

Direct and Indirect Gender Discrimination in Old-Age Pensions in 33 European Countries



THE EUROPEAN NETWORK OF
LEGAL EXPERTS IN
THE FIELD OF GENDER EQUALITY

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Part I

Direct and Indirect Gender Discrimination in Old-Age Pensions in 33 European Countries

The application of Article 157 TFEU, Directive 2006/54/EC
and Directive 79/7/EEC

Simonetta Renga, Dora Molnar-Hidassy and Genoveva Tisheva

1. INTRODUCTORY REMARKS

1.1 The purpose of the report

The purpose of the report, which follows the 2007 Report of the Gender Network *Social security and gender: report on Directive 79/7/EEC and Directive 86/378/EEC as amended by Directive 96/97/EC*, is that of highlighting the most relevant features of direct and indirect gender discrimination in the statutory and occupational old-age pension systems. This with the aim of offering a contribution to the reflection – foreseen in the *Roadmap for Equality Between Men and Women 2006-2010* – on the reinforcement of the effectiveness of gender equality legislation in the field of old-age pensions.

Women pensioners run higher poverty risks than men as a consequence of the inequalities existing between men and women in the labour market. These differences in work patterns are then mirrored, often in the form of indirect gender discrimination, by the pension schemes. All the more so when: the pension system is based on the lifetime employment record of the claimants; the schemes are based on actuarial principles (which means the use of gender-related actuarial factors); there is a strong link between benefits and contributions (such as there is in the defined contributions schemes, for example); benefits are earnings related.

The report will therefore start with an outlook on the social policy trends existing in the various countries.

Afterwards, the crucial features, as regards gender equality, of the statutory old-age pension system will be analysed. In this context, attention will be paid to: qualifying conditions; the pension amount; derived rights (Art. 7.1 c-d)); caring credits; exceptions to Directive 79/7/EEC, that is pensionable age (Art. 7.1 a)) and advantages granted to persons who have brought children (Art. 7.1 b)).

Furthermore, the occupational old-age pension schemes will be analysed in the light of gender equality. Occupational schemes are deeply involved in the processes of reforming old-age pensions and are increasingly run according to insurance principles and thus under the criteria of capitalization: this might give rise to many gaps in terms of social protection, especially when non-standard working patterns, mainly taken up by women, are concerned. In this prospect, the features to be analysed as regards occupational funds in the report will be: coverage, the calculation of benefits and contributions, the use of actuarial factors, caring credits, vesting and reimbursement rules, the pensionable age.

Moreover, following the ECJ case law, which considers as occupational pension schemes those formerly classified as basic statutory schemes by the domestic legislator, particular attention will be paid to civil servants' old-age pension schemes. Finally, possible answers to gender inequalities in the old-age pensions system will be

put forward and recommendations at the EU legislative and social policy levels will be proposed. In particular, updating Directive 79/7/EEC and repealing the exceptions of Article 7.1 a), b), c) and d) of Directive 79/7/EEC will be regarded as the minimum objectives. Moreover, it will be considered extremely important to include in both the *statutory funds* and the *occupational schemes* legislation on a minimum provision on care credits, for all persons who have, because of caring responsibilities, taken time off from their job or are unemployed; these provisions ought to be gender-neutral. Finally, the provision of mechanisms to control the legitimacy of gender-related actuarial factors would be welcome.

As the overview of all national reports shows, the great difficulty in finding common standards and comparing the social security fields is due to the extreme difference in old-age pension systems in the various Countries; the gender equality legislation, however, is a crucial instrument in attaining common standards in social protection. In this perspective, as old-age pension provisions are part of the set of instruments geared to lower the risk of poverty for older women, the report fits within the *European Year of Combating Exclusion and Poverty*.

1.2 Some technical concepts

By way of an introduction to this complex subject, it is here opportune to explain some technical concepts which will be frequently used in the Report.

The *Pay-as-you-go schemes (PAYG)* are those where the payment of contributions by the pensioners are relevant for qualifying conditions and pension amount purposes, but pensions are then actually paid out of the contributions by active workers.

The *funded schemes* provide for pensions paid by the contributions accrued over the years by the pensioners themselves, according to the criterion of *capitalization*.

Schemes with *defined contributions (DC)* are those in which the total amount of the pension is not predetermined, but depends upon factors such as the number of contributions accrued or the results of the management of the resources set aside by means of periodical contributions; contributions to these schemes are, on the other hand, predetermined.

The *notional defined contribution schemes (NDC)* give participants a hypothetical account containing all contributions made over their working lives, credited at a certain rate of return; at the time of retirement, pension benefits are calculated taking into consideration the contributions accrued in the notional account and the life expectancy factor.

Schemes with *defined benefits (DB)* are those where the intended total pension payment is established *a priori*: for this prearranged total the contribution is periodically adjusted according to factors such as the variations in the general economic situation, the variations in the profits of the investments of capital made by the fund and so forth.

Pensionable income is the wages upon which the pension amount is calculated. *Career/contribution/insurance periods for the purpose of pension calculation* are normally the number of yearly wages/contributions or insurance years upon which pensions are calculated.

Pensionable age is synonymous with the age of retirement, that is the age at which a pension can be claimed.

Minimum qualifying conditions are those requirements which have been set for access to pension rights. Among them the following may be relevant: the *service/career periods*, that is the total length of employment; the *insurance period*,

that is the number of the claimant's insured years; the *contributions period*, that is the number of contributions paid into the pension fund.

Coefficient of transformation can be used in pension calculation to represent the average remaining life expectancy of the claimant.

Figurative/notional contributions, which are also called *contribution credits*, are contributions virtually but not effectively paid by the insured person: contribution crediting is generally recognised in cases of unemployment, sickness, caring periods, and so forth; normally, in this case contributions are paid out of the State budget.

Full pension is the maximum amount of pension which is payable.

The *replacement rate* between wages and pensions is the difference which exists in the individual wages and pension amount.

2. SOCIAL POLICY TRENDS

2.1 Comparing old-age pension models in the perspective of gender equality: the traditional *Three-Pillar Model* vis-à-vis the *World Bank Model*

The traditional *Three-Pillar Model*, upon which EU Directives 79/7/EEC and 2006/54/EC are based, is made up of a statutory public pillar, an occupational pillar and a private insurance pillar. The countries which are organized according to this pillar are: **Cyprus, Denmark, Finland, France, Greece, Luxembourg, Malta, Norway, Portugal, Turkey, Sweden, Ireland, Austria, the Netherlands, Belgium, the UK, Liechtenstein, Italy, Spain, Germany, the Czech Republic.**¹

The choice of the Three-Pillar Model *per se* is irrelevant as far as gender equality is concerned. Indeed, as we shall see in the course of the Report, what do matter are rather the features of the various schemes, statutory and occupational, used in the Three-Pillar Model. This especially in relation to the different working patterns of men and women in the labour market and to the pay gap that exists between them, which are both mirrored by the pension system.

Many Central and Eastern European Countries have chosen, on the other hand, the *World Bank Model (WBM)* rather than the Three-Pillar Model. The WBM is made up of the following pillars: a first mandatory public pillar; a second privately managed mandatory savings pillar; a third pillar made up of additional private pensions savings and occupational pensions, which has been used in order to better represent the latest pension reforms.

The WBM Countries are: **Bulgaria, Lithuania, Estonia, Latvia, Slovakia, Croatia, Slovenia, Poland, Hungary, FYR of Macedonia, Romania and Iceland.**²

In particular, there was a paradigmatic shift in many Central and Eastern European countries after the collapse of communism, when the strong idea of redistribution and the egalitarian attitude of the pension system turned into pension self-care via privately managed pension funds. Within this process, the original statutory system was generally transformed into a three-pillar model with the co-

¹ Although some literature classifies the **Czech Republic** as a WBM system (see H. Vaandrager, 'Adopting a regional approach to occupational pensions in Central and Eastern Europe', *AEGON Global Pension* (2009)), the national expert defines it as a Three-Pillar Model system.

² Although attention is regularly given to the Central and Eastern European countries when we are discussing the WBM, according to its definition the pension system of **Iceland** belongs to this group as well. In this case the first pillar is a tax-financed public plan, which provides for a flat-rate or means-tested basic pension for all; the second pillar is a mandatory occupational or private, but publicly regulated, funded pension scheme; the third pillar is a voluntary funded pension scheme.

operation of the World Bank (and of the International Monetary Fund).³ Although the above-detailed basic idea was the same in all the countries, the actual realisation gave rise to slight differences.

According to the national reports, the WBM pillar system *per se* may be useful for gender equality purposes, provided that the mainly indirectly discriminatory features within each system are abolished by taking into account the real situation of women in the labour market. The most significant problem of this system is that it often transfers the differences between the wages of women and men to the pensions. Employees in low-paid and precarious jobs, among whom women are disproportionately over-represented, cannot afford to save much and often fail to do so even if the law has supposedly made retirement savings schemes mandatory. For most of them the voluntary private pillar is practically useless.

Advantages reserved for women with regard to child care, a lower retirement age and service period requirements are rooted in the previous pension system, where these preferences served as balancing elements for women's pension rights. After the change of regimes, many countries recognized that these factors result in negative effects as well: for example, lower qualifying service periods for women cause a lower replacement rate between wages and pensions (and therefore increases the 'at poverty' risk); a lower pensionable age in a market-based economy may result in the fact that employers have a better perspective of collaborating with a 50-year-old man, because it can be assumed that such a worker would be interested in working at least 15 years, not only 10, as in the case of women. However, the arguments for abolishing gender-related advances are not yet universally accepted, although in the light of the undertaken economic and political reforms, the logic of the previous structure falters.

The *main difference between the Three-Pillar Model and the WBM* rests in the second pillar, which is occupational, in the one model, and privately managed, mandatory and financed by a share of social security contributions, in the other. Here the main doubt as regards gender equality legislation based on the three-pillar model is whether the privately managed and publicly financed, mandatory WBM schemes can be classified as a second tier of the first pillar and so included under Directive 79/7/EEC, or as private insurances consequently regulated by Directive 2004/113/EC. For example, if the privately managed and publicly financed mandatory schemes were regulated by Directive 79/7/EEC they would not be allowed to use gender-related actuarial factors. As regards the classification of these schemes, only **Croatia, Estonia, Poland and Slovakia** expressly stated in their national reports that the first and second pillar may both be considered as being part of the European first pillar addressed by Directive 79/7/EEC.

2.2 General trends: old-age pension reforms and their impact on gender equality

a) *Three-Pillar Model Countries*

Demographic and structural problems, such as the ageing of the population, changing family patterns, and low fertility rates, have made reforming the pension systems crucial on the political agenda of many Member States and EEA Countries in order to preserve their financial sustainability. A particularly important issue of the reforms is

³ See also Alfio Cerami: Social Policy in Central and Eastern Europe, Universität Potsdam, Lit and Peter Vanhuyse: Devide and Pacify, CEU Press.

that of the pensionable age in both statutory and occupational funds in order to comply with the jurisprudence of the Court of Justice.⁴

In this context, women pensioners run higher poverty risks than men as a consequence of the inequalities which exist between men and women in the labour market.

As A. Sundén puts it: ‘An aspect of special interest here is that men and women have different patterns of work history, with women having a lower participation rate in the formal labour market, interrupted careers in response to child rearing, and lower wages. Also, women have longer life expectancy than men and more often become widows than men become widowers. These differences may influence the consumption possibilities in old age depending on how the pension system is designed. Pension benefits will reflect labour market behaviour.’⁵

The aspect just described is stressed by all the national reports: the experts confirm that the differences in work patterns are then mirrored, often in the form of indirect gender discrimination, by the pension schemes.

In the light of the domestic trends as regards old-age pension reforms, women’s unequal situation in the labour market is going to be more and more faithfully reflected by the pension system.

As we shall try to explain in this section, many of the pension reforms, which have taken place or are in progress in most EU Member States and EEA Countries, are among the factors which increase the at-poverty risks of women of pensionable age; this is due to their low pension amount or to their failure to qualify under the statutory schemes.

Indeed, some **statutory pensions** have moved from Pay-As-You-Go (PAYG) to funded schemes, or from Defined Benefits (DB) to notional defined contribution schemes (NDC) and defined Contributions schemes (DC) (**Italy’s** new contributory system, the future statutory second tier of the **Czech Republic**). In **Norway**, in the statutory NDC supplementary scheme, there are also plans to introduce a life expectancy factor, which will take into account women’s higher life expectancy. In general, therefore, a stronger link between contributions and benefits has therefore been introduced, which makes the claimants’ continuity and regularity of employment and the earning variations crucial factors in determining access to and the amount of

⁴ See: C-46/07 *Commission v Italy*; C-559/07 *Commission v Greece*; C-351/00 *Pirkko Niemi v Finnish Government*; C-366/99 *Griesmar v Ministre de l’Économie, des Finances et de l’Industrie and Others*; C-262/88 *Barber v Guardian Royal Exchange Assurance Group*; C-110/91 *Moroni v Collo GmbH*; C-408/92 *Constance Christina Ellen Smith and Others v Avdel Systems Limited*; C-50/99 *Jean-Marie Podesta v Caisse de Retraite par répartition des Ingénieurs Cadres & Assimilés (CRICA) and Others*; C-200/91 *Coloroll Pension Trustees Limited v James Richard Russell and Others*. See on these issues: S. Deakin, ‘Equalising Occupational Pension Rights: The Direct Effect of European Community Law’, *The Cambridge Law Journal* 1990 p.408-410; D. De Vos, ‘Les pensions professionnelles ou l’art de l’interrogation’, *Chroniques de droit social* 1990 p.357-363; C.M. Sjerps, ‘Van doornroosje en haar hardnekkige prins, oftewel: hoe het EG-Hof de pensioenwereld probeert te wekken’, *Sociaal Recht* 1990 p.212-217; N. Colneric, Ninon, ‘Neue Entscheidungen des EuGH zur Gleichbehandlung von Männern und Frauen’, *Europäische Zeitschrift für Wirtschaftsrecht* 1991 p.75-79; M. De Vos, ‘La notion de “Rémunération” au sens de l’article 119 du Traité de Rome et son application dans le temps au regard de l’arrêt Barber et des arrêts postérieures de la Cour de justice des Communautés européennes’, *Revue de droit social* 1995 p.156-205.

⁵ A. Sundén, ‘A Discussion of Retirement Income Security for Men and Women’ in: Bernd Marin & Eszter Zólyomi (ed.) *Women’s Work and Pensions: What is Good, What is Best? Designing Gender-Sensitive Arrangements*, pp. European Centre Vienna, Ashgate.

benefits. Here non-standard workers, most of whom are women, suffer the main losses in terms of future pension amounts and often fail to qualify for benefits.

Minimum insurance and contribution requirements have been increased (**Italy, Cyprus, Spain, the Czech Republic**) and this is bound to have a negative impact upon the pensions of all the atypical workers, such as intermittent, temporary, occasional and part-time workers, many of whom are women.

Earnings-related DB schemes formerly based on the last salary or on the best selected earning years are now based on lifelong earnings (**Sweden, Portugal, Norway** in 2011). The career period for the purpose of calculating the pension has often been increased (**Austria, France, Finland**). The contribution period which gives access to a full pension benefit has in many cases been lengthened (**Belgium, Malta**, planned by the June proposals in **France**). The trends just described imply that the pension amount mirrors the unequal situation of women in the labour market, that is the pay gap and fragmented careers resulting in lower pensions. Indeed, shorter pensionable periods (e.g.: contribution/earnings periods taken as a basis for calculating the pension amount) would be more favourable for low-earning labour market career workers, who are prone to earn more towards the end of their career rather than at the beginning; although those women with high pay fluctuations and fragmented careers can be at a disadvantage with short pensionable periods as a decrease in earnings during the period of reference for the pension calculation can result in a lower pension (**Greece**). The pension calculation based on the best selected spells of employment was indeed the most favourable choice for atypical workers. As an example of the trend under analysis, **Germany** can be mentioned: under the DB statutory pension system, there was a mechanism for calculating pensions that allowed the pension of people with long working histories, but low incomes, to be increased; this, however, was abolished with the 2001 reform. This mechanism was especially beneficial for women.

Finally, the pensionable age has been increased for both men and women (**Greece**; planned by the June proposals in **France**) and often the increase for women has meant equalization with men (**Belgium, the UK, Liechtenstein, Malta**).

In many countries, there has been an attempt to compensate these changes through the recognition of contribution credits for child rearing or through other mechanisms of contribution/earnings credits for non-standard workers (**Sweden; Belgium; Austria; Greece; Finland**; to a certain extent, regarded as not sufficient by the national expert, **France**). In **Sweden**, for example, the new earnings-related pension scheme is based on lifelong earnings rather than on the best 15 years of earnings: this change, which can be regarded as detrimental to women (who to a larger extent than men work part time), was compensated by fairly generous pension rules for child-rearing years. In **Belgium**, a major correction of the pension calculation to the benefit on non-standard workers has been made possible through the mechanism of ‘a guaranteed pension amount per career year’: that is, provided that the combined working time of the considered year adds up to a minimum of 104 full workdays, the guaranteed all-sector remuneration is substituted for the actual remuneration in that year if the former is higher than the latter.

Ireland and the **UK** appear to be going in a different direction in relation to the general trends. In **Ireland**, recent reforms appear to have had a positive effect on gender equality: the introduction of various social insurance contribution credits for interruptions due to family or care reasons has broadened significantly the opportunity to qualify for the State pension; the prohibitions on the exclusion of atypical workers, working at least 20 % of the normal working hours of comparable permanent full-time

employees can be seen to have significantly addressed an area of exclusion of female workers from occupational schemes. Moreover, the statutory system will be replaced, according to the 2010 National Pensions Framework, by 2020, when a minimum social insurance contribution of ten years will be required, with the rate of benefit then being assessed proportionately to the number of contributions made over the course of the recipient's working life; as can be read in the national report: 'given the fact that this system will take total lifelong contributions into account with a relatively low minimum contribution requirement, it should improve further access to state pensions for atypical workers'. In the **UK**, the very low level of the state pension and the ensuing dependence of pensioners on occupational and/or private pensions disproportionately disadvantages women, whose coverage by occupational and private pensions is significantly lower than men. As a sort of reaction to this, recent reforms of the state pension scheme have attempted to further gender equality: the state scheme traditionally consisted of a basic state pension and an earnings-related supplementary state pension; now the income-related second pension has been replaced by a flat-rate state pension, and significant efforts have been made to reduce the pension poverty experienced by many women whose fractured working lives have traditionally resulted in inadequate coverage. National Insurance Credits were introduced in order to ensure coverage for those who have taken time out of the workforce to take over caring responsibilities. This will allow parents and carers to build up qualifying years through weekly credits for both the basic and additional statutory pension (without limits in the number of qualifying years taken into account).

In some countries, there has also been an increased effort to reform **occupational schemes** in order to keep pensions at an acceptable level (**Italy, UK**). In some other countries, the coverage of occupational schemes has been reduced and the qualifying conditions tightened (**the Netherlands**, for example).

However, occupational schemes are normally organised according to insurance principles and thus under the criterion of capitalization, and this might give rise to many gaps in terms of social protection.

Specific problems emerging from national reports are: if the higher life expectancy of women is taken into consideration, women's pensions can be lower or their contribution rate higher than those provided for men (moreover, a higher contribution rate can discourage employers from employing women); the contribution record (that is the number of contributions accrued over a working life) and consequently the pension amount are impaired by earnings which are inferior to average standards and an irregular career, as the insurance principles are rigorously applied. In substance, as regards occupational schemes, the application of actuarial principles can result in social inequalities and this can give rise to indirect discrimination based on gender once more stemming from different female working patterns.

Reforms often have long transitional periods and in most cases there are no provisions which are geared towards amending past inequalities. The **Belgian** situation in the *Jonkman and others* case (C-231, 232, 233/06) is a case in point. Within the statutory pension scheme for paid workers, special conditions are provided for the flight personnel of airlines: a full career of 34 years, 55 years as the legal age of retirement, higher contributions and higher benefits than the normal statutory pension benefits for all paid workers. As the standard practice of the airlines (before Directive 76/207/EEC was adopted) was to terminate stewardesses' contracts when they reached the age of 40, stewardesses could not meet the special conditions, so that

it had seemed logical to exclude them from the flight personnel pensions scheme. The exclusion had to be repealed when **Belgium** implemented Directive 79/7/EEC, but ever since then the successive governments have repeatedly failed to develop a method for eliminating the effects of the stewardesses' past exclusion without creating fresh discrimination: as the national expert puts it, '*Jonkman* is the latest episode in this sorry saga, but the government has taken no steps to comply with the ECJ's decision, awaiting the Labour Court of Appeal in Brussels (which had referred to the ECJ for a preliminary ruling) to produce a final judgment, which the latter does not seem anxious to do'.⁶

b) WBM Countries

Countries of the WBM have to face similar demographic and structural problems as the nations with the Three-Pillar Model, such as the ageing population, changing family patterns, the lowering of the fertility rate and financial sustainability. Moreover, besides the classic and well-known factors, the effects of the current financial crisis have to be managed as well. We can see that in this difficult economic situation old-age pension reforms give priority to financial aspects rather than to gender equality, and women are quite vulnerable because they are more dependent on the statutory system (this happens, for example, in **Iceland, Slovenia, Lithuania**).

The national systems' answer to maintaining the balance between ageing and financial sustainability is to regularly increase the retirement age (**Estonia, Hungary, Romania, FYR of Macedonia, Latvia** from 2012, for example). Even though the increase in the pensionable age is not as yet linked to equalization, as most of the WBM Countries still maintain differences in the age of retirement for men and women.

Another feature, which is common in the Three-Pillar Model Countries, is the shift from DB to DC/NDC schemes and, more generally, the strengthening of the link between pension benefits and contributions (**Slovenia, Bulgaria, Romania**). **Slovenia** is a case in point: as from 2015, the contributions paid by the insured person to the first pillar will be recorded in his/her personal pension savings account; personal pension savings accounts shall be virtual, because the system will maintain its PAYG nature and the contributions of active workers will still be used to pay the pension of retired workers. In this context, it is considered necessary to introduce a strong

⁶ In C-231,232,233/06 *National Pensions Office v Emilienne Jonkman and Others*, the Court of Justice ruled that: 'Directive 79/7 on the progressive implementation of the principle of equal treatment for men and women in matters of social security does not preclude a Member State, when it adopts rules intended to allow persons of a particular sex, originally discriminated against, to be eligible throughout their retirement for the pension scheme applicable to persons of the other sex, from making such membership dependent upon the payment of adjustment contributions consisting of the difference between the contributions paid by the persons originally discriminated against in the period during which the discrimination took place and the higher contributions paid by the other category of persons during the same period, together with interest to compensate for inflation. However, any measure taken by a Member State in order to comply with the norms of Community law, such as the principle of equal treatment between men and women, must be effective. Consequently, that directive precludes a Member State, when it adopts rules intended to allow persons of a particular sex, originally discriminated against, to become eligible for the pension scheme applicable to persons of the other sex, from requiring the payment of adjustment contributions to be made together with interest other than that to compensate for inflation. That directive also precludes a requirement that that payment be made as a single sum, where that condition makes the adjustment concerned impossible or excessively difficult in practice. That is the case in particular where the sum to be paid exceeds the annual pension of the interested party'.

redistributive element (the zero pillar), which would provide everyone with a universal pension at 65 years of age.

All the WBM countries, however, have realized the shift to DC schemes by introducing the privately managed, mandatory second pillar/second tier of the first pillar schemes: it is important to stress that the significance of the new schemes will definitely increase in the forthcoming years, as the WBM system was introduced around the new millennium and the first payments are only now being made.

We can also witness an increase in the required minimum contribution periods (for example, in **Romania** and **Slovakia**) and higher contribution levels (**FYR of Macedonia**, for instance); there is also a general decrease in the replacement rate between wages and pensions.

The pension calculation based on lifelong earnings rather than on the last working years or on the best selected year of employment has been introduced (**Bulgaria, Romania**), like in many Three-Pillars Model countries.

Although disparities in the labour market are not eliminated at the stage of accumulating pension assets, pension systems tend to compensate them at the time of calculating the benefits. This is probably the case as regards the non-application of different life expectancy factors in the first-pillar statutory schemes. In **Poland**, for example, the application of uniform life expectancy rates will increase benefits for women at the expenses of men. On the other hand, the application of gender-related actuarial factors is very much debated in relation to the second pillar/second tier schemes.

3. STATUTORY OLD-AGE PENSION SCHEMES (SCHEMES FALLING UNDER DIRECTIVE 79/7/EEC): THE MAIN FACTORS OF GENDER INEQUALITIES

3.1 Statutory old-age pension schemes in Three-Pillar Model Countries

3.1.1 Contribution conditions, pension amount, derived entitlements of a wife

Quite often the pension systems of the Three-Pillar Model countries do not show any discriminatory patterns as regards contribution conditions and the calculation of pension amounts. It is rather the specific female working patterns – that is occasional employment, career interruptions due to caring activities and low pay – which endanger their pension rights. When exclusions from coverage and reductions in pension amounts in relation to non-standard working patterns considerably affect more women than men and are not justified by social policy aims (*C-317/93 Inge Nolte v Landesversicherungsanstalt Hannover* and *C-444/93 Ursula Megner and Others v Innungskrankenkasse Rheinhessen-Pfalz*),⁷ this might be considered to be indirect discrimination.

⁷ The Court of Justice stated on this issue that Article 4(1) of Directive 79/7 must be interpreted as meaning that national provisions which limit access to statutory pensions for low earning workers or for those working few hours a week do not constitute discrimination on grounds of sex, even where the relevant provisions affect considerably more women than men, since the national legislature was reasonably entitled to consider that the legislation in question was necessary in order to achieve a social policy aim unrelated to any discrimination on grounds of sex; that will be the case where the exclusion of such employment from compulsory insurance corresponds to a structural principle of a contributory social security scheme which is the only means of satisfying a social demand for such employment and is designed to avoid an increase in unlawful employment and devices circumventing social legislation.

a) *Contribution rules*

As regards the coverage of the pension system, statutory funds based on minimum insurance, contributions or the length of employment conditions may fail to protect workers with irregular careers, who do not manage to fulfil these conditions (systems such as those in **Luxembourg**, **Italy** as regards the old earnings-based system, the **UK**, **Austria**, **Greece**, **Portugal**, **Turkey** and **Spain**). All the more so as there is a trend to increase the length of qualifying periods.

The **Spanish** scheme requires, for instance, over a 15-year contribution period, 2 years of actual contributions immediately before the date of applying for a pension and this can be a requisite which is almost impossible to fulfil for workers with recent spells of inactivity.

In systems such as in **Cyprus** and **Italy** (a new contributory pension), the qualifying condition based on a minimum benefit amount requisite (under which pensions are not paid) can endanger the pensions rights of atypical workers with low salaries and can require long contribution periods to be attained.

The **Luxembourg** statutory fund directly bans occasional workers with less than 3 months employment per year and low-paid self-employed workers from the pension scheme; moreover, only part-time workers with more than 64 hours per month can have the full monthly contribution credited. The **UK** also excludes the low-paid from insurance.

In **France**, workers must have earned in one year at least 800 times the hourly minimum wage in the valid year; if workers' wages are below this threshold, it is possible to validate a quarter if in a period of three months a worker had earned 200 times the hourly minimum wages (a similar situation exists in **Sweden** as regards the earnings-related part of the pension).

In **Italy**, a general rule is provided according to which the worker is credited with the weekly contribution in full only if his/her pay is at least equal to 40 % of the monthly minimum pension; if this ceiling (about EUR 183 a week) is not reached, the weekly contribution is proportionally reduced (a similar rule is in place in **Portugal**).

In **the Netherlands**, there is a residence condition from 15 to 65 years as a qualifying condition, coupled with a proportional reduction in the pension in the years of absence from the country; there are therefore no qualifying contribution conditions linked to paid employment. Similar situations can be found in **Denmark**, where all the residents are entitled to the *Folkepension* at 67 years of age and this right is not work-related, and in **Norway** with the *NIS basic pension* paid to residents. These can be regarded as the best choice as far as non-standard employees are concerned.

In other countries, minimum qualifying conditions are very low and so they do not hamper the pension rights of non-standard workers. In **Liechtenstein**, the minimum contribution condition is 1 year, for example (as it is in **Malta**); the minimum pension amount, however, is not sufficient to ensure survival. In **Germany**, the minimum contribution condition is 5 years. In **Ireland** it is 5 years, which will, however, rise to 10 in 2012; moreover, any employed person earning more than EUR 38 per week is required to make a weekly contribution.

In the **Czech Republic**, there is a long insurance condition (from 16 to 35 years, depending on the pension benefit required); this condition, however, is softened as regards atypical workers by the so-called 'working time conto', which enables the employer to use a workforce intensively for a certain period – for example, for seasonal work - and then leave the workers inactive: in this case, the worker is paid as if s/he has worked for the whole year for a fixed time and this implies that there will

be no losses in terms of insurance years. Occasional workers for no more than 150 hours a year, however, are not covered by statutory pensions.

Periods of unemployment are generally taken into account for pension rights and amounts when covered by unemployment benefits.

b) Pension amount

There is a general trend shown by the national reports to assess the pension amount on the lifetime employment record of the claimant; even when pensions are earnings-related in DB schemes, rather than being contribution-based (NDC or DC schemes), there is a trend to take into account the whole career earnings or long earning periods rather than the best selected spells of employment or the last working period incomes, which are normally the higher ones in the workers' careers (**Luxembourg, Spain, Sweden, Turkey, Portugal, Austria, the Czech Republic, Germany, Liechtenstein, Finland** as regards the statutory mandatory professional pension).

The trends just described imply that the pension amount mirrors the unequal labour market situation of women, where the pay gap and fragmented careers result in lower pensions. Indeed, shorter *pensionable periods* - that is, contribution/earning periods taken as a basis for calculating pension amounts - are more favourable for low earners, who are prone to earn more towards the end of their career rather than at the beginning. Although those women with high pay fluctuations and fragmented careers can be at a disadvantage with short pensionable periods, as a decrease in earnings during the period of reference for calculating the pension can result in a lower pension, as happens in **Greece**. The most favourable choice for this type of worker is pension calculation on the best selected spell of employment; however, when the best spell is very long - for example, 25 years like in **France** or 20 in **Norway's** statutory supplementary pension - this is no longer true.

Malta and **Greece** are exceptions to the trend. **Malta** has retained, for the time being, the calculation of the pension on the average wage/salary earned during the three best consecutive calendar years in the last ten years of employment. In **Greece** the pension is calculated on earnings either from the last 5 years of employment (for those insured from 1.1.1993 onwards) or from the best 5 of the last 10 years of employment (for those insured prior to 1.1.1993).

The atypical workers' pension rights are also endangered by the strengthening of the link between benefits and contributions which is typical of NDC (see the new contributory system in **Italy, Sweden, Portugal**) and DC systems (**Austria, Denmark** in the statutory supplementary *ATP* scheme). Even in most DB schemes, pension amounts may depend on the number of insurance years within the scheme or on the number of contributions paid each year: in **Greece**, for example, the pension amount increases depending on the length of insurance within IKA (a similar situation *mutatis mutandis* can be found in **Italy** in relation to the old earnings-based system, in **Ireland** and in **Turkey**).

An indirect discriminatory feature can be found in the pension calculation in the **Belgium** system. In particular, the main characteristic of the paid workers' old-age pension scheme is the coexistence of two rates to be applied to average remuneration: 75 % ('household rate') and 60 % ('single person rate'). If the sum of the two single persons' pension rate, among a couple, is inferior to the 75 % household rate as calculated on the higher average earnings, then the 'household' pension is awarded to the spouse who obtained the higher average remuneration. Then, the other spouse's pension is cancelled, unless both spouses insist on two 'single pensions' (which never happens because it is economically disadvantageous). The indirect discrimination

rests on the fact that the higher income is almost always that of the man and the benefit which is cancelled is therefore that of the woman.

As long as part-time workers are specifically concerned, in **Italy** insurance and contribution periods for the purpose of determining the pension amount are calculated in proportion to the number of hours effectively worked; therefore, part timers are not credited with contributions for the weeks when they do not carry out their work activity and this can noticeably endanger the contribution record of vertical part timers (that is, those whose work is executed full time, but only in certain fixed periods during the week/month/year).⁸ In **Greece**, where women make up 70 % of part-time workers, part timers had - and to a lesser extent still have compared with other countries where the benefits of part timers are assessed in the standard way - a very favourable treatment: until 1991, the law provided that, in any event, the amount of a part timer's pension could not be lower than the lowest full timers' pension; from 1991 onwards, this safety net was weakened, as it was provided that a part timer's pension cannot be lower than only half the lowest full timers' pension.

Another feature of the pension system that negatively affects women is the fact that many schemes pay full pensions only after quite long periods of contributions/employment (the **UK**, **France**, the old pay-based system in **Italy**, **Portugal**, **Austria**, **Belgium**, **Germany**, **Malta**, **Liechtenstein**, the supplementary statutory pension in **Norway**, for example).

In this context, it may be extremely important to have a minimum benefit or a flat-rate component of the pension paid to all those who fulfil the statutory pension qualifying conditions, as happens, for example, in **Luxembourg**, **Cyprus**, **Sweden**, **Austria**, **Portugal**, **Greece**, **France**, **Turkey**, **Denmark**, **Finland**, **Ireland**, **Liechtenstein**, **Norway** and in the **UK**. Although in several cases the minimum pension is quite low, like, for example, in the **UK** (where the replacement rate between the statutory pension and wages, that is the amount of pay replaced by the pension benefit, is the lowest in Europe, amounting to 17 %) and in **Liechtenstein**.

In **Belgium**, where statutory pensions are anyway very modest and are calculated on the yearly average income, there is a major correction of the pension amount for low-paid workers through the mechanism of 'guaranteed remuneration amount per career year': provided that the combined working time of the considered year adds up to a minimum of 104 full workdays, the guaranteed all-sector remuneration is substituted for the actual remuneration of that year if the former is higher than the latter. However, if the 'guaranteed amount' is not applicable, there is no minimum pension.

Very interesting from the atypical workers' perspective is **the Netherlands'** solution, where the statutory pension system provides for flat-rate benefits which are related to the statutory minimum wage (or the wages floor), even though the levels of benefits are dependent on the pensioner's private situation (single, cohabiting, with dependent children and so forth) and on the number of years of residence in the country.

Another problem, as regards pension amounts, is that pensions in some cases are adjusted, i.e. index-linked, below the inflation rate. As the majority of minimum pension recipients are women, they are affected by this reduction in pensions to a disproportional extent (see **Austria**, **Belgium**, **Greece**).

⁸ See on this specific issue joined cases C-395/08 and C-396/08 *Istituto Nazionale della Previdenza Sociale (INPS) v Tiziana Bruno and Others*.

So far, the Three-Pillar Countries, except **Portugal**, do not take into account the higher life expectancy of women in the calculation of pensions.

c) Derived entitlements of the wife, according to the exception of Article. 7.1 c)-d) of Directive 79/7/EEC and Survivors' pensions

Derived entitlements, according to Article 7.1 c)-d) of Directive 79/7/EEC, are: the granting of old-age or invalidity benefit entitlements by virtue of the derived entitlements of a wife; the granting of increases in long-term invalidity, old-age, accidents at work and occupational disease benefits for a dependent wife.

The national reports do not show many examples of discriminatory derived rights: in several cases, there are no derived rights at all in the domestic systems; in many other cases, there are derived rights, but they are gender-neutral (**Austria, Finland, Greece, Ireland, Malta, Portugal, Spain, Sweden, Turkey**).

In **Cyprus**, the basic pension is increased to reflect the number of dependants by 1/3, 1/6 and 1/6 for the first, second or third dependant respectively. In the case of a male beneficiary, his spouse is a dependant if she lives with or has been maintained by him and receives no pension from the Social Insurance Fund, regardless of whether she is working or not. In the case of a married female beneficiary, the increase for her dependent children is in any case equal to the 1/6 of the basic pension for each child (the maximum number of dependent children: two). Her spouse is a dependant if he is unable to support himself, is wholly maintained by her, and receives no pension from the Social Insurance Fund. Thus the treatment of the two spouses is different and probably linked to the male breadwinner concept. If both spouses are entitled at the same time to increases for dependants, the payment to dependants is only payable to the spouse who is entitled to the higher benefit. This can conceal indirect discrimination, as the wife's benefit will often be lower than that of the man.

A best practice as regards the individualization of additions for dependents can be found in the **Irish** system. Here, the pension of a spouse may be increased for a qualified adult who is dependent on the pension recipient. At present, approximately 95 % of those who are 'qualified adults' are female. For any applications received after the 27th September 2007, the increase is paid directly to the dependent spouse rather than to the main pension recipient: in this way, through the process of the individualization of rights, the dependent spouse (normally, the wife) becomes entitled in her/his own right to the addition, in place of the main pension recipient (normally, the husband).

The **UK** system aims at equality as regards supplements. Indeed, spouses and civil partners can choose to receive the basic state pension based on the contributions of their spouses/civil partners rather than their own, to a maximum 60 % of the basic state pension, when both partners have reached state pensionable age. Prior to May 2010 this benefit was only available to wives.⁹ Male civil partners will not be able to

⁹ See C-420/92 *Elizabeth Bramhill v Chief Adjudication Officer*, which stated: 'Article 7(1)(d) of Council Directive 79/7 does not preclude a Member State which provided for increases in long-term old-age benefits in respect of a dependent spouse to be granted only to men from abolishing that discrimination solely with regard to women who fulfil certain conditions. The purpose of the directive is to implement progressively the principle of equal treatment for men and women in matters of social security and it would be incompatible with that purpose and likely to jeopardize implementation of that principle if the directive were to be interpreted as meaning that in the case of benefits which a Member State has excluded from the scope of the directive pursuant to Article 7(1)(d) it could no longer rely on the derogation provided for by that provision if it adopted a measure which has the effect of reducing the extent of unequal treatment based on sex'. See also on this issue C-373/89 *ASBL v Nadine Rouvroy and Others*, where it is stated: 'Article 4(1) of

benefit from derived entitlements until April 2015. Women will be able to benefit from contributions paid by their female civil partners after May 2010.

Derived rights can be a crucial issue in the case of separation or divorce: to this end some countries have introduced provisions on the splitting of pension rights (the **UK, Sweden, Malta**, to some limited extent **Austria**, for example).

Survivors' pensions are also an important resource for women who have higher life expectancy and who may have given up their job in favour of caring activities and are therefore unable to qualify for pensions in their own right. Almost all the countries have survivors' pensions in their system and they are gender-neutral. An exception to this is **Cyprus** and **Turkey**. In **Cyprus**, a widower's pension is not payable except where the widower is permanently incapable of self-support; on the other hand, a woman who has paid insurance contributions is entitled to draw a widow's pension alongside her own social insurance pension. In **Turkey**, there is preferential treatment for female children: male children have an upper age limit, after which they no longer have a right to survivors' benefits; females have no age limit as long as they are unmarried, divorced or widowed and not covered by the state social security scheme. In the **UK**, survivors' pensions are moving towards gender-neutrality. Here we should reiterate that Article 3.2 of Directive 79/7/EEC states that the gender equality directive on statutory social security shall not apply to the provisions concerning survivors' benefits.

3.1.2 Pensionable age (Article. 7.1 a) Directive 79/7/EEC)

The statutory pensionable age is equal in many countries: **Cyprus; Norway; the Netherlands; Spain; Liechtenstein; Belgium, Sweden and Finland**, where there is a flexible retirement age; **Luxembourg; France; Portugal; Denmark; Germany; Ireland**. In **Spain**, a claimant can receive an early old-age pension and still work part time: this type of early pension is not available to part-time workers and those on seasonal contracts. This exclusion from the opportunity to receive an early pension may indirectly discriminate against women as they mostly work part time or occasionally.

However, there are some countries where differences in the pensionable age between men and women still persist. These are: **Italy**, the **UK, Greece, Austria**, the **Czech Republic, Malta** and **Turkey**. In the **UK** equalization is scheduled at 65 years of age with a long transitional period (2010-2020). In **Italy** the pensionable age for women is 5 years lower than that for men, but women can carry on working until the age provided for men and be covered by unfair dismissal protection: thus the age is flexible between 60 and 65 for women and not for men. In **Italy**, at present there are no plans to equalize statutory pensions. In **Greece**, there is no general process of equalizing the pensionable age, but only legislative interventions in particular situations; moreover, there are strong reactions against raising the pensionable age for women, mainly by trade unions and politicians. In **Turkey, Malta** and **Austria**, a process of equalization has started, but with extremely long transitional periods (2024-2036 in **Austria**; 2036-2048 in **Turkey**; 2007-2027 in **Malta**).

Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security must be interpreted as precluding national legislation which reserves to married women, widows and students the possibility of being assimilated to persons not liable to pay any social security contributions without granting the same possibility of exemption from contributions to married men or widowers who for the rest satisfy the same conditions'.

In some countries, the pensionable age is lowered or further lowered for women who have raised children/children unfit for work or disabled and the same advantages are denied or granted only to a limited extent to male carers (the **Czech Republic, Greece, Italy**, under the new contributory system, **Turkey**). In **Italy**, for example, a reduction of 4 months per child in women's retirement age, with a maximum limit of 12 months is granted. As an alternative to that, the pensionable age of working mothers can be *virtually* increased, which means that they will reach pensionable age before their effective age (in substance, what we have here is early retirement): by one year, if she has one or two children; by two years, when she has three children or more. In **Greece**, mothers of children who are minors or unfit to work may be entitled to an early pension, while fathers have the same right only if they are widowed; mothers of at least three children may be entitled to receive an early pension, while fathers enjoy the same rights only if they are widows or divorced; mothers of handicapped children may be entitled to a pension, irrespective of their age, if they have 7 500 service/insurance days, while fathers acquire this right as second-choice claimants only.

In countries where the pensionable age is different, this may imply consequences for other benefits, such as early retirement schemes. This happens, for example, in **Austria, Greece** and the **UK**. In the UK, in particular, some benefits are only payable up until the state pensionable age is attained and so entitlement ceases at different ages for men and women. The lawfulness of this was unsuccessfully challenged under Directive 79/7/EC in *Hepple v Adjudication Officer* (C-196/98)¹⁰ and at the European Court of Human Rights in *Stec v UK*.¹¹ A different pensionable age also has repercussions for entitlement to a Job Seeker's Allowance (payable in respect of unemployment) which stops at the pensionable age.

The different pensionable age in favour of women is justified in these countries with the argument that it compensates the caring work carried out by women. On the other hand, however, the pension amount will be higher at higher retirement ages and lower at lower retirement ages. As a consequence, the earlier women retire, the lower will be their pension amounts.¹²

3.1.3 Advantages granted to persons who have brought up children (Article. 7.1 b) Directive 79/7/EEC)

Many countries do not make use of the exception in Article 7.1 b) of Directive 79/7/EEC, as they have gender-neutral provisions on advantages in old-age pensions granted to persons who have brought up children (**Austria, Belgium, the Netherlands, Luxembourg, Sweden, Portugal, the Czech Republic, Denmark, Finland, Spain, Liechtenstein, Malta**).

The situation in **France** is very particular and shows the risks of equalization in this area. Indeed, caring advantages, for a very long time, have not been gender-neutral in **France**, as their purpose was to offset the disadvantages of mothers in the

¹⁰ See on the same issue C-139/95 *Livia Balestra v Istituto Nazionale della Previdenza Sociale (INPS)* and C-303/02 *Peter Haackert v Pensionsversicherungsanstalt der Angestellten*. In all these decisions, here including C-196/98, the Court of Justice declared the consequences for other benefits of the different pensionable age to be non-discriminatory.

¹¹ European Court of Human Rights in *Stec v UK* (2006) 43 EHRR 47.

¹² See on this issue C-377-384/96 *August De Vriendt and Others v Rijksdienst voor Pensioenen*, according to which, 'if national legislation has maintained a different pensionable age for male and female workers, the Member State concerned is entitled to calculate the amount of pension differently depending on the worker's sex'. The same is stated in C-154/96 *Louis Wolfs v Office National des Pensions (ONP)*.

labour market and in pension rights. At present, these specific rights have been extended to fathers. However, as the national expert puts it: 'If the recognition of fathers' rights could not be questioned, the problem was to conceive of a solution where women's rights were not diminished. Unfortunately, these reforms occur in the context of a general reform of pensions, aiming to lower the financial burden of pensions, and nobody thinks that the rights previously granted to mothers can be maintained and offered to fathers'.

Some other countries have advantages for child rearing reserved to women or allowed to men only as second-choice claimants (**Cyprus, Italy, Turkey, Greece, the UK, Spain, Germany, Norway**).

In **Italy**, for example, under the new contribution system more favourable coefficients of transformation (which are used in the calculation of pensions to represent the average remaining life expectancy) are fixed for maternity, in relation to which the increment of one year of the coefficient of transformation for one or two children and two years for three or more children is laid down: as transformation coefficients are representative of the average life expectancy, they are higher for a higher pensionable age, and the higher they are the higher is the pension amount; so when they are virtually increased the pension amount is going to be higher.

In **Cyprus**, periods of interruption to employment for up to three years due to the raising of children are credited (only) to women for pension rights and pension amount purposes as if they were working periods. Child credits of up to 156 weeks per child are granted to women who are entitled to a pension, but who have failed to make contributions because they were raising children aged up to 12 years.

In **Turkey**, 90 extra pensionable days will be added to each year of service of a female worker who has a disabled child in need of constant care. The total working periods of female workers who have a disabled child are virtually increased by 0.25 for pension calculation purposes and these periods are also deducted from the age limit so that they can retire earlier.

In **Spain**, women who give birth to a child and are not actively working have 112 days contribution credits for pension purposes; the same right is not recognised for men.

In **Greece**, as the national expert puts it, 'the image of women as *sole carers* of children has developed into an image of *principal carers*'. Indeed, there are *service credits* for mothers and subsidiarily for fathers, which are taken into account for pension rights.

In the **UK**, National Insurance Credits allow parents and carers to build up qualifying years through weekly credits for pensions; credits are available for parents in receipt of Child Benefit, paid out to women who form part of heterosexual couples (in the absence of an agreement to the contrary). This amounts to a presumption in favour of women.

In **Germany**, child care may generate individual pension credit points for women, which are then relevant for pension amount purposes; fathers are only entitled to child-raising credits if they are the main carer and the mother agrees to this.

In **Norway**, periods of interruption to employment due to raising children are credited through *care credits*, which are included in the calculation of the supplementary pension; care credits are automatically assigned to the mother, if the parents do not give notice that the care credits should be given to the father. Care credits were introduced in 1992 and will come into effect from around 2020.

Some experts consider exceptions to the equality principle to be outdated because they perpetuate the traditional division of roles within the family.

3.2 Statutory old-age pension schemes in WBM Countries (schemes falling under Directive 79/7/EEC and schemes of the second tier of the first pillar/second WBM pillar)

As we have already stated, the WBM is made up of the following pillars: a first mandatory public pillar; a second privately-managed mandatory savings pillar, financed by a share of social security contributions; a third voluntary savings pillar, where, in some countries, occupational pensions have recently been included. The main difference between the Three-Pillar model and the WBM rests in the second pillar, which is occupational in the one model, and privately managed, mandatory and financed by a share of social security contributions, in the other.¹³

In this section, we shall describe both the *first and the second pillar of the WBM system*. Indeed, in many reports *the two pillars are rather seen as two tiers of the first pillar*. Moreover, we should reiterate here that the main doubt as regards gender equality legislation based on the three-pillar model is whether the privately managed and publicly financed mandatory WBM schemes can be classified as a second tier of the first pillar and thereby included under Directive 79/7/EEC, or as private insurances consequently regulated by Directive 2004/113/EC.¹⁴

The third/fourth voluntary savings/occupational schemes pillar will be described in Section 4.

3.2.1 Contribution conditions, pension amount, derived entitlements of a wife

As is also stated in the Three-Pillar Model Summary regarding Western systems, the level of contributions and the method of calculation in the WBM systems usually do not create gender-related differences in legal terms; difficulties in accessing pensions and differences in the pension amount are rather a consequence of gender-based inequalities in labour market careers.

A) First pillar statutory schemes

a) Contribution rules

Here again, minimum insurance, contributions or the length of employment conditions may fail to protect workers employed in non-standard working patterns, such as part-time, occasional and fixed-term workers who do not manage to fulfil these conditions. According to the national reports, part-time positions are predominantly taken up by women. The OECD statistics show that more women are employed part time in the Three-Pillar Model Countries than in the WBM Countries, which stems from the fact that this kind of employment is rather under-developed in the Central and Eastern European Countries.¹⁵

In any event, almost all countries have long qualifying insurance periods, which range from 10 to 15 years.

Pensions can sometimes be acquired at lower pensionable ages, provided that higher contribution requirements are fulfilled, which are often different for men and women. In **Hungary**, for example, besides the minimum 15-year qualifying period coupled with 65 years of age, a pension can be claimed at 63 years of age with 37 years of insurance cover for men, and at 60 years of age with 34 years of insurance cover for women (similar provisions exist in **Croatia** and **Slovenia**).

¹³ See above under Section 2.1 of this Report.

¹⁴ For these concepts see above under Section 2.1 of this Report.

¹⁵ See Incidence of Full Time – Part Time employment – common definition at http://stats.oecd.org/Index.aspx?DatasetCode=FTPTC_1#, accessed on 28 July 2010.

The situation is totally different in **Iceland** and **Estonia** that have residence-based systems which are independent from the employment history of the claimant and therefore represent the best solution from the non-standard workers' point of view. Minimum wage/hour thresholds can also result in exclusion from compulsory insurance, which can adversely affect the future pension rights and the pension amounts of women.

In **Hungary**, there is a minimum wage ceiling: that is, all kinds of work performed personally against payment – here including home-working, self-employed or free-lance workers, and assisting family members, with the exception of volunteers as defined in the relevant laws – are only insured and accrue service periods if the payments per month amount to 30 % of the statutory minimum wage. It is predominantly women who are excluded by this 30 % rule. As the Hungarian expert stated, the excluded categories can be explained by the aim of social policy, similar to the *Inge Nolte v Landesversicherungsanstalt Hannover* case (C-317/93).

Not only irregular work, but the periods of unemployment can also result in difficulties in the accrual of contributions for pension rights purposes. These periods are generally taken into account for pension rights and the amount thereof when covered by unemployment benefits (in **Hungary**, they are only taken into account for entitlement to a pension and not for the pension amount; in **Croatia**, they are not taken into account at all). This is an admirable attitude, as fragmented labour affects women more than men.¹⁶

b) Pension amount

Countries of the WBM model, generally speaking, provide benefits from a two-tier system, where one part of the pension is based on PAYG and the other on an investment-like service under the funded system.

The national reports demonstrate a general shift in that the pension amount is now determined by the lifetime employment record of the claimant. When a long salary period is implied in a system, labour market inequalities in terms of the pay gap and fragmented careers are transferred to pension amounts. We can witness a trend of taking the whole career earnings or long wage periods into account (rather than the best selected spells of employment/the income during the last working periods) in **Bulgaria, Croatia, Hungary, Latvia, FYR of Macedonia and Slovakia**.

Shorter *pensionable periods* – that is contribution/earning periods which are taken as the basis for calculating pension amounts - are more favourable for low earners, who are prone to earning more towards the end of their career rather than at the beginning. Although those women with high pay fluctuations and fragmented careers can be at a disadvantage with short pensionable periods, a decrease in earnings during the period of reference for the calculation of pensions can result in a lower pension. The most favourable choice for these kinds of workers is a pension calculation which is based on the best selected spell of employment; however, when the best spell is very long – like in **Slovenia** and **Lithuania** – this is no longer true. In **Slovenia**, in particular, pensions are based on the best 18 years after 1970; however, a gradual increase up to a 35-year period will be introduced in 2011.

We can also witness the strengthening of the link between benefits and contributions which is typical of NDC (**Poland** and **Latvia**) and DC systems (for example, **Slovakia**). Even in DB schemes, pension amounts depend on the number of

¹⁶ See Eurostat, at <http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home/>, accessed on 6 March 2010.

insurance years within the scheme or on the number of contributions paid each year (**Bulgaria, Croatia, Hungary, Lithuania, Slovenia**, for instance). This obviously affects atypical workers' pension rights.

In **FYR of Macedonia**, where the pension amount is calculated on the basis of lifelong earnings and the contributions paid over a full-life career, a gender-specific life expectancy rate is applied.

Another feature of the pension system that negatively affects women is the fact that many schemes only pay out full pensions after fairly long periods of contributions/employment (for example, **Hungary, Romania, Slovenia, FYR of Macedonia**).

In this context, it may be extremely important to have a minimum benefit or a flat-rate component of the pension paid to all those who fulfil statutory pension qualifying conditions, for example in **Bulgaria, Hungary, Croatia, Estonia, Latvia, Slovakia** and **Romania**.

The situation is radically different in **Iceland**, where there is a residence-based system: here pension amounts are determined by law, according to the length of residence. This is obviously very convenient for those with low pay or non-standard working patterns, as pension amounts are not influenced by the workers' employment situation.

Another problem as regards pension amounts is that pensions in some cases are adjusted, i.e. are index-linked below the inflation rate. As the majority of minimum pension recipients are women, they are affected by this reduction in pensions to a disproportional extent (see, for example, **Lithuania**).

c) Derived entitlements of the wife, according to the exception of Article 7.1 c)-d) of Directive 79/7/EEC and Survivors' pensions.

There are no supplements and benefits by virtue of the derived entitlements of a wife in the first-pillar pension schemes.

In most countries there are gender-neutral survivors' pensions (**Bulgaria, Lithuania, Poland, Romania, Slovakia, Slovenia, Estonia**). Survivors' pensions are not gender-neutral in **FYR of Macedonia**, as there are differences in the ages when men and women are eligible (45 for women/55 for men).

B) Second pillar – second tier of 1st pillar

The purpose of this pillar/tier is to supplement or partially substitute the 1st pillar and to create opportunities for increasing the replacement ratio of the person's benefit.

The second pillar/tier is managed by private insurance companies.

Participation in this pillar/tier can be either mandatory or voluntary, depending on the regulations of the country in question. It is also common that participation is only mandatory for certain groups of persons (for example, those who are at the beginning of their career) due to transitional periods within legal reforms.

Conditions under which a retiree acquires the second-pillar/tier pension are closely linked to the first pillar conditions.

The terms according to which the mandatory second-pillar/tier funds can be established and managed are strictly regulated by law. In other words, only those types of benefits that are prescribed by the legislator can be provided. Furthermore, the funds in question can only invest in explicitly prescribed types of financial assets and under strictly determined conditions. Also, these funds are strictly controlled by State Agencies.

a) Contribution rules

The personal scope of the second pillar/tier is narrower than that of the first pillar, as not all employers are obliged to participate in the schemes. When the regulations entered into force in the countries in question, the legislator determined the groups of workers for whom the pillar is mandatory or voluntary.

Workers' social security contributions are divided between the first and second pillar, as a certain percentage of social insurance contributions to the first pillar is diverted to the second-pillar schemes. Since contributions are determined as wage percentages, the gender pay gap is mirrored in pension rights and amounts.

Access to pensions depends on the fulfilment of the pensionable age and often a qualifying period, such as 5 years in **Estonia**, 15 years in **FYR of Macedonia** and **Slovakia**, 120 to 180 months (depending on the retirement age, respectively 58 or 53) in **Slovenia**. The longer the required period, the more difficult it is to fulfil the qualifying conditions for non-standard workers.

Unemployment periods are taken into consideration for pension rights in **Hungary** and **Iceland**.

b) Pension amount

As this pillar is based on DC schemes which are organised according to the principle of capitalization, the pension amount depends on the total contributions paid and on the rate of return of the pension fund. The purpose is for the employee to retain the economic value of his/her contributions; the actual amount of the pension always depends on the amount collected and invested in an individual account held by the private pension fund, subsequently increased by yields.

In this respect, once again, both the pay gap and the irregular payment of wages due to the non-standard nature of the work performed are simply transferred to the pension benefit, since in this system there is no solidarity or social welfare elements; this is highly disadvantageous for women.

Pension payments can be closely linked to the first pillar amount; this is the case in **Slovakia**, where 50 % of the benefit comes from the first pillar PAYG system and 50 % from the second pillar; the situation is similar in **Hungary** where 75 % stems from the first pillar and the remainder is provided by the second pillar. In **Latvia**, there are two possibilities: the accrued funded pension capital will be transferred to the individual account of the first tier/first pillar of the pension capital and the pension is calculated from the total amount, according to the first-tier/first-pillar formula; or the participant may, with the accrued funded pension capital, purchase a life annuity from an insurance company. In **Croatia**, individuals, upon retirement, must use the accumulated balance in their accounts to purchase a life annuity from an authorised insurance company; accordingly, the second-pillar pensions depend upon: the type of life annuity purchased from an authorised insurance company; actuary tables; the amount of saved funds and the returns accrued in the individual account.

In this regard the best practice as regards gender equality can be found in **Slovenia**, where there is a minimum guaranteed return on paid insurance premiums; the minimum guaranteed return is the annual rate of return, which shall not be lower than 40 % of the average annual interest on Government Stocks with a maturity exceeding one year. A main and significant issue regarding the calculation of pensions is the *application of gender-related actuarial factors*. A wide range of life expectancy tables can be found in the WBM Countries; the use of the life expectancy factor differs not only from country to country, but from pillar to pillar as well. In the second privately-managed mandatory savings pillar (second tier of first pillar),

gender-related actuarial factors, which take into account the different life expectancy of women, are used much more in calculating pension amounts. Here the use of gender-related actuarial factors also depends on whether or not the privately-managed and publicly financed mandatory WBM schemes can be classified as a second tier of the first pillar and thereby included under Directive 79/7/EEC, or as private insurances consequently regulated by Directive 2004/113/EC. Indeed, if the privately-managed and publicly financed mandatory schemes were regulated by Directive 79/7/EEC, they would not be allowed to use gender-related actuarial factors.

An example of the twofold attitude is **Slovenia**, where a gender-related table is used in the second pillar/second tier of the first pillar schemes, while it is not available in the first-pillar statutory scheme. In **Bulgaria**, the pension amount also depends on biometric statistical tables approved by the deputy chairman of the Financial Supervision Commission (FSC).

In **Iceland** an indirectly discriminatory age-related factor was established in 2006 by most of the second-pillar occupational funds. In particular, an age-related pension scheme was adopted: prior to that an equal accrue of rights prevailed, i.e. fund members accrued the same entitlement for the same contribution, regardless of their age when the contribution was paid; after the age-related scheme was adopted, the rights accrued are determined by the age of the fund member when the contribution is paid. Younger fund members thus accrue more rights than older members for the same contribution. As the national expert put it: 'Some funds reasoned that linking entitlement to age ensured equality between fund members in their accrue of entitlement over their working life.' The age-related rights are clearly discriminatory towards women who have had interrupted careers because of having children. Only by not having children could women enjoy the same security in their old age as men. The system appears gender-neutral when looking simply at the laws or pension schemes but when set in a societal context it is not in favour of women'. In **Croatia**, it is not clear from the regulations to which extent second-pillar insurance companies are allowed to use gender-based actuarial tables.

c) Derived entitlements of the wife, according to the exception of Article 7.1 c)-d) of Directive 79/7/EEC and Survivors' pensions

There are no supplements and benefits by virtue of the derived entitlements of a wife. Interesting provisions on splitting pension rights can be found in **Iceland**, where the insured person, on the basis of an agreement with his/her spouse, can arrange to mutually and equally divide the rights acquired during the period that the marriage, consensual union or recognized cohabitation has existed or may exist; however, there are time limits on the rights of couples to share pension rights and this has been criticized and changes have been recommended so that couples can start such a sharing agreement even after the commencement of payments. In **Latvia**, co-insured spouses are entitled to benefits from life insurance in the case of the death of the insured person. All these provisions are gender-neutral.

Gender-neutral survivors' pensions are provided in **Bulgaria, Hungary, Iceland** and **Slovenia**. In **FYR of Macedonia**, in the case of a member's disability or death, assets from the individual account are transferred to the PAYG public pension fund, which provides the full amount of the survivor's pension.

3.2.2 Pensionable age (Article 7.1 a) Directive 79/7/EEC)

A) First-pillar statutory schemes

The pensionable age is equal for women and men in **Iceland** (67 years), **Latvia** and **Hungary**. In **Hungary**, the legislator, after a gradual equalizing period, first changed the pensionable age to 62, and as of 1 January 2010 this has become 65 for both men and women (this process will be finalised by the end of 2022 when those born in 1957 will be 65).

In **Bulgaria**, **Croatia**, **FYR of Macedonia**, **Poland**, **Lithuania**, **Romania**, **Estonia**, **Slovakia** and **Slovenia** differences can be found as regards pensionable ages. In **Croatia**, the Constitutional Court has found the sex-based difference in the retirement age to be in breach of the Constitutional guarantee of equal treatment; the Court decided to leave the regulation provisionally in force until 2018 and thus left the legislator with a considerable period of time to gradually eliminate the difference. In **Bulgaria**, the retirement age is linked to the contribution periods accrued: 63 years of age with 37 years of insurance for men and 60 years of age with 34 years of insurance for women; failing these conditions, a minimum 15 years of insurance at the age of 65 for both genders is required. In **Estonia**, equalization is provided as from 2017. In **Slovakia**, equalization is planned as from 2015. In **Slovenia**, the different pensionable age has consequences for other benefits/advantages, such as: pension support allowance for retired persons whose pension is under the regulated minimum, which is obtained earlier by women than men; the lowering of a full retirement age by virtue of having children; the determination of pension amounts (the minimum percentage for an insured woman with an insurance period of 15 years amounts to 38 %, while for men the percentage is 35 % of the pension rating base).

In **Estonia**, **Hungary**, **Romania** and **Slovenia** there are early retirement provisions linked to periods for caring for children or disabled family members. These provisions are gender-neutral only in **Estonia**. In **Hungary** and **Romania**, early retirement provisions are reserved for women; in **Slovenia**, early retirement linked to child-care periods can be allowed for both men and women, but men are regarded as second-choice claimants.

B) Second pillar – second tier 1st pillar

Provisions on the pensionable age show that this pillar is strongly linked to the first pillar, as in most countries the rules of the general statutory schemes are applied (**Bulgaria**, **Croatia**, **Estonia**, **Hungary**, **Iceland**, **Latvia**, **Lithuania**, **FYR of Macedonia**, **Poland**, and **Slovakia**). There is some leeway in **Bulgaria** and **Iceland**, where pensions can be claimed and awarded 5 or 2 years before the general pensionable age. In **Slovenia**, the pensionable age is different from the first pillar scheme and is 58 years for both men and women (an early pension can be claimed at 53 years of age).

As almost all the statutory first-pillar schemes apply a different retirement age for men and women (the pensionable age in statutory first-pillar schemes is only equal in **Iceland**, **Latvia** and **Hungary**), the regulations practically transfer this inequality to the second pillar.

3.2.3 Advantages granted to persons who have brought up children (Article 7.1 b) Directive 79/7/EEC)

A) First-pillar statutory schemes

Most countries have gender-neutral caring advantages. Caring advantages are not gender-neutral in **Bulgaria**, **FYR of Macedonia** and, to a very limited extent, in **Latvia**. In **Bulgaria**, child-care and disabled care credits are in the first instance recognised for women; men are normally entitled to these advantages as second-choice claimants. In **FYR of Macedonia**, periods of interruption to employment due to raising children as well as to caring for a disabled child are taken into account for pension rights purposes: here again, there are presumptions in favour of women in the recognition of these advantages; moreover, there is confusion in the terminology as the legislation sometimes refers to mothers, sometimes to parents as care providers. In **Latvia**, periods spent on raising a child/children up to 8 years, before 1996, are only credited to women.

On the basis of the evaluation of national regulations, keeping child-care periods gender-neutral is essential not only because of their effect on pensions, but because of their possibility to determine the conscience and attitude of society as a whole.

B) Second pillar/second tier 1st pillar

In the **second pillar/tier**, caring credits are very rare: they can be found in **Iceland**, **Estonia** and **Hungary** and are all gender-neutral.

4. OCCUPATIONAL OLD-AGE PENSION SCHEMES (SCHEMES FALLING UNDER ARTICLE 157 TFEU, DIRECTIVE 86/378/EEC, AS AMENDED BY DIRECTIVE 96/97/EC, NOW ARTICLES 5-13 OF THE RECAST DIRECTIVE 2006/54/EC): THE MAIN FACTORS OF GENDER INEQUALITY

4.1 Occupational old-age schemes in the Three-Pillar Model Countries (Second Pillar)

4.1.1 Coverage, contributions, calculation of pensions, vesting and reimbursement rules

There are specific problems with occupational funds within the traditional Three-Pillar Model. In first place, there is their limited coverage of both non-standard working patterns (part-time, fixed-term contracts, occasional workers and so forth) and low-paid workers, mostly women. In second place, there is the increase in DC schemes at the expense of DB schemes, which implies a stronger link between contributions and benefits according to the criterion of capitalization, and in turn this mirrors the gender differences in the labour market. Then, there is the fact that earnings-related DB schemes formerly based on the last salary or on the best selected earning years are now based on lifelong or on lengthy periods of employment: this results in a disadvantage for workers with earnings which are below average, as the benefit level depends on the regularity of their earnings; although women with high pay fluctuations can be at a disadvantage also with short periods of reference for pension calculations, a decrease in earnings during the relevant period can result in a lower pension. Finally, there is the issue of actuarial factors: if the higher life expectancy of women is taken into consideration, women's pensions can be lower or their contribution rate higher than those provided for men (moreover, a higher contribution rate can discourage employers from employing women).

a) *Coverage*

The limited coverage of occupational schemes is particularly felt in countries such as **Italy**, **Cyprus**, the **UK**, where women are underrepresented in employment.

Women may renounce insurance because of low earnings in situations where membership is voluntary (such as in **Italy**, **Ireland** and **Spain**). In particular, in **Ireland**, participation in private-sector occupational schemes is voluntary; however, as from 2014, the National Pensions Framework intends to introduce a new system of auto-enrolment for private sector workers in order to ensure increased coverage and the adequacy of pensions. Under this system, once a person over 22 years of age enters or changes employment he/she will automatically enter the new pension scheme; an employee may only be excluded from auto-enrolment if he/she chooses to opt out.

In **Liechtenstein**, only a person who has a formal right to a statutory old-age pension can request a complementary benefit to ensure minimum living standards; participation in the second pillar is generally mandatory for all employers in each sector.

In **Belgium**, the Equal Opportunities Council (opinion no. 73 of 17 October 2003) found that women were being seriously disadvantaged because of their relative concentration in certain activity sectors (e.g. the textile industry) with low pay and because of horizontal segregation (e.g. banks).

The situation is more stable in countries such as **France**, **Norway** and **Austria**, where the schemes are mandatory and apply to almost all workers falling within the scope of the basic scheme.¹⁷ In **the Netherlands**, the share of women among all persons without a pension scheme (9 %) is somewhat lower than the share of men among all persons without a pension scheme (11 % for men).

Another reason for the limited coverage of women is membership limitations for non-standard workers,¹⁸ or minimum employment/contributions as a condition for access to funds/benefits. In **Cyprus**, for example, there is a precondition of 6 months of employment for accessing the fund and there are membership limitations for part-time and fixed-term workers. In **Italy**, the minimum qualifying insurance period for access to benefits is 5 years; the sole device specifically provided by legislation that may be useful to accrue the contribution record of atypical workers is the possibility for them to pay extra voluntary contributions into the fund, even after attaining retirement age, subject to the condition that at least one year of contributions has matured. Moreover, some funds exclude short-term employees with contracts of less than three months. In **Spain**, a minimum contribution of at least two years is required for access to benefits. In **Turkey**, the minimum contribution to qualify for benefits is 10 years. In **Luxembourg**, the minimum contribution requirements are set by each fund, but according to the legislation this cannot exceed 10 years. In **Liechtenstein**,

¹⁷ In the **UK**, the Pension Act 2008 will result, in 2012, in the introduction of quasi-compulsory occupational pension schemes. Employers of anyone aged between 22 and 65 and earning over GBP 5 000 a year will be required automatically to enrol them in private pension schemes, from which the employees can choose to opt out. Those who earn less than GBP 5 000 p.a. or fall outside the age bracket for automatic enrolment will be entitled to be enrolled in a pension scheme upon request with the same contribution obligations imposed on their employers.

¹⁸ The CJ stated that ‘the exclusion of part-time workers from an occupational pension scheme constitutes discrimination prohibited by Article 119 of the Treaty (Articles 117 to 120 of the Treaty have been replaced by Articles 136 EC to 143 EC) if that measure affects a considerably higher percentage of women than men and is not justified on objective grounds unrelated to any discrimination based on sex’ (C-50/96 *Deutsche telecom AG v Schoder*; see also C-246/96 *Magorrian, Cunningham v Eastern health and Social Services Board*).

the scheme is limited to a minimum annual income of about EUR 13 000 and an employment contract for at least 3 months. In **Germany**, employees in marginal employment are excluded from occupational pension schemes as long as they choose the option of dispensing with the obligation to obtain statutory pension insurance. Most marginal employees decide to choose this option, because the benefits are very minor. In **Ireland**, limitations on membership in occupational benefit schemes are allowed for certain atypical workers, such as occasional workers and part-time/fixed-term workers when the normal working hours constitute less than 20 % of the normal working hours of a comparable full-time employee. In **Norway**, there is a membership limitation for those working less than 14 hours weekly. The national expert points out that a 14-hour week equals a 38.5 % position in occupations with reduced working hours, which is the case for many publicly-dominated female professions such as nurses and care workers; according to the expert, the arguments for retaining such a threshold are, in addition to the negligible administrative burden that they imply, that part-time workers with limited employment contracts have nothing to gain from joining the pension fund, as they will eventually receive less from the scheme than what they will pay by being members. It is also stressed that many part-time workers combine various limited employment contracts that are each too small to be taken into consideration, but that in total provide a higher percentage work contract. Moreover, there is another limitation for employees working less than 20 % of the normal working hours for a comparable full-time employee. In the **UK**, the sheer number of occupational schemes makes it impossible to make general assertions as to whether membership limitations apply; however, discrimination against part timers would breach domestic as well as EU law unless it is objectively justified; at any rate, lower-paid workers are less likely to benefit from occupational pension schemes; moreover, pension schemes are less likely to exist in low-pay sectors, where women predominate. Discrimination against part timers is forbidden in **Belgium**, where the principle of equal rights *pro-rata temporis* is laid down.

Periods of unemployment are not normally taken into account for pension rights. In a few countries (**France**, **the Netherlands** and **Spain** in some limited cases), however, they are taken into consideration.

b) Pension amount

In all countries, a legal framework for occupational schemes is provided; the principle of gender equality is often expressly regulated (for example, in **Belgium**, the **Czech Republic**, **Denmark**, **Ireland**, **Italy**, **Luxembourg**, **Malta**, **Portugal**). In the **Czech Republic** and **Malta** there is a legal framework for second-pillar pensions, but there is not as yet a system of occupational schemes.

The type of scheme – DC or DB – strongly influences the benefit level of pensions for non-standard workers and low-paid workers: DC schemes (such as those existing in, for instance, **Italy**, **Cyprus**, **Denmark**, **Norway**, **Germany**, **France**, **Liechtenstein**, **Spain** and **Sweden**) strongly penalize irregular careers. In the **UK**, where schemes can be both DC and DB, as is expressly stated by the national expert, DB schemes based on workers' final salary are much more beneficial to members than DC schemes: 'where contributions-based schemes are concerned, interruptions to earnings and the impact of the gender-wage gap are ... very significant because they reduce the level of 'pot' built up over the working life'. In **Ireland**, occupational schemes must provide benefits at a level of 65 % of the final salary or less in order to be approved by the Revenue Commissioners for tax exemption purposes; private pension agreements are generally contribution-related schemes.

In DB schemes (as can be found in **Italy**, the **UK**, **the Netherlands**, **Norway**), the situation changes if the final salary, the career average or limited periods are taken into account for pension amount purposes: workers with earnings which are inferior to the average standard are at a disadvantage when career averages are taken into account; women with high pay fluctuations and fragmented careers can be at disadvantage also with short periods of reference for pension calculation, as a decrease in earnings during the relevant period can result in a lower pension; the best practice in this respect is to take into account the best selected spells of employment. In many countries there is a trend of shifting from the final salary or the best selected periods of employment to career averages (for instance, in **Norway** and in **the Netherlands**).

In **the Netherlands**, for example, most pension schemes are earnings-related and are based on average pay. In order to keep the pension amount stable, many adjustments are necessary, which give rise to increasing premium difficulties for low-paid workers. Here the accrued pension rights of women are generally lower than those of men. Moreover, the complicated *deductible* mechanism often makes it impossible for low-paid workers to obtain pensions. Indeed, in order to make an allowance for the first-pillar pension, employee pensions in the second pillar are assessed on the basis of earnings after the deduction of an offset - the franchise (the *deductible*); the level of the deductible varies from about EUR 10 000 to about EUR 20 000 per year. Applying a deductible to employees' pension assessment has a direct impact on the level of the pension that one can possibly accrue under second-pillar schemes: employees with low earnings might be unable – if a high deductible has been applied – to obtain a pension; furthermore, the lower the earned income, the lower the employee pension - when expressed as a percentage of that income - that it is possible to accrue. However, part-time workers are not at a disadvantage, as the deductible is lowered according to the part-time percentage.

In the **UK**, DB schemes generally define final pensionable earnings using the best years' earnings of the last few years of employment, or the average of the last best years. Benefits are then based on pensionable earnings (i.e., the total amount of earnings taken into account to calculate a pension) with a multiplier depending on the years of membership of the scheme, a factor which self-evidently disadvantages women who are less likely to have uninterrupted periods of employment.

A final issue as regards occupational scheme benefits is whether or not they provide for survivors' pensions: this is particularly relevant for all those women who have stopped working for care reasons and who may be dependent in old age on their husbands' income. The majority of the national reports do not mention the existence of survivors' benefits in occupational schemes. In those countries where occupational benefits include survivors' pensions, these are normally gender-neutral (**Austria** and **Belgium** as regards civil servants, **Cyprus**, **France**, **Greece**, **Italy**, **Liechtenstein**, **the Netherlands**, **Portugal**).

c) Actuarial factors.

The use of gender-related actuarial factors is a problem that mainly affects **occupational pensions**. Indeed, occupational pensions are generally funded and therefore managed according to capitalization criteria.

The national reports show that in many countries gender-specific actuarial factors are applied in occupational pensions, within the limits allowed by Directive 2006/54/EC (**Italy**, **Belgium**, **Austria**, **Luxembourg**, **Portugal**, **Spain**, the **UK**, the

Czech Republic, Malta, Ireland, Cyprus as regards the DB scheme for public employees).¹⁹

Directive 2006/54/EC allows, to a certain extent, the use of gender-related actuarial factors (Article 9.1 (h) and (j)). However, gender-related actuarial factors are not used in **Sweden, Greece, Denmark** (for workers who joined the occupational scheme after 1st July 1999) and **France**. In **the Netherlands**, the situation is different as gender-related actuarial factors are used by occupational funds and insurance companies for funding purposes, but contributions and benefits remain gender-neutral both in DB and DC schemes. In **Germany**, since 31 December 2005, unisex tariffs are mandatory. They must ensure that men and women paying the same amount of contributions gain the same amount of pension.

However, the issue of gender-related actuarial factors is crucial as far as equalization in the occupational pillar is involved. In particular, if the higher life expectancy of women is taken into consideration in actuarial factors, women's pensions can be lower or their contribution rate can be higher than those provided for men; moreover, a higher contribution rate can discourage employers from hiring women (higher contributions are provided in **Italy, Belgium, UK and Ireland**).

Thus it is considered extremely important to control this factor as regards inequality. In this respect, in the countries where these factors are used, controlling them could be introduced by EU legislation. The **Italian** solution could be taken as an example to this end: indeed, legislation states, in the first place, that any gender-related actuarial factors used must be sound, relevant and accurate; in the second place, the Vigilance Commission on Pensions (COVIP) and the Equal Opportunities National Committee are called upon to control the legitimacy and the non-discriminatory nature of any actuarial factors used.

d) Vesting conditions

In cases of non-standard and occasional work, which is often performed by women, it might be difficult for workers to fulfil the minim conditions within the same occupational fund, and the provisions that regulate the transferral of the worker's position from one occupational fund to another. In other words, the main issue is what happens when the worker leaves the scheme without having qualified for a pension. In particular, it has to be ascertained whether the right to the paid-in contributions (by the worker and by the employer) is conditional upon a minimum contribution/membership period within the fund; it also has to be assessed whether the right to the transferral of contributions (paid in by the worker or the employer) from one fund to another is conditional upon a minimum period of contribution/membership in the fund. Any contribution/membership conditions would be difficult to fulfil for non-standard workers.

Many countries have vesting periods and/or limitations as regards transferral from one fund to another (**Greece, Denmark, Ireland, Spain, Germany, Austria, the UK, Cyprus, Italy, Belgium, Liechtenstein and Luxembourg**). In **Italy**, for example, the right to transfer one's own individual position to another fund or to individual forms of pension exists after two years of subscription to a fund (this condition is set aside when access to the new fund matures in relation to a change of job); alternatively, the worker can recover his/her own contributions, including those paid in by the employer, subsequently increased according to the technical rate of profit of the fund

¹⁹ See on actuarial factors also CJ 200/91 *Coloroll Pension Trustee Ltd v Russel and Others* and CJ 152/91 *Neath v Hugh Steeper Ltd*, which are consistent with what was stated under Directive 2006/54/EC.

(in this case no vesting rule is required). In **Greece**, the vesting period is 1 year, but, here again, this condition is set aside when access to the new fund matures in relation to a change of job. In the **UK**, all occupational pension schemes must offer members with preserved pension entitlements the option of transferring payments on leaving pensionable employment; they are not legally required to provide preserved pensions to leavers with less than two years' pensionable service, but any member who leaves after 3 months of pensionable service in an occupational pension scheme is entitled to a cash transfer sum which might be used to acquire rights under another occupational pension scheme or personal pension scheme, or to a refund of his or her own contributions. In **Belgium**, a worker begins to acquire rights after one year's participation in a scheme. In **Norway**, there is a three-year vesting period; if the employee leaves work or is dismissed before this first three-year period expires, the accrued pension credits in the occupational schemes are lost. In **Ireland**, there is a two-year vesting period (employees are entitled to a reduction in the vesting period where a value has been transferred from a previous scheme); if employees leave their employment before the expiry of the two-year period, they will only be entitled to be remunerated with the contributions they have made during that period.

A country where there are no limitations is **Sweden**: there, pension capital is regarded as private property and it can be moved from one fund to another without any restrictions. The same occurs in **Portugal** and **France**. In **Turkey**, workers can change schemes once a year and in the case of an anticipated withdrawal from the scheme, benefits can take the form of a lump sum, a programmed withdrawal or an annuity. In **the Netherlands**, there is no minimum vesting period and when leaving the scheme the employee is entitled to his/her accrued pension rights; the pension fund or insuring company is however – as far as the pension scheme allows for this – entitled to surrender the pension two years after leaving the scheme if the pension amount is small.

4.1.2 Pensionable age

Almost all countries are in line with both the Court of Justice's case law and Directive 2006/54/EC as regards the pensionable age in occupational funds (**Luxembourg**, the **UK**, **Spain**, **France**, **Portugal**, **Austria**, **Turkey**, **Sweden**, **Cyprus**, **Belgium**, the Netherlands, the **Czech Republic**, **Denmark**, **Germany**, **Ireland**, **Liechtenstein**, **Malta**, **Norway**).²⁰

In **Greece**, there is no provision on the pensionable age, as this issue is entirely left to the scheme's regulations.

Countries such as **Belgium** and **the Netherlands** had a period when there was a different pensionable age, but there have not been any transitional provisions thereon.

²⁰ The Court of Justice's case law on the pensionable age addresses private employment occupational funds (C-262/88 *Barber v Guardian Royal Exchange Assurance Group*; C-110/91 *Moroni v Collo GmbH*; C-408/92 *Constance Christina Ellen Smith and Others v Avdel Systems Limited*; C-50/99 *Jean-Marie Podesta v Caisse de Retraite par répartition des Ingénieurs Cadres & Assimilés (CRICA) and Others*; C-200/91 *Coloroll Pension Trustees Limited v James Richard Russell and Others*) on the one side, and civil servants' occupational schemes on the other (C-46/07 *Commission v Italy* and C-559/07 *Commission v Greece*; C-366/99 *Griesmar v Ministre de l'Économie, des Finances et de l'Industrie and Others*; see also C-351/00 *Pirkko Niemi v Finnish Government* and C-457/98 *Commission v Greece*). As regards the pensionable age in civil servants' occupational funds, see below under Section 3.3 on Civil Servants in this Report.

Neither have measures been taken to compensate retroactively the disadvantaged sex for losses suffered in the past.²¹

National reports have shown no evidence of cases in which discriminated men have applied for a lower pensionable age in private employment occupational schemes, as a result of the Court of Justice's case law.²² In the **Netherlands** there have been cases of discriminated men applying for a more favourable recalculation of their pensions linked to the different pensionable age, as a result of the Court of Justice's case law.

In some countries a flexible retirement age is allowed subject to the same conditions for men and women (**Ireland, the Czech Republic, Belgium**)

A country where the pensionable age for men and women is different is **Italy**. The legislation allows the occupational pension upon the attainment of the pensionable age established in the statutory system to which the individual belongs. In the statutory system, women's pensionable age is 5 years lower than that for men; women can, however, carry on working until the pensionable age set for men. In this respect, therefore, men are subject to more disadvantageous treatment than women as they cannot anticipate their pension and have a fixed pensionable age set at 65. However, there are no longer any consequences stemming from the different pensionable ages for other benefits. Self-employed workers, on the other hand, have the same pensionable age for men and women.²³

4.1.3 Civil servants

In many countries there are specific pension schemes for civil servants (for instance, in **Greece, Belgium, Italy, Cyprus, Austria, France, Spain, Portugal, Sweden, Germany, Denmark, Ireland, Liechtenstein, Malta, Turkey and Finland**) which apply either in place of or as a supplement to the general statutory pension. In **Portugal**, civil servants traditionally had a specific social security system, but more recent trends have been towards unification with the general statutory social security system.

²¹ In **Belgium**, in particular, the Gender Act of 10 May 2007 stated that no difference of treatment between male and female workers anterior to 17 May 1990 could be challenged as discrimination: this might be regarded as incompatible with the C-246/96 *Magorrian and Cunningham v Eastern Health and Social services Board and Others* ruling of the ECJ; still, in the only reported case, the Labour Court of Appeal of Antwerp decided on 6 June 2000 that for periods anterior to 17 May 1990, the claimant (a man) could rely on a general provision of the Social Security Act of 27 June 1969, under which when an employer unilaterally grants complements to social security benefits to his staff, he may not discriminate between members of the same category, given that men and women did not constitute different categories.

²² In **France**, following the decision in C-366/99 *Griesmar v Ministre de l'Économie, des Finances et de l'Industrie and Others* (which stated that the principle of equal pay is infringed by a national provision which limits to female civil servants who have had children a service credit for the calculation of their retirement pension in as much as it excludes from entitlement to that credit male civil servants who are able to prove that they assumed the task of raising their children), there has been domestic case law and changes in legislation with the purpose of equalization in both the private and the civil servants' occupational schemes: as caring advantages in the form of service credits for the calculation of a retirement pension were involved in this case, the issue will be fully analysed below, under Section 4.1 of this Report.

²³ C-46/07 *Commission v Italy*, which ordered Italy to equalize the pensionable age for civil servants, will be fully analysed below under Section 3.3 of this Report: following this case, the pensionable age will be equalized for civil servants as from 2012, while there are no equalization provisions relating to the pensionable age in private employment occupational schemes.

These schemes have to be considered as occupational according to both the case law of the Court of Justice and Directive 2006/54/EC.²⁴

In **Sweden, Spain, Austria, Liechtenstein, Germany, Portugal, Ireland, Denmark, Malta, Turkey, Finland** and **Belgium** there is no gender discrimination in civil servants' pension schemes. In **Cyprus**, there are limitations on membership for seasonal, part-time, occasional and fixed-terms workers.

For **France**, case C-366/99 (*Griesmar v Ministre de l'Économie, des Finances et de l'Industrie and Others*) qualifies the civil servants' fund as occupational. The conformity of the amended civil servants' scheme with EU legislation is still debated as it might still indirectly discriminate against fathers.²⁵

The situation is different in **Italy** and **Greece**. In **Italy**, the Court of Justice, in case no. 46/07, *Commission v Italy*, declared that the pension scheme for civil servants managed by INPDAP is occupational and, as such, is discriminatory on the basis of Article 141 TEC (now 157 TFUE), since it provides that the general pensionable age for men is 65 and for women 60. Following the Court of Justice decision, Act No. 122 of 30 July 2010 equalized the pensionable age for male and female civil servants at 65 years of age; the rule will become fully operative in 2012; in the meantime, women's pensionable age has been increased, starting from 2010, by one year; from 2012, women's pensionable age will be increased by 4 years in one step.²⁶

The ECJ (Case C-559/07 *Commission v Greece*) found **Greece** to be in breach of Article 141 TEC (now 157 TFUE) because it maintained provisions which determined different retirement ages and different *minimum* service requirements for men and women in the Civil Servants/ Pensions Code, which it considered occupational.²⁷ The national expert reports that a reform aimed at complying with the ECJ judgment is planned. However, Act no. 3847/2010 provides that pension rights that have been

²⁴ C-46/07 *Commission v Italy*; C-559/07 *Commission v Greece*; C-4/02 *Hilde Schönheit v Stadt Frankfurt am Main* and C-5/02 *Becker v Land Hessen*; C-351/00 *Pirkko Niemi v Finnish Government*; C-366/99 *Griesmar v Ministre de l'Économie, des Finances et de l'Industrie and Others*; C-457/98 *Commission v Greece*; C-7/93 *Bestuur van het Algemeen Burgerlijk Pensioenfonds v Beune*. See also Article 7.2 of Directive 2006/54/EC.

²⁵ As we shall see under the following Section 4.1 b) on caring credits in occupational funds, on 25 June 2009 the European Commission sent a reasoned opinion to France: in particular, some caring credits are granted only when the parent has stopped working for a certain period, and fathers did not have the right to do so until recent reforms. As regards caring benefits in France see also C-206/00 *Mouflin v Recteur de l'académie de Reims*.

²⁶ See on this issue: J.P. Lhernould, 'L'actualité de la jurisprudence communautaire et internationale', *Revue de jurisprudence sociale*, 2009, p.201-202; F. De Bari, 'Parità di retribuzione ed età di pensionamento diverse sulla base del sesso del dipendente pubblico', in *Diritto pubblico comparato ed europeo*, 2009 p.403-407; L. Terminiello, 'La previsione di un diverso requisito anagrafico per uomini e donne ai fini della percezione della pensione INPDAP viola l'art. 141 del Trattato CE', *Rivista italiana di diritto del lavoro*, 2009 02 p.452-456 C. Buzzacchi, 'In tema di età pensionabile: la parità tra i generi o la tutela della funzione familiare della donna?', in *Quaderni costituzionali*, 2009 p.416-419 F. Angelini, 'Il principio della parità retributiva nel lavoro pubblico', in *Giornale di diritto amministrativo*, 2009 p.721-730.

²⁷ On these issue see: A. Petroglou 'Gender equality in the pension system of civil servants; the consequences of the ECJ judgment of 26.3.2009 and the possibilities to achieve gender equality without disadvantaging women, in particular mothers' *Social Security Law Review* 2009 pp. 334-345; E. Broussy, F. Donnat, C. Lambert 'Chronique de jurisprudence communautaire. Egalité homme/femme, L'actualité juridique', in *Droit Administratif* 2009 p.982; L. Driguez, 'Egalité de traitement entre hommes et femmes en matière de rémunération', *Europe* 2009 Mai Comm. No. 191, p. 20; A. Stergiou, 'Efimerida Dioikitikou', in *Dikaïou* 2009 p.198-210. See also C-457/98 *Commission v Greece* and Case C-147/95 *Dimossia Epicheirissi Ilektrismou (DEI) v E. Evrenopoulos*.

established or will be established until 31.12.2010 by civil servants covered by the Code are not affected by them remaining in service after 31.12.2010. However, even before the ECJ case, the Greek Courts had awarded men an earlier pension, subject to the conditions which apply to women.

4.2 Occupational old-age schemes in WBM Countries (WBM Third Pillar)

The area of occupational schemes, which is normally regarded as the third pillar in WBM systems, has been very little developed to date.

Estonia and **Romania** do not have occupational funds. **Lithuania** has specific legislation on occupational funds, but none have so far been established. In **Latvia**, **Croatia**, **Hungary**, and **Bulgaria** there is also specific legislation, but only a few schemes are operative. **FYR of Macedonia** and **Poland** appear to have a more developed system of occupational funds.

The situation is different in **Iceland** and **Slovenia**: there, occupational schemes are regarded as part of the second tier of the first pillar (which would be the second pillar in the WBM); in these two countries the WBM occupational third pillar includes only voluntary individual pension savings (which are outside the scope of our Report). In any event, in the WBM system the purpose of the third pillar is to save beyond the obligatory pension construction and therefore to strengthen self-care during old age.

4.2.1 Coverage, contributions, calculation of pensions, vesting and reimbursement rules

a) Coverage

Participation rules often determine the success of pension schemes, because a well-settled pension fund can reach a wider range in society. In this regard the targeted group of persons partly provides the basis for its usefulness. If the conditions do not set standards which can be difficult to fulfil for an irregular worker (such as a minimum salary and/or a minimum period of employment, high contributions rate), the system will more likely be successful from a gender equality point of view. In **Poland** the basic contribution cannot be higher than 7 % of the employee's wage and a person working for several employers can be a member of more than one organisation, which necessarily strengthens the amount of the future occupational pension. In **Lithuania** the requirement of minimum employment cannot exceed 12 months. **FYR of Macedonia** offers very good solutions: indeed, the amount of contributions is up to the person and the scheme covers persons aged between 18 and 70, regardless of the employment status. In **Bulgaria**, there are no minimum qualifying conditions and every person who has reached the age of 16 may be insured. **Slovakia** has high qualifying conditions for access to a pension: 10 years of contributions and 55 years of age; 5 years of contributions and 40 years of age.

The low coverage of occupational funds is also influenced by the fact that they are generally set up as voluntary schemes.

b) Pension amount

The type of scheme – DC or DB – strongly influences the benefit level of non-standard and low-paid workers: DC schemes, such as those existing in **Bulgaria**, **Hungary**, **Latvia**, **FYR of Macedonia** and **Poland** strongly penalize irregular careers, as pension amounts are based on accrued contributions. The situation in **FYR of Macedonia** is twofold as the amount of payment depends on the gained assets in the individual account. Services can be here lump-sum, periodic withdrawals, annuity

purchases, or a combination thereof in the case of old age, disability or death. There is also a mandatory lump-sum payment for small account balances, which can help persons with lower paid/irregular working patterns and therefore can balance the above-mentioned 'penalizing' attitude.

In **Croatia** a voluntary NDC system exists, where all the residents of the country can be members and the pension amount is related entirely to the contributions. Therefore a strong relation is created between one's salary and the earned benefit, which, at the end of the day, has the same effect on women as DC systems.

In DB schemes, the situation changes if it is the final salary, the career average or limited periods that are taken into account for pension amount purposes: workers with below average earnings are at disadvantage when career averages are taken into account; women with high pay fluctuations and fragmented careers can be at a disadvantage also with short pensionable periods, as a decrease in earnings during the period of reference for calculating pensions can result in a lower pension; the most favourable practice in this respect is to take into account the best selected periods of employment. Nonetheless, almost all the WBM occupational schemes are DC and only in a very few countries is the opportunity to set up DB funds left to legislation (**Lithuania, Hungary**).

c) Actuarial factors

In the **WBM occupational third pillar**, gender-related actuarial factors are used in **Bulgaria, Croatia, Hungary, Slovakia** and **Latvia** as regards life insurances provided by the employer. In **Lithuania**, the regulation of such aspects is left to the fund.

d) Vesting conditions

In cases of non-standard and occasional work, which is often performed by women, it might be difficult for workers to fulfil the minimum conditions within the same occupational fund: to this extent, as we have already stated, the provisions that regulate a transferral of the worker's position from one occupational fund to another and the vesting rules are important.

In the **Hungarian** system, there can be a maximum five-year vesting period; if the employment is terminated, the worker can transfer the contributions accrued to the fund of the new employer, or leave them in the previous employer's fund; when the employment is terminated before the end of the vesting period, the employer can retain the accrued rights. In **Bulgaria**, upon the termination of legal relations between the enterprise insurer and the insured person, the latter shall be entitled to transfer the accumulated resources from one fund to another. In **FYR of Macedonia**, transferring contributions to another fund is only possible during the first year of membership.

4.2.2 Pensionable age

A gender-neutral pensionable age is laid down in **Hungary, Bulgaria, Poland, Croatia, Lithuania, Slovakia** and **Latvia**. In **FYR of Macedonia**, pension benefits can be withdrawn no earlier than 10 years before the legal retirement age under the PAYG statutory system: the minimum pensionable age is therefore 52 for women and 54 for men.

4.2.3 Civil servants

Special social security schemes are historically based on the idea that they can offer security and independence for public sector employees, and guarantee a specific

standard of living for this group of persons. It also makes a public career more attractive, as this can be an important component of the remuneration.

These conditions not only favour the competitiveness of public sector employment against the private sector, but these advantages are given in exchange for persons' loyalty and special obligations in their service (e.g. a longer probationary term, a higher age requirement, no possibility to take industrial action, etc.).

Bulgaria, Croatia, Estonia, Hungary, FYR of Macedonia, Poland, Slovakia and Slovenia, however, do not have a specific system of old-age pensions for civil servants.

Iceland, Latvia, Lithuania and Romania do provide for such a scheme, although, unfortunately, the national reports did not indicate whether they are considered as occupational in the light of the European Court of Justice's case law. **Lithuania** has different pensionable ages for men and women. The schemes in **Romania** and **Iceland** are gender-neutral.

Latvia stated, on the other hand, that its DB scheme, which is a mandatory scheme for certain groups of civil servants, officials and certain employees, qualifies as occupational according to the European Court of Justice's case law. The main purpose of this scheme is to provide a bridging pension for groups of persons working in or serving the public sector who usually retire earlier (due to specific/unhealthy work). No gender-related differences are mentioned in the report.

5. A POSSIBLE ANSWER TO GENDER INEQUALITY IN OLD-AGE PENSION SYSTEMS

5.1 Caring credits

In our view, it is extremely important to keep atypical workers (intermittent, temporary, occasional and part-time workers) - positions often taken up by women - within the social insurance system. Therefore, an important step in this direction could be to improve the set of instruments geared towards recovering wasted contributions due to the performance of caring activities. Indeed, many national experts would welcome the inclusion of a minimum provision on care credits as regards both statutory and occupational funds. These advantages should, however, be gender-neutral, as to allow these advantages also for men is crucial in order to avoid the reinforcement of women's traditional role of caring for and raising children.

5.1.1 Caring credits in the Three-Pillar Countries

a) Statutory system

One instrument to recover wasted contributions is the crediting of contributions for pension rights and amount purposes during maternity and parental leave. These are granted in most countries. As a matter of fact this is a sort of minimum standard. In **Ireland**, however, contribution credits are allowed on condition that there is at least one reckonable contribution to the statutory system and that contributions have been paid in either of the two previous tax years.

The only country that has no provisions on this is **Turkey**, even though there is a draft law on parental leave. In **Turkey**, women can choose to pay voluntary contributions for maternity leave, but the employer will not have a duty to contribute; where a woman resigns due to pregnancy or giving birth, she can also choose to pay voluntary contributions for a maximum of two years' unemployment. A partial exception is **Greece**, where parental leave is taken into account for pension rights and

amounts, like maternity leave, if the parent pays his/her contribution and the employer's contribution during the leave taken.

The situation is different in **the Netherlands**: there, citizens are insured as residents, regardless of having paid jobs and regardless of having care responsibilities, thus caring credits are not needed (a similar situation is present as regards the *Folkepension* in **Denmark**, the national pension in **Finland** and the NIS basic pension in **Norway**).

Another important instrument for the recovery of wasted contributions is the crediting of contributions during periods of care, which can concern children, disabled or elderly people. Here the situation varies to a significant extent among the countries. Sometimes the provisions are gender-neutral, at other times they are reserved for women. These provisions concern, to a greater extent, caring for children and only to a lesser extent caring for the disabled; very rarely are they allowed for caring for elderly persons.

The **Belgian** response to the care issue is the gender-neutral career break scheme, which is full-time or part-time leave devoted to caring for children or disabled or seriously ill family members, during which the worker receives no remuneration from his/her employer but is entitled to modest benefits paid by the statutory unemployment insurance scheme. When the career break is used by a worker under the age of 50, up to 60 months of the leave are taken into account for pension rights provided that the worker's personal contributions to the pension insurance scheme have been paid; beyond the age of 50, the full-time or part-time career break/time credit leave is taken into account without any contributions being due.

In **Sweden**, a parent who stays at home or reduces her/his working hours to take care of a child under four years of age is credited with pension rights corresponding to her/his earnings before the child was born or to 75 % of national average earnings; pension rights for child-rearing are automatically given to the parent with the lowest income in the year concerned.

In **Italy**, there is a gender-neutral crediting of contributions if leave is taken due to the illness of a child, leave for the parents of seriously handicapped children, daily rest for mothers and fathers, rest periods and leave of absence for severely handicapped workers and for parents of handicapped children; furthermore, under the new contribution-based system, up to 160 days per child of notional contributions, for parents who take time off work to educate or assist children up to the age of six years, and 25 days per annum of notional contributions, for parents who take time off work to assist children above six years of age, or their spouse, or a live-in parent, provided that a handicap is present, are granted.

In **Luxembourg**, 24 months for the first and second child and 48 months starting from the 3rd child are credited for pension rights on demand by the parent who stops working in order to bring up children.

In **Greece**, workers having disabled children or spouses are entitled to a pension subject to a reduced service requirement, irrespective of age and the pension amount cannot be lower than the lowest pension paid by the scheme.

In **France**, since 2010, there are gender-neutral contribution credits to increase the contribution period, a pension provision for non-working parents, and pension bonuses for persons with three or more children. Moreover, parents who are raising a child with a disability receive an increase in the length of their insurance cover by one trimester per raising period of 30 months, with a maximum of 8 trimesters. In the case of interrupted activity, the parent who remains at home can benefit from the old-age

insurance under some conditions (to be the beneficiary of certain family benefits, to have income below a certain ceiling, to have dependent children).

In **Spain**, the first year of interruption to employment due to bringing up children or due to caring for dependant relatives is credited in order to reach the minimum period of contributions required for retirement.

In **Finland**, periods spent on so-called *Home care leave*, which may be taken after parental leave and continue until the child is 3 years old are taken into account under the statutory mandatory professional pension scheme.

In **Ireland**, the *Homemaker's Scheme* is available to anyone giving up work to care for a child under the age of 12 or to care for a disabled person for a period up to 20 years: where a person qualifies for this scheme, any gap in their involvement in insurable employment attributable to periods of care covered by the Scheme will be disregarded for the purposes of assessing average yearly social insurance contributions upon which the pension right depends.

In **Malta**, periods of interruption for caring purposes are contribution-credited for up to two years.

In **Austria**, periods of child care are credited as contributions for up to 60 months. Moreover, those who have failed to carry out gainful employment during their lifetime due to family reasons will receive a limited contribution credit for child-raising periods.

The system in the **Czech Republic** is particularly advanced as far as care credits are concerned. Indeed, the caring period is counted as an insurance period for up to the child's fifth birthday; this period may be prolonged if the child is dependent on care by another person. Moreover, in that system there is also a provision for caring for elderly people: in particular, contribution credits are allowed for the periods of caring for elderly persons who need long-term care, with no specific time limit and this also applies to those who care for a person who needs assistance, with no time limit.

Many countries still have no gender-neutral provisions concerning care credits. In the **UK**, for instance, brand new National Insurance Credits (NIC) have been installed, which allow parents and carers to build up qualifying years through weekly credits for both the basic and additional statutory pensions: the credits are available for parents in receipt of Child Benefit for children aged under 12, as well as for approved foster carers and those caring for at least 20 hours a week for people who are in receipt of various disability-related benefits. After 2010 there will be no limit on the number of years for which credits can be given. However, there is here a presumption in favour of women in that NIC are available to the recipients of Child Benefit which, in a heterosexual couple, is the woman in the absence of an agreement to the contrary.

In **France**, a specific right for women linked to maternity is maintained: increased insurance coverage for pensions in the private sector for a maximum of one year for women who have given birth to one or more children. For the second year, the mother will continue to benefit from another increase in insurance coverage for children born before 1 January 2010, except if the fathers can prove, in the year following the publication of the law, that they have raised their children on their own. For children born after 1 January 2010, the mother will continue to benefit from an increased insurance coverage for a second year if there is agreement between the father and the mother and this is expressed in the six months following the child's 4th birthday. If there is disagreement between the parents, the advantage will be granted to the parent who can prove that he/she has contributed more and for a longer period to the

education of the child. If both parents have contributed equally to the child's education, the benefit will be divided into two.

Italy allows more favourable coefficients of transformation as regards pension calculations for maternity and a reduction or a virtual increase in the female retirement age according to the number of children in the family.

The same holds true for **Cyprus**, where periods of interruption to employment due to the bringing up of children are only credited to women for pension purposes and for three years; moreover, child credits of up to 156 weeks per child are granted to women raising children aged up to 12 years.

Also **Turkey** has provisions which are reserved for women: 90 extra pensionable days will be added to each year of service of a female worker who is the mother of a disabled child in need of constant care to entitle her to early retirement; the total working periods of women workers who have a disabled child are increased by 0.25 and these periods are also deducted from the age limit.

Greece also has contribution credits, the so-called *service credits*, for mothers and as a second choice for fathers, which are taken into account for accruing the insurance periods required for establishing a right to a pension and its amount.

In **Spain**, those women who have given birth to a child and are not actively working have 112 days contribution credits for pension purposes; the same right is not recognised for men.

In **Germany**, child care may generate individual pension credit points for women, which are then relevant for pension amount purposes; fathers are only entitled to child-raising credits if they are the main carer and the mother agrees to this.

In **Norway**, periods of interruption to employment due to bringing up children are credited through *care credits* included in the calculations regarding the NIS supplementary pension; the care credits are automatically assigned to the mother, if the parents do not give notice that the care credits should be assigned to the father. Care credits were introduced in 1992 and will come into effect in around 2020.

Another important issue as regards caring credits is the basis of the calculation which is used for them. In the most advanced systems, the basis of the calculation is the same as if the claimant was working: in this case there is no loss in terms of pension rights. In the **Czech Republic**, for example, the earning base of pension credits is the same as her/his average earnings at work. The situation is somehow different as regards the *Home care leave* in **Finland**: as this leave does not provide an entitlement to an earnings-related benefit, but a flat-rate one, the income levels might be low for persons who make use of this option, especially for fixed-term contracts, many of whom are women of child-bearing age. However, when a person's 'stable level of income' drops by more than 20 %, the income is to be calculated at the level it was before the home-care leave. In **Germany, Greece, Portugal and Italy**, credits during maternity and parental leave are based on 100 % of the former worker's earnings. Care credits are calculated according to the working period's earnings in **Cyprus and Sweden**. In other countries, such as **Liechtenstein, Greece and Austria**, caring credits count less than the full crediting of work periods for pension purposes. In **Austria**, in particular, the calculation basis for care credits is a legally stated minimum earnings rate, the so-called *equalization supplement reference rate*, increased by 2 % per year. In **Greece**, the earning basis for calculating the *service credits* is the minimum daily salary of a manual worker multiplied by 25: this means that in the case of an insured person with a higher wage, credited periods for raising children count less than the full crediting of real service periods for pension purposes.

b) *Occupational schemes*

Caring credits in occupational schemes are fairly rare, as it is normally left to the scheme's regulations whether to provide for them or not. Mostly, only the caring periods for which the employer pays remuneration are taken into account.

Among the countries that have express provisions on caring credits in occupational schemes are **Sweden, Italy, the Netherlands, France, Portugal, the Czech Republic, Ireland, Luxembourg, Norway** and the **UK**.

In the **UK**, schemes are required by law to count any period of paid maternity leave (now available for a year) or paid paternity leave (two weeks) as pensionable service, with benefits being based on the salary before taking the leave in the case of defined benefit schemes and the amount of contributions made by a woman or man in a defined contribution scheme dependent on actual earnings (the employer having to continue with any contributions during the period of paid leave).²⁸

In **Sweden**, the occupational scheme in the private sector contains a child-rearing credit compensating for 13 months of parental leave per child.

In **the Netherlands**, during the period of maternity leave (approx. 4 months), pension rights will continue to accrue.

In **Italy**, women/men who perform care work at home, without remuneration, are allowed the possibility to pay contributions into the funds on an irregular or occasional basis; care workers can also allow the discounts obtained through the use of credit cards to be paid into the funds.

In **Portugal**, there are no specific rules regarding the effects of caring periods. However, the national expert argues that, since there is a Labour Code rule that establishes that maternity leave and parental leave periods are credited as effective work for statutory pension rights purposes, this rule can be extended to occupational schemes; moreover, Decree-Law No. 307/97 qualifies any different treatment related to pensions as a result of these forms of leave as discrimination and prohibits such practices.

In the **Czech Republic**, the Anti-discrimination Act provides for equal conditions for the suspension of a performance or acquisition of entitlement to benefits paid during maternity leave or family-related leave.

In **Ireland**, the Pensions Act 1990 prohibits any less favourable treatment in relation to access to or contributions from a scheme due to an employee being on maternity leave or on leave for family reasons; the employee must still be receiving some form of remuneration from the employer for this prohibition to apply, however, and there is no statutory requirement for an employer to provide remuneration to an employee while he/she is on maternity leave or leave for family reasons.

In **Luxembourg**, according to the Act of 8 June 1999, suspending the retention or acquisition of rights during periods of maternity leave or leave for family reasons which are granted by law or under an agreement and are paid by the employer is forbidden.

²⁸ See also as regards the **UK** C-411/96 *Boyle and Others v Equal Opportunities Commission*, which stated that 'Directive 92/85 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding precludes a clause in an employment contract from limiting, in the context of an occupational scheme wholly financed by the employer, the accrual of pension rights during the period of maternity leave referred to by Article 8 of that directive to the period during which the woman receives the pay provided for by that contract or national legislation'. Along the same lines see C-356/03 *Mayer v Versorgungsanstalt des Bundes und der Länder* as regards an occupational fund in **Germany**.

In **Norway**, maternity/parental leave are taken into consideration and credited for pension rights and amount purposes subject to the existence of an established working relationship during the leave.

In **France**, where there are some caring advantages provided by occupational schemes such as credits for the calculation of retirement pensions, the situation is rather complicated.²⁹ Before the Griesmar case (C-366/99 *Griesmar v Ministre de l'Économie, des Finances et de l'Industrie and Others*), these advantages were sometimes only granted to women. However, in the Griesmar case the ECJ stated that the principle of equal pay is infringed by a national provision which limits to female civil servants with children a service credit for the calculation of their retirement pension in as much as it excludes from entitlement to that credit male civil servants who are able to prove that they assumed the task of raising their children. As a consequence, legislation was enacted in 2003 which extended the same provisions to men. As the national expert outlines, the question still being debated concerns the transitional period as the rights are different if the children were born before or after 1 January 2004. For children born after 2004, women will still receive a six-month contribution bonus per child. According to the Law, this specific right is linked to pregnancy and maternity and thus it should not be seen as discrimination which is prohibited by EU legislation. However, the system is different for children born before 2004; according to the 2003 Law, female and male civil servants will receive a one-year pension contribution 'bonus' for every child born or adopted before 2004, if they stopped working in order to look after the child for at least two months. The provision is problematic because, based on maternity leave, women will automatically fulfil this condition but men will not. Indeed, the conformity of the scheme governing the retirement of civil servants with EU legislation is still being debated and on 25 June 2009 the European Commission sent a reasoned opinion to **France**: in particular, rights are granted only when the parent has stopped working for a certain period, and fathers did not have the right to do so until recent reforms.³⁰ In **France**, another contribution bonus is paid to both women and men when they are off work or working reduced hours for child-care purposes, with a maximum of three years.

5.1.2 Caring credits in the WBM Countries

a) *First-pillar statutory system (first tier) and second-pillar (second tier of the first pillar) private insurance mandatory schemes*

In the **First pillar/tier**, each country - in one way or another - takes periods of care into consideration. The general solution is to give full contribution credits for the duration of the maternity/paternity/parental leave. In some countries, however, the periods of contribution credits do not count as if they were working periods. This happens when the contributions are calculated either according to the minimum wage or a certain wage percentage, or according to the allowance/wage paid during the

²⁹ See on this issue E. Chemla, 'Retraites : majorations de durée d'assurance et égalité', *Droit social* 2, 2010, p. 190.

³⁰ As regards caring benefits in **France** see also C-206/00 *Mouflin v Recteur de l'académie de Reims*, which stated: 'The principle of equal pay for men and women enshrined in Article 119 of the Treaty (Articles 117 to 120 of the Treaty have been replaced by Articles 136 EC to 143 EC) is infringed by a provision of national law which, in providing that only female civil servants whose husbands suffer from a disability or incurable illness making it impossible for them to undertake any form of employment are entitled to a retirement pension with immediate effect, deprives male civil servants in the same situation of that right'.

leave: in these cases, the caring periods count less than the full crediting of work periods for pension purposes (**Bulgaria, Lithuania, FYR of Macedonia, Poland**).

In general, caring advantages are more generous in WBM countries than in the Three-Pillar Model Countries, as child care outside of maternity/paternity/parental leave, periods of care for children with special needs and periods of disabled care are often taken into account for pension rights and amount purposes (**Bulgaria, Croatia, Estonia, Latvia, Lithuania, FYR of Macedonia, Poland, Slovakia, Slovenia**). Less frequent are caring credits for the care of elderly people (these are present in **Latvia**, for employment periods before 1996 and in **Poland**, where contribution credits are allowed for the generic care of family members). In several cases, however, the basis for calculating contributions is either the minimum wage or a part of the employee's wage: in these hypotheses, the caring periods therefore count less than full contributions when at work (**Bulgaria, Latvia, Lithuania, FYR of Macedonia**).

Sometimes, the caring advantages are not gender-neutral, as they are either reserved for women or there is a presumption in favour of women and men are regarded as second-choice claimants (**Bulgaria, FYR of Macedonia, Latvia** to a very limited extent)

In some countries particular types of caring advantages are being experimented. In **FYR of Macedonia**, for example, from January 2009, mothers who have given birth to their fourth child and who have taken care of children until they are 18 years of age, are unemployed and have no pension, can apply for the *long-life benefit* after they reach the age of 62. The caring provisions adopted in **Slovenia** are also interesting: here, the period of time under compulsory insurance, in which an insured parent was employed part time due to caring for his/her child up to the age of three, or six if one of the parents nurses and cares for two children, or up to the age of eighteen due to the care of a disabled child, shall be considered as a period of full-time employment; moreover, people who have obtained the status of a family attendant for adult disabled persons have the right to a partial payment for lost income to the amount of the minimum salary or to the proportional part of payment for lost income in the case of part-time work: from these payments insurance contributions are paid.

In **Iceland**, periods of care are not taken into account in the public pension scheme as it is solely based on residence, length of residence and the current income. In the first statutory pillar in **Estonia, Hungary, Romania and Slovenia** there are also early retirement provisions for persons who have cared for children or disabled family members. These provisions are reserved for women, with the exception of **Estonia**, where they are gender-neutral.

In the **second pillar/tier**, caring credits are very rare. Coverage, when it exists, is usually linked to the existence of child-related remuneration. Periods of unpaid interruption to employment due to raising children are not normally credited or taken into account for pension rights. In **Iceland**, for example, during maternity/paternity leave, a parent shall pay a minimum of 4 % of the maternity/paternity leave payment into a pension fund and the Maternity/Paternity Leave Fund shall pay a minimum of 8 %. In **Estonia**, 1 % of the amount of the parental benefit per each child born is additionally allocated from the state budget to persons who receive such benefits in order to make contributions to mandatory pension funds. The best practice is represented by **Hungary**, where the first-pillar provisions are applied.

b) *Third-pillar occupational schemes*

Caring credits in occupational schemes are fairly rare, as it is mostly left to the scheme's regulations whether to provide for them or not. Often, only the caring periods for which the employer pays remuneration are taken into account.

5.2 Best practices

a) *Here are the best practices in the light of gender equality encountered in the statutory pension systems.*

As regards *pension systems reforms*,³¹ in many countries there has been an attempt to compensate the changes in the pension system which were detrimental to non-standard workers (who are mainly women) through the recognition of contribution credits for child rearing or through other mechanisms of contribution/earnings credits for non-standard workers (**Sweden**; **Belgium**; **Austria**; **Greece**; **Finland**; to a certain extent, regarded as not sufficient by the national expert, **France**); generally speaking, this sort of compensation can be regarded as best practices. In **Sweden**, for example, the new earnings-related pension scheme is based on lifelong earnings rather than on the best 15 years of earnings like in the old system; this change, which can be regarded as detrimental to women (who work part time to a larger extent than men), was compensated by fairly generous pension rules for child-rearing years. In **Belgium**, a major correction of the pension calculation to the benefit on non-standard workers has been made possible through the mechanism of 'a guaranteed pension amount per career year': that is, provided that the combined working time of the considered year adds up to a minimum of 104 full workdays, the guaranteed all-sector remuneration is substituted for the actual remuneration in that year if the former is higher than the latter. In **Ireland**, the introduction of various social insurance contribution credits for interruptions due to family or care reasons has significantly widened the opportunity to qualify for the State pension. In the **UK**, National Insurance Credits were introduced in order to ensure coverage for those who have taken time out of the workforce to take over caring responsibilities: this will allow parents and carers to build up qualifying years through weekly credits for both the basic and additional statutory pension (without limits in the number of qualifying years taken into account).

In relation to *pension qualifying conditions*,³² the residence condition for access to pensions can be regarded as the best choice as far as non-standard employees, such as women, are concerned. In **the Netherlands**, for example, there is a residence condition from 15 to 65 years as a qualifying condition, coupled with a proportional reduction in the pension in the years of absence from the country; there are therefore no qualifying contribution conditions linked to paid employment. Similar situations can be found in **Denmark**, where all the residents are entitled to the *Folkepension* at 67 years of age and this right is not work-related, and in **Norway** with the *NIS basic pension* paid to residents. The same residence-based system can be found in **Iceland** and **Estonia**.

As regards *pension amounts*,³³ the most favourable choice for women with interrupted or non-standard careers is a pension calculated on the best selected spell of employment, such as occurs in Malta and **Greece**. **Malta** has retained, for the time being, the calculation of the pension based on the average wage/salary earned during

³¹ See above, Section 2.2 of this Report.

³² See above, Section. 3.1.1 and 3.2.1.

³³ See above, Section. 3.1.1 and 3.2.1.

the three best consecutive calendar years in the last ten years of employment. In **Greece** the pension is calculated based on earnings either from the last 5 years of employment (for those insured from 1.1.1993 onwards) or from the best 5 of the last 10 years of employment (for those insured prior to 1.1.1993). Moreover, in **Greece**, where women make up 70 % of part-time workers, part timers were given - and to a lesser extent still have compared with other countries where the benefits of part timers are assessed in the standard way - very favourable treatment: until 1991, the law provided that, in any event, the amount of a part timer's pension could not be lower than the lowest full timers' pension; from 1991 onwards, this safety net was weakened, as it was provided that a part timer's pension cannot be lower than only half the lowest full timers' pension.

Another best practice in the pension amount is that of having a minimum benefit or a flat-rate component of the pension paid to all those who fulfil the statutory pension qualifying conditions, as happens, for example, in **Luxembourg, Cyprus, Sweden, Austria, Portugal, Greece, France, Turkey, Denmark, Finland, Ireland, Liechtenstein, Norway, UK, Bulgaria, Hungary, Croatia, Estonia, Latvia, Slovakia and Romania**.

Very interesting from the atypical workers' perspective is also **the Netherlands'** solution, where the statutory pension system provides for flat-rate benefits which are related to the statutory minimum wage (or the wages floor), even though the levels of benefits are dependent on the pensioner's private situation (single, cohabiting, with dependent children and so forth) and on the number of years of residence in the country.

Another interesting solution as regards pension amounts is that of **Iceland**, where there is a residence-based system: here pension amounts are determined by law, according to the length of residence. This is obviously very convenient for those with low pay or non-standard working patterns, as pension amounts are not influenced by the workers' employment situation.

Finally, in relation to pension amounts in the *WBM System Second pillar/Second tier of 1st pillar*, a best practice as regards gender equality can be found in **Slovenia**, where there is a minimum guaranteed return on paid insurance premiums; the minimum guaranteed return is the annual rate of return, which shall not be lower than 40 % of the average annual interest on Government Stocks with a maturity exceeding one year. We reiterate that this pillar is based on DC schemes, which are organised according to the principle of capitalization; the pension amount therefore normally depends on the total contributions paid and on the rate of return of the pension fund.

A best practice as regards *derived entitlements of a wife*,³⁴ is the individualization of additions for dependents in the **Irish** system. Here, the pension of a spouse may be increased for a qualified adult who is dependent on the pension recipient. At present, approximately 95 % of those who are 'qualified adults' are female. For any applications received after the 27th September 2007, the increase is paid directly to the dependent spouse rather than to the main pension recipient: in this way, through the process of the individualization of rights, the dependent spouse (normally the wife) becomes entitled in her/his own right to the addition, in place of the main pension recipient (normally the husband).

Derived rights can be a crucial issue in the case of separation or divorce: to this end some countries have introduced provisions on the splitting of pension rights,

³⁴ See above, Section 3.1.1 and 3.2.1.

which can be regarded as best practices (**UK, Sweden, Malta**, to some limited extent **Austria**, for example).

As far as *care credits* are concerned,³⁵ the system in the **Czech Republic** is particularly advanced. Indeed, the caring period counts as an insurance period for up to the child's fifth birthday; this period may be prolonged if the child is dependent on care by another person. Moreover, in that system there is also a provision for caring for elderly people: in particular, contribution credits are allowed for the periods of caring for elderly persons who need long-term care, with no specific time limit and this also applies to those who care for a person who needs assistance, with no time limit.

The caring provisions adopted in **Slovenia** are also interesting: here, the period of time under compulsory insurance, in which an insured parent was employed part time due to caring for his/her child up to the age of three, or six if one of the parents nurses and cares for two children, or up to the age of eighteen due to the care of a disabled child, shall be considered as a period of full-time employment; moreover, people who have obtained the status of a family attendant for adult disabled persons have the right to a partial payment for lost income to the amount of the minimum salary or to the proportional part of payment for lost income in the case of part-time work: from these payments insurance contributions are paid.

In relation to maternity/paternity and parental leave, it is important to find a right balance between the need for reconciliation and the risk of the segmentation of the female labour market; in this light, the provision of incentives for men who take care leave so as to avoid the risk of perpetuating stereotyped distributions in family roles, as there exist in **Italy**, can be regarded as a best practice: here, as a measure to encourage fathers to take parental leave, the maximum total length of the leave awarded per child has been increased from ten to eleven months if the father takes it for at least three months.

Another important issue as regards caring credits is the basis of the calculation which is used for them. In the most advanced systems, the basis of the calculation is the same as if the claimant was working: in this case there is no loss in terms of pension rights (**Germany, Greece, Portugal, Italy, Cyprus and Sweden**).

In the *second pillar/tier of the WBM system*, where caring credits are very rare, the best practice is represented by **Hungary**, where the first-pillar provisions are applied.

b) Here are the best practices in the light of gender equality encountered in the Occupational schemes.

In relation to the *scheme's qualifying conditions*,³⁶ participation rules often determine the success of pension schemes, because a well-settled pension fund can reach a wider range in society. Here, **FYR of Macedonia** offers very good solutions: indeed, the amount of contributions is up to the person and the scheme covers persons aged between 18 and 70, regardless of their employment status.

Again in relation to qualifying conditions, periods of unemployment are not normally taken into account for pension rights. In a few countries (**France, the Netherlands and Spain** in some limited cases), however, they are taken into consideration and this can be regarded as a best practice.

³⁵ See above, Section 5.1.

³⁶ See above Section 4.1.1 and 4.2.1.

As regards *gender-related actuarial factors in pension calculations*,³⁷ these are not used in **Sweden, Greece, Denmark** (for workers who joined the occupational scheme after 1st July 1999) and **France**. In **the Netherlands**, the situation is different as gender-related actuarial factors are used by occupational funds and insurance companies for funding purposes, but contributions and benefits remain gender-neutral both in DB and DC schemes. In **Germany**, since 31 December 2005, unisex tariffs are mandatory. They must ensure that men and women paying the same amount of contributions gain the same amount of pension. All these situations can be regarded as best practices.

Where gender-related factors are used, it is considered extremely important to control this factor as regards inequality. Here, the **Italian** solution could be taken as an example to this end: indeed, legislation states, in the first place, that any gender-related actuarial factors used must be sound, relevant and accurate; in the second place, the Vigilance Commission on Pensions (COVIP) and the Equal Opportunities National Committee are called upon to control the legitimacy and the non-discriminatory nature of any actuarial factors used.

In the area of the *vesting conditions*,³⁸ in cases of non-standard and occasional work, which is often performed by women, it might be difficult for workers to fulfil the minimum conditions within the same occupational fund, and the provisions that regulate the transferral of the worker's position from one occupational fund to another. Here the best practices are those of **Sweden, Portugal** and **France**, where there are no limitations.

5.3 Reconciliation policies

In general terms, a social security system essentially based upon the employment status of the claimants, as all statutory and occupational old-age pension systems are, strongly penalises persons who are in a situation of need and do not have a good employment record. In particular, as caring for the family is mainly entrusted to women, this can result in their exclusion from the labour market and consequently from contributory benefits.³⁹

In this context, some scholars have suggested that in order to attain gender equality in social protection there should be a life-cycle approach to the matter, that is an approach which is inspired by reconciliation policies between work and private life and which takes into account all the various stages of one's life (the necessities of youth, professional life, motherhood/fatherhood, caring for elderly or disabled family members, old age). Indeed, the life-cycle approach, as we shall explain, can take into account changing career patterns and periods away from employment: for example, it can also lead to the inclusion of children's education, active parenthood, and caring activities among the insured risks.

In the 2007 Report on Directive 79/7/EEC and Directive 86/378/EEC, written by the then Commission's Network of legal experts in the fields of employment, social affairs and equality between men and women, it is opportunely written that this approach tends to 'weaken, in the first place, the link between employment and social security'. Further on they explain: 'Given the fact that for many women it is exactly

³⁷ See above Section 4.1.1 and 4.2.1.

³⁸ See above Section 4.1.1 and 4.2.1.

³⁹ On these issues see: S. Koukoulis-Spiliotopoulos 'Retirement and harmonization of family and work; issues of substantive gender equality and judicial protection (ECJ 26.3.2009 C-559/07)' *Social Security Law Review* 2009 pp. 753-785; A. Lyon-Caen, H. Masse-Dessen, 'La retraite des femmes ou l'égalité mal comprise', *Le Monde*, 11 septembre 2009.

their employment career that affects their qualification for social security and the benefits they receive, this life-cycle philosophy may work out well.’

To put it differently, reconciliation policies should address the current structural imbalance in the division of paid and unpaid work between men and women.

Reconciliation policies should be aimed at both men and women. This must be stressed as reconciliation provisions are in most countries taken more often by women than men. Indeed, gender equality can be attained not only by favouring female participation in the labour market but also by increasing men's role in caring within the family.

Some tools of the life-cycle approach based on reconciliation policies in social protection can be the following:

- a) ***Recovering wasted contributions.*** An important step in the direction of reconciliation between work and the family could be improvements to the set of instruments in the statutory social security system geared towards recovering wasted contributions due to caring activities, such as the crediting of contributions (see above Section 5.1 on caring credits).
- b) ***Maternity/Paternity/Parental leave.*** Attention should be paid to the improvement of maternity/paternity and parental leave, and in particular to the length, flexibility and level of payment: a right balance between the need for reconciliation and the risk of the segmentation of the female labour market should be found. In this light, incentives should be provided for men who take care leave so as to avoid the risk of perpetuating stereotyped distributions in family roles. In **Italy**, for example, as a measure to encourage fathers to take parental leave, the maximum total length of the leave awarded per child has been increased from ten to eleven months if the father takes it for at least three months.
- c) ***Periods of caring activities.*** The problem of counting periods of caring activities should also be faced. The possibility to include periods of care for the elderly or the disabled among the insured risks could, for example, be taken into consideration and social security allowances could therefore be provided. As a matter of fact, one should think about the possibility of remunerating caring activities: those engaged in such activities produce wealth for society; some economists have also found a system to quantify the wealth produced. One could think of a tax rebate as a form of remuneration, for example.
- d) ***Time-credit schemes.*** Such schemes can offer the possibility to accumulate days to compensate for overtime, rest days, days granted due to a collective reduction of working time etc. in view of a career break, for example for caring activities.

6 RECOMMENDATIONS AT THE EU LEVEL

6.1 Changes in EU gender equality legislation

- a) ***The main findings of the report are the following:***
 - In general terms and in both the ***Three-Pillar Model and the WBM system***, women pensioners run higher poverty risks than men as a consequence of the inequalities existing between men and women in the labour market. These differences in work patterns are then mirrored, often in the form of indirect gender discrimination, by the ***statutory pension schemes***. Women receive lower pension amounts than men and often fail to qualify for benefits.
 - Quite often the ***statutory pension systems***, both in the ***Three-Pillar Model and in the WBM***, do not show any directly discriminatory patterns as regards

contribution conditions and the calculation of pension amounts; it is rather the specific female working patterns – that is occasional employment, career interruptions due to caring activities and low pay – which endanger their pension rights. All the more so when: the pension system is based on the lifetime employment record of the claimants; the schemes are based on actuarial principles (which means the use of gender-related actuarial factors); there is a strong link between benefits and contributions (such as in the defined contribution schemes, for example); benefits are earnings related.

- Following recent pension reforms all over Europe: *statutory pensions* have moved from Pay-As-You-Go (PAYG) to funded schemes, or from Defined Benefits (DB) to notional defined contribution schemes (NDC) and Defined Contribution schemes (DC); minimum insurance and contribution requirements have been increased; there has been a strengthening of the link between pension benefits and contributions; even in most DB schemes, pension amounts may depend on the number of insurance years within the scheme or on the number of contributions paid each year; earnings-related DB schemes, formerly based on the last salary or on the best selected earning years, are now based on lifelong earnings; the career period for the purpose of calculating the pension has often been increased; the contribution period which gives access to a full pension benefit has in many cases been lengthened. These reforms are bound to have a negative impact upon the pensions of all atypical workers, such as intermittent, temporary, occasional and part-time workers, many of whom are women.
- In the *WBM pension system a second privately-managed mandatory savings pillar (second tier of first pillar)* has been introduced: this pillar is based on DC schemes which are organised according to the principle of capitalization; the pension amount depends on the total contributions paid and on the rate of return of the pension fund. The purpose is for the employee to retain the economic value of his/her contributions; the actual amount of the pension always depends on the amount collected and invested in an individual account held by the private pension fund, subsequently increased by yields. In this respect, once again, both the pay gap and the irregular payment of wages due to the non-standard nature of the work performed are simply transferred to the pension benefit, since in this system there is no solidarity or social welfare elements; this is highly disadvantageous for women.
- In the *WBM second privately-managed mandatory savings pillar (second tier of first pillar)*, *gender-related actuarial factors*, which take into account the different life expectancy of women, are used in calculating pension amounts. Here the use of gender-related actuarial factors also depends on whether or not the privately-managed and publicly financed mandatory WBM schemes can be classified as a second tier of the first pillar and thereby included under Directive 79/7/EEC, or as private insurance consequently regulated by Directive 2004/113/EC. Indeed, if the privately-managed and publicly financed mandatory schemes were regulated by Directive 79/7/EEC they would not be allowed to use gender-related actuarial factors.
- The *statutory pensionable age* is equal in many countries in the *Three-Pillar Model*. Whereas, in the *WBM system*, almost all the statutory first-pillar schemes apply a different retirement age for men and women and the regulations practically transfer this inequality to the privately-managed second tier of the first pillar (WBM second pillar) (Article 7.1 a) Directive 79/7/EEC).

- The national reports do not show many examples of discriminatory *derived rights in statutory pensions*: in several cases, there are no derived rights at all in the domestic systems; in many other cases, there are derived rights, but they are gender-neutral (Article 7.1 c), d) Directive 79/7/EEC).
- In most countries there are gender-neutral *survivors' statutory pensions*.
- Many countries do not make use of the exception in Article 7.1 b) of Directive 79/7/EEC, as they have gender-neutral provisions on *advantages in old-age statutory pensions granted to persons who have brought up children*. Some other countries have advantages for child rearing reserved to women or granted to men only as second-choice claimants.
- There are specific problems with *occupational funds within the traditional Three-Pillar Model as well as within the WBM system*. In the first place, there is their limited coverage of both non-standard working patterns (part-time, fixed-term contracts, occasional workers and so forth) and low-paid workers, mostly women. In the second place, there is the increase in DC schemes at the expense of DB schemes, which implies a stronger link between contributions and benefits according to the criterion of capitalization, and in turn this mirrors the gender differences in the labour market. Then, there is the fact that earnings-related DB schemes formerly based on the last salary or on the best selected earning years are now based on lifelong or on lengthy periods of employment. This results in a disadvantage for workers with earnings below average, as the benefit level depends on the regularity of their earnings. Although women with high pay fluctuations can be at a disadvantage also with short periods of reference for pension calculations, a decrease in earnings during the relevant period can result in a lower pension.
- The area of *occupational schemes in the WBM Countries*, which is normally regarded as the third pillar of the system, has, however, been very little developed to date.
- The national reports show that in many countries in both systems gender-specific actuarial factors are applied in *occupational pensions*, within the limits allowed by Directive 2006/54/EC.
- Almost all countries are in line with both the Court of Justice's case law and Directive 2006/54/EC as regards the *pensionable age in occupational funds*.
- In many *Three-Pillar Model* countries there are *specific pension schemes for civil servants*. They do not have discriminatory features, however. These schemes have to be considered as occupational according to both the case law of the Court of Justice and Directive 2006/54/EC. Most countries of the *WBM system*, on the contrary, do not have a specific system of old-age pensions for civil servants.
- It is extremely important to keep atypical workers (intermittent, temporary, occasional and part-time workers) – positions often taken up by women – within the social insurance system. Therefore, an important step in this direction could be to improve the *set of instruments geared towards recovering wasted contributions due to the performance of caring activities, both in the statutory and occupational scheme systems*. Indeed, many national experts would welcome the inclusion of a minimum provision on care credits as regards both statutory and occupational funds. This is true for both the *Three-Pillar Model and the WBM system*:
 - i) One instrument to recover wasted contributions is the *crediting of contributions for pension rights and amount purposes during maternity and*

- parental leave*. These are granted in most countries. As a matter of fact this is a sort of minimum standard.
- ii) Another important instrument for the recovery of wasted contributions is the *crediting of contributions during periods of care, which can concern children, disabled or elderly people*. Here the situation varies to a significant extent among the countries. Sometimes the provisions are gender-neutral, at other times they are reserved for women. These provisions concern, to a greater extent, caring for children and only to a lesser extent caring for the disabled; very rarely are they allowed for caring for elderly persons. Sometimes, the caring advantages are not gender-neutral, as they are either reserved for women or there is a presumption in favour of women, and men are regarded as second-choice claimants. In general, caring advantages are more generous in WBM countries than in the Three-Pillar Model Countries.
 - iii) Another important issue as regards *caring credits is the basis of the calculation* which is used for them. In the most advanced systems, the basis of the calculation is the same as if the claimant was working: in this case there is no loss in terms of pension rights. In other countries, caring credits count less than the full crediting of work periods for pension purposes.
- In the *second pillar/second tier of the first pillar of the WBM system and in occupational schemes in both the models caring credits* are fairly rare, as it is normally left to the scheme's regulations whether to provide for them or not. Mostly, only the caring periods for which the employer pays remuneration are taken into account.
- b) In the light of these findings, the changes to EU gender equality legislation should concern:**
1. Updating Directive 79/7/EEC should be the minimum objective of the EU legislator in the immediate future. The directive contains concepts which are definitely outdated, such as, for example, that of indirect discrimination; the more advanced definition of indirect discrimination contained in Directives 2004/113/EC and 2006/54/EC could be applied to Directive 79/7/EEC.
 2. Extending the personal scope of Directive 79/7/EEC to all inactive people, which may be mostly women.
 3. Repealing the exceptions of Article 7.1 a), b), c) and d) of Directive 79/7/EEC, with the provision of a transitory period. We should reiterate that Art. 7.1 a) to d) provides for the following exclusions from the scope of application of Directive 79/7/EEC: the pensionable age; advantages in respect of old-age pensions granted to persons who have brought up children; the granting of old-age entitlements by virtue of the derived entitlements of a wife; the granting of long-term old-age benefits for a dependent wife.
 4. Repealing the exclusions from social assistance and survivors' pensions that are not linked to social insurance risks provided by par. 3(1)(a) of Directive 79/7 (Article 3(1)(b) and 3(2) Directive 79/7/EEC). In particular, old-age survivors' benefits provided under statutory schemes should be fully included within the scope of application of the gender equality principle laid down by Directive 79/7/EEC without any exception.
 5. Improving the EU provisions on parental leave, in order to ensure that, during parental leave, employees continue to accrue their pension rights as if they were working full time.

6. Inclusion in the *statutory funds* legislation of a minimum provision on care credits for all persons who because of caring responsibilities have taken time off from their job or are unemployed. In particular, the EU legislator should provide for gender-neutral advantages. To allow these advantages also for men is crucial in order to avoid the reinforcement of women's traditional role of caring for and raising children. This minimum provision is strictly linked to the abolition of the exceptions under Article 7.1 a)-d) of Directive 79/7/EEC. The care credits ought to have the same value of effective contributions and be considered both for pension rights and pension amount purposes.
7. Inclusion of a minimum provision on care credits in the EU legislation on *occupational schemes* for all persons who because of caring responsibilities have taken time off from their job or are unemployed. This provision should be wider than that provided by Article 9.1 g) of Directive 2006/54/EC, which qualifies as an example of discrimination: 'suspending the retention or acquisition of rights during periods of maternity leave or leave for family reasons which are granted by law or agreement and are paid by the employer'.
8. Providing mechanisms to control the legitimacy of gender-related actuarial factors. Legislation could state, for instance, that any gender-related actuarial factors used must be sound, relevant and accurate; in the second place, the legitimacy and the non-discriminatory nature of these factors could be scrutinized by the domestic equal opportunities bodies.

6.2 The social policy level

At the social policy level, we suggest the following points:

1. The permanent validity of the traditional Three-Pillar Model as *the* instrument of intervention in gender equality should be questioned. All the EU equality legislation in social security matters is based upon the Three-Pillar Model: indeed, Directive 79/7/EEC concerns the first pillar; Directive 2006/54/EC concerns the second pillar (and follows Directives 86/378/EEC and 96/97/EC); finally, Directive 2004/113/EC regulates private insurance and that falls within the third pillar. However, many Eastern and Central European Countries' social security systems are organized on the basis of the World Bank Model, which is made up of the following pillars: a first mandatory public pillar; a second privately-managed mandatory savings pillar; a third voluntary savings pillar; a more recent fourth pillar made up of additional private pension savings and occupational pensions, which has been used in order to better represent the latest pension reforms. The main difference between the two models rests in the second pillar, which is occupational in the one model, and privately-managed, mandatory and financed by a share of social security contributions in the other. Here the main doubt as regards gender equality legislation based on the three-pillar model is whether the privately-managed and publicly financed mandatory WBM schemes can be classified as a second tier of the first pillar and thereby included under Directive 79/7/EEC, or as private insurances consequently regulated by Directive 2004/113/EC. For example, if the privately-managed and publicly financed mandatory schemes were regulated by Directive 79/7/EEC they would not be allowed to use gender-related actuarial factors.
Therefore, it is open to debate if a global **Recast directive on gender equality in social protection** would be welcome in the long run: this directive could be free

of pillar distinctions and its provisions could rather be targeted and adapted to the various kinds of pension schemes existing in the Member States. The Recast Directive should strongly take the European Court of Justice's case law into consideration.

2. It is crucial to reiterate here that men and women have different working patterns: women have a lower participation rate in the formal labour market; they interrupt their careers due to child rearing; and they are among the main victims of the pay gap. Finally, women have a longer life expectancy than men and become widows more often than men become widowers. This aspect is stressed by all the national reports: the experts confirm that the differences in working patterns are then mirrored, often in the form of indirect gender discrimination, by the pension schemes.

Therefore, in order to attain gender equality in social protection there should be a life-cycle approach thereto inspired by reconciliation policies between work and private life. Indeed, a life-cycle approach can take into account changing career patterns and periods away from the labour market and it can also lead to the inclusion of education or active parenthood among the insured risks. As we wrote in Section 5.3, some tools of the life-cycle approach based on reconciliation policies in social protection could be the following: a) recovering wasted contributions due to caring activities, that is providing for minimum clauses on contributions credits; b) improving maternity/paternity and parental leave minimum provisions, and in particular their length, flexibility and the level of payment, with incentives provided for men who take care leave so as to avoid the risk of perpetuating stereotyped distributions in family roles; c) including periods of care for the elderly or the disabled among the insured risks; d) promoting time-credit schemes which offer the possibility to accumulate days to compensate for overtime, rest days, days granted due to a collective reduction of working time etc. in view of a career break, for example for caring activities. OMC (Open Method of Coordination) measures could be extensively adopted in this field.

Part II

National Law: Reports from the Experts of the Member States, EEA Countries, Croatia, FYR of Macedonia and Turkey

AUSTRIA – Anna Sporrer

A) GENERAL QUESTIONS

1. The old-age pensions system

The Austrian pensions scheme is based on the three-pillar system. In Austria, the public statutory pensions system is still predominant, but the basis for a general occupational social security system funded by companies has been created by the introduction of new regulations on severance pay due after the termination of an employment relationship ('new severance pay').¹ The third pillar represented by private pension schemes is promoted by means of preferential tax treatment.

The most important laws forming part of the first pillar are the *General Social Security Act*,² the *Act on Social Security for Persons Engaged in Trade and Commerce*,³ the *Act on Social Security for Farmers*,⁴ and the *Act on Social Security for Self-employed Persons*.⁵ According to these laws general social insurance includes health, accident and pension insurance, provided that full insurance cover is granted. The *Act on Social Security for Notaries Public*⁶ governs the pension insurance scheme for notaries public and insures against old age, incapacity to work, and death. The *Act on the Social Insurance Fund for Artists*⁷ governs the payment of benefits by the federal government to the pension insurance contributions of self-employed artists with compulsory insurance.

The statutory pension schemes organised on a Pay-As-You-Go basis are to be qualified as defined contribution schemes. The occupational pension schemes can predominantly be defined as Defined Contribution systems.

Austria also grants gender-neutral survivors' pensions after the Constitutional Court, in 1980, repealed the provisions that only provided for an entitlement to survivors' pensions to women as being unconstitutional. Consequently, a step-by-step regulation was introduced and in the meantime men and women are entitled to survivors' pensions in a completely equal manner. A person is only entitled to a widow's pension (or a widower's pension) if he/she was validly married to the insured spouse at the time of death and, in the case of divorce, only if he/she received maintenance payments from the insured person at the time of his/her death.

The *social welfare acts of the Länder*⁸ can be regarded as 'social assistance according to Article 3(1)(b) of Directive 79/7/EEC'. These Acts provide for minimum

¹ 'Abfertigung neu'.

² 'Allgemeines Sozialversicherungsgesetz'.

³ 'Gewerbliches Sozialversicherungsgesetz'.

⁴ 'Bauern-Sozialversicherungsgesetz'.

⁵ 'Sozialversicherungsgesetz der freiberuflich selbständig Erwerbstätigen'.

⁶ 'Notariatsversicherungsgesetz'.

⁷ 'Künstler-Sozialversicherungsfondsgesetz'.

⁸ 'Sozialhilfegesetze der Länder'.

social benefits for all those who are not entitled to any other social security payment. In July 2010 the Austrian Parliament concluded an agreement with the Austrian Länder on the harmonisation of the regional social welfare acts, laying down *inter alia* minimum standards for the conditions and amount of the benefit.⁹ Due to this agreement all persons who are legally entitled to remain in Austria are entitled to this benefit.

As part of the ‘safety net’ *the Unemployment Insurance Act*¹⁰ governs the insured event of unemployment for certain groups of and certain persons in training, except for civil servants in a public-law employment relationship. During periods of entitlement to unemployment benefit, contributions to the pension schemes are paid.

Furthermore, all persons who receive a pension below the equalisation supplement reference rate¹¹ receive additional social benefits up to the amount of EUR 784 for single persons and EUR 1 175 for married persons.

The relevance of these supplement systems for women are remarkable: Half of all women in Austria receive pension payments under this reference rate. This shows that women are affected by the principle of equivalence more strongly than men. There are derived rights for spouses, but they usually only apply for the duration of the marriage and only regarding health and accident insurance; personal pension expectancies can only be acquired during employment or limited child-raising periods. Women who have failed to be engaged in gainful employment during their lifetime due to family reasons will not receive any compensation from the social security system except for limited insurance for child-raising periods. However, in recent years the system has been considerably improved for the benefit of women. No other personal pension entitlements are created during a marriage. In Austria, there is no mandatory (but a limited voluntary) ‘pension splitting’ for wives without gainful employment and/or wives who have neglected their gainful employment in order to raise their children and to look after the home.

Another problem is that pensions are often adjusted below the inflation rate. As the majority of minimum pension recipients are women, they are affected by this *de facto* reduction in pensions to a disproportional extent.

2. Old-age pension reforms

The amendments to the Pensions Reform of 2003 took effect beginning on 1st January 2004 for all statutory pension entitlements. An exception is made for those pensions where all the conditions were met by 31st of December 2003 and if the old system would have been more favourable to the beneficiary.

The *General Pensions Act*,¹² which entered into force on January 1, 2005, harmonizes the four main pension systems, namely the *General Social Security Act*,¹³ the *Act on Social Security for Persons Engaged in Trade and Commerce*,¹⁴ the *Act on Social Security for Farmers*,¹⁵ and the *Act on Social Security for Self-employed Persons*¹⁶ by adding up the sum totals of the bases for calculating the insurance

⁹ The new System is called ‘Bedarfsorientierte Mindestsicherung’ = needs-oriented minimum safeguard.

¹⁰ ‘Arbeitslosenversicherungsgesetz’.

¹¹ ‘Ausgleichszulagenrichtsatz’.

¹² ‘Allgemeines Pensionsgesetz’.

¹³ ‘Allgemeines Sozialversicherungsgesetz’.

¹⁴ ‘Gewerbliches Sozialversicherungsgesetz’.

¹⁵ ‘Bauern-Sozialversicherungsgesetz’.

¹⁶ ‘Sozialversicherungsgesetz der freiberuflich selbständig Erwerbstätigen’.

contributions acquired under the respective systems. Women born before 1st of January 1955 are not included in this harmonisation.

Due to the old system women have been entitled to a statutory old-age pension at 60 years of age, men at 65. In addition to this, as a qualifying condition there must be 180 months of contributions or 300 months of periods of insurance during one's whole working life or 180 months of insurance during the last 360 months prior to the reporting date.

The main impact of the pensions reforms on women are:

- A prolongation of the calculation period: before the reforms the calculation of a pension was based on a period of 180 months (15 years). This period is prolonged between 2004 to 2028 by 12 months per year up to 480 months (40 years) in total. This period of calculation will be reduced by a maximum of 36 months for a child and the period of caring for a family member. This prolongation of the calculation period affects those women who have been engaged in periods of part-time work, as an increasing amount of time with lower income will be included in the calculation.
- The maximum pension of 80 % of the basis for calculation will be reached after 45 years only. As women often spend longer periods without employment, many women never reach the required 45-year insurance period.
- Positive impacts for women can be expected with the increase in the basis of calculation for time spent on child care. Up until now the basis has been the supplement reference rate which is increased by 2 % per year beginning with 2004 and this will have been increased by 50 % in 2018. In this way women who have spent time being engaged in child care will be supported.
- Women who have collected 40 years of contributions may retire at the age of 55 years without any reduction. Time when maternity leave allowance was received and the time spent on child care up to 60 months equally count as contribution times. Beginning from 2014 this regulation will only apply to those women who, in addition to this, have been engaged in 120 months of heavy work.
- Corridor pension: This pension currently allows men who have collected 450 months of insurance to retire at the age of 62 years without any reduction. Women will only be allowed to profit from this in 2028 due their different pensionable age.
- The right to retire because of unemployment, which is a certain type of pension, was completely eliminated in 2004.
- Long-term unemployed persons who lose their unemployment benefit due to the long duration of their unemployment will receive 'emergency welfare aid'¹⁷ but the income of the living partner or husband/wife will be included in the calculation. Beginning on 1st January 2005, the time during which a person would be entitled to this welfare aid, but does not receive any benefit due to his/her partner's income, will be counted as pension time.
- Voluntary pension splitting: Beginning on 1st January 2005 a parent who is not the main carer may voluntarily transfer 50 % of his/her pension contributions which are paid until the 4th birthday of the child to the pension account of the main carer. (However, this option has not yet been used. It is assumed that the reason for this lies in the risk that both partners might not have sufficient means of subsistence during old age).

¹⁷ 'Notstandshilfe'.

3. Retroactivity of legislation

The *General Pensions Act*,¹⁸ which entered into force on January 1, 2005, harmonizes the four above-mentioned pension systems by adding up the sum totals of the bases for calculating the insurance contributions acquired under the respective systems. Women born before 1st January 1955 are not included in that law.

For persons who have collected a minimum of one month of insurance before 1st January 2005 there will be a mixed system between the old and the new pensions law, the so-called ‘calculation in parallel’. If the criteria for old-age pensions after the General Social Security Act are more favourable to a claimant, this law will be applied.

The minimum insurance period under the General Pensions Act amounts to 180 months of insurance, 84 months (7 years) of which have been collected before 1st January 2005.

For all persons born after 1st January 1955 a pension account will be established, where the basis and conditions for all insurance periods will be registered during one’s whole working life. Since 2007 all insured persons are entitled to receive information on their individual pension account.

For all persons who were born after 1st January 1955 and who have a minimum insurance period of one month a calculation will be made based on a parallel comparison between the old legal system and the Act on the Harmonisation of Pensions.

4. The World Bank Model

Not applicable.

B) STATUTORY OLD-AGE PENSION SCHEMES

(Schemes falling under Directive 79/7/EEC)

1. Qualifying conditions

In general, the main problem regarding pension rights for women is that they are tied to a (regular) employment relationship, i.e. without employment under social insurance law there is no direct entitlement to benefits and where there is an entitlement to benefits, it depends on the amount of the contributions and the periods during which they were paid (the equivalence principle). This applies in particular to pension payments.

All forms of non-self-employment are covered except for persons who are unable to meet the minimum work limit which is an income of EUR 28.33 daily or EUR 366.33 yearly.

In general, persons employed on the basis of quasi-freelance contracts, home workers and persons in minor employment are not entitled to full insurance cover, but the General Social Insurance Act provides for the inclusion of these groups of employees provided that certain requirements are met.

Periods of unemployment or of entitlement to ‘emergency welfare aid’ will count as insurance periods for the calculation of pensions.

2. The amount of the old-age pension

Prolongation of the calculation period: before the reforms the calculation of a pension was based on an insurance period of 180 months (15 years of insurance in between the

¹⁸ ‘Allgemeines Pensionsgesetz’.

last 30 years or 15 years of contributions at any time prior to the reporting date). This period is prolonged between 2004 to 2028 by 12 months per year up to 480 months (40 years) in total. This calculation period will be reduced by a maximum of 36 months for a child and the period for caring for a family member. This prolongation of the calculation period affects those women who have been engaged in periods of part-time works, as an increasing amount of time with a lower income will be included in the calculation.

The maximum pension of 80 % of the basis for calculation will only be reached after 45 years. As women often spend longer periods without employment, many women will never reach the required 45-year insurance period.

Positive impacts for women can be expected with increasing the basis of the calculation for time spent on child care. Up to now the basis has been the supplement reference rate which is increased by 2 % per year beginning in 2004 and which will have been increased by 50 % in 2018. With this, women who have spent time being engaged in child care will be supported.

3. Periods of caring

This calculation period will be reduced by a maximum of 36 months for a child and the period spent on caring for a family member. This prolongation of the calculation period affects those women who have spent periods being engaged in part-time work, as an increasing amount of time with a lower income will be included in the calculation.

A minimum standard at the EU level for including periods of care in pension rights seems more adequately to meet the requirements of the principle of de facto equality between women and men.

4. Exceptions, Article 7.1 of Directive 79/7

The pensionable age and the possible consequences for other benefits (Article 7.1 a))

In Austria the standard retirement age is 65 years for men and 60 years for women. The early retirement age is 61.5 years for men and 56.5 years for women. The early retirement age was increased from 60/55 years, despite the fact that today only 50 % of all persons retire from regular work, 50 % have been unemployed before regular retirement and have lived on unemployment benefits or special needs allowances.

After the Austrian Constitutional Court found the different pensionable age for women and men to be unconstitutional in 1990, the legislator decided on a step-by-step system, by which the pensionable age for women shall be increased. A special Constitutional Law gradually increases the statutory retirement age for women to that of men. The transition period for equalising the standard retirement age will be 1 January 2024 to 1 January 2033 (hence, as of this date there will be a uniform retirement age for women and men).

This period of transposition has often been criticised as being too long. The legislator had the intention of equalizing the pensionable ages for women and men only at the time when women working in the private sector will de facto have the same opportunities with regards to salaries and employment etc. From the perspective of de-facto equality between women and men and with a view to social justice, the equalisation should not be enforced too quickly. As has already been reported in Austria, women only have average pensions of 50 % of men's average pensions (in the private sector), the income gap is around 30 % and is increasing (!), the employment rate of women in part-time jobs is increasing - without any safeguard

provisions which would minimize the negative effects of this kind of employment for pensions, the unemployment rates of women are regularly higher than those of men; apart from this, women suffer from several other forms of inequalities on the labour market, they are still the main carers for children and new developments after the introduction of the new system of ‘child-care allowances’ mean that the employment rate for women returning from parental leave has gone down from around 50 % to approx. 30 % whereas the take-up rate of parental leave by men is still rather low.

Due to this situation the legislator decided on a step-by-step system, by which the pension age for women shall be *increased slowly*, which can be justified with regard to the existing disadvantages for women on the labour market.

A uniform secondary-law basis would have the advantage that principles that have been established in one field can more easily be introduced in other fields. However, any harmonisation would have to ensure the prevention of ‘levelling down’ or any deterioration in the legal positions already achieved.

Concerning the income of women and men after retirement age it has to be mentioned that – since 2000 – the government has adjusted pensions far below the inflation rate and – in addition – has reduced pensions by the same percentage, which in the late 1990s tended to be above the inflation rate.

Advantages granted to persons who have brought up children (Article 7.1 b))

Caring advantages are gender-neutral, a presumption in favour of the mother and a limited formal possibility for the father to disprove this possibility when applying for it has been repealed by the Constitutional Court as being unconstitutional.

Old-age or invalidity benefit entitlements or increases in long-term benefits by virtue of the derived entitlements of a wife (Article 7.1 c) and d)).

All persons who receive a pension below the equalisation supplement reference rate¹⁹ receive additional social benefits up to the amount of EUR 784 for single persons and EUR 1 175 for married persons. This supplement for the spouse living in the same household is paid to the main insured partner.

C) OCCUPATIONAL OLD-AGE PENSION SCHEMES

(Schemes falling under Article 157 TFEU, Directive 86/378/EEC, as amended by Directive 96/97/EC, now Articles 5-13 of the Recast Directive 2006/54/EC)

1. Coverage

The legal framework for occupational pension schemes is laid down in the Act on Private Pensions and the Act on Business Pensions. Occupational pension schemes covering the risks of old age and incapacity to work are usually based on collective agreements between the employers’ and the employees’ representatives, either at a sector or plant level, or in individual agreements. All these agreements provide for promises of benefits which are usually dependent on the length of employment. In 2007 a provision was inserted into the Act on Private Pensions according to which different contributions or benefits may only be based on ‘sex’ when this criterion constitutes a determining factor within a risk assessment, which is based on relevant and exact statistical data. Risk assessment and actuarial factors have to be published in the business plan of the pension fund and have to be evaluated on a regular basis. The Act on Business Pensions provides for a general principle of equal treatment of

¹⁹ ‘Ausgleichszulagenrichtsatz’.

employees or groups of employees, which forbids differentiations which are arbitrary and unjustified.

Although it is sometimes difficult to distinguish between statutory and occupational social security schemes, it is nevertheless possible using criteria that have been developed to that end. The classification may be difficult in cases where the social system has been laid down by legislation which, in fact, is also based on an agreement between the employer's and the employees' representatives (cf. Art. 1(j) of EC Directive 1408/71/EEA). This question was at issue concerning additional pension insurance with the insurance company for Austrian railroad employees in which connection the Austrian Ministry for Social Affairs took the view that the existence of a statutory social security scheme was to be assumed if the following criteria were met: essential provisions are based on legislation, the contributions are collected by means of administrative measures and not in a private-law manner and the system is primarily financed according to the pay-as-you-go principle and not according to the funding principle.

The creation of occupational pension schemes in the private sector generally lies within the competence of the social partners and are mandatory as soon as a collective agreement is concluded on this question.

2. Calculation of old-age pensions and contributions

In Austria, occupational pension schemes are granted either on the basis of collective bargaining agreements, shop agreements or individual agreements. All of these agreements provide for direct promises of benefits, which, however, are also dependent on the length of employment.

3. Actuarial factors

The Austrian Parliament has passed an act by which Dir. 2004/113/EC shall be implemented into the Austrian legal system by amending the Act on Insurance Contracts²⁰ and the Insurance Monitoring Act.²¹ The amendments are aimed at implementing the principle of equal treatment between women and men in private insurances. Concerning health insurances the new provisions determine that costs related to pregnancy and maternity shall not result in higher premiums or less favourable services for women. The prohibition on gender-specific treatment cannot be derogated from in individual contracts. The legislator has made use of the exception in Article 5 par. 2 of the directive by ruling that gender-related differences may be admissible if and so far as the use of sex is a determining factor in the assessment of risk based on relevant and accurate actuarial and statistical data. Legal protection is given by the possibility for individuals to claim compensation before the civil courts, whereas organisations dedicated to consumer protection may also claim before the civil courts. Due to the new provisions laid down in the Insurance Monitoring Act, insurance companies which make use of the exception concerning the actuarial factors and statistical data are obliged to inform the financial markets monitoring authority²² and to deliver all relevant documentation. Furthermore, these companies have to widely publish all statistical data concerning gender-based differences related to insurance risks, e.g. statistical death rates, gender-segregated damage statistics etc.

²⁰ 'Versicherungsvertragsgesetz 1958'.

²¹ 'Versicherungsaufsichtsgesetz'.

²² 'Finanzmarktaufsicht'.

4. Caring credits

As there are no general statutory rules on the inclusion of caring credits, the different collective agreements or single contracts may differ as to what concerns the inclusion of caring credits. No surveys are available on this question.

5. Vesting and reimbursement rules

After a 5-year contribution period the contributions will not be lost, but may be transferred to another employer, to other forms of private pensions by the individual employee or to a pension fund.

6. Pensionable age

The pensionable age in private occupational schemes has to be gender-neutral due to EU and national legislation.

7. Civil servants

The social security systems for civil servants of the federal government and the Länder governments are allocated to the second pillar as pension payments to civil servants are considered to be ‘pay’ within the meaning of the jurisdiction of the European Court of Justice. The law on pensions for civil servants is not part of the general social security system. The Austrian pension schemes for civil servants are mandatory and are specific. Due to the Austrian Federal Constitution legislative competences in the field of pensions for civil servants are shared between the federal State and the Länder. Thus the Federal State as well as the nine Austrian Länder have enacted separate acts, each for their own civil servants. Pars pro toto the pension scheme for civil servants employed by the Federal state shall be described hereunder – the Acts passed by the Länder differ therefrom in certain details.

Due to § 1 of the ‘Pensionsgesetz 1965’, Official Journal (OJ) 340, as amended by OJ 71/2003, this Act lays down the entitlement to pensions for civil servants of the Federal State, their survivors and relatives. ‘Civil Servants’ under this Act are all employees of the Federal State, whose employment is based on public law.

Generally speaking, the laws contain rules on the entitlement to pensions for civil servants, their survivors and relatives. Female and male civil servants pay the same contributions, have the same pensionable age, the same entitlement to an old-age pension and early retirement and the possibility to exchange the survivor’s benefit for a higher old-age pension. There are no differences in the calculation of pensions either regarding the gender of the civil servant or her/his family status. Pension expectations can be acquired during child-raising periods subject to the condition that the child has been raised by the civil servant as the main carer for a maximum period of 48 months

- this equally applies to female and male civil servants.
- The regulations on the retirement age have always been formulated in a gender-neutral manner and therefore the retirement age for female and male civil servants is equal. The retirement age will also be raised on a step-by-step basis. For persons who were born before 1 October 1940 the regular retirement age is 60 years whereas for persons who were born after 2 October 1952 the retirement age will be 65 years.
- Female and male civil servants pay the same contributions, they have the same pensionable age, the same entitlement to an old-age pension and early retirement and can exchange the survivor’s benefit for a higher old-age pension.

Referring to the *Beune* case: There are no differences in the calculation of pensions either regarding the gender of the civil servant or her/his family status.

Referring to the *Griesmar* case: Child benefits are granted subject to the condition that the child has been raised by the civil servant as the main carer for a maximum period of 48 months – this equally applies to female and male civil servants.

Referring to the *Niemi* case: As mentioned above, the regulations on the retirement age are formulated in a gender-neutral manner and therefore the retirement age for female and male civil servants is equal.

BELGIUM – Jean Jacqmain

A) GENERAL QUESTIONS

1. The old-age pensions system

- The statutory scheme for paid workers (based on Special Powers Royal Decree n° 50 of 24 October 1967) is of the PAYG type.
- The scheme for civil servants (based on the Act of 21 July 1844) is commonly regarded as statutory, the ECJ's case law notwithstanding (see below under Section C.7). It does not entail any personal contribution by the civil servant towards his/her own old-age pension, although he/she must pay defined contributions to finance the survivors' pensions. It is not DB either.
- Occupational pension schemes for paid workers may be DC or DB.
- The three-pillar model is applicable.
- The statutory schemes for paid workers and civil servants include survivors' pensions (not necessarily 'old age' as a pension may be paid to a surviving spouse well before the age of retirement). Occupational schemes for paid workers may, but must not include survivors' benefits.
- All survivors' pension schemes are gender-neutral.
- There is a safety net, the Guaranteed Income for Aged Persons Act of 22 March 2001, which is an assistance scheme subject to a means test. It is gender-neutral.

2. Old-age pension reforms

Taking the question literally, one should answer that the last decade has seen no important reform as the reform was in fact introduced in 1996 and implemented in stages up until 1 January 2009. It was aimed at bringing women's legal retirement age up to that of men's (i.e. from 60 to 65), and consequently at lengthening a career which gives access to a full benefit from 40 to 45 years. Thus, formally, Belgium has ceased to make use of the exception provided by Article 7(1) (a) of Directive 79/7/EEC.

Obviously, the burden of the reform rested on women, who are now compelled to remain in a career for even longer. The issue of gender equality was not ignored by the federal government, and some cushioning provisions were included in the reform such as the 'guaranteed amount per career year' (see below under Section B.2) and the integration of periods when a career break has been taken into the computation of a career. Marginally, women are now entitled to unemployment and sickness benefits and to the *prépension/brugpensioen* scheme (a complement to unemployment benefit paid by the former employer: see the ECJ Case *Commission v Belgium*, C-173/91 [1993-I-5943]) until 65 instead of 60. However, nothing was provided for persons who withdraw from the labour market at certain periods of their lives due to family reasons. Certain measures were aimed at lessening the impact of the sheer application of the *pro rata* principle in case of part-time work (see below under Section B.3).

By and large, the effect of the reform was to deprive women of a minor advantage which certainly could not compensate for the major defect of the statutory pension system for paid workers, i.e. the weakness of the benefits, especially for women (see below under Section B.2).

It may be useful to mention that the reform was the essential part of a ‘special powers’ legislation aimed at allowing Belgium to achieve one of the Maastricht targets (consolidating social security schemes) as a condition for access to the Single Currency System.

The aforementioned reform did not apply to the civil servants’ scheme, in which the age of 65 and a full career of 45 years had always been uniform for both sexes.

3. Retroactivity of legislation

This whole section is almost irrelevant as there were neither retrospective effects nor any recalculation of benefits, and no levelling down either.

The *Jonkman and others* case (C-231, 232, 233/06 [2007-I-5149]), in spite of its importance in ECJ case law, concerns a marginal situation. Within the statutory pension scheme for paid workers, special conditions are provided for airline flight personnel: a full career of 34 years, 55 as the legal age of retirement, higher contributions and higher benefits. As the standard practice of airlines (before Directive 76/207/EEC) was to terminate stewardesses’ contracts when they reached 40, they could not meet the special conditions, so that it had seemed logical to exclude them from the flight personnel scheme. The exclusion had to be repealed when Belgium implemented Directive 79/7/EEC, but ever since the successive governments repeatedly failed to develop a method for eliminating the effects of stewardesses’ past exclusion without creating fresh discrimination; *Jonkman* is the latest episode in this sorry saga, but the government has taken no steps to comply with the ECJ’s decision, waiting for the Labour Court of Appeal in Brussels (which had referred to the ECJ for a preliminary ruling) to produce a final judgment, which the latter does not seem anxious to do.

4. The World Bank Model

Not applicable.

B) STATUTORY OLD-AGE PENSION SCHEMES

(Schemes falling under Directive 79/7/EEC)

1. Qualifying conditions

Any period of activity as a paid worker, which provided an entitlement to the payment of employer’s and personal contributions, is taken into account for the calculation of the old-age pension. There is no exclusion of any sort of non-standard occupation. A notion of the minimum length of occupation does exist (i.e. the equivalent of 104 full workdays per year), but its purposes are the attribution of the ‘guaranteed amount per career year’ (see below) and the recognition of the person concerned as a paid worker if he/she has also performed activities as a self-employed person or a civil servant during the same year. Consequently, there are no difficulties of the *Tiziana Bruno* or *Nolte* types.

In the civil servants’ scheme, a minimum period of occupation of 5 years is required; if this has not been attained when the person concerned must retire (on grounds of disability far more often than of reaching retirement age), the period of occupation as a civil servant is transferred into the paid workers’ scheme.

All periods of unemployment during which a person has been entitled to benefits are taken into account for pension rights in the paid workers' scheme. The same applies for periods of sickness and invalidity.

2. The amount of the old-age pension

The main characteristic of the paid workers' old-age pension scheme which must be immediately explained is the coexistence of two rates to be applied to the average remuneration (see below): 75 % (the 'household rate') and 60 % (the 'single person rate').

Let us imagine a couple of exactly the same age, who have both been employed as paid workers and attain the age of 65 on the same day. The National Pension Office (i.e. the competent statutory social security agency) will first calculate the amount of each spouse's pension at the 'single person rate'. It will then calculate the amount of pension at the 'household rate', based on the higher average remuneration (after comparing the husband's and the wife's remuneration). If the second amount is higher than the sum of the two 'single person' pensions, the 'household' pension is awarded to the spouse who obtained the higher average remuneration and the other spouse's pension is cancelled, unless both spouses insist on two 'single pensions' (which in practice never occurs). Regrettably, the example provides a nutshell illustration of the gender issue in the paid workers' scheme: in nearly all cases 15 % of the husband's average remuneration is more than 60 % of the wife's (as $H \times 60\% + W \times 60\% < H \times 75\%$).

The required number of career years for a full old-age pension is 45, and the legal age of retirement is 65, as mentioned above. However, the notion of a 'flexible age of retirement' allows a worker (a man or woman) to apply for a pension at any time between 60 and 65, accepting an eventual loss in calculation if he / she does not attain 45 career years at that age; conversely, if he / she remains in employment, it is possible to continue working beyond 65 in order to add years to an incomplete career. In any case, a maximum of 45 years are taken into account (which may allow the selection of some better paid years).

The amount of the pension is not related to the paid contributions, but the payment of the worker's personal contributions (7.5 % of the remuneration, without a ceiling) is the condition for a career year to be taken into account. However, there is a long list of circumstances which are taken into account while no contributions have to be paid: various forms of leave, career breaks and time credits (see below) and the whole periods during which a worker has been entitled to unemployment or sickness / invalidity benefits.

The notion of 'average remuneration' used above was a simplification for the example. More precisely, the method of calculating the pension is the following. For each year of the career, the yearly remuneration is multiplied by the fraction $1/45$ and by the rate 60 or 75 %. The result is then index-linked to be converted into its present value. An addition of the yearly results produces the amount of the pension.

A major correction of the calculation is possible through the mechanism of the 'guaranteed amount per career year'. Provided that the combined working time of the considered year adds up to a minimum of 104 full workdays, the guaranteed all-sector remuneration is substituted for the actual remuneration of that year if the former is higher than the latter.

In this way, if the 'guaranteed amount' is not applicable, there is no minimum pension. There is a maximum, however, but its modest amount gives an idea of the main weakness in the Belgian statutory scheme for paid workers: the present yearly gross ceiling is EUR 22 000 at the 'single person' rate and EUR 27 600 at the

‘household’ rate. As mentioned above, personal contributions are based on the full (non-ceiling) remuneration.

The pension benefit itself is index-linked, under the Act of 1 March 1977 which applies to all social security benefits. Based on the so-called ‘health index’ (i.e. the cost of living index from which certain crucial items such as petrol and tobacco have been excluded), the system reacts to each rise (or fall) of 2 %.

Inevitably, a recurrent gap will open between the level of the active workers’ wages and the level of pensions, so that general increases must be granted periodically (subject to budget availability, and not exempt from electoral intent).

3. Periods of caring

All periods of leave related with the protection of maternity are taken into account for pension rights, as during her pregnancy or after giving birth a worker is entitled to social security benefits; the only exception concerns apprentices in small businesses under the age of 18, numerically a very marginal category but still a gap in Belgium’s implementation of Directive 92/85/EEC.

Belgium has two forms of parental leave. The first one is a variant of the career break or time credit scheme (see below) and, as such, is fully taken into account for pension rights. The second one, organised by a Collective Agreement of the National Labour Council, is a totally unpaid leave without any social security cover; although more flexible than the former, it is hardly used at all.

The Belgian response to the care issue is the career break scheme, which more recently took the form of the time credit scheme. It is a full-time or part-time leave, during which the worker receives no remuneration from his/her employer but is entitled to modest benefits paid by the statutory unemployment insurance scheme. It can be used for any purpose except for engaging in another paid activity, but comprises certain care-oriented variants (parental leave, caring for a terminally ill member of the family, caring for a seriously ill member of the family). When the career break/time credit scheme is used by a worker under the age of 50, up to 60 months of the leave are taken into account for pension rights provided that the worker’s personal contributions to the pension insurance scheme have been paid (the first 12 months are free of contributions; the following 12 or 24 are free as well if the leave is used after the birth or adoption of a second or third child). Beyond the age of 50, the full-time or part-time career break/time credit leave is taken into account without any contributions being due.

Beyond the scope of the career break/time credit scheme, any unpaid leave agreed upon with the employer, or any period of withdrawal from the labour market, however serious the care necessities which may force a worker to use such expedients, generates no pension rights.

Given the unequal distribution of family roles in a society like the Belgian one, care obviously raises a major gender issue as to employment and career opportunities, which should firstly be addressed through a better offer of collective facilities (crèches, hospitals, homes, etc.). Correspondingly, but not alternatively, there is value in the notion of identifying care as a specific risk which has to be met by social security schemes, the obligation to assure gender equality serving as a fulcrum.

4. Exceptions, Article 7.1 of Directive 79/7

The pensionable age and the possible consequences for other benefits (Article 7.1 a))

As mentioned above, 65 is now the legal age of retirement for both sexes. The notion of a 'flexible retirement age' allows a worker to retire at any moment between 60 and 65, and if he/she has attained 45 career years by that time, there is no negative effect on the calculation of the pension amount. Retiring at 65 is not compulsory if the worker can keep his/her present job or find another one. Moreover, the pension remains due even if the beneficiary also draws an income from a paid activity, within limits which were tripled within the last ten years (the gross yearly ceiling is now EUR 21 436, or EUR 26 075 if the pensioner has at least one dependent child; compared with the maximum amounts of pension mentioned above under Section B.2, this gives a vivid illustration of the weakness of the Belgian pension benefits). There is no room in the system as explained above for any consideration of gender-specific life expectancy tables.

There is no exception left under Article 7.1.a) of Directive 79/7/EEC, but a word of explanation may be useful about *De Vriendt and others* and *Wolfs*. When the notion of a 'flexible age of retirement' was introduced by an Act of 20 July 1990, while the legal age was still 60 for women and 65 for men, a number of male workers immediately quoted the ECJ's decisions in Cases C-9/91 *E.O.C.* [1993-I-1267] and C-328/91 *Thomas and others* [1993-I-1267] to claim that their pension rights had to be calculated on the basis of a full career of 40 years (as applied to women) instead of 45. When the Labour Court of Antwerp referred to the ECJ for a preliminary ruling, the European Court decided in Case C-154/92 *Van Cant* [1993-I-3830] that if the national legislation had equalized the retirement ages (which was for the domestic courts to consider), the length of a full career had to be equalized as well. The Belgian government then had Parliament pass an 'interpretative Act' of 19 June 1996, to state that the pensionable ages had never been equalized. Thus, when the ECJ was faced with preliminary questions once again, its rulings in the Case of *De Vriendt and others* and *Wolfs* reciprocated *Van Cant*: if the legal ages of retirement have not been equalized, the lengths of the required careers may remain different. Meanwhile, it had been realised in Belgium that the 'interpretative Act' had not had as its sole purpose to preserve the statutory pension scheme from considerable expenses: indeed, stating that the legal ages of retirement had remained different was vital for the projected reform which was aimed at lengthening women's careers up to 45 years (see above under Section A.2).

Advantages granted to persons who have brought up children (Article 7.1 b))

Not applicable.

Old-age or invalidity benefit entitlements or increases in long-term benefits by virtue of the derived entitlements of a wife (Article 7.1 c) and d)).

Not applicable.

C) OCCUPATIONAL OLD-AGE PENSION SCHEMES

(Schemes falling under Article 157 TFEU, Directive 86/378/EEC, as amended by Directive 96/97/EC, now Articles 5-13 of the Recast Directive 2006/54/EC)

1. Coverage

It should first be made clear that in Belgium occupational pension schemes may only aim at complementing statutory schemes; the substitution of the former for the latter is prohibited (hence the following terminology: *pensions complémentaires / aanvullende pensioenen*).

Secondly, the institution of an occupational pension scheme is entirely optional. Such schemes are instituted by way of collective agreements within an activity sector or within an enterprise; they may also result from a one-sided decision by the employer, if no contributions are imposed on staff members.

A sector C.A. may provide whether or not an individual staff member is allowed to decline participation. As to single enterprise schemes, theoretically an individual refusal to participate is possible, but then the employer would always be suspected of exerting pressure to that effect.

Under the present Act of 28 April 2003, no sector of the economy is excluded from the possibility of instituting an occupational pension scheme. However, in the public sector such a scheme can only possibly be instituted for staff members who are not tenured, i.e. entitled to a civil servant's pension.

The Act of 28 April 2003 forbids the use of distinctions which are not reasonably justified between staff members. While the previous Act of 6 April 1995 used the notion 'categories', this has been discarded as being misleading, unless another piece of legislation clearly establishes categories. For instance, the Employment Contracts Act of 3 July 1978 still contains a radical distinction between manual (blue-collar) and intellectual (white-collar) workers; thus, for instance, an employer may lawfully institute an occupational pension scheme for white-collar workers only.

Moreover, the Act of 28 April 2003 refers to the Gender Act of 10 May 2007, which explicitly prohibits discrimination between women and men in occupational pension schemes.

As to indirect discrimination, situations of the *Schröder*, *Magorrian* and *Allonby* types seem to be provided for as the Act of 28 April 2003 also refers to the Acts of 5 March and 5 June 2002, aimed at implementing Directives 97/81/EC (part-time workers) and 1999/70/EC (fixed-term contracts) respectively. Moreover, the Act of 28 April 2003 forbids discrimination against part-time workers and lays down the principle of equal rights *pro rata temporis*.

It is currently estimated that 60 % of paid workers in the private sector are covered by an occupational pension scheme. There is no breakdown per sex readily available. In an opinion (no. 73) of 17 October 2003, the Equal Opportunities Council submitted that women were seriously disadvantaged because of their relative concentration in activity sectors (e.g. the textile industry) with lesser pay rates, and because of horizontal segregation in more remunerative sectors (e.g. banks).

2. Calculation of old-age pensions and contributions

The Act of 28 April 2003 is a legal framework which is meant to provide a number of safeguards. Within that framework, and given the various prohibitions of discrimination mentioned above, the parties to an occupational pension scheme are free to organize it however they want regarding contributions and benefits.

As to the specific question concerning periods of unemployment, i.e. periods during which a worker is not in the employ of any employer, usually they can never be taken in consideration, unless the rules of the scheme allow for voluntary personal contributions, and the worker can afford to pay those contributions.

3. Actuarial factors

Gender-related actuarial factors can be used within the precise limits set by Directive 2006/54/EC, the provisions of which were simply reproduced in the Gender Act of 10 May 2007, with a careful reference to periods of occupation posterior to 17 May 1990, as stated in the '*Barber* Protocol' (which had remained attached to Article 141 EC) and Article 12 (1) and (2) of Directive 2006/54/EC.

However, the Gender Act, which also applies to self-employed persons, did not simply reproduce Article 11 c) of Directive 2006/54/EC, and the scope of the Act of 28 April 2003 only includes paid workers.

There is no known occupational scheme for self-employed persons. Apart from individual '*third-pillar*' contracts, they fall under a gender-neutral statutory scheme (based on Special Powers Royal Decree no. 72 of 10 November 1967) which provides for a basic compulsory DC system that can be augmented through voluntary increased contributions.

This is probably the reason why the Gender Act of 10 May 2007 makes no reference to the exception provided by Article 11 c) of Directive 2006/54/EC.

4. Caring credits

Again, it is up to the parties to a scheme to provide how various periods of absence, especially relating to care, may be taken into consideration. This is far from comforting if one thinks of the extremely offhand way in which some collective agreements deal, or rather do not deal, with the most basic of all 'care' absences, the maternity leave: e.g. when a C.A. provides that only the periods of effective presence at work will be taken into account for the calculation of the Christmas bonus. Indeed, the provisions of Directives 92/85/EEC and 2006/54/EC concerning the preservation of rights during maternity leave are not properly implemented in Belgium, for the silliest of reasons (i.e. during the preparation of the Gender Act of 10 May 2007, two members of the federal government could not agree on which one had to draft the necessary provisions).

There is no known case law on the issue of 'care and occupational rights'. However, the specific reference to *Griesmar* is not relevant, first because the civil servants' pension scheme is considered to be statutory (see below under Section C.7), and second because it never contained any provisions similar to the French ones which were disputed in that case.

5. Vesting and reimbursement rules

A worker begins to acquire rights after one year's participation in a scheme.

The Act of 28 April 2003 devoted very detailed provisions to the preservation of a worker's rights in case of withdrawal from a scheme for any other reason than retirement (the ending of the individual contract, the bankruptcy of the employer, etc.). Essentially, acquired reserves (through personal and employer's contributions) are transferred to a new employer's occupational pension scheme, or to an insurance company specializing in such schemes. However, as the main purpose of the Act was to encourage the development of occupational pensions as a complement to statutory

old-age pensions, the cash payment of individual reserves is not allowed before the age of 60, unless in the form of loans or advanced instalments.

6. Pensionable age

After the gradual equalization of the statutory pension age (see above under Section A.2), the same age of 65 is applicable to occupational schemes, with the same possibility to anticipate it at any time between 60 and 65.

Apart from the possibilities of using gender-related actuarial factors, as allowed for by Directive 2006/54/EC, the legislation forbids any different treatment of men and women. Indeed, the prohibition had already been laid down in the previous (and first) Occupational Pensions Act, of 6 April 1995, with a reference to periods of occupation posterior to 17 May 1990. However, no provision had been adopted to compensate for eventual discrimination relating to periods anterior to that date, and the present Gender Act of 10 May 2007 consolidated the status quo when it stated that no difference of treatment between male and female workers anterior to 17 May 1990 could be challenged as discrimination. This might be regarded as incompatible with the *Magorrian and Cunningham* ruling of the ECJ; still, in the only reported case, the Labour Court of Appeal in Antwerp decided on 6 June 2000 that for periods anterior to 17 May 1990, the claimant (a man!) could rely on a general provision of the Social Security Act of 27 June 1969, under which when an employer unilaterally grants complements to social security benefits to his staff, it may not discriminate between members of the same category, given that men and women did not constitute different categories.

7. Civil servants

Nothing in the previous summary concerning the paid workers' statutory scheme applies to civil servants' pensions. In their scheme, the old-age pension is personal and irrespective of marital status. A full career is 45 years (for ranks which require a higher level of education, the number of study years leading to the required degree are taken into account). The age of compulsory retirement is 65, but the pension can be applied for from 60 onwards. The pension amount is based on the average remuneration during the last 5 years of one's career, multiplied by the fraction $x/60$ where x is the number of career years; the pension amount is limited to $\frac{3}{4}$ of the average remuneration (hence, 45 years for a full career). As mentioned above, a minimum of 5 years as a civil servant is required. There is an absolute pension ceiling of EUR 69 000 per year. There is also a guaranteed minimum (mainly applicable when a civil servant is invalidated out after a short career) which includes 'single person' and 'household' rates.

Pensions are index-linked under the Act of 1 March 1977, but another major difference with the paid workers' scheme is the *péréquation/perekwatie* mechanism, through which a future increase in remuneration on the basis of which the pension amount was calculated will apply to the pension itself, with a one-year delay.

The main reasons why common and learned opinion in Belgium (and, indeed, the Gender Act itself) cannot accept the notion that the civil servants' statutory scheme would be occupational are the following. First, as mentioned above, the occupational scheme for paid workers may only provide complements to the statutory benefits while for civil servants there may be no other benefits than those provided by their statutory scheme. Second, there are no contributions, no reserves to manage and no need for an organisational structure.

The former statement must be qualified. A civil servant pays no contribution to his/her old-age pension, but must contribute 7.5 % of his / her remuneration to finance survivors' pensions (whether or not he/she has dependants); this rate is far too high for actual needs and leaves a surplus which goes to the Treasury ...to help to pay for old-age pensions. The employer does not pay any contributions either: the yearly expenses budget must only provide the necessary amounts to pay the current and new pensions. The main exception concerns local councils, which are at liberty to manage their own pension fund, or have pensions managed by an insurance company, or participate in the statutory social security scheme which has been instituted for those authorities, which entails paying a lump-sum yearly contribution; but the sole purpose of such variants is to guarantee the payment of benefits which are governed by the same principles as for the remainder of civil servants.

Although civil servants' pensions are not regarded as falling within the scope of Article 157 TFEU and Directive 2006/54/EC, all known forms of discrimination contained in the scheme have been eliminated long ago by means of references to Directive 79/7/EEC or Articles 10 and 11 of the Belgian Constitution (i.e. the general principles of equality and non-discrimination under the law). Surviving spouses' pensions were extended to men in all statutory schemes, i.e. the schemes covering paid workers, self-employed persons and civil servants (rather a cosmetic revolution as by now hardly more than 5 % of all survivors' benefits are paid to men) in 1984, i.e. nine years before the ECJ's *Ten Oever* decision in Case C-109/91 [1993-I-4879].

However, the 'care' issue is not absent from the civil servants' scheme, perhaps in an even more acute form as in that covering paid workers. Public service regulations offer civil servants more generous possibilities to take various forms of leave and furloughs than in the private sector: the career break scheme, but also other absences more specifically related to family duties (children's school leave, etc.). Using such possibilities has no adverse effects on one's career other than the loss of remuneration. However, a rule introduced in 1986 at a time of serious state budget deficit (Special Powers Royal Decree no.442), and still in force, provides that the accumulated sum of such absences is only taken into account for the calculation of pension rights within the double limit of 5 years and 20 % of effectively performed services. Thus, given the unequal distribution of family roles, such an abundance of possible 'care' leave can turn into a trap for women as far as pension rights are concerned.

BULGARIA – *Genoveva Tisheva*

A) GENERAL QUESTIONS

1. The old-age pensions system

The Bulgarian pension system was reformed in 2000. The three-pillar pension system includes the following:

- a) the public social security scheme defined benefits (DB) in the first pillar which is pay-as-you-go (PAYG);
- b) mandatory defined contributions (DC) plans in the second pillar;
- c) voluntary DC plans in the third pillar.

1.1. The first pillar provides a basic earnings-related pension. The earnings-related public scheme is managed by the National Social Security Institute (NSSI) paying a

defined benefit (DB) pension with a 1 % accrual rate for each year of one's working life up to a maximum pension with an average replacement rate of 40 %. Mandatory contributions after several reductions amount to 17 % of the wages paid (60 % of which is paid by employers and 40 % by employees). Old-age benefits from the PAYG are indexed according to the Swiss indexation rule (50 % inflation + 50 % of earnings as an increase).

The reform has introduced the single concept of insurance income as a basis for the monthly calculation of contributions referring to the Law on the Public Social Insurance (PSI) Budget, where the minimum and maximum monthly amounts of the insurance income in the course of the calendar year are defined (for part-time workers the minimum insurance income is defined proportionally according to legal working hours or days). The law also has provisions which define the contributions that have to be paid by insured persons, employers and self-insured persons on an annual basis for each fund.

1.2. The supplementary *mandatory* pension insurance (SMPI) supplements the first pillar and creates opportunities for increasing the replacement ratio. This pillar is composed of 2 types of funds: universal pension funds (UPF) and professional pension funds (PPF). The contribution for the UPF is 5 % and for people born after 1960 this 5 % does not enter into the PAYG.

1.3. The supplementary *voluntary* pension insurance (SVPI) is, just like the second pillar, capital-based, and represents the third element of the pension system. It comprises voluntary contributions paid either by oneself or jointly with the employer or only by the employer without the participation of the insured person in order to provide a lifelong or time-limited pension during old age or disability, as well as a survivor's pension in case of the death of the insured person or respectively the person receiving a voluntary pension. The SVPI is based on social insurance contributions paid in the agreed amounts. As of 1 January 2007 occupational pension schemes, in accordance with EC Directive 2003/41, were introduced into the SVPI.

The contributions paid by employers (to the amount of up to 60 BGN) and insured persons (up to 10 % of the taxable income) are tax exempt, while the benefits to be paid may differ between a lifelong pension, a time-limited pension or a lump-sum payment.

1.4. *Survivors' pensions.* Survivors' pensions are gender-neutral. Personal pensions, related to employment and paid under the PAYG pillar, could be transferred into survivors' pensions. The children, the surviving spouse and the parents have the right to a survivor's pension.

Under the UPF or the PPF, in the case of the death of the insured person the surviving spouse or his/her relatives in the ascending and descending line will be paid the accumulated sum under the deceased's individual account as a lump sum or by schedule, according to the Inheritance Law.

1.5. The statutory social old-age pension. Art. 89 (1) of the social insurance code (SIC) stipulates the right to a means-tested social pension for persons who have reached 70 years of age. The social old-age pension is determined by the Government.

2. Old-age pension reforms

The new eligibility criteria for old-age pensions in the PAYG pillar have been implemented since January 1, 2000. The legal retirement age in 2009 was 63 for men (after a 37-year insurance period) and 60 for women (after a 34-year insurance period). The qualifying condition for the PAYG and the SMPI is expressed as a sum of the claimant's age and the length of the insurance period. The claimant's age plus his/her insurance record must equal at least 100 points for men and 94 points for women. If the person cannot attain these 100 points he/she can obtain a pension with a minimum of a 15-year insurance record at the age of 65 for both women and men.

This reform has increased the retirement age for women by 5 years during a 10 year period (2000-2009). There have been discussions as to whether the retirement age should be the same for men and women, but to date no political party has taken the responsibility to continue increasing the retirement age for women. As the dependency ratio in Bulgaria is deteriorating the Government has proposed to increase the length of service – 40 years for men and 37 for women – instead of increasing the retirement age. It has to be noted that the gender pay gap persists in Bulgaria and that the labour market segregation is very visible - women are mainly employed in low-paid jobs, e.g. nursing staff, education, certain social services, etc. At the same time, part-time employment is not widespread and women are not prevalent therein.

3. Retroactivity of legislation

In 2008 the Government increased pensions in nominal and real terms: the recalculation of old-age pensions was based on insurance income during 2007; additional lump-sum payments were made to supplement old-age pensions in November and December 2008. These measures were intended to alleviate the effect of inflation and the already developing economic crisis in final months of that year.

4. The World Bank Model

The European model was developed before the pension reforms in the CEE due to the pressure of political and economic changes. It will probably also undergo changes due to economic and demographic factors. In any case there should be clarification to indicate under which part of the European model the UPF will fall for the purposes of gender equality.

Mandatory Individual Accounts

The SMPI is capital-based with DCs, which are accumulated and capitalized in individual accounts. They are organized and administered by licensed pension insurance companies. Their activities are regulated and supervised by the Financial Supervision Commission (FSC).

The SMPI is based on monthly contributions to the UPF and/or the PPF with the value of the contributions being defined in the SIC.

UPFs cover employees and the self-employed. Participation is compulsory for all workers born after December 31, 1959.

PPFs workers working under hazardous conditions are entitled to early retirement and they represent about 10 % of the workforce. Persons subject to SMPI in a PPF are those working in 'at risk' jobs. The objective is to provide for the possibility to attain the right to a professional time-limited pension for early retirement, which precedes the pension based on the periods of insurance and old age, without any cumulative effect of the two pensions.

Pursuant to the SIC, UPF insured persons may retire 5 years before they reach the statutory retirement age under the PAYG pillar if the resources accrued in their individual accounts are sufficient to cover the monthly minimum old-age and insurance pension.

The personal scope of the second pillar is narrower than that of the first pillar and it covers only old-age and death risks.

Annuities

The amount of the additional *lifetime* pension for old age will be determined on the basis of:

1. the accumulated sum in the individual account;
2. the biometric statistical tables approved by the deputy chairman of the FSC; and
3. the technical interest rate approved by the deputy chairman of the FSC.

The principles of the future annuity provision in Bulgaria were unfortunately not sufficiently thought through during the early years of the reform. This was not necessary in 2000, but payments will start at the earliest in 2015/2018. The question has been, given that the legislation (generally) specifies the products that are to be made available, whether it would not be in the best interest of all participants in the SMPI to be pooled into a single annuity provision monopoly, perhaps with the option for the monopoly provider to contract out the management of assets?

Another argument in favour of creating a monopoly annuity provider is the criterion that the annuity should be based on unisex life expectancy, if Bulgaria finds that it has to move in this direction to satisfy EU requirements.

The choice is between providing a national unisex annuity factor to be applied by all, or to allow providers to determine their own annuity factor. A national criterion has the advantage that it is the same for all, but it can prove difficult to apply this factor to many small insurance collectives, once again without being very conservative. If private providers are allowed to choose their own annuity factors in accordance with their knowledge of their own participants, the goal of uniformity will be lost.

The SMPI schemes are more related to Directive 79/7 although they are based on a different philosophy – no solidarity among contributors, DCs, and no state guarantees for the benefits. At the same time the retirement age is the same in the PAYG and the UPF. The SVPI uses the same retirement age for men and women: 60.

B) STATUTORY OLD-AGE PENSION SCHEMES (Schemes falling under Directive 79/7/EEC)

1. Qualifying conditions

The qualifying conditions for pensions under the PAYG and the SMPI pillars are 63 years of age/a 37-year insurance period for men and 60 years of age/a 34-year insurance period for women

The PAYG pillar introduces a close link between the amount of benefits received and the financial contribution of each insured person. It also provides for an optimal distribution of the insurance burden among the insured persons and the employers. Following the principle of mandatory participation and universality, the first pillar *covers all economically active persons* during old age. A person who has attained a full period of insurance and has reached the statutory retirement age, but with lower income during social insurance periods, is entitled to receive a minimum pension. The amount is approved each year by the Law on the Public Insurance Budget. Persons

with at least 15 years of insurance have the right to receive pension benefits at the age of 65; the amount of the benefit cannot be lower than 85 % of the minimum pension for periods of insurance and old age.

Persons having reached the age of 70 are eligible for a social old-age pension if the average income of their family is lower than the guaranteed minimum income (GMI) for the respective year as well as if no other pension has been granted. GMI was introduced to assist individuals and families who fall below a certain income level and to provide a cash benefit. The benefit is intended to fill the gap between the household income and the threshold (annually) established by the Government as the cost of a basket of essential food. It is set below the minimum wage, the social pension or the lowest unemployment benefit.

2. The amount of the old-age pension

The amount of the pension in the PAYG depends on the insurance period, the individual pension coefficient (IPC) and the average monthly insurance income in the country. The amount of the IPC depends on the insurance income for the period after 1996. For the period before 1997 the three best years (with the highest insurance income) are also taken into account for the calculation. *The IPC* of the person is calculated in conformity with the following requirements. The pension is determined based on the submitted insurance income upon which insurance payments have been made for 36 consecutive months chosen by the person from the last 15 years of service before 01.01.1997 (if there is no interruption during these years, this is the period 01.01.1982–31.12.1996) and the insurance income upon which insurance payments have been made for the period after 01.01.1997. Two proportions are calculated – *for the period up to 31.12.1996 (IC1) and for the period after 01.01.1997 (IC2)*:

- IC1 = (the average monthly insurance income of the person for the chosen 36 month period) / (the average working salary in the country during this period);
- IC2 = (the average monthly insurance income of the person in the period after 01.01.1997) / (the average monthly insurance income in the country during this period);

When calculating IC1 and IC2 the periods in which the person was not insured for a pension are not taken into consideration.

The total individual IC coefficient is obtained as an averagely weighted value from IC1 and IC2:

- $IC = (IC1 \times 36 + IC2 \times \text{the number of months}) / (36 + \text{the number of months})$.

All multipliers in the pension formula could be indicated briefly as follows:

Amount = (the average insurance income in the country) x IC x (the length of insurance service).

If the pension amount, thus calculated, is less than 115 % of the social old-age pension (and for a pension provided at 65 given that there is a 15-year insurance period – less than 105 % of the social old-age pension), the pension is set at the indicated protective minimum amount. The minimum extent of the pension for insured practice and age under the PAYG pillar is annually determined by the Law on the budget of state social insurance. In 2010 it is set at BGN 136 (EUR 1 = BGN 1.9583 at the fixed rate).

If the individual has an average wage then his/her IC is 1.0 according to either of IC1 or IC2 (see above). A person with 40 (39) years of insurance cover would then be entitled to a benefit of 40 (39) % of the average wage etc., according to the benefit formula. To be eligible to retire at the age of 63 a man would have to have 37 years of

insurance cover. A woman will need 34 years of insurance cover for a full benefit, but according to the formula if she had an average wage she would receive a benefit equal to 34 % of the average wage. Of course the ICs will not normally equal the average wage, and the actual individual outcome expressed as a percentage of the average wage will be a dispersion somewhere around the average. As of 2007 persons who postpone their retirement have a right to an increase in the weight of their periods of insurance (acquired after reaching the statutory retirement age) in the pension formula. For 2007 the coefficient in the pension formula was 1.5 %, but as of 1 January 2008 it was raised to 3 % with no limit for the present in order to promote higher employment among persons above the statutory retirement age and periods of insurance (37 years for men and 34 years for women).

The objective of the new formula is to link insurance contributions and benefits more closely. This formula provides a much improved incentive to pay contributions, as after January 1, 1997 all years for which contributions are paid are included in the calculation of an individual coefficient. As a result, the new formula will approach a lifetime earnings formula, although since it retains the idea of a fixed age for eligibility for a full pension, it does not go all the way.

Since women are usually younger than their spouses and outlive them by about four years, the benefits associated with the lower pension ages for women may prove to be a long-term problem as single women in the lower end of the earnings scale will have very limited pensions, which will become increasingly smaller in terms of an average wage as they become older. The average replacement rate for a newly granted benefit is thus likely to be around 35 %.

Since benefits are only partially wage indexed, the ratio of the average benefit computed for the entire amount of pensioners to the average wage will be less as wages will grow faster than benefits. So, the macro ratio of the average benefit for the entire amount of pensioners to an average wage is likely to be somewhere around 30 % in a decade or so. It is possible that this result will be improved somewhat for persons fully covered in the system, if the rate of return in the SMPI is greater than the rate of wage growth; however, it will take many decades until the average participant has full cover under the SMPI.

Benefits are not taxed. Since 2008 wage earners pay a little over 10 % in income taxes, which increases the after-tax replacement rate. For example, a pre-tax replacement rate of 35 % would be about 40 % after tax. This trick is used to claim that the replacement rate is 40 % and above.

As of 1 July 2007 pensions have been indexed under the 'Swiss rule'. The amendments to the SIC, which entered into force at the beginning of 2007, put into effect the decision that the indexation of pensions will take place in the middle of the year. They will be calculated according to a formula that comprises 50 % of the increase in the national consumer price index (CPI) and 50 % of the insurance income growth during the previous calendar year.

However, pension indexation during the period 2005-2007 was based on discretionary decisions by the government.

Part-time workers have reduced wages which are proportional to the hours worked per month which influences the formula.

There is a ceiling on pensions (BGN 720) and on contributions (BGN 2000). Although there are ongoing debates as to the ceilings and political will to remove them, there are still political and financial obstacles to their removal.

At the request of the insured person the UPF may pay a lifelong additional pension for old age five years before the completion of the PAYG retirement age, on

condition that the accumulated resources in the individual account allow for the granting of such a pension of an amount not less than the minimum pension for insured service and age under the PAYG pillar.

The SMPI fund magnifies women's average disadvantage in the labour market, since they have no solidarity or social welfare elements that help to compensate for the gender wage gap. Thus, women's lower average wages are directly reflected in lower pension benefits.

The Bulgarian SMPI regulations are silent on a key issue for all women, whether rich or poor: how life expectancy will be used to determine future private pension benefits. Internationally, private pension systems tend to pay lower benefits to women based on their longer average life expectancy, but there is no public system in the world that discriminates in this way. The new Bulgarian SMPI is a hybrid system – publicly mandated and funded, but privately managed. Should public principles prevail in its design, or should these questions be left to private pension managers?

If the latter position is upheld, what other groups will face discrimination because of longer average life expectancy? Non-smokers, who outlive smokers on average? Members of ethnic majorities, who on average outlive minorities? Those who are free from any predisposition to genetic diseases? In this sense, gender discrimination would create a dangerous precedent.

3. Periods of caring

The insurance period is calculated in hours, days, months and years. As periods covered by insurance *without making insurance payments* the legislation considers the following:

1. Paid and non-paid leave for bringing up a child; Contributions are not paid by the State. This period is not included in the calculation of the insurance income. Transfers are made by the State each year up to 12 % of the NSSI budget in order to pay pensions and other social security payments.
2. The time during which a parent has taken care of his/her disabled children with a permanently reduced ability to work, due to which the parent has not been insured or has not received a pension. For this period, insurance contributions are paid to fund 'Pensions' based on a minimum salary starting from the date of providing the pension, which are for the account of the state budget.
As a period covered by insurance upon retirement, the period during which a non-working mother has cared for a child up to 3 years of age is also included. For this period insurance contributions shall be paid from the state budget based on the minimum salary.
3. The period during which the person has received unemployment benefits (based on the same principle as the period for caring for a small child).

4. Exception, Article 7.1 of Directive 79/7

There is no mandatory retirement age. A retired person can work and receive an old-age pension without restrictions. The retirement age for men and women is still different. There is no possibility for flexible early retirement in the PAYG pillar. Support is provided to persons of preretirement age who are unemployed on a long-term basis through unemployment benefits that will help them to reach retirement age with contributions paid, although based on a lower insurance income. This provision is gender-neutral.

There are no clear legal arguments against equalizing the retirement age for men and women in Bulgaria. Some calculations show that even this step will not make the

amount of pensions for women equal to those for men because of the gender pay gap, given that all other conditions are equal.

As regards the UPF it is clear that women would receive lower pensions due to the gender-based actuarial (biometric as per the SIC) tables generally used by the pension insurance companies. This is the clearest example of forthcoming discrimination against women in practice. The SVPI is different, as at least women may consider whether or not to participate and decide to accept the policy of the PIC which aims at making a profit. This debate is currently not present in Bulgaria, as the earliest starting point for payments from the UPF is in 2015 (with 5 years' early retirement) or in 2022 for women and in 2018/2023 for men.

The difference in the pensionable age could be easily removed if there would be clear EU legislation on the issue. A transitory period would be recommendable in order to avoid a situation where one generation of working women would have to face a sharp increase in their retirement age. The increased retirement age could be made optional for a certain period of time with certain adjustments to pensions taken earlier. As the social insurance system is based on contributions and is increasingly against significant redistributions among participants in order to make them participate and have trust in the system, it would be better to find a way to compensate women for unequal labour market conditions and unpaid work through public social policies instead of retaining the difference in the retirement age.

Advantages granted to persons who have brought up children (Article 7.1 b))

There are presumptions in favour of women or the main care provider in the recognition of these advantages according to the Labour Code (Articles 163-168). Men are entitled to these advantages as second-choice claimants, with the exception of unpaid parental leave up to when the child reaches 8 years of age, which is gender-neutral and treats parents on an equal footing. As these rules are based on sustainable stereotypes it would be advisable to adopt the amendment on a step by step basis. This period is considered as an insurance period for pensions, but is not included in the calculation of the insurance income.

Old-age or invalidity benefit entitlements or increases in long-term benefits by virtue of the derived entitlements of a wife (Article 7.1 c) and d)).

The number of women receiving a survivor's pension (79.5 % of those in receipt of this pension) is considerably higher than that of men (20.5 %). Women survivors receiving a supplement to their pension instead of a survivor's pension is also four times higher than the number of men receiving this supplement.

C) OCCUPATIONAL OLD-AGE PENSION SCHEMES

(Schemes falling under Article 157 TFEU, Directive 86/378/EEC, as amended by Directive 96/97/EC, now Articles 5-13 of the Recast Directive 2006/54/EC)

The practice of the occupational old-age pension scheme is still very limited. It was introduced in Bulgarian legislation as a result of the accession process and supplements the SVPI regulations. Participation is *voluntary*. Most of the sectors of the economy are not covered by occupational old-age schemes. As indicated by the name of the scheme, it targets people with an employment relationship which is insured for all risks under Article 4 para. 1 or para 3.4 of the SIC. Every person who has reached the age of 16 may be insured in a SVPI fund with occupational schemes. The cover provided to insured persons is stipulated in a collective agreement between

the sponsoring undertaking and the workers/employees. According to the conditions in the collective agreement, the SVPI fund under occupational schemes may pay to the insured person an early pension for up to 5 years prior to attaining 60 years of age. This retirement age applies to both men and women and differs from the PAYG and SMPI funds. This pension shall be for a fixed term according to the conditions of the professional scheme. Instalments are made by enterprises and workers or employees insured under occupational scheme.

The instalments by the insurers go to the individual account of the insured person and are kept separate from the personal instalments and from the instalments of the other insurer of this person.

Prohibition of discrimination (new, SG 67/03)

The insurer may not refuse SVPI to workers and employees on the grounds of nationality, origin, sex, sexual orientation, race, skin colour, age, political or other convictions, religious or other belief, membership of trade unions and other public organisations and movements, marital, public and material status and the presence of psychic and physical disabilities. In the case of insurance under a professional scheme any discrimination whatsoever - direct or indirect, on the grounds of sex, especially with regard to marital or family status - shall also be prohibited, in particular in relation to:

1. the applicable scope of the schemes and the terms of access thereto;
2. the obligation to pay the insurance payments and their calculation;
3. the calculation of the pension payments, including any increase, due to spouses and persons, entitled to maintenance, and the conditions which determine the duration and the retention of the right to a pension payment.

Those persons who are entitled to a one-off or deferred payment from a fund for SVPI under occupational schemes in the event of the death of the insured person or a pensioner shall be determined in the collective agreement.

The amount of the *lifelong pension* under this division shall be determined on the basis of:

1. the accumulated resources in the individual account;
2. the biometrical (for actuarial purposes dealing with the average life expectancy of men and women) tables approved by the Financial Supervision Commission;
3. the technical interest rate approved by the FSC.

The amount of the *pension for a fixed period* under this division shall be determined on the basis of:

1. the accumulated sum of the individual account;
2. the period of receiving the pension which is fixed in advance;
3. the technical interest rate approved by the deputy chairman of the Commission.

Using sex as an actuary factor when estimating the amount of the lifelong pension is allowed, provided that the pension insurance company uses reliable and regularly updated public statistic information, in which the determining significance of the sex is obvious.

Upon the termination of legal relations between the enterprise insurer and the insured person, the latter shall be entitled to transfer the accumulated resources from personal insurance instalments to the individual account or a part thereof from one fund for SVPI under professional schemes to another such fund managed by another PIC.

There is no regulation on caring credits in the law. Obviously these issues could be dealt with in collective agreements. At present no public information on collective agreements has been made available.

Civil servants

Civil servants are covered by the PAYG and the UPF. The contributions are paid by the state. There are special regulations for military personnel.

CROATIA – Goran Selanec

A) GENERAL QUESTIONS

1. The old-age pensions system

The current Croatian old-age pensions system is designed in accordance with the World Bank's (WB) three-pillar model. The first pillar is the mandatory PAYG system based on the principle of cross-generational solidarity. It is a DB scheme financed via statutorily determined individual contributions and the State budget revenues. Individual contributions are in principle paid by employees. There are no special schemes for special categories of workers. However, several groups of state officials and civil servants (military officers, police officers, parliamentary deputies, members of the Government, disabled war veterans) are granted benefits from this pillar under more favourable conditions. Their benefits are financed partly or entirely by the State as their employer.

The second pillar is a DC scheme which is mandatory for all employees. It is an individual capitalized savings system financed via statutorily determined individual contributions. Individual contributions are paid by the employees.

The total pension contribution rate is the same for all insured persons and it amounts to 20 % of gross earnings with 5 % of the total contribution being diverted to second-pillar funds.

The third pillar is a voluntary NDC pension system based on individual savings. Both the second-pillar and the third-pillar voluntary pension funds are run and managed by private insurance associations (companies). There are very few voluntary funds in Croatia, due to the slow development of the capital market.

The first pillar covers employed persons, self-employed persons, persons who earn other income, self-employed farmers, as well as their family members. It also covers persons who enjoyed the so-called extended insurance and persons insured under certain special circumstances.

Second-pillar pensions are acquired simultaneously with the first-pillar pension upon the completion of the first pillar requirements. Upon retirement, individuals must use the accumulated balance in their accounts to purchase a life annuity from an authorised insurance company. Accordingly, the second-pillar pensions depend upon 1) the type of life annuity purchased from an authorised insurance company; 2) actuarial tables; 3) the amount of saved funds and returns accrued in the individual account.

The voluntary third-pillar funds are financed completely through voluntary contributions by individuals who have freely chosen to participate in the third pillar. An insured person autonomously determines the amount of contributions. The pension benefits are paid as annuities. The amount of the pension is determined according to the same principles used for the second pillar.

The old-age survivors' pensions are primarily drawn from the first pillar. However, the old-age survivors are also entitled to second-pillar pensions upon the completion of the eligibility conditions prescribed for the first pillar old-age survivor's pension. The survivors' pensions are gender-neutral. In contrast, a person's contributions invested in the third pillar are included in the inheritance sum.

The Croatian old-age pensions system does not provide a safety net for those who have not been members of the cross-generational solidarity insurance system. The system provides the right to a minimum pension granted only to those who have qualified for membership of the cross-generational solidarity insurance system.

2. Old-age pension reforms

Croatia started to reform the pension system in the second half of the 1990s. The key instrument of the reform was the 1998 Pension Insurance Act.²³ However, the current system effectively started functioning in 2002. Since Croatia switched from the purely PAYG socialist system based on the principle of cross-generational solidarity to the three-pillar system the legislator decided that not all employees would earn their pensions from the new system. Accordingly, the system has two tracks and not all employees/retirees are members of the two mandatory pillars. Employees who were between 40 and 50 years of age on January 1, 2002 were given the opportunity to choose whether they wanted to be insured under the second pillar. Persons insured under the first pillar and older than 40 years in 2002 who did not choose to be additionally insured under the second pillar, and those older than 50 years, remained subject only to the first-pillar generation solidarity scheme. Their contribution rate to the first pillar is 20 % of their gross earnings.

However, in 2007 the legislator implemented a pension supplement for those retirees who acquired a pension since 1999 only on the ground of the PAYG pillar.²⁴ Consequently, those who chose in 2002 to be insured under the second pillar are now receiving approximately 25 % lower in pensions. Currently all of these disadvantaged retirees are female since at the time only women managed to acquire the early retirement right due to the different retirement age. This supplement-based disadvantage is not necessarily indirectly discriminatory since soon the first early male retirees will start receiving pensions that are 27 % lower than pensions received by those who opted to stay only in the first pillar. In that sense any possible discrimination depends on the overall number of women and men who opted for the second pillar and those who stayed only in the first pillar in 2002.

The 1998 reform gradually increased the retirement age for both sexes. The 1998 retirement age was 55 years for men and 50 years for women in addition to the requirement of 20 years of retirement insurance membership for both sexes. Following the increased rate of 6 months per year the 2009 retirement age reached 65 years for men and 60 years for women in addition to 15 years of retirement insurance membership for both sexes. A similar increase occurred in relation to the early retirement age. Since 2009 the early retirement age for men is 60 years of age in addition to 35 years of retirement insurance membership and 55 years of age and 30 years of retirement insurance membership for women.

²³ Zakon o mirovinskom osiguranju, Narodne Novine [Official Gazzete no.] 102/98, 127/00, 59/01, 109/01, 147/02, 117/03, 30/04, 177/04, 92/05, 43/07.

²⁴ Zakon o dodatku na mirovine ostvarene prema zakonu o mirovinskom osiguranju, Narodne novine br. 79/07. [The Act on the supplement to pensions acquired according to the Pension Insurance Act, Official Gazzete no. 79/07].

It is fair to say that the pension reform was not particularly sensitive to the notion of sex equality. The reform was primarily designed around conventional working patterns – indefinite employment contracts and full-time work – that favour male workers. Moreover, the calculation of the old-age pension is based on the percentage of the person's overall average earnings and the number of years in employment. Both of these factors do not favour fragmented careers due to care having to be provided.

It is difficult to say whether the reform contributed anything to the notion of sex equality. It did however hinder sex equality in that it explicitly retained the pension gap due to the different retirement age for men and women. This gap is potentially even wider to the extent that part of the old-age pension is determined through the second pillar since second-pillar pensions depend directly on the size of the personal investment in the financial bounds market. Due to the pay gap it is reasonable to assume that women's contribution to the second pillar will be lower and will therefore yield a lower investment return.

3. Retroactivity of legislation

The only amendment to the pension system due to sex inequality occurred due to the decision of the Croatian Constitutional Court which found the different pensionable age to be unconstitutional.²⁵ As a result of this amendment the retirement age for women will increase to 65 or more by 2018. The reform will have a retroactive effect to the extent that women who entered the pension insurance system under one set of conditions will retire under a different set. However, it is almost certain that the pensions calculated under the prior system will not be recalculated.

4. The World Bank Model

The Croatian old-age retirement system is designed according to the WB model consisting of a mandatory cross-generational pillar, a mandatory capitalized savings account pillar and a voluntary capitalized savings account pillar.

The system is inherently problematic from a sex equality point of view. The system is based on a different retirement age for men and women. At the same time, however, the two features of the system that are of key importance to the amount of old-age pensions are the number of employment years and the amount of gross earnings. Furthermore, participation in the voluntary third pillar is encouraged by the State through participation subsidies and exemptions. Yet it is likely that due to the sex-based pay gap fewer women will be able to afford to participate in the third pillar.

The EU three-pillar model is still able to describe the structure of the Croatian old-age pension scheme to a significant extent. The first pillar falls within the scope of the 79/7 Directive. The second pillar is run and managed by private insurance companies. However, participation in that pillar is mandatory and the pillar is funded by the 5 % share of the mandatory retirement contributions paid by employees. Moreover, the conditions under which a retiree acquires the second-pillar pension are tied to the first-pillar conditions. Furthermore, the conditions under which the mandatory second-pillar funds can be established and managed are strictly regulated by law. They can thus offer only those types of retirement pensions that are prescribed by the legislator. Also, they can invest only in explicitly prescribed types of financial bonds and under strictly prescribed conditions. Moreover, the insurance companies running the second-pillar funds are strictly controlled by the State. The safety of

²⁵ Decision of the Constitutional Court of the Republic of Croatia No. U-I-1152/2007 dated 18 April 2007, Official Gazette 43/07.

personal contributions is guaranteed by the State Budget. All this suggests that they fall within the scope of the 79/7 Directive.

The situation with the third pillar is somewhat vaguer. To the extent that the voluntary closed-ended funds are sponsored by employers, they probably fall within the scope of Arts 5-13 of the 2006/54 Recast Directive. To the extent that this service is offered by private insurance companies they fall under the 2004/113 Directive.

B) STATUTORY OLD-AGE PENSION SCHEMES (Schemes falling under Directive 79/7/EEC)

1. Qualifying conditions

As noted above, the Croatian retirement system consists of two tracks or, more precisely, of two groups of retirees – those who acquire a pension only under the first pillar and those who acquire it under both mandatory pillars. The qualifying conditions are the same for both groups of retirees.

The regular old-age pension is granted for individuals who reach 65 (men) or 60 (women) years of age and acquire 15 years of membership in the mandatory cross-generational first pillar.²⁶ The early old-age pension is granted to individuals who reach 60 (men) or 55 (women) years of age and acquire 35 (men) and 30 (women) years of membership in the mandatory cross-generational first pillar.²⁷

Membership of both pillars is immediately granted to any person who engages in employment.²⁸ This applies to all types of employment contracts (part-time employment contracts, seasonal employment contracts, occasional employment contracts). Membership is also acquired by persons on the basis of short-term work contracts.²⁹ Such qualifying conditions do not hamper so-called non-standard workers' access to the old-age pension scheme. Moreover, the system provides that part-time work is regarded as the full-time work for the purposes of acquiring membership within the scheme.³⁰

In principle, periods of unemployment are not taken into account for the calculation of the membership period. Exceptionally, unemployed persons who have reached retirement age but have failed to accumulate the prescribed number of membership years are granted membership for a maximum of 5 years.³¹

2. The amount of the old-age pension

The calculation of the old-age pension differs for the two groups of retirees.

The calculation of the old-age pension for the first group:

The amount of a person's pension acquired only on the basis of the first pillar is based on lifelong earnings, except for the transitional period during which it was based on the best selected periods of employment.³² The amount is the product of the person's personal points (PP), the pension factor (PF) and the actual pension value (APV).³³

²⁶ Art. 30 of the Pension Insurance Act (PIA).

²⁷ Art. 31 PIA.

²⁸ Art. 10 PIA.

²⁹ Arts. 11, 16a PIA.

³⁰ Art. 25/8 PIA.

³¹ Cl. 51. Zakon o posredovanju pri zapošljavanju i pravima za vrijeme nezaposlenosti, Narodne Novine br. 80/08, 94/09. [Art. 51 of the Act on the job-finding procurement and rights during a period of unemployment, Official Gazette no. 80/08, 94/09].

³² Art. 184 PIA.

³³ Art. 74 PIA.

The PP is the average of the ratio between an individual's wage and the national average wage for each year of the calculation period (the period of membership in the first-pillar cross-generational insurance), multiplied by the total insured years (i.e. the number of membership years in the first pillar) and an initial factor that penalises early retirement.³⁴ The initial factor is 1.00 and it decreases at the rate of 0.15 % for each month that person retires before the regular retirement age.³⁵

In the transitional period 1999-2010 the prescribed number of the best out of the total insured years was taken into account. The prescribed number of the best years for 1999 was 10 and it increased by 3 years per annum until 2009 when it reached 40 best years.³⁶

The APV is the legally determined pension amount for one PP.³⁷ The APV is determined by the Croatian Institute for Retirement Insurance for each half-year term. The PF for the old-age pension and early old-age pension equals 1.00.³⁸

The first pillar also includes the right to a minimum pension.³⁹ The minimum pension is the product of the 0.825 % of the average 1998 national gross wage, the number of membership years in the first pillar and the PF. The maximum pension is the product of specially calculated personal points (MPPP), the pension factor (PF) and the actual pension value (APV). The MPPP is acquired if we multiply the number of acquired membership years with the product of the regular PP and the factor 3.8. This ceiling on benefits from the first pillar is not coupled with the ceiling on contributions.

The calculation of the old-age pension for the second group:

The amount of pension acquired on the basis of the first and second pillar is based on lifelong earnings. It is the sum of the cross-generational pension, the basic pension, and the second pillar annuity.⁴⁰

The cross-generational pension is calculated for the period of a person's membership within the first pillar before the establishment of the reformed retirement scheme in 2002. Similar to the calculation for the first group of retirees, the amount of the cross-generational pension is the product of PP, PF, and APV. Those persons who were not members of the first pillar before 2002 do not have the right to a cross-generational pension but only to the two remaining elements of the sum.⁴¹

The basic pension is the sum of two parts.⁴² The first part amounts to 0.25 % of the national gross salary in the previous year multiplied by the number of membership years in the scheme after the establishment of the new scheme. The second part amounts to 25 % of the APV for personal points acquired after the establishment of the new scheme. This track does not include either a minimum or a maximum pension.

The amount of the second-pillar annuity depends on the amount of accumulated capitalized savings in the second-pillar account, the type of pension chosen by a

³⁴ Art. 75 PIA.

³⁵ Art. 78 PIA.

³⁶ Art. 184 PIA.

³⁷ Art. 79 PIA.

³⁸ Art. 80 PIA.

³⁹ Art. 82 PIA.

⁴⁰ Art. 83 PIA.

⁴¹ Id.

⁴² Art. 84 PIA.

member and actuarial calculations.⁴³ It is not clear to which extent second-pillar insurance companies are allowed to use sex-based actuarial tables. Initially, the Act on Pension Insurance Associations provided that second-pillar associations cannot use unit pension tariffs for calculating pensions that are different for men and women.⁴⁴ This implied that almost all of the actuarial tables had to be unisex. Since life expectancy tables are not used for the calculation of the unit pension tariffs the Act implied that they were allowed. Ironically, the situation regarding sex-based actuarial tables became more obscure due to the transposition of Directive 86/378. In 2007 the Act was amended to transpose Art 6 of Directive 86/378. The transposition is rather questionable since the Act now provides that different pension amounts for men and women are prohibited except when they result from actuarial calculations.⁴⁵ The necessity element has been omitted. Due to this amendment it is possible to argue that second-pillar insurance associations are allowed to use sex-based actuarial tables. In this respect it should also be pointed out that the Suppression of Discrimination Act allows insurance service providers to negotiate insurance contributions, premiums and benefits taking sex into account in accordance with the rules of actuarial mathematics to the extent that such a measure satisfies the proportionality principle.

Both tracks consistently apply the pension formulas to all scheme members regardless of their type of employment. However, the calculation of the membership period is based on the full-time work standard. Consequently, part-time work has to be proportionally recalculated into full-time work. The recalculation is based on the 40-hour working week.⁴⁶ The same applies to seasonal employment during which workers often work more than 40 hours per week.⁴⁷

3. Periods of caring

Maternity and parental leave are relevant in terms of access to pension rights and in terms of the calculation of the pension amount.

First, employed parents on statutory maternity or parental leave are members of the old-age insurance scheme.⁴⁸ Hence, the period of leave is relevant for calculating the membership period in its role as a qualifying condition for pension rights. It is also included in the calculation of the membership period for the purpose of calculating the amount of pension. The period of maternity or parental leave is counted as full-time work for the purpose of membership even if parents use it as a right to work part time throughout the duration of the leave.⁴⁹

Second, the amount of the maternity or parental allowance is important for the calculation of the pension amount. The amount of the received allowance substitutes the amount of the person's salary as a factor of PP calculation for the respective period of leave.⁵⁰ In this sense the system works to the disadvantage of women.

⁴³ Cl. 2/3. Zakon o mirovinskim osiguravajućim društvima i isplati mirovina na temelju individualne kapitalizirane štednje, Narodne Novine 106/99, 63/00, 107/07. [Art. 2/3 of the Act on pension insurance associations and the payment of pensions based on individual capitalized savings (PIAA), Official Gazette no. 106/99, 63/00, 107/07].

⁴⁴ Art. 38 PIAA.

⁴⁵ Art. 28a PIAA.

⁴⁶ Art. 25/3 PIA.

⁴⁷ Art. 25/5 PIA.

⁴⁸ Cl. 25. Zakona o roditeljskim potporama, Narodne Novine 85/08, 110/08. [Art. 25 of the Act on maternity and parental support, Official Gazette 85/08, 110/08].

⁴⁹ Art. 25/2/1 PIA.

⁵⁰ Art. 77 PIA.

The maternity allowance amounts to an average of the last six salaries paid before the beginning of the leave.⁵¹ Furthermore, the amount of the maternity allowance has a top ceiling. Consequently, women with higher salaries are placed at a disadvantage in the calculation of their old-age pension. Moreover, only women who have been employed for 12 consecutive months or have worked for at least 18 months in the last two years have the right to a maternity allowance amounting to 100 % of their average salary.⁵² Women who do not satisfy this condition receive a minimum allowance that amounts to 70 % of their average salary.

The situation related to the role of parental leave allowances in the calculation of the pension amount is even more disadvantageous. The parental allowance has a top ceiling of 80 % of the so-called national budgetary base, which is the legally determined base for calculating several types of social benefits. Since the base is rather low, those parents who decide to take parental leave, the great majority of whom are women, are placed at a significant disadvantage as regards their pension calculation.

In principle, the periods of interruption to employment due to raising children, except for maternity and parental leave, do not count for pension rights and the amount thereof. The Act on Maternity and Parental Support allows for extended parental leave allowing one of the parents to freeze her or his employment status and to stay at home to care for a child until that child's third birthday. This period is not taken into account for the calculation of the membership period.⁵³

In principle, other forms of periods of care within the household, such as caring for the disabled or home care are not taken into account for the pension right and amount purposes. However, the period taken to care for a child with an established need for increased parental care commencing after ordinary parental leave and finishing on the child's third birthday is included in the calculation of the insurance membership period. The leave in its entirety is treated as a full-time working period. Similarly, the parents of a child with greater development difficulties can take additional leave until that child's eighth birthday. The whole period of leave is treated as full-time work for the purposes of the membership period.

The preceding description shows that the Croatian old-age pension system is not particularly favourable to persons carrying out caring responsibilities, the overwhelming majority of whom are women. As a rule, care periods are valued less for the purposes of calculating the pension amount. Moreover, the described forms of child-care leave are only taken into account for pension purposes when they pertain to employed persons.

The great majority of the provisions regulating the value of child-care periods for the old-age pension system are gender-neutral in the sense that all rights are granted to both parents. However, bearing in mind the fact that traditionally women bear the greatest share of child-care responsibilities the formal neutrality of the legal provisions is hardly impressive. This is even more so since the Maternity and Parental Support Act allows parents to transfer their parental leave rights to one parent. Such a provision is clearly designed to facilitate the traditional sex-based distribution of child care. The extent to which the traditional one (female) care-provider model still underpins the Croatian social system is also illustrated by Art. 15/2 PIA that provides

⁵¹ Cl. 41. Zakona o o obveznom zdravstvenom osiguranju, Narodne Novine 150/08, 94/09, 153/09. [Art. 41 of the Act on mandatory health insurance (MHIA), Official Gazette no. 50/08, 94/09, 153/09].

⁵² Art. 19 MHIA.

⁵³ Art. 15 PIA.

that where two unemployed parents care for a child during that child's first year, membership within the pension scheme will be granted to the mother unless both parents agree otherwise.

4. Exceptions, Article 7.1 of Directive 79/7

The pensionable age and the possible consequences for other benefits (Article 7.1 a))

The Croatian Labour Act does not prescribe a mandatory retirement age in the strictest sense. However, Art. 104 of the Act does provide that employment will end when a worker reaches 65 years of age and 15 years of pension insurance membership unless the employer and the worker agree otherwise. The provision does not differentiate between men and women. A person cannot start utilizing his/her old-age pension right and continue to work.

As noted previously, the Croatian old-age pension system sets different ages for men and women as a condition to qualify for a pension. It also sets different ages for men and women as a condition to qualify for early retirement. However, since most of the social benefits are tied to one's employment status I am not aware that the difference in the pensionable age has a consequence for other benefits.

The Croatian Constitutional Court has found that the sex-based difference in the retirement age is in breach of the Constitutional guarantee of equal treatment. Nevertheless, the Court decided to leave the provisions in effect until January 1, 2018 and thus it has left the legislator with a considerable period of time to gradually eliminate this difference. The legislator has not yet started the levelling process. It is also highly unlikely that the legislator will provide any compensation for any loss suffered due to discrimination.

One reason that can help to explain the legislative reluctance to commence this levelling reform is the fact that the measure is not popular among the public. The public attitude towards the measure has so far been rather hostile. First, the traditional patriarchal perception of female and male social roles is still rather strong and the early retirement for women is perceived as a reward for their child-care services. Moreover, early retirement facilitates so-called 'granny' child-care services. Second, and more understandably, many women have welcomed early retirement as an escape from their jobs that are often considered less prestigious and are lower paid.

On the other hand, as argued before, the earlier pensionable age for women has considerable effects for the amount of their pensions, especially if they have assumed responsibility for child care. This is particularly the case with the pension acquired in the second pillar. In light of the described structural disadvantages for women that are not only characteristic of the Croatian pension systems (and not because it 'discriminates' against men), the Art. 7 exception concerning the pensionable age for men and women should be strongly reconsidered.

Advantages granted to persons who have brought up children (Article 7.1 b))

In addition to the previously explained child-care leave regulations, the system does not provide any special advantages to its members who have assumed caring responsibilities. In principle the pensionable advantages for individuals who have assumed responsibility for child care are welcomed. However, EU legislation should not allow those advantages that facilitate the traditional perception of child-care distribution. On the country, it should encourage advantages that are explicitly designed to encourage or even compel men to assume a greater share of child-care responsibilities.

Old-age or invalidity benefit entitlements or increases in long-term benefits by virtue of the derived entitlements of a wife (Article 7.1 c) and d)).

The Croatian social system does not provide for these types of benefits. I do believe that these exceptions are outdated and should be reconsidered.

C) OCCUPATIONAL OLD-AGE PENSION SCHEMES

(Schemes falling under Article 157 TFEU, Directive 86/378/EEC, as amended by Directive 96/97/EC, now Articles 5-13 of the Recast Directive 2006/54/EC)

1. Coverage

The Croatian old-age pensions system allows for the occupational scheme under the third pillar of the reformed system.⁵⁴ However, only a few occupational schemes have so far been established. Every person residing in Croatia can be insured within the third pillar.

Voluntary pension insurance schemes can be established as open-ended and closed funds. The open-ended funds are financed via individual contributions paid by employees. The employment status is of no relevance for this type of pension. The closed funds can be financed by companies, trade unions or self-employed persons. Accordingly, occupational pension schemes can be established in the form of a closed voluntary fund.⁵⁵

The membership conditions are not explicitly regulated by the MVPFA. The Act leaves them to the discretion of the employer who must stipulate them in the fund's Statute.⁵⁶ However, Art. 113 of the Act explicitly prescribes that membership must be available to all employees working for a particular employer. Consequently, the employer cannot exclude a particular category of employees such as part-timers from the fund. Art. 113 does allow the employer to limit membership to particular professional categories of employees, however. This may be a way to circumscribe the previous guarantee.

Arts 111/7 and 111/8 of the Act explicitly prohibit any type of direct or indirect discrimination on grounds of sex in relation to fund membership.

2. Calculation of old-age pensions and contributions

The amount of the pensions in the occupational schemes is entirely contribution related. The contributions are determined by a particular employer sponsoring the fund. The pension amount depends on 1) the type of life annuity purchased from an authorised insurance company; 2) actuarial tables; 3) the amount of saved funds and returns accrued in the individual account. The pension right is subject only to the condition that a person must reach 50 years of age to start drawing his or her pension.

3. Actuarial factors

Art. 39/2 of the Pension Insurance Associations Act explicitly prescribes that insurance associations are allowed to take sex-based actuarial tables into account in relation to third-pillar pensions. I do not know to what extent these tables are actually used. However, Art. 39/2 seems to be too broad in light of Art. 9/1 of Directive 2006/54 or Art. 6 of Directive 86/378.

⁵⁴ Cl. 4-5. Zakona o obveznim i dobrovoljnim mirovinskim fondovima, Narodne Novine 49/99, 63/00, 103/03, 177/04, 71/07 [Arts 4-5 Act on Mandatory and Voluntary Pension Funds (MVPFA), Official Gazette no. 49/99, 63/00, 103/03, 177/04, 71/07].

⁵⁵ Art 105 MVPFA.

⁵⁶ Art 109 MVPFA.

4. Caring credits

The question of possible caring credits is at the discretion of a particular employer sponsoring the occupational fund.

5. Vesting and reimbursement rules

The Mandatory and Voluntary Pension Funds Act is rather ambiguous in relation to vesting and reimbursement rights. On the one hand, it is clear that the funds of the workers' personal account are his/her private property, especially since the government subsidizes this type of personal savings. Moreover, the Act prescribes that the person in question can use his/her funds for pension purposes when he/she reaches 50 years of age. On the other hand, Art. 111 of the Act states that in the case of membership coming to an end the person in question can use the funds in his/her account for purposes of the third-pillar pension in accordance with the fund's Statute which suggests that the employer has a certain degree of discretion in regulating these issues.

6. Pensionable age

The sex-based differences as regards pensionable ages are explicitly prohibited by Arts 111/7 and 111/8 of the Mandatory and Voluntary Pension Funds Act as well as Art. 28a of the Pension Insurance Associations Act.

CYPRUS – *Lia Efstratiou-Georgiades*

A) GENERAL QUESTIONS

1. The old-age pensions system

The pension system in Cyprus is almost entirely public, with private provisions playing a relatively minor role compared to the General Social Insurance Scheme. There are no differences concerning gender in the pension legislation on the pensionable age. The pensionable age according to the Social Insurance legislation is 65 for both sexes.

The current pensions system in Cyprus comprises the General Social Insurance Scheme (a statutory compulsory scheme, which covers all workers (including self-employed persons), in both public and private sectors), the Social Pension Scheme, the Special Allowance for pensioners (first-pillar schemes), the Occupational Pension Schemes for the employees of the broader Public Sector and Voluntary Provident Funds and other similar collective agreements (second-pillar schemes). Moreover, a Public Assistance Scheme exists which provides financial assistance for social services to persons whose means are not sufficient to meet their basic and special needs. Third-Pillar Pension Schemes are not well established in Cyprus.

- a) *The General Social Insurance Scheme* (GSIS) introduced in 1957 is the mandatory first-pillar part of the pension system financed on a pay as you go basis by contributions from the insured persons, the employers and the State. It has taken its current shape following two major reforms in 1964 and 1980. The 1964 reform extended compulsory insurance to every person gainfully occupied in Cyprus. The 1980 reform introduced earnings-related insurance, which is applied along the lines of the scheme of flat-rate contributions and benefits. Also, an adjustment of pensions became a regular feature of the Scheme. The GSIS covers, in addition to old-age, invalidity pensions, the widow's pension, the

- orphan's pension and disability pensions as well as short-term benefits (sickness, unemployment, maternity and work injuries), marriage and funeral benefits.
- b) *The Social Pension Scheme*, also part of the first pillar, ensures the universality of the pension system by providing non-means-tested pensions to residents of Cyprus who, for any reason, have not participated in the labour market and, as a consequence, do not have a pension income from any source. This is of importance for women, especially among older generations who did not participate in the labour force and worked in agriculture in non-remunerated family work. This is financed through general taxation.
 - c) The special allowance is payable to every pensioner with an annual pension income not exceeding EUR 11 106 and is financed out of general taxation. As from 30 November 2009 the allowance is not payable to new beneficiaries who are entitled to a new benefit under the Scheme mentioned in paragraph d) below.
 - d) *The Benefit for households of pensioners with low income Scheme*: The Council of Ministers, by Decision No. 69.209 of 5 August 2009, has approved the implementation of the Scheme on 'Grants to pensioners' households with low income', a cash-benefit scheme addressed to pensioners' households whose total annual income is below the poverty threshold. The Scheme commenced on 30 November 2009.
Eligible to apply are households having their habitual residence in the Republic of Cyprus, with persons who receive a pension from the Social Insurance Fund (old age, invalidity, widow's etc.), a social pension or a pension from any occupational pension scheme applicable in Cyprus.
 - e) *The Public Assistance Scheme*: Every person legally residing in Cyprus has the right to a decent standard of living. This right is ensured through the provision of financial assistance and/or social services to persons whose means are not sufficient to meet their basic and special needs.
 - f) The *Social card* is issued to all social insurance pensioners and provides them special reductions in the price of certain services such as transport, public entertainment and other cultural events.
 - g) *The Government Employees Pension Scheme* or Public Service Pension Scheme, which is financed on a pay-as-you-go basis from the State budget, provides mandatory retirement and survivors' pensions for permanent civil servants and members of the educational service, the police, the armed forces and some other government officials.
 - h) *The Semi-government Employees Pension Schemes*, which are funded, provide for mandatory retirement and survivors' pensions to the permanent employees of public utility corporations, of local authorities and of other public law authorities.

The Voluntary Provident Funds constitute the second pillar of the system and are arrangements that are agreed within the framework of free collective bargaining. They provide defined contribution lump-sum benefits. However, for certain categories of employees, the Provident Fund is combined with a defined benefit lump-sum.

See the Annex for the main legislative sources.

2. Old-age pension reforms

- a) Under the Social Insurance Systems there are no differences between men and women concerning retirement age. The Social Insurance Law of 1980-2009 provides that if both spouses are entitled at the same time to increases for

- dependants, the payment to dependants is only payable to the spouse who is entitled to a benefit at a higher rate.
- b) In the past there were a number of elements in the GSIS that did discriminate against women. However, almost all of these were removed in the course of the process towards ‘accession to the EU’, when changes were made to ensure the harmonization of national law with EU law. At the same time, the necessary changes were made to the terms of the occupational pension schemes and the Provident Funds.

Positive discrimination in favour of women constitutes the following: assimilation (the granting of credits) under the GSIS, periods of child care up to three years for each child, as well as the Social Pension, which benefits almost entirely non-insured women, and the mother’s allowance, which is paid to every woman who has reared four or more children. Female government employees who have given birth are entitled to an additional twelve weeks unpaid maternity leave – additional to the 18 weeks granted by law to all female employees. This time off is counted as pensionable service under the government employees’ pension scheme.

Discrimination exists in relation to widowhood under the GSIS. A widower’s pension is not payable except where the widower is permanently incapable of self-support. The fact that the Social Insurance Laws do not provide for the transfer of the wife’s pension to the widower can be considered to discriminate against men. This discrimination is accentuated by the fact that a woman who has paid insurance contributions is entitled to draw a widow’s pension alongside her own social insurance pension. Moreover, whilst old-age pensions are taxed, this is not the case for widows’ pensions. On the other hand, survivors’ pensions in the occupational schemes are gender-neutral.

- c) All types of employment are covered under the GSIS.
- d) Except for the widower’s pension and the care period as mentioned above, all reforms have taken into account the issue of gender equality and have not hindered gender equality. The Social Insurance legislation has been amended as of 1 April, 2009 (Amendment Law No. 22(I)/09), in order to adopt measures aiming at increasing the revenue and containing the expenditure of the Social Insurance Fund. Specifically a gradual increase in the contribution rate has been adopted which is equal to 1.3 % every 5 years from 1 April 2009 until 1 January 2039. Additionally, eligibility contributions for an old-age pension and an old-age lump-sum payment have increased. Moreover, the number of education/ training credits granted for an old-age pension has been restrained to a maximum limit of 6 years.

3. Retroactivity of legislation

The Cyprus pension system has been amended so as to deal with gender inequalities (as mentioned above in question 2). All forms of discrimination against women were removed when changes were made to ensure the harmonization of national law with EU law as mentioned in Section 2 above.

4. The World Bank Model

Not applicable.

B) STATUTORY OLD-AGE PENSION SCHEMES **(Schemes falling under Directive 79/7/EEC)**

1. Qualifying conditions

The qualifying conditions for entitlement to an old-age pension on completion of the pensionable age (the age of 65) under the GSIS are:

- (a) Paid contributions during at least five years and insurable earnings in the lower band of not less than 260 times the weekly amount of the basic insurable earnings. The rate of contribution to the GSIS and the method of calculating pensions and benefits are the same for men and women. As from 1 April 2009 the above-mentioned contribution in the case of employed persons is 17.9 % of their 'insurable earnings' and this is shared among the employer, the employee and the state in the proportion of 6.8 %, 6.8 % and 4.3 % respectively and this will be increased by 1.3 % until it reaches 25.7 % in January 2039.

Concerning the contribution of self-employed persons the contribution is 16.9 % of the insurable income and this will be increased by 1.3 % every five years until it reaches 24.7 % in January 2039.

- (b) Weekly average insurable earnings (actual and credited) as of 5 October 1964, in the lower band or from the contribution year in which the insured person attained the age of 16, to the last contribution week before the pensionable age, equal to at least 30 % of the weekly amount of the basic insurable earnings.

It is noted that an insured person may qualify for an old-age pension at the age of 63 provided that the weekly average insurable earnings (as in (b) above) is equal to at least 70 % of the weekly amount of the basic insurable earnings.

All types of employment of any context are covered and taken into consideration when examining the qualifying conditions of any benefit/pension paid under the GSIS.

The pension right is subject to minimum contribution conditions.

As from 3 January 2011:

- (i) Paid contributions during at least seven years and insurable earnings in the lower band not less than 364 times the weekly amount of the basic weekly amount of the basic insurable earnings.

As from 2 January 2012:

- (i) Paid contributions during at least ten years and insurable earnings in the lower band not less than 520 times the weekly amount of the basic weekly amount of the basic insurable earnings.

No threshold as to minimum hours applies. Qualifying conditions do not hamper the pension right of non-standard workers. Workers with earnings and careers inferior to the average standard are able to qualify for pensions.

Periods of unemployment are taken into account for pension rights and amount purposes.

2. The amount of the old-age pension

Pensions consist of a Basic and a Supplementary Pension.

The Basic Pension equals 60 % of the average lower part of insurable earnings (EUR 8 435 for 2010) increased by 1/3, 1/6 and 1/6 for the first, second or third dependant respectively. In the case of a married female beneficiary the increase for her dependent children is in any case equal to 1/6 of the basic pension for each child (the maximum number of dependent children: two).

The Supplementary Pension equals 1.5 % of the total amount of paid and credited insurable earnings in the upper part of insurable earnings (up to EUR 50 592 for 2010) over the claimant's whole career which is converted into a weekly amount by dividing by 52.

- The pension amount is based on lifelong earnings.
The pension amount is calculated on the basis of the contributions paid over a full-time career.
- Gender-specific life expectancy tables are not taken into consideration in calculating the pension amount.

The conditions for drawing a full basic pension is that the annual average paid or credited insurable earnings from 5 October 1964 or from 7 January 1957 until retirement age is equal to 52 times the weekly Basic Insurable Earnings.

The Minimum Pension equals 85 % of the full Basic Pension which for the year 2010 is EUR 330.93 per month.

- The pension calculation formula is the same for all insured persons, including standard workers and part timers.

Basic Pensions are adjusted at the beginning of each year in accordance with the percentage of the revision of the Basic Insurable Earnings which are increased every year in line with an annual survey of wages and salaries. Supplementary Pensions are adjusted on the same day, in accordance with the increase in the cost of living index (a comparison of the second semesters of the last two years).

Pensions (Basic and Supplementary Pensions) are also adjusted every July according to the increase in the cost of living index (a comparison of the first semester of that year with the second semester of the previous year), if the latter is at least 1 %. This increase is taken into account when determining the increase in pensions at the beginning of the year.

There is a ceiling on the amount of insurable earnings which is now EUR 973 per week or EUR 4 216 per month, on which all benefits (pensions) are calculated.

3. Periods of caring

Periods of maternity leave or parental leave are taken into consideration or credited for pension rights and amount purposes.

- Periods of interruption to employment due to the bringing up of children are credited or taken into account for pension rights and amount purposes. Any other period of care within the household (care of the disabled, home-care) is not credited or taken into account for pension rights and amount purposes. The caring period is taken into consideration for three years. Caring periods do not count less than the full crediting of work periods for pension purposes. Credits are recognised regardless of the employment position of the claimant. These provisions are not gender-neutral. The caring credit system is still based on the traditional 'one care provider' model. There are no automatic mechanisms for allocating caring credits to women/mothers or to the main care providers.

Child credits of up to 156 weeks per child are granted to women entitled to a pension after 31 December 1992, who failed to make contributions because they were raising children aged up to 12 years. The child credits are based on the traditional 'one care provider' model. These credits are allocated to mothers.

Caring periods do not count less than the full crediting of work periods for pension purposes.

- Caring periods are awarded for pension purposes.

- It would be feasible to include a minimum provision on care credits in the gender equality EU legislation in the field of social security.

4. Exceptions, Article 7.1 of Directive 79/7

The pensionable age and the possible consequences for other benefits (Article 7.1 a))

There is a mandatory retirement age imposed by legislation. A claimant may be in receipt of an old-age pension and still work without paying contributions. The pensionable age is the age of 65 but, provided that certain contribution conditions are met, the pension can be paid at the age of 63. The pensionable age can be deferred to the age of 68 upon the pensioner's request.

The pensionable age for men and women is the same. There is no gender discrimination concerning the pensionable age.

Advantages granted to persons who have brought up children (Article 7.1 b))

Care periods are mentioned in Section 3 above.

Old-age or invalidity benefit entitlements or increases in long-term benefits by virtue of the derived entitlements of a wife (Article 7.1 c) and d)).

The basic part of the pension is increased to reflect the number of dependants, increased by 1/3, 1/6 and 1/6 for the first, second or third dependant respectively. In the case of a male beneficiary, his spouse is a dependant if she lives with or has been maintained by him and receives no pension from the Social Insurance Fund, regardless of whether she is working or not. In the case of a married female beneficiary, the increase for her dependent children is in any case equal to the 1/6^h of the basic pension for each child (the maximum number of dependent children: two). Her spouse is a dependant if he is unable to support himself, is wholly maintained by her, and receives no pension from the Social Insurance Fund.

The supplement is not means-tested.

Where the spouses are separated, the respective increment can only be paid directly to the spouse provided that they are not cohabiting.

C) OCCUPATIONAL OLD-AGE PENSION SCHEMES

(Schemes falling under Article 157 TFEU, Directive 86/378/EEC, as amended by Directive 96/97/EC, now Articles 5-13 of the Recast Directive 2006/54/EC)

General Note

Answers to questions 1 to 6 are given below in relation to defined benefit schemes (pension funds) and defined contribution schemes (provident funds).

Explanatory Note

(a) Defined benefit schemes (pension funds):

Employees in the public and semi-public sector enjoy supplementary mandatory pension schemes (that of the Government Employees Pensions Scheme or the Semi-Government Employees Pension Schemes). The statutory retirement age has gradually increased to 63 by July 2008. The participation of employees in the financing of Government and Semi-Government Schemes is limited to a share in the cost of survivors' pensions.

Upon retirement, these funds provide a lump-sum benefit and a monthly pension for life. For this pension only the employer contributes to the fund. The majority

of these funds exist in semi-public organizations, other legal entities of public law, local authorities and for self-employed persons (advocates and doctors).

(b) Defined contribution schemes (provident funds):

These funds provide in the case of the termination of employment, or retirement, or incapacity to work or death or dissolution of the fund only a lump-sum benefit. In these funds contributions are made by the employer and the employee. The majority of provident funds exist in companies and other entities in the private sector, in trade unions and for certain industries (industry-wide funds, e.g. the hotel industry and the construction industry).

1. Coverage

(a) Defined benefit schemes (pension funds): participation in the scheme is mandatory.

(b) Defined contribution schemes (provident funds): participation in each scheme depends on its rules of operation and can be mandatory or voluntary.

In the private sector, around 30 % to 35 % of the working population participate in provident funds.

a) Employees in the public and semi-public sector enjoy supplementary mandatory pension schemes (that of the Government Employees Pensions Scheme or the Semi-Government Employees Pension Schemes). The statutory retirement age is 63, but early retirement is allowed after the age of 58 without any reduction in benefits.

b) A major proportion of private sector employees have supplementary coverage in the form of lump-sum payments under non-statutory Provident Funds established by collective agreements.

Most organizations in the private sector make use of either company Provident Funds or participate in industry-based Plans (the hotel industry, construction, industrial workers etc.). These are substantial and well established Plans. Company Provident Funds are administered by committees made up of representatives of the employer and employees. Industry Provident Funds are administered by committees made up of trade union representatives and employer association representatives. The retirement benefit is not predefined and depends on the financial results of the Fund. Contributions normally range between 5-10 % from each party and are tax deductible for employees.

Defined contribution schemes (provident funds):

- There is a membership limitation based on a minimum period of employment which in most schemes is 6 months.
- Restrictions on access for seasonal, part-time and short-term contract workers: it depends on the scheme's rules of operation. No restrictions on access for low wage earners (the contribution to the fund by the employee is a percentage on his/her salary).
- Certain categories of staff are excluded from coverage: it depends on the scheme's rules of operation.

Defined benefit schemes (pension funds):

- There is no membership limitation based on minimum periods of employment, minimum hours worked per week or minimum earnings per year.
- There are restrictions on access for seasonal, part-time and short-term contract workers.
- Hourly paid workers and other non-permanent (non-regular) workers are excluded from coverage.

For permanent civil servants there is no membership limitation based on minimum periods of employment, minimum hours worked per week or minimum earnings per year.

Defined contribution schemes (provident funds):

- There is a membership limitation based on a minimum period of employment which in most schemes is 6 months.
- Government manual workers (hourly paid) have their own Provident Fund where participation is mandatory after a minimum period of six months' employment.

There are no data on the participation rate of men and women in occupational pension schemes.

The participation rate in defined contribution schemes (provident funds) is around: 60 % men, 40 % women.

2. Calculation of old-age pensions and contributions

Defined benefit schemes (pension funds):

- Pension amounts are earnings-related and the final salary is taken into consideration.

Defined contribution schemes (provident funds):

- Pension amounts are contribution-related.
- The calculation of contributions is linked to particular wage elements. The percentage of contributions by the employer and the employee is specified in the scheme's rules of operation.

Defined benefit schemes (pension funds):

- The pension right is subject to the length of service with the employer.
- Periods of unemployment are not taken into account for pension rights and amount purposes.

Defined contribution schemes (provident funds):

- The pension right is subject to employment conditions which are specified in the law and the scheme's rules of operation (the employee has a right to his/her lump-sum benefit only in the case of the termination of employment or incapacity to work or death or retirement or the dissolution of the fund).

3. Actuarial factors

Defined benefit schemes (pension funds):

- These occupational funds use gender-related actuarial factors when they prepare their actuarial valuation in order to determine the employer's contributions.

Defined contribution schemes (provident funds):

- The above questions are not applicable to provident funds.

4. Caring credits

Defined benefit schemes (pension funds):

- The caring periods for which the employer pays remuneration are taken into account.

Defined contribution schemes (provident funds):

- The caring periods for which the employer pays remuneration are taken into account.

5. Vesting and reimbursement rules

Defined benefit schemes (pension funds):

- The rules on the vesting and reimbursement of contributions are specified in the fund's rules of operation (regulations). A bonus is granted if the worker leaves the scheme without having qualified for a monthly pension.
- The right to the paid contributions is conditional upon a minimum employment period (the length of pensionable service).
- The right to have the contributions (paid in by the employer) transferred from one fund to another is not conditional upon a minimum period of insurance / membership of the fund.

Defined contribution schemes (provident funds):

- The rules on the vesting and reimbursement of contributions are specified in the fund's rules of operation. Provident funds only provide lump-sum benefits in the case of the termination of employment or incapacity to work or death or retirement or the dissolution of the fund.
- The right to the paid in contributions is only conditional upon a minimum period of service with the employer in cases which are specified in the fund's rules of operation e.g. voluntary termination of employment by the worker.

6. Pensionable age

Defined benefit schemes (pension funds):

- There are no different pensionable ages for men and women.

Defined contribution schemes (provident funds):

- There are no different pensionable ages for men and women.

The remainder of the questions under this paragraph are not applicable.

7. Civil servants

Every employed person in Cyprus, including civil servants, is compulsorily insured under the GSIS. Beyond this, civil servants are insured under the Public Service Pension Scheme (PSPS) which is an occupational scheme.

The PSPS provides retirement and survivors' pensions to permanent civil servants, to members of the educational service, of the police and the armed forces, to judges, to the Attorney-General, the Auditor-General, the Accountant-General and their Deputies. It is financed by general taxation on a pay as you go basis from the state budget and provides mandatory retirement pensions and survivors' pensions for permanent civil servants and other state employees as mentioned above.

As far as the GSIS is concerned, there is a basic and supplementary scheme. The Government pays, on behalf of the employee, the contributions to the supplementary scheme of the GSIS and the public officer pays only towards the basic scheme. As far as the PSPS is concerned the distinction between basic and supplementary does not apply.

The GSIS and the PSPS are regulated by statute: the Social Insurance Law (Law No. 41 of 1980-2009 and Regulations issued thereunder) and the Public Service Pensions Law (Law No. 97(1)/1997) and subsequent amendments.

In contrast to the GSIS, the PSPS is non-contributory. Public officers pay contributions only for the transfer of their pension to the widow/widower and orphans.

The PSPS concerns civil servants, that is the holders of a permanent office in public service (Ministries/Departments/Independent Services/Offices), in the Army, the Police, the Educational Service, the Judicial Service, the Law Service, Service in the Office of the Attorney-General, the Auditor-General, the Accountant-General and their Deputies.

As far as the GSIS is concerned, the Government pays, on behalf of the employee, the contributions to the supplementary scheme of the Social Insurance Fund. The amount paid is calculated as a percentage (9.4 %) of the earnings of the public officer. However, the Government deducts from the pension granted to the employee under the PSPS the amount of supplementary social insurance pension gained from contributions paid on behalf of the employee. The public officer pays only towards the basic scheme of the Social Insurance Fund (3.2 % of his/her earnings).

The benefit paid in both cases is by reason of the former employment relationship.

The PSPS is financed by the Consolidated Fund of the Government through general taxation whereas the GSIS is financed by the Social Insurance Fund.

The basic part of the GSIS is considered to be PAYG whereas the supplementary part is considered to be a partially-funded scheme. The PSPS is an occupational scheme and cannot be categorised either as a PAYG or funded, since it is funded by the Consolidated Fund.

The annual pension is calculated on the basis of a fraction of 1/800 of the officer's annual pensionable emoluments on the date of his/her retirement for each month of pensionable service. The annual pension cannot exceed one half of the officer's annual pensionable emoluments. The lump-sum payment is computed on the basis of the annual pension. The lump sum is computed as follows: Lump sum = Annual pension*15.5/3. If an official resigns before the age of 45 (or the age of 48 in the case of medical doctors and officers being hired after 30 June 2005), and has at least 3 years of service, he/she is entitled to a gratuity only, which is calculated on the basis of 1/12 of his last monthly pensionable emoluments for each completed month of pensionable service. If he/she retires after the age of 45 and has at least 5 years of service, his/her pension and lump-sum payment are computed on the basis of his/her pensionable emoluments at the time. The lump sum is granted at the time of early retirement whilst the pension is withheld and is granted upon attaining the age of 55 (or the age of 58 in the case of medical doctors and officers being hired after 30 June 2005). The final pension sum to be granted is computed taking into consideration the general and cost of living increases granted to pensioners between the time of early retirement and the time of the payment of the pension benefits. Officers who retire at any time after their 55th birthday (or after the age of 58 in the case of medical doctors and officers hired after 30 June 2005) are granted their retirement benefits immediately.

The Scheme has very few discriminatory features on the ground on gender and they only have minor importance. More specifically, Article 11 provides that a female officer can be permitted to retire (after three years' service) because of marriage or bearing a child or adopting a child not older than six years. In this case the woman is granted a gratuity which is equal to 1/12 of her monthly pensionable emoluments for

each month of pensionable service. Article 31 (1c) provides for the termination of a granted pension to a female child who gets married. Article 18(3) provides for the recognition of the pension service of a woman officer who had retired under Article 11 for the purpose of calculating her annual pension. These provisions, which gave some advantages to women, have fallen into disuse and will soon be amended.

Article 34 of Law No. 97(I)/1997 provides that any reference to the words 'officer', 'pensioner', 'widow', 'the wife' are interpreted as including 'female officer', 'female pensioner', 'female deceased', 'widower', 'the husband' and any reference to children shall be interpreted so that it includes the children of the female officer or female pensioner. Moreover, a reform is planned in order to amend Articles 11, 31(1c) and 18(3).

The equalization does not provide for a transitional period.

In the legislation there is no clause which protects reasonable expectations in the continuation of existing pension rules.

The Cypriot Government has not taken measures to compensate retroactively the disadvantaged sex for losses suffered in the past.

There has never been discrimination against men as regards pensionable age.

In the case of a woman who would work until she reaches the normal pensionable age, the annual pension would be calculated on the basis of a fraction of 1/800 of the officer's annual pensionable emoluments on the date of her retirement for each month of pensionable service. The annual pension cannot exceed one half of the officer's annual pensionable emoluments. The lump sum is computed on the basis of the annual pension. According to the amendments in force since 1 July 2005 the lump sum is computed as follows: $\text{Lump sum} = \text{Annual pension} \times 15.5/3$. In the case of a woman officer who exercises the option of early retirement under the provisions of Article 11, she is entitled to a gratuity only, which is calculated on the basis of 1/12 of her last monthly pensionable emoluments for each completed month of pensionable service.

CZECH REPUBLIC – *Kristina Koldinská*

A) GENERAL QUESTIONS

1. The old-age pensions system

The old-age pensions system in the Czech Republic has still not been completely reformed and still has some characteristics which are less common in other countries. There are just two pillars in the pensions system, which follows the traditional three-pillar model, with simply the second pillar being absent:

The Statutory scheme – based on Act No. 155/1995 Coll., on pension insurance. This scheme was developed based on the older system established during communist times. There are still some residual features, for example a lower pensionable age for women who have raised children, periods without insurance counting as insurance periods, and so on.

From the statutory scheme the following pensions are provided:

- old-age pension;
- disability pension;
- widow's pension;
- widower's pension; and
- orphan's pension.

Survivors' pensions used to be more easily accessible to widows but today they are gender-neutral.

The statutory scheme is organised on a pay-as-you-go basis and is based on defined contributions.

There is no real occupational pension scheme; there are some aspects of occupational schemes in private pensions and in bonuses individually awarded by the employer.

The third pillar is represented by the private scheme called state-contributory supplementary pension insurance (Act No. 42/1994 Coll.).

For those who do not generally qualify for statutory pensions there are, however, possibilities to be covered by the statutory scheme, even if this has been tightened somewhat under the last amendment. According to the previous legal regulations, it was necessary to reach 65 years of age and to have completed a required insurance period of at least 15 years (this was to be increased year by year by one year until 2013 – 16 years for 2010, 17 years for 2011, 18 years for 2012, 19 years for 2013 and 20 years after 2013). Currently, the required age will be gradually increased and the insurance period lengthened depending on the calendar year in which the required age is reached. At the same time the required age will no longer be the same for everyone – it will now be derived from the retirement age for men with the same date of birth, to which five years will always be added – see Sec. 29 par. 2 of the Pension Insurance Act.⁵⁷ This means that a person who was born in e.g. 1942 and did not reach the required insurance period will in 2011 need to reach at least 17 years of insurance and also to reach an age of more than 66 years and 2 months.

An insured person who does not meet any of the aforementioned conditions is however eligible for an old-age pension if he/she has reached 65 years of age and meets the legal eligibility conditions for a disability pension.

In the Czech social security system, there is a safety net contained in the system of social assistance, which does not however follow the principle of the social assistance old-age pension. It is gender-neutral.

2. Old-age pension reforms

It should be said that in the Czech Republic a real reform of the old-age pensions system is still expected; it has not yet been enacted. It is envisaged that parametrical changes will be carried out and the pay-as-you-go system maintained. Pension reform should have three phases.

Phase one of this reform has already been undertaken by Act No. 306/2008 Coll., which amends the Act on Pension Insurance. It entered into force on 1 January 2010. The main changes connected with gender equality are as follows:

According to the original legal regulations, an insured person had to reach retirement age and complete the 25-year insurance period (the above-mentioned 15 years are only applicable if the person did not meet the legal conditions for claiming an old-age pension). Currently, the required period of insurance has been lengthened to up to 35 years. This is now still gender-neutral, as the period for raising children is calculated within the insurance period. As soon as this will not be the case (or not to the current extent – the child-raising period is applicable up to when the

⁵⁷ It is connected with quite a complicated formula of counting the precise pensionable ages and insurance periods. The gradual increase in the pensionable age is specified in a table included in the Annex to the Pension Insurance Act. According to this Annex, the pensionable age of a man who was born in e.g. 1945 is 61 years and 8 months, whereas the pensionable age of a woman, born in 1950 with two children, is 59 years and 8 months.

child reaches five years of age), it is probable that women will have more difficulties in attaining the obligatory insurance period. An old-age pension cannot be awarded to an insured person who has not completed the required insurance period when he/she reaches retirement age. The pension can only be awarded at a later date, once the individual has completed the required insurance period.

As far as awarding a so-called premature old-age pension in accordance with Section 31 of the Pension Insurance Act is concerned, it is still possible to claim this kind of benefit as early as three years before a claimant reaches retirement age. This should be a better option for women, as their retirement age is lower and can be even lower if a woman has raised more than one child. In any event the premature old-age pension is available to everybody who fulfils the necessary conditions, including the required contribution period for the old-age pension. It is actually not a specific benefit, it is just a way of providing an old-age pension some years before the person who is entitled reaches retirement age. It was included as one of instruments to solve the problems connected with unemployment among older workers, who are almost unemployable if they lose their job just a few years before they reach pensionable age.

Before the Pension Insurance Act was recently amended, there had been differences in the conditions for claiming survivors' pensions for men and women. After having reached 55 years of age in the case of women and 58 in the case of men it was possible to be eligible to continue to claim a widow's/widower's pension even after one year after the death of a spouse (the basic period for providing survivors' pensions for spouses is just one year). The person may continue to receive this pension if he or she fulfils other conditions, e.g. if he or she reaches a certain age. The age limit for the purpose of these pensions is now calculated in the same way for both men and women (see Section 50 par. 2 (e) of the Pension Insurance Act). It is now necessary for both men and women to reach the age of at least four years before retirement age for a man with the same date of birth. This is again connected with the very complicated formula for defining pensionable age – see above. It is however sufficient to reach one's own retirement age if this is lower than the age mentioned in the previous sentence.⁵⁸

Within the second phase of the pension reform a new act on pension savings should be adopted. The system of supplementary pensions should be rebuilt and become more stable. It is currently not clear whether there will be any impact on gender equality; however, there should not be any.

The third phase should bring the establishment of the private funded system, within which it should be possible to opt out of a part of the obligatory contributions to the public pension system (the first pillar). This is, however, still in the stage of very initial proposals and no concrete government bill is as yet available.⁵⁹ It is also very crucial how the next government deals with pension reform (the elections were on 28 May 2010).⁶⁰

The current government envisages that within the pension reform some measures to support families with children will be implemented. These measures should establish an interdependence between a basic system of pension insurance (first pillar)

⁵⁸ Information taken from the official website of the Czech Social Security Administration on pensions, <http://www.cssz.cz/en/pension-insurance/changes-in-pension-insurance-valid-from-1-january-2010.htm>, accessed 31 May 2010.

⁵⁹ Information taken from the official website of the Ministry of Labour and Social Affairs on pension reform – <http://www.mpsv.cz/cs/8179>, accessed 31 May 2010.

⁶⁰ It seems that there will be a right-wing government, and all parties in this future government declared before the elections that pension reform is of major importance.

and the number of children raised in the family. It has been proposed that the basic pension insurance should in some way influence the demographic development and include certain measures including a sort of ‘remuneration’ to parents for their children. This is however not accepted as being a very good idea, especially because today there are already several measures within the pension insurance system which actually support families with children, or women who raise children (a reduced retirement age for women who have raised more than one child, the caring period which is counted as an insurance period for up to when the child reaches five years of age – this period may be prolonged if the child is dependent on care by another person, the caring period is however not calculated as a period without income, so this does not reduce the final benefit calculation - and other advantages for the calculation of old-age pensions for people who have raised children). It has been proved that a so-called replacement rate of old-age pensions in the Czech Republic is very similar for women with children and women without children.⁶¹

It does not seem that the future reforms will have different effects for building up old-age pensions for men and women. As will be explained below, the only real difference is the pensionable age, which is possible to lower, but only for women. It can be expected that this difference will be abolished by future reforms.

The current system of old-age pensions already takes into consideration the fact that men and women have different working patterns, that in fact women are advantaged by the lower retirement age and that it is mostly women who use the possibility to count child-raising periods fully as insurance periods.

The current system, however, does not pay any special attention to people with non-standard working patterns and it is not really expected that the pension reform will change anything in this regard. One of the reasons for this could also be that flexible forms of labour relations are not used to any great extent on the Czech labour market.

The future reforms will probably be gender-neutral but will however not pay any special attention to gender equality.

3. Retroactivity of legislation

The Czech pension system has recently been amended and geared towards gender equality in survivors’ pensions – the age limit for claiming the long-term widow’s or widower’s pension has been equalised for men and women. It is expected that the retirement age will also be equalised, but this has not yet occurred.

There used to be a procedural condition which only applied to men who raised children – if they wanted to have child-raising periods counted, they had to request this within a limited period of time, whereas for women such periods were counted automatically. The Constitutional Court abolished this measure.⁶² It was not applied retroactively.

It is not envisaged that, as a consequence of any reform, already awarded pensions will be recalculated.

4. The World Bank Model

Not applicable.

⁶¹ Information available in Czech at <http://www.mpsv.cz/cs/8258>, accessed 11 May 2010.

⁶² Pl. ÚS 42/04 - to be found in Czech on <http://nalus.usoud.cz/>, accessed 25 May 2010.

B) STATUTORY OLD-AGE PENSION SCHEMES

(Schemes falling under Directive 79/7/EEC)

1. Qualifying conditions

An insured person is entitled to an old-age pension if he/she has reached retirement age (the retirement age is currently being prolonged – see below) and has completed the required period of insurance. Since January 1, 2010 the required insurance period has been lengthened to up to 35 years. When determining the minimum length of the insurance period for a specific insured person, the crucial fact is the calendar year in which the individual in question reaches retirement age. An old-age pension cannot be awarded to an insured person who has not completed the required insurance period as of the day of reaching retirement age. An insured person who reaches retirement age after 2014 and has not completed the required period of insurance by that day is also eligible for an old-age pension if that person has completed at least 30 years of the so-called ‘net’ insurance period, i.e. the period of insurance completed by virtue of carrying out gainful activities or by virtue of voluntary contributions to the pension insurance scheme (for persons who are not obligatory insured – e.g. because they work abroad, or they do not work at all, under certain conditions it is possible to register for voluntary participation in the pension insurance system).

The required age for eligibility for the so-called partial old-age pension will be gradually increased and the insurance period lengthened depending on the calendar year in which the required age is reached. The required age is derived from the retirement age for men with the same date of birth, to which five years will always be added.

An insured person who does not meet any of the aforementioned conditions is also eligible for an old-age pension if he or she has reached 65 years of age and meets the legal eligibility conditions for a disability pension.

Non-standard work contracts are covered by the pension scheme as regards part-time contracts, short-term contracts and also seasonal contracts. Occasional contracts are normally used as an agreement on providing work – for a maximum of 150 hours per year. These contracts are not covered by the pension scheme. I would not say that this minor exception disadvantages women in particular, as non-standard work contracts are not used very much in the Czech Republic. What disadvantages women more is the fact that employers often refuse to employ a woman with caring responsibilities as such and also when applying for a non-standard work contract or part-time work.

As already described, there is a trend to extend the insurance period – to up to 35 years. For employees there is no minimum contribution, whereas for self-employed persons there is a minimum contribution, or better there is a minimum income from self-employment which is a necessary condition to establish the insurance relationship (Sec. 10 of the Pension Insurance Act). There is, however, no minimum hours threshold.

The qualifying conditions do not hamper the pension rights of non-standard workers. Not even vertical part-timers are disadvantaged, since in the labour code there the so-called ‘working time conto’ is included, which enables the employer to use its workforce intensively for a certain period – for example, for seasonal work - and then leave the workers free. The worker is paid as if s/he has worked for the whole year for a fixed time. There is no specific limit with regard to the total hours worked. It is actually up to the employer whether and in which way it employs its own workers as its obligations deriving from the employment relationship do not change.

In the Czech system, periods of unemployment are taken into account for pension eligibility and amount purposes if the unemployed person is registered with the labour office as an unemployed person.

2. The amount of the old-age pension

The amount of pension consists of two components: a basic assessment and a percentage assessment. The amount of the basic assessment of a pension has been, since 1 August 2008, CZK 2 170 (EUR 85) per month. The amount of the percentage assessment of the pension must be at least CZK 770 (EUR 30) per month. This means that there is actually a minimum pension amount, which is CZK 2 940 (around EUR 115). There is actually no flat-rate benefit, while the basic assessment shall not be considered as a flat-rate benefit. It is just a part of the calculation formula.

The percentage assessment shall be 1.5 % of the calculation base for each year of the insurance time reached before entitlement to the pension has arisen. The insurance time shall also include the so-called non-contributory periods of insurance (Section (§) 5 of the Act on Pension Insurance).

The amount of the percentage assessment shall increase provided the person conducts gainful activity even after he/she becomes entitled to an old-age pension and receives no such pension, specifically for every completed 90 calendar days this shall be increased by 1.5 % of the calculation base. For defining the final amount of pension, there are so-called reduction limits, which apply in order not to burden the pension scheme too much and also in order to promote the principle of solidarity within the pension system.

The pension amount is based on one's lifelong salary, as it is calculated based on the last 30 years of earnings. So it is calculated on the basis of the contributions paid over one's lifelong career. For calculating the pension amount no gender-specific life expectancy tables are taken into consideration.

The pension is calculated based upon the contributions, not upon whether the pensioner used to work as a part-timer.

All pensions are calculated by using a so-called 'recalculating quotient,' a number which is regularly published by government order and which results in the indexation of newly calculated pensions so that contributions paid over the years are recalculated in order to correspond to actual average wages. For already awarded pensions, there is also a system of indexation. The paid out pensions are increased regularly every year in January; a different procedure is established only in the case of very low inflation (if the increase is less than 2 %) and in the case of high inflation (at least 5 %); the increase in pensions is established so that this represents at least 100 % of the price increase for the average old-age pension and also at least one-third of the increase in real wages; the specific amount of an increase shall be determined by government order, while the increase may be higher than the minimum increase required by law; pensions may be increased by means of extraordinary increases as long as the increase in prices in the monitored period reaches at least 5 %; such an increase must be decided by the government within 50 days after the last day of the calendar month in which the said condition was met.⁶³

In the Czech Republic there is still a system of a ceiling on benefits which is coupled with a ceiling on contributions. There are so-called 'reduction limits' – included in § 15 of the Pension Insurance Act – which actually reduce the amount of

⁶³ See the official information of the Ministry of Labour and Social Affairs, <http://www.mpsv.cz/en/8671>, accessed 25 May 2010.

average earnings to a limited amount, which are then calculated as a basis for the calculation of the percentage assessment of the pension. However, these ‘reduction limits’ have recently been abolished by a very important and problematic decision by the Constitutional Court⁶⁴ in a case filed by a former worker who used to earn an above average salary (more than EUR 2 500) and claimed that his right to an adequate pension had been violated because his pension, due to the above-mentioned reduction limits, merely reached just 19 % of his previous earnings, while other, less well-off, people receive a much higher percentage. The abolition of these reduction limits shall enter into force as of 30 September 2011.

3. Periods of caring

The Czech system of counting care periods as insured periods is very generous in Czech law. Not only does the period of maternity leave – 28 or 32 weeks – count fully as insured periods, but also all parental leave, which may last for up to when the child reaches five years of age. Moreover, the Czech Pension Insurance Act envisages that care periods up to when the child reaches five years of age will be counted (Sec. 5 Par. 1 (r) and Sec. 12 of the Pension Insurance Act). Normally it is the mother whose child-raising period is counted as an insurance period. There is a similar rule for periods when caring for the elderly (with no specific time-limit – during the whole period when the person needs care) who need long-term care (Sec. 5 Par. 1 (s) and Sec. 12 of the Pension Insurance Act). Normally it is a relative, or a person who lives with the person in need, who is recognized as a carer. The above-mentioned periods for raising children are taken fully into account for pension eligibility and also for calculating the amount. This also applies to persons who care for a person who needs the assistance of another person (according to Act No. 108/2006 Coll., on Social Services), only here there is no time-limit. The earning base for these non-contribution periods is the same as if the person earned the same average earnings as s/he earned during the years when s/he worked. Care periods count as the full crediting of work periods for the purposes of eligibility for a pension. Caring credits are equally recognised for men and women, much more often they are credited to women who still continue to be the main carers.

The Czech pension system is neutral as regards the employment sector/position, which is especially due to the historical experiences from communist times. There were some work categories, for example miners, manual workers and high positioned members of the communist party, who were advantaged in their pension rights. The relevant provisions were among the first to be abolished after 1989. This is why there are no employment positions which receive special treatment in the Czech pension system. There are some additional benefits in special systems, for example for members of the armed forces and firemen. There is also Act No. 218/2000 Coll., on Civil Servants, which envisages some additional benefits for civil servants. This act, however, is still not in force (and will probably not enter into force). All the above-mentioned additional benefits are conceptualised as gender-neutral.

It should here be underlined once again that the Czech pension system is still not reformed and is still based on the traditional one-carer model. The most apparent example of this concept is the issue of the pensionable age, described in detail below. There have also been automatic mechanisms for allocating care credits to women/mothers as the main carers. This was recently abolished by the Constitutional Court.

⁶⁴ Pl.ÚS 8/07 to be found in Czech on <http://nalus.usoud.cz/>, accessed 25 May 2010.

From the Czech perspective it would be useless to include care credits in gender equality EU legislation; however, in general it could be very useful to include a minimum provision in this regard. Such a provision would in fact put a certain limit also on the future reforms of the relevant provisions in the Czech system. In some Member States it could help to slightly increase social security benefits for carers – most often women.

4. Exceptions, Article 7.1 of Directive 79/7

Pensionable age and the possible consequences for other benefits (Article 7.1 (a))

In the Czech system there is no mandatory retirement age imposed by legislation. In fact, many people continue to work even if they have already reached retirement age. This is particularly because of the possibility to claim a pension (after having fulfilled the conditions) and to work at the same time, or even take just half of the pension and continue to work, while the person in question's future pension continues to increase.

There is still a different pensionable age for men and women. According to § 32 of the Pension Insurance Act, for insured persons born between 1936 and 1968 the retirement age shall be determined based on an Annex to the Act on Pension Insurance (the pensionable age is being increased gradually). For each year of birth, a different pensionable age is envisaged as follows:

Table of retirement ages (the number of years + months)

	Men	Women					
Year of birth		childless	1 child	2 children	3 children	4 children	5+ children
1936	60 + 2	57	56	55	54	54	53
1937	60 + 4	57	56	55	54	54	53
1938	60 + 6	57	56	55	54	54	53
1939	60 + 8	57 + 4	56	55	54	54	53
1940	60 + 10	57 + 8	56 + 4	55	54	54	53
1941	61	58	56 + 8	55 + 4	54	54	53
1942	61 + 2	58 + 4	57	55 + 8	54 + 4	54 + 4	53
1943	61 + 4	58 + 8	57 + 4	56	54 + 8	54 + 8	53 + 4
1944	61 + 6	59	57 + 8	56 + 4	55	55	53 + 8
1945	61 + 8	59 + 4	58	56 + 8	55 + 4	55 + 4	54
1946	61 + 10	59 + 8	58 + 4	57	55 + 8	55 + 8	54 + 4
1947	62	60	58 + 8	57 + 4	56	56	54 + 8
1948	62 + 2	60 + 4	59	57 + 8	56 + 4	56 + 4	55
1949	62 + 4	60 + 8	59 + 4	58	56 + 8	56 + 8	55 + 4
1950	62 + 6	61	59 + 8	58 + 4	57	57	55 + 8
1951	62 + 8	61 + 4	60	58 + 8	57 + 4	57 + 4	56
1952	62 + 10	61 + 8	60 + 4	59	57 + 8	57 + 8	56 + 4
1953	63	62	60 + 8	59 + 4	58	58	56 + 8
1954	63 + 2	62 + 4	61	59 + 8	58 + 4	58 + 4	57
1955	63 + 4	62 + 8	61 + 4	60	58 + 8	58 + 8	57 + 4
1956	63 + 6	63	61 + 8	60 + 4	59	59	57 + 8

1957	63 + 8	63 + 4	62	60 + 8	59 + 4	59 + 4	58
1958	63 + 10	63 + 8	62 + 4	61	59 + 8	59 + 8	58 + 4
1959	64	64	62 + 8	61 + 4	60	60	58 + 8
1960	64 + 2	64 + 2	63	61 + 8	60 + 4	60 + 4	59
1961	64 + 4	64 + 4	63 + 4	62	60 + 8	60 + 8	59 + 4
1965	65	65	64 + 8	63 + 4	62	62	60 + 8
1966	65	65	65	63 + 8	62 + 4	62	61
1967	65	65	65	64	62 + 8	62	61 + 4
1968	65	65	65	64	63	62	61 + 8

For insured persons born after 1968 the retirement age shall be

- for males: 65 years,
- for females:
 - 62 years for those who have raised at least 4 children,
 - 63 years for those who have raised 3 children,
 - 64 years for those who have raised 2 children, otherwise
 - 65 years.

It is to be expected that these provisions on the retirement age will change and the retirement age for men and women will be made equal. The main argument is statistical and demographical data. Whereas women continue to live longer, there is no real reason to define a lower pensionable age for them, which after all means a lower pension for women, as they work for a shorter time. Moreover, it is not economically sustainable that the period for raising children (with care most often provided by women) will count for up to four years, which means that some women could have some periods which are not covered by pension insurance because they cared for children.

Some political parties in the Czech Republic (such as the Christian Democrats) were against the equalisation of the pensionable age and against abolishing the lower pensionable age for women who have raised more than one child. They argued that this is a pro-family measure which should remain in the pension system. It should be underlined that pension insurance in the Czech Republic is not a system which should primarily include pro-family measures. These are and should continue to be included in the system of state social support, which is the system of family benefits.

To remove the exception concerning the pensionable age through gender equality EU legislation on statutory social security would be very useful for the Czech Republic. At the same time, it would be necessary to introduce a transitional period.

As mentioned above, pension insurance is not the right instrument to tackle discrimination against women in the labour market. The pension insurance system should also not serve to compensate women for work carried out within the family. There should be other instruments for this purpose, especially instruments to harmonise working and family life to relieve women from their work and, if it is already provided, to compensate them, for example through family benefits (gender-neutral), paid when necessary – i.e. when the children are small, need care, and the family is in need of additional funds. ‘To provide compensation to the woman when she is old can be questioned.’⁶⁵

⁶⁵ This opinion was published in Czechoslovakia as far back as in 1968 by Prof. Tomes.

Advantages granted to persons who have brought up children (Article 7.1 b))

In the Czech system of old-age pensions there are care advantages. These are gender-neutral as regards care periods counting towards insurance periods – as non-contributory periods – see above. There are also advantages in lowering the pensionable age for women who have raised two or more children. This is an advantage for only women and men are not eligible, even if, for example, a man looks after his children until they reach adulthood after his wife dies or abandons the family. There has been a tentative attempt to abolish the relevant provision – Sec. 32 of the Pension Insurance Act. The Constitutional Court declined to abolish it, however, arguing that it should be abolished in the next major pension reform.⁶⁶

The exception is outdated. It conserves the traditional division of family roles in child rising and caring. It should therefore be eliminated through gender equality EU legislation on statutory social security, necessarily with a transitional period.

Old-age or invalidity benefit entitlements or increases in long-term benefits by virtue of the derived entitlements of a wife (Article 7.1 c) and d)).

In the Czech pension system there are invalidity pensions and also survivors' pensions, as described above. These benefits are granted equally to men and women. There are, however, no benefit entitlements or increases in any benefits by virtue of the derived entitlements of a wife.

Survivors' pensions are not means tested. They are basically provided for up to one year, but this period may be prolonged to an unlimited period under certain conditions – for example, if the widow or widower is old, or cares for his or her parent who is dependent on care by another person.

The Czech system does not have any splitting provision, so the whole survivor's pension is due to the actual spouse. To change this would be very significant, as the Czech Republic has one of the highest levels of divorce. This is however probably not to be changed through EU legislation, but should be changed within national legislation.

C) OCCUPATIONAL OLD-AGE PENSION SCHEMES

(Schemes falling under Article 157 TFEU, Directive 86/378/EEC, as amended by Directive 96/97/EC, now Articles 5-13 of the Recast Directive 2006/54/EC)

The Czech Republic still does not have a system of occupational old-age pensions, so the questions in this section cannot be answered as there is no such detailed legislation. The only thing that can be done here is to cite Sections 8 and 9 of the Antidiscrimination Act. Both of these sections were the only systematic instrument to implement Directive 2006/54.

The abovementioned sections will provide the rules for equality between men and women in any future occupational scheme, but also in already existing schemes of the employer, which could have the characteristics of occupational schemes. The employer is obliged not to discriminate on grounds of sex, if he or she provides employees, former employees and their family members with remuneration or performance corresponding to a monetary value in order to substitute or supplement the benefits provided from the basic scheme of social protection covering:

1. illness;
2. invalidity;

⁶⁶ Pl.ÚS 53/04 - to be found in Czech on <http://nalus.usoud.cz/>, accessed 25 May 2010.

3. old age, including early retirement;
4. occupational injury and occupational disease;
5. unemployment.

The employer shall also not discriminate on the ground of sex, if he or she provides other monetary or non-monetary performance having the characteristics of social benefits, particularly survivors' or family benefits, to the extent that they are paid by the employer to the employee on grounds of employment.

Men and women must have, in particular, equal access to an occupational social security scheme, equal entitlement to the provision of a performance, equal conditions for the origin, duration and retention of entitlement to a performance, equally compulsory or voluntary affiliation to a scheme, equal rules for the provision of a performance, particularly age limits, the duration of employment or period of affiliation to a scheme, equal conditions for the suspension of a performance or acquisition of entitlement to benefits paid during maternity leave or family-related leave, entitlement to an equal scope of performance upon the fulfilment of the same conditions, an equal method for calculating the amount of the employer's or employees' contributions, an equal method for calculating the amount of performance including increases due in respect of a spouse or for dependants, equal conditions for the reimbursement of contributions to an employee when the employee leaves the scheme without having fulfilled the conditions guaranteeing a deferred right to long-term benefits, and an equal method for fixing the retirement age for the purpose of granting a pension from an occupational social security scheme.

All the above-mentioned apply *mutatis mutandis* to self-employed persons and professional associations in which these persons participate, which are based on the principle of affiliation to an occupation.

The Antidiscrimination Act sets some limits on an employer's obligation to comply with the principle of equal treatment of men and women, as regards:

- a) individual contracts for self-employed persons,
- b) employee schemes for self-employed persons, intended for only one member,
- c) insurance contracts to which the employer is not a party, in the case of salaried employees,
- d) optional provisions of people's social protection schemes offered to participants individually,
- e) employee schemes in so far as benefits provided from these systems are financed by contributions paid by employees on a voluntary basis.

The employer's obligation to comply with the principle of equal treatment of men and women shall not preclude an employer from granting to persons who have already reached retirement age for the purposes of granting a pension by virtue of an employee scheme, but who have not yet reached the retirement age for the purposes of granting a statutory retirement pension, a pension supplement. The pension supplement serves to make equal or nearly equal the overall amount of benefit paid to these persons in relation to the amount paid to persons of the other sex in the same situation who have already reached the statutory retirement age, until the persons benefiting from the supplement reach the statutory retirement age.

The employer may also set different levels of benefit in connection with the application of necessary measures taking account of actuarial calculation factors which differ according to sex in the case of defined benefit schemes; set different levels of employers' contributions to an employee scheme; and set different standards or standards applicable only to persons of a specified sex, as regards the guarantee or

retention of entitlement to deferred benefits when a person leaves an occupational social security scheme.

Where men and women may claim a flexible retirement age under an occupational social security scheme under the same conditions, this shall not contravene the principle of equal treatment of men and women.

7. Civil servants

In the Czech Republic there is Act No. 218/2000 Coll., on state civil service, which should enter into force on 1 January 2012, but it is not certain whether this will occur (probably not).

This Act (and also no other Acts) does not deal with occupational funds as such. Occupational funds as institutions and occupational schemes as a type of social insurance scheme do not yet exist in the Czech Republic.

As regards the members of the armed forces, their pensions, regulated by the general Pension Insurance Act, are administered by the Ministry of Defence, the Ministry of Justice or the Ministry of the Interior. All the conditions and provisions for claiming the right to a pension are the same as for ordinary pensioners.

DENMARK – *Ruth Nielsen*

A) GENERAL QUESTIONS

1. The old-age pensions system

Danish old-age pensions are based on the traditional three-pillar scheme: i.e. there are statutory social security schemes (the standard retirement pension (folkepension) and a compulsory supplementary pension scheme (ATP) for salaried workers), occupational pension schemes, in Denmark often based on collective agreements, and private insurances.

The purpose of the present report is only to highlight the most relevant features of direct and indirect gender discrimination in the statutory and occupational old-age pension systems. In Denmark there is probably no direct discrimination in these areas and hardly any indirect discrimination either. Actuarial factors are not used in a discriminatory way in statutory and occupational old-age pension schemes in Denmark. The unisex principle is mandatory in statutory and occupational old-age pension systems entered into after 1 July 1999.

2. Old-age pension reforms

There has been no relevant old-age pension reform related to statutory or occupational pensions in Denmark during the last decade.

3. Retroactivity of legislation

Danish legislation is usually not retroactive.

4. The World Bank Model

Not applicable.

B) STATUTORY OLD-AGE PENSION SCHEMES

(Schemes falling under Directive 79/7/EEC)

In connection with the implementation of Directive 79/7 some 30 years ago, Denmark revised its social security legislation to make it sex-neutral from 1984 onwards. Before this reform, the qualifying age for the general statutory old-age pension (folkepension) was 67 for men and married women and 62 for unmarried women. This age was made sex-neutral and fixed at 67 for everyone. It was later lowered to 65 and then raised again to 67. Married men whose spouses were between 64 and 67 were entitled to a benefit for their wives. This benefit was subsequently abolished. There was also a special Act concerning widows' pensions. This Act was repealed and widows' pensions were also abolished. Denmark therefore did not opt to make use of the possibilities for a derogation provided by the Directive, but instead chose to make its social security legislation gender-neutral.

Under the Act on social pensions⁶⁷ all Danish residents are entitled to a standard retirement pension (folkepension) when they reach the age of 67 (65). Persons whose 60th birthday falls on or after 1 July 1999 are entitled to a pension at 65. This right is not work-related. Former housewives, retired workers, those receiving benefits, etc. all enjoy the same rights to the standard retirement pension (folkepension).

The standard retirement pension (folkepension) is tax-financed. Persons with higher income pay more in tax than persons with a lower income. As set out below, the entitlement to the standard retirement pension (folkepension) is reduced for persons with an income above a certain level. The standard retirement pension (folkepension) is part of the distributive justice system in the Danish welfare state and generally operates to the advantage of women by ensuring some redistribution of means from men as a group to women as a group.

In addition, there is a compulsory supplementary pension scheme (ATP) for salaried workers. It is based on the unisex principle and, due to women's higher longevity compared to that of men, contributes to redistributing means from men as a group to women as a group.

1. Qualifying conditions

The standard retirement pension (folkepension)

The following persons are entitled to the standard retirement pension (folkepension):

- Danish nationals.
- Salaried workers and self-employed persons who are nationals of other EU Member States.
- Other foreign nationals after 10 years' residence in Denmark.

In order to qualify for a standard retirement pension (folkepension), a person must have lived in Denmark for at least three years between their 15th and 65th (67th) birthdays.

Entitlement to a full standard retirement pension is acquired after 40 years of residence in Denmark between the ages of 15 and 65 (67). Persons with a shorter period of residence have the right to a pension amounting to 1/40th of the full pension rate for each year they have lived in Denmark between the ages of 15 and 65 (67).

⁶⁷ Consolidated Act no. 484 of 29.May 2007 on social pensions with later amendments.

Supplementary pension schemes for employed persons (Arbejdsmarkedets Tillægspension – ATP)

All persons aged between 16 and 66 who are employed in Denmark are covered by the ATP scheme,⁶⁸ provided that they work at least nine hours a week. Employed persons who become self-employed can continue to be covered by the ATP scheme under certain conditions. In this case, they have to pay the contributions in full themselves. Otherwise, contributions to the ATP scheme are paid jointly by the employer and the employee. The employer pays two-thirds and the employee one-third of the contribution. The employer is responsible for paying the employee's share.

2. The amount of the old-age pension

The standard pension (folkepension) consists of a basic amount and a pension supplement.

The basic amount of the standard pension (*folkepension*) is DKK 65 376 (EUR 8 780) per year (2010) before tax. Payment of the basic amount is subject to a means test concerning the pensioner's income and is reduced if he or she has a salaried income above a certain level.

The pension supplement depends on the combined earnings of the pensioner and his/her spouse. For a single pensioner with no other income it is DKK 67 896 (EUR 9 118) per year (2010), i.e. a single pensioner with no other income receives in total (the basic amount of the pension + a supplement) DKK 133 272 (approximately EUR 17 770) per year from the state provided the above-mentioned qualifying conditions (in particular 40 years' residence in Denmark) are met.

For persons covered by the ATP scheme who are not working full time (27 hours per week), the payment due is either two-thirds (which requires at least 18 hours' work per week) or one-third (which requires at least 9 hours' work per week) of the full contribution rate. For full-time workers/employees the contribution is (in 2010) DKK 71 (a little less than EUR 10) per week.

On request the ATP scheme pays old-age pensions for life once the member reaches the age of 65. The amount depends on how many years the person concerned has been covered by the scheme and on the amount paid in contributions. An old-age pension is normally granted as an ongoing benefit, but small pensions may be paid as a single or an annual lump-sum amount.

Persons working less than 9 hours per week are not covered by the ATP scheme. It applies without discrimination to standard and non-standard contracts for at least 9 hours' work per week.

3. Periods of caring

For entitlement to a standard pension (folkepension) it is irrelevant what the pensioner has been doing during his/her residence in Denmark, for example whether or not he or she has taken care of anyone, done any work at all or whatever.

ATP is only for persons who are on the labour market. If a person leaves the labour market to take care of another person, for example a child, no contribution to the ATP will be paid for that person while she or he remains outside the labour market. If she or he works reduced hours only a reduced ($\frac{2}{3}$ or $\frac{1}{3}$) contribution will be

⁶⁸ See now Consolidated Act no. 942 of 2.10.2009 on supplementary pension schemes for employed persons (Arbejdsmarkedets Tillægspension – ATP). An unofficial translation of the Danish Act on ATP is available at the Financial Services Authority's website http://www.finanstilsynet.dk/Regler-og-praksis/Translated-regulations/~media/Finanstilsynet/Mediafiles/newdoc/Acts/CAct887_240804H%20pdf.ashx.

paid into the ATP. The amount paid out of the ATP when a person becomes a pensioner depends, as mentioned above, on how much has been paid into ATP on behalf of that person.

In Denmark, it is not usual to leave the labour market for care purposes. Most persons caring for another are in employment at the same time so that ATP contributions are paid. This also applies when they are on maternity leave or parental leave or other kinds of benefit paid by the state as compensation for the loss of salary.

4. Exceptions under Article 7.1 of Directive 79/7

Denmark has not made use of the exceptions provided for in Article 7.1 of Directive 79/7 such as:

- Pensionable age and the possible consequences for other benefits (Article 7.1 a).
- Advantages granted to persons who have brought up children (Article 7.1 b).
- Old-age or invalidity benefit entitlements or increases in long-term benefits by virtue of the derived entitlements of a wife (Article 7.1 c) and d).

C) OCCUPATIONAL OLD-AGE PENSION SCHEMES

(Schemes falling under Article 157 TFEU, Directive 86/378/EEC, as amended by Directive 96/97/EC, now Articles 5-13 of the Recast Directive 2006/54/EC)

The concrete conditions in occupational pension schemes are typically laid down in collective agreements. This means that the detailed provisions vary from one collective agreement to another. Collective agreements are basically based on freedom of contract. If the parties to a collective agreement are in agreement they have considerable discretion to choose what kinds of criteria they wish to use. There are a few statutory limitations to the freedom of contract. The unisex principle is, for example, now mandatory by law. Before it became mandatory in 1999, a number of parties to collective agreements had agreed to adhere to that principle on a voluntary basis, see below.

1. Coverage

The principle of equal treatment for men and women in occupational pension schemes is in Denmark governed by the Act⁶⁹ on equal treatment of men and women in insurance, pension and similar financial services (before 21 December 2009 the Act on equal treatment of men and women in occupational social security schemes). After 21 December 2009 the Act covers both the labour market (occupational schemes) and private insurances.

2. Calculation of old-age pensions and contributions

In Denmark most occupational pension schemes are defined contribution schemes.

3. Actuarial factors

One or two generations ago, most pension schemes used actuarial calculations which were gender-related in such a way as to result in women receiving smaller monthly benefits than men for whom the same contributions had been paid. During the last 25 years or so the trend has been shifting. A number of new pension schemes were established in connection with the renewal of collective agreements in 1989 and 1993.

⁶⁹ Consolidated Act no. 775 of 29 August 2001 with later amendments on equal treatment of men and women in insurance, pension and similar financial services.

Most of these schemes use actuarial calculations that result in women receiving the same monthly benefits as men for whom identical contributions have been paid. This is known as the unisex basis of actuarial calculations. A few older schemes, for example the one which applies to lawyers, also adopted the unisex calculation.

In 1998, a new Act providing for unisex pension schemes was adopted. The main provision of the Act is Section 8 which prohibits provisions in pension schemes according to which men and women are treated differently on grounds of sex as regards the determination and calculation of contributions and benefits. Of special importance is that the Act prohibits both different contributions and different benefits, also in cases where the reason for different treatment is based on actuarial factors. However, the prohibition of sexual differentiation on grounds of actuarial factors only applies to workers who joined the scheme after 1 July 1999.

4. Caring credits

In principle the parties to collective agreements that establish an occupational pension scheme could choose to provide caring credits. They can also choose not to do so if care credit means credit for unpaid care work. I know of no example where the parties to such an agreement have chosen to provide caring credits in this sense.

Many periods of care are covered by pay agreements providing for full pay for absence from work for caring purposes, for example parental leave or time off to care for sick children. If the worker/employee is entitled to full pay, that includes pension contributions.

5. Vesting and reimbursement rules

Vesting and reimbursement rules vary from one collective agreement to another. They cannot lawfully be sex discriminatory.

6. Pensionable age

The pensionable age varies from one collective agreement to another. It cannot lawfully be sex discriminatory.

7. Civil servants

There is a special Act on pensions for civil servants.⁷⁰ Since the exceptions allowed under Directive 79/7/EEC have not been made use of in Denmark, the ECJ case law on pensions for civil servants has not given rise to much debate.

ESTONIA – *Anneli Albi*

A) GENERAL QUESTIONS

1. The old-age pensions system

Pensions are regulated by the following Acts in Estonia: the State Pension Insurance Act,⁷¹ the Earned Years Pensions Act, the Favourable Conditions Pensions Act, the Funded Pensions Act, and Acts which establish an entitlement to a special pension in certain professions, such as the Courts Act and the Police Service Act.

⁷⁰ Consolidated Act no. 230 of 19 March 2004 on pensions for civil servants with later amendments.

⁷¹ All acts are officially published in the online Official Gazette at www.riigiteataja.ee and are no longer issued as paper editions.

By way of background, pension reforms were carried out in Estonia in 1999-2002, resulting in the World Bank recommended model of a three-pillar pension system. This system is composed of the mandatory state pension insurance, mandatory funded pension and supplementary private pension. As regards pensions,⁷² the first two pillars of the Estonian pension system fall within the scope of Directive 79/7. For the purposes of EU law, none are regarded as occupational pensions; the third pillar is essentially a private pension savings scheme.

The first pillar, state pension insurance, is based on pay-as-you-go financing and covers three social risks: old age, permanent incapacity for work and loss of a provider. This pension consists of two components: (a) national fixed-rate pensions ensured for all residents of Estonia, and (b) old-age, incapacity-for-work and survivor's pensions based on former work input, including length of service and social tax paid by the employer or the self-employed person. As regards component (b), for persons who have entered the labour market since 1999, old-age pension rights are only acquired on basis of social tax paid.

The second pillar, mandatory funded pensions, was launched in 2002 and is based on full pre-financing; it covers the risk of old age only. *Estonia's second pillar is not an occupational scheme, and thus the retirement age in the second pillar is the same as in the first pillar.*⁷³ The second-pillar pension funds are administered by private asset management companies. In essence, the second pillar is an individual savings scheme, where the amount of the pension depends on the total contributions over one's career and the rate of return of the pension fund.

The third pillar, the supplementary voluntary-funded pension, became operative in 1998 and consists of supplementary-funded pension schemes based on pre-financing. The state encourages participation in such schemes with tax incentives. The third pillar covers two social risks: old age and permanent incapacity to work. The third-pillar pension schemes are offered by voluntary pension funds and life insurance companies.

Overall, the trend thus appears to be towards a contribution-based approach.

All pillars are included within the scope of the Gender Equality Act 2004, which applies to 'all areas of social life' (Art. 2). A footnote attached to the title of the Gender Equality Act mentions that the Act, *inter alia*, is meant to implement Directives 79/7, 86/378 and 96/97.

The legal criteria of the pension pillars are equal in respect of men and women, except for the pensionable age in both the first and the second pillar, where the qualifying age will be gradually equalised by 2016. Data regarding any specific gender impact assessments is not available to the country expert.

Some legislative amendments came into effect in January 2006 to eliminate some discriminatory provisions that were, *inter alia*, pointed out by a research report by the

⁷² Information regarding pensions in this report is predominantly based on the following documents: 'Euroopa Liidu ühiste pensionieesmärkide mõju Eesti pensionisüsteemile' (The impact of the European Union's common objectives in pensions upon the Estonian pensions system), Poliitikauuringute Keskus PRAXIS (Tallinn, April 2004), p. 83 (hereinafter 'Praxis Report'), and '2005 National Strategy Report on Adequate and Sustainable Pensions; Estonia', Report composed by the Ministry of Social Affairs of the Republic of Estonia, available at www.sm.ee (hereinafter 'Ministry of Social Affairs 2005 Report'). The National Report on Strategies for Social Protection and Social Inclusion 2006-2008, compiled by the Ministry of Social Affairs of Estonia, is relatively short (one page in length) as regards the pensions system. It summarises the 2005 National Report on Pension Strategies where further details were provided; according to the 2006 report no significant changes have been planned in the field of pensions policy.

⁷³ Ministry of Social Affairs 2005 Report, *supra* note 72.

Praxis Centre for Political Studies.⁷⁴ The Earned Years Pensions Act contained disparities with the Directive by establishing for women in some professions (e.g. textiles, airline crews and ships' crews) a shorter minimum working period than for men in order to be entitled to a pension. Since such a working period was not related to the retirement age, it was considered not to fall under the transitional period allowed by the Directive. Relevant provisions were indeed amended by the legislature at the end of 2005 thereby equalising the eligible working periods for men and women.

2. Old-age pension reforms

According to the reformed system, the amount of the pension is related to the amount of the previous salary. As regards the pensions of those persons who qualified for a pension before 1999, the average old-age pensions are broadly equal between women and men (the pension for women amounts to nearly 97 % of the average old-age pension for men). This is because until 1999 pension rights were only determined on the basis of the length of service, while at the same time the employment rate of women had been relatively high. Furthermore, until 1999 one of the parents was granted an additional two years of service per child.

However, since 1999 pensions are more closely connected with working and remuneration-related payments. The first pillar is now dependent on the social insurance tax payments and the second pillar on salary and social insurance tax payments. This, as noted by the Ministry of Social Affairs,⁷⁵ appears to pose the risk of women receiving a lower pension in comparison with men because of the gender pay gap and the periods taken off by women in connection with raising children.⁷⁶ This concerns both the first pension pillar (national pension), which is based on the social insurance tax paid, as well as the second pillar, which is based on earnings-related contributions. The Ministry also pointed out that the development of the old-age pension for women is further influenced by the fact that the annual pension insurance coefficient for the periods of raising children is very low.

The differences in the eventual pension acquired by men and women are likely to be considerable in practice, as the gender pay gap in the country is one of the largest in Europe. According to Eurostat, the gender pay gap has consistently been approximately 30 % in recent years.⁷⁷ In terms of women's involvement in part-time work, part-time work is relatively rare in Estonia. The Estonian Human Development Report 2009⁷⁸ noted that when comparing women on an international scale, a relatively higher percentage of Estonian women participate in the labour market as full-time employees. However, on the other hand, they are rather likely to leave the labour

⁷⁴ 'Euroopa Liidu ühiste pensionieesmärkide mõju Eesti pensionisüsteemile' (The impact of the European Union's common objectives in pensions upon the Estonian pensions system), Poliitikauuringute Keskus PRAXIS (Tallinn, April 2004), p. 83.

⁷⁵ '2005 National Strategy Report on Adequate and Sustainable Pensions; Estonia', Report compiled by the Ministry of Social Affairs of the Republic of Estonia, available at www.sm.ee, accessed 20 December 2007.

⁷⁶ See also on this point *Euroopa Liidu ühiste pensionieesmärkide mõju Eesti pensionisüsteemile* (The impact of the European Union's common objectives in pensions upon the Estonian pensions system), *Poliitikauuringute Keskus PRAXIS*, 2004, p 85-87. Available at (in Estonian): http://www.sm.ee/fileadmin/meedia/Dokumendid/Sotsiaalvaldkond/kogumik/pensioniuurimus_2004_1_.pdf, accessed 20 Februari 2010.

⁷⁷ Gender pay gap in unadjusted form. Available on: <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&language=en&pcode=tsdsc340&plugin=0>, accessed 20 March 2010.

⁷⁸ Available on (in English): http://www.kogu.ee/public/eia2009/EIA2009_engredis.pdf (accessed 31 March 2010).

market for a period of time in order to have children and to care for them. In 2008, 66 % of Estonia's working-aged women (aged 15–65) were employed, which is an average figure when compared to other European countries.

3. Retroactivity of legislation

No issues have arisen with regard to retroactivity in terms of gender equality. However, the issue of retroactivity and legitimate expectations recently arose in a different (and gender-neutral) context: the cuts necessitated by the economic recession. On 14 May 2009, Parliament adopted the Act amending the Funded Pensions Act and Social Tax Act, temporarily suspending payments to the mandatory pension funds.

4. The World Bank Model

As explained above, the pillars of the Estonian pensions system are treated for the purposes of EU law as first (state) and third pillar (private) pensions. None are regarded as occupational pensions. Earlier, a Report by Praxis⁷⁹ noted that the second pillar of the Estonian pensions system may prompt questions as to whether it might qualify as an occupational scheme rather than a state pension scheme. However, it is treated as a state pension scheme where, as with the first pillar, the qualifying age will be gradually equalised by 2016.

B) STATUTORY OLD-AGE PENSION SCHEMES (Schemes falling under Directive 79/7/EEC)

1. Qualifying conditions

As regards Estonia's first-pillar pension, it consists of two components. Both components are paid from the state budget. The first is national fixed-rate pensions that are ensured for all residents of Estonia. The second is old-age, incapacity-for-work and survivor's pensions based on former work input, including length of service and the social tax paid by the employer or the self-employed person. For the second component, the qualifying period is 15 years of employment. The first component is paid if the person does not qualify for the second component but has been resident in Estonia for five years. As regards the second component, for persons who have entered the labour market since 1999, old-age pension rights are only acquired on the basis of the social tax paid.

At present, the first pillar of the Estonian pension scheme, the state pension insurance, includes minimum pension guarantees. All persons of at least 63 years of age, who have been residents of Estonia for at least the last five years prior to applying for pension, have a right to a national pension. This includes those elderly persons whose length of employment is very short or whose income subject to social tax has been very low during their entire career.⁸⁰ On April 7, 2010 Parliament adopted amendments to the State Pension Insurance Act, raising the pensionable age to 65 years. This amendment will take effect on January 1, 2017.

According to the Ministry of Social Affairs 2005 Report,⁸¹ the state pension coverage is practically universal. Approximately 97 % of men and 99 % of women who are residents and have reached the pensionable age are in receipt of a pension

⁷⁹ Ministry of Social Affairs 2005 Report, *supra* note 72, p. 84.

⁸⁰ Ministry of Social Affairs 2005 Report, *supra* note 72, p. 14.

⁸¹ Ministry of Social Affairs 2005 Report, *supra* note 72, p. 12.

from the State. The majority of the remainder receive a pension from another country (mainly from the Russian Federation).

As regards the Estonian second pillar, participation is mandatory for persons born in 1983 or later. Persons born prior to 1983 and participating at the labour market can join the second pillar on a voluntary basis.

2. The amount of the old-age pension

In the Estonian first pillar, the amount of the pension is related to the duration of employment, as it depends on the social tax paid for the employee. The social tax rate constitutes 33 % of the amount of the salary and other fees subject to the social tax. 20 % of the social tax is determined for the state pension insurance and 13 % for the state health insurance fund.

According to the Ministry of Finance, the average percentage of the pension to an average salary, for persons who have not joined a funded pension (savings) scheme, is approximately 32 % at the age of 50.⁸²

The state pays social tax for the listed groups of persons who are inactive in the labour market including for family and child-rearing obligations. In such cases, as a rule, social tax shall be paid based on that year's monthly rate, which may not be lower than the minimum wage. The years of pensionable service shall also include the time during which a person cares for a disabled person of a certain category, for a disabled child or for a person under 18 years of age who has been disabled since childhood. Additionally, pensionable service includes time during which a mother, father, step-parent, guardian or actual carer of a child cares for that child under three years of age until the child attains three years of age.

In the second pillar, the rate of the second pillar contribution is 6 % of the wages. The employee pays 2 % from gross wages, which is supplemented by the state by 4 % of the gross wage on account of the social tax paid by the employer. Thus the contributions are paid by the state, but on the basis of the social tax paid by the employer. Since there is a qualification period of five years, the payment of the first benefits was not expected to commence until 2009. The size of the pension depends on the total contributions over one's career and the rate of return of the pension fund.

3. Periods of caring

The gaps in the accumulation period of the 2nd pillar pension for women due to raising children are somewhat compensated by supplementary contributions by the state. These contributions, in effect since 2004, amount to 1 % of the parental benefit. These supplementary contributions by the state are made during the period of receiving the parental benefit, which is on average up to 15 months. However, such contributions still comprise only 1/6th of the former contributions from the parent's former work income. Furthermore, additional contributions are not made during the period of maternity benefit (approximately 4.5 months), which are paid on the basis of the Health Insurance Act.

As regards inactive persons, Article 6(1) of Social Tax Act stipulates that the state pays social tax for the listed groups of persons who are inactive in the labour market including for family and child-rearing obligations. According to Article 6(2) and Article 2(1) of the Social Tax Act in such cases, as a rule, social tax shall be paid based on that year's monthly rate. This monthly rate may not be lower than the minimum wage of the previous calendar year (in 2010 the rate is 4 350 *kroons*

⁸² Table reproduced at <http://www.pensionikeskus.ee/?id=583>, accessed 21 June 2010.

(EUR 277)). According to Article 28(2)(7) of the State Pension Insurance Act, the years of pensionable service shall also include the following periods:

- time during which a person cares for a category 1 disabled person, for a disabled child or for a person under 18 years of age who has been disabled since childhood;
- time during which a mother, father, step-parent, guardian or actual carer of a child cares for that child under 3 years of age until the child attains 3 years of age.

As of 2006, the Government has gradually increased the social tax paid to the pension system by the State for inactive persons. This was aimed at extending the pension rights granted for the periods of absence from the labour market. This, in turn, will alleviate the negative impact of childcare-related absences from the labour market on the amount of the pension. However, social tax is paid only on the basis of the amount of the minimum salary, not on the basis of the previous salary or the amount of the parental benefit.

As regards the state pensions, it has additionally been pointed out that approximately 7 % of those reaching retirement age and having received minimum or very low wages may face problems in the future as regards fulfilling the required qualification period of 15 years.⁸³ This problem concerns primarily those workers who have received minimum or very low wages. Additionally, it may concern persons who have been economically non-active for longer periods, including parents staying several years on parental leave. The social tax paid by the state for persons on parental leave has been low. The longer a person stays away from the labour market to raise children, the smaller will thus be the old-age pension, which will be considerably lower than the average or even just the minimum rate.

4. Exceptions, Article 7.1 of Directive 79/7

The pensionable age and the possible consequences for other benefits (Article 7.1 a))

The retirement age is currently 63 for men and 59 for women; women's retirement age will gradually rise and will be equal to that for men by 2016, in line with the transitional scale permitted in Directive 79/7. On April 7, 2010 Parliament adopted amendments to the State Pension Insurance Act raising the pensionable age to 65 years for both men and women. This amendment will take effect on January 1, 2017.

The general rules concerning the pensionable age are stipulated in Article 7 of the State Pension Insurance Act (hereinafter SPA). According to Article 7(1) of the SPA the following persons have the right to receive an old-age pension:

- 1) persons who have attained 63 years of age and
- 2) persons whose pension qualifying period, provided for in Article 27 of the SPA⁸⁴ and earned in Estonia, is 15 years.

As seen above, persons who do not meet this criterion are entitled to a basic state pension after five years of residence.

According to Article 7(2), in order to gradually equalize the pensionable age of men and women, the right of women born between 1944 and 1952 to receive an old-age pension arises at the following ages:

⁸³ 'Euroopa Liidu ühiste pensionieesmärkide mõju Eesti pensionisüsteemile' (The impact of the European Union's common objectives in pensions upon the Estonian pensions system), Poliitika-uuringute Keskus PRAXIS (Tallinn, April 2004) p. 18.

⁸⁴ Article 27(1) of the SPA stipulates that a pension qualifying period is a period during which an insured person is engaged in an activity which grants the right to receive a state pension.

Year of birth	Age
1944	58 years 6 months
1945	59 years
1946	59 years 6 months
1947	60 years
1948	60 years 6 months
1949	61 years
1950	61 years 6 months
1951	62 years
1952	62 years 6 months

The issues concerning retirement and dismissal due to the retirement age are additionally regulated in certain specific acts; see further under C).

Advantages granted to persons who have brought up children (Article 7.1 b))

Article 10 of the SPA provides a right to an old-age pension under more favourable conditions. These also concern a right to early retirement if the person has had extensive family obligations. According to Article 10(1), the following persons who have earned the pension qualifying period (15 years) required for the grant of an old-age pension have the right to receive an old-age pension under more favourable conditions:

- 1) A mother, father, step-parent, guardian or carer who for at least eight years has raised a child under 18 years of age with a moderate, severe or profound disability or five or more children. They are entitled to retire five years before attaining the pensionable age.
- 2) A mother, father, step-parent, guardian or carer who has raised four children for at least eight years. They are entitled to retire three years before attaining the pensionable age.
- 3) A mother, father, step-parent, guardian or carer who has raised three children for at least eight years. They are entitled to retire one year before attaining the pensionable age.

If several persons have the right to apply for an old-age pension under more favourable conditions with respect to the same children, the persons shall agree on who exercises the right to receive the old-age pension under the more favourable conditions (Article 10(2)).

According to Article 10 of the Funded Pensions Act, the state makes an additional contribution to the mandatory pension fund (i.e. the second Estonian pension pillar, see above) upon the receipt of a parental benefit. One per cent of the amount of the parental benefit per child born is additionally allocated from the state budget to persons who receive such benefits pursuant to the Parental Benefit Act in order to make contributions to mandatory pension funds (Article 10(1)).

C) OCCUPATIONAL OLD-AGE PENSION SCHEMES

(Schemes falling under Article 157 TFEU, Directive 86/378/EEC, as amended by Directive 96/97/EC, now Articles 5-13 of the Recast Directive 2006/54/EC)

This section appears to be inapplicable to Estonia. As explained in Part 1, the first and the second pillars fall under Directive 79/7 and the third pillar is a private savings scheme. The Estonian third-pillar pension schemes are offered by voluntary pension

funds and life insurance companies. The payment of benefits will not commence before 55 years of age. The pensionable age is equal for men and women in this pillar.

In terms of the actuarial factors in this scheme, it may be worth noting that insurance companies have expressed concern with regard to the envisaged equal treatment of men and women in private pensions, since this would render pension insurance more expensive both for men and women. The difference in the life expectancy of men and women is very high in Estonia, resulting in a price difference of around 30 %. In 2003, the life expectancy was 66.0 for men and 76.9 for women. The share of women among residents aged 65 and over was 67 %, and among those aged 75 and over it was 74 %. The respective average percentages for the whole EU were ca 60 % and 67 %. The share of women in the elderly population in Estonia is thus higher than the EU average.⁸⁵

Civil servants

As regards civil servants, their scheme does not differ from the general scheme which applies to other categories of workers. The retirement age and the principles concerning the amount of the pension are regulated differently in some branches of the civil service. These include, for example, the Courts' Act, the Police and Border Guard Act, the Chancellor of Justice Act and the State Audit Office Act.

An interesting case may be worth reporting regarding the Police Service Act. On 20 November 2009 the Supreme Court *en banc* (i.e. the full court) declared that Article 49(3) and 49(4) of the Police Service Act are unconstitutional and invalid. These provisions provide that a female police officer born in 1948 is dismissed from the police force earlier than a male police officer born in the same year.⁸⁶

The Administrative Chamber of the Supreme Court initiated constitutional review proceedings regarding Article 49(3) of the Police Service Act. The Chamber found that this provision gives rise to differential treatment of women and men born in 1948. Therefore it was necessary to review whether this provision is in compliance with Article 12 of the Constitution (the right not to be discriminated against on the grounds of sex).

According to the Act, police officers can be accepted into police service, depending on the actual position, until the age of 55 or 60. However, according to Article 49(3), with the permission of the head of the Police Board, a police officer may be employed in the police service until he or she reaches the pensionable age provided for in Article 7 of the State Pension Insurance Act. According to this provision, the general pensionable age is 63. Article 7(2) stipulates that in order to gradually equalise the pensionable age of men and women, the right of women born between 1944 and 1952 to receive an old-age pension arises prior to reaching the general pensionable age, at the ages envisaged in the Act. For women born in 1948, the respective age is 60 years and 6 months. The claimant in this case objected to being released from the police force on the basis of Article 49(3) of the Police Service Act when she reached the age of 60 years and 6 months. The pensionable age for male police officers born in 1948 is 63.

The Supreme Court *en banc* found that there is no reasonable justification for the dismissal of female police officers from service at an earlier age than their male counterparts. The Supreme Court disagreed with the reasoning of the District Court which had found that the difference in treatment between female and male police

⁸⁵ The statistics are based on the Ministry of Social Affairs 2005 Report, *supra* note 72, p. 25.

⁸⁶ The judgment of the Supreme Court of 20 November 2009, No 3-3-1-41-09. The text of the judgment is available in English at: <http://www.nc.ee/?id=1103>, accessed 30 April 2010.

officers had been in compliance with the Constitution. The District Court had seen this as an optimal compromise between two conflicting interests: on the one hand, the interest of the police officer in continuing in service, and, on the other, the interest of the state in bringing younger persons into the service. The Supreme Court found that it is not acceptable that the state's interests would be given greater weight at the expense of female police officers. The Supreme Court took the position that it is not justified to interfere with the female police officer's right to choose her occupation. This, unlike male police officers, would eliminate the possibility to earn a higher income than the pension. Further, the Supreme Court stated that as a result of the difference in the length of service, the female police officer would also receive a lower police pension.

The Supreme Court declared the dismissal of the complainant unlawful and awarded compensation to the amount of six months' remuneration. Reinstatement was not possible because the complainant had not requested this during the earlier stages of the proceedings.

Thereafter the complainant submitted a new complaint to the administrative court. She claimed that her dismissal from the police force constituted discrimination on the grounds of sex, and requested the court to declare her dismissal from the police force invalid. She also claimed compensation on the basis of the GEA. The administrative court (of first instance) found that the dismissal did not constitute discrimination but had instead been caused by objective circumstances, because the dismissal had been based upon the imperative provision of the Police Service Act.⁸⁷

FINLAND – Kevät Nousiainen

A) GENERAL QUESTIONS

1. The old-age pension system

The Finnish old-age pension system does not fit well into the EU pillar system. The Finnish system is based on statutory and mandatory pension insurance schemes which in practice cover all persons who have an occupation and receive earnings from that activity, both those that receive income from employment, as well as those who receive income as self-employed entrepreneurs or farmers, or agricultural entrepreneurs. Until recently, people receiving a scholarship (students, artists) were excluded from the mandatory schemes, but since the beginning of 2009 this group is also insured under the insurance scheme for agricultural entrepreneurs.

There are several statutory old-age insurance schemes for persons with an occupation, each functioning under a specific statute; a list of relevant legislation is provided at the end of this report. Public employees are covered by the State Employees' Pension Act, the Municipal Employees' Pension Act, the Pension Acts of the Lutheran and Orthodox Churches, and the pension rules of the Act on the Bank of Finland; state pension schemes are also implemented in the County of Åland. Most private-sector employees are covered by the Act on Employees' Pensions. Sailors' pensions are subject to separate legislation. The Act on Entrepreneurs' Pensions and the Agricultural Entrepreneurs' Pension Act cover entrepreneurs. The entrepreneurial

⁸⁷ *Halduskohus ei pidanud naispolitseiniku vabastamist sooliseks diskrimineerimiseks* (The administrative court did not consider the dismissal of the female police officer to be discriminatory) – Postimees Online, 16 April 2010, available at: <http://www.tartupostimees.ee/?id=250850>, accessed 30 April 2010.

pension schemes differ somewhat from the employees' schemes. The main aspects of all employees' schemes are basically similar, even though they differ in their specific detail. The former differences between the private and the public pension schemes have diminished and almost disappeared. All paid work must be insured under a statutory scheme.

These statutory occupational pension schemes are a mix of pay-as-you go and funded systems. Contributions are paid both by employers and employees. The contributions are related to the person's earnings. Neither the earnings to be taken into account nor the pensions are capped, with the exception of self-employed persons' pension schemes. The private pension schemes are run by various authorised pension providers: private insurance companies, employers' pension funds, non-profit or sector-based pension institutions, such as the Seafarer's Pension Fund. The private sector schemes fund a part of the contributions, but the larger part of contributions is spent on paying the benefits of those currently receiving a pension. The state, municipal and church pension schemes are entirely of the pay-as-you-go type. The private sector employers' payments depend on factors such as the size of the enterprise and the age of the insured persons, while the employees' contributions depend on their age (those over 53 paying 5.2 % of their pay, and younger persons 4.1 %). The amount of the pension is predetermined by earnings collected during relevant years and the rate at which they accrue on a yearly basis (as in a DC system), not by a predetermined benefit, under both public and private pension schemes.

The occupational pension scheme is complemented by a secondary pension scheme, the national pension scheme, where the right to a pension is based on residence. The national pension scheme under the National Pensions Act is a statutory system in the EU sense, that is, it is not based on occupational contributions. It is meant to provide minimum security in case the recipient has no occupational pension, or the occupational pension is small, in which case the recipient may be entitled to a partial national pension. The number of persons receiving a full national pension is relatively small (around 90 000 persons), while altogether around 460 000 persons received old-age pensions from the national pension scheme in 2008.⁸⁸ Although the relative importance of the national pension scheme as a source of income for retired persons is diminishing, it remains an important complementary source of income especially for women with fragmented careers. As it is residence-based, the national pension scheme does not exclude non-citizens. According to the ideology of the universal nature of national pensions, no persons should be excluded, and thus refugees, persons who have been granted asylum, their family members and stateless persons are also covered. The ideal of universality has proved problematic in some notorious recent cases, where immigrants from countries outside the EU and Nordic states wish to have elderly family members remain in Finland to be taken care of as these elderly relatives have no source of income or relatives in their country of origin. Deportation orders have recently been issued in two such 'foreign grandmother' cases. Under Finnish law, resident elderly persons are entitled to a national pension, but their children are not obliged to maintain them. Therefore, officials believe that granting residence in such cases could lead to an influx of elderly family members of the immigrant population in Finland.⁸⁹

⁸⁸ KELA, Tilastokatsaus 6.5.2009 Kansaneläkkeiden väheneminen keskeytyi tilapäisesti vuonna 2008.

⁸⁹ The fate of two grandmothers, the Egyptian Eveline Fadayel and the Russian Irina Antonova, has been the subject of debate in the media. The decision to deport them has caused demonstrations, and a Lutheran congregation has offered asylum to Eveline Fadayel. President Tarja Halonen

Thus, the Finnish old-age pension system consists of two types of statutory pensions. While the national pension system resembles the mandatory public pillar pensions of the European three-pillar system, occupational pensions are both statutory and mandatory. The occupational public sector pension schemes resemble the private sector schemes in essential details, although some differences still exist, for example as to how the schemes are administered. Old-age survivors' pensions exist in both occupational statutory pensions and in national pension schemes. Both the pensions and the survivors' pensions are gender-neutral in both cases.

2. Old-age pension reforms

The main occupational pension schemes have undergone a major reform in the last decade, and further amendments are under discussion. The main aim of the reform was to lengthen occupational careers to correspond with the rising life expectancy, and to unify the system both by making the private and public sector pension schemes resemble each other more closely, and to unify the private sector schemes. The private sector reform was based on a social partners' agreement made in 2001, which was acted upon by the Government. A further agreement in January 2009 increases the contributions paid by both employers and employees in 2011 and 2012. The Government has decided to act upon the agreement. The solution chosen to lengthen occupational careers was to introduce a flexible pensionable age, backed up by a quicker rate for building up pension benefits for those remaining at work after they have attained the lowest pensionable age of 63. It is possible to end one's working career earlier, but at the cost of a lower pension. The pensionable age before the reform was 65, but few employees remained at work until the official retirement age.

With the reform, the time frame to be taken into account in building up pension benefits was to be made longer, from 18 to 68 years, and the pensionable age was made flexible, from 63 to 68 years. An incentive to remain at work after 63 was to be given in the form of a higher percentage of accruing benefits. The conditions for part-time pensions were made less advantageous for persons born in 1947 and later. Part-time pensions were relatively generous under the old system, with no great loss to the final pension level. Part-time pensions were considered to be a means of keeping people for a longer period of time in the labour market, but now people are not encouraged to take part-time pensions – it is believed that those willing to work part time will even stay in the labour market on a full-time basis.

The reform was carried out as a tripartite agreement between the social partners and the Government. A social partners' agreement made in 2001 set down the guidelines for the reform carried some years later, the necessary law amendments taking place around 2006. The pension schemes for public-sector employees also underwent a reform that was based on these general guidelines. The social partners also agreed that the gender impacts on pensions were to be assessed, and an assessment was carried out by the Ministry of Social Affairs and Health.

The preparatory works for the most important piece of legislation concerning private statutory occupational pensions, the Act on Employees' Pensions, justify the reform by a need to secure the basis of occupational pensions by longer occupational activity and by increasing the de facto pensionable age by two or three years. All private-sector mandatory pension schemes were brought under the single Act, with sailors' pensions being the only exception. After the reform, the obligation to insure

considered that these persons should be allowed to remain with their families in Finland for humanitarian reasons, and an amendment to the legislation has been discussed.

employees, contributions and benefits became similar in all sectors and occupations. Entrepreneurs' and employees' pension schemes are mainly similar. The Act on Employees' Pensions is the point of reference for other pieces of legislation on pension schemes.⁹⁰

In the former pension system, pension benefits were defined on the basis of the last few years in employment, but after the reform, a person's whole employment career after s/he has reached the age of 18 is taken into account. The age of the employee is taken into account when calculating the benefit, so that the pension grows by 1.5 % on a yearly basis until the employee reaches 52. After that, the pension grows by 1.9 % and finally 4.5 % per year from 63 to 68. It is expected that the 'super-accrual' during the last years of one's employment career are an incentive for staying longer at work.

After the reform, all income from employment as well as from unemployment benefit, family-related or sickness leave which is earnings related is taken into account when calculating the benefit. Even unpaid periods caused by maternity, paternity and parental leave are calculated in the time taken into account, as well as periods spent on so-called home-care leave, which may be taken after parental leave and continue until the child reaches 3 years old. As the last-mentioned leave does not provide an entitlement to an income-related benefit, but a flat-rate one, the income levels tend to be low for persons who take the option. The impact on the carer's pension thus remains small. If a person's 'stable level of income' drops by more than 20 %, the income is to be calculated at the level it was before the home-care leave. The condition may be difficult to fulfil under the present conditions, when many women of child-bearing age work on fixed-term working contracts. – A condition for taking any unpaid periods into account is that the person in question must have already earned a certain amount of earnings that entitle him or her to a pension (approx. EUR 12 000).

Although the last mentioned conditions privilege persons who have already established themselves in permanent jobs, the reform in general has benefited persons in non-typical employment. The former system privileged persons with long, permanent employment contracts, whose unpaid periods of leave were usually taken into account in pension benefits if they took place during the employment contract. Persons under time-limited contracts could not increase their benefits under such leave periods. Thus, the reform made persons under non-typical employment contracts equal to those under permanent contracts. Persons with long-term jobs and those in short-term posts were formerly subject to separate pieces of legislation, and the pensions of the latter group tended to remain low. Time-limited employment contracts are frequently used in Finland, especially among women of child-bearing age in public employment. Women make use of family-related leave much more often than men, and the reform was therefore in their interest. The present system takes into account all periods and earnings, which is an improvement for persons with fragmented working careers.

A maximum of five years spent on studies is also taken into account in pension benefits, provided that the person in question succeeds in obtaining a degree. Academic degrees are more commonly taken by women than by men, and therefore the reform may have benefited women. The issue was not pursued when the gender impact of the legislation was considered, however.

⁹⁰ Government Bill HE 45/2005 vp.

The pension reform has probably not come to an end. A rise in the official minimum pensionable age is often demanded in public debate. The employees' representatives claim that the reform has already effectively led to a rise in the de facto pensionable age, and will be more effective than making the official minimum age for retirement higher. It is also often claimed that employers are not in fact interested in keeping their older employees at work, and are even less interested in employing persons who are approaching the pensionable age.

3. Retroactivity of legislation

The provisions on the entry into force of each piece of pension legislation are complicated. Generally, however, the family pension system was reformed in 1990 so that both widows and widowers became entitled to a survivor's pension. Formerly, in private-sector family pension schemes only widows were entitled to such pensions. The conditions for such pensions were made somewhat stricter, however. A condition was introduced to the effect that the couple had to be married before the survivor was 50 years of age, but without full retroactive force in the case of widows.

The pension reform, put into effect by several pieces of legislation, was to be applied immediately. During a period of transition, however, the benefits are to be calculated under the old as well as the new rules. For example, according to the provisions on the entry into force of the Employees' Pensions Act,⁹¹ which came into force at the beginning of 2007, the new system was to be applied from that date. In employment contracts that continue without a break until the employee retires, if that happens before 2012 the pension is to be calculated both according to the rules in force before 2005 and according to the present rules. If the old rules would have provided a higher pension, the difference is to be added to the pension calculated by the new rules.

4. The World Bank Model

Not applicable.

B) STATUTORY OLD-AGE PENSION SCHEMES (Schemes falling under Directive 79/7/EEC)

Exceptions, Article 7.1 of Directive 79/7

Advantages granted to persons who have brought up children (Article 7.1 b))

Persons who have brought up children are given no special advantages above those already described (i.e. time and earnings during family-related periods of leave are taken into account in pension schemes).

Old-age or invalidity benefit entitlements or increases in long-term benefits by virtue of the derived entitlements of a wife (Article 7.1 c) and d))

Of old, the right to family pensions was reserved for widows only. As the different pension schemes differed from each other, the benefits may also have been different. Family pensions were made gender-neutral long before the latest pension reform, however. With an amendment to the Employees' Pensions Act of 1961 in 1990, the last preferential treatment of widows was removed, but widows born before 1950 were still eligible for a family pension at a younger age than widowers. The

⁹¹ Työntekijän eläkelain voimaantulolaki 396/2006

provisions on family pensions in the Employees' Pensions Act of 2006 make no exceptions to gender neutrality.

C) OCCUPATIONAL OLD-AGE PENSION SCHEMES

(Schemes falling under Article 157 TFEU, Directive 86/378/EEC, as amended by Directive 96/97/EC, now Articles 5-13 of the Recast Directive 2006/54/EC)

As the Finnish legislation is not well suited to the differentiation between schemes under the European three-pillar scheme, I have described the statutory, mandatory occupational pensions above.

1. Coverage

Due to difficulties in making a sensible difference between the pension system under Directive 79/7/EEC and the system under Directive 86/378/EEC, the description of the Finnish system is provided here. As described under A, Finnish pension schemes are statutory and mandatory, and they are operative in all fields where people have earnings either as employees or as entrepreneurs.

Under the Employees' Pensions Act, part-time and seasonal contracts are all included, provided that the employee in question is paid a minimum of EUR 41.89 per calendar month. The condition thus excludes only very occasional jobs. There are no grounds to believe that women would be more often affected by this condition than men. If the final pension benefit is EUR 20 per month or less, it may be paid as a lump sum, not as a monthly pension.

The pension right is not subject to a minimum contribution, a minimum hour threshold or some other such condition, and persons having non-typical jobs are not hampered by such eligibility conditions.

Unemployment benefit is a form of statutory occupational pension scheme. When the person on unemployment benefit fulfils the age criteria for an old-age pension, his or her unemployment benefit is turned into an old-age pension. The time on unemployment benefit is then calculated into the time for entitlement to an old-age pension.

Unemployment periods as such are taken into account if the person in question has received earnings-related unemployment benefits, by taking into account 75 % of the earnings that are the basis of the earnings-related unemployment benefit, up until the recipient is 63 years of age. The condition is that the unemployed person has been in employment for 10 months during the last 28 months, and has been a member of an unemployment fund for 10 months. Those who have been employed for 34 weeks during the previous 28 months, worked a minimum of 18 hours per week, and received a minimum sum in earnings, may receive unemployment benefit from the National Pensions Institute. Such a benefit is not income tested and is thus not dependent on the income of the spouse. The unemployed person who does not fulfil this condition of previous employment is merely entitled to a benefit that is income tested, and thus does not entitle that person to a pension. Due to the more fragmented working careers of women, they may be hit harder by the requirement of previous employment than men.

2. Calculation of old-age pensions and contributions

Since the pension reform, the amount of the pension is now based on lifelong earnings, except during the transition period when the former method of calculation would mean a better outcome for the person in question. The pension amount is

calculated as a percentage of earnings. As explained under 2., the percentage for accruing the pension is larger during the last few years in employment.

Gender is not an actuarial factor in the calculation of the pension amount.

There is no 'full pension' in the sense that the amount of the pension depends on the number of years of contributions, and on staying on until one reaches the age of 52 years or especially 63 years. It is calculated that post-reform pension schemes should amount to 60 % of one's pay upon retirement. The pension amount depends entirely on the income level and the years spent on earning the pension, but persons who fail to receive the minimum level defined by the national pension scheme are compensated from this system. For those whose earnings have been low, due to part-time work, long absences from occupational activity for study purposes, caring for children or the elderly or some other such reason, their pension tends to remain inadequate. Because absences due to care responsibilities are more common for women than men, women tend to be in the majority among those who need the national pension scheme to complement their occupational pension.

The statutory occupational pensions are not capped.

3. Actuarial factors

Gender is not used as an actuarial factor.

4. Caring credits

After the pension reform, more periods for care and income during these periods are now taken into account as pensionable earnings than previously. A total of 117 % of the earnings which form the basis for the maternity, paternity and parental benefits paid during corresponding periods of leaves are taken into account in the pension. If the benefit in question is paid to the employer (which occurs when the employer under a collective agreement pays full pay to the employee during such leave), 17 % of the earnings on which the benefit is calculated is taken into account; in these cases the pay itself is naturally also taken into account. Pensionable earnings also include remuneration to be paid from support to home care for children. Home-care allowances are paid to parents who care for their children at home, after the parental leave period has ended, until the child is 3 years old. The home-care allowance is a flat-rate benefit, and the sum is perhaps a quarter of what would be the earnings of the person in question on the labour market. The problem is not that the allowance is taken into account as earnings, but the fact that the level of compensation for the period of caring for children after the maternity, paternity and parental leave periods is so low and that the low level of the allowance is reflected in the pension.

5. Vesting and reimbursement rules

The pension schemes do not contain vesting and reimbursement rules. On the other hand, contributions to the system always provide an entitlement to a pension, and if the level of the pension remains low, compensation is received from the national pension scheme.

6. Pensionable age

The pensionable age is gender-neutral, both for employees and self-employed workers. Since the pension scheme for military personnel was made gender-neutral, there has been no need to equalize legislation or benefits from pension schemes.

The pensionable age is flexible, from 63 to 68 years, but that does not mean that 68 would be a mandatory pensionable age. Employment contracts come to an end

when the employee reaches 68 years of age, unless the employer and employee agree on a continuation. The employee may, of course, also seek employment elsewhere. In public service, the official must retire at 68, but even earlier retirement ages may be provided where occupational requirements so demand. Occupational pensions must be applied for and they are first paid after the person has left his/her occupation. However, after the decision is made, entrepreneurs may continue their occupation, and a retired person may seek a new job and even accrue a pension, if s/he is not yet 68. A person cannot be nominated to a public office after he or she has reached 68. As men tend to work in the private sector and women in the public sector, it may be that men, at least in theory, could more easily find paid employment even during their retirement. On the other hand, the gender gap in life expectancy in Finland is high, and it can be assumed that fewer men than women are capable of carrying on in an occupational capacity after 68. The gender impact analyses made in the context of the pension reform did not throw any light on such considerations.

7. Civil servants

As explained earlier, the pension system for civil servants, both state and municipal officials, follows similar rules to those of the private sector.

FRANCE – Sylvaine Laulom

A) GENERAL QUESTIONS

1. The old-age pensions system

In France, the statutory scheme is still organized on a Pay-As-You-Go basis and on the defined-benefits system. The pension depends on the individual's period of contribution to the scheme and the wage levels received in the past. The period of contributing to the scheme includes periods for which contributions were paid (periods actually worked) and periods for which contribution credits are awarded (periods of unemployment, for example, see below). The French social welfare system is characterized by the existence of an inter-professional social welfare general scheme for employees covering most of employees working in the private sector. Other schemes are attached to this general scheme (agricultural plan, non-employee non-agricultural). The general scheme was set up in 1946 and constitutes the first pillar. Private-sector workers' pension entitlements comprise a basic pension (through affiliation to the so-called '*régime général*' (general scheme)) and one complementary and compulsory pensions (through affiliation to the ARRCO ('Association pour le régime de retraite complémentaire des salariés') and/or AGIRC ('Association générale des institutions de retraite complémentaire des cadres') schemes). While the complementary schemes are based on the accumulation of points, the basic scheme is based on contribution years. There remains for other professions some other special schemes that pre-existed the setting up of the general scheme and did not wish to be attached to it. For civil servants, this question of the nature of the scheme has been answered by the Griesmar case which qualifies their scheme as a professional one.

There are old-age survivors' pensions in statutory and occupational schemes and they are gender-neutral.

There is a safety net in France. The minimum old-age pension which is now called the 'old people's solidarity allocation' ('*Allocation de solidarité aux personnes âgées*') is a guarantee for any older person residing in France to receive a minimum

amount on which to live. It was established for senior citizens who have not acquired sufficient rights for the social security pension. Access to the basic pension is subject to certain conditions: being 65 years of age (60 in certain circumstances), having insufficient resources, and living in France. The conditions are generally gender-neutral. However, there is still a specific advantage for women. If a woman has worked as a blue-collar worker for a certain period and justified a minimum insurance length under the statutory scheme, and if she has brought up children, the age requirement is lowered to 60 years of age.

2. Old-age pension reforms

The main provision of the 1993 reform that affects women more than men is the increase from 10 to 25 in the number of years used to calculate the reference wage upon which the pension amount is based. There are still some differences between statutory and occupational schemes at least regarding public servants. For example, if the reference period for the calculation of the retirement amount is based on the 25 best years, it is based on the last six months in the public servants' scheme.

As women's working careers are less homogenous than those of men, this increase is more likely to bring less good years into the equation for women. Thus although the reforms do not include any sex-specific provisions, the differences between men's and women's working careers lead to sex-specific differences in the effects of the reforms on the average pension amount'.⁹² Otherwise, discussions surrounding the 2003 pension reform have revealed concern about women's future entitlements. For example, specific provisions for part-time workers were adopted allowing them, under the statutory scheme and with the agreement of their employer, to contribute on a full-time basis. The provision is gender-neutral but has more positive effects for women as most part-time workers are women.

In the French old-age pensions system, for years, as a consequence of family policies, women were given specific pension rights. Indeed, it seems that 'France is the country that grants the widest range of pension rights for children raised and the longest established, as some date back to when the pension system was first created in 1945'.⁹³ In order to address a social reality, namely the disadvantages which women incur in their professional career by virtue of the predominant role assigned to them in bringing up children, mothers who have raised children were granted an increase in their insurance coverage and some other advantages. The purpose of these measures was to offset the disadvantages which female workers who have had children encounter in their professional life. Some differences existed between the statutory old-age pensions scheme, the scheme governing the retirement of civil servants and other specific occupational schemes, but a common aspect was the recognition of these specific rights for mothers: contribution credits to increase the contribution period, the provision of a pension for non-working parents, and pension bonuses for persons with three or more children.

As is well known, the *Griesmar* case⁹⁴ challenged the specific rights for women in occupational old-age pension schemes and obliged the government to adopt new measures, thereby taking fathers into account and not only mothers. These measures were included in the 2003 Law reforming the old-age pensions system. However, the

⁹² C. Bonnet, S. Buffeteau & P. Godefroy 'Effects of Pension Reforms on Gender Inequality in France', *Population-E* (2006) pp. 41-70.

⁹³ C. Bonnet, S. Buffeteau & P. Godefroy 'Effects of Pension Reforms on Gender Inequality in France', *Population* (2006/1) p. 41.

⁹⁴ CJCE, 29 November 2001, *Griesmar*, 366/99.

conformity of the scheme governing the retirement of civil servants to EU legislation is still debated as it would still indirectly discriminate against fathers, and on 25 June 2009 the European Commission sent a reasoned opinion to France.

The *Griesmar* case did not question the legality of the general pension scheme. Article 7 of Directive 79/7 still allows for differences between men and women for advantages in respect of old-age pension schemes granted to persons who have brought up children and the acquisition of benefit entitlements following periods of interruption to employment due to bringing up children. Thus some specific rights for women who have raised children were preserved in the statutory old-age pension schemes. However, the *Griesmar* case provided hope to plaintiffs and the statutory old-age pension scheme has also been challenged, not through the legislation of the EU, but through Article 14 of the European Convention on Human Rights. As a consequence, new legislation was enacted on 24 December 2009.⁹⁵

The general reform of pensions, aiming to lower the financial burden of pensions, has finally been adopted.⁹⁶ The main provision of the reform is the extension of the statutory age for entitlement to an old-age pension from 60 to 62, a stage that will be reached gradually. The legal age is when one is able to claim a pension, whether all the contributions have been met or not and it is a legal right. The minimum years of contribution which give the right to a full pension will also be increased from 40.5 years to 41 in 2012 and to 42 thereafter. The age of entitlement to a full pension (that is, a pension without deductions) will also be progressively raised to 67 from 65.

It is obvious that the law will have negative consequences for women. As women are usually working and contributing less than men because of part-time work and because of interruptions to their careers, the increase in the minimum years of contribution will automatically affect women more than men. However, there are only three measures in the law which take into account the specific situation of women and they are not sufficient to improve the pension situation of women, while the reform could threaten their already inadequate pension rights.

First, the daily maternity allowance received by women when they are on maternity leave will be taken into account when calculating their pension rights. Second, the age of entitlement to a full pension will remain at 65 for parents, born between 1 July 1951 and 31 December 1955, of three children. This specific right will be granted to the parent who has interrupted or reduced her/his career to raise their children. A similar rule will apply to the parents of a disabled child. The third provision regards the gender pay gap. The idea is that a stricter policy on the gender pay gap will contribute to reducing wage differences and will thus have positive consequences for the level of women's pensions. The labour code already provides an obligation to negotiate on sex equality and equal pay at enterprise level. Thus every year, at company level, the employer has a duty to negotiate with trade unions in order to define the objectives concerning equality between men and women in the enterprise and to design the measures to be implemented in order to attain these objectives. If an agreement is reached, the obligation to negotiate will only apply every three years. The employer must also give information to workers' representatives on equality. Employers in enterprises with at least 50 employees must present to the works council, each year, a written report on the comparative situation of men and women in the enterprise. The report must contain a comparative analysis between men and

⁹⁵ Article 65 de la loi n° 2009-1646, loi de financement de la Sécurité Sociale pour 2010. On the actual situation, see E. Chemla, 'Retraites : majorations de durée d'assurance et égalité', *Droit social* fév. 2010, p. 190.

⁹⁶ Loi No. 2010-1330 du 9 novembre 2010 portant réforme des retraites.

women in terms of recruitment, training, qualification, pay, working conditions and the balance between professional and private life. The new law on pensions provides that the report must now contain an 'action plan' to insure occupational equality between women and men. This plan must be based on clear, precise and operational criteria and must define the objectives for the year to come and the necessary actions to attain these objectives. The most important measure of the pension law is that sanctions are now prescribed when enterprises employing at least 50 employees have not concluded any agreement on sex equality or have not produced an 'action plan'. The sanction provided by the law is a maximum fine of 1 % of the wages due to the workers during the period when an agreement should have applied. A decree must now be adopted to determine more precisely the sanction that will take into account the efforts made by the enterprise to attain equality objectives and the reasons why no agreement or action plan have been concluded. Enterprises now have until 1 January 2012 to comply with these new obligations. A decree must also be adopted to define the content of the action plan.

The pension reforms have met with strong opposition from all trade unions, with strikes and massive street protests. If, at the beginning of the debate, the gender consequences of the reform were highlighted by only a few commentators, this issue has become the one central argument of the numerous opponents of the reform. In a recent deliberation,⁹⁷ the Haute Autorité de Lutte contre les Discriminations et pour l'Égalité (HALDE) held that the reform will have much greater negative consequences for women than for men and it has asked for positive actions to improve the situation of women in the labour market, particularly concerning the gender pay gap. The HALDE also held that better account should be taken of the situation of women in the pensions system in order to improve their pension rights. The members of the Observatory of parity between women and men (Observatoire de la parité entre les femmes et les hommes) also want Parliament to pay attention to the possible indirect discrimination that can be found in the reform and they fear that the sanctions provided are not sufficiently precise. However, the Constitutional Court has approved the law and found that the equality principle has been respected as the law specifies the same rules for women and for men⁹⁸ The Constitutional Court adopted, in its decision, a very formal interpretation of the principle of equality between women and men and it did not take into account the fact that the law will have more negative effects on women than on men.

3. Retroactivity of legislation

Concerning the consequences of the *Griesmar* case in the occupational old-age pension schemes, the question still being debated concerns the transitional period as the rights are different if children are born before or after 1 January 2004. For children born after 2004, women will still receive a six-month contribution bonus per child. According to the law, this specific right is linked to pregnancy and maternity and thus it should not be analysed as discrimination prohibited by EU legislation. Indeed, in the *Griesmar* case the Court of Justice has distinguished 'whether that credit is designed to offset the occupational disadvantages which arise for female workers as a result of being absent from work during the period following childbirth, in which case the situation of a male worker is not comparable to that of a female worker, or whether it is designed essentially to offset the occupational disadvantages which arise for female

⁹⁷ Délibération No. 2010-202, 13 septembre 2010.

⁹⁸ Décision No. 2010-617 DC du 9 novembre 2010.

workers as a result of having brought up children, in which case it will be necessary to examine the question whether the situations of a male civil servant and a female civil servant are comparable' (point 46). Another contribution bonus could be paid to both women and men but is equal to the periods when they are off work or working reduced hours for child-care purposes, up to a three-year ceiling.

However, the system is different for children born before 2004. So as not to extend the previous women's right to men, a transitional period is needed so as not to harm the reasonable expectations of women in the continuation of existing pension rules. According to the 2003 law,⁹⁹ female and male civil servants will receive a one-year pension contribution 'bonus' for every child born or adopted before 2004 if they stop working to look after the child for at least two months. Could this rule be considered to be indirect discrimination as the Commission believes? The problem is that because of pregnancy leave, women will automatically fulfil this condition and not men.

The 2003 law has maintained specific rights for mothers in statutory schemes as was allowed by Article 7 of Directive 79/7. For the *Conseil Constitutionnel* this was not contrary to the constitutional principle of equality as it could be viewed as positive action: 'considering that it is the legislator's duty to take account of inequalities from which women have suffered up to now; that in particular they have ceased employment to a much greater extent than men in order to bring up their children; that, in 2001 for instance, their contribution period to a scheme was, on average, 11 years less than that of men; that women's pensions remain, on average, one-third lower than those of men; that it is in the general interest to take account of this situation and guard against the consequences that would result from repealing the provisions of Article L. 351-4 of the Social Security Code on the level of pensions provided to contributors in the coming years, the legislator is entitled to maintain, while adjusting them as required, provisions aimed at compensating for the inequalities that are normally destined to disappear'.¹⁰⁰ It was the first time that the *Conseil Constitutionnel* had used this argument to justify what could have been considered to be discrimination.

However, certainly because of the Griesmar case, this provision was challenged by fathers who have raised children. In a first decision, the *Cour de cassation*,¹⁰¹ in applying Article 7 of Directive 79/07, refused to grant a father who had raised two children alone the increase in his insurance coverage.¹⁰² In 2006, the *Cour de cassation* decided that Article L.351-4 of the Social Security Code was contrary to Article 14 of the European Convention on Human rights.¹⁰³ Article L.351-4 does not make any distinction between women who have stopped working to raise their children and women who continue to work. For the *Cour de cassation* there is no justification in distinguishing between women who have not stopped working to raise their children and a man who proves that he has raised his child alone. However, the legislator did not take this decision into account and no modification was made to this provision. In 2009, the *Cour de cassation*,¹⁰⁴ applying Article 14 of the European

⁹⁹ Article 12 and R13 of the Civil and Military Retirement Pensions Code.

¹⁰⁰ Decision n°2003-483 DC du 14 août 2003.

¹⁰¹ Cass. 2^{ème} civ. 29 novembre 2006, n°04-30586, Bull. II 364.

¹⁰² Cass. 2^{ème} civ. 14 juin 2004, n° 02-30978, Bull. II 300.

¹⁰³ The conformity of the French provisions with the ECHR could be discussed as the European Court has accepted specific rights for women if justified; see ECHR, 27 March 1998, *Petrovic v Ostrja* and ECHR 12 April 2002, *Stec v United Kingdom*, see E. Chemla, op. cit.

¹⁰⁴ Cass. 2^{ème} civ. 19 février 2009, n°07-20668, Bull. II 53.

Convention on Human Rights, held that such a difference in treatment between men and women is contrary to the Convention; it could only be allowed if there is an objective and reasonable justification for this difference. Thus the man, the father of the 6 children he had raised, could request the same pension benefits as a woman. The decision of the *Cour de Cassation* follows a deliberation of the HALDE, which took the same position and asked the legislator to modify the Social Security Code.¹⁰⁵

The decisions of the *Cour de cassation* provided a strong incentive to the legislator and a new provision included in the law to finance social security in 2010 was adopted in December 2009.¹⁰⁶ As for civil servants, a specific right for women linked to maternity is maintained: increased insurance coverage for pensions in the private sector for a maximum of one year for women who have given birth to one or more children. For the second year, the mother will continue to benefit from another increase in insurance coverage for children born before 1 January 2010, except if fathers can prove, in the year following the publication of the law, that they have raised their children on their own. For children born after 1 January 2010, the mother will continue to benefit from an increased insurance coverage for a second year, if there is agreement between the father and the mother, expressed in the six months following the child's fourth birthday. If there is disagreement between the parents, the advantage will be granted to the parent who can prove that he/she has contributed more and for a longer period to the education of the child. If both parents have contributed equally to the child's education, the benefit will be divided into two.

4. The World Bank Model

Not applicable.

B) STATUTORY OLD-AGE PENSION SCHEMES (Schemes falling under Directive 79/7/EEC)

1. Qualifying conditions

The statutory age for entitlement to an old-age pension is 60. Workers may however claim their pension later if they so wish. It is also possible to claim a pension before the age of 60 in the case of extended periods of insurance or disability. Individuals who continue to work after the age of 60 and who have paid contributions for longer than the period required to obtain a full pension (this depending on the year of their birth) can obtain an increase in their pension. A reform of old-age pensions is actually being discussed and it seems that the age of 60 is going to be replaced by an older limit, possibly 62. Non-standard work contracts, part-time contracts, short-term contracts, etc, are covered by the statutory pension scheme. There is, however, a minimum hours threshold. Workers must have earned in one year at least 800 times the hourly minimum wage in order to validate one full year. If workers' wages are below this threshold, it is possible to validate a quarter if in a period of three months a worker had earned 200 times the hourly minimum wage.

Periods of unemployment are assimilated to periods of work according to certain conditions. 50 days of unemployment benefit allow the validation of one quarter.

¹⁰⁵ Délibération n°2005-43 du 3 octobre 2005 and Délibération n° 2008-237 du 27 octobre 2008.

¹⁰⁶ Article 65 de la loi n° 2009-1646 du 24 décembre 2009, loi de financement de la Sécurité Sociale pour 2010.

2. The amount of the old-age pension

Gender-specific life expectancy tables are not taken into consideration in calculating the pension amount. There is a trend to extend the contribution period required for eligibility. Before the 2003 law, the minimum contribution was 37.5 years. Now the number of necessary annuities to benefit from a full retirement pension has increased depending on one's date of birth. For example, for people born in 1952, they need 41 years of contributions (164 semesters) to benefit from a full retirement pension. There is no minimum contribution but the level of the pension will depend on the years of contribution. The reference period for the calculation of the retirement amount is based on the 25 best years. It is now being debated whether it will be necessary to extend the contribution period once more. Each extension has negative consequences for women as it will be more difficult for them to reach this extension.

The amount of the pension depends on three different factors. The average annual earnings are the adjusted earnings on which contributions have been paid. The reference period for the calculation of the retirement amount is now based on the 25 best years. The payment rate of pensions paid between the ages of 60 and 65 is calculated according to the total period of insurance, including periods credited as periods of insurance. The 50 % full rate is payable to individuals having a total insurance period of 160 to 164 quarters (depending on the year of one's birth), aged over 65 or belonging to specific categories. For those who have not worked for the total insurance period, the pension will be less important. The total period of insurance includes both periods of contributions paid to the various basic schemes (see Section L 351–1 of the Social Security Code) and equivalent periods, i.e. periods of cessation from work in the case of sickness, maternity, disability, industrial injury, military service, unemployment, etc. The total insurance period is the effective period of insurance (contribution periods and equivalent periods) under the insurance scheme. There is a minimum amount of old-age pension for those who meet qualifying conditions.

3. Periods of caring

Maternity leave and parental leave are entirely credited for building up pension rights. Fathers or mothers who raise a child with a disability receive an increase in their insurance coverage length of one trimester per raising period with a length of 30 months with a maximum of 8 trimesters (Article L. 351-4-1 CSS).

In case of interrupted activity, the parent who remains at home can benefit from the old-age insurance. Some conditions must however be met: to be the beneficiary of certain family benefits, to have an income below a certain ceiling, to have dependent children, their number and age being decided by a decree.

4. Exceptions, Article 7.1 of Directive 79/7

Pensionable age and the possible consequences for other benefits (Article 7.1a))

There is no mandatory retirement age in the statutory old-age pension scheme. It is now possible and easier to continue working if a person receives an old-age pension. Since January 1, 2009, it is possible after the age of 65 years (or after 60, if a person has a right to a full pension) to receive an old-age pension and to continue working. The pensionable age has always been the same for men and women in France.

Advantages granted to persons who have brought up children (Article 7.1.b))

Caring advantages exist in France and for a very long time they have not been gender-neutral (see above). The purpose of these measures was to offset the disadvantages which female workers who have had children encounter in their professional life. These specific rights have now been extended to fathers. If the recognition of fathers' rights could not be questioned, the problem was to conceive a solution where women's rights are not diminished. Unfortunately, these reforms occur in the context of a general reform of pensions, aiming to lower the financial burden of pensions, and nobody thinks that the rights previously granted to mothers can be maintained and offered to fathers. The question is whether the reforms will not have a reverse effect as far as women are concerned.

Old-age or invalidity benefit entitlements or increases in long-term benefits by virtue of the derived entitlements of a wife (Article 7.1c) and d))

The award of a reversion pension to a surviving spouse is not automatic but is subject to specific age and income conditions, but it has become gender-neutral. Reversion pensions are paid to surviving spouses or surviving former spouses aged at least 55, whose income is below a given level. The income to be taken into consideration is the survivor's personal income or that of the new household in the case of remarriage, a civil union or a common-law marriage. Persons whose spouse died prior to 1 January 2009, and who fulfilled the requisite conditions on that date, are entitled to a reversion pension from the age of 51. The amount of the reversion pension may not exceed 54 % of the deceased spouse's pension or the pension to which the deceased spouse would have been entitled. Persons not meeting the age requirement for a reversion pension may qualify for a widowhood allowance. This is a temporary benefit intended to support the surviving spouse until he/she finds a job or returns to work. It is payable to any person not meeting the age requirement for a reversion pension and whose personal income is below a certain level.

C) OCCUPATIONAL OLD-AGE PENSION SCHEMES

(Schemes falling under Article 157 TFEU, Directive 86/378/EEC, as amended by Directive 96/97/EC, now Articles 5-13 of the Recast Directive 2006/54/EC)

There are many different occupational old-age pension schemes in France. Complementary schemes are considered as professional schemes.¹⁰⁷ The employee mandatory complementary schemes were created by inter-professional agreements or by law (AGIRC, ARRCO). These schemes are generalized and work under the distribution rules with a system of accumulating points. There are also various special schemes. The complementary schemes are mandatory and apply to almost all workers who are also covered under the basic scheme. Thus there are no sectors of the economy where occupational pension schemes do not operate. Their rules may be different, but they are mostly based on the same principles as the statutory scheme. They are based on defined contributions and run on a 'pay as you go' basis. Thus there have been no specific vesting rules. There are no related actuarial factors. There are no different pensionable ages for men and women in occupational schemes. In the complementary schemes, the situation of part-time workers is the same as in the statutory schemes and periods of leave and periods of unemployment are taken into consideration. There were some caring advantages provided by occupational schemes

¹⁰⁷ ECJ, 25 May 2000, C-50/99, *Podesta*.

and they were sometimes only granted to women. But after the *Griesmar* and the *Podesta* cases these advantages became gender-neutral.

GERMANY – Beate Rudolf

A) GENERAL QUESTIONS

1. The old-age pensions system

The old-age pension system in Germany is based, for most employees, on the traditional three-pillar model. All employees are covered by statutory pensions pursuant to the Social Code No. VI (*Sozialgesetzbuch Sechstes Buch (SGB VI)*), unless they belong to an occupational pension scheme. Additional private insurance can be bought by employees. Self-employed persons (with some exceptions)¹⁰⁸ are not obligatory members of the statutory pension scheme, but may voluntarily become members. Special rules apply to members of the liberal professions that have set up their own chambers:¹⁰⁹ If they are self-employed, they are members of special statutory pension schemes set up by public law (*berufsständische Versorgungswerke*); employees in the liberal professions may apply for membership in these special schemes. These special schemes are considered to be part of the first pillar. Public servants fall under a special regime; they receive old-age pensions (*Beamtenversorgung*) from their employer without having had to contribute to any scheme.

The statutory pension scheme is organised on a Pay-As-You-Go basis; occupational pension schemes and the special schemes for the liberal professions are funded schemes.

The statutory pension scheme is based on the Defined Contributions system. Occupational pension schemes can be based on the Defined Benefits system or on the Notional Defined Contributions system; the latter is prevalent. The special schemes for the liberal professions are based on Defined Contribution systems.

Old-age survivors' pensions exist in both statutory and occupational pension schemes, as well as in the special schemes for the liberal professions and for public servants. They are gender-neutral.

Those who do not qualify for statutory pensions are entitled to social benefits (*Sozialhilfe*) pursuant to the Social Code No. XII (*Sozialgesetzbuch (SGB) Zwölftes Buch (XII) – Sozialhilfe*).

2. Old-age pension reforms

During the last decade, gender equality has not triggered any reform of the old-age pension systems (an equalisation of the different retirement ages had already taken place in 1996, in the wake of the *Barber* judgment). When the retirement age was increased (from 65 years to 67), it applied to men and women equally (the increase is incremental; 67 years applies to all persons born after 31 December 1963).

In the light of decreasing statutory pensions due to an increase in persons entitled to statutory pensions and the concomitant decrease in the workforce, the government

¹⁰⁸ Among the categories of self-employed persons who are obligatory members of the statutory pension scheme are a number of professions with a high percentage of women, such as care workers, midwives, or persons working from home (*Heimgewerbetreibende*).

¹⁰⁹ They encompass architects, physicians, dentists, veterinarians, psychotherapists, pharmacists, lawyers, notaries public, tax consultants, chartered accountants, auditors, and engineers.

created incentives for additional private old-age insurance. After criticism of the fact that such private insurance (*'Riester Rente'*, named after the Labour Minister at the relevant time) used actuarial factors to the detriment of women, the conditions for government subsidies for Riester Rente were changed: Subsidies are only granted for entering into private insurance that applies unisex tariffs. In contrast, the reform did not take into account the fact that, because of their lesser income, women would be in a lesser position to take out additional private insurance.

To some extent, the statutory pension schemes take into consideration the different working patterns of men and women. For example, they take into account the time taken for child care up to three years per child. Such time is attributed to the parent who has actually taken care of the children, and it is evaluated as being 83 % of average income. Caring for sick family members is only taken into account if it took place between 1992 and 1995. The gender pay gap (due to women's lower average income and because of their higher proportion among part-time workers) is not taken into account. Indeed, German statutory pensions have long been criticised for their reliance on the 'normal employee' (*Normalarbeitsverhältnis*) as reflecting male working patterns.

While the reforms have not taken into account the need for substantive gender equality, they have also not created new obstacles to achieving gender equality.

3. Retroactivity of legislation

Pension systems in Germany have not recently been amended in order to take gender inequalities into account. The amendments that took place in 1992 concerning occupational pension schemes (the equalisation of the retirement age for men and women) contained limited retroactivity. According to Sect. 30a of the Law on Occupational Pensions, men born before 1 January 1952 have the right to request payment of occupational pensions when they reach 60 years of age or older (and fulfil the general requirements for statutory pensions).¹¹⁰ For calculating the amount of pension due, only work performed after 17 May 1990 (the date of the *Barber* judgment) is taken into consideration. Thus, men can receive occupational pensions from the same age as women could (until the *Barber* judgment and before the subsequent changes in the Law on Statutory Pensions which introduced a uniform age limit of 65 years). For women, however, the work performed before the *Barber* judgment will also be taken into account for the calculation. No compensation for disadvantages suffered in the past was introduced, and no levelling down took place.

4. The World Bank Model

Not applicable.

B) STATUTORY OLD-AGE PENSION SCHEMES (Schemes falling under Directive 79/7/EEC)

1. Qualifying conditions

The qualifying conditions for access to statutory old-age pensions are (1) having reached the age limit (of 67 years)¹¹¹ and (2) having fulfilled the 'general waiting period' (*allgemeine Wartezeit*). The latter term denotes a minimum period of five

¹¹⁰ Among other things, there is a prohibition on earning more than EUR 400 monthly while receiving a statutory pension, Sect. 34(3) No. 1 Social Code No. VI (*Sozialgesetzbuch (SGB) Sechstes Buch (VI)*), available at www.gesetze-im-internet.de (visited 7 April 2010).

¹¹¹ A lower age limit (65 or more) for those born before Jan. 1, 1964; see above at A) 2.

years of payment of contributions or of special time periods that must be considered (*Berücksichtigungszeiten*), which includes periods for bringing up children (maximum 3 years per child) or for looking after a child in need of care (*pflegebedürftig*). The relevant payment of contributions applies to standard and non-standard work contracts, including part-time and low-income contracts, *i.e.* with a monthly salary of EUR 400 or less (*geringfügig Beschäftigte*). However, for short-term contracts and occasional contracts that last less than two months or 50 days per calendar year, contributions do not have to be paid. There is no information as to whether the last-mentioned category covers men and women to a different extent. The exclusion of short-term contracts and occasional contracts reduced the scope of exclusion as compared to the situation which led to the judgment in case C-317/92 (*Inge Nolte v Landesversicherungsanstalt Hannover*); it is therefore justified *a fortiori*.

The pension right is not subject to minimum contributions or employment conditions. Also, there is no trend to extend the minimum contribution period required for eligibility. On the contrary, the conditions for fulfilling the minimum contribution period have been eased: The minimum threshold of 15 hours, which was also at stake in the *Inge Nolte* case, has since been abolished.

The qualifying conditions described above do not hamper the pension rights of part-time workers, but hamper those of temporary and occasional workers. These categories of employees can gain a number of months towards the minimum contribution period by voluntary contributions, which must amount to at least EUR 79.60. Vertical part-timers are particularly disadvantaged as compared to part-time workers because they have to rely on voluntary contributions to gain the same number of relevant months as part-time workers. A vertical part-timer who works full time, but only for six months per calendar year, only gains six months towards the 'general waiting period', whereas a part-timer working 50 % during the whole year gains 12 months. It must be underlined, however, that qualification for pensions does not depend on whether a worker has earnings and a career which are inferior to the average standard. Discrepancies in this regard do however strongly influence the amount of old-age pensions.

Periods of unemployment are taken into account for pension rights and amount purposes.

2. The amount of the old-age pension

The amount of the statutory pension is based on lifelong earnings, which are reflected in the contributions paid over one's full-life career. The contributions are converted into 'salary points' (*Entgeltpunkte*). A full salary point is given for contributions paid out of the average yearly income of all salaried workers in Germany. The amount of a contribution is calculated in proportion to the salary received; there is a cap on the salary which is taken into account for this purpose (*Beitragsbemessungsgrenze*); it stands at EUR 66 000. These salary points based on the contributions paid are supplemented by fictitious salary points, which reflect periods during which no contributions were paid, such as periods for raising children, and periods during which reduced contributions were paid, such as times of unemployment. Life expectancy does not influence the amount of the old-age pension and thus does not result in any inequality between men and women.

There is neither a maximum nor a minimum amount of statutory old-age pension. This explains why the minimum contributory period is so low (five years, see above at B)1.) There are no flat-rate benefits.

For part-time workers, the same rules apply. As the conversion of contributions into a full salary point (*Entgeltpunkt*) is made on the basis of the average yearly income of all salaried workers in Germany, the lower annual income of part-time workers contributes to lowering the figure (which presently stands at EUR 32 003 (EUR 26 918 for the Eastern *Länder*)).

Old-age pensions are indexed in comparison to the average annual salary. The annual old-age pension of a standard pensioner (*Eckrentner*) relates to the average yearly income of salaried workers. The standard pensioner is defined as a person who has paid average contributions for 45 years and has thus acquired 45 salary points. This indexing is used only for the purpose of determining the percentage of pension payments out of the salaries of the current generation of workers. If the percentage is projected to fall below 46 % until 2020 (or below 43 % until 2030), the Federal Government has to propose adequate measures to the Federal Parliament. There is no ceiling on benefits.

3. Periods of caring

Periods of maternity leave are taken fully into account for building up pension rights. Periods of parental leave are taken into account for each child up to three years of age (if another child is born during this time, the periods are added up). The time is evaluated as 83 % of the average income. Caring for children above three years of age is taken into account if the parent paid contributions during that period and if she/he has paid statutory contributions for at least 25 years. Parents engaged on low income contracts do not have to have paid contributions during the care period. Caring for sick family members is only taken into account if it took place between 1992 and 1995 and if the person in question paid voluntary contributions into the statutory pension scheme.

In all cases, the periods are credited to the parent irrespective of their employment position (with the exception of low-income contracts, see above). The provisions are gender-neutral. The system is still based on the traditional one-care provider model in that it allocates the caring time to one parent only and does not allow for this period to be shared between the parents. Parents can, however, reach a *de facto* sharing agreement by a common declaration in which they attribute parts of the caring time to the mother and parts to the father. If, however, the parents do not arrive at a unanimous declaration, the care time is attributed to the mother – yet another indication that the system is not gender-neutral. It does, however, work in favour of mothers because they can thus build up credit towards their pensions.

Ensuring that parents caring for a child do not suffer negative consequences with respect to their statutory pensions when they interrupt their employment is justified by the societal interest of not creating a disincentive to have children. This interest belongs to society as a whole, and not merely to persons covered by statutory pension schemes, and hence it should not be shouldered by the more limited circle of members of statutory pension schemes. Given the differences in EU member states with respect to their statutory pension systems, I would find it difficult to formulate a minimum provision on care credits.

4. Exceptions, Article 7.1 of Directive 79/7

The pensionable age and the possible consequences for other benefits (Article 7.1 a))

The mandatory retirement age is 67 for all persons born after 1 January 1964. It used to be 65, but has been increased (on an upward moving scale for persons not yet

retired, but born before 1 January 1964). The retirement age cannot be deferred. Claimants who receive an old-age pension can still work; the maximum additional monthly income is EUR 400.

The pensionable age is equal for men and women. The former unequal age limit had been justified by the notion that women should be compensated for the discrimination they had encountered during their working life, and the fact that they usually bear the larger part of family chores, including bringing up children, which reduces their pensions. After the *Barber* judgment by the ECJ, this argument was no longer regarded as being tenable, and the ECJ's argument became generally accepted. The equalisation of the pensionable age for men and women was brought about in 1996 in the wake of the *Barber* judgment. There is a transitional period, which started in 2000 (for women born after 21 December 1939) and which will end in 2012 (i.e. for women born between 1945 and 1951, the pensionable age reaches 65). Men were not compensated for any loss suffered in the past.

On average, men leave the labour market at the age of 63.6, while women do so at the age of 63.2 (in the 'old' Länder of the Federal Republic of Germany; for the 'new' Länder, the ages are 63.1 for men and 61.6 for women).¹¹² Data on years of service acquired are not available.

In my opinion, the exception concerning the pensionable age can be eliminated from EU legislation on statutory social security. The *Barber* judgment should have triggered a changed understanding a long time ago. Nevertheless, the principle of proportionality would require a transitional period with a staggered increase in lifelong working time. The exception should be eliminated because it perpetuates gender-based stereotypes and works to the disadvantage of women because women have less time to build up their claim for social security benefits. Moreover, their chances of finding employment decrease with their age more than men's chances decrease because employers consider them to be less attractive employees due to the fact that they cannot be employed for the same length of time as men of the same age. Instead of a mandatory earlier retirement age for women, a proportionate approach would be to permit all workers to enjoy earlier retirement concomitant with the years spent on bringing up children or caring for children or elderly family members.

Advantages granted to persons who have brought up children (Article 7.1 b))

The only advantages for having brought up children are the crediting mechanisms described above (at B.3 and B.4.1).

Old-age or invalidity benefit entitlements or increases in long-term benefits by virtue of the derived entitlements of a wife (Article 7.1 c) and d)).

About 60 000 men and 250 000 women benefit from old-age benefits after the death of their spouse.¹¹³

The rules on survivors' pensions are gender-neutral. Surviving wives are entitled to a survivor's pension when they bring up a child who is under 18 years of age, when they are older than 47 years, or when their capacity to work is limited because of invalidity (*erwerbsgemindert*). For all other survivors, their pension is limited to

¹¹² Statistik der deutschen Rentenversicherung, Rentenzugang 2009, p. 4 (published in June 2010), http://www.deutsche-rentenversicherung.de/nn_23882/SharedDocs/de/Inhalt/04_Formulare_Publikationen/03_publicationen/Statistiken/Statistik_Baende/statistikband_rentenzugang_wegfall_aenderung_pdf.templateId=raw.property=publicationFile.pdf/statistikband_rentenzugang_wegfall_aenderung_pdf, accessed 14 August 2010.

¹¹³ Statistik der deutschen Rentenversicherung, *supra* note 112, p. 88.

24 months after the death of the husband (or wife). Widows who have remarried are not entitled to a survivor's pension, unless the new marriage has resulted in divorce or has been annulled. Three months after the death of the husband, the income of the widow is taken into account for determining the amount of her survivor's pension. The method for taking this income into account is rather complicated: Only income that surpasses the present value of the pension (*Rentenwert*) by more than 26.4 times is taken into account. This limit is augmented by a factor of 5.6 compared to the present value of the pension for each child under the age of 18. The present value of the pension reflects the pension that a person earning an average income would receive after having paid into the social security scheme for one year. It is adapted every year. Presently, the present value of the pension is EUR 27.20 (in the Western Länder), and EUR 24.13 (in the Eastern Länder).¹¹⁴

In the case of divorce, the pension rights are split between the spouses.

With respect to EU law: These exceptions should be provided in a gender-neutral way; EU gender equality legislation should abolish the exception which is made for wives only. However, for those Länder that have made use of the exception and which are bound by the prohibition of 'levelling down', a transition period is necessary so as to allow the Länder to adapt their social security systems gradually to take the increase in claimants into account.

C) OCCUPATIONAL OLD-AGE PENSION SCHEMES

(Schemes falling under Article 157 TFEU, Directive 86/378/EEC, as amended by Directive 96/97/EC, now Articles 5-13 of the Recast Directive 2006/54/EC)

1. Coverage

Participation in occupational pension schemes is mandatory if contained in collective labour agreements; otherwise it is voluntary. The Law to Improve Occupational Pensions (*Gesetz zur Verbesserung der betrieblichen Altersversorgung – Betriebsrentengesetz, BetrAVG*) does not exempt any sector of the economy from its application. Occupational pension schemes can replace statutory pensions; in most cases, they only supplement them.

There are five types of occupational pension schemes: direct insurances (*Direktversicherung*), pension promises by the employer (*Pensionszusage*), support and pension institutions (*Unterstützungskasse* and *Pensionskasse*) and pension funds (*Pensionsfonds*). Direct insurances are offered by private insurance companies. Pension promises by the employer require the employer to earmark specific monies, which may be put in a fund, invested in the company, or used to purchase insurance. In any of these cases, the employer must insure the monies concerned against the risk of insolvency. Support institutions are institutions that administer the contributions, but are borne by one or several employers; employees retain their claims against the employer. The employer has to insure the monies given to the support institution against the risk of insolvency. Pension institutions are independent associations, created by one or several employers; employees have a claim against that institution. Pension funds are institutions which are independent of employers; employees have claims against that institution. Pension institutions and pension funds are controlled by the Federal Office for Insurances (*Bundesamt für das Versicherungswesen*).

¹¹⁴ Source: http://www.deutsche-rentenversicherung.de/nr_15834/SharedDocs/de/Navigation/Deutsche_RV/werte_rv_node.html_nnn=true#doc15836bodyText2, accessed 14 August 2010.

Because of the multitude of occupational old-age pension schemes, it cannot conclusively be stated whether there are membership limitations. The Law on Occupational Pension Schemes does not provide for such limitations. Equally, it does not exclude certain categories of staff from being covered.

No gender-disaggregated data on the participation rate in occupational pension schemes are available.

2. Calculation of old-age pensions and contributions

Pension amounts are contribution-related. The basis for calculating the contribution depends on the applicable collective agreement or the specific agreement between an employer and employee. Hence, no general rule can be discerned as to whether particular wage elements (beyond the ordinary wage) are relevant. Equally, the exclusion of non-standard workers (temporary or occasional workers, low-income workers (*geringfügig Beschäftigte*)) may be part of an applicable collective agreement or specific contract.

Irrespective of the type of occupational pension scheme, contributions are paid by the employer; the employee has the right to demand that a part of his/her salary is used towards the occupational pension scheme. There is an upper cap on this contribution; it amounts to 4 % of the maximum amount on which contributions to the statutory social security are calculated (*Beitragsbemessungsgrenze*). On average, employees pay about EUR 40 out of their own salary towards occupational pension schemes. This amount is tax deductible and reduces the social security charges of the employee.

Periods of unemployment are not taken into account for amount purposes, but are taken into account for pension eligibility as they are calculated with respect to the general waiting period (in the same way as they count towards the general waiting period within the statutory social security system).

The decisive criterion for pension purposes is the amount paid into the scheme; the duration of participation is not relevant.

3. Actuarial factors

Since 31 December 2005, unisex tariffs are mandatory. They must ensure that men and women paying the same amount of contributions gain the same amount of pension. In contrast, there is no provision for taking into account the fact that, on average, women earn less than men.

4. Caring credits

No credits are given for caring for a child or other family members. Parents taking parental leave may pay voluntary contributions to an occupational pension scheme, but the employer is not obliged to contribute as well. Thus, *de facto* this opportunity is only available to a parent whose spouse has a sizeable income.

5. Vesting and reimbursement rules

When an employment relationship ends, employees retain their claim if the employment has lasted for at least five years and the employee is older than 25 years. Upon fulfilling the general requirements for old-age pensions (attaining the age limit, fulfilling the general waiting period as under the statutory social security scheme), the employee is entitled to the pension payments from the occupational pension scheme.

6. Pensionable age

Today, the pensionable age is 67 for men and women alike. It is gradually being increased from 65; the transition period will end in 2012. Before the *Barber* judgment, the age limit for women was lower than that for men (60 as compared to 65). It was equalised by Sect. 30a of the Law to Improve Occupational Pensions.¹¹⁵ This provision grants men born before 1 January 1952 the right to request the payment of occupational pensions when they are 60 years of age or older (and fulfil the general requirements for statutory pensions).¹¹⁶ For calculating the amount of pension due, only work performed after 17 May 1990 (the date of the *Barber* judgment) is taken into consideration. Thus, they can receive occupational pensions from the same age as women could (until the *Barber* judgment and the subsequent changes in the Law on Statutory Pensions which introduced a uniform age limit of 65 years (which was recently increased incrementally to reach 67 for all persons born after 31 December 1963)). For women, however, the work performed before the *Barber* judgment will also be taken into account for the calculation.

7. Civil servants

The main difference in the old-age pension system for civil servants (*Beamte*) in Germany as compared to employees (including those in public service) lies in the fact that the pensions are financed directly from the State budget (on the federal level or on the level of the *Länder*). There is neither a fund nor do civil servants pay contributions towards their old-age pensions; the necessary money is raised in full by general taxation. The right to an old-age pension derives from the employment relationship under public law between a civil servant and the State. Their payment thus constitutes a part of their salary.

The pension amount is related to the previous salary and the duration of the employment. The law is gender-neutral; the age limits for retirement are identical for men and women. The limit has been increased to 67 years (to 62 for special categories of civil servants, such as police officers and fire fighters). There is a transition period: For civil servants born between 1947 and 1963, there is a staggered increase in the retirement age; the limit of 67 thus applies to all civil servants born after 31 December 1963.

¹¹⁵ The relevant provision reads:

‘(1) Männlichen Arbeitnehmern,

1. die vor dem 1. Januar 1952 geboren sind,

2. die das 60. Lebensjahr vollendet haben,

3. die nach Vollendung des 40. Lebensjahres mehr als 10 Jahre Pflichtbeiträge für eine in der gesetzlichen Rentenversicherung versicherte Beschäftigung oder Tätigkeit nach den Vorschriften des Sechsten Buches Sozialgesetzbuch haben,

4. die die Wartezeit von 15 Jahren in der gesetzlichen Rentenversicherung erfüllt haben und

5. deren Arbeitsentgelt oder Arbeitseinkommen die Hinzuverdienstgrenze nach § 34 Abs. 3 Nr. 1 des Sechsten Buches Sozialgesetzbuch nicht überschreitet, sind auf deren Verlangen nach Erfüllung der Wartezeit und sonstiger Leistungsvoraussetzungen der Versorgungsregelung für nach dem 17. Mai 1990 zurückgelegte Beschäftigungszeiten Leistungen der betrieblichen Altersversorgung zu gewähren. § 6 Satz 3 gilt entsprechend.

(2) Haben der Arbeitnehmer oder seine anspruchsberechtigten Angehörigen vor dem 17. Mai 1990 gegen die Versagung der Leistungen der betrieblichen Altersversorgung Rechtsmittel eingelegt, ist Absatz 1 für Beschäftigungszeiten nach dem 8. April 1976 anzuwenden.

(3) Die Vorschriften des Bürgerlichen Gesetzbuchs über die Verjährung von Ansprüchen aus dem Arbeitsverhältnis bleiben unberührt.’

¹¹⁶ Among other things, there is a prohibition on earning more than EUR 400 while receiving a statutory pension, Sect. 34(3) No. 1 Social Code No. VI (*Sozialgesetzbuch (SGB) Sechstes Buch (VI)*), available at www.gesetze-im-internet.de (accessed 7 April 2010).

A) GENERAL QUESTIONS

1. The old-age pensions system

1.1. The Greek social security system is something of a maze; it is fragmented and complex. There are about 150 schemes, each governed by provisions scattered in several, frequently amended, statutes, decrees and ministerial decisions. It is thus difficult to find which schemes are statutory and which are occupational and to look for discriminatory provisions, or even to find the rules in effect on each occasion.¹¹⁷

The most important pension schemes with respect to the number of affiliated workers are the scheme of the Civil and Military Pensions Code (Civil Pensions Code),¹¹⁸ which covers civil servants of the State and legal persons governed by public law, including local authorities and the military, and the scheme run by the Social Security Organisation (IKA). IKA is a legal person governed by public law; its scheme covers workers on a private law contract who are not affiliated to any other scheme for their main pension.¹¹⁹ IKA also provides benefits for sickness, invalidity, accidents at work, occupational diseases and maternity and insures against unemployment. Both schemes are contributory and affiliation to them is compulsory. In view of the complexity of the social security system, this report will necessarily mainly deal with the scheme of IKA and the Civil Pensions Code, and, where this is possible, with certain features of other schemes.

1.2. There is no systematic study aimed at finding gender discriminatory provisions in any scheme. This task has been mostly left to the courts, which usually apply the constitutional gender equality norm (Article 4(2))¹²⁰ to all schemes, by levelling up, without bothering about the (occupational or statutory) character, under EU law, of the scheme in question. Thus, both the Court of Audit, which hears civil servants' pension claims, and the Council of State (the Supreme administrative court), which hears at last instance, upon final appeal, all other pension claims, often uphold men's claims to an old-age pension¹²¹ or to a widower's pension¹²² subject to the requirements provided for women.

1.3. The statutory old-age pension schemes are organized on a PAYG basis and are based on a Defined Benefits (DB) system. The schemes established under Article 7 of

¹¹⁷ This was acknowledged in the Explanatory Report to Act 3655/2008: 'Administrative and organizational reform of the social security system and other social security provisions', OJ A 58/3.4.2008.

¹¹⁸ Presidential Decree 169/2007: 'Codification, under the title "Civil and Military Pensions Code" of the provisions in force regarding civil and military pensions' OJ A 80/2007 (Κώδικας Πολιτικών και Στρατιωτικών Συντάξεων).

¹¹⁹ Ίδρυμα Κοινωνικών Ασφαλίσεων (IKA) governed by Act 1846/1951 as subsequently modified. On its English website, IKA calls itself the 'Social Security Institute': <http://www.ika.gr/en/home.cfm>.

¹²⁰ Article 4(2) of the Constitution: 'Greek men and women have equal rights and obligations'. This provision does not seem to create any problems for EU citizens.

¹²¹ See e.g. Court of Audit (Plen.) judgments 977/2000 and 44/2009 (civil servants - occupational scheme); Council of State judgment 1379/1998 (general scheme for workers on a private law contract - statutory scheme).

¹²² See e.g. Court of Audit judgment (Plen.) judgment 1273/1996 (civil servants - occupational scheme); Council of State judgment 1467/2004 (Plen.) (general scheme for workers on a private law contract - statutory scheme).

Act 3029/2002, which until recently were considered to be the sole occupational pension schemes (see below 1.4) are funded.

1.4. In Greece, the three-pillar distinction is confusing regarding the two first pillars (statutory and occupational). Article 4(2) of the Constitution applies to all areas, including social security of any kind (see above 1.2). Many schemes that must be considered occupational under EU law are generally considered statutory. On 26 March 2009, the ECJ found Greece to be in breach of Article 141 TEC (now Art. 157 TFUE) for maintaining provisions determining different retirement ages and different *minimum* service requirements for men and women in the Civil Pensions Code, which it considered occupational.¹²³ There are several other occupational schemes as well, such as those of public corporations and banks, which cover their personnel. An example is provided by the *Evrenopoulos* case where the ECJ found that the Public Power Corporation (DEI) scheme is occupational.¹²⁴

Until the ECJ judgment of 26 March 2009, the only schemes that were generally considered occupational were those run by the so-called ‘occupational social security funds’ whose establishment is provided by Article 7 of Act 3029/2002.¹²⁵ These are non-profit legal persons governed by private law, which may offer supplementary social security coverage for any risk, including old age, death and invalidity; they grant benefits in kind or in cash, periodically or as a lump sum. Affiliation to them is not compulsory. Very few such schemes have been established.

By virtue of Articles 1-6 of Act 3655/2008,¹²⁶ six occupational pension schemes (of public corporations and banks) were grouped together with IKA, under the title IKA ETAM (ETAM stands for ‘Unified Insurance Fund for Salaried Workers’).¹²⁷ This was not a merger. The conditions for granting pensions and the methods for calculating their amount, applying to each scheme, did not change. Thus, IKA remained a statutory scheme, while the other six schemes (among which is the scheme that was at issue in the *Evrenopoulos* case (above 1.4)) remained occupational.

1.5. There are *survivors’ pensions* in statutory and occupational schemes. Most schemes used to disadvantage men, making the award of the pension to a widower subject to special conditions which did not apply to widows.¹²⁸ This changed in most statutory and occupational schemes, and the conditions are currently the same for men and women. The conditions that the Civil Servants’ Code laid down for widows were extended to widowers in 2005.¹²⁹ For workers on a private law contract, in the private and public sector, the equalization was achieved in 1999 in both statutory and occupational schemes. In the latter schemes, the conditions made common for widows and widowers were stricter than those which, up until then, had been applicable to widows.¹³⁰ The widow(er) must not work or receive another pension; in case he/she works or receives another pension, he/she receives 50 % of the widow’s/widower’s pension until the age of 65 and thereafter 70 % of the pension. If he/she receives more

¹²³ Judgment of 26 March 2009 Case C-559/07 *Commission v Greece*.

¹²⁴ Case C-147/95 *Dimossia Epicheirissi Ilektrismou (DEI) v E. Evrenopoulos* [1997] ECR I-2057.

¹²⁵ Act 3029/2002: ‘reform of the social security system’ OJ A 160/11.7.2002.

¹²⁶ Act 3655/2008: ‘administrative and organisational reform of the social security system’ OJ A 58/3.4.2008.

¹²⁷ Ενιαίο Ταμείο Ασφάλισης Μισθωτών.

¹²⁸ See Case C-147/95 *Dimossia Epicheirissi Ilektrismou (DEI) v E. Evrenopoulos* [1997] ECR I-2057.

¹²⁹ Article 4(1) of Act 3408/2005.

¹³⁰ Article 62 of Act 2676/1999, replaced by Article 4 of Act 3385/2005.

than one pension, this reduction applies to the pension that he/she chooses. In case the widow(er) is physically or mentally handicapped, he/she receives the whole pension, without any other condition.

1.6. A *divorced spouse* concurs with the widow(er) of the deceased regarding the survivor's pension, subject to the following conditions: that he/she is at least 65 years of age or unfit for work at the time of his/her former spouse's death; that his/her former spouse, at the time of his/her death, was paying him/her maintenance by virtue of a judicial decision or an agreement between the spouses; that the marriage with the deceased had lasted at least fifteen years; that the divorced spouse has not remarried; that his/her total yearly income does not exceed the amount of the pension paid by OGA to non-insured elderly persons (see below 1.8). In such cases, the widow(er) receives 70 % and the divorced spouse 30 % of the survivor's pension. If the marriage had lasted for at least twenty-five years until the divorce, the widow(er) receives 60 % and the divorced spouse 40 % of the pension. The amount is the same for the divorced spouse in case there is no widow(er).¹³¹

1.7. There are specific provisions regarding farmers. Their pensions are paid by a contributory scheme run by the Agricultural Insurance Organisation (OGA), a legal person governed by public law.¹³² OGA also pays sickness benefits, as well as compensation to farmers who incur damage to their crops as a result of hail or frost. Persons whose farming is their main profession (they make a living therefrom) and those residing in communes whose population is under 5,000, whatever their profession, provided they are not covered by any other scheme, are affiliated to OGA, which must thus be considered a statutory scheme. The widows of pensioned men receive a non-contributory survivor's pension from OGA, provided the marriage took place before the husband retired and she receives no pension of any kind from another scheme.¹³³ This pension amounts to the lowest old-age pension granted by OGA (currently EUR 360 monthly).¹³⁴ If, when her husband dies, the widow has already attained the age of 65, she receives the pension immediately; if she is under 65 at that time, she receives it when she reaches 65. Widowers are not entitled to such a pension. There is also a contributory pension which the surviving spouse, irrespective of sex, may receive, provided that he/she receives no other pension, including from OGA.¹³⁵

1.8. A means-tested pension ('the pension for non-insured elderly persons') is paid by a special OGA scheme to persons over 65. The means test takes into account the person's individual income (from employment or any other source) or, in the case of a married elderly person, the family income. A condition for granting this pension is that the elderly person does not receive, him/herself or his/her spouse, a pension or any other periodical benefit from any source, with the exception of certain benefits, such as welfare benefits paid to paupers or refugees or other benefits whose amount is inferior to that of the lowest OGA old-age pension. If one spouse is receiving an old-age pension from OGA, this does not prevent the other spouse from receiving the non-insured elderly person's pension, but the old-age pension of the other spouse is taken

¹³¹ Article 4 of Act 3232/2004.

¹³² Οργανισμός Γεωργικών Ασφαλίσεων (ΟΓΑ) governed mainly by Acts 4169/1961 and 2458/1997.

¹³³ Article 6(2) of Act 4169/1961.

¹³⁴ See http://www.oga.gr/EN/index_en.php# accessed 27 June 2010.

¹³⁵ Article 8 of Act 2458/1997 and Article 53(3) of Act 3518/2006.

into account for the means testing. The income of the other spouse is not taken into account if, at the time of the application for the non-insured elderly person's pension, the spouses have been separated for at least five years or the other spouse has disappeared for thirty years. This pension amounts to the lowest old-age pension granted by OGA (currently EUR 330 monthly, see above 1.7). In order to qualify for this, one must be a Greek citizen, an EU citizen or a citizen of a Council of Europe Member State having ratified the European Social Charter or a person who is stateless or has refugee status. It is non-contributory; it is state funded. This scheme does not seem to contain any form of gender discrimination.

2. Old-age pension reforms

2.1. Pension problems are mainly the result of women's disadvantaged position in the labour market. They cannot therefore be resolved, or even reduced, unless they are tackled at their roots.

2.2. In most (statutory and occupational) schemes women, in particular mothers, are still entitled to a pension at an earlier age and/or subject to shorter service periods than men, in spite of a gradual increase in the pension ages of both men and women. The main pension reforms in the last decade were made by Act 3029/2002¹³⁶ and Act 3655/2008.¹³⁷ There are also provisions relating to pensions in several other statutes dealing with social security or even other matters.

2.3. *Different effects for building up old-age pensions* for men and women: These reforms gradually increased the pension age of men and women, without abolishing the differences in women's entitlement to an earlier pension. They also introduced indirectly different effects for the building up of old-age pensions, by granting a service credit to mothers, in the first place, and subsidiarily (in cases where the mother does not make use of such a service credit) to fathers. More in particular:

2.3.1. The 'Greek Report on Pension Strategy'¹³⁸ – a kind of explanatory report to Act 3029/2002 – referred to women's problems due to *different working patterns*. It also listed among the objectives of the reform the '*equal treatment of men and women*'. It deplored the existence of provisions which 'indirectly result in major losses of entitlement by women', such as requirements of *minimum* employment in order to establish a pension entitlement; it further stated that 'many women do not have the requisite contributions to establish such entitlement'. It also stressed that 'the incentives and opportunities for early retirement condemn women to low pensions (because of the limited years of contributions they encourage)'. It deplored that 'however active the participation of women in the labour market, the period following childbirth still leads to loss of contributions'.

The above Report thus acknowledged that the crucial period for women is '*the period following childbirth*'. However, the only measure for coping with women's problems that the Report announced (and Act 3029/2002 introduced) was a *service credit* for mothers insured with IKA (see above 1.1).¹³⁹ If the mother did not make use of the credit, then the father was entitled to it. Article 141 of Act 3655/2008 extended the credit to mothers, and subsidiarily to fathers, who are affiliated with most other

¹³⁶ Act 3029/2002: 'reform of the social security system' OJ A 160/11.7.2002.

¹³⁷ Act 3655/2008: 'administrative and organisational reform of the social security system' OJ A 58/3.4.2008.

¹³⁸ Ministry of Economy and Finance and Ministry of Labour and Social Security, September 2002.

¹³⁹ Article 4(7) of Act 3029/2002.

schemes covering workers on a private law contract (among which are both statutory and occupational schemes) and increased it. Thus, it is now one year for the first child and two years for each subsequent child until the third one. According to the explanatory memorandum of this provision, this measure aims at supporting mothers and families, in accordance with Article 21(1) of the Constitution which requires the protection of the family, childhood and motherhood, in view also of the acute demographic problem.¹⁴⁰ There are no official data, but it seems that it is mainly women who make use of this credit.

2.3.2. The Explanatory Report to Act 3655/2008, which concerns IKA ETAM (above 1.4.), states that ‘the provisions fixing lower pension ages for mothers of minor or handicapped children were introduced at a time when there were no measures for supporting working mothers. They operated as an incentive for women’s inclusion in the labour market and a reward for their having a double role, i.e. for combining, at a difficult period, motherhood with employment. These provisions have remained in effect until today, although the working conditions of women no longer differ in any respect from those of men and, moreover, the incentives provided for working mothers are very important (the recognition of the period of pregnancy and maternity leave as working time, parental leave, a service credit for each child etc.). Such provisions do not exist in any other EU country. In spite of the above, the State, recognizing the double role which a working mother still has, deems it necessary to retain provisions which grant a full old-age pension to mothers of minor children at the age of 55 (...). However, the current working conditions and the incentives that aim at supporting the family no longer justify the possibility for mothers to receive a reduced pension at the age of 50 [this is why it is gradually being abolished].’ (See below B. 4. 2.1).

2.3.3. In 2008, fathers acquired in some cases a right to an earlier pension, under stricter conditions than mothers, who already had that right. Thus, while *mothers of minor children or children unfit for work* retained the right to a pension at an earlier age, fathers acquired that right provided they are widowers. Also, *mothers of at least three minor children or children unfit for work* retained their right to a pension with shorter service requirements, while fathers acquired that right provided they are widowers or divorced, and in the latter case they have the custody of the child by virtue of a judicial decision (Articles 140 and 144 (1) and (6) of Act 3655/2008, regarding IKA ETAM, above 1.4.) (see below B.4.2.1).

Furthermore, the right of *mothers of handicapped children* of any age to a pension subject only to a reduced service requirement, irrespective of the mother’s age (below 4.1), was granted subsidiarily to fathers (in case the mother does not make use of this or has died). Fathers acquired a personal right to such a pension only if they are divorced and have the custody of a minor child or they have the tutorship of a handicapped child. Both rights belong to workers affiliated with most schemes covering workers on a private law contract, whether statutory or occupational (Article 4(5) of Act 3232/2004, Article 140 of Act 3655/2008).

Spouses of handicapped persons, irrespective of their sex, are entitled to a pension subject only to a service requirement, irrespective of age. (Article 5(4) of Act 3232/2004).

2.3.4. Work on *non-standard contracts* is covered by social security. More in particular:

¹⁴⁰ Article 21(5) of the Constitution requires that effective measures for coping with the demographic problem be taken.

Part-time work: 70 % of part-timers are women¹⁴¹ There are no part-timers among those covered by the Civil Servants' Code. The social security coverage of part-timers, whether they are paid a monthly or a daily wage, is compulsory in all schemes covering workers employed on a private law contract; part-timers' social security contributions are proportionate to their pay, and so are their pensions.¹⁴² However, in no case may the wages that are taken into account be lower than a certain *minimum*. There is no *minimum* hours threshold (see below B.1.2). It must be noted that the hourly pay of part-timers is proportional to the hourly full-time pay of a comparable worker, i.e. a worker performing the same or similar work under the same conditions.¹⁴³ This may create indirect discrimination in pay for work which is of equal value; in such case, the discrimination is perpetuated in the pension. Until 1991, the law provided that, in any event, the amount of a part-timer's pension could not be lower than the lowest full-timer's pension. From 1991 onwards, this safety net was weakened, as it was provided that a part-timer's pension cannot be lower than only half the lowest full-timer's pension.¹⁴⁴ This affects mainly women, who, as mentioned above, make up 70 % of all part-timers.

70 % of workers on *fixed-term* contracts are women.¹⁴⁵ Even if their employer is the State or legal persons governed by public law, they are not covered by the Civil Pensions Code, but mainly by IKA. Their pensions are calculated in the same way as the pensions of workers on an indefinite contract. The main problem is that social security coverage is discontinued between contracts.

Temporary work is carried out by workers hired by a 'temporary employment company' (the direct employer) and temporarily 'lent' to other (indirect) employers. This form of employment concerns an increasing number of cleaners (overwhelmingly women, mostly immigrants). Although the setting up and activities of such companies and their obligations, along with the indirect employers' obligations, are regulated by law,¹⁴⁶ control is inadequate. Thus, working conditions, including pay, are very poor. The problem is not only that low pay results in low pensions, but also that these workers are often not insured with IKA, as they should be,¹⁴⁷ and they do not dare to claim their rights.

There are some measures for *low-paid jobs* including the following: Workers paid the *minimum* wage fixed by national general collective agreements are exempted from contributions to IKA (see above 1.1) (6.67 % of their salary); thus, the employer does not deduct them from their wages. In order to qualify for this exemption, workers who receive a monthly salary must work full time for at least 25 days a month; this excludes part-timers – women in the large majority of cases (see above). Manual

¹⁴¹ Labour Institute of the General Confederation of Labour & the Civil Servants Federation (*INE GSEE/ADEDY Enimerossi* 151/2008, 164 and 165/2009: <http://www.inegsee.gr>, accessed 20 May 2010).

¹⁴² Article 39 of Act 1892/1990.

¹⁴³ Article 38 of Act 2639/1998, replaced by Article 2 of Act 3846/2010.

¹⁴⁴ Presidential Decree 508/1991.

¹⁴⁵ *INE GSEE/ADEDY Enimerossi* 151/2008, 164 and 165/2009: <http://www.inegsee.gr>, accessed 20 May 2010.

¹⁴⁶ Act 2956/2001, as modified by Article 3 of Act 3846/2010.

¹⁴⁷ See *INE GSEE/ADEDY Labour relationships in the cleaning sector – Results of an empirical research* Athens, 2009: <http://www.inegsee.gr>; Greek National Commission for Human Rights http://www.nchr.gr/media/gnwmateuseis_eeda/ergasia/fin_EEDA_ergolavikes_anatheseis_ioul09.doc, accessed 19 May 2010.

workers, who are paid a daily salary, are exempted from the contribution irrespective of the number of days they work, but they must also be, in any case, full-timers.¹⁴⁸

2.3.5. In spite of the 2002 Strategy and Act 3029/2002 having gender equality as an objective, the reforms introduced by this Act did not deal with gender equality. Moreover, Act 3655/2008 justifies the extension and increases of the service credit as a measure to support mothers and families, rather than a measure aimed at promoting substantive gender equality (see above 2.3.2).

2.3.6. Have these reforms hindered gender equality? The answer to this question is not easy. The disadvantaged position of women in social security reflects their inferior position in the labour market, which is currently deteriorating due to the economic crisis. In spite of rather satisfactory employment legislation and very effective sanctions applied by the Greek courts, there is widespread discrimination in practice against women regarding access to and conditions of employment, including pay (individual discrimination and the pay gap), promotion (the ‘glass ceiling’) and dismissal. This situation is perpetuated by stereotypes and labour market structural inequalities (e.g. women’s atypical and precarious employment, their concentration in low-paid, low-prestige jobs, and career breaks/shorter working lives, mainly due to family obligations) as well as a lack of effective control by the Labour Inspectorate, due to the inadequacy of personnel and material means, as admitted in their annual reports.¹⁴⁹

Maternity or even the mere prospect thereof is the main obstacle to entering, remaining in and returning to the labour market. Measures facilitating the ‘reconciliation of family and work’ by men and women, along with incentives for men to make use of such measures,¹⁵⁰ can alleviate women’s multiple burden and modify their image as costly and disadvantageous workers, whom employers avoid hiring or promoting or try to find a way to dismiss at no cost. Legal protection against dismissal during pregnancy and thereafter is strong,¹⁵¹ but discrimination on grounds of pregnancy and maternity in practice is a growing concern, especially in times of economic crisis.¹⁵² Parental leave in the private sector¹⁵³ is a dead letter, as it is unpaid and not compensated through State benefits; moreover, a parent who takes it must pay his/her own and the employer’s social security contributions, in order to maintain social security coverage. Thus, the take-up is very low and those taking it (mainly mothers) are disadvantaged in pay and social security. There is also discrimination (direct and indirect) in the public sector regarding parental leave and promotion (the glass ceiling).¹⁵⁴

¹⁴⁸ Article 14 of Act 2837/2000.

¹⁴⁹ See the Labour Inspectorate’s annual reports: <http://www.ypakp.gr>, accessed 22 May 2010.

¹⁵⁰ See the preamble to the Framework Agreement on Parental Leave (Directive 96/34/EC OJ L 145 19.6.1996, p. 4). This is repeated in the Greek Council of State (Supreme Administrative Court) judgments 1 and 2/2006.

¹⁵¹ Article 15 of Act 1483/1984 prohibits dismissal during pregnancy and one year after childbirth or for a longer period in case of pregnancy-related sickness, thus going further than EU law.

¹⁵² See Ombudsman *Equal treatment of men and women in employment and labour relationships*, Special Report November 2009, <http://www.synigoros.gr/diakriseis>, accessed 20 May 2010.

¹⁵³ Three and a half months for each parent, non-transferable, until the child reaches the age of three and a half (Articles 5-6 Act 1483/1984 OJ A 153/8.10.1984, as modified by Act 2640/1998 OJ A 206/3.9.1998).

¹⁵⁴ See S. Koukoulis-Spiliotopoulos ‘Greece’ in S. Prechal & Susanne Burri *Gender Equality Law in 30 European Countries 2009 update*: <http://ec.europa.eu/social/main.jsp?catId=641&langId=en>, accessed 25 May 2010; S. Koukoulis-Spiliotopoulos ‘Retirement and harmonization of family and work; issues of substantive gender equality and judicial protection (ECJ 26.3.2009 C-559/07)’ *Social Security Law Review* 2009 pp. 753-785 (in Greek).

While remedies and sanctions are very effective, women are reluctant to claim their rights, mainly for lack of evidence and a fear of victimization. This fear is growing along with the financial crisis and the consequent increase in female unemployment, which is already much higher than male unemployment.¹⁵⁵ Moreover, workers cannot benefit from EU procedural rules on the burden of proof and the *locus standi* of unions and other organisations for bringing workers' cases before the courts, as these rules are inadequately transposed and thus remain virtually unknown.¹⁵⁶

In the field of social security, an important problem is the growing *inflexibility* of pension conditions. Where even one day of the service period is lacking, the right to a pension is completely lost. This affects in particular the pension rights of non-standard workers. There should be some flexibility and a possibility to 'buy' lacking qualifying time.

The adverse effects of the equalization of pension conditions can be compensated in several ways. Thus, e.g. the equalization can be done in a flexible way, as allowed by EU law; service credits must be granted in a gender-neutral way to all workers (they are not currently granted at all to civil servants) and earlier pension rights for parents of handicapped children and spouses of handicapped persons must be introduced or maintained. Earlier pension rights of mothers of minor children can be extended to men for a transitional period.¹⁵⁷ While EU law requires the equalization of men's and women's pension ages in occupational schemes only, and this is urgent after the ECJ judgment of 26.3.2009 (see above 1.4), it seems that the economic crisis will also accelerate the equalization of pension conditions in statutory schemes.¹⁵⁸ This is why the above measures are necessary, but they must be combined with measures facilitating the reconciliation of family and working responsibilities and a more effective implementation of EU procedural rules.

3. Retroactivity of legislation

The Greek pensions system has not recently been amended due to gender inequalities. Therefore, the questions under this heading are *not applicable*.

4. The World Bank Model

Not applicable

B) STATUTORY OLD-AGE PENSION SCHEMES (Schemes falling under Directive 79/7/EEC)

1. Qualifying conditions

1.1. A typical statutory old-age pension scheme which, moreover, is the most important one is the IKA scheme (see above 1.1). Non-standard work contracts, such as part-time or short-term contracts or seasonal contracts, temporary contracts and low

¹⁵⁵ 1½ times higher than average and more than twice as high as the male rate: *INE GSEE/ADEDY Enimerossi* 164/2009: <http://www.inegsee.gr>, accessed 18 May 2010.

¹⁵⁶ See S. Koukoulis-Spiliotopoulos 'Greece' *European Gender Law Review* No. 1/2008, p. 73.

¹⁵⁷ See A. Petroglou 'Gender equality in the pension system of civil servants; the consequences of the ECJ judgment of 26.3.2009 and the possibilities to achieve gender equality without disadvantaging women, in particular mothers' *Social Security Law Review* 2009 pp. 334-345 (in Greek).

¹⁵⁸ See S. Renga et al. 'Old age pension rights for women in three European countries. What about equality? A gender outlook of the French, Italian and Greek old age pension systems' *European Gender Equality Law Review* No. 1/2010.

income contracts, are covered by this scheme. We have noted certain guarantees and problems above, under A.2.3.4.

1.2. The pension right is subject to a contribution and to a *minimum* duration of insurance. There is a trend to extend the insurance or contribution period required for eligibility, along with the growing inflexibility of pension conditions (see above A. 2.2.6), something which is detrimental to women, due to their often irregular working patterns. There is, however, no *minimum* hours threshold (see above 2.3.4).

Article 2 (3) of Act 3846/2010 provides that those who perform ‘alternate work’ are assimilated to part-timers. It defines ‘alternate work’ as full-time work performed for less days a week or less weeks a month or less months a year or according to a combination of these systems. Thus, ‘alternate work’ amounts to vertical part time.

1.3. Periods of *unemployment* are taken into account for acquiring pension rights, not for amount purposes. The days for which the unemployed received an unemployment allowance within the last ten-year period before he/she applied for an old-age pension are taken into account as insured working time, up to a limit of two hundred days. They do not, however, increase the pension amount. This also applies to *sickness* periods during which sickness benefits are paid by a scheme (Articles 40 and 47 of Act 2084/1992).

2. The amount of the old-age pension

We will deal with the IKA scheme (above 1.1):

2.1. For those insured until 31.12.1992, the pension amount is based on the earnings and contributions during the best 5 out of the last 10 years of employment (Article 2 of Act 3029/2002). For those insured from 1.1.1993 onwards, the pension amount is based on the earnings and contributions during the last five 5 years of employment (Article 28 of Act 2084/1992).

2.2. Gender-specific life expectancy tables are not taken into account in calculating pension amounts.

2.3. A full pension is the pension that is not reduced by law in case the pension age provided by law is not reached. It is granted to those who have at least 15 years (i.e. 4 500 days) of insurance (this is the *minimum* to have access to a pension) and the age of 65, if they are men, or 60, if they are women.¹⁵⁹ The full pension granted by IKA consists of two parts: a) the ‘main pension’, which is calculated on the basis of the wages received during the 5 best years within the last ten-year period of employment, and b) increases depending on the length of insurance with IKA. Each increase corresponds to three hundred (300) working days in excess of 3 000 working days, up to 14 399 working days.

Once the pensionable age is set, the insured worker is classified, according to his/her pensionable income, into one of the 28 insurance classes provided by IKA’s legislation. A percentage of wage replacement applies to each of these classes for the calculation of the main pension. This percentage varies from 70 % for low wages (1st to 17th insurance classes) to 30 % for higher wages (18th to 28th insurance classes). These wage replacement percentages concern the main pension granted by IKA, not

¹⁵⁹ Article 27(1) of Act 1902/1990.

the supplementary pension. The amount resulting from the above calculation is increased in proportion to the insured working days. Every three hundred working (300) days beyond 3 000 working days provide an entitlement to a 1 % increase, up until 7 799 days. From 7 800 days onwards, the increase ranges from 1.5 % (for low wages) to 2.5 % (for higher wages) for every 300 working days. The resulting pension cannot exceed 70 % of the wages. The *maximum* (70 %) wage replacement applies to cases where the insurance period exceeds 14 100 working days.¹⁶⁰

There is a *minimum* old-age pension for those who meet qualifying conditions, which for workers insured until 31.12.1992 is EUR 486 per month (the main pension from IKA-ETAM, see above 1.4) plus EUR 121.55 (the supplementary pension from ETEAM).¹⁶¹

2.4. The pension paid to part-timers corresponds to the proportion of full-timers' wages that they receive (Article 39 of Act 1892/1990). For those who receive a daily salary up to EUR 8, the pension cannot be lower than half the lowest full-timers' pension paid by IKA (see above A.2.3.4.).

2.5. The indexation of pensions follows the indexation of civil servants' pensions. In 2010 the pensions were not indexed; in 2009 a lump-sum benefit was paid, instead of an indexation.

2.6. There is a ceiling on pensions (EUR 3 500), coupled with a ceiling on contributions (EUR 2 432.25).

3. Periods of caring

3.1. *Maternity leave* (17 weeks, i.e. 56 days before and 63 days thereafter) is taken into account for the building up of pension rights and amount purposes, for the main pension (IKA ETAM) and the supplementary pension (ETEM), in the same way as normal working time (Article 22(6) of Act 3232/2004). Article 142 of Act 3655/2008 introduced a 'special benefit for the protection of motherhood' for mothers affiliated to IKA ETAM, which consists of an additional six months' leave, after maternity leave. This leave is taken into account in the same way as normal working time.

3.2. *Parental leave* is taken into account for pension rights and amounts, like maternity leave, if the parent pays his/her contribution and the employer's contribution during the parental leave (Article 40 of Act 2084/1992, Article 5 of Act 2335/1995). The provisions are gender-neutral.¹⁶²

3.3. There are *service credits* for mothers and subsidiarily for fathers (see above A.2.3.1), which are taken into account for accruing the service time required for establishing a right to a pension and its amount. The earning basis for calculating this credit is the *minimum* daily salary of a manual worker multiplied by 25; this means

¹⁶⁰ Article 29 of Act 1846/1951.

¹⁶¹ ETEAM (Uniform Scheme for the Supplementary Insurance of Salaried Workers, Ενιαίο Ταμείο Επικουρικής Ασφάλισης Μισθωτών), a legal person governed by public law, which provides supplementary old-age, invalidity and survivors' pensions to those affiliated to IKA or any other scheme that provides a main pension (except the civil servants' scheme) and who do not receive a supplementary pension from any other scheme (Article 6 of Act 3029/2002).

¹⁶² Parental leave in the private sector is 3½ months for each parent (non-transferable to the other parent) until each child reaches the age of 3½ years, and it is unpaid (Act 1483/1984).

that in the case of an insured person with a higher wage, credited periods for bringing up of children count less than the full crediting of real service periods for pension purposes. These credits concern the schemes under IKA ETAM, which may be statutory or occupational (see above A.1.4).

3.4. The rights of mothers, and subsidiarily fathers, to an *earlier pension*, i.e. either at an earlier age or subject to a service requirement only, irrespective of age, is mentioned above (A.2.3.3.). They concern all schemes covering workers on a private law contract, which may be either occupational or statutory (Article 140 of Act 3655/2008).

3.5. Other periods of care in the household are not taken into account for pension rights or amount purposes. However, a worker (man or woman) having a handicapped child or a handicapped spouse is entitled to a pension subject to a reduced service requirement, irrespective of age (above A. 2.3.3.). The pension amount cannot be lower than the lowest pension paid by the scheme. These rights concern all schemes for workers on a private law contract, which may be either occupational or statutory (Article 5 of Act 3232/2004). The above rights for spouses are gender-neutral.

3.6. The above periods, except the service credits, count in the same way as the full crediting of work periods for pension purposes. All periods are recognised regardless of the employment position.

3.7. Thus, in the area of social security, the image of women as the *sole carers* of children has developed into an image of *principal carers*. However, parental leave and the right of parents of handicapped children and spouses of handicapped persons to an earlier pension (above 3.2. and 3.5) are gender-neutral. Let us note that, after having been adapted to the constitutional gender equality principle, by virtue of Act 1329/1983, Greek family law provides that men and women have common rights and obligations within the family, including as regards their children.

3.8. We think that a gender-neutral *minimum* provision on care credits in the gender equality EU legislation in the field of social security would be advisable and feasible.

4. Exceptions, Article 7.1 of Directive 79/7

1. Pensionable age and the possible consequences for other benefits (Article 7.1 a)

1.1. There is a mandatory retirement age imposed by legislation, in conjunction with a *minimum* service/insurance time, for entitlement to a pension from IKA. For those having 4 500 service days, the age required is 65 for men and 60 for women. In the case of longer service, the age is lower. Thus, for those having 10 500 service/insurance days with IKA the pensionable age is 58 (Article 143(1) of Act 3655/2008) and it will be increased by 6 months a year from 1.1.2013 onwards until the age of 60 is reached on 1.1.2016. In the case of 10 000 service/insurance days, which is an additional early retirement case within IKA, the pensionable age is 62 for men and 57 for women. Women's pensionable age will increase by 6 months a year from 1.1.2013 onwards until the age of 60 is reached on 1.1.2018. All these rules concern *full pensions*.

It is also possible to receive at a lower age a pension reduced by 6 % for each year that is missing from the above normal pension age for men and women, respectively.

A claimant can get an old-age pension and still work. If the pensioned person starts salaried work before he/she has reached the age of 55, the payment of the pension is deferred. After the age of 55, the pension amount that exceeds EUR 750 a month is reduced by 70 %, but it is increased by 20 % for each child who is a minor or a University student, up to the age of 24, or unfit for work. The service time of the pensioner is not taken into account for an increase of the pension or for the establishment of a new pension right from another scheme. These restrictions do not apply to widows/widowers, persons pensioned by OGA (mainly farmers, see above A.1.7), or having a large family (i.e. at least three children), or covered by Regulations 1408/71/EEC and 574/72 EEC, and to some other categories (Article 63 of Act 2676/1999).

1.2. Regarding differences in pensionable ages between men and women, see above 4.1.

1.3. There are strong reactions against the raising of the pension age for women, mainly by trade unions and several politicians. The argument is that the lower pension age is compensation for disadvantages suffered by women during their working life. However, the most important women's NGOs stress that the early withdrawal of women from the labour market does not solve their employment problems, which are reflected in social security. They underline that both men and women need support in establishing a family and rearing children, something which is very difficult due to high youth unemployment and the precarious position of the young in the labour market. Thus, they have started a campaign demanding that the social security reform be a 'package' with measures to ensure real gender equality and to facilitate reconciling family and professional obligations. They also recall that EU law does not require the equalization of pension ages in statutory schemes (which cover several forms of atypical work as well as many manual workers), but only in occupational schemes.¹⁶³

1.4. There is no process of equalizing the pensionable age, but only legislative interventions in several situations. In such cases, the measures do not have retroactive effect and there is a transition period. There are no measures to compensate for any loss suffered in the past.

1.5. Regarding crediting mechanisms in relation to the pensionable age for persons who have brought up children or have performed other care work within the family, see above A.2.3.1 and B.3.3.

1.6. Earlier pensionable ages for women do not always mean lower pension amounts (see below 2.1, above 3.6. and 4.1.1). Average life expectancy is not taken into account in the calculation of benefits.

1.7. We have no data on the average age when men and women leave the labour market, nor on the service periods accrued when they retire, but there is a general impression that women leave earlier.

¹⁶³ See S. Koukoulis-Spiliotopoulos 'Greece' *European Gender Equality Law Review* No. 1/2010.

1.8. We think that the exception concerning the pensionable age should not be eliminated in the near future. This is a very sensitive area and there should not be pressure on persons who already have vested rights, on the basis of which they have organised their lives. If it is eliminated, a transitory period would be necessary. We do not think that different pensionable ages for women discriminate against men. The problem is that they come too late in order to be able to eliminate or even reduce women's problems in the labour market, which are reflected in their pension.

2. *Advantages granted to persons who have brought up children (Article 7.1(b))*

2.1. As mentioned above (2.3.3), mothers have rights to an earlier pension, such as the following:

Mothers of children who are minors or unfit for work can receive from IKA a full pension at the age of 55 (i.e. at an age that is inferior by 5 years to the age applying to childless women and by 10 years to the age applying to men) and a reduced pension at the age of 50 (the latter will be gradually abolished by the year 2015). These options are subject to 5 500 service/insurance days. Fathers of minor children who are widowers have the same rights (Article 144(1) of Act 3655/2008).

Mothers of at least three children can be pensioned with 20 service/insured years, irrespective of their age; those who will be pensioned from 2013 onwards must also be 50 years old. Fathers who are widowers or divorced, and in the latter case have custody of their children, acquired that same right (Article 144(6) of Act 3655/2008).

Mothers of handicapped children can be pensioned, irrespective of their age, by most schemes covering workers on a private law contract, if they have 7 500 service/insurance days (Article 4(5) of Act 3232/2004). Fathers acquired this right subsidiarily (Article 140 of Act 3655/2008).

Spouses (men and women) of handicapped persons establish a pension right after 10 years of marriage and 7 500 working days, irrespective of their age (Article 5(4) of Act 3232/2004). This is the only gender-neutral measure.

2.2. As it is shown above, there is a presumption that women are the main care provider. Men are entitled to these advantages as second-choice claimants, that is only if women do not make use of them, or if they are widowers with children or divorced and have custody of the children.

We consider this exception to be outdated, as it perpetuates the traditional division of family roles in child raising and caring. It can and should be eliminated. A transitory period is necessary.

3. *Old-age or invalidity benefit entitlements or increases in long-term benefits by virtue of the derived entitlements of a wife (Article 7.1 c) and d))*

3.1. Supplements exist in our system. We have no data on the number of men and women benefiting therefrom, but as they are provided by law, all those who fulfil the legal conditions receive them.

3.2. These supplements are equally granted to men and women. The amount of old-age and invalidity pensions paid by IKA is increased for the other spouse who does not work or receive a pension (Article 29 of Act 3518/2006). It is not means-tested according to the dependent spouse's income. It cannot be paid directly to the non-working or non-pensioned spouse. There is no splitting of pension rights between spouses in the event of separation or divorce or in any other case.

3.3. We do not consider these exceptions to be outdated. They should be retained, in particular now that in many countries pensions have diminished as a result of the economic crisis.

C) OCCUPATIONAL OLD-AGE PENSION SCHEMES

(Schemes falling under Article 157 TFEU, Directive 86/378/EEC, as amended by Directive 96/97/EC, now Articles 5-13 of the Recast Directive 2006/54/EC)

It is not easy to define occupational schemes under Greek law. The ECJ held, on 26.3.2009, that the scheme of the Civil Pensions Code (above A.1.1) is occupational, something that all Greek governments had denied for years. In the light of ECJ case law, several other schemes also seem to be occupational, such as those of banks and public corporations; these are governed by legislative provisions. Until the above ECJ judgment, it was generally considered that the sole occupational schemes were those established under Article 7 of Act 3029/2002, the so-called ‘occupational social security funds’ (hereafter ‘occupational funds’), which provide supplementary benefits (above A. 1.4). There are very few such schemes.

1. Coverage

1.1. Participation in occupational schemes, except the above occupational funds, is mandatory. ‘Occupational funds’ can be established in all sectors of the economy.

1.2. There are no membership limitations in ‘occupational funds’, such as minimum periods of employment, minimum hours worked per week, minimum earnings per year. There are no restrictions to access for seasonal, part-time, short-term contract workers or low-wage earners. No categories of staff are excluded from coverage. According to Article 7(9) of Act 3029/2002, every worker has the right to be insured with an ‘occupational fund’ that covers his/her profession, without having the obligation to be a member of a trade union of this profession. No conditions which create discrimination among persons who are entitled to participate are allowed.

1.3. There are no data on men’s and women’s participation rate on occupational pension schemes.

2. Calculation of old-age pensions and contributions

2.1. Regarding ‘occupational funds’, the law only provides that they function according to the capitalization system (Article 7(5) of Act 3029/2002). The systems for the calculation of pensions and contributions are provided in the instrument that establishes the fund.

Most of the other occupational schemes (e.g. those of banks and public corporations) are organized on a PAYG basis and pension amounts are earnings-related. As they are many, we cannot find what salary is taken into consideration in each one of them for calculating pensions. It seems that in several of them the pension is calculated on the basis of the pay of the last year(s) of service and is directly related to the length of service.¹⁶⁴

3. Actuarial factors

Actuarial factors are not provided by the law for ‘occupational funds’.

¹⁶⁴ See e.g. the scheme at issue in Case C-147/95 *DEI v Evrenopoulos* [1997] ECR I-2057.

4. Caring credits

Caring credits are not provided by the law for ‘occupational funds’. The issue is left to the founders.

5. Vesting and reimbursement rules

According to Article 7(1) of Act 3029/2002, a member of an ‘occupational fund’ can request his/her departure from the fund, if he/she has a *minimum* participation of one year. In such a case, he/she has the right either to transfer to another fund which covers his/her profession, or to receive the benefits to which he/she is entitled in connection with the period of his/her membership in the fund that he/she leaves. A member of such a fund who changes his/her profession has the same rights, without restriction as to the duration of his/her participation.

6. The pensionable age

The pensionable age is not provided by the law for ‘occupational funds’. It is left to the founders.

7. Civil servants

7.1. The most important occupational scheme is the scheme under the Civil Pensions Code, which is compulsory. Its occupational character was confirmed by the ECJ (see above A. 1.1, 1.4). It has been set up and is governed by statute. It is more generous than the scheme covering workers subject to a private law contract (IKA, see above A. 1.1 and B). Only employees pay into the scheme. The benefits are paid by reason of the former employment relationship. It is a PAYG scheme. We will refer hereafter to all those covered by the Civil Pensions Code as ‘civil servants’.

7.2. The pension amount is conditional upon previous pay and the duration of employment. For those insured until 31 December 1992 the pension amount is based on the earnings and contributions of the last month of employment. For those insured from 1st January 1993 onwards, the pension amount is based on the earnings and contributions of the last five years of employment.¹⁶⁵

7.3. Pensionable ages and contribution periods required for granting the pension are different for men and women. The pensionable age has been gradually increased, but it remains lower for women than for men. More in particular:

7.3.1. *Civil servants recruited from 1st January 1983 until 31 December 1992*

A service period of 25 years entitles men and women to a pension. Until 1998, men’s pensionable age was 60.5; it was increased from 1999 onwards by six months every year until it reached 65 years (in 2007), which is the current pensionable age for men. Women’s pensionable age was 58.5 until 1998; it was increased from 1999 onwards by six months every year, until it reached 60 years (in 2003), which is the current pensionable age for women.¹⁶⁶

A 15-year service period provides an entitlement to a pension, which men can receive at the age of 65 and women at the age of 60.¹⁶⁷ A 37-year service period entitles both men and women to a pension irrespective of their age.¹⁶⁸

¹⁶⁵ Article 5 of Act 2084/1992.

¹⁶⁶ Articles 1(1a) and 56 (1b) of the Civil Pensions Code.

¹⁶⁷ Article 19(7) of Act 2084/1992, Article 1(11) of Act 3029/2002.

¹⁶⁸ Article 1(6e) of Act 3029/2002.

Moreover, there is an entitlement to a reduced earlier pension, irrespective of the service period, for men at the age of 60 and for women at the age of 55; this pension is reduced by 1/267 (4 %) for each month which is missing from the respective pensionable age.¹⁶⁹

Women are entitled to an earlier pension in several circumstances, as follows:

Women (not men) having minor or handicapped children or a handicapped spouse are entitled to a pension after 25 years of service, at the age of 50, or after 15 years of service, at the age of 60, or after 35 years of service, at the age of 58; these women are entitled to a pension, irrespective of their age, after 37 years of service.¹⁷⁰

Women and men having at least three children are entitled to a pension after 15 years of service, at the age of 65. However, additional conditions are required for men: that they are divorced and the guardians of the children or widowers.¹⁷¹

7.3.2. Civil servants recruited from 1st January 1993 onwards

A service period of 15 years entitles men and women to a pension that they can receive at the age of 65.¹⁷²

Both men and women are entitled to a reduced earlier pension, irrespective of the service period, at the age of 60; this pension is reduced by 1/267 for each month (4 % for each year) which is missing from the respective pensionable age.¹⁷³

Women are entitled to an earlier pension in several circumstances, as follows:

Women having minor or handicapped children are entitled to a pension at the age of 55, if they have 20 years of service,¹⁷⁴ These women are entitled to a reduced pension at the age of 50, if they have 20 years of service.¹⁷⁵ This pension is reduced by 1/267 for each month (4 % for each year) which is missing from the respective pensionable age.¹⁷⁶

Mothers of three children are entitled to a pension at the age of 56, after 20 years of service; mothers of four children at the age of 53, and mothers of five children and more at the age of 50, in all cases after 20 years of service.¹⁷⁷

A reform aimed at complying with the ECJ judgment is planned.

Act 3847/2010 provides that pension rights that have been established or will be established until 31.12.2010 by civil servants and functionaries, members of the armed forces, the police and the fire service covered by the Code are not affected by their staying in service after 31.12.2010; eventual changes related to pensions do not affect the conditions for granting them a pension and its calculation.

The State has not taken measures to compensate retroactively the disadvantaged sex. Even before the ECJ found the Civil Pensions Code provisions on pensionable ages contrary to Article 141 TEC (now Article 157 TFEU), the Greek courts had awarded an earlier pension to men, subject to the conditions applying to women (see above A.1.2). Women and men who opt for early retirement receive a lower pension than the pension they would receive if they had remained in service until the normal pensionable age

¹⁶⁹ Article 1(6) of Act 3029/2002.

¹⁷⁰ Articles 1(6)(c), (d) and (e) and Article 1(11) of Act 3029/2002, Article 56(1)(b) of the Civil Pensions Code.

¹⁷¹ Article 19(7) of Act 2084/1992,

¹⁷² Article 3 of Act 2084/1992.

¹⁷³ Article 15(1) of Act 2084/1992.

¹⁷⁴ Article 3 of Act 2084/92

¹⁷⁵ Article 3 of Act 2084/92

¹⁷⁶ Article 15(1) of Act 2084/1992.

¹⁷⁷ Articles 3 of Act 2084/1992.

GREECE: ANNEX – THE REFORM OF THE PENSION SYSTEM

1. The framework and the general features of the reform

1.1. The pension reform must be seen within the framework of the financial crisis and the support programme for Greece, which includes pooled bilateral loans by the Euro area Member States in conjunction with International Monetary Fund (IMF) funding. The financial support was made dependent on compliance by Greece with measures consistent with a ‘Memorandum of Understanding’, signed on 3 May 2010 by the European Commission, acting on behalf of the Euro area Member States, and the Hellenic Republic. This Memorandum contains three specific memoranda: a ‘Memorandum of economic and financial policies’, a ‘Memorandum of specific economic policy conditionality’ and a ‘Technical Memorandum of understanding’. The ‘Memorandum of specific economic policy conditionality’ requires *inter alia* modifications to employment and social security law.

The ‘Memorandum of Understanding’ is annexed to a Loan Facility Agreement, signed on 8 May 2010 by the Euro area Member States, as lenders, and the Hellenic Republic, as the borrower. A bill to sanction this Agreement is pending in the Greek Parliament.¹⁷⁸ However, these instruments have come into effect upon their signature.

1.2. The legislation adopted within this framework does not refer to gender equality or to EU social security law; it does not contain measures to facilitate the reconciliation of family and work, neither does it deal with acute problems in law and practice which affect the right of men and women to reconcile family and work.

The new measures aggravate the already weak position of women in social security, which results from their weak position in the labour market (above A.2.3.6.). Thus, the new system for calculating the pension amount on the basis of one’s whole working life penalizes women, who often have shorter and/or irregular working patterns (currently, the pension amount, for those covered by IKA, is based on the earnings and contributions during the best five years out of the last ten years of employment, and for civil servants on the earnings and contributions of the last month or the last five years of employment, see above B.2.1 and C.7.2). Moreover, the equalization of the pensionable ages and length of service requirements for men and women was made in an abrupt and inflexible way, with very short transition periods.

The new legislation also deregulates the labour market, in particular by facilitating dismissals, and consequently reducing redundancy payments, and by intervening in collective agreements, and even in individual contracts. It favours atypical work, where the majority of workers are women (above A.2.3.4) and where the average pay is already lower than in stable work.¹⁷⁹ Regarding collective agreements, the new legislation goes further than the Memorandum. While the latter only requires a reform of the wage bargaining system, following dialogue with social partners, the new legislation directly repeals collective agreement clauses to the detriment of workers and reverses the hierarchy of collective agreements; it allows for the lowering of minimum standards laid down by national general collective agreements and gives precedence to firm collective agreements over collective

¹⁷⁸ www.parliament.gr (in English and Greek), last accessed on 15 September 2010.

¹⁷⁹ Monthly averages, 2009: EUR 848 (fixed-term work) v. EUR 1 110 (indefinite duration or permanent work): Labour Institute of the General Confederation of Labour & the Civil Servants Federation (*INE GSEE/ADEDY*), *The Greek Economy and Employment, Yearly Report 2010*: <http://www.inegsee.gr>, last accessed on 20 September 2010.

agreements of a wider scope and over national collective agreements.¹⁸⁰ It also repeals individual contract clauses to the detriment of workers. These measures run counter to the fundamental labour law principle that the provisions which are more favourable to workers prevail; they affect the fundamental right to collective bargaining guaranteed by ILO standards and the Charter of Fundamental Rights of the EU and remove important safety nets providing for protection from poverty and social exclusion.¹⁸¹ However, this is done in an abrupt way, the new provisions having immediate effect, with no transition period being provided. Thus, labour market structural inequalities which affect women are strengthened.

The aims of the reform are admittedly financial: to decrease public expenditure and enhance competitiveness,¹⁸² rather than to comply with EU social law. Measures for attaining these aims include an increase in the pensionable age and length of service requirements, decreases in wages and pensions, the freezing of pensions for three years and the measures mentioned in the previous paragraph.

The equalization of the pensionable ages goes further than required by EU law, as it also concerns statutory schemes, for which Directive 79/7 allows exceptions. Thus, the distinction between occupational and statutory schemes, which was never clear in our country, is further blurred. Let us recall that Directive 79/7 requires that, in order to ascertain whether the exceptions are still justified, Member States should periodically examine these exceptions in the light of social developments. No such examination was ever made and the exceptions were repealed for purely financial reasons. Moreover, the equalization was made in an inflexible way, with short and uneven transition periods, and with no consideration being given to proportionality.

1.3. The new legislation is very complex and confusing. The Acts by which it was introduced are difficult to combine amongst themselves and with previous legislation, while new austerity measures in the employment and social security areas are expected. There is thus no legal certainty and workers are panicking, with the result that many are resigning, in order to benefit from current conditions of entitlement to a pension and current pension amounts. This is why Acts 3845/2010 and 3847/2010 allowed employees covered by the Civil Pensions' Code (see above A. 1.1. and 1.4), who resigned in the course of 2010, to revoke their resignation and return to their post

¹⁸⁰ There are five categories of collective agreements: i) national general collective agreements, which determine compulsory minimum standards for all workers across the country; ii) branch (sectoral) agreements, covering companies which produce the same or similar products in a particular town, region or in the whole country; iii) undertaking (firm) agreements which cover all those employed by a firm; iv) national professional agreements covering a particular profession; and v) local professional agreements, covering a profession in a town or region. According to Act 1876/1990 on collective agreements (OJ A 27/8.3.1990: <http://www.et.gr>, last accessed on 20 September 2010), the provisions of the last four categories may not be less favourable for workers than the national general collective agreement each time in effect, while individual contracts (and, in principle, statutory provisions) prevail over collective agreements only insofar as they are more favourable to the worker.

¹⁸¹ The Greek Confederation of Labour (GSEE) has lodged a complaint with the ILO: http://www.gsee.gr/news/news_view.php?id=1408&year=2010&month=07&key=Δεξιό%20Τύπ%20&page=0&limit=10, last accessed on 20 September 2010. The Athens Bar, together with the Federation of Civil Servants (ADEDY) and other unions, has lodged a petition for the annulment of ministerial decisions and other administrative acts which implement the recent legislation reforming the social security and the labour law systems, claiming that this legislation is incompatible with the Greek Constitution, the European Convention on Human Rights, the Lisbon Treaty, ILO standards etc, inter alia, as it does not comply with the principle of proportionality. See Athens Bar website: www.dsa.gr, last accessed on 20 September 2010.

¹⁸² These aims are laid down in the explanatory reports to the new Acts and in the Acts themselves.

within one month of the publication of each Act in the OJ.¹⁸³ Moreover, it was not proven by an *ex ante* actuarial study that this reform would ensure the sustainability of the pension system. More generally, instead of achieving their aims, the measures seem rather to deepen the recession, with unemployment, in particular among young people and women, continuously rising and labour market participation shrinking.¹⁸⁴

1.4. On 6 August 2010, the Greek government, admitting, directly or indirectly, the ineffectiveness of the measures taken, in particular in terms of growth, proposed a revision of the ‘Memorandum of Understanding’.¹⁸⁵ The measures proposed lead to a further deregulation of the labour market, in particular by reaffirming the reversal of the hierarchy of collective agreements in favour of firm agreements and introducing the suppression of the power of the Ministry of Labour to extend sectoral agreements to those not represented in the collective negotiations.¹⁸⁶ These measures will further weaken the position of the social partners and individual workers and will have unfavourable repercussions for pensions. They will be particularly prejudicial to women, as women’s position at firm level is weak and they are less represented in negotiations than men, due to their lower participation in trade unions. Thus, the non-extension of c.a.s will affect women to an important extent.

1.5. The first statute which aimed at implementing the memoranda was Act 3845/2010,¹⁸⁷ to which the ‘Memorandum of Understanding’ is annexed. This Act laid down the framework of the employment and social security reform. It was immediately followed by Act 3847/2010,¹⁸⁸ which diminished the amounts of additional remuneration paid for Christmas, Easter and the annual leave to pensioners of the State (the corresponding payments granted to employees of the public sector,

¹⁸³ Act 3845/2010 ‘measures for implementing the mechanism of support of the Greek economy by the Euro area Member States and the IMF’, OJ A 65/6.5.2010: OJ website: <http://www.et.gr>; Act 3847/2010 ‘Redetermination of Christmas, Easter and annual leave allowances for pensioners of the State’, OJ 67/11.5.2010: OJ website: <http://www.et.gr>, both last accessed on 25 October 2010.

¹⁸⁴ 2010 second semester data show that, as a result of the deepening recession, registered unemployment has risen to 11.8 % (exceeding by 2.9 % the figure for the same period in 2009). This is the highest figure since 2000 and it is expected to reach 13 % by 2011, the highest figure in the last fifty years. 47 % of the unemployed are long term (an increase of 4.7 % since last year). Employment levels have fallen by 2.3 % since last year. Registered female unemployment is 15.5 % (it was 12.5 % in 2009), while registered male unemployment is 9.4 %. The worse hit regions are those of Attica and Macedonia, which include the largest cities. (See Foundation for Economic and Industrial Research (IOBE), *Quarterly Bulletin* No. 61, September 2010, http://www.iobe.gr/index.asp?a_id=111, last accessed on 25 September 2010; Labour Institute of the General Confederation of Labour & the Civil Servants Federation (*INE GSEE/ADEDY*) Review *Enimerossi* No. 174, July-August 2010: <http://www.inegsee.gr>, last accessed on 20 September 2010). According to more recent data, registered unemployment is expected to reach 14.5 % or even 15 % in 2011: Minister and Deputy Minister of Finance interviews, 5 October: www.minfin.gr, last accessed on 5 October 2010.

¹⁸⁵ See Ministry of Finance website: <http://www.minfin.gr/content-api/f/binaryChannel/minfin/datastore/d8/4e/34/d84e340dfc9bb18ddb836375c1612696d0210d31/application/pdf/Revised+MoU+FINAL.pdf>, in English, last accessed on 18 September 2010.

¹⁸⁶ While n.g.c.a.s bind all employers in the country, the other c.a.s bind only those employers belonging to the organizations which have negotiated and signed them. According to Act 1876/1990 ‘on collective agreements’, OJ A 27/8.3.1990: <http://www.et.gr>, last accessed on 20 September 2010, sectoral or professional c.a.s which bind employers employing at least 51 % of workers in that branch or profession may be extended by a decision of the Minister of Labour to the whole branch or profession.

¹⁸⁷ See above 1.3.

¹⁸⁸ See above 1.3.

which are taken into account for the calculation of their pension, were previously diminished by Act 3845/2010). These Acts were followed by more specific legislation providing for the social security and employment law reform, while further legislation is expected. The provisions of these Acts are very complicated. They must be combined with other provisions, which they modify or to which they simply refer. We will summarily report the most important modifications to the current system. We will also mention, where this is necessary in order to have a better picture of the new system, the provisions which were retained by the new legislation.

2. Statutory old-age pension schemes

2.1. As already explained, the main statutory scheme is IKA, which covers workers who are subject to a private law contract. There are other statutory schemes as well and several occupational schemes which cover such workers. Six occupational pension schemes (of public corporations and banks) were grouped together with IKA, under the title IKA ETAM. This was not a merger. The conditions for granting pensions and the methods for calculating their amount, which apply to each scheme, did not change (see above A.1.1.–1.4.). Thus, IKA remained a statutory scheme, while the other six schemes remained occupational. Act 3863/2010¹⁸⁹ contains measures reforming all pension schemes which cover workers in a private law employment relationship, *without distinguishing between statutory and occupational ones*. It concerns persons who do not fulfil the conditions for receiving a pension under the current legislation until 31.12.2010. We will summarily deal with the IKA scheme.

2.1.1. Full pension:

Minimum requirements: According to Article 10(11) of Act 3863/2010, the minimum length of insured service remains 4500 days for both men and women, while the pensionable age for women (60) will be raised from 2011 onwards, so as to reach the age which is currently applicable to men (65) (above B.2.3) by 2015. However, this rule does not apply to women who reach 60 years of age until 31.12.2010.

More in particular, according to a transitional provision in Article 10(11) of Act 3863/2010, women are entitled to a pension at the age which is in force when they reach the age of 60. This means that there is no change for women who reach the age of 60 until 31.12.2010, i.e. those born up to 31.12.1950. These women are still entitled to a full pension at the age of 60 if they fulfil 4 500 days of insurance. There is a change for women who reach the age of 60 from 1.1.2011 onwards.

Thus, women who reach the age of 60 in 2011, i.e. those born in 1951, are entitled to a pension at the age of 61, once they fulfil 4500 days of insurance. Women who reach the age of 60 in 2012, i.e. those born in 1952, are entitled to a pension at the age of 62, once they fulfil 4500 days of insurance. Women who reach the age of 60 in 2013, i.e. those born in 1953, are entitled to a pension at the age of 63, once they fulfil 4 500 days of insurance. Women who reach the age of 60 in 2014, i.e. those born in 1954, are entitled to a pension at the age of 64, once they fulfil 4500 days of insurance. Women who reach the age of 60 from 1.1.2015 onwards, i.e. those born from 1955 onwards, are entitled to a pension at the age of 65, once they fulfil 4 500 days of insurance.

¹⁸⁹ Act 3863/2010, ‘New social security system and related provisions, regulation of employment relationships’, OJ A 115/15.7.2010: OJ website: <http://www.et.gr>, last accessed on 30 October 2010.

Consequently, it is the generation of women born from 1955 onwards that bear the heaviest burden of sex equality: the pensionable age of women who are currently 55 years old or younger is raised from the age of 60 to the age of 65.

Longer service: Longer insured service provides an entitlement to a full pension at an earlier age. A full pension is currently granted to women at the age of 57, if they have 10 000 days of insurance, while it is granted to men at the age of 58, if they have 10 500 days of insurance (above B.4.1.1). Article 10(12) of Act 3863/2010 raises the length of service and the ages on a yearly basis from 2011 onwards, so that 12 000 days of insurance and the age of 60 for both men and women are reached by 2015. However, this rule does not apply to men and women who fulfil the current prerequisites for a pension until 31.12.2010.

More in particular, according to the above provision, women are entitled to a pension at the age and with the length of service which are in force in the year in which they fulfil 10 000 days of insurance. Men are entitled to a pension at the age and with the length of service which are in force in the year in which they fulfil 10 500 days of insurance.

This means that there is no change for women who fulfil 10 000 days (33.33 years) of insurance until 31.12.2010; these women are still entitled to a full pension at the age of 57. This will be the case of women born until 31.12.1959, since those born from 1960 onwards cannot fulfil 33.3 years of insurance by 2010, even if they have worked from the age of 18 ($1960+18+33.3=2011$).

Women who have 10 000 days of insurance in 2011 are entitled to a full pension at the age of 58, if they fulfil 10 400 days of insurance. Women who have 10 000 days of insurance in 2012 are entitled to a full pension at the age of $58^{1/2}$, if they fulfil 10 800 days of insurance. Women who have 10 000 days of insurance in 2013 are entitled to a full pension at the age of 59, if they fulfil 11 200 days of insurance. Women who have 10 000 days of insurance in 2014 are entitled to a full pension at the age of $59^{1/2}$ if they fulfil 11 800 days of insurance. Women who have 10 000 days of insurance in 2015 are entitled to a full pension at the age of 60, if they fulfil 12 000 days of insurance.

Consequently, in this case, it is the generation of women born from 1960 onwards that bear the burden of sex equality. It is a double burden: increases both in the length of service and in the pensionable age.

2.1.2. Reduced pension: According to Article 10(13) of Act 3863/2010, the minimum length of insured service remains 4 500 days for both men and women, while the pensionable age for women (now 55) is raised from 2011 onwards, so as to reach the age which is applicable to men (60) by 2015. However, this rule does not apply to women who reach 55 years of age until 31.12.2010.

More in particular, according to a transitional provision in Article 10(13) of Act 3863/2010, women are entitled to a reduced pension at the age which is in force when they reach the age of 55. This means that there is no change for women who reach the age of 55 until 31.12.2010, i.e. those born until 31.12.1955. These women are still entitled to a reduced pension at the age of 55, if they have 4 500 days of insurance. There is a change for those who reach the age of 55 from 1.1.2011 onwards, as follows:

Women who reach the age of 55 in 2011, i.e. those born in 1956, are entitled to a reduced pension at the age of 56, once they fulfil 4500 days of insurance. Women who reach the age of 55 in 2012, i.e. those born in 1957, are entitled to a reduced pension at the age of 57, once they fulfil 4 500 days of insurance. Women who reach the age of 55 in 2013, i.e. those born in 1958, are entitled to a pension at the age of 58,

once they fulfil 4 500 days of insurance. Women who reach the age of 55 in 2014, i.e. those born in 1959, are entitled to a pension at the age of 59, once they fulfil 4 500 days of insurance. Women who reach the age of 55 from 2015 onwards, i.e. those born from 1960 onwards, are entitled to a pension at the age of 60, once they fulfil 4 500 days of insurance.

Consequently, it is the generation of women born from 1955 onwards, and in particular the generation of women born from 1960 onwards, that bear the burden of gender equality. It is for these women that the pensionable age for a reduced pension is raised from the age of 55 to the age of 60.

For both men and women, the pension reduction remains 6 % for each year which is missing from the normal pensionable age applying to men and women. Nevertheless, although the percentage of the reduction remains the same, the reduction of the pension for women is higher, due to the increase in their pensionable age. The reduction reaches 60 % for women born in 1955 who are entitled to a full pension at the age of 65 and to a reduced pension at the age of 55 ($10 \times 6 = 60\%$).

2.1.3. Parents of minor children: For mothers insured until 31.12.1992, a full pension is currently granted, if they have minor children, they are 55 years old and they have 5 500 days of insurance. A reduced pension is currently granted to them from the age of 50, subject to the same conditions (above B.2.1).

According to Article 10(17)(b) of Act 3863/2010, from 2011 onwards the minimum length of insured service remains 5500 days, while the pensionable age for a full pension is raised from 2011 onwards, so as to reach the normal pensionable age of men for a full pension (65) by 2013. The pensionable age for a reduced pension is raised from 2011 onwards, so as to reach the normal pensionable age of men for a reduced pension (60) by 2013. Mothers are entitled to a pension at the age which applies when they fulfil 5 500 days of insurance, provided that, when they fulfil 5 500 days of insurance, their child is still a minor. It is irrelevant whether the child is no longer a minor when the mother reaches the pensionable age. However, these rules do not apply to mothers who fulfil 5 500 days of insurance until 31.12.2010.

More in particular, according to a transitional provision in Article 10(17)(b) of Act 3863/2010, there is no change for mothers who have fulfilled 5 500 days until 31.12.2010. These mothers are still entitled to a full pension at the age of 55 and to a reduced pension at the age of 50. This will be the case of mothers born until 1974, since mothers born from 1975 onwards cannot attain 5 500 days (18.33 years) of insurance by 31.12.2010, even if they have worked from the age of 18 ($1975+18+18=2011$).

Mothers who fulfil 5 500 days of insurance in 2011 and have a minor child are entitled to a full pension at the age of 57 and to a reduced pension at the age of 52. Mothers who fulfil 5 500 days of insurance in 2012 and have a minor child are entitled to a full pension at the age of 60 and to a reduced pension at the age of 55. Mothers who fulfil 5 500 days of insurance from 2013 onwards are entitled to a full pension at the age of 65 and to a reduced pension at the age of 60. This will be the case of women born from 1977 onwards, since women born from 1977 onwards can only have 5 500 days (18.33 years) of insurance from 2013 onwards, even if they have worked from the age of 18 ($1977+18+18=2013$).

Consequently, in this case, it is the generation of mothers born from 1977 onwards that bear the burden of sex equality. For this generation there will not be a different pensionable age on grounds of maternity.

2.1.4. Parents of children who are unfit for work or are handicapped: (above A.2.3.3. and B.4.2.1): Mothers retain their current entitlement to a full pension at the

age of 55, with 5 500 days of insurance, and to a reduced pension with the same number of days, at the age of 50. Fathers also retain their current entitlement, which is subject to their being widowers. Mothers of handicapped children also retain their current entitlement to a full pension after 7 500 days of insurance irrespective of age. Fathers retain this entitlement subsidiarily (if the mother does not make use of this or has died). (Article 10(17)(e) last sentence). Thus, differences on grounds of sex remain after 2013.

2.1.5. Spouses of handicapped persons: Women and men remain entitled to a pension after 7 500 days or 25 years of insured service, irrespective of their age (above A. 2.3.3).

2.1.6. Service credit: mothers and subsidiarily fathers (if the mother does not make use of the credit) retain their current entitlement (above A.2.3.1 and B.3.3).

2.2. Summing up: The pensionable age for women is raised in most cases in an inflexible way. In particular, it is raised by five years within a period of five years (above 2.1.1, 2.1.2) and in the case of mothers of minor children, by ten years within a period of only three years (above 2.1.3). Moreover, this is done where EU legislation (Directive 79/7) does not require equalization between men and women, since the IKA scheme is statutory. A smoother increase in the pensionable age, made through clear and unambiguous provisions (which is not the case), would be in accordance with EU gender equality law and with the principles of legal certainty and family protection, both of which are EU principles. This would also make the pension reform socially acceptable and would reduce social tensions.

The service credit should be made gender-neutral. Moreover, the social security reform should be combined with effective gender-neutral measures for the reconciliation of family and work, which should be funded from state funds, and with the eradication of persisting direct and indirect discrimination against women in law and in practice, including in matters of maternity protection. This would provide support to families and modify the image of women as costly and occasional workers, without laying an additional burden on employers – something which is very important, in particular in the private sector, in a context of economic crisis (cf. above D).

3. Occupational old-age pension schemes

3.1. The most important occupational scheme is the civil servants' scheme (above A.1.1. and C). The pension reform in this scheme was brought about by Act 3865/2010;¹⁹⁰ it concerns persons who are not entitled to a pension by virtue of current legislation until 31.12.2010 (Article 6(11) Act 3865/2010).

3.1.1. Full pension: For those insured until 31.12.1992, the minimum length of service remains 15 years for both men and women, while the pensionable age for women (currently 60) is raised from 2011 onwards, so as to reach the age which is currently applicable to men (65) by 2013 (Article 6(2)(bc) Act 3865/2010).

According to the above provision, women are entitled to a pension at the age which applies when they fulfil 15 years of service. This means that women who fulfil 15 years of service in 2010 are entitled to a full pension at the age of 60. Women who fulfil 15 years of service in 2011 are entitled to a full pension at the age of 61. Women who fulfil 15 years of service in 2012 are entitled to a full pension at the age of 63. And women who fulfil 15 years of service in 2013 are entitled to a full pension at the

¹⁹⁰ Act 3865/2010 'Reform of the pension system of the State and related provisions', OJ 120/21.7.2010; OJ website: <http://www.et.gr>, last accessed on 30 October 2010.

age of 65. This will be the case of women born from 1980 onwards, since women born from 1980 onwards can only achieve 15 years of insurance from 2013 onwards, even if they have worked from the age of 18 ($1980+18+15=2013$).

3.1.2. Reduced pension: For women insured until 31.12.1992, the pensionable age (55 until 31.12.2010) is increased by one year in 2011 and by two years from 2012 onwards, so as to reach the current pensionable age for men (60) by 2013 (Article 6(3)(b) Act 3865/2010).

According to the above provision, women are entitled to a pension at the age which is in force when they fulfil 15 years of service. This means that women who fulfil 15 years of service in 2010 are entitled to a reduced pension at the age of 55. Women who fulfil 15 years of service in 2011 are entitled to a reduced pension at the age of 56. Women who fulfil 15 years of service in 2012 are entitled to a reduced pension at the age of 58. And women who fulfil 15 years of service in 2013 are entitled to a full pension at the age of 60. This will be the case of women born from 1980 onwards, since women born from 1980 onwards can only have 15 years of insurance from 2013 onwards, even if they have worked from the age of 18 ($1980+18+15=2013$).

The pension reduction is increased from a current 1/267 (4 %) (above C.7.3.2) to 1/200 (6 %) for each year which is missing until the normal pensionable age (65).

Consequently, it is particularly the generation of female civil servants born from 1980 onwards that bears the burden of sex equality. For this generation there will not be a different pensionable age on grounds of sex.

3.1.3. Parents of at least three children: Mothers of at least three children are currently entitled to a full pension, if they have a service period of 20 years until 31.12.2010, irrespective of their age.

Mothers and fathers of at least three children, who fulfil a service period of 20 years from 1.1.2011 onwards, are treated equally from 2011 onwards, but they must fulfil stricter conditions: the length of service is increased and a pensionable age is required. The length of service is raised from 20 to 25 years by 2013, while a pensionable age of 52 is required for 2011, which reaches 65 by 2013 (Article 6(2)(ba) Act 3865/2010). Mothers and fathers are entitled to the pension in the year that they fulfil a service period of 20 years (Article 6(2)(c) Act 3865/2010).

3.1.4. Parents of minor children: The pensionable age for women is currently 50 and the service period is 25 years until 31.12.2010. For both mothers and fathers, the service period remains 25 years, while the age is increased to 52 for 2011, to 55 for 2012 and to 65 (the pensionable age for men) for 2013. (Article 6(2)(ba) Act 3865/2010). Women follow the pensionable age required when they fulfil the minimum service period of 25 years. Thus, no difference between mothers and fathers of minor children will remain after 2013.

3.1.5. Parents of handicapped children and persons having handicapped spouses: The entitlement of women to an early pension at the age of 50, with a service period of 25 years, is extended only to men who fulfil 25 years of service from 2011 onwards (Article 6(7)(a) Act 3865/2010).

3.1.6. Service credit: A service credit of one year for the first child, two years for the second and two years for the third is provided for both mothers and fathers who have been appointed from 1.1.1993 onwards (Article 6(12) Act 3865/2010). Thus, in contrast to the IKA service credit, the service credit for civil servants is gender-neutral. However, in order to obtain it, the parents must pay the corresponding social security contributions (6.67 %), something which is not required for IKA (above 2.1.6).

3.2. Summing up: The pensionable age and, in some cases, the length of service of women civil servants are increased in an inflexible way. In particular, within a period of only three years the age for entitlement to a reduced pension is increased by five years (above 3.1.1, 3.1.2) and for mothers of minor children, by fifteen years (above 3.1.3). For parents of at least three children, the length of service is increased by five years and the pensionable age by 15 years within three years only.

Although this is done in areas where EU law requires full gender equality, the remarks regarding the reform of the IKA scheme (above 2.2) also apply to the civil servants' scheme. This is the more so as EU law does not require a particular method for equalizing pension conditions for men and women. On the contrary, Directive 86/378, as amended by Directive 96/97, enables Member States to make socially acceptable reforms through flexible arrangements. Thus, a smooth increase in pensionable ages, made through clear and unambiguous provisions (which is not the case), would be in accordance with EU gender equality law and with the principles of legal certainty and family protection, both of which are EU principles. Moreover, the pension reform should be combined with gender-neutral measures for the reconciliation of family and work (which is not the case) and with the eradication of gender discrimination related to the parental leave of civil servants, which persists in the civil servants' scheme. Furthermore, administrative practices which curtail this leave should also stop.¹⁹¹ In this way, social justice would be promoted, while the social acceptance of the reform would be encouraged and social tensions would be reduced.

4. Concluding remarks:

The burden of gender equality is not spread over the generations. It is borne by the generation of women born from 1955 onwards, especially those born from 1960 onwards, and more particularly mothers born from 1977 onwards.

The aims of the Greek social security and labour law reform are mainly financial. It is true that the financial situation in Greece is very bad and that austerity measures are needed in order to resolve the crisis. However, the measures relating to this reform must be drawn and interpreted in the light of fundamental EU values and rights, including gender equality, and of EU horizontal social objectives which also condition the effectiveness of economic objectives.

Let us recall that social rights are fundamental rights of the same nature and level as other fundamental rights, by virtue of the Treaties and ECJ case law. The ECJ, in interpreting a social principle enshrined in the Treaty (Article 119 TEC – now 157 TFEU), held that the Community/Union '*is not merely an economic union, but is at the same time intended, by common action, to ensure social progress and seek constant improvement of the living and working conditions of the peoples of Europe*'; thus, '*the economic aim*' pursued by Article 119 '*is secondary to the social aim pursued by that provision, which constitutes the expression of a fundamental right*'.¹⁹²

Fundamental rights, including gender equality, are fundamental '*values*' of the Union (Article 2 TEU), while the first aim of the Union is to promote its values and the well-being of its peoples (Article 3(1) TEU). The promotion of gender equality is a horizontal objective of the Union (Article 3(3) TEU, Articles 7-8 TFEU). The Union's

¹⁹¹ On the social and gender equality problems linked to the pension reform in Greece, see S. Renga, H. Masse-Dessen, S. Laulom and S. Koukoulis-Spiliotopoulos 'Old-Age Pension Rights for Women in Three European Countries. Which Equality?' *European Gender Law Review* No. 1/2010, 14; S. Koukoulis-Spiliotopoulos 'Greece' *European Gender Law Review* No. 1/2010, 77.

¹⁹² Cases C-50/96, *Schröder*, [2000] ECR I-774; C-270-271/97, *Sievers*, [2000] ECR I-933.

social objectives, including social inclusion, social protection and social progress, are interwoven with its economic objectives, whose effectiveness they condition; economic cohesion relies on social cohesion (Article 3(3) TEU).

The above norms are reflected in the Commission's 2010 Report on gender equality, which stresses that 'efficient gender equality policies must be considered as part of the solution for exiting the crisis, supporting recovery and building a stronger economy for the future'. The Commission recalls that gender equality is not only a question of social fairness, but also 'a precondition for meeting the objectives of sustainable growth, employment, competitiveness and social cohesion'. Moreover, it warns that 'the economic downturn should not be used as a reason to slow down progress on reconciliation policies and to cut budgets allocated to care services and leave arrangements, affecting labour market access by women in particular'.¹⁹³

The ECJ, when it found Greece to be in breach of Article 141 TEC (now 157 TFEU) (above A.1.4), recalled the necessity of measures facilitating the reconciliation of family and work. It is also well established ECJ case law that the implementation of EU law must be made in a clear and transparent way, which can create legal certainty.

It is obvious that the Greek social security and labour law reform is not in line with the above EU values and objectives and the requirements based thereon.

HUNGARY – Csilla Kollonay Lehoczky

A) GENERAL QUESTIONS

1. The old-age pensions system

Hungary has a pension system¹⁹⁴ that includes two *statutory and mandatory* schemes and, in addition, voluntary private schemes. The first part of the mandatory statutory schemes continues the former (pre-transition) Pay-As-You-Go (PAYG) public scheme, with a Defined Benefit (DB) system and its second part – only mandatory for those who entered the labour market from 1 January 1998 onwards – is a funded Defined Contribution (DC) system. The pension age is now 62 in both systems for both men and women (complete equalization will be completed by 1 January 2013) and will then increase to 65 by 2022.

The Act on *occupational pension schemes*¹⁹⁵ has been adopted so as to formally comply with EU requirements; however, it is not applied in practice. According to the Act it might be either a DB or a DC scheme, the employment contract or the collective agreement determines the amount of the promised benefit or the amount of the contribution respectively. The statutory PAYG system has survivors' pensions. The occupational schemes may or may not have such pensions, depending on the construction of the given scheme. Survivors' pensions are gender-neutral: both widows and widowers might be entitled and there is no difference in the income

¹⁹³ Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions. *Equality between women and men - 2010*, SEC(2009)1706.

¹⁹⁴ Introduced by three acts: Act LXXX of 1997 on entitlement and those entitled to social security benefits, private pensions and on the financial coverage of such provisions, Act LXXXI of 1997 on social security pensions, Act LXXXII on private pensions and private pension funds.

¹⁹⁵ Act CXVII of 2007 on the 'employers' pension' – established under EU harmonization requirements, still not widely implemented in practice.

spectrum covered by the salary of a male or a female. (Both can result in a widow's/widower's, orphan's, or parent's pension, without distinction.)

In the mandatory private and the voluntary private schemes there are no survivors' pensions, the surviving beneficiaries might be designated by the account holder. (The surviving relatives – widow(er)s, children, parents - of these insured private pension fund members can receive survivors' pensions from the public PAYG scheme, 1.5 % of their pension contribution goes to the public fund.)

The social assistance scheme has been established¹⁹⁶ in order to provide a replacement or supplement for those who, for any reason, have failed to qualify for an old-age pension or for adequate benefits (in terms of the amount or length of payment) within the overall social insurance system. The *old-age allowance* is a means-tested benefit for those who are beyond pensionable age and their income is around the minimum pension (80 % of the average with a spouse or partner, 95 % in the case of a single person below 75 years of age and 130 % in the case of a single person above 75 years of age). There is no gender discrimination in the system, just the opposite: the favourable treatment of persons above 75 has a more favourable effect as far as women are concerned, as they represent a higher proportion within this age group. However, I am not sure whether this form of social assistance¹⁹⁷ would fall under Article 3 par. 1 (b) of Directive 79/7/EEC.

2. Old-age pension reforms

Reforms of the old-age pension system targeting gender equality started in 1993 and have become accomplished during the last decade. Reforms also included the introduction of the mandatory private funded system as well as the extended availability of private insurance. While the impact of the reforms was rather positive and brought male and female pensions closer to each other, the introduction of the occupational pension system has been accompanied by a legislative amendment of the regulation on 'financial services' permitting gender-based actuarial calculations, which were not previously allowed. (Perversely, this change has 'sneaked in' under the veil of implementing the Service Equality Directive, making use of the 21 December 2007 deadline and quickly adopting the gender-differentiating rules granted in the Directive.)

Different working patterns, different labour market participation and different conditions for women were not taken into consideration in the reforms, and this did not even seem necessary because the equalization process was long enough and also because of the overall duty to engage in work and the corresponding high rate (around 90 %, and 85-90 % of which was full time) of women in employment in the pre-1989 regime.

In order to compensate, at least in part, the disadvantage suffered by women due to the significant increase in their pensionable age (from 55 to 60, then to 62 and to 65 in total), the law has adopted two kinds of slight advantage if women take an early pension. First, originally an early pension was available for women five years before the pensionable age, while for men the early pension opportunity became available later; however, this difference decreased and will be uniform by 1 January 2013. Second, upon the calculation of the required length of service for an early pension women and single fathers could obtain a one to three-year advantage in case of having

¹⁹⁶ Act III of 1993 on social assistance and the administration of social assistance.

¹⁹⁷ Regulated by Act III of 1993 on Social Administration and Social Benefits (the overall law on means-tested social assistance benefits).

raised one or more children. The child-raising advantage was extended to all fathers by the Constitutional Court and was abolished from 1 January 2009.

In sum, by the end of the extended gradual equalization period – from 1 January 2013 – the pension age will be 62 to 65 (gradually reaching 65 by 2023) regardless of sex; an early pension is available two years before attaining pensionable age and there is no ‘child-raising preference’.

3. Retroactivity of legislation

Hungarian pension systems have not been recently amended for gender inequalities since such inequalities have been eliminated earlier. The equalization of the legislation took place gradually, with no retroactive element. (Since during the socialist era around 90 % of women participated in the labour market, the equalization related predominantly to the pensionable age and did not bring about any dramatic changes.)

4. The World Bank Model

The ‘Three-Pillar Model’ – if it means: 1. Mandatory public, 2. Occupational, 3. Private – does not apply to the system in Hungary, because Hungary did not have an occupational pension.

As a result of the developments in recent years Hungary now has an occupational pension scheme, thus, with a certain degree of exaggeration, it can now be said that the Hungarian system does fit within the Three-Pillar Model; however, the details are different. It cannot only be described in terms of ‘pillars’, instead ‘pillars’ as well as ‘tiers’ should be used.¹⁹⁸

The first pillar is the basic mandatory system. This consists of two ‘tiers’, the first tier is the public PAYG system, managed by public administration organs,¹⁹⁹ the second tier within the first pillar is the mandatory funded scheme, managed by private pension funds.²⁰⁰ The mandatory pension (both the public and the private) is based on gender equality rules, the general equal treatment principle is laid down in the Pension Act as well as the Private Pension Act, and thus they fall under Directive 79/7

The second pillar is the voluntary Occupational Pension scheme²⁰¹ which is a fully funded, optionally either DC or DB scheme that can provide a supplement to the pension obtained within the framework of the first pillar. An employee can be a member of the scheme if the employer undertakes – either in the individual or in a collective contract – to pay a regular contribution on behalf of the employee. The employer is free to decide whether or not to join or establish such a fund; however, if it decides to do so, the benefit must be provided according to the rules on equal treatment. Employees might pay additional contributions, and (in contrast to the claim by the trade unions) the employer may condition its contribution on co-payment by the employee. However, in practice this scheme does not function.

The third pillar is the traditional voluntary private pension scheme regulated by the same Private Pension Act as the mandatory one. This is practically a system of individual savings accounts, with state involvement regarding its regulation and

¹⁹⁸ David Natali: Basic Glossary for the Analysis of Pension Systems. 2004. Observatoire Social Europeenne p.7.

¹⁹⁹ Act LXXXI of 1997 on Social Security Pension.

²⁰⁰ Act LXXXII of 1998 on Private Pension and Private Pension Funds.

²⁰¹ Regulated by Act CXVII of 2007 on the Employers’ Pension and Institutions of the Employer’s Pension adopted after a call from the Commission as Directive 2003/41/EC had not been implemented.

overall inspection, operating in principle in a system of self-management and with the optional possibility of contributions from the employer. Private pension funds can be established by one employer, by several employers, professional chambers and associations, employee representative organizations, separately or by several of them together. Employers may contribute to the individual pension account of their employees. If the employer does contribute, the principle of equal treatment applies according to the Private Pension Act, i.e. the employer cannot differentiate between its employees regarding coverage or conditions. Employers seem to be ready to contribute to such voluntary private pension funds (as a form of fringe benefits granted to their employees) rather than joining (or establishing) an institution providing for an occupational pension.

B) STATUTORY OLD-AGE PENSION SCHEMES **(Schemes falling under Directive 79/7/EEC)**

1. Qualifying conditions

Access to an old age pension is conditional upon reaching a certain age and having a certain length of service (a contributory period).

Retirement age: An old-age pension is available at the age of 62 for those born before 1952 and, with a gradual increase (by 6 months every year), by 2023 it will be 65 for those born in 1957 or later. These age limits are uniform for men and women. Physical work under certain unhealthy conditions may result in a maximum of a two-year age preference (the precondition is ten years of work, for women it is eight years of work under statutorily defined conditions, or six years under air pressure which is higher than 100 kPa).

Early pension – at a decreased amount – is available for anyone two years before pensionable age when there is a minimum of 37-40 years of service (dependent on the age and the pension age of the person and the age preference requested). In the past child-raising could result in additional years of service for the purpose of an early pension; this has now been abolished.

The minimum length of service is 10 years in the case of pensions requested before January 1, 2013 (or later if the person was insured exclusively under the PAYG public pension system) and 20 years in the case of pension claims submitted from January 1, 2013 onwards. In the latter case a so-called ‘partial pension’ is available with a curtailed amount in the case of at least 15 years of service.

Calculation of service periods. There is a difference in the calculation of service periods depending on whether it is a period preceding or following January 1, 1998.²⁰² When obtained in the pre-1998 era, periods not covered by social security contribution can also be credited even after 1997 (e.g. period of university studies, mandatory military service), whereas from January 1, 1998 only periods worked in a relationship covered by social security law are credited if the contribution was paid or if the employer deducted it from the person’s pay, but failed to transfer it to the public pension funds. All kinds of labour law employment and public service, regardless of the working time, the length of service or the type of work are automatically coupled with the mandatory pension insurance. Besides formal employment, all kinds of work performed personally against payment – working at home, contracts for work, self-employed or free-lance workers, helping family members, with the exception of volunteer work as defined in the relevant laws – are insured and accrue a service

²⁰² The date of the entry into force of the laws on the new social security system.

period if payment for this work during a month reaches 30 % of the statutory minimum wage. Since predominantly women undertake such work, the provision protects women as much as they are covered. On the other hand, women are predominantly those who are excluded by the 30 % rule. The excluded categories can be explained by the aims of social policy, similar to the *Inge Nolte* case (C317/93).

Periods of university studies also count as years of service.

For those in an employment relationship there is no minimum contribution; in the case of other types of contracts for personal work the minimum income level (30 % of the minimum wage) means at the same time a minimum contribution level. There is nevertheless a limitation called the 'proportionality consideration' of service periods: if the amount of pay in an employment or personal work relationship is less than the minimum wage, those periods can be taken into consideration with a proportionately decreased length.

Periods of drawing unemployment benefit are taken into account for pension rights and pension amount purposes.

The minimum contribution period after the reform has been increased from 10 to 20 years (exceptionally 15 years if earned under the old system).

2. The amount of the old-age pension

The pension amount is based, in principle, on lifelong earnings. Since this system was introduced from 1988 onwards, incomes earned since January 1, 1988 are now taken into consideration and this gradually grows into lifelong earnings. Since the pension is free from taxation and provides an entitlement to health care without any contribution, the net income – after income tax and social security contributions – is taken into account in the case of pensions granted before 1 January 2013.

No gender-specific life expectancy tables are taken into consideration.

There is no longer any distinction between a full and a partial old-age pension. In the case of a pension granted before 1 January 2013 with ten years' minimum service the pension is 33 % of the calculated basis (the net monthly income). It increases by 2 % with each additional year and reaches 63 % with 25 years of service (the start of the 'full pension' in the past). The top of the scale is 40 years of service when the pension reaches 80 % of the basic income.

In the case of pensions granted from January 1, 2013 the minimum 20 years of service will be coupled with a 33 % increase and the pension will reach 66 % of the basic after 40 years of service.

There is no flat-rate pension in the system. There is, on the other hand, a minimum pension: those attaining pensionable age and having a minimum service period are entitled to a minimum pension that is established annually; in 2010 it is about EUR 110 (identical to the amount in 2009) which is around one-third of the average pension. In the case of an income that is so low that it does not reach the minimum pension, the person receives the amount of the income.

There are no special rules for the *calculation of pensions for non-standard workers*; however, the so-called 'proportionality' rule for those earning less than the minimum wage, even if it relates to the calculation of periods of service, indirectly influences the salary as well.

Indexation: Incomes earned before the last three years preceding retirement are upgraded according to a calculated inflation rate.

A ceiling on benefits is automatically set on calculable income. For the time being – as an element of solidarity – incomes are taken into consideration along a degression scale, and only up to a maximum limit. This means that above the

maximum amount²⁰³ the individual does not pay a contribution and the additional amount is not taken into consideration when his pension is calculated. This maximum amount is increased gradually with the final aim being to abolish the degression and the income maximum.

3. Periods of caring

Periods on sick pay (including periods on leave with sick pay for taking care of a sick child under 12 year of age), maternity benefit (paid to the mother during maternity leave) and child-care benefit (paid for the period of child-care leave to any of the parents) also accrue if on the day before taking the leave in question the person was insured. If entitled, the total length of the caring period is taken into consideration. Here again, only the status of being ‘insured’ matters and not the employment position of the claimant. No other periods of unpaid leave besides those mentioned (e.g. unpaid leave to take care of a sick relative) are credited.

These pension crediting rules are gender-neutral, except for one ‘historic’ norm that will disappear with time. Namely, mothers who gave birth to a child before 1968 are entitled to a 365-day additional service period per child (550 days in the case of a disabled child). This is a ‘compensation’ rule, because child-care leave was introduced from 1 January 1968 (and only for women at that time).

Responding to the question regarding a possible EU-level regulation, I think that if a majority of the Member States already have some form of care credits then a mandatory minimum level would not only be feasible but also desirable in order to harmonize labour and social security costs that are a significant factor of economic competition within the European Union. Without a common minimum, Member States might be exposed to opposite pressure from the global market, prompted to adopt measures that might appear economically useful in the short term but are precarious in the long run.

4. Exceptions, Article 7.1 of Directive 79/7

The pensionable age and the possible consequences for other benefits (Article 7.1 a)

A mandatory retirement age only applies in public service. It is 70 years for civil servants and for a few categories of public employees by the automatic termination of their employment at this age. Besides this, there is no mandatory retirement age; however, becoming entitled to an old-age pension (attaining pensionable age and having the necessary length of service) is an automatic ground for an employer to terminate the employment. Obtaining an old-age pension does not require the termination of employment and the claimant or pensioner may continue to work, except in the case of an early pension that cannot be drawn if employment is maintained.

The pensionable age is the same for men and women. It has been determined through a long process, starting in 1993 by increasing the retirement age for women to 55 and thereafter gradually to the male retirement age of 60; they have now both been raised to 62. This process will be completed by 1 January 2013 and will be followed by another increase to reach the uniform age of 65.

The gradual nature of this change made the process smooth and no compensation was required. The only and short-lived preference was the crediting of child-raising activity by a maximum of a three-year credit only for the purpose of an early pension.

²⁰³ HUF 7 453 300 – roughly EUR 28 000 in 2010.

The different pensionable age cannot have a significant effect on the new funded systems because those who are covered by these systems already have the same pensionable age.

The questions regarding an exceptionally different pensionable age are not relevant for Hungary.

Advantages granted to persons who have brought up children (Article 7.1 b))

The only caring advantages in Hungary are that caring periods are credited towards a pension, provided that the claimant was insured on the day preceding the caring period. This advantage is gender-neutral and covers any parent who takes child care leave or sick leave to take care of a sick child. Beyond this, no advantage or benefit is granted in the pension system with regard to bringing up children.

Old-age or invalidity benefit entitlements or increases in long-term benefits by virtue of the derived entitlements of a wife (Article 7.1 c) and d)).

No derived entitlements of a wife are granted in the Hungarian pension system.

In the past there used to be a so-called „spousal supplement’ that was paid to the pensioner with regard to a cohabitant spouse (partner) concerning the age, disability and the lack of any significant income of the spouse or partner. This can no longer be granted since January 1, 1998 and in cases when it is still being paid, it is paid to the entitled spouse and not to the pensioner.

C) OCCUPATIONAL OLD-AGE PENSION SCHEMES

(Schemes falling under Article 157 TFEU, Directive 86/378/EEC, as amended by Directive 96/97/EC, now Articles 5-13 of the Recast Directive 2006/54/EC)

1. Coverage

Participation in occupational pension schemes is voluntary for both employers and, when the employer has established or joined such a pension provider institution, for employees. It has to be included in the employment contract, or in a collective contract.

Occupational pension schemes are not really operative in any sector of the economy.

The law on occupational pensions²⁰⁴ obliges employers to ensure equal treatment for all employees with regard to contributions. The length of employment or part-time work cannot be a ground for discrimination. Nevertheless, the employer might differentiate according to the contributions paid by the employees: the employer may make its contributions conditional upon the payments made by the employees.

These elements cannot imply gender discrimination.

2. Calculation of old-age pensions and contributions

The law gives a wide latitude of available options regarding the amount of contributions, the types of funding (contribution or benefit-driven), the management of the amounts in the individual accounts, and the portfolio options. Employment variations do not play a role in the contribution and expected benefits.

The termination of employment does not necessarily terminate membership of the pension fund, unless it occurs during the vesting period. The member may decide to leave the account with the former employer or may take his/her investments to

²⁰⁴ Act CXVII of 2007 on Employers’ Pension Scheme and Its Institutions.

another pension provider. If the member does not indicate his/her intention to transfer his/her accumulated savings and entitlements, it is presumed that they are left with the previous employer. This might also be so in the case of unemployment.

3. Actuarial factors

Occupational funds are entitled by the law to use gender-related actuarial factors but, since they do not currently operate, these factors are not used.

4. Caring credits

The law is silent on such credits. If there would be any such credits, employers would be obliged to ensure equal treatment.

5. Vesting and reimbursement rules

The amounts recorded on the account as well as the entitlement thereto are a property of the member, except when a vesting period ('a conditional qualifying period') is prescribed. It can be a maximum of five years. If the employment is terminated within that period only the contributions paid by the member up to that time are to be transferred. Beyond this period the employee can transfer the total amount.

3. Pensionable age

There are no special rules on the pensionable age; the general rules apply.

4. Civil servants

There are no different rules for civil servants.

ICELAND – *Herdís Thorgeirsdóttir*

A) GENERAL QUESTIONS

1. The old-age pension system

The old-age pension system in Iceland is based on the prototypical *three-pillar* system based on the World Bank Model:

- (I) The so-called first pillar is a tax-financed public plan that provides a flat-rate or means-tested basic pension, to which every citizen is entitled. The aim is income equalization and collective guarantee, taking into account the lifetime risks facing all individuals;
- (II) The second pillar is a mandatory occupational or private, but publicly regulated, funded pension scheme;
- (III) A voluntary funded pension scheme, often with tax incentives.

The *social security system* was established in 1936 with the main purpose of ensuring the social livelihood of those unable to work because of old age or disability. *Social Security Act No. 100/2007* stipulates a certain degree of social protection. Everyone residing in Iceland for a certain length of time is automatically insured by the Icelandic Social Insurance System, unless provisions of international agreements provide otherwise, e.g. regarding age, degree of disability and length of residence. Income and family circumstances can also have an effect.

The *second and third pillar* went through a comprehensive pension reform that took place in 1997 and 1998 and resulted in the current Act on *Mandatory Pension Insurance and the Activities of Pension Funds No. 129/1997, amended by Law No. 13/2009*. Tax incentives for voluntary individual pension savings were established

as part of that reform. At that time, the pension system of employees in the public sector was also reformed by establishing a new independent pension fund in addition to the old fund.

The statutory public pension scheme (first pillar) is a tax-financed public plan that provides a flat-rate or means-tested basic pension to which every citizen is entitled. The social insurance is financed from the State Treasury by tax payments into the treasury and payroll taxes paid by employers and independently working individuals, but there is no other specific premium paid for Social Insurance. The public pension is paid as basic pension, with additional supplements to single or low-income citizens. The basic pension is low or roughly 10 % of the average earnings of unskilled workers and is *means-tested by a reduction* rate, applied after a certain income threshold. The main transfers, on the other hand, are paid through supplementary pension also means-tested with a certain reduction. The supplementary pension is no longer tested against half the income of the spouse but against pension payments from occupational pension funds and other income, such as interest revenues.

People living and working in Iceland for a stipulated length of time can, at the age of 67, apply for an old-age pension. To acquire the right to an old-age pension, an individual must have lived in Iceland for at least three calendar years between 16 and 67. Old-age pensions are paid starting at age 67,²⁰⁵ regardless of occupation or marital status. Men and women have the same right. Residence for 40 years between 16 and 67 entitles people to a full old-age pension, while shorter residence proportionally reduces the pension. The amount of the pension thus depends on a person's length of residence. The amount of old-age pension is determined by law, and pensioners' incomes affect this. Various types of compensation paid along with the old-age pension are linked to income.

The average length of employment in Iceland is high compared to other industrialized countries: around 40 to 45 years on average. The average retirement period is estimated at 14 years for men and 19.5 years for women. 13 % of women are 65 years and older, and 10 % of men.²⁰⁶ Labour participation is high. The official retirement age in the public pension system is 67 years. Life expectancy for women (2008) is 83 years and for men it is 79.6 years. The number of women in the labour force (2009) is 84 300 and for men this is 96 600. In 2009, the percentage of women employed full time was 63 % and of men 87 %.

The pension system in Iceland is work related. Payments from occupational pension funds affect social security payments. Two other income categories count as well: ordinary income wages and income from interest rates.

The main characteristic of the Icelandic pension system is the operation of a *mandatory occupational pension fund (second pillar)*. These funds became mandatory by law in 1974. This was a result of a general wage settlement after tripartite negotiations between labour unions, the Federation of Icelandic Employers (SA) and the State. All working individuals and their employers are obliged to pay certain minimum premiums into a pension fund according to Pension Act No. 129/1997. Every working wage earner is obliged to contribute a minimum of 12 % of his/her salary to an occupational fund, in most cases a fund predetermined by his/her trade union. The employer contributes a minimum of 8 % of the total contribution. A

²⁰⁵ Or two years earlier, then reducing the amount.

²⁰⁶ http://www.jafnretti.is/D10/_Files/Women%20and%20Men-2010.pdf, accessed 5 July 2010.

similar arrangement exists in the public sector.²⁰⁷ The pension funds pay a pension for old age and also disability and death grants. The right to payments from a pension fund depends on the paid premiums of fund members and the length of the payment period. Further information about these rights can be obtained from the relevant pension fund.

Occupational pension funds that enjoy state or municipal guarantee are defined-benefit schemes (*DB*).²⁰⁸ Occupational pension funds on the general labour market are defined-contribution schemes (*DC*). During the contribution period, the pension portfolio grows as part of a collective scheme in the custody of the occupational pension fund, based on continuous contributions and accruing interest, dividend or other capital income. When retired, usually at the age of 70, the individual receives benefits in the form of a pension income based on his/her acquired pension rights, without any distinction between actual contributions and capital income. These benefits are then taxed as ordinary income, like salaries without any exemption (second pillar). The links between the three pillars in the pension system can best be described by a simple example. Take a typical Icelandic individual who will be retiring in the near future. From the age of 60 to 67, this individual will enjoy his/hers private savings, if relevant, while still working, but possibly only part-time while preparing for full retirement. At 67, the same individual, still working, will possibly enjoy, based on the income earned simultaneously, benefits from the public system, while postponing any withdrawals from his/hers occupational pension fund until the age of 70 to increase his/hers pension rights. Then, from the age of 70, the individual will possibly both enjoy benefits from the public pension system and benefits from his/hers occupational pension funds, depending on the total income earned or accrued (occupational pension benefits included).²⁰⁹

The funds do not, however, fit simple classifications. Some of the funds have an employment guarantee and would be characterised as defined-benefit funds, where the employer bears the investment risk, but in Iceland only the Government, municipalities and banks can guarantee pension funds. But the other funds are not pure defined-contribution funds. The investment risk is borne collectively by the members, and there is some scope for smoothing out changes in benefits and for some risk-sharing among generations.

The framework of the tax treatment of pension contributions is stipulated in Income Tax Act No. 90/2003 and Pension Act No. 129/1997: Up to a certain maximum, pension contributions are deductible both by the employer and the employee. The investment returns of the pension funds are tax exempt until paid out. Pension funds are income tax exempt entities. Pension income is in most cases taxable as employment income when paid out.

There is a possibility of supplementary pension (third pillar), by saving more than the minimum premium into a personal pension fund or into the pension savings account of a financial company. As part of a general pension reform in 1998, legislation on tax incentives for voluntary individual pension savings was adopted. The reform made it possible for employees to deduct from their taxable income a contribution to authorized individual pension schemes. The wage payer pays a

²⁰⁷ In 1998, the minimum rate of contribution was 10 % of the total salary, 4 % for employees and 6 % for employers. In 2005, the rate was increased to 11 % and again to 12 % at the beginning of 2007; the minimum share of the employers now being 8 % instead of 6 %.

²⁰⁸ Defined benefit schemes.

²⁰⁹ http://evropa.utanrikisraduneyti.is/media/esb_svor/II%20-%20Economic%20Criteria/Annex%20II-49%20Pension%20System.pdf, accessed 5 July 2010.

matching contribution, which varies according to wage agreements. Payments from a personal pension fund have no effect on social security payments. An authorization has to be acquired by the Ministry of Finance in order to be able to provide such pension schemes. In most cases they are defined contribution individual accounts. The pension savings cannot be distributed until the age of 60 and have to be paid in equal instalments over a period of at least seven years.

Voluntary private pensions increased by leaps and bounds in the first years of the 21st century, reaching 15 % of the GDP in 2007. This type of savings proved to serve as a cushion to the blow of the financial crisis in the wake of the collapse of 90 % of the banking system in October 2008. Subsequently, Icelanders were temporarily allowed early withdrawal from their third-pillar pension funds by reason of the crisis.²¹⁰

2. Old-age pension reforms

At the turn of the century, the Icelandic pension system had taken many of the characteristics on which the interaction of the three-pillar system is based, i.e. a certain degree of income equalization; some degree of flexibility and providing scope for individual choice. The public pension system provided a low basic pension but a much higher supplementary pension, which was, however, means tested, also against pension from other sources.²¹¹ This meant that, as the occupational or second-pillar pensions matured, the public pension would dwindle in relative terms. At the time, pension payments from the public system were still somewhat larger than those from the occupational funds.

In October 2008, 90 % of the Icelandic banking system collapsed. Before the collapse of the banking system in October 2008 there had been various improvements that benefitted both the elderly and disabled. Spouses-related benefits were abolished in 2008,²¹² amounts of benefits were raised and the level of basic pension benefits (not affected by other revenues) were also raised.

In July 2009, *legislative amendments in social security and pension rights* for the elderly were adopted as a measure to counter the worsening financial situation in the country. These measures are to be temporary and include the following: (1) Lowering of the level of guaranteed payments not impacted by other income. This measure is due to the growing unemployment. This means that the public pension payment to a pensioner that lives alone and has an income of EUR 327²¹³ (ISK 50 000) will be EUR 39 (5 826) less per month. The payments from the public pension to roughly 2000 pensioners will be lower. (2) Income from an occupational fund after the legislative amendments in July 2009 are now affect the basic guaranteed payment from the public pension. Prior to this change the income from an occupational fund did not affect the guaranteed basic pension amount.²¹⁴ The pension payments to more than 5 000 pensioners will be reduced as a consequence.

From informal research it has become evident that the above measures affect women more than men. Women are more vulnerable with regard to these changes as they depend on the public pension system more often.

²¹⁰ <http://cb.is/lisalib/getfile.aspx?itemid=7817>, accessed 5 July 2010.

²¹¹ <http://cb.is/lisalib/getfile.aspx?itemid=7817>, accessed 5 July 2010.

²¹² The income of a spouse does not affect payments from Social Security Services. The legislative amendment took effect on 1 April 2008.

²¹³ Exchange rate very fluctuating – at present the rate is approx. 1 EUR is 153 ISK.

²¹⁴ <http://www.felagsmalaraduneyti.is/media/09FrettatengtFEL09/18062009FylgiskjalMedFrett.pdf>, accessed 5 July 2010.

In the last decade the by far most negative measure affecting the pension rights of women is the adoption of the *age-related pension scheme*. This system was adopted around 2006 by most occupational pension funds. Prior to that, equal accrual of rights prevailed, i.e. fund members accrued the same entitlement for the same contribution, regardless of their age when the contribution was paid. Since the age-related scheme was adopted by the occupational funds, the rights accrued are now determined by the age of the fund member when the contribution is made. Younger fund members thus accrue more rights than older members for the same contribution. Some funds reasoned that linking entitlement to age ensured equality between fund members in their accrual of entitlement over their working life.

The *age-related rights are clearly discriminatory for women* who have had interrupted careers because of having children. Only by not having children could women enjoy the same security in their old age as men. The system appears gender neutral when looking simply at the laws or pension schemes but when viewed in societal context it is not in the favour of women. Women have lower wages than men. The gender-based pay gap still exists and has been approximately 15 % for many years. Icelandic women have more children than women in other European countries and they are victimized by the age-related rights scheme. Iceland has the highest birth rate in Europe after **Turkey**, or 2.1 births per woman.²¹⁵ Women taking care of children do not accrue any pension rights at the same time. Women raising children also work fewer hours outside the home than men and are often part-time workers for years. Statistics from 2010 show²¹⁶ that women in the age group of 16-74 participating in the labour market make up 73 % and men in the same age group 77 %. The percentage of women working full time is 63 % and men 87 %. Women working part time or less than 35 hours per week are 37 % and men 13 %.²¹⁷ Women with a family usually enter the labour market full force later in life; often in their forties or fifties. For the same reasons, women are often older than men when they finish their graduate studies or get a professional license.

The changes in the pension system in the first decade of the 21st century are all geared towards the individual. The influence of marriage and co-habitation has been diminished in this context. When the occupational funds were initially established, married couples were considered as a unit accruing mutual savings and security. If a spouse died, the surviving spouse got half of his (her) pension during the rest of her (his) life. Now, occupational funds pay standard spouse pension on average for two years, three years at most.²¹⁸

Pension Act No. 129/1997 (Article 14) enables a fund member, on the basis of an agreement between him (her) and his spouse, to decide on an arrangement to provide for mutual and equal division of rights acquired during the period that the marriage, consensual union or recognized cohabitation has existed or may exist.

There are time limits on the *rights of couples to share pension rights* and this has been criticized, with critics calling for a change so that couples can start such sharing even after the commencement of payments.²¹⁹ Women in trade unions have reiterated that pension rights should be the mutual asset of a couple as many have agreed on a routine where the man works the longer hours outside the home while the woman is

²¹⁵ <http://www.felagsmalaraduneyti.is/radherra/RaedurMS/nr/2983>, accessed 5 July 2010.

²¹⁶ <http://www.jafnretti.is/D10/Files/Women%20and%20Men-2010.pdf>, accessed 5 July 2010.

²¹⁷ <http://www.jafnretti.is/D10/Files/Women%20and%20Men-2010.pdf>, accessed 12 June 2010.

²¹⁸ <http://www.live.is/english/pension>, accessed 12 June 2010.

²¹⁹ http://www.vssi.is/index.php?option=com_content&view=article&id=26:lifeyrisrettindi-skipting-milli-hjona&catid=31:greinar&Itemid=40, accessed 13 June 2010.

mostly at home, thus not working less but still not receiving a salary for being a homemaker; an arrangement beneficial for the family. Such an arrangement should not be allowed to eradicate the woman's security when she reaches old age if her husband dies. According to representatives of trade unions an obstacle to this system are technicalities in the Pension Act eliminating the possibility of an individual spouse to enjoy this arrangement. The main conditions for sharing pension rights are that such an arrangement must be reciprocal, even and amount up to one-half of the value of the fund member's accumulated old-age pension entitlements. It does not matter whether the other spouse has modest or no pension entitlements. It is only possible to share accrued rights that have been accumulated during the marriage or co-habitation and such an agreement must be made seven years prior to the commencement of payments and only if there are no apparent illnesses or health problems diminishing the life expectancy sparking such an agreement.²²⁰

At least one trade union has challenged the legislative assembly and called for the abolition of the time limit for sharing arrangements, so that individuals can benefit from such an arrangement although pension payments have begun.²²¹

When the occupational pension funds were initially established (1970s), the regulatory schemes were based on the premise that a survivor's pension would be paid to the spouse of the deceased during the rest of her life. This scheme was changed due to the poor financial situation of the occupational funds, with the VR pension fund leading the way in 1979.²²²

Now most of the occupational schemes pay widows' and widowers' benefits for approximately two years. A spouse's pension is also paid if the deceased fund member received old-age or disability pension. The same rule applies generally for the children of the deceased until the age of 19.

A spouse is a person who was married to, or lived in recognized cohabitation or a confirmed union with the deceased fund member at the time of death. The spouse either receives a standard spouse's pension or a pension equivalent to the value of the deceased fund member's inflation-adjusted contributions, depending on which is higher. A spouse's pension is paid for at least three years and longer if one of the following requirements is met: (1) A life-long pension is paid if the spouse is born before 1925. It gradually decreases if the spouse is born after 1925 and is no longer paid if the spouse is born after 1945. (2) A spouse's pension is paid for at least three years and longer if the spouse supports a child under the age of 23 years.²²³ A disabled spouse receives a pension until the age of 67. A spouse's pension is 60 % of the old-age pension at the age of 67.²²⁴

Voluntary individual pension savings, on the other hand, are inherited by spouses, children or other relatives. These benefits, both survivor's pension from the occupational fund and the voluntary individual pension savings, are taxed as ordinary income.

The reasoning set forth a decade ago when moving away from the life-long payment of survivor's pension was that it had originally been meant for the 'wife' if the husband died. It was argued that the survivor's pension was no longer necessary,

²²⁰ http://www.ll.is/files/bbeidhgcbg/LL_Baekl.pdf, accessed 12 June 2010.

²²¹ http://www.vssi.is/index.php?option=com_content&view=article&id=26:lifeyrisrettindi-skipting-milli-hjona&catid=31:greinar&Itemid=40, accessed 12 June 2010.

²²² VR is the commercial workers' pension fund; <http://www.live.is/english/members/>, accessed 12 June 2010.

²²³ <http://www.live.is/english/pension/>, accessed 5 July 2010.

²²⁴ <http://www.live.is/english/pension/>, accessed 5 July 2010.

as both men and women were active participants in the labour market. As has been argued here, women have not benefited from increased participation in the labour market to the same extent as men with regard to collecting pension entitlements. According to statistics, in 2010 37 % (average 35 hours per week) of women are working part time and 13 % of men.²²⁵ 14.8 % of families are single mothers with children. Married couples with children are 31.6 % of all families and consensual union with children 12.2 %. Furthermore, women working part time are likely to be shouldering most of the responsibilities at home, also in the case of divorce.

The motive behind abolishing the life-long survivor's pension is not all together pure, as at the time it was also argued that as soon as the financial situation of the occupational funds improved, the survivor's pension would be revived.²²⁶ Life expectancy for women (2008) is 83 years and for men it is 79.6 years. The number of women in the labour force (2009) is 84 300 and for men it is 96 600. In 2009, the percentage of women employed full time was 63 % and of men 87 %.²²⁷

3. Retroactivity of legislation

There have been no recent amendments regarding gender inequalities (see Section 2 above). Due to the financial crisis, amendments of the social security act (in July 2009) are to the disadvantage of most, not least those who are heavily dependent on the public pension system.

In general, legal amendments take effect as soon as the law is in force and are not retroactive unless there is a special clause providing for recalculation of benefits.

When the occupational funds switched from the scheme of equal accrual of rights to age-related rights (which do not, as stated in Section 2 above, work in the favour of women), funds like *VR* – the occupational fund of commercial workers – stated that those fund members who had accrued rights in the early part of their working life, under the system of equal accrual, could continue within this system up to a certain maximum. Contributions beyond that maximum would lead to accrual of entitlements in age-related rights.²²⁸

4. The World Bank Model

I refer to Section 1 above, describing the function of the three-pillar system in Iceland. The gender discrimination features are the ones clad in the costume of gender equality – like the adoption of age-related rights which constitute indirect discrimination against women, as described in Section 2.

The three-pillar system as such may be useful for gender equality purposes if the discriminatory features within each system are abolished, taking into account the real situation of women in the labour market.

B) STATUTORY OLD-AGE PENSION SCHEMES (Schemes falling under Directive 79/7/EEC)

1. Qualifying conditions

The EC gender equality directives were adopted in the XVIII Annex to the EEA agreement; among them Directive 79/7/EEC on the equal rights of men and women to social security.

²²⁵ http://www.jafnretti.is/D10/_Files/Women%20and%20Men-2010.pdf, accessed 12 June 2010.

²²⁶ <http://www.lifeyrir.is/category.mvc/display/106>, accessed 11 June 2010.

²²⁷ http://www.jafnretti.is/D10/_Files/Women%20and%20Men-2010.pdf, accessed 14 June 2010.

²²⁸ <http://www.live.is/english/pension>, accessed 12 June 2010.

Social Insurance (Act on Social Security No. 100/2007²²⁹) is a statutory insurance system covering all Icelanders. Everyone residing in Iceland for a certain length of time is automatically insured by the Icelandic Social Insurance System unless provisions in international agreements provide otherwise. Nevertheless, certain additional conditions must be fulfilled to be entitled to payments, e.g. regarding age, degree of disability and length of residence. Income and family circumstances can also have an effect.

Residence is the main qualifying condition for receiving a pension. Residence generally means domicile as defined in the Act on Domicile, and length of residence is therefore based on registration in the National Registry. People living and working in Iceland for a stipulated length of time can apply for an old-age pension at the age of 67. To acquire the right to an old-age pension, an individual must have lived in Iceland for at least three calendar years between 16 and 67. Old-age pensions are paid starting at age 67,²³⁰ regardless of occupation or marital status. Men and women have the same right. Residence for 40 years between 16 and 67 entitles people to a full old-age pension, while shorter residence proportionally reduces the pension. The amount of the pension thus depends on a person's length of residence. The amount of an old-age pension is determined by law, *and pensioners' income affect this*. Various types of compensation paid along with the old-age pension are linked to income.

2. The amount of the old-age pension

The amount of the old-age pension is based on the last salary. An income estimate is a prerequisite for payments from the Institute of Social Security (*TR*). In order to ensure that pensioners receive the payments to which they are entitled, adequate information on their income must be made available. Payments are recalculated and corrected when information on the levies imposed by tax authorities becomes available. At the beginning of each year, all pensioners receive an income estimate for the coming year. Income is pre-registered in the income estimate and is based on the most recent valid income estimate. Pre-registered income increases in accordance with price index increases proposed by authorities. According to law, pensioners are under the obligation to inform *TR* of any changes in their income. Income estimates must be signed.

The estimate is based on the total income for the relevant year, before taxes. If any income is anticipated, the total amount of such estimated income is registered. Capital income (includes income from real property and liquid funds, sales profits, interest, price level adjustments, depreciation and exchange rate gains on commercial bank and savings bank deposits, other deposits and shares, dividends from shares, dividends and interest on principal accounts) counts as joint income of a married couple, the total of which should be registered. Otherwise, income of spouse does not affect the payments from the public pension.

There is a ceiling on benefits as the maximum amount depending on other factors is defined in the Act on Social Security.²³¹

Pensioners living in a medical institution, short-term residence or service facilities can be entitled to spending money when their pension expires. Pension payments stop when residence at an institution or short-term residence lasts for more than six months

²²⁹ Not yet available in English, due to constant upgrading and changes.

²³⁰ Or two years earlier, then reducing the amount.

²³¹ Act No. 100/2007, Article 17 – the total amount stipulated is EUR 1 948. (ISK 297.972) to individuals who have resided in the country for 40 years between the age of 16 to 67, taking into account the factor reducing that sum stipulated in Paragraph 2 of the said Article.

in the previous twelve months. This, however, applies only to stays lasting for thirty continuous days at the end of this period. An allowance is linked to income.

3. Periods of caring

Periods of caring are not taken into account in the public pension scheme, as it is solely based on residence, length of residence and present income.

4. Exceptions, Article 7.1 of Directive 79/7

There is no mandatory retirement age stipulated in the Act on Social Security. It only states that everyone who has reached the age of 67 is entitled to public pension (on the residence condition mentioned above). If an individual wants to commence receiving payments at a later age he/she will only be paid back two years. A pensioner may continue working but income from work will reduce his payments from the public pension.

There are no advantages granted to persons who have brought up children in the public scheme or benefit entitlements by virtue of the derived entitlements of a wife (Article 7.1. c in Directive 79/7).

C) OCCUPATIONAL OLD-AGE PENSION SCHEMES

(Schemes falling under Article 157 TFEU, Directive 86/378/EEC, as amended by Directive 96/97/EC, now Articles 5-13 of the Recast Directive 2006/54/EC)

1. Coverage

All employees and employers or self-employed persons *are obliged* to ensure their pension rights through membership of a pension fund from the age of 16 until the age of 70 (Article 1 Act 129/1997).

Membership of an occupational fund depends on the collective agreement, which determines the minimal wages in the relevant occupational sector. If a certain sector has no collective agreement or if the terms of employment are not based on a collective agreement, the employee must opt for an occupational fund according to the rules of such funds permitting membership.

The Act on Mandatory Insurance of Pension Rights makes it obligatory for all employees and employers or self-employed people to ensure their pension rights through membership of a pension fund from the age of 16 to 70 years of age. Pension fund membership depends on the collective wage bargaining agreement that determines the minimum salary in the occupation in question – or it may depend on special legislation. If an individual's collective wage bargaining agreement does not cover his/her occupation, or if his/her employment contract is not based on a collective wage bargaining agreement, he/she can pick his/her own pension fund in accordance with the rules of the individual funds. The rules of individual funds may not permit private individuals to become member. This applies, for example, to the pension funds of government employees.

On the other hand, occupational funds, like *VR* – the fund of commercial workers – will not restrict access to individual employees or self-employed people if they belong to the fund's respective union or if their hiring contract is based on the respective union's agreement. The *VR* fund of commercial workers permits individuals as well as owners and other managers of companies working within the occupational scope of the fund to be members, even if they do not belong to an employees association.

Anyone for whom contributions are paid, who pays or has paid a contribution to a pension fund and is entitled to benefits from it, as further provided for in the Pension Act, is a pension fund member. No one may be refused membership in a pension fund for reasons of health, age, marital status, family size or gender (Article 2 Act 129/1997).

The Icelandic Pension Funds Association (IPFA) covers 33 funds.²³² Total assets of all pension funds in the IPFA amounted to EUR 8.8 billion (ISK 1.591 billion) at the end of December 2008. The assets of the pension funds in the IPFA cover approximately 99.5 % of the total pension fund assets in Iceland.

The vast majority of wage earners in Iceland (approximately 85 %) are unionised.²³³

2. Calculation of old-age pensions and contributions

Occupational pension funds in the general labour market are defined-contribution schemes (DC). Pension entitlement is the total of accrued and future rights. (Future entitlement can be estimated by calculating estimated future salaries.) Minimum pension contributions shall amount to at least 12 % of the contribution base (the employee pays 4 % and the employer 8 %). The minimum contribution to a pension fund shall be calculated from the total of wages paid and remuneration for any type of work, task or service. The contribution base shall be composed of all types of wages or remuneration for work subject to income tax pursuant to the first paragraph of Point 1 of Section A of Article 7 of Act No. 90/2003 on Income and Net Worth Tax¹. The contribution base shall not, however, include benefits paid in kind, such as clothing, food or accommodation, or payments which are intended to cover cash outlays, e.g. vehicle allowances, per diem payments and food allowances. Furthermore, retirement and pension benefits paid by the State Social Security Institute or pension funds, other benefits paid by the State Social Security Institute, per diem accident and sickness payments paid by trade union health insurance funds and benefits paid by insurance companies for loss of earnings resulting from injury shall be excluded from the contribution base.

Occupational pension funds (e.g. the one for the trade and commercial sector, VR) pay two types of pension, the old age savings pension where the fund member accrues pension rights until he/she starts receiving pension. The VR pension fund also pays risk pension. The risk category includes disability as well as spouse's and children's pensions.

The amount of pension depends on the payments made to the fund. When calculating disability and spouse's pension, the years remaining until the age of 65 are taken into account. Pension payments are inflation-protected and are adjusted monthly according to the Icelandic Consumer Price Index. Pension is paid monthly on the last weekday of each month into pensioners' Icelandic bank account. Pension payments are subject to income tax in the same way as earned income.

In some pension funds, the pension is calculated as a proportion of wages, and therefore increases in line with wage rises. Pensions from pension funds are linked to price levels. In most pension funds, the amount of the pension is adjusted each month, based on changes in the consumer price index.

The pension is taxed in the same manner as any other income; however, pensioners can use their personal tax allowance to reduce their taxes. Contributions

²³² <http://www.ll.is/?i=7>, accessed 16 June 2010.

²³³ <http://eng.felagsmalaraduneyti.is/information/employment/>, accessed 16 June 2010.

are not taxed as they are deducted from taxable income before income tax. The employer's contribution is deductible from tax. Since pension fund premiums are paid into the pension untaxed, this prevents double taxation. Entitlements from pension funds are exempt from the capital gains tax on interest income.

All individual taxpayers are entitled to a tax card stating the personal tax allowance which reduces their income tax. Therefore, if the pensioner has an unused tax card, it is important to send it to the fund. Married or cohabiting couples can use 100 % of the other spouse's unused tax card.

Periods of unemployment do not count, unless the relevant individual receives unemployment benefits. The contribution base shall include unemployment benefits as provided for in the Unemployment Insurance Act. It is left up to the employee's discretion whether he pays membership fees to his trade union or the association of which he is a member, if he loses his job. If he continues paying membership fees he retains various rights (sickness daily payments).²³⁴

The minimum insurance coverage by a pension fund, based on a 40-year contribution period, shall amount to 56 % of the monthly wages for which the contribution is paid, as a monthly old-age pension for life from the time that the pension is first paid, but no later than the age of 70. Minimum insurance coverage shall, furthermore, provide for the equalisation among pension fund members of costs due to spouses' pensions and costs due to children's pensions.

Most pension funds grant favourable loans to fund members secured by a property mortgage. The rules and terms of such loans vary from one fund to the next. The loans are normally indexed and linked to the consumer price index.

3. Actuarial factors

According to the Pension Act, all employees receive the same benefits for equal contribution independent of the life expectancy, which for women is longer than for men. The life expectancy for a new-born girl is now 82.9 years and for a new-born boy 78.6 years.²³⁵ Individuals receive payments from the occupational funds throughout their lives.

4. Caring credits

During maternity/paternity leave, a parent shall pay a minimum of 4 % of the maternity/paternity leave payments into a pension fund and the Maternity/Paternity Leave Fund shall pay a minimum of 8 %.²³⁶ In addition, the parent shall have the right, according to the Act on Maternity/Paternity Leave and Parental Leave No. 95/2000, to pay into a private fund, in which case the Maternity/Paternity Leave Fund shall be obliged to make the statutory complementary contribution.

Periods of unpaid interruption of employment due to bringing up children are not credited or taken into account for pension rights.

5. Vesting and reimbursement rules

A pension fund member may decide to transfer the portion of his contribution that is to be paid into an individual pension account, in accordance with Paragraph 3 of Article 4, and the portion which is to be devoted to supplementary insurance coverage, to a party other than the pension fund which accepts his contributions.

²³⁴ http://www.ein.is/sidur/uploads/stada_launafolks_nov_08.pdf, accessed 16 June 2010.

²³⁵ According to statistics for the years 2001-2005.

²³⁶ Act No. 74/2008, Article 10.

The employer or pension fund concerned is under the obligation to transfer payments in accordance with the decision of the pension fund member pursuant to the first paragraph to another party without additional charge to the pension fund member.²³⁷

Pension rights earned and provided by the mandatory pension system are not inherited by the spouse of the deceased or his/her children. However, in most cases the spouse can claim pension benefits from the pension fund in question, based on the pension rights of the deceased for some years after his/her death and the same rule generally applies for the children of the deceased until the age of 18.

Voluntary individual pension savings, on the other hand, are inherited by spouses, children or other relatives. Payments to children shall be divided into equal amounts and are payable until the age of 18. These benefits, both the mandatory and voluntary individual pension savings, are taxed as ordinary income.

The pension funds have certain rules on their mutual relations. When a participant starts to receive a pension, it is sufficient to send an application to the fund to which the last contributions were made, and that fund will then forward the application to other funds into which contributions have been made. However, pension entitlements are not transferred between funds.

6. Pensionable age

The pensionable age is the same for both sexes. (Also see the discussion on age-related rights in Section 2 above). Payment of pension is assumed to commence at the age of 67. The commencement of pension payments can be brought forward to the age of 65, and it can be delayed to the age of 70. The amount increases by 8.2 % if one commences at 68; 17.4 % if one commences at 69, and 27.8 % if one commences at 70. Likewise, there is a 16.2 % reduction if one commences at 65 and an 8.4 % reduction if one commences at 66.

7. Civil servants

Civil servants have a special position in the Icelandic labour market. A special law, Act No. 70/1996, applies to their rights and duties. Additionally, Act No. 94/1986 addresses the wage agreements of civil servants. The principal role of the Pension Fund for State Employees (*LSR*²³⁸) is to pay pensions to its members upon retirement and throughout their lives and ensure a pension for their families following a loss of income due to impaired ability to work or due to death.

The Fund operates in three divisions: A and B, and a division for individual retirement accounts. Division A of the *LSR* is fully funded. Benefit rights are based on the amount of contributions collected. All employees that are paid in accordance with salary agreements for public employees of the State or state entities as well as certain municipal employees are entitled to become members of *LSR*. The contribution paid to Division A amounts to 15.5 % of total contributions. The member pays 4 % and the employer 11.5 %. All new members pay into Division A.

The older system of the *LSR* is Division B. It is a mixed system that is partially based on funding from accumulated contributions and in part from supplementary contributions from public sources. The rights of fund members in Division B are based on their working life and relative proportion of full-time work. This division was closed to new members at the end of 1996.

²³⁷ Article 5 of the Pension Act No. 129/1997.

²³⁸ *LSR Lífeyrissjóður starfsmanna Ríkisins*.

Like the occupational funds on the general labour market, the *LSR* has stopped all payments of life-long survivor's pensions. The new Division A has adopted the rules of the *VR* pension fund for commercial workers, paying surviving spouses pensions for three years. The older Division B, however, according to the old scheme, pays a life-long pension to surviving spouses. The spouse's pension is a proportion of accrued rights and hence this is a small amount if the fund member dies at a young age.

IRELAND – *Frances Meenan*

A) GENERAL QUESTIONS

1. The old-age pensions system

There has been a considerable amount of debate and consultation over the last three years in Ireland in relation to pensions commencing with the Green Paper on Pensions published in 2007, then a Report on the Consultation Process for the Green Paper on Pensions was published in 2008 and, finally, the National Pensions Framework document in March 2010.²³⁹

The old-age pension system in Ireland is broadly organised in a two-pillar model²⁴⁰ (two elements) with first-pillar pensions providing for mandatory statutory schemes provided under the State's social protection programme and voluntary supplementary benefits in the form of occupational pension schemes and private pension plans such as Personal Retirement Saving Accounts²⁴¹ or Retirement Annuity Contracts. It is also described as a tripartite arrangement between the State, employers and individuals/employees/the self-employed. This tripartite arrangement applies, in different ways, to both first-pillar (social welfare/ protection) and second-pillar (occupational) pensions.²⁴² The two sources for statutory contributory pensions are the State Pension (Contributory)²⁴³ and the State Pension (Transition),²⁴⁴ with the former being the primary form of state pension available to those over 66 years of age and the latter being available to certain retired persons who are aged over 65 years and under 66 years. The schemes are operated on a Pay-As-You-Go basis. They operate on a defined benefit system with predetermined rates of benefit applying depending on the aggregate number of social insurance contributions. By 2020, this will be replaced, however, with a new total contributions system.²⁴⁵ This new system will require a minimum social insurance contribution of ten years with the rate of benefit then assessed proportionately to the number of contributions made over the course of the recipient's working life. The system will be subject to a maximum assessable contribution of 30 years worth of contributions.

²³⁹ The Department of Social and Family Affairs (now the Department of Social Protection) has a dedicated website with all these documents at <http://www.pensionsgreenpaper.ie/publications.html>, accessed 2 June 2010.

²⁴⁰ As described in paragraph 1.5 of the Pensions Green Paper.

²⁴¹ Sections 91-125 of the Pensions Act 1990, as amended by s. 3 of the Pensions (Amendment) Act 2002.

²⁴² As described in paragraph 1.27 of the Pensions Green Paper.

²⁴³ Sections 108-113 of the Social Welfare Consolidation Act 2005, as amended.

²⁴⁴ Sections 114-117 of the Social Welfare Consolidation Act 2005, as amended.

²⁴⁵ The National Pension Framework 2010 p.20 *et seq.* <http://www.pensionsgreenpaper.ie/downloads/NationalPensionsFramework.pdf>, accessed 2 June 2010.

With regard to voluntary supplementary schemes, private pension coverage stood at 54 % in 2008. This figure comprises 37 % of employees who hold occupational pensions only, 13 % who held personal pensions only and 4 % who hold both.²⁴⁶ In 2006, there were 778 400 members of occupational pension schemes in Ireland among a workforce of just over 2.1 million people. Figures provided by the Pensions Board in 2006 indicate that at that point 33 % of such members were public sector workers on defined benefit schemes, 33 % were private sector workers on defined benefit schemes and 33 % were private sector workers on defined contribution schemes.²⁴⁷

Provision is also made for survivors' pensions in statutory form through the Widow's/Widower's Pension (Contributory).²⁴⁸ The application of the Widow's/Widower's Pension (Contributory) is gender-neutral. There are no provisions in the Pensions Acts requiring survivors' pensions in occupational benefit schemes. Section 70 of the Pensions Act 1990 as amended by s.22 of the Social Welfare (Miscellaneous Provisions) Act 2004 does, however, lay down a principle that there shall be no discrimination on any of the discriminatory grounds in respect of any rule of a scheme. This prohibition is to apply the same to any dependents of a member of a scheme as it does to a member and as such the provision of any survivors' benefits in occupational benefit schemes must be gender-neutral.

In addition to the various forms of contributory pensions provided by the state, non-contributory pensions are also available in the form of the State Pension (Non-Contributory)²⁴⁹ and the Widow's/Widower's Pension (Non-Contributory).²⁵⁰ In order to qualify for a State Pension (Non-Contributory) one must be aged 66 years or older, be habitually resident in the state, not be eligible for the State Pension (Contributory) and pass a means test. Means are assessed by examining all income received by an applicant. The first EUR 200 earned by an applicant *per* week is, however, disregarded for the purposes of an assessment. The assessment also takes into account the value of all capital and the income of all property personally used. For the purposes of this assessment the family home is disregarded although any income derived from the home may be assessable. Rental income may be disregarded for the purposes of the assessment where not renting a room would mean the applicant was living alone in the family home. The first EUR 190 500 of the proceeds of the sale of the family home may also be discounted where the home is sold in order to buy or rent more suitable alternative accommodation or to go into a nursing home.

2. Old-age pension reforms

Recent reforms appear to have had a positive effect on gender equality. The introduction of various social insurance contribution credits for interruptions due to family or care reasons has broadened significantly the opportunity to qualify for the State pension.

There has also been evidence of improvements with regard to the take up of voluntary pension coverage by women in recent years. In 2008 50 % of women in the Irish workforce had occupational or private pension coverage compared to 56 % of men. This represents a considerable narrowing of the gap between male and female

²⁴⁶ Quarter 1 2007 and Quarter 1 2008 – Pensions Update, Quarterly National Household Survey. http://www.cso.ie/releasespublications/documents/labour_market/current/qnhspensionsupdate08.pdf, accessed 2 June 2010.

²⁴⁷ <http://www.pensionsgreenpaper.ie/downloads/Chapter9.pdf>, accessed 4 May 2010.

²⁴⁸ Sections 123-129 of the Social Welfare Consolidation Act 2005, as amended.

²⁴⁹ Sections 152-160 of the Social Welfare Consolidation Act 2005, as amended.

²⁵⁰ Sections 162-171 of the Social Welfare Consolidation Act 2005, as amended.

workers since 2002 when only 45 % of female workers had pension coverage compared to 57 % of male workers.²⁵¹

Additionally, prohibitions on the exclusion of atypical workers working at least 20 % of the normal hours of work of comparable permanent full-time employees can be seen to have significantly addressed an area of significant exclusion of female workers from occupational schemes. During the mid-1990s the number of schemes open only to permanent employees stood at 75 % and as such the reform can be seen as significantly reducing the exclusion of female workers in Ireland.²⁵²

3. Retroactivity of legislation

The Pensions Act 1990, as amended by s. 22 of the Social Welfare (Miscellaneous Provisions) Act 2004, provides for equal pension treatment as between male and female workers regarding voluntary supplemental schemes. Section 80 of that Act provides that any rule of a scheme which is in breach of equal pension treatment shall be null and void to the extent that it breaches equal pension treatment. Where this occurs, an employer or trustee must amend the scheme to level up its rules.²⁵³ The section does, however, apply different rules for the date at which the rule shall be deemed null and void and the benefits contained therein must be levelled up. In the case of an employed person the rule shall be null on the date it takes effect not being a date earlier than the 17th May 1990 or the 8th May 1976 in the case of employed persons who were denied access to the scheme or had initiated a claim of discrimination regarding pension provision prior to the 17th May 1990.²⁵⁴ In the case of self-employed persons a discriminatory rule will be deemed null and void as and from the date it purports to take effect not being a date earlier than the 1st January 1993.

In relation to statutory schemes a number of important reforms have not been made retroactive. The Homemakers Scheme, which was introduced in 1994, applies only to periods of care occurring after the introduction of the scheme. Additionally, recent reforms enabling dependent spouses or partners to receive directly any increases in their partner's pension under the 'Qualified Adult' system do not apply to applications made prior to the introduction of the reform.

Additionally in relation to access to statutory benefit schemes recent reforms do not appear to have remedied historical disadvantages suffered by women. One issue identified by the National Pensions Framework is the legacy of the marriage bar which excluded many married women from a number of sectors of employment up until the early 1970s.²⁵⁵ Notwithstanding the significant impact identified by the Framework on the social insurance record of such workers, it concluded that having regard to the need to uphold the contributory principle underlying the State Pension (Contributory) no action could be taken to address this shortcoming.

4. The World Bank Model

Not applicable.

²⁵¹ Quarter 1 2007 and Quarter 1 2008 - Pensions Update, Quarterly National Household Survey. http://www.cso.ie/releasespublications/documents/labour_market/current/qnhspensionsupdate08.pdf, accessed 2 June 2010.

²⁵² (1997) I.L.T. 135.

²⁵³ Section 80 (2) of the Pensions Act 1990, as inserted by s. 22 of the Social Welfare (Miscellaneous Provisions) Act 2004.

²⁵⁴ Section 80 (1) (b) of the Pensions Act 1990, as inserted by s. 22 of the Social Welfare (Miscellaneous Provisions) Act 2004.

²⁵⁵ Page 25, The National Pension Framework.

B) STATUTORY OLD-AGE PENSION SCHEMES **(Schemes falling under Directive 79/7/EEC)**

1. Qualifying conditions

In order to qualify for the State Pension (Contributory) the applicant must have entered into social insurance before attaining the age of 56 years, have made a certain number of social insurance weekly contributions and have paid an average number of social insurance weekly contributions during that period. Any employed person earning more than EUR 38 per week or a self-employed person is required to make a weekly contribution. The minimum number of social insurance contributions required for eligibility for a state pension is 260. This will rise to a minimum of 520 weekly contributions for persons reaching 66 years of age on or after the 6th April 2012. An applicant must have at least an average of 10 social insurance contributions *per year* to qualify. The requirement to have an average of 10 contributions *per year* will be abolished in 2020 and applicants will require only a minimum 520 total contributions over the course of their working life from that point.²⁵⁶

The only exclusion on categories of workers eligible for State Pension (Contributory) at present is with regard to which class of social insurance payment is being paid by the contributor. For the purposes of the State Pension (Contributory), Class A, E, F, G, H, N, or S contributions are reckonable. Depending on a person's employment/self-employment status and the amount of reckonable earnings different classes of national insurance contributions are applied to the person.²⁵⁷ Class A, E, F, G, H, N, or S contributions are reckonable for the purposes of the State pension with Class A and S being the two most commonly paid rates of contribution. The Class A rate of contribution is applicable to all persons employed in the private sector and public sector workers recruited from 6 April 1995, earning more than EUR 38 per week. The Class S rate applies to all self-employed people, certain company directors and certain people earning income from investments and rent. Other classes of contributions are not reckonable. The most common of these are permanent pensionable public sector workers recruited before 6 April 1995, private sector workers earning less than EUR 38 per week, people with subsidiary employment and people over the age of 66 years. The Class A contribution encompasses any person under 66 years of age who is in industrial, commercial and service-type employment who is employed under a contract of service with a reckonable pay of EUR 38 or more per week from employment. The majority of Irish employees, including atypical workers such as workers on part-time, vertical part-time or low income contracts pay social insurance contributions under Class A and as such atypical workers such as these are generally covered under the State Pension (Contributory). The required average number of contributions at present is 10 contributions *per year*. Given the low average requirement it is unlikely that this will unduly prejudice atypical workers in their access to State pensions. When the new total contributions system is introduced a worker will be required only to make 10 years worth of social insurance contributions in the course of their working life in order to qualify for a State pension. Given the fact that this system will take total lifelong contributions into account with a relatively low minimum contribution requirement, this new system should improve further access to state pensions for atypical workers.

²⁵⁶ Page 21, The National Pensions Framework.

²⁵⁷ <http://www.welfare.ie/EN/Topics/PRSI/Pages/prsiclasses.aspx>, accessed 22 June 2010.

2. The amount of the old-age pension

The rate of benefit for the State Pension (Contributory) is assessed based on average contributions over the period in paid insurance. No life expectancy tables are taken into consideration in calculating the rate of benefit. There is a minimum contribution period of ten years over which a minimum aggregate of ten contributions *per year* must have been paid. The State Pension (Contributory) operates on a flat-rate benefit system. The rate of benefit ranges from EUR 115.20 *per week* for applicants with average contributions of between 10-14 contributions to a ceiling of EUR 230.30 *per week* for applicants with average contributions of 48 or more.²⁵⁸ Atypical workers' rate of benefit is assessed in the standard way. Rates of benefit are adjusted annually at budget time based on Government commitments, resources and economic conditions. The National Pensions Framework has recently restated the State's commitment to maintain the State pension's value at a rate of 35 % of average weekly earnings.²⁵⁹

From 2020 the average contributions system will be replaced by a total contributions system.²⁶⁰ Under this system a minimum of 520 contributions will still be required in order to qualify for the State Pensions (Contributory). Thereafter, the rate of benefit will be assessed on a basis which is proportionate to the number of contributions made up to a maximum of 30 years worth of assessable contributions.

3. Periods of caring

If an employee is on maternity or carer's leave²⁶¹ he/she will automatically qualify for social insurance contribution credits provided he/she has at least one reckonable contribution and has paid contributions in either of the two previous tax years. Any person receiving maternity benefits automatically qualifies for credits. Additional credits for each week of additional unpaid maternity leave up to a maximum of 16 weeks may also be obtained provided the employee obtains a completed application form from the employer when she returns to work. In respect of persons receiving carer's benefits or allowances, credits may be claimed for up to 65 weeks. Article 63A of the Social Welfare (Consolidated Contributions and Insurability) Regulations 1996, as inserted by Art. 2 of the European Communities (Social Welfare) (Consolidated Contributions and Insurability) (Amendment) (Parental Leave Credited Contributions) Regulations 2005, extends credited contributions to persons for each week of parental leave they take.

The Homemaker's Scheme is available to anyone giving up work to care for a child under the age of 12 or to care for a disabled person. In such a case, the person requiring care must be so disabled or incapacitated as to need either constant supervision in order to avoid a danger to himself or herself or frequent assistance throughout the day in connection with his or her normal personal needs. To be eligible for the scheme an applicant must be permanently living in the State, be aged less than 66 years, have commenced insurable employment on or after their 16th birthday and before their 56th birthday, not be earning more than EUR 38 *per week* from other work and be caring full time for a child under 12 years of age or a disabled person. The scheme applies to any eligible applicant in respect of time off work taken from the 6th April 1994 and may apply to an individual applicant for a period of up to 20 years. The Scheme operated on a more limited basis, however, between the 6th April

²⁵⁸ <http://www.welfare.ie/EN/Schemes/Pension/Pages/oapc.aspx>, accessed on 4 May 2010.

²⁵⁹ Page 19.

²⁶⁰ Page 21, The National Pensions Framework.

²⁶¹ Article 58 Social Welfare (Consolidated Contributions and Insurability) Regulations 1996.

1994 and the 5th April 1995 with regard to time off for child care and during this period time off would only qualify under the Scheme where the child was less than six years of age. The application of these provisions is gender-neutral. The Scheme may only be utilised, however, by one parent or carer at any given time in respect of a particular child or disabled person.

Where a person qualifies for the Homemaker's Scheme any gap in their involvement in insurable employment attributable to periods of care covered by the Scheme will be disregarded for the purposes of assessing average yearly social insurance contributions. From 2012 this Scheme will be amended to introduce a credits system to replace the current system of disregarding periods of care.²⁶² It is intended that the new credits system will be backdated to 1994, with applicants being able to claim credits for periods of care up to a maximum of 20 years. Upon the introduction of a total contributions approach in assessing rates of benefit in 2020, it is intended to halve the maximum number of credits to 520, being ten years worth of credits.

4. Exceptions, Article 7.1 of Directive 79/7

The pensionable age and the possible consequences for other benefits (Article 7.1 a))

There is no mandatory retirement age as such in Irish legislation. The only limitation on working beyond the pensionable age is the requirement for a person receiving the State Pension (Transition) to be retired. As from 2014 the State Pension (Transition) will be abolished and a new pensionable age of 66 will apply. This will be further increased to 67 in 2021 and 68 in 2028. Recipients of the State Pension (Contributory) will still be able to work beyond the date on which they reach pensionable age. The National Pension Framework also envisages allowing people to defer their State pension and receive an actuarially increased benefit when they do decide to retire.²⁶³ The pensionable age is equal for men and women.

Advantages granted to persons who have brought up children (Article 7.1 (b))

Periods of interruption to employment due to the bringing up of children are addressed through the Homemaker's Scheme. These are gender-neutral although only one person may qualify as the carer of a child at any given time. Social insurance credits are also provided to persons on maternity benefit, parental leave as well as carer's leave. As there are no presumptions favouring either gender in the application of these schemes, a transitory period would not appear to be necessary in Ireland should this exception be eliminated.

Old-age or invalidity benefit entitlements or increases in long-term benefits by virtue of the derived entitlements of a wife (Article 7.1 c) and d))

There is provision for the granting of old-age benefit entitlements by virtue of the derived entitlements of a spouse. Under the State pensions system, the pension of a spouse may be increased in respect of a qualified adult who is dependent on the pension recipient. At present, approximately 95 % of those who are 'qualified adults' are female.²⁶⁴ The dependent spouse's income will be means tested for the purposes of assessing their eligibility for the increase. For any applications received after the 27th September 2007 the increase is paid directly to the dependent spouse. For

²⁶² Page 22, The National Pensions Framework.

²⁶³ Page 24, The National Pensions Framework.

²⁶⁴ http://www.nwci.ie/download/pdf/iwla_pensions_presentation.pdf, accessed on 12 May, 2010.

applications made before that date, the increase will continue to be paid to the benefit recipient. Eligibility for the increase operates on a gender-neutral basis. Increases are provided on similar terms for dependent spouses of persons on Invalidity Pensions. As the scheme operates on a gender-neutral basis, there would be no requirement for a transitory period in Ireland.

Section 17 of the Family Law (Divorce) Act 1996 and s. 12 of the Family Law Act 1995 provide for pension adjustment orders on a decree of divorce or judicial separation in respect of benefits from occupational schemes and other supplementary pension schemes. There is no provision, however, for any splitting of State pension rights.

C) OCCUPATIONAL OLD-AGE SCHEMES

(Schemes falling under Article 157 TFEU, Directive 86/378/EEC, as amended by Directive 96/97/EC, now Articles 5-13 of the Recast Directive 2006/54/EC)

1. Coverage

Participation in occupational pension schemes in Ireland is subject to different rules for public sector workers²⁶⁵ and private sector workers. Participation in such schemes is generally mandatory for public sector workers. Participation in private sector occupational schemes is voluntary. The National Pensions Framework intends, however, to introduce a new system of auto-enrolment for private sector workers in order to ensure increased coverage and the adequacy of pensions. Under this system, once a person over 22 years of age enters into or changes employment he/she will be automatically entered into the new pension scheme. Auto-enrolment will not be required where the employee is a member of his/her employer's scheme and the scheme is either a defined benefit scheme or is a defined contribution scheme having a contribution rate and an employer contribution equal to or greater than the minimum paid under the new scheme. An employee may be excluded from auto-enrolment only if he/she chooses to opt out of it. It is intended that this scheme will be introduced in 2014.²⁶⁶

Limitations on membership of occupational benefit schemes are allowable under Irish legislation for certain atypical workers. Section 9(3) of the Protection of Employees (Part-Time Work) Act 2001 excludes part-time workers from the equal treatment obligation set down in that section in as much as it relates to pension treatment where the normal hours of work constitute less than 20 % of the normal hours of work for a comparable full-time employee. Casual workers are afforded less protection under the Act than part timers and grounds for less favourable treatment may be objectively justifiable even if they are not so for regular part-time workers.²⁶⁷ Section 6 of the Protection of Employees (Fixed-Term Work) Act 2003 extends the principle of non-discrimination to fixed-term work. This includes membership of benefit schemes provided the normal hours of work constitute no less than 20 % of the normal hours of work for a comparable full-time employee. Prior to these statutory reforms there was no requirement for an employer to include atypical workers in occupational schemes. This can be seen to have had a significant impact on levels of coverage among atypical workers prior to the enactment of these reforms and in 1995

²⁶⁵ Whilst this report was published in 2000, it is nonetheless a useful summary of public service pensions. <http://www.finance.gov.ie/documents/psp/pensionreport.pdf>, accessed 2 June 2010.

²⁶⁶ Page 29, The National Pension Framework.

²⁶⁷ Section 12 Protection of Employees (Part-Time Work) Act 2001.

only 11 % of temporary and part-time employees were covered under an occupational benefit scheme as compared to 63 % of permanent full-time employees.²⁶⁸

According to the Quarterly National Household Survey in 2008 50 % of women in the Irish workforce had occupational or private pension coverage compared to 56 % of men, representing a narrowing of the gap between male and female workers since 2002 when only 45 % of female workers had pension coverage and 57 % of male workers had coverage.²⁶⁹

2. Calculation of old-age pensions and contributions

Public sector pensions are currently earnings related. The rate of public service pensions is assessed by virtue of the final salary of the pension recipient. It is, however, intended to amend the public sector pension assessment mechanism in order to calculate rates of pension on the basis of contributions.²⁷⁰ It is intended that legislation will be put before the *Oireachtas* in the course of 2010 to give effect to a new public sector pension regime encompassing these changes. While there is no uniform method for assessing rates of occupational pensions in the private sector all occupational schemes must provide benefits at a level of 65 % of final salary or less in order to be approved by the Revenue Commissioners for tax exemption purposes. Private pension agreements are generally contribution-related schemes.

The Pensions Act 1990, as amended, does allow for minimum conditions for membership of a scheme. Atypical workers such as part-time workers and fixed-term workers are protected by the principle of equal pension treatment only if they work 20 % of the normal working hours of a comparable full-time or permanent employee.

3. Actuarial factors

Section 71(a) of the Pensions Act 1990, as inserted by s. 22 of the Social Welfare (Miscellaneous Provisions) Act 2004, provides that no account shall be taken of any difference on the basis of sex of the levels of contributions which the employer makes, to the extent that the difference is for the purposes of removing or limiting differences between men and women in the amount or value of benefits provided under a defined contribution scheme or ensuring the adequacy of funds necessary to cover the cost of the benefits defined under a defined benefit scheme. In addition, no account shall be taken of any difference on the basis of sex of members in the amount or value of benefits provided under a defined contribution scheme to the extent that the difference is justifiable on actuarial grounds or certain elements provided under a defined benefits scheme to the extent that the difference results from the effects of the use of actuarial factors differing according to sex at the time when the funding of such scheme is implemented. There may also be special treatment for women in relation to pregnancy and childbirth. There may also be a flexible pension age as long as the conditions are the same for men and women. These exceptions are consistent with those provided in Article 9 (j) of the Recast Directive.

Section 71(b) of the Pensions Act 1990, as inserted by s. 22 of the Social Welfare (Miscellaneous Provisions) Act 2004, allows for gender-related differences in pension treatment in relation to benefits provided where such differences are justifiable on actuarial grounds. This subsection further provides an exception in relation to the

²⁶⁸ (1997) 15 I.L.T. 135.

²⁶⁹ Quarter 1 2007 and Quarter 1 2008 - Pensions Update, Quarterly National Household Survey. http://www.cso.ie/releasespublications/documents/labour_market/current/qnhspensionsupdate08.pdf, accessed 2 June 2010.

²⁷⁰ Page 49, The National Pensions Framework.

amount or value of certain benefits under a defined benefit scheme such as conversion into a lump sum of part of a periodic pension, the transfer of occupational benefits, a reversionary pension paid to a dependent in return for the surrender of part of a pension, and the reduction of a pension where an employee opts to take early retirement. In order for less favourable treatment to come under this exception the differential treatment must be due to actuarial factors differing according to sex at the time when the funding of the scheme was implemented. These exceptions are consistent with those set down in Article 9 (h) of the Recast Directive.

4. Caring credits

There is no mandatory provision for caring credits in occupational benefit schemes. Section 81A and 81B of the Pensions Act 1990, as amended, does, however, prohibit any less favourable treatment in relation to access to or contributions from a scheme due to an employee being on maternity leave or on leave for family reasons. The employee must still be receiving some form of remuneration from the employer for this prohibition to apply, however, and there is no statutory requirement for an employer to provide remuneration to an employee while they are on maternity leave or leave for family reasons.

5. Vesting and reimbursement rules

Vesting periods in Ireland are subject to a maximum period of two years of membership in the scheme.²⁷¹ The employee is entitled to a reduction in the vesting period where a value has been transferred from a previous scheme. After this period departing employees are entitled to the full benefit of both their own contributions and the contributions of their employer. If they leave their employment before the expiry of this period they will be only entitled to be remunerated with the contributions they have made in that period. There is no minimum period of membership required for a person in order to transfer preserved benefits to a new scheme other than the original two-year vesting period. Where an employee wishes to transfer a benefit to a new scheme an application must, however, be made within two years of the termination of the employee's previous employment.

6. Pensionable age

There are no exceptions in Irish legislation to the principle of equal pension treatment which would allow for different pensionable ages depending on gender for employees. As there has never been any provision for different pensionable ages there has been no a statutory reform or case law regarding the equalisation of pensionable ages.

7. Civil servants

Separate provisions exist for pension schemes for employees in the public sector in Ireland. These also operate on an occupational benefit basis. These are supplementary schemes and are regulated by statute.²⁷² Occupational benefit schemes are available across the public sector with the particulars of the scheme being set down in separate statutes for each category of worker within the public sector. The provision of benefit

²⁷¹ Section 28 of the Pensions Act 1990, as amended by the Pensions (Amendment) Act 2002.

²⁷² Superannuation Acts 1834 to 1963, Superannuation and Pensions Act 1976, the Public Service (Miscellaneous Provisions) Act 2004 (removal of retirement age) and more recently the Financial Emergency Measures in the Public Interest Act 2009 which provides for deductions in the remuneration of public servants in relation to their pensions given the economic recession.

schemes is set down in statutory form with the exception of certain categories of civil servants deemed to be non-established civil servants whose pensions are regulated by employers' regulations.

The scheme is part funded by pension levies paid by public sector workers and contributions from the state. The scheme is operated on a Pay-As-You-Go basis. The final benefit which will accrue to civil servants is currently assessed by virtue of their annual salary at the date of retirement and the length of service within the public sector. The duration of employment is used to assess the percentage of the final salary due at the date of retirement with a maximum assessable period of 40 years which would entitle a recipient to 50 % of their final salary.

The pensions are payable by virtue of the previous employment relationship with the former employee and would appear to be covered under Article 141 of the EC Treaty given the earnings-related nature of the benefits, the provision of separate schemes for different categories of public sector workers and the minimum period of service requirements set down in the schemes.

Public service pension schemes are gender-neutral as regards retirement ages. The different schemes provide for early retirement for categories of public sector workers such as members of *An Garda Síochána*, the Defence Forces, the Prison Service and also fire-fighters. Such differences are, however, based on requirements of early retirement for certain categories of public sector workers for operational reasons. Different benefits available on the grounds of gender did previously exist. The provision of mandatory membership of the Civil Service Widow's and Children Scheme was originally mandatory only for male employees. The Scheme was, however, extended to all new female appointees on or after 1 June 1981.

It is intended to introduce legislation in 2010 which will introduce a single pension scheme for all new entrants to the public service.²⁷³ The new scheme will set a new minimum pension age of 66 and a maximum retirement age of 70. The scheme will also replace the current 'final salary' system with a system based on career average earnings. In this system a specific pension accrual rate will be applied whereby public servants earn or accrue a certain amount of pension payable on retirement each year.

Reference Material:

1. The Central Statistics Office *Quarterly National Household Survey, Pensions Update - Quarter 1 2007 and Quarter 1 2008*.
2. Mel Cousins *Irish Social Welfare Law*, Second Edition 2002.
3. Kevin Finucane, Brian Buggy & Úna Tighe *Irish Pensions Law and Practice*, Second Edition 2006.
4. The Government of Ireland *The National Pension Framework*, March 2010.
5. The Government of Ireland *The National Women's Strategy*, April 2007.
6. Frances Meenan *Protection of Employment (Fixed – Term Workers) Act 2003 – Recent case law* (2006) 3(2) IELJ 39.
7. Cliona Kimber *Fixed-term workers – Where are we now?* (2007) 4(4) I.E.L.J. 103.
8. The Government of Ireland *The Pensions Green Paper*, 2007.
9. The Pensions Board *The Pensions Report*, October 2005.
10. Mary Redmond *Access to Pension Schemes – National and European Perspectives for Atypical Workers*, (1997) 15 I.L.T. 135.

²⁷³ Page 49, National Pensions Framework.

A) GENERAL QUESTIONS

1. The old-age pensions system

Our social security system is mainly based on the first pillar, that is statutory pensions. The general statutory system for old-age, invalidity and survivors' pensions (IVS scheme) is administered, in the private sector, by the National Social Welfare Institute (INPS) and, in the public sector, by the National Provident Institution for the Employees of Public Administrations (INPDAP). The Italian pension system was reformed by Act No. 335/1995, which transformed the pension regime from a pay-based system to a contribution-based system. The long transition period provided for the reform to enter into full effect has resulted in the coexistence within our pension system of two different regimes: the old *pay-based system* and the new *contribution-based system*. Both the systems are Pay-As-You-Go.

The new *contribution-based system* is a Notional Defined Contribution (NDC) scheme, that is participants are given a hypothetical account containing all contributions made over their working lives, credited at a certain rate of return; at the time of retirement, pension benefits are calculated taking into consideration the contributions accrued in the notional account and the life expectancy factor.

The old *pay-based system* is a scheme with defined contributions but with benefits calculated on the basis of the average of taxable pay received in the last ten years of contributions.

Alongside statutory schemes, we have occupational funds which are intended to supplement statutory funds. Occupational pension cover is managed according to the criteria of capitalization and has an optional character. Funds may be with defined contributions (DC) or with defined payment (DB). Self-employed workers can choose either the fund with defined payment or that with defined contribution. The choice of funds with defined payment is not available to employees, who have access only to DC schemes.

Our pensions system is based on the traditional three-pillar model, that is statutory, occupational and private funds, which have only recently been developed. However, case C-46/07 (*Commission v Italy*) may result in a rethinking of the features of the three-pillar structure in our system. Indeed, the Court of Justice considered the pension scheme for civil servants to be an occupational fund. By contrast, our legislation deals with it as a statutory pension scheme and regulates it according to the legislation on public schemes.

Survivors' pensions are part of the general statutory IVS scheme. Surviving partners and cohabitants are not entitled to pensions. The survivors' pensions do not demonstrate other discriminatory features.

The legislation on occupational funds does not provide for survivors' annuities when the deceased worker had not yet fulfilled the pension requirements. If the worker dies after having gained access to a pension, the fund can pay annuities calculated on the contributions accumulated or, as an alternative, the redemption of the capital accrued. The annuities or the capital accrued are paid to the worker's heirs (among whom a partner and cohabitant are not included), or to the subjects appointed by the deceased worker: therefore, a partner and cohabitant are not automatically regarded as heirs of the pensioner.

As a safety-net benefit, we have the social allowance: this is an annuity of about EUR 411 a month, paid for thirteen months by INPS. The allowance is increased for

claimants over 70 years of age with a low income. The social allowance is paid to citizens, EU citizens and non-EU citizens with a long-term residence permit, subject to the condition that they are at least 65 years of age and have been resident for 10 years. The third condition is that the applicant has earnings which are inferior to a certain threshold (about EUR 5 349 per annum). If the applicant is married the spouse's earnings are taken into consideration and the threshold is doubled (EUR 10 698 per annum). Aggregations of income in order to determine entitlement to a benefit and its amount can engender indirect gender discrimination. Indeed, even if the threshold is doubled when the income of the spouse is taken into consideration, the benefit may be refused more frequently to women than to men, considering that men generally have incomes which are higher than women.

2. Old-age pension reforms

In 1995, the Italian pension system was reformed and the statutory schemes were transformed from pay-based to contribution-based. Under the contribution-based pension system, which is founded on how many contributions have been paid in over the years, the earnings variations as well as the continuity and the regularity of the claimants' employment appear to be of crucial importance, as the benefit-qualifying conditions and the pension amount are very sensitive to these factors.

Under the old pay-based system, which is still (temporarily) in force, there has been a progressive increase in minimum insurance and contribution requirements: this can be detrimental to all those who have non-standard working patterns. Moreover, as far as the pension amount is concerned, the period of reference for the calculation of pensionable income has also been increased and this has resulted in a decrease in the pension benefit of all those who have high pay fluctuations.

An extremely important aspect of this new reality has also been the importance given to occupational pension schemes, which are promoted through tax relief on the contributions paid into them and which have been completely reformed by Decree No. 252/2005. On the one side, the presence of the second pillar is vital in keeping pensions at an acceptable level; on the other, one has to be conscious of the fact that the benefit rights of atypical workers will always be at stake under these schemes, which are run according to the criteria of capitalization, as access to the schemes, contribution records and benefit amounts depend on regular participation in the labour market.

In this area of social security, the Government has very recently implemented the Recast Directive (Decree No. 5/2010). This piece of legislation does not, however, provide anything on the personal and material scope of the principle of non-discrimination, on its implementation as regards self-employment and on the retroactive effects of the measures introduced. In particular, in relation to its material scope, the application of the principle of non-discrimination to public servants' benefits paid by reason of the employment relationship (Article 7.2 of Directive 2006/54/EC), which is the main issue under consideration in the Court of Justice decision C-46/07, is not mentioned at all. It also allows the setting of different levels of benefits in as far as this may be necessary to take account of actuarial calculation factors, which differ according to sex. Among the actuarial factors, the higher life expectancy of women is often taken into consideration by occupational funds: therefore, women's pensions can be lower or their contribution rate can be higher than those provided for men. Last, but not least, these provisions fail to implement the Recast Directive as regards the pensionable age, which is different for men and women.

Finally, following the Court of Justice decision C-46/07, the pensionable age for men and women in the civil servant sector has been equalized (Act No.102/2009, as modified by Act No. 122/2010).

3. Retroactivity of legislation

Article 22 *ter* of Act 3.8.2009, No. 102, equalized the pensionable age for men and women in the civil servant sector.

The rule was due to become operative in 2018; however, the legislator, by means of Act No. 122 of the 30th of July 2010, has shortened the transitional period to 2012, when both men and women will reach the pensionable age at 65. Although we have no specific legislative clause which protects reasonable expectations and confidence in the continuation of existing pension rules, all the pension reforms have had transitional periods before their full entry into force provided by legislation. This is because the Constitutional Court has recognized the existence of a general principle of protecting reasonable expectations and confidence so as to benefit workers who are close to fulfilling the qualifying conditions for pensions (Corte Cost, 20-12-1996, No. 402; Corte Cost. 14-7-1988, No. 822; Corte Cost.12-12-1985, No. 349). Moreover, the legislator has been compelled to provide for transitional periods by political pressure from political parties, trade unions and pensioners' lobbying groups which have always been exerting pressure on any pension reforms.

No measures have been taken to compensate retroactively the disadvantaged sex for any loss suffered in the past.

Here it must be outlined that the equalization has taken place by way of increasing the pensionable age of women up to the limit provided for men, rather than the opposite. Thus we have had an upward equalization, as could be predicted given the budgeting constraints and the progressive increase in life expectancy in Europe.

4. The World Bank Model

Not applicable.

B) STATUTORY OLD-AGE PENSION SCHEMES

(Schemes falling under Directive 79/7/EEC)

1. Qualifying conditions

The statutory system is compulsory and its coverage is not subject to limitations.

The pension system is, on the whole, quite in line with EU legislation, despite the fact that Directive 79/7/EEC has never been implemented.

Under the old *pay-based scheme*, the contribution requirements are: at least 20 years of obligatory insurance and contributions or the equivalent (notional, voluntary or by redemption). Under this scheme, the amount and number of contributions paid and the continuity of payments determine eligibility to social insurance. The increase in the minimum insurance and contribution requirements which has taken place in Italy during the last few decades is bound to have a negative impact upon the pensions of all atypical workers.

The requirements for access to pensions in the new *contribution-based system* are the following: a) a minimum contribution period of 5 years; b) the total contributions paid must be such that the total of the pension corresponding thereto is at least equal to EUR 491 per month (that is to say, 1.2 times the social allowance); or, alternatively, the worker must be at least 65 years of age. Here, the amount of the individual total contribution is very sensitive to both the earnings variations and the

continuity and regularity of the claimants' employment. The same holds true for the fulfilment of the total amount of the requisite pension rather than for the five-year contribution period: in order for the pension to be at least equal to 1.2 times the state social allowance, much more than 5 years of contributions are needed.

It must also be underlined that in our system there is a general rule which concerns all the benefits subject to the fulfilment of contribution conditions, such as pensions. According to this rule, the number of weekly contributions to be credited annually is equal to the number of paid working weeks; the worker, however, is only credited with the weekly contributions in full if his/her pay is at least equal to 40% of the monthly minimum pension. If this ceiling (about EUR 183 a week) is not reached, the weekly contribution is proportionally reduced: a proportional reduction of the weekly contribution results, in turn, in a reduction of the contribution record and thus a period of time longer than normal will be necessary to fulfil the contribution conditions.

Periods of unemployment are taken into account for pension right and amount purposes through notional contributions.

2. The amount of the old-age pension

Under the *pay-based system*, the pension amount is calculated as follows: the pensionable income (the average taxable earnings during the last 10 years of contributions) x a quota or rate of yield of 2 % for each year of accredited contributions, within the maximum limit of 40 years of contributions; the maximum pension will be equal to 80 % (40 years x 2 %) of the average pay during the period of reference. Actuarial factors are not used in the calculation of pensions.

Under this scheme, the number of contributions paid and the continuity of payments determine the benefit levels.

As long as part-time workers are specifically concerned, insurance and contribution periods for the purpose of determining the pension amount are calculated proportionally to the number of hours effectively worked; therefore, they are not credited with contributions for the weeks when they do not carry out their work activity and this can noticeably endanger the contribution record of vertical part-timers.

Decreases in earnings during the period of reference for the calculation of pensionable income (normally the last 10 years) determine, in turn, a decrease in pension benefits. Therefore all those who have high pay fluctuations are disadvantaged in relation to the definition of the pension amount. However, those who earn less than EUR 183 per week have a proportional recalculation of their contribution period for the purpose of the pension amount: this results in a lengthening of the period of reference for the calculation of the pensionable pay and, in turn, an increase in pensionable pay and thus in the pension. In this area a solution was also found for part-time workers: in fact, it is provided that the length of service for the purpose of the pension amount is calculated in full in relation to full-time work and proportionally to the time effectively worked as regards part-time work; in this way, the period of reference for the calculation of the pensionable pay is lengthened, the spells of part-time work are absorbed and do not lower the pensionable pay and in turn the pension amount.

Again, a temporary worker will have substantial reductions in his/her contribution period for the purpose of the pension amount and this will naturally cause a reduction in the pension amount: if, for example, a person works for 40 years under temporary contracts for 6 months a year, she/he will have the contribution period reduced to 20

years and in the end she/he will have a pension amount equal to 40 % of the earned pay (a quota or rate of yield of 2 % x each year of contribution accredited); if the same worker had worked for 40 years with a contract of employment of indefinite duration, his/her pension would have been equal to 80 % of the pay earned.

The system provides for an upper ceiling on pensions but not on contributions.

Under the *contribution-based system*, the pension amount is calculated as follows: the total individual contribution (the sum of all contribution years accredited to the interested party, revalued annually on the basis of the average variation in the gross domestic product in the previous five years) x transformation coefficients (representative of the average remaining life expectancy) = the gross annual pension, which is re-evaluated annually on the basis of inflation. The transformation coefficients are the same for men and women despite women having a higher average remaining life expectancy. The system provides for an upper limit on pensions and contributions.

Here again, the earnings variations as well as the continuity and regularity of the claimants' employment appear to be of crucial importance for the total individual contribution.

In both systems, pensions are annually adjusted on the basis of the ISTAT retail price index for workers' families: equalization rates decrease with the increase in the pension amount.

3. Periods of caring

The main instrument to recover wasted contributions is the crediting of notional contributions. Notional contributions are equally granted to employed men and women. They cover: pregnancy, maternity/paternity leave and parental leave; leave due to the illness of a child; leave for parents of seriously handicapped children; daily rest for mothers and fathers; rest periods and leave of absence for severely handicapped workers and for the parents of handicapped children. The notional contribution applies to both the total amount of and the right to pensions.

EU legislation which has a gender-neutral minimum provision on care credits would be crucial to dispense with stereotype traditional gender roles within the family and in the labour market.

4. Exceptions, Article 7.1 of Directive 79/7

The pensionable age and the possible consequences for other benefits (Article 7.1 a))

A mandatory retirement age, which cannot be deferred, exists only for civil servants. Women's pensionable age for the purpose of an old-age pension is set at 5 years lower than that set for men (60 for women, 65 for men). Women, however, can carry on working until they reach the pensionable age set for men and also be covered by the protection against unfair dismissal. According to Act No. 122/2010, from 2015 onwards, every 3 years the pensionable age will be increased for both men and women and this will be proportional to the increase in life expectancy at 65 years of age as registered by the National Statistics Institute (ISTAT); in 2015, however, the increase in the pensionable age cannot be higher than three months.

Under the old pay-based system, women aged 60 who decide to keep on working until the age of 65 have an incentive in terms of increase of 0.5 % per year of extra work for the pension yield rate; this benefit does not exist for men.

Thus, the pensionable age is only flexible for women and not for men. This feature, which clearly favours women, can be justified as it helps to fill the gaps in the

contribution records of the claimants or to compensate the caring work carried out by women. On the other hand, as the coefficients of transformation are linked to the retirement age, the pension amount will be higher at higher retirement ages and lower at lower retirement ages. As a consequence, the earlier women decide to retire, the lower is their coefficient and in turn their pension amounts.

The pensionable age for men and women in the civil servant sector has recently been equalized.²⁷⁴

We do not have any domestic data either on the average age when men and women leave the labour market or on the years of service accrued. According to Eurostat data (2007), in Italy men leave the market on average at 58.2 years of age and women at 57.2.

On the road to equality, the different pensionable age for men and women should be repealed: the flexible pensionable age between 57 and 65 years of age contained in the 1995 pension reform for both men and women should be reintroduced. Directive 79/7/EEC should be amended in this respect, even if a transitory period is provided.

Advantages granted to persons who have brought up children (Article 7.1 b))

The advantages as regards old-age pensions for the purpose of child rearing are provided under the new contributory pension system exclusively for the benefit of women. More favourable transformation coefficients are fixed for maternity, in relation to which the increment of one year of the transformation coefficient for one or two children and two years for three or more is laid down. Then, in relation to maternity, a reduction in the age of retirement of 4 months per child is granted, with a maximum limit of 12 months; as an alternative, the pension age of the working mother can be virtually increased by one year when she has one or two children, or by two years when she has three children or more.

I regard this exception as outdated because it perpetuates the traditional division of roles within the family. A step forward in Italy is represented, for example, by the gender-neutral provision introduced by the 1995 reform for those paying in contributions to the new contribution-based system: a) up to 160 days per child of notional contributions for parents who take time off work to educate or assist children up to the age of six years; b) 25 days per annum of notional contributions for parents who take time off work to assist children above six years of age, or their spouse, or a live-in parent, provided that the child has a handicap. The real question is whether its elimination would leave women without compensation for their care work or would lead to an extension of these sorts of advantages to both men and women.

Old-age or invalidity benefit entitlements or increases in long-term benefits by virtue of the derived entitlements of a wife (Article 7.1 c) and d))

We do not have any of these benefits and supplements. I think that these exceptions should be eliminated. A transitional period may be necessary.

²⁷⁴ Alongside the old-age pension (i.e. based on the claimant's retirement age), there exists the retirement pension, which is based on the number of years spent at work. In order to qualify for this pension, the claimant has to be 59 years of age (which will become 60 in 2011 and 61 in 2013) with 36 years of contributions, or, alternatively, 40 years of contributions without an age limit, for both men and women.

C) OCCUPATIONAL OLD-AGE PENSION SCHEMES

(Schemes falling under Article 157 TFEU, Directive 86/378/EEC, as amended by Directive 96/97/EC, now Articles 5-13 of the Recast Directive 2006/54/EC)

1. Coverage

Occupational pension cover is regulated by Act No. 252/2005. It is managed according to the criteria of capitalization and has an optional character.

Alongside the distinction between DC and DB funds, another important distinction made by the legislation is that between closed and open funds. Funds constituted on a company basis or on the basis of certain categories of workers or professions are known as closed funds. Open funds are created at the initiative of financial intermediaries which must be recognized by law, that is to say banks, estate agents, insurance companies, and companies managing joint investment funds. The worker is free to subscribe to a closed or open pension fund.

The forms of occupational pension provisions are generally available to all workers. Employees can only subscribe to defined contribution (DC) funds because of the variability of the contribution payments, which does not fit very well with the receipt of a generally fixed income. Obviously, closed funds are only available to workers within the category or profession involved. As for the rest, the legislative framework leaves it to the statutes of the funds to define membership. As far as we could see, some statutes of closed funds exclude managers from membership, whereas others are reserved for managers. Some other funds exclude short-term employees (with contracts of less than three months).

There are no sectors of employment which are not covered by occupational schemes, because, where closed funds are absent, the employee may subscribe to open funds.

We have about 400 occupational schemes. The most important pension fund model in Italy is the closed fund constituted on the basis of a productive category: in fact, 2 041 004 workers have subscribed to closed funds, whereas 820 357 workers are covered by open funds. Some 66 % of workers covered by closed funds are men, whereas 33.4 % are women. In the open funds, 60.9 % of subscribers are men and 39.1 % are women. However, only 26 % of private employees have subscribed to occupational funds.²⁷⁵

2. Calculation of old-age pensions and contributions

Occupational funds may be with defined contributions or with defined payments. Funds with defined contributions are those in which the total amount of the pension is not predetermined, but depends upon the results of the management of the resources set aside by means of periodical contributions; contributions to these funds are, on the other hand, predetermined. Funds with defined payments are, in contrast, those where the intended total pension payment is established *a priori*: for this prearranged total the contribution is periodically adjusted on the basis of variations in the general economic situation and in the profits of the capital investments made by the fund.

Capitalization criteria are applied here. According to Act No. 252/2005, old-age pension benefits are paid with the annuities formula; the worker, however, can choose a mixed formula: he/she can ask for a lump-sum amount up to the 50 % of the capital accrued plus the annuities for the rest.

²⁷⁵ Data by COVIP (the Pension Fund Supervisory Committee) (2008), *Annual Report*, in www.covip.it, last accessed 28 May 2010.

The contribution of the employee is established by the instituting documents of the funds, as a percentage of basic pay.

The pension fund is, in addition, financed with payments into it of the annual sum set aside for severance pay. The investment of severance pay in pension funds ought to guarantee employees an increased return on that quota of salary which is deferred. The pension funds into which the severance allowance is paid may also permit, in cases laid down by law, anticipated payments of the pension owed to the beneficiary.

According to Act No. 252/2005, the contribution to the fund can also depend upon particular elements of the wage or be identified by means of the complete payment to the fund of some of these pay elements; therefore, it could occur that wage elements are taken into consideration that are less favourable for women and this, in turn, would result in a lower pension for them than that provided for other workers; also this hypothesis can thus give rise to cases of indirect discrimination. In general, however, we have seen no differentiations in the level of contributions in occupational schemes.

The requirements for access to pension payments are established by the statute of the funds, according to the amount-due criterion belonging to the capitalization system. The minimum qualifying insurance period is fixed by Act No. 252/2005 at five years.

As the insurance principles relating to capitalization are rigorously applied here, the pension amount for atypical, intermittent, temporary, occasional and part-time workers, most of whom are women, can be really low. The contribution record is also impaired by earnings which are inferior to average standards and irregular careers. Indeed, periods of unemployment are not taken into account for pension rights and amount purposes. The sole device specifically provided by legislation that may be useful to accrue the contribution record of atypical workers is the possibility for them to pay contributions into the fund voluntarily even after attaining the retirement age, on condition that they have matured at least one year of contributions.

3. Actuarial factors

Decree No. 5/2010 implementing the Recast Directive allows the setting of different levels of benefits in so far as may be necessary to take account of actuarial calculation factors, which differ according to sex in the case of defined-contribution schemes; in the case of funded defined-benefit schemes, certain elements may be unequal where the inequality of the amounts results from the effects of the use of actuarial factors which differ according to sex at the time when the scheme's funding is implemented. The decree states that any actuarial factors used must be sound, relevant and accurate; the Vigilance Commission on Pensions (COVIP) and the Equal Opportunities National Committee are called upon to control the legitimacy and the non-discriminatory nature of the actuarial factors used. The limits of Article 9.1 of Directive 2006/54/EC have been fulfilled; the legislation goes even further by controlling the use of these factors.

Both funds with defined contributions and those with defined payments take actuarial factors into account for calculating the benefit. Among the actuarial factors, the higher life expectancy of women is taken into consideration. No other gender-related factor is taken into consideration.

The funds of self-employed workers do not have different levels for workers' contributions in relation to the use of actuarial calculation factors.

4. Caring credits

Supplementary funds provide for women/men who undertake care work at home, without remuneration, the possibility to pay contributions into the funds on an irregular or occasional basis; care workers can also pay into the funds the discounts obtained through the use of credit cards.

There are no other legislative provisions for the recovery of wasted contributions during maternity or parental leave, or during leave for serious family reasons, or for caring for the disabled. It is therefore left to the funds' regulations to include instruments such as notional contributions or redemptions and, as far as we could see, the funds' regulations do not have any specific provision on this issue.

5. Vesting and reimbursement rules

In cases of irregular work, it might be difficult for workers to fulfil the minimum condition within the same occupational fund: to this extent the provisions that regulate the transferral of the worker's position from one occupational fund to another and the vesting rules are important. In particular, Act No. 252/2005 provides that when the subscription conditions relating to the form of the complementary pension are no longer fulfilled, the employee may opt for a transfer to another fund or for the redemption of her/his own contributions. The power to transfer one's own individual position to another fund or to individual forms of pension exists after two years of subscription to a fund; the above-mentioned insurance condition is set aside when access to the new fund matures in relation to the type of working activity carried out. Alternatively, the worker can recover his/her own contribution, including that paid in by the employer, increased according to the technical rate of profit of the fund; in this case no vesting rule is required.

6. Pensionable age

Act No. 252/2005 states that the occupational old-age pension will be paid upon attaining the pensionable age established in the statutory system to which the individual belongs. In the statutory system for employed workers, women's pensionable age is set at 5 years lower than that for men. Women can, however, carry on working until they attain the pensionable age set for men. In this respect, therefore, men are subjected to more disadvantageous treatment than women as they cannot anticipate their pension and have a fixed pensionable age set at 65.

There are no consequences stemming from different pensionable ages for other benefits.

Discriminated men have never applied to the courts for a lower pensionable age. The national legislator has not so far intervened in the pensionable age of occupational funds.

The retirement age in the schemes for the self-employed is set at 65 for men and women.

7. Civil servants

The Court of Justice, in case No. 46/07, *Commission v Italy*, declared that the pension scheme for civil servants managed by INPDAP was discriminatory on the basis of Article 141 EC, since it provides that the general pensionable age for men is 65 and for women 60.

The Court therefore considered the INPDAP scheme to be occupational.

By contrast, our legislation considers it to be a statutory pension scheme and regulates it according to the legislation on public schemes (Act No. 335/1995).

The statutory nature of INPDAP is also demonstrated by the fact that: subscription to it is compulsory (occupational funds are voluntary in Italy); INPDAP has general coverage in the public employment sector and as such replaces the general insurance public pension scheme run by the INPS (the National Social Welfare Institute), which is consequently not operative in the area of public employees; alongside the statutory INPDAP scheme, there exist occupational funds for public servants.

Obviously, if the INPDAP pension scheme is considered to fall under the scope of Directive 79/7, then the pensionable age is a possible exception to the application of the equality principle on grounds of gender under Article 7 (1) (a). Following the Court of Justice's decision, Act 3.8.2009, No. 102, as modified by Act No. 122/2010, has equalized the pensionable age of men and women in the civil service at 65 years of age. This rule will be fully operative in 2012. In the meantime, women's pensionable age is being increased, starting from 2010, by one year; from 2012 women's pensionable age will be increased by 4 years. The pensionable age of 60 years for women, including the right to carry on working until they attain the age set for men, is still being applied to those women who have fulfilled their contributions and age conditions by 31 December 2009; the pensionable age of 61 years for women will still be applied to those women who have fulfilled their contributions and age conditions by 31 December 2011. Moreover, according to Act No. 122/2010, from 2015 onwards, each 3 years, the pensionable age will be increased for both men and women proportional to the increase in the life expectancy at 65 years of age as registered by the National Statistics Institute (ISTAT); in 2015, however, the pensionable age increase cannot be higher than three months.

LATVIA – Kristine Dupate

A) GENERAL QUESTIONS

1. The old-age pensions system

The old-age pension system in Latvia is predominantly based on the statutory old-age system. The statutory old-age system has two tiers. The first tier is the NDC system and the second is the DC system. It operates in the following way. Each employee (or a self-employed person) is subject to mandatory social insurance under the statutory social insurance system which provides protection against the risks of old age, unemployment, maternity, paternity, child care, occupational diseases, accidents at work, disability, illness or death. Each employee/employer is under an obligation to pay a certain percentage of the income earned from work as contributions (the total amount constitutes 33.09 % of earnings; the employee contributes 9 %, the employer 24.09 %).²⁷⁶ Insurance against old-age risks constitutes 21.66 % of earnings. In

²⁷⁶ Currently it is 33.09 % from income for work for employees who are not entitled to a statutory or occupational old-age pension – the employee only pays 9 % from his/her salary, while the employer contributes 24.09%. Self-employed persons are under an obligation to contribute statutory social insurance contributions from a minimum salary irrespective of the amount of income from self-employment. The contribution rate is 28.17 %, since they are not subject to insurance against unemployment, accidents at work and occupational diseases. Source: the Law on State Social Insurance (*Par valsts sociālo apdrošināšanu*), Official Gazette No. 274/276, 21 October 1997.; Regulations of the Cabinet of Ministers No. 1577, 'Regulations on the division of statutory social insurance contributions among social insurance risks' (*Noteikumi par valsts*

general 20 % is paid directly as insurance against old-age risks under the first tier, but 1.66 % is spent on administration.²⁷⁷ If a person is subject to the second tier of the statutory old-age system²⁷⁸ – 18 % goes to the first tier, and 2 % to the second tier.²⁷⁹

The second tier of the statutory system is mandatory. Contributions to the second tier form part of the mandatory contributions to the statutory social insurance contributions. It means that persons who are subject to the second tier must contribute on a mandatory basis, because it is part of the mandatory first pillar, but they may freely choose and change the body which manages their contributions (savings) – licensed undertakings for state-funded pension management.

Due to historical changes certain parts of the population, in particular those having employment periods before 1996, are subject to the mixed schemes under the first tier. The NDC system started to operate from 1996. Consequently, for periods of employment until 1996 the old-age pension is calculated on the basis of employment periods with a presumed amount of contributions (for all, the average insurance salary during the years 1996-1999) and not on the basis of real contributions. For each year of employment before 1996 persons are presumed to have been contributing towards their old-age insurance contributions at the amount of the average insurance salary during the period 1996-1999. Thus for older persons their pension is less dependent on real contributions, but more on the length of the period of employment.

There are two types of occupational pension schemes in Latvia. One is the DB scheme. This is a public-sector scheme²⁸⁰ – a long-term service pension scheme for certain groups of civil servants, officials and employees.²⁸¹ The main purpose of this scheme is to provide a bridging pension for groups of persons working in or serving the public sector who usually retire earlier (due to specific unhealthy work) than the generally defined retirement age (currently 62). When the person reaches 62, he/she formally becomes entitled to the statutory pension, but the amount of the pension remains the same – at the level of the long-term service pension. Starting from the age of 62 the long-term service pension is partially replaced by the statutory pension (to the full amount) and the difference is still paid under the long-term service scheme.

The other occupational pension scheme is the DC scheme. It is voluntary – the existence of such schemes is dependent upon the will of each employer. The employer may contribute, to the benefit of employees, to the private pension funds. Private

sociālās apdrošināšanas iemaksu likmes sadalījumu pa valsts sociālās apdrošināšanas veidiem 2010.gadā), Official Gazette No. 204, 29 December 2009.

²⁷⁷ Regulations of the Cabinet of Ministers No. 1577, 'Regulations on the division of statutory social insurance contributions among social insurance risks' (*Noteikumi par valsts sociālās apdrošināšanas iemaksu likmes sadalījumu pa valsts sociālās apdrošināšanas veidiem 2010.gadā*), Official Gazette No. 204, 29 December 2009.

²⁷⁸ According to the Law on State-Funded Pensions (*Valsts fondēto pensiju likums*), Official Gazette No. 78/87, 8 March 2000., subject to mandatory participation in the second tier are all persons who were younger than 30 at the time when the Law on State-Funded Pensions entered into the force (on 1 July 2001), while persons between 30 and 49 could/can join the second tier voluntarily.

²⁷⁹ Regulations of the Cabinet of Ministers No. 1577, 'Regulations on the division of statutory social insurance contributions among social insurance risks' (*Noteikumi par valsts sociālās apdrošināšanas iemaksu likmes sadalījumu pa valsts sociālās apdrošināšanas veidiem 2010.gadā*), Official Gazette No. 204, 29 December 2009.

²⁸⁰ Although this kind of pension is fully funded by the state budget, it nevertheless corresponds to all three criteria established by the ECJ in *Niemi* (Case C-351/00, Pirkko Niemi, *European Court reports 2002* Page I-07007), thus falling within the scope of Article 141.

²⁸¹ According to Latvian law these groups are persons in military service, a certain category of civil servants at the Ministry of the Interior, prosecutors, judges and artists employed by the state or municipality.

pension funds operate like ‘savings banks’. Contributions are built up and when the employee reaches the pensionable age defined by each particular scheme, he/she has a right to receive the contributed or ‘saved’ sums either as one payment or as divided periodical payments.²⁸² Such a system does not have any gender perspective, except for the amount of savings due to the possible pay gap.

Apart from the two schemes described, a third one has recently emerged. In substance it is life insurance which is provided by the employer.²⁸³ Under this scheme employer is under an obligation to contribute a certain sum periodically. The employee, by attaining a certain age defined in the insurance contract, is entitled to periodical benefits from the insurance company either over a certain period of time, for example, 10 years, or on a lifelong basis. This type of occupational old-age pension may be discriminatory because actuarial factors apply in life insurance in Latvia

Occupational pension schemes have a negligible impact on the Latvian old-age pension system. Only a few employers provide occupational pension schemes for their employees.

The first tier of the statutory social insurance scheme provides a survivor’s pension for minor children or disabled dependants in the ascending line (children, grandchildren without parents) and the horizontal line (minor or disabled siblings without another breadwinner) only. There are no survivor’s pension rights for a spouse. Under the second tier there could be a right to a ‘survivor’s pension’. According to Article 7 of the Law on State-Funded Pensions a person attaining pensionable age will have two options – to add second-tier capital to first-tier capital for the purpose of calculating the statutory old-age pension or to buy life insurance (a lifelong pension) from a private insurance company. If the person decides to buy life insurance there may be co-insured persons. Co-insured partners are entitled to benefits from life insurance in the case of the death of the insured person. This right is provided to spouses only.²⁸⁴ It may lead to discrimination on the grounds of family status and also to indirect discrimination against women, since there is a higher percentage of unmarried women than men. Besides this, there is high percentage of cohabiting partners living outside wedlock. Since men have higher earnings and live for a shorter period of time, it is very often the case that their partners (predominantly women) will not obtain a right to receive benefits from the life insurance of their deceased partners.

Persons who do not qualify for a statutory old-age pension are entitled to a state subsistence allowance but only 5 years after attaining retirement age. The state subsistence allowance is a universal allowance.²⁸⁵ A person will not qualify for an old-age pension if his/her period of employment is for less than 10 years.²⁸⁶ The existence of such an allowance does not in itself result in discrimination; however, most probably the recipients of this allowance are predominantly women because, logically, women more frequently do not have an employment record of at least

²⁸² The Law on Private Pension Funds (*Par privātajiem pensiju fondiem*), Official Gazette No 150/151, 20 June 1997.

²⁸³ Based on the Law on Insurance Agreements (*Par apdrošināšanas līgumu*), Official Gazette No. 188/189, 30 June 1998, which is applicable to all insurance agreements

²⁸⁴ Regulations of the Cabinet of Ministers No. 42, ‘Regulations on typical pension insurance agreements’ (*Mūža pensijas apdrošināšanas tipveida noteikumi*), Official Gazette No. 106, 18 March 2003.

²⁸⁵ The Law on State Social Allowances (*Valsts sociālo pabalstu likums*), Official Gazette No. 168, 19 November 2002.

²⁸⁶ The Law on State Pensions (*Par valsts pensijām*), Official Gazette No. 182, 23 November 1995.

10 years plus the fact that women tend to live longer than men. At the same time the amount of such an allowance²⁸⁷ is so low that it leads to poverty, thus resulting in institutional discrimination against women. The ‘institutional discrimination’ in the opinion of the author of this report is a type of discrimination not directly covered by law but which nevertheless exists among groups in society. In particular, this is where, according to the law, there are two separate groups which are not legally comparable (are not in a comparable situation) and accordingly different legal regimes are applicable to them, for example workers and pensioners. At the same time the legal regimes applicable to each group are such that it puts one of the group in a disadvantageous situation, for example, the level of income for workers and pensioners, where workers are entitled to at least LVL 180 (EUR 256) as a minimum salary, but the minimum old-age pension is LVL 45 (EUR 64). There are more workers who are men and more pensioners who are women, but one could not claim discrimination against pensioners in comparison to workers, because under the law those groups are incomparable.

In the context of a state subsistence allowance the fact is that far too many recipients of such an allowance are women due to the reasons mentioned below.

There are certain kinds of means-tested municipal allowances, but even when such allowances are awarded, poverty is inescapable.²⁸⁸

2. Old-age pension reforms

The statutory old-age NDC system was created in 1996. For periods of employment until 1996 the old-age pension is calculated on the basis of employment periods with a presumed amount of contributions (for all persons with an average insurance salary between 1996-1999) and not on the basis of real contributions. For each year of employment before 1996 persons are presumed to have contributed old-age insurance contributions amounting to the average insurance salary during the years 1996-1999. Thus for older persons their pension is less dependent on real contributions and more on the length of their employment record. Statistical data on the amount of statutory old-age pensions reveal that that pension gap is growing each year.²⁸⁹ It follows that that system which is applicable to employment periods before 1996 is more favourable from a gender equality perspective than the current NDC system. This may be explained by the fact that in the days of the USSR the employment rate for women was very high, plus the fact that they were entitled to caring credits – 8 extra employment years for each child if the mother remained at home to care for the child(ren) up until they had reached 8 years of age. Such a system does not reflect the pay gap while the NDC system does in fact mirror the pay gap, in particular shorter employment periods plus child-care crediting to the minimum amount. At the same time, under the NDC system women receive more than men due to considerable life expectancy differences.²⁹⁰

²⁸⁷ Currently LVL 45 (EUR 64) a month - Regulations of the Cabinet of Ministers No. 1605 ‘Regulations on the amount of the state subsistence allowance, death grants, their recalculation, awarding and payment’ (*Noteikumi par valsts sociālā nodrošinājuma pabalsta un apbedīšanas pabalsta apmēru, tā pārskatīšanas kārtību un pabalstu piešķiršanas un izmaksas kārtību*), Official Gazette No. 204, 29 December 2009.

²⁸⁸ The Law on Social Services and Assistance (*Sociālo pakalpojumu un palīdzības likums*), Official Gazette No. 168, 19 November 2002.

²⁸⁹ *Women and Men in Latvia 2008* Central Statistical Bureau of Latvia, Rīga 2008.

²⁹⁰ In 2007 the life expectancy for women was 76.5 years, but for men it was 65.8. *Women and Men in Latvia 2008* Central Statistical Bureau of Latvia, Rīga 2008.

3. Retroactivity of legislation

There have been no recent amendments to tackle gender inequalities from the past. The only measure taken was with regard to employment periods before 1996. It was adopted together with the legislative package to reform the NDC system in 1995.²⁹¹ The measure envisages the awarding of employment periods for periods spent on child care, caring for a disabled child and caring for elderly family members (who are over 80 years old). Periods spent outside employment on raising children up to the age of 8 are to be considered as employment periods. Only women have this right, however. This measure on the one hand effectively compensates women for caring periods, but, on the other, leads to direct discrimination against those men (presumably few) who have employment breaks due to child-care obligations.

The scheme for employment periods before 1996 is currently active. Almost all persons retiring now have employment periods before 1996. Their pension is formed on the basis of two systems – the calculation system for periods before 1996 and the one for after 1996.

4. The World Bank Model

Latvia obviously has a system which is based on the WBM. However, the MISSOC system is considered to be a classical three-pillar model. Part of the mandatory statutory contributions managed by private pension funds is considered to fall under the second tier of the first pillar.

The second tier of the statutory system (the first pillar) is mandatory. Contributions to the second tier form part of the mandatory contributions to the statutory social insurance contributions. It means that persons who are subject to the second tier must contribute on a mandatory basis, but they can freely choose to change the undertaking that manages the contributions (savings). These are licensed undertakings for state-funded pension management.

According to Article 7 of the Law on State-Funded Pensions a person attaining pensionable age will have two options – whether to add second-tier capital to first-tier capital for the purpose of calculating the statutory old-age pension or to purchase life insurance (a life pension) from a private insurance company. The problem here is actuarial factors which are still used in the life insurance sector in Latvia. Whether private insurance companies legally provide life insurance under the second tier (subject to classical life insurance conditions where actuarial factors are applicable) or whether they are not allowed to differentiate according to sex is still unclear.²⁹² This is unclear because none of the participants under the second tier have yet attained pensionable age.

As to the character of the second tier of the first pillar, it has characteristics of both the statutory and the occupational system. At the same time it cannot be compared to either of the systems because it has its own unique characteristics.

The author is of the opinion that with regard to Latvia the second tier of the first pillar is more statutory than occupational, because, firstly, under Latvian law it is not managed by traditional pension funds, but by special second-tier private pension funds which do not pay out an occupational old-age pension in its classical format – periodical lifelong payments based on biometric data. Instead a person may choose whether to add second-tier capital to first-tier capital, or to obtain life insurance. In the

²⁹¹ The Law on State Pensions (*Par valsts pensijām*), Official Gazette No. 182, 23 November 1995.

²⁹² Regulations of the Cabinet of Ministers No. 42, Regulations on typical pension insurance agreements (*Mūža pensijas apdrošināšanas tipveida noteikumi*), OG No.106, 18 March 2003.

case of life insurance Directive 2004/113 will come into play, unless the national legislator will adopt a decision on the principle of equal treatment.

The author is of the opinion that the Latvian model, although it is based on the WBM, effectively fits within the traditional three-pillar model and consequently the pertinent EU legal regulation.

B) STATUTORY OLD-AGE PENSION SCHEMES **(Schemes falling under Directive 79/7/EEC)**

There is one scheme which falls under Directive 79/7. It is the generally applicable statutory social insurance scheme. It is the dominant scheme since participation in occupational or private old-age pension schemes is the exception rather than the norm in Latvia.

1. Qualifying conditions

All employees and self-employed persons are subject to mandatory old-age insurance under the statutory social insurance system irrespective of the type of contract.²⁹³ Persons obtain the right to obtain an old-age pension while they are subject to social insurance.

A person is entitled to a statutory old-age pension if he/she satisfies the following criteria: (1) he/she has attained the age of 62 and (2) has a social insurance record of at least 10 years.²⁹⁴ There are no minimum contributions. If the pension is very low the recipient is entitled to an old-age pension which is equivalent to the minimum statutory subsistence allowance.²⁹⁵ So far there has been no debate on extending the contribution periods, but there have been debates on increasing the pensionable age from 62 to 65 starting from 2012.

Social insurance periods include those periods of active employment and periods when a person is entitled to sickness, unemployment, maternity, paternity, child-care and disabled child-care allowances.²⁹⁶ During the respective periods the persons in question are insured against the risk of old age by the state from the statutory social insurance budget. During periods of sickness, unemployment, maternity and paternity persons are insured by the state to almost the full amount. So during those periods the persons in question acquire contributions to a hypothetical old-age pension account to an amount which is generally equal to those contributions which would have been made if the persons had remained in active employment. Periods spent on child care are subject to a different system. During this period (until the child reaches 18 months) the person is insured to an amount which is equal to LVL 50 (EUR 71) monthly.²⁹⁷ In comparison, the minimum salary in Latvia in 2010 is LVL 180 (EUR 256).²⁹⁸

²⁹³ The Law on State Social Insurance (*Par valsts sociālo apdrošināšanu*), Official Gazette No. 274/276, 21 October 1997.

²⁹⁴ Article 11 (1) of the Law on State Pensions (*Par valsts pensijām*), Official Gazette No. 182, 23 November 1995.

²⁹⁵ The Law on State Pensions (*Par valsts pensijām*), Official Gazette No. 182, 23 November 1995.

²⁹⁶ The Law on Statutory Social Insurance (*Par valsts sociālo apdrošināšanu*), Official Gazette No. 274/276, 21 October 1997.

²⁹⁷ The Law on Statutory Social Insurance (*Par valsts sociālo apdrošināšanu*), Official Gazette No. 274/276, 21 October 1997.; Regulations of the Cabinet of Ministers No. 230, 'Regulations on mandatory statutory social insurance contributions from the state budget and statutory social insurance special budgets' (*Noteikumi par valsts sociālās apdrošināšanas obligātajām iemaksām*

In general, the Latvian statutory old-age pension system does not differentiate between standard workers and non-standard workers. It does, however, indirectly discriminate against women with regard to child-care leave since this is the only social risk during which, under the statutory social insurance system, the person does not fully acquire (with regard to the amount) a right to an old-age pension.

2. The amount of the old-age pension

In Latvia an old-age pension is calculated on the basis of lifelong earnings.

The old-age pension for periods of employment after 1996 is calculated in the following way. The pension capital is divided by generally defined and applicable years of life expectancy (and multiplied by a specific index). The pension capital constitutes the sum of lifelong contributions.

The old-age pension for periods of employment before 1996 is calculated in the same way as for employment periods after 1996. However, the pension capital constitutes a hypothetical sum of money which has never been paid in the form of contributions because the NDC did not exist before 1996. The pension capital for this period constitutes the yearly capital of the average social insurance salary during 1996-1999 multiplied by the years of employment and then divided by generally defined and applicable years of life expectancy (and multiplied by a specific index).²⁹⁹

For calculating the old-age pension life expectancy tables are taken into account. They are gender-neutral.³⁰⁰ Life expectancy tables may be changed due to changing life expectancy statistics.

For an entitlement to a statutory old-age pension at least 10 years of statutory social insurance are necessary.³⁰¹ Statutory social insurance periods include active employment periods and periods during which the person in question receives sickness, unemployment, maternity, paternity and child-care allowances.³⁰²

A flat-rate old-age pension exists for those persons who have been socially insured for at least 10 year, but whose old-age pension is below the statutory minimum. The old-age pension may not be lower than the state subsistence allowance.³⁰³ For those who are not entitled to a statutory old-age pension under the Law on State Pensions,³⁰⁴ a state subsistence allowance is provided under the Law on State Social Allowances³⁰⁵ 5 years after attaining pensionable age. This means that when a person attains the pensionable age of 62 and he/she does not qualify for a

no valsts pamatbudžeta un valsts sociālās apdrošināšanas speciālajiem budžetiem), Official Gazette No. 91, 13 June 2001.

²⁹⁸ Regulations of the Cabinet of Ministers No. 791, 'Regulations on a minimum monthly salary and a minimum hourly rate' (*Noteikumi par minimālo mēneša darba algu un minimālo stundas tarifa likmi*), Official Gazette No. 150, 26 September 2008.

²⁹⁹ The Law on State Pensions (*Par valsts pensijām*), Official Gazette No. 182, 23 November 1995.

³⁰⁰ Regulations of the Cabinet of Ministers No. 1046, 'Regulations on the applicable planned periods for paying out old-age pensions for the purpose of their calculation' (*Noteikumi par vecuma pensijas aprēķināšanai piemērojamiem plānotajiem vecuma pensijas izmaksas laikposmiem*), Official Gazette No. 198, 19 December 2008.

³⁰¹ Article 11 (1) of the Law on State Pensions (*Par valsts pensijām*), Official Gazette No. 182, 23 November 1995.

³⁰² Law on Statutory Social Insurance (*Par valsts sociālo apdrošināšanu*), Official Gazette No. 274/276, 21 October 1997.

³⁰³ The Law on State Pensions (*Par valsts pensijām*), *Valsts sociālo pabalstu likums* No. 182, 23 November 1995.

³⁰⁴ *Par valsts pensijām*, Official Gazette No. 182, 23 November 1995.

³⁰⁵ *Valsts sociālo pabalstu likums*, Official Gazette No. 168, 19 November 2002.

statutory old-age pension, he/she will become entitled to a state subsistence allowance when he/she attains the age of 67.

All workers, irrespective of the type of employment contract, are treated in the same way. The calculation of the old-age pension is the same for everyone.

In Latvia indexation and supplement payments exist. Indexation is based on the yearly inflation index. Supplement payments are provided for periods of employment before 1996 and currently constitute LVL 0.7 (EUR 1) monthly for each employment year.

There is no ceiling on old-age pension benefits. There used to be ceilings on contributions set periodically by the Cabinet of Ministers, which restricted the amount of the possible old-age pension. However, due to the economic crisis and the consequent deficit in the statutory social insurance budget the contribution ceilings were cancelled starting from 1 January 2009. Besides, a ceiling on the remainder of the statutory social insurance allowances (except for old-age pensions) was introduced.

3. Periods of caring

Under the system established after 1996 persons are fully credited for periods spent on maternity leave. During periods of maternity leave persons are insured to the full amount (in the form of a statutory insurance salary which is a 'real' salary) by the state from the statutory social insurance budget.³⁰⁶

The same full insurance for periods spent on paternity leave was established from 1 January 2009 onwards.³⁰⁷ This delayed amendment will not however lead to considerable discrimination against men, since paternity leave lasts for 10 calendar days in comparison to maternity leave which lasts for almost 4 months.

This means that persons on maternity and paternity leave are fully credited with regard to pension rights and the amount thereof.

There is also crediting for periods spent on child-care leave. This concerns those persons who are the recipients of a child-care allowance and only as long as the person is entitled to the child-care allowance. Persons are entitled to a child-care allowance until the child reaches 18 months.³⁰⁸ However, the amount of crediting is very low. During this period (until the child reaches 18 months) the person is insured by the state from the statutory social insurance budget to an amount which is equal to LVL 50 (EUR 71) monthly.³⁰⁹ In comparison, the minimum salary in Latvia in 2010

³⁰⁶ The Law on Statutory Social Insurance (*Par valsts sociālo apdrošināšanu*), Official Gazette No. 274/276, 21 October 1997.

³⁰⁷ Amendments to the Law on Statutory Social Insurance (*Grozījumi likumā 'Par valsts sociālo apdrošināšanu'*), Official Gazette No. 104, 9 July 2008.

³⁰⁸ Unemployed persons are entitled to a flat-rate state social child-care allowance, while employed persons are entitled to a statutory social insurance child-care allowance which is dependant on their level of earnings. A crediting system is applicable to both groups equally - the Law on State Social Allowances (*Valsts sociālo pabalstu likums*), Official Gazette No. 168, 19 November 2002; the Law on Maternity and Sickness Allowances (*Par maternitātes un slimības pabalstiem*), Official Gazette No. 182, 23 November 1995.

³⁰⁹ The Law on State Social Insurance (*Par valsts sociālo apdrošināšanu*), Official Gazette No. 274/276, 21 October 1997; Regulations of the Cabinet of Ministers No. 230, 'Regulations on mandatory statutory social insurance contributions from the state budget and statutory social insurance special budgets' (*Noteikumi par valsts sociālās apdrošināšanas obligātajām iemaksām no valsts pamatbudžeta un valsts sociālās apdrošināšanas speciālajiem budžetiem*), Official Gazette No. 91, 13 June 2001.

is LVL 180 (EUR 256).³¹⁰ The result is that during periods of child care the person in question collects contributions for his/her old-age pension which are much lower than if he/she would remain in active employment.

There is also the same amount of crediting for parents who are in recipient of a care allowance for a disabled child. They are credited until the disabled child reaches the age of 18.³¹¹

It follows that during child-care periods persons are fully credited for the purpose of the pension right, but not fully for the amount thereof.

No other care crediting is provided for under Latvian law.

For employment periods before 1996 there is the following crediting system. Crediting may be obtained for periods spent on raising a child or children up to 8 years of age and for caring for a disabled child (from group I) until that child reaches the age of 16 and for caring for the elderly (above 80 years of age).³¹² The crediting system for raising a child or children is available for women only. Periods spent outside active employment during which a woman has had a child or children below the age of 8 may be counted as periods of active employment.³¹³ On the one hand, such a right effectively remedies gender inequality in the past with regard to the right to an old-age pension the and amount thereof, but, on the other hand, it directly discriminates against men who were the real carers of their children and could not work as a result.

Taking into account the fact that Latvia has a minimum amount crediting system (except for long-term care for the elderly), it would be desirable to eliminate any gender discrimination under EU law.

4. Exceptions, Article 7.1 of Directive 79/7

Pensionable age and the possible consequences for other benefits (Article 7.1 a))

In general there is no mandatory retirement age except for certain professions defined by law, for example, civil servants and employees at the Ministry of the Interior. However, they may still work in other functions after retirement from these mandatory retirement professions.

After retirement pensioners can remain in employment and, at the same time, receive the statutory old-age pension to the full amount.³¹⁴ However, this right is denied to persons who are the recipients of an early retirement pension. Under the Transitional Provisions of the Law on State Pensions, for a certain period of time

³¹⁰ Regulations of the Cabinet of Ministers No. 791, 'Regulations on the minimum monthly salary and the minimum hourly rate' (*Noteikumi par minimālo mēneša darba algu un minimālo stundas tarifu likmi*), Official Gazette No. 150, 26 September 2008.

³¹¹ The Law on Statutory Social Insurance (*Par valsts sociālo apdrošināšanu*), Official Gazette No. 274/276, 21 October 1997.

³¹² Point 1 of the Transitional Provisions of the Law on State Pensions (*Par valsts pensijām*), Official Gazette No. 182, 23 November 1995.

³¹³ Point 1(8) of the Transitional Provisions of the Law on State Pensions (*Par valsts pensijām*), Official Gazette No. 182, 23 November 1995.

³¹⁴ Due to the economic crisis and limited budget resources in 2009 Parliament took a decision envisaging a right to a statutory old-age pension for employed persons amounting to 30 % of their old-age pension - the Law on the Paying out of State Pensions and State Allowances During the Period 2009-2012 (*Par valsts pensiju un valsts pabalstu izmaksu laika periodā no 2009.gada līdz 2012.gadam*), Official Gazette No. 100, 30 June 2009. However, on 21 December 2009 the Constitutional Court found this provision to be unconstitutional - Decision in case No.2009-43-01, Official Gazette No. 201, 22 December 2009.

persons have been entitled to early retirement. They are precluded from working and receiving an early old-age pension at the same time.³¹⁵

Since 1 January 2008 the pensionable age is equal for both men and women. The equalization of the retirement age in Latvia works in favour of gender equality because it allows women to collect a higher amount of contributions which are on average lower due to the pay gap.

According to Article 11(4) persons who have employment records of at least 30 years and have cared for five or more children until those children have reached the age of 8 or have cared for a disabled child have a right to early retirement which is 5 years earlier than the normal pensionable age. It is therefore currently 57. The State Social Insurance Agency has provided somewhat curious unofficial information to the effect that some mothers belonging to this category have complained about the equal right given to fathers under this provision, in particular to those who have never in reality taken care of their five or more children or their disabled child.

The Ministry of Welfare has provided the following data on the average age when men and women leave the labour market, the average pension and the average employment records. In 2009 the average age when women applied for an old-age pension was 59.54, for men it was 60.83; the average pension amounted to LVL 201.61 (EUR 287) for women and LVL 234.07 (EUR 333) for men; average employment records amounted to 37.08 years for women and 36.47 years for men. Especially surprising is the data on employment records which is higher for women. The author explains this phenomenon with the following reasons. The first reason is effective care crediting for employment periods before 1996 for women. Secondly, persons who are retiring now worked for a proportionately longer period during the days of the USSR when full-time employment was mandatory with minor exceptions, thus almost all women were full-time employees. The third reason is the existence of illegal employment for a long period of time – starting from the beginning of the 1990s and continuing to this day. Illegal employment affects considerably more men than women, since more men work in the private sector and in professions where illegal employment is more widespread, for example the construction industry.

Advantages granted to persons who have brought up children (Article 7.1 b))

As described in Section B3 two crediting systems exist – one for periods of employment after 1996 and the other for periods before 1996.

The system after 1996 is gender-neutral. It is applicable to persons who are the recipients of a child-care allowance or an allowance for caring for a disabled child irrespective of the sex of the carer. This system indirectly discriminates against women, however, because predominantly women use the right to child care and tend to care for a disabled child alone, but the crediting system provides for contributions to the old-age pension at the minimum amount. The new statutory old-age pension system established after 1996 indirectly discriminates against women, because under this system the amount of the old-age pension is dependent upon the contributions collected, in other words it is directly influenced by the amount of salary and the length of lifelong employment. Women on average have shorter employment periods and lower salaries. Such a picture is reflected in the Latvian statistics – it shows that the difference between the amount of old-age pensions received by men and women is increasing each year, because each year the new old-age system has an increasing impact on the calculation of ‘new’ pensions (for those retiring now). For those retiring

³¹⁵ The Law on State Pensions (*Par valsts pensijām*), Official Gazette No. 182, 23 November 1995.

after 1996 the old-age pension is calculated under two systems – until 1996 and after 1996. The system until 1996 takes into account the length of employment with a presumed equal annual amount of contributions; besides, this system generously compensates women for interruptions due to child care (up to 8 years for each child). Statistics show that under the ‘old’ system women are entitled to even higher pensions than men. However, each year the part worked before 1996 for ‘new’ pensioners diminishes. It means that each year the impact of the new system increases and together this increases its indirectly discriminatory effect.

The system before 1996 is discriminatory because credit rights for child care (except for caring for a disabled child) are awarded to women only. Under this system men cannot be second-choice claimants, even when the mother had died when the child was very young and the father was the only real carer.

This exception under EU law should be eliminated as soon as possible.

Old-age or invalidity benefit entitlements or increases in long-term benefits by virtue of the derived entitlements of a wife (Article 7.1 c) and d))

The Latvian statutory old-age pension system is based on individual rights. So there are no derived rights for spouses.

C) OCCUPATIONAL OLD-AGE PENSION SCHEMES

(Schemes falling under Article 157 TFEU, Directive 86/378/EEC, as amended by Directive 96/97/EC, now Articles 5-13 of the Recast Directive 2006/54/EC)

1. Coverage

Occupational old-age pension schemes are generally voluntary. They are mandatory in the public sector for professions which are subject to the right to long-term service. At the same time long-term service pensions cannot be considered as mandatory, because they are awarded without any contribution obligations. They are paid from the state budget, not from any special budget funded by contributions by the respective employees (civil servants).

One type of occupational old-age pension scheme is based on the Law on Private Pension Funds.³¹⁶ Under this law two kinds of private pension funds could be established – one type where funds function as ‘saving banks’, the other where funds function in a classical way. By a ‘classical’ pension fund is meant the fund which provides, after the beneficiary attains retirement age, periodical occupational old-age pension payments based on biometric data. Funds which function as ‘saving banks’ simply collect contributions and pay them out to a person when that person attains the agreed pensionable age. There are no ‘classical’ pension funds in Latvia. This is due, first of all, to the requirement to have a large basic capital fund – at least EUR 3 million,³¹⁷ and, secondly, to the low turnover or a very low participation rate. Consequently it is not profitable from a business perspective. Membership of such occupational old-age pension schemes is dependent on the participation conditions laid down in those special pension schemes and which are agreed upon individually between an employer and the private pension fund. Due to this, the author has not had access to information on the conditions which employers determine for their employees to participate in occupational old-age pension schemes.

³¹⁶ *Par privātajiem pensiju fondiem*, Official Gazette No. 150/151, 20 June 1997.

³¹⁷ Article 22¹ of the Law on Private Pension Funds (*Par privātajiem pensiju fondiem*), Official Gazette No. 150/151, 20 June 1997.

At the same time discrimination on the grounds of sex is prohibited by the Law on Private Pension Funds³¹⁸ which is applicable to private pension funds for occupational old-age pension schemes. The law itself does not provide any detailed regulations on participation criteria, just basic principles. Article 11(2) provides that participation and entitlement must be based on such objective criteria as seniority, profession, the post in question etc. According to Article 11(3) any discrimination on the grounds of origin, property status, race and ethnic origin, sex or religion is prohibited. However, objective criteria such as seniority³¹⁹ or profession³²⁰ which are explicitly allowed by Article 11(2) of the law may be indirectly discriminatory in themselves. Thus the Law on Private Pension Funds incorrectly implements the requirements of Directives 86/378 and 96/97 (2006/54). Besides this, Article 11(3) does not contain all the prohibited grounds provided by Directive 2000/78 – age, disability and sexual orientation, which from the perspective of gender equality could lead to multiple discrimination. Occupational old-age pension schemes established on the basis of individual schemes for each employer under the Law on Private Pension Funds are supervised by the Financial and Capital Market Commission. This administrative institution established under the Law on Private Pension Funds has competence to approve of not only general private pension fund programmes but also individual programmes and agreements concluded between private pension funds and employers. In an interview with this institution it was disclosed that, first, it does not collect data on the participation of men and women in such schemes and indirectly discriminatory participation conditions are usually not analysed.

Another type of occupational old-age pension scheme is based on the Law on Insurance Agreements.³²¹ This law is intended to apply to all individual insurance agreements. At the same time, it may be applicable to individual insurance agreements where insurance is provided to the employee by the employer. Consequently in this case the insurance would fall under occupational social security. It has recently emerged that employers provide their employees with old-age pension insurance which in its substance is life insurance.³²² The problem is that such occupational old-age pension schemes were not considered by the legislator to fall under Article 157 and Directive 2006/54. As a consequence there is no control mechanism for ensuring the principle of equal pay, because there are no measures to control an employer as to whether such a scheme is provided to all employees qualifying under objective criteria and whether such a scheme ensures the principle of equal pay. Theoretically, such life insurance agreements could be considered as elements of pay under Article 60 of the Labour law,³²³ but employers and employees are likely to be unaware of this.

The fact remains that occupational old-age pension schemes of whatever type (except that of the public sector) have only had a minor impact in Latvia because the number of participants is very low.

³¹⁸ Par privātajiem pensiju fondiem, Official Gazette No. 150/151, 20 June 1997.

³¹⁹ Case C-184/89, *Helga Nimz v Freie und Hansestadt Hamburg*, European Court reports 1991, I-00297.

³²⁰ In the case of Latvia where there is considerable horizontal segregation in the labour market. See *Women and Men in Latvia 2008* Central Statistical Bureau of Latvia, Riga, 2008.

³²¹ *Par apdrošināšanas līgumu*, Official Gazette No. 188/189, 30 June 1998.

³²² Author's interviews with life insurance companies carried out in 2009.

³²³ *Darba likums*, Official Gazette No. 105, 6 July 2001.

2. Calculation of old-age pensions and contributions

Occupational old-age pension schemes provided under the Law on Private Pension Funds and the Law on Insurance Agreements are based on contributions, because benefits are dependent on the amount of contributions. There are no data on whether employers provide contributions related to earnings, the type of employment or similar criteria. The fact remains that under such schemes the defining factor for the amount of benefits is the amount of the total contributions.

According to the Law on Private Pension Schemes the participants in such a pension scheme have the right to transfer savings to another pension scheme.³²⁴ Schemes under the Law on Insurance Agreements may be different, however. Since such a scheme is provided on the basis of the individual contract between the employer and the life insurance company, the old-age insurance under such schemes is not transferred to another employer if the person changes his/her employment, unless the agreement itself provides for such a possibility. There is no generally applicable legal regulation on this. Usually when there is a change of employer private pension funds and life insurance companies offer to continue the old-age pension scheme on an individual basis (under the third pillar).

3. Actuarial factors

Private old-age pension schemes established under the Law on Private Pension Funds currently operate as 'savings banks'. When the pensionable age is attained they simply pay out the entire sum collected by contributions. Since they do not apply biometric data they do not apply any actuarial factors. Those schemes established under the Law on Insurance Agreements are subject to the opposite situation. Since, in substance, such occupational old-age pension schemes are life insurance schemes actuarial factors apply, because Latvia has decided to retain actuarial factors for life insurance agreements under Directive 2004/113.

There is no legislation on and consequently there is no data available as to what kinds of conditions an employer may set for both types of schemes and what kind of benefits are provided by life insurance companies.

4. Caring credits

There is no information available on care credits. During maternity, paternity and child care an allowance is provided by the statutory social security system and so the employer is not obliged to credit those periods.

5. Vesting and reimbursement rules

There is no information available on vesting and reimbursement rules because schemes are based on individual agreements (individual for each employer).

According to the Law on Private Pension Funds reimbursement before attaining pensionable age is only provided for those persons who become disabled and belong to the 1st group (severely disabled) or in the case of the death of a person for his/her beneficiaries (either by an inheritance agreement or according to Civil Law rules). In other cases a person is usually given the opportunity to continue in the old-age scheme on an individual basis (under the third pillar). Under Article 11(8) of the Law on Private Pension Funds an employee has the right to transfer contributions to another scheme.

³²⁴ Article 11(8)

6. Pensionable age

According to the Law on Private Pension Funds the pensionable age is subject to the individual scheme's agreements, but it cannot be less than 55 years of age. The pensionable age must be equal for men and women. In fact, they have always been equal because the system of private pension funds was only established comparatively recently – at the end of the 1990s.

7. Civil servants

There are occupational old-age pension schemes for certain professions in the public sector. According to Latvian law, persons in military service,³²⁵ certain categories of employees at the Ministry of the Interior,³²⁶ prosecutors,³²⁷ judges³²⁸ and artists employed by the state or municipality³²⁹ are entitled to a special long-service pension.

Such a scheme is a long-term service scheme. In general, it is intended as a bridging pension scheme. After entitlement to the statutory old-age pension, the long-term service pension is decreased in proportion to the old-age pension. This means that the person in question, after attaining the age of 62, will remain entitled to a pension of the same amount, although its sources are different. The recipient is entitled to a statutory pension paid out of the social security budget and a long-term service pension paid out of the state budget, the amount of which will be the difference between the long-term service pension and the statutory pension. According to the criteria set by the CJ, these schemes qualify as occupational schemes.

The long-term service pension scheme is based on different principles than those under the Law on Private Pension Funds and the Law on Insurance Agreements. A long-term service pension is provided without any contributions having been made, because it is financed by the state budget. In general it is calculated on the basis of the salary earned during the last five years. The criteria for qualifying for a long-term service pension are gender-neutral. In general it is dependent upon the completion of a certain period of service. It is on average 20 years of service. For some professions age is also a qualifying condition, which is equal for men and women and tends to be 50 years of age (for example, certain employees of the Ministry of the Interior and prosecutors).

³²⁵ The Law on Long-Term Service Pensions for the Military (*Militārpersonu izdienas pensiju likums*), Official Gazette No. 86, 1 April 1998.

³²⁶ The Law on Long-Term Service Pensions for Employees of a Certain Rank at the Ministry of the Interior (*Par izdienas pensijām Iekšlietu ministrijas sistēmas darbiniekiem ar speciālajām dienesta pakāpēm*), Official Gazette No. 100/101, 16 April 1998.

³²⁷ The Law on Long-Term Service Pensions for Prosecutors (*Prokuroru izdienas pensiju likums*), Official Gazette No. 181, 3 June 1999.

³²⁸ The Law on Long-Term Service Pensions for Judges (*Tiesnešu izdienas pensiju likums*), Official Gazette No. 107, 7 July 2006.

³²⁹ The Law on Long-Term Service Pensions for Artists of State and Municipal Orchestras, Choirs, Concert Organizations, Theatres and the Circus (*Valsts un pašvaldību profesionālo orķestru, koru, koncertorganizāciju, teātru un cirka mākslinieku izdienas pensiju likums*), Official Gazette No. 106, 7 July 2004.

A) GENERAL QUESTIONS

1. The old-age pensions system

The traditional three-pillar model is used in Liechtenstein. The first pillar is called old-age and survivor's pension (*Alters- und Hinterlassenenversicherung, AHV*),³³⁰ the second pillar is called occupational pension (*Betriebliche Personalvorsorge, BPV*),³³¹ and the third is called voluntary pension (*Selbstvorsorge*). The first and the second pillar generate the main pension for most people whereas the first pillar is an important basic pension but cannot guarantee a normal standard of living. The second pillar is therefore also very important to ensure survival. The third pillar completes the first and second pillar. The first and the second pillar are mandatory pension schemes regulated by law. The first pillar is organized on a Pay-As-You-Go basis (PAYG)³³² whereas the second pillar is mainly funded (Art. 10 BPVG). The first pillar seems to be based on a Notional defined Contribution system – NDC - (Art. 64ter AHVG deals with individual accounts) and the second pillar shall be based on a Defined Contributions (DC) system. Survivors' pensions exist in both the first and second pillar. They are gender-neutral, which means for female and male spouses under the same conditions. In Liechtenstein there is a safety net for those who have a right to a statutory pension but cannot afford the minimum standard of living with the pension and other income. There are two kinds of benefits, on the one hand complementary benefits if the person has a right to an old age-pension and, on the other, benefits like welfare aid also exist if there is no right to an old-age pension.

2. Old-age pension reforms

The impact on gender equality of the reforms of the old-age pensions system concerns mainly the pensionable age, survivors' pensions and the taking into account of periods of caring. These reforms do not specifically take into account the fact that men and women have different working patterns where mainly women have non-standard working patterns. The traditional three-pillar model results in a well functioning old-age pension system for men. Most women only attain a sufficient old-age pension through their spouses. This is because women often quit their jobs or reduce their working hours after the birth of their first child. The three-pillar model is based on occupational activity without any interruptions. Women with reduced occupational carriers do not attain their own right to an old-age pension which is higher than the poverty level. Repurchasing lacking insurance time for the right to an old-age pension is only possible during specific periods and according to the amount of years and the actual age of the claimant and, most of the time, this is simply not affordable. Consequently any redemption is too costly.

3. Retroactivity of legislation

Concerning the pensionable age long transition periods are applicable. Since 2010 the ordinary pensionable age for both men and women is now set at 64 years. Previously,

³³⁰ AHVG, updated LGBL. 2009 No. 358. Legislation of Liechtenstein is accessible on the Internet www.gesetze.li (Lilex Liechtenstein), accessed 3 June 2010.

³³¹ Gesetz über die betriebliche Personalvorsorge, BPVG, LGBL. 1988 No. 12, updated LGBL. 2007 No.13, Verordnung zum BPVG, BPVV, LGBL. 2005 No. 288.

³³² AHV Yearly Report 2009, see point 1.2.1 in this report, accessible on the Internet www.ahv.li, accessed 3 June 2010.

the pensionable age was different for men and women. During a transition period the following pensionable ages were applicable: women born in 1940 and prior to that date: 62 years, born in 1941 until 1945: 63 years, born in 1946 and later: 64 years; men born 1935 and earlier: 65 years, born in 1936 and later: 64 years. Benefits for caring periods for relatives other than children have only been in place since 1997. Survivors' pensions in the second pillar have only been available since 2006. To my knowledge, legislation has not foreseen any specific norms for the retroactive recalculation of pensions for people whose pensions have been calculated prior to the changes.

4. The World Bank Model

I do not think that the traditional three-pillar model is still able to describe the structure of old-age pension schemes and thus it is not useful for gender equality purposes for the same reasons as already described above under point A.2. In Liechtenstein there is a mandatory funded pension scheme (second pillar) which discriminates against mainly women because it does not take into account their non-standard working patterns, such as part-time, fixed-term contracts, occasional jobs and low paid work.

B) STATUTORY OLD-AGE PENSION SCHEMES (Schemes falling under Directive 79/7/EEC)

1. Qualifying conditions

An old-age pension from the first pillar is available to a person who has been insured for at least one year at the AHV and is 64 years old. The years 1954 until 1996, during which non-working spouses domiciled in Liechtenstein, e.g. housewives, were exempted from the obligation to pay premiums, are considered to be the insured period. Normally nobody is *de facto* excluded from being insured under the first pillar. But it has to be noted that the amount of a minimum old-age pension from the first pillar will never be sufficient to survive. A minimum pension varies between CHF 27 (EUR 18) and CHF 53 (EUR 36) per month if the person has been insured for at least one year. There is no average replacement rate between pensions and wages. The first pillar is considered to guarantee a minimum old-age pension for everybody who has been insured. There are only four points which have to be satisfied: the insured period, the average yearly income, a minimum pension and a maximum pension per line in the pension scale corresponding to the insured period. Furthermore, it has to be taken into account that only a person who has a formal right to a statutory old-age pension can demand a complementary benefit to ensure a minimum standard of living. Periods of unemployment are taken into account only in the first pillar.

2. The amount of the old-age pension

Old-age pensions are calculated on the basis of the insured period and the average annual salary during this period. For a full old-age pension the person has to be insured from the age of 20 years to the age of 64 years without any interruptions. If the person was insured for 43 years he or she has the right to an old-age pension between a minimum of CHF 1 140 (EUR 750) and A maximum of CHF 2 280 (EUR 1 500). The exact amount of a person's old-age pension lies between these two amounts and depends on the exact amount of the person's average earnings during those 43 years. That means that somebody who only had a low income will receive

the guaranteed minimum old-age pension, while someone who had a very high income will not receive more than the absolute maximum old-age pension. Each lacking contributory period results in a lower old-age pension. See the following old-age pension scale of the AHV which has been applicable since January 2009:

Pension scale	Minimum pension	Maximum pension
43 years of insurance	CHF 1 140 (EUR 750)	CHF 2 280 (EUR 1 500)
40	CHF 1 060 (EUR 697)	CHF 2 121 (EUR 1 395)
30	CHF 795 (EUR 523)	CHF 1591 (EUR 1 046)
20	CHF 530 (EUR 348)	CHF 1 060 (EUR 697)
10	CHF 265 (EUR 174)	CHF 530 (EUR 348)
1	CHF 27 (EUR 18)	CHF 53 (EUR 36)

Each line in the pension scale corresponds to a minimum and to a maximum pension whereas the maximum pension is limited to double the minimum pension. In the first pillar there is an absolute ceiling on benefits as mentioned above that corresponds to the amount of CHF 2 280 (EUR 1 500) (in 2009) as the maximum old-age pension to be received from the first pillar. There seems to be no ceiling on contributions since the employer and the employee each have to pay 3.8 % of the annual salary to the first pillar. Concerning the pension's indexation a factor is used which takes into account the development of salaries and prices (Art. 77bis AHVG).

3. Periods of caring

In the first pillar periods of care are taken into account or credited to a certain extent for the building up of pension rights. Maternity leave and parental leave are taken into consideration as insured periods according to the actual employment contract. Furthermore, there are benefits for non-working spouses for periods of caring for children and other relatives in the same household. Non-working spouses domiciled in Liechtenstein receive benefits for the years 1954 to 1996. Regarding their right to an old-age pension they are considered as having paid the minimum premium to the AHV. Since 1997 this benefit is only granted if they have paid a fee for non-working persons. For periods of caring for children extra amounts additional to the annual salary are granted. This right is granted to persons having cared for children up to the age of 16 years. Married couples receive the benefits during their marriage, each spouse being given half of these benefits. After divorce only the parent who is caring for the children will receive the benefits. Such fictitious amounts will be taken into account by the AHV on demand at the moment of calculating the pension. They increase the average amount of the yearly salaries for pension purposes. For periods for caring for other relatives in the same household extra amounts additional to the annual salary have been granted since 1997. Such amounts have to be requested annually at the AHV for the year when care took place. These amounts also increase the average salaries for pension purposes. In any case, caring periods for children and other relatives in the same household count less than the full crediting of work periods for pension purposes.

In my opinion it is very important that a minimum provision on care credits should be included in gender equality EU legislation.

4. Exceptions, Article 7.1 of Directive 79/7

The pensionable age and the possible consequences for other benefits (Article 7.1 a))

A mandatory retirement age is now imposed by legislation at the age of 64 years for both men and women since 2010. But there is also the possibility of a flexible pension age that allows one to start receiving a pension at the age of 60 years or to postpone it to the maximum age of 70 years. For each year that a person starts to receive a pension before 64 years the pension is reduced by 3 % (at 63 years) to 16.5 % (at 60 years) for the remainder of the pension time, in other words for the rest of that person's life. If a person decides to work beyond the age of 64, each year longer results in a higher pension for the rest of that person's life: an additional 5.22 % (at 65 years) to an additional 40.71 % (at 70 years). An argument for the equalization of the pensionable age is that women shall have the same right to receive a pension at the same amount as men do, since they pay premiums until the same age. An argument against this is that according to stereotypical roles in society women who have occupational activities tend to also carry out unpaid work such as household chores and caring for children and other persons. Therefore they should be privileged by an earlier retirement age. But with both arguments there is a catch because at the end of the day women end up working longer but do not receive the same amount of pension since they interrupt their occupational activities to care for children. On the other hand, earlier retirement for women does not correctly compensate them financially for the work which they have done. So in my opinion the whole structure has to be reconstructed taking into consideration, for both women and men, the fact that occupational activities and other activities are part of life and have to be taken into account in such a manner that every person is able to attain an independent right to guarantee one's survival in old age.

Advantages granted to persons who have brought up children (Article 7.1 b))

Care periods are taken into account in the old-age pension system and are gender-neutral in the sense that both women and men can require this. In reality the traditional division of family roles in raising and caring for children has the effect that mainly women request such a possibility. Whether this is really an 'advantage' can be doubted because the effect on the old-age pension is not the same as if someone continues an occupational activity. If it is to be considered an advantage, then it must at least have the same result. But this is apparently not feasible in the structure as it currently stands which is not satisfactory for either women or men. Women are neither privileged in their actual role nor correctly compensated and therefore men are simply not attracted to these less rewarding roles. Whatever structure the old-age pension schemes have, periods for bringing up children have to be taken seriously and adequately into account. Otherwise the underlying problem of stereotypical roles for women and men will not have a real opportunity of being resolved.

Old-age or invalidity benefit entitlements or increases in long-term benefits by virtue of the derived entitlements of a wife (Article 7.1 c) and d))

According to Arts 57 and 58 AHVG there are survivors' pensions for both men and women subject to the same conditions. The law differentiates between a right to an unlimited and a limited survivor's pension. The limit is meant to be in time, which means that the surviving spouse receives the pension during a certain period of time or on a lifelong basis. For instance, if the surviving spouse is childless she or he has to be 45 years of age and have been married for at least five years to receive an

unlimited survivor's pension. If the surviving spouse has a child she or he also receives an unlimited survivor's pension. The right to a limited survivor's pension is available to, e.g., a spouse who has been married for at least one year and is not older than 40 years of age, or a spouse who has been married for more than one year but no longer than five years and is older than 40 years of age, or a spouse who has been married for more than five years and becomes a widow or widower between the ages of 40 and 45 years. Depending on which of the conditions mentioned above are fulfilled, the period of the limited survivor's pension is shorter or longer. Divorced persons have the same right as married spouses if the former spouse was obliged to pay maintenance at the time of death. If surviving spouses at the same time have a right to an old-age pension or invalidity pension only the higher pension will be granted. In my opinion these exceptions cannot be updated as long as the stereotypical roles of men and women are not the same concerning the conciliation of professional and private life.

C) OCCUPATIONAL OLD-AGE PENSION SCHEMES

(Schemes falling under Article 157 TFEU, Directive 86/378/EEC, as amended by Directive 96/97/EC, now Articles 5-13 of the Recast Directive 2006/54/EC)

1. Coverage

Participation in the second pillar is generally mandatory for all employers in each sector. The insurance depends on a minimum annual income of CHF 19 350 CHF (EUR 13 000) (from 2006) which corresponds to three quarters of the annual maximum pension (CHF 2 280 / EUR 1 500 per month) in the first pillar. The legislator has decided to interlink the first and the second pillar at this point. The maximum pension in the first pillar is a fixed amount CHF 2 280 (EUR 1 500) per month – and the minimum annual income to be insured in the second pillar is linked to it. The working contract has to last more than three months and the insured person has to be at least 23 years of age. Consequently these qualifying conditions - especially in the second pillar - hamper the pension rights of non-standard workers. Workers with earnings which are inferior to the average standard are not able to qualify for pensions.

2. Calculation of old-age pensions and contributions

Pension amounts are earnings related. Art. 5 BPVV prescribes that at the moment of reaching pensionable age the capital has to be transformed into a lifelong pension according to actuarial criteria. More technical details are contained in the rules of each insurance company. Periods of unemployment are only taken into account in the first pillar.

3. Actuarial factors

The law governing the occupational pension system, the BPVG and the second pillar, leads to the assumption that actuarial factors are indeed used when calculating the pension.

4. Caring credits

To my knowledge there are no caring credits in the second pillar.

5. Vesting and reimbursement rules

If a person leaves the insurance scheme before reaching pensionable age all existing capital will be saved for him or her as a so-called *Freizügigkeitsleistung* (Art. 11 and 12 BPVG). In such a case this capital will be transferred to his/her new employer's insurance company or left in a specific account for old-age pension purposes. This account belongs to the employee. The employee has no influence on the employer's choice of fund within the second pillar. That means that the employee has to join the employer's fund. If the employee changes his/her employer and the new employer has another fund, the existing capital is transferred from the old employer's fund to the new one. The right to have paid contributions transferred is not conditional upon a minimum period of insurance or membership of the fund.

6. Pensionable age

An old-age pension from the second pillar is available to an insured person who has reached the age of 64 years. This applies to both men and women.

7. Civil servants

According to the law (Art. 2a PVG³³³) civil servants' old-age pensions are a kind of occupational funds which exist in addition to the AHV (the first pillar). There is a different law which governs civil servants' old-age pensions but this has been harmonised with the second pillar concerning private employment contracts. However, one important aspect is different: the minimum salary is not a condition for joining the civil servants' pension scheme. Pursuant to Art. 3 PVG all persons insured within the first pillar AHV are insured with the PVG. Civil servants have an AHV and an occupational PVG pension.

LITHUANIA – Tomas Davulis

A) GENERAL QUESTIONS

1. The old-age pensions system

The Lithuanian pension system consists of four tiers: (1) the mandatory state pay-as-you-go defined benefit pensions, (2) the funded defined contributions scheme, (3) the supplementary voluntary pension scheme, and (4) the voluntary occupational scheme.

- 1) *The State social insurance* old-age pension system is contributory. The employer's and employee's contributions are calculated as a percentage of the salary paid to the employee. The pension consists of two parts: a) a basic pension that is of the same amount for all pensioners who have acquired the necessary social insurance period (30 years). The purpose of this basic part is to guarantee minimum living standards for pensioners; b) a supplementary part is calculated using a formula comprising years of service, individual wage coefficients and average insurable income in the country. The purpose of this supplementary part is to preserve an adequate level of income.

All persons under the contract of employment, civil servants as well as the self-employed and some categories of individuals who are insured by the state are

³³³ Pensionsversicherungsgesetz, PVG, last update LGBI. 2009 No. 387.

covered by the social insurance pension in order to receive old-age, disability and survivors' social insurance pensions.

- 2) *The second element* of the Lithuanian pension system is the funded (cumulated) pension scheme for those insured by the State social insurance pension system and aged below the legal retirement age. This scheme allows a portion of the state social insurance contributions to be accumulated in private pension funds. Participation in this scheme is voluntary, although opting out of the scheme after joining is restricted. The employer does not participate in this system because only the employee decides whether or not to direct a percentage of his/her state social insurance contributions³³⁴ to the pension fund.

All persons who pay contributions for the whole social insurance pension and who have not reached the pensionable age may choose to transfer part of the social insurance contributions to the pension funds. The benefits from a pension fund will only be paid when a person reaches pensionable age, which is the same as for the social insurance pension (first pillar). For the assets accumulated in a pension fund, a person will have to buy a monthly pension benefit paid for life, in other words an annuity. Participants who have accumulated less than is required to purchase an annuity will have the right to receive the accumulated assets as a lump sum or as periodic benefit payments.

- 3) *A supplementary voluntary pension* is possible through either pension insurance or special voluntary pension funds (these started operating in 2004, although the law was adopted in 1999). The voluntary pillar can take two different forms: DC if supplementary contributions are invested into pension funds or a life insurance company, or DB when purchasing a classical life insurance product. Contributions to the system may be made by the individual or his employer, and tax allowances are available, providing contributions do not exceed 25 % of the person's annual earnings.
- 4) As the Law on accumulated occupational pensions was only adopted in 2006, it is indeed possible to establish *occupational pension schemes*, although as yet none have been created.

There are also so-called 'state pensions' for certain categories of public employees and civil servants, scientists and judges. These pensions are state-financed and non-contributory. The purpose of these pensions is to compensate for the activities which are of exclusive importance to the State's existence rather than to provide an income replacement in the case of old age. It should be noted that the State pensions scheme is applied together with the scheme for social insurance pensions, which means that these categories of persons enjoy double cover.

Widows', widowers' and orphans' pensions belong to the state social insurance scheme. They are awarded to the spouse and children of a deceased person (or a person declared dead or missing in accordance with the established procedure) who was covered by the state social pension insurance and where the deceased person had acquired the state social pension insurance record as required by the law for a state social insurance incapacity or old-age pension (if the deceased was already of pensionable age the minimum insurance period is the same as for an old-age pension (15 years); if the deceased was not of pensionable age the required insurance period is the same as for a incapacity pension (from 2 months to 15 years depending on the

³³⁴ The contribution accumulated with pension funds gradually increased: from 2.5 % in 2004 to 5.5 % in 2007, but due to financial difficulties by the state the social insurance fund has temporarily reduced to 2 % since 2009.

person's age)). The deceased does not need to be the actual beneficiary of an old-age or incapacity pension. In this case a hypothetical situation is taken into account.

The Lithuanian social assistance system includes certain elements that can be attributed to social assistance old-age pensions – the 'social assistance pension'. The following persons are entitled to receive a social assistance pension:

- parents (adoptive parents) who have reached pensionable age and who for not less than 15 years have nursed a disabled family member at home;
- mothers who have given birth to and brought up five or more children until they reached the age of 8 and who have attained pensionable age.

Social assistance pensions are granted and paid to the above-mentioned persons who are not entitled to a social insurance old-age or disability pension. Thus social assistance pensions can be considered as a safety net for those who do not qualify for statutory pensions because of justifiable reasons (in this case it is considered that extraordinary family conditions – nursing disabled family members and raising a large number of children – are justifiable reasons). The second category of persons (mothers) can be considered to be a case of positive discrimination. The first category legally applies to both genders, but because of family traditions it is women in practice who much more often take responsibility for nursing disabled family members and constitute the greatest part of the beneficiaries. On the one hand, social assistance pensions might be regarded as an additional safety-net instrument for women who do not qualify for social insurance old-age pensions. On the other hand, however, the amount of the social assistance pension is quite low (for the amount of the social insurance basic pension see Part A) point (1)) and the beneficiaries, most of whom are women, might appear to be in a weaker economic position.

2. Old-age pension reforms

The Lithuanian pensions system has undergone several reforms.

The first significant old-age pension reform in 1994-1995 created the state social insurance pension system which was clearly defined as a pay-as-you-go system. The old-age pension was determined as a double-amount payment consisting of two parts: the main part (the basic pension) and a supplementary part (see Part A) point (1)). The supplementary voluntary state social insurance pension was also offered to those who are not mandatory insured by the system.

The second significant reform in 2004 introduced funded (accumulated) pension schemes (called a 'second-pillar pension' in Lithuania). Participation in a funded scheme is voluntary and the possibility to participate in the scheme is only ensured for those who are insured by the state social insurance pension system. Funded pension schemes are organized as a personal (individual) accumulation within personally chosen private pension funds and are financed by transferring the share of the mandatory state social insurance contributions directly to the private pension funds (at a flat-rate share for all participants).

Also in 2004 another change took place in the state social insurance old-age pension system - the early awarding of a state social insurance old-age pension was introduced. Persons satisfying certain conditions obtained a possibility to receive an old-age pension five years earlier than at the pensionable age (the pensionable age for men is 62 years and 6 months, for women it is 60).

In 2006 the Law on the accumulation of occupational pensions was adopted. This law introduced a totally new type of old-age pension in Lithuania. The occupational pension scheme is voluntary, based on a pension association agreement between the

employer(s) and the employees. The personable age must be determined by the parties to the pension association agreement, but cannot be less than 55 years.

In 2009 the coverage of state social insurance was extended by the inclusion of previously uninsured groups of individuals (authors, sportspersons, all groups of self-employed persons, persons receiving incomes under copyright agreements) under its scope of application. The difference in the contribution rate and benefits compared with employees still remains, but the contributions have gradually increased.

The reforms of the old-age pensions system were influenced by economic, political, labour market or demographic conditions. Therefore the legislative developments addressed specific problems, none of which were directly related to gender equality issues. However, some specific provisions of the old-age pension legislation might be considered to have an influence on gender equality: one of them formulates the principle of gender equality; another provides some advantages to more socially vulnerable persons (as the rule women); a third, on the contrary, results in a different position for men and women. These aspects will be illustrated further.

The State social insurance old-age pension scheme includes several aspects which might be considered as advantageous for women. Firstly, one of the (adoptive) parents or a person appointed as a child's guardian who raises a child under 3 years of age is insured under this scheme. The social insurance contributions are paid by the state. This guarantee is only available to those persons who do not have the status of a worker. On the one hand, this privilege is advantageous for women because the economically inactive period, which is more typical for women, is taken into consideration when calculating the necessary insurance period for the provision of an old-age pension. On the other hand, this measure cannot be considered to be sufficient because the said contributions are minimal – calculated according to the minimum monthly salary as approved by the Government³³⁵ – and naturally result in lower pensions. Secondly, because of the still existing wage differences between men and women, women are entitled to lower pensions.³³⁶ And thirdly, the State only pays the contributions for the first pillar, leaving the second-pillar share uncovered.

When establishing funded pension schemes (second pillar) no specific gender issues were considered. Thus, there are certain negative aspects of women's participation in such a scheme. The main problem is that in the case of women who interrupt their working career because of giving birth to and raising children the transfer of a share of contributions to a private pension fund is also interrupted. According to the law, employed women who take 'pregnancy and maternity leave' and consecutively 'child-care leave' (this leave can be taken by the father as well, but traditionally it is more common for women to take such leave) receive special state social insurance maternity benefits that fully (or at least to a great extent) compensate for lost salary. Nevertheless, these incomes are not considered as 'insured incomes' and this means that no social insurance contributions are paid and no share thereof is transferred to a private pension fund, and naturally the funded old-age pension may result in a lower amount.³³⁷ Differently from the previously mentioned persons who are not active as workers, in this case when a worker interrupts his/her working activity by taking one of the aforementioned forms of leave no contributions are paid

³³⁵ The minimum monthly salary approved by the Government is almost two times lower than the average salary in the national economy.

³³⁶ According to the data from the first quarter of 2010, women's average wages were 15 % lower.

³³⁷ It should be noted that these periods of leave during which social insurance benefits are received do not have any influence on the social insurance old-age pension, because the periods and amount of benefits are taken into account.

at all. However, these periods when special social insurance maternity benefits are received are automatically treated as insurance periods for the first-pillar old-age pension. The share of the second pillar remains uncovered.

Non-standard working patterns in the Lithuanian labour market are not generally seen as being common to women. For example, there is no significant difference in men's and women's work under fixed-term contracts. Also, it cannot be stated that it is mainly women who are engaged in low-paid jobs (of course, with the exception of the aforementioned average wage difference (see footnote 3) and the traditional horizontal and vertical segregation of jobs). Part-time work, however, is indeed more popular among women.³³⁸

Nevertheless, the type of employment does not actually have any substantial negative results in the old-age pension system.

(1) The state social insurance pension scheme is mandatory for all employed persons regardless of the type of employment; no one can be excluded because of an atypical employment contract such as a fixed-term or seasonal contract. In the case of part-time work there are several precarious aspects that may negatively influence the old-age pension of an employee. Firstly, working on a part-time basis usually means a proportionally lower wage (compared with full-time workers working in the same position or profession) and thus a lower state social insurance old-age pension. Secondly, working on a part-time basis might result in shorter social insurance record. In this case, it should be clarified that the social insurance period depends not only on the length of the employment period, but also on the amount of wages; that is, the basis for a one-month social insurance record is the minimum monthly salary approved by the Government.³³⁹ If a worker receives only 50 % of the minimum monthly salary per month, he acquires only half a month as a social insurance record. Longer periods of part-time work with only a portion of the minimum monthly salary are therefore necessary over a longer career to fulfil the requirements of a minimum and necessary social insurance period for an old-age pension.³⁴⁰

(2) In the case of funded pension schemes, the possible problem is the same – because of the part-time worker's relatively lower wage, the worker accumulates lower amounts in the private pension fund.

In the case of occupational funded pension schemes, fixed-term workers might be excluded from their scope because the pension fund's rules may provide for a minimum period of employment with a sponsoring undertaking upon the completion of which a person is entitled to become member of the pension association and to participate in the pension fund.

³³⁸ According to data from 2008, part-time workers amounted to 12 % of all employed persons. About two-thirds were women.

³³⁹ It should be noted that in the first-pillar system two different bases exist. The basis for contributions is the actual wage of the employee. The basis for the social insurance record is the minimum wage approved by the Government, but only for the record 'floor'. For example: a) a person receives 50 % of the minimum wage per month, i.e. LTL 400 – monthly contributions are calculated according to this actual amount and the person acquires only half a month as a social insurance record per calendar month; b) a person receives 100 % of the minimum wage per month, i.e. LTL 800 - monthly contributions are calculated according to this actual amount and the person acquires 1 month as a social insurance record per calendar month; c) a person receives double the minimum wage per month, i.e. LTL 1600 - monthly contributions are calculated according to this actual amount and the person still acquires only 1 month as a social insurance record per calendar month.

³⁴⁰ The situation concerning social insurance periods is not affected if an employee working under a part-time contract receives a wage which is not lower than the minimum monthly salary.

As a rule, social security reforms (especially reforms concerning the social insurance system) and, less significantly, legal amendments and changes are mostly stimulated by economic and sometimes political reasons. There is thus only one case that can be considered to be a deliberate intention to deal with a gender issue in the reforming law and this is the case of the Law on accumulated occupational pensions. The legislator, in observing corresponding EU legislation, deliberately included provisions directly addressing the issue of gender equality and prohibited setting terms and conditions for participating in pension funds that contradict the principle of equality between women and men.

The reforms of old-age pension legislation do not determine any specific rules that can be considered as directly hindering gender equality and weakening women's position. On the other hand, the lack of provisions directed at improving gender equality means that already existing problems have not been solved.

3. Retroactivity of legislation

There have been no changes or amendments that can be considered to have addressed the specific question of gender inequalities. In general, if new provisions dealing with pension calculation rules are determined, they can be applied retroactively. In this case, the laws usually provide a safeguard mechanism stating that where the recalculation of a pension amount will result in a decreased pension compared to the previous amount, a pensioner shall continue to be paid the pension awarded previously.

4. The World Bank Model

The Lithuanian pension system is only partially based on the WBM. In fact, it is a multi-pillar system, though not all elements have features which are typical of one of the pillars defined by the WBM. The first pillar – a mandatory contributory pay-as-you-go pension system - is still considered to be the main element of the Lithuanian pension system. The second pillar – funded individual accumulated pensions (the funded pension scheme) - is only voluntary and its cover might be considered as being too low. The third pillar – supplementary voluntary pensions – is not very popular in Lithuania because of the relatively low level of personal incomes.

The Lithuanian example demonstrates that the three-pillar model is no longer sufficient. The differences between the different national pillars can be too great to apply unanimous principles, including those on gender equality.

Lithuanian funded pension schemes, notwithstanding the fact that they are voluntary, are also managed by private pension funds and financed by a share of public social security contributions. The principle of voluntary participation means that this scheme falls within the scope of Directive 2004/113 rather than Directive 79/7.

B) STATUTORY OLD-AGE PENSION SCHEMES (Schemes falling under Directive 79/7/EEC)

1. Qualifying conditions

Individuals are entitled to receive the state social insurance old-age pension when they meet the established age requirements and have a sufficient state social insurance record for pensions, i.e.:

- they have attained the established age for an old-age pension (for men 62 years and 6 months, for women 60);

- they have attained the minimum state social insurance record for an old-age pension (the minimum period of insurance for an old-age pension is 15 years).

Non-standard work contracts are not excluded from the statutory old-age insurance scheme. Social insurance contributions shall be paid in all cases regardless of the number of working hours or the length of the contract or the amount of income. This regulation may be considered to be a better instrument for achieving the aims of social policy (referred to in C-317/93) because it guarantees that the greatest part of the working population will qualify for social insurance benefits (all active periods will be taken into account), but the amount of benefits could be lower when compared to those who have paid contributions for a longer period of time or who have received higher incomes. In contrast, the exclusions referred to in C-317/93 might be considered to be too strict since they do not guarantee even minimum benefits.

The Lithuanian social insurance old-age pension scheme sets a requirement of having at least a 15-year social insurance period. This period is calculated by generally accumulating all contributory periods irrespective of their length or any breaks in between. The social insurance period to qualify for an old-age pension is considered to be quite long and up until now there has not been any discussion to extend it. There is no minimum hours threshold.

It could be said that non-standard workers do not face any disadvantages in fulfilling the contributions because, firstly, the social insurance scheme is applicable to all workers regardless of the type and the duration of the work contract and, secondly, contribution periods are accumulated without any restrictions. Workers who receive comparatively lower incomes or have inferior careers can qualify for the social insurance old-age pension under the same conditions.

There are several periods of unemployment (considered as being for ‘objective’ reasons) which are taken into account when establishing the right to a pension:

- periods during which unemployment social insurance benefits were received are equated with contributory periods and the amount of the unemployment benefit is equated with the contributory income;
- the period during which one of the (adoptive) parents cares for a child under 3 years of age (even when, before the birth of the child, the person was not in fact employed) is a contributory period; contributions are from the state budget on the basis of the minimum monthly salary;
- the period during which one of the (adoptive) parents, or an appointed guardian or custodian of a disabled person cares for that disabled person at home is a contributory period; contributions are paid from the state budget on the basis of the minimum monthly salary for the whole period of care.

2. The amount of the old-age pension

The rules on calculating the old-age pension combine three methods. Thus the actual pension amount is based on: a) a fixed-amount part that is the same for all pensioners who have the same insurance periods; b) the twenty-five most favourable calendar years of the person’s insurance record; as the amount of contributions paid is directly related to the amount of the person’s wages, this means that the person may select his/her best employment periods; c) the total insurance record; the longer the insurance record (regardless of the salary received during this time), the higher will be the amount of the pension.

Gender-specific life expectancy is not taken into consideration.

There are two levels of the required contributory periods:

- the minimum insurance period is 15 years. This period provides a right to an old-age pension, but not of the full amount. If the person does not have an insurance period of at least 15 years, he/she will not be entitled to any social insurance old-age pension;
- the necessary period of 30 years will grant the right to a full old-age pension (the best 25 years previously mentioned are included in these 30 or more years).
The old-age pension consists of two parts:
- a flat-rate ‘basic’ pension that is the same for all pensioners who have attained the necessary insurance period; if a person only has the minimum period, the amount of this flat-rate basic pension is reduced proportionally.³⁴¹
- a supplementary part which is calculated by using a formula comprising the total length of the insurance period (the minimum 15 years also applies), the individual wage and the average insurable income in the country. The longer the insurance period, the higher the pension.

In this case a non-standard worker (especially a part-time worker) might only be more negatively affected concerning the amount of the pension. The amount might be lower compared to a standard worker of the same profession (in the same position), but only if the part-time was for long periods and the wage was relatively low.

Indexation does not have clear and permanent set rules. The decision to index pensions is taken at a political level (with regard to the economic situation) on once only basis.

Formally, there is no ceiling on old-age pensions. But in practice some restrictions might appear in individual cases when applying the special calculation formula – certain elements thereof have a maximum scale and this will limit the actual amount of the pension.

3. Periods of caring

A period of maternity/paternity leave is taken into consideration for the right to as well as for the amount of a pension. Periods of pregnancy and maternity leave (about 4 months), paternity leave (up to 1 month) and child-care leave³⁴² (up until the child reaches three years of age) are considered as insurance periods. Special state social insurance maternity/paternity benefits received during the period of pregnancy and maternity leave, paternity leave and part of the period of child-care leave (up until the child reaches two years of age) are regarded as insured income even though no contributions have actually been paid. During the remaining period of child-care leave (the last year) contributions are paid out of the state budget based on the minimum monthly salary (the third year of this leave does in fact have the same effect as child-raising periods by non-active persons as described below).

The period during which one of the (adoptive) parents cares for a child under 3 years of age (even when, before the birth of the child, this person was not in fact employed) is equivalent to a contributory period. Contributions are paid out of the state budget based on the minimum monthly salary. And the period during which one of the (adoptive) parents or an appointed guardian or custodian of a disabled person cares for that disabled person at home is also equivalent to a contributory period subject to the aforementioned conditions. The length of this period shall last for as long as the need for constant care (nursing) is determined by the administrative institutions. Formally, these

³⁴¹ Currently, the amount of the ‘basic’ pension is about half of the net minimum monthly salary, so it might be considered as a low pension.

³⁴² At the same time only one of the parents may take this leave. But there is a possibility to exchange the period of leave between them with no time or periodical limits.

provisions are gender-neutral, but because of traditional and cultural attitudes they apply more frequently to women than men.

EU legislation may only be invoked where there are a number of national provisions that provide an advantage (or a disadvantage) to the status of one gender concerning care periods.

4. Exceptions, Article 7.1 of Directive 79/7

The pensionable age and the possible consequences for other benefits (Article 7.1 a))

There is no mandatory retirement age in Lithuania. A person is free to choose whether or not to leave the labour market upon attaining pensionable age. A person who is awarded a pension may continue to work and receive a double income – his/her pension and wages.³⁴³

In Lithuania the pensionable age for men and women is different: 60 years for women and 62 years and 6 month for men. And it has the same consequences (different ages) for early retirement old-age pensions when unemployed persons satisfying certain conditions have a possibility to receive an old-age pension at five years earlier than the pensionable age. It should be noted that the early retirement pension is considered to be the same old-age pension (falling within the same scheme), only starting earlier.

This different pensionable age was indeed reasonable when women had to combine relatively hard manual work and giving birth to a number of children. An argument for the equalization of the pensionable age can relate to the fact that in modern society certain specific psycho-physiological aspects of women's work are no longer relevant. Another argument for equalization can be the ageing society and, at the same time, the longer life expectancy of women. In this case it is quite reasonable to increase women's pensionable age to that of men.

At the beginning of 2010 there have been discussions at the political level on prolonging and, at the same time, equalizing the pensionable age. Up until now no decision has been taken and no clear model for prolonging and equalizing this age is in sight. In any case, it should be pointed out that the reform of the pensionable age (if it does happen) will only be influenced by economic reasons (financial problems within the social insurance fund) and not by reasons of gender equality.

There is no credit system regarding the pensionable age.

In fact, the earlier pensionable age for women might be seen as lowering the amount of the pension. Women having a lower pensionable age may leave labour market earlier but also with shorter insurance periods (which means a proportionately lower pension). On the other hand, this negative aspect of the pensionable age is not so crucial because under Lithuanian legislation a person is absolutely free to choose whether or not to leave the labour market after reaching pensionable age or to remain in the labour market and to increase his/her future pension: the working pensioner obtains his/her pension and later after eventually retiring he/she has the right to recalculate his/her pension taking into account the advantage of an additional insurance record.

A more crucial factor is the objectively existing wage difference between men and women, which cannot be tackled individually.

³⁴³ But then the pension will be considerably smaller compared with the pension of the pensioner without the contract of employment (the rule applicable since 2010).

The percentages of pensioners who had attained the necessary insurance period (30 years) and only a minimum period (between 15 and 29 years) in 2009 (according to data by the State Social Insurance Fund Board) were:

Age group	Women		Men	
	Necessary	minimum	necessary	Minimum
60-65	84 %	16 %	90 %	10 %
65-70	95 %	5 %	92 %	8 %
70-75	97 %	3 %	97 %	3 %

The exception concerning the pensionable age must only be eliminated in cases where retirement upon reaching pensionable age is mandatory. There might not be a direct relation between the different pensionable age and labour market conditions and working patterns, because not all atypical working situations are characterised as being exceptional to women. Compensation for care work at home can be organized by establishing instruments to recognize certain periods as insurance periods.

Advantages granted to persons who have brought up children (Article 7.1 b))

There are several care advantages (see Part B, point 3), but the provisions are absolutely gender-neutral (with the exception of pregnancy and maternity leave, which is obviously only available to women, and paternity leave which is only given to fathers).

This exception can be eliminated (or revised) because it reflects the traditional division of family roles which tends to change. The advantages in the case of child raising and/or the provision of care can now be seen not as a question of gender equality but as the method for striking a balance in working and family life. All related provisions should be, as far as possible, gender-neutral, except for cases related to a woman's pregnancy and giving birth.

Old-age or invalidity benefit entitlements or increases in long-term benefits by virtue of the derived entitlements of a wife (Article 7.1 c) and d)

There are no benefits in the Lithuanian old-age or invalidity pensions scheme falling under the scope of Article 7.1 c) and d).

C) OCCUPATIONAL OLD-AGE PENSION SCHEMES

(Schemes falling under Article 157 TFEU, Directive 86/378/EEC, as amended by Directive 96/97/EC, now Articles 5-13 of the Recast Directive 2006/54/EC)

As the Law on occupational pensions was only adopted in 2006, there are no statistical data concerning this scheme or information on its practical implementation. Nevertheless, some predictions may be given at this point in time. Considering the fact that the social insurance pension scheme covers the entire economically active population it is not expected that participation in occupational pension schemes will be significant, at least in the immediate future. Another reason is the still low level of social dialogue and collective agreements in Lithuania. As the implementation of occupational pension schemes in practice requires close dialogue between the employer and employees, the lack of social dialogue in Lithuanian enterprises will be a serious obstacle to occupational pension schemes.

Participation in occupational pension schemes is absolutely voluntary and can be applied in all economic sectors, including the self-employed, but no occupational pension funds have, as yet, been created in Lithuania.

Formally, there are only two limitations in the legislation. Pension fund rules may provide for a minimum period of employment with a sponsoring undertaking upon the completion of which a person is entitled to become a member of the pension association and to participate in the pension fund. This period may not exceed twelve months. It may also provide for a minimum age requirement and a person who has not reached this age cannot become a member of the pension association and participate in the pension fund. This age cannot be more than 21.

Pursuant to the law, all other aspects must be determined in the pension association or pension fund rules. As no occupational pension fund has, as yet, been created in Lithuania, it is impossible to comment on the above-mentioned aspects. However, the law clearly forbids a different pensionable age for men and women in the pension association or pension fund rules.

7. Civil servants

In general, public servants are covered by the state social insurance pension scheme which determines different pensionable ages for women (60 years) and men (62½ years).³⁴⁴ In addition, there is a state-financed complementary scheme of state pensions³⁴⁵ for some categories of public servants where different age criteria exist (usually directly linked to the pensionable age in the state social insurance system).

Legislation	Covered Persons	Conditions	Result
Law on State Pensions for Public Servants and the Military	Public servants in internal affairs, state security, the military, the Special Investigations Office and the Department of Prisons	20 years of service and no age limit	No differences between sexes
	Public servants in internal affairs, state security, the military, the Special Investigations Office and the Department of Prisons	At least 5 years of service + Pensionable age according to the state Social Insurance System	Different pensionable ages
	Public Servants at the State Prosecutors' Office	20 years of service + Pensionable age according to the state Social Insurance System	Different pensionable ages

³⁴⁴ Today's retirement age has been gradually achieved in the period starting in 1995 when it was fixed at 55 years for women and 60 years for men.

³⁴⁵ In fact this scheme is supplementary to the state social insurance old-age pension scheme.

Legislation	Covered Persons	Conditions	Result
Law on State Pensions for Scientists	State Pensions for Scientists	Period of professional activity in the state university after gaining PhD or habilitation + Pensionable age according to the state Social Insurance System	Different pensionable ages
Law on State Pensions for Judges	State Pension for Judges	At least 5 years of activity + Pensionable age according to the state Social Insurance System	Different pensionable ages

These benefits are directly financed from the State budget without establishing any specific funds, and no contributions or special taxes are paid.

LUXEMBOURG – Anik Raskin

A) GENERAL QUESTIONS

1. The old-age pensions system

In Luxembourg, the normal retirement age is 65. Female and male workers are entitled to an old-age pension at the age of 65, provided that at least 120 months of compulsory insurance pension periods, continuous insurance periods, optional insurance periods or periods covered by a retroactive purchase can be established.

However, workers are entitled to an early old-age pension at the age of 57, provided that at least 480 months of compulsory insurance periods can be established.

To be entitled to an early old-age pension at the age of 60, at least 480 months of compulsory insurance periods, continuous insurance periods, optional insurance periods, additional periods (military service periods) or periods covered by a retroactive purchase must be provided. An additional condition to be entitled to this type of early old-age pension is that at least 120 months without additional periods can be established.

Retirement may be deferred to the age of 68. A part pension, combined with part-time employment is also possible.

The statutory scheme is organized on a Pay-As-You-Go basis.

The old-age pension is made up of two elements; a flat-rate component and an annual increment of adjusted lifetime-covered earnings.

Old-age pensions are indexed and also periodically adjusted regarding the evolution in general wages.

Old-age survivor's pensions are based on the old-age pension. The survivor benefit is equal to 100 % of the flat-rate benefit plus 75 % of the annual increment. The cumulated old-age survivor's pension and personal earnings is subject to a limit. This does not encourage women to take part on the labour market. By now, on average, women's survivors' old-age pensions are still higher than women's own old-age pensions.

Persons who are not covered by the social security system may apply for the '*Revenu Minimum Garanti*' (Guaranteed Minimum Income) which is an income

aimed at allowing persons to live in dignity. This income is subject to the conditions of residence and age. People under 25 years of age cannot obtain the Guaranteed Minimum Income. Regarding residence, EU citizens have to be registered as inhabitants – non-EU citizens have to be registered for at least 5 years. The amount allocated is fixed every year and adapted to the costs of living. The Guaranteed Minimum Income is subject to reimbursement. The amounts received have to be repaid if one's financial situation improves.

Luxembourg's social security system is formally gender-neutral.

Occupational pension schemes may be with defined contributions or with defined benefits. The choice is left to the employer.

2. Old-age pension reforms

There have been no significant reforms of the old-age pension system in Luxembourg during the last decade. The statutory scheme is still based on that of the so-called 'male breadwinner'.

However, one specific measure was introduced in 2002 in order to 'recognise' care activities carried out by housewives. This measure consists of an allowance at a flat-rate amount per child which is paid to persons who have cared for their children while not working on the labour market. Formally, the measure is gender-neutral, but in practice this so-called 'mother's pension' is claimed by women. The measure was and still is highly contested regarding its effects on gender equality because of two reasons: The first reason concerns its possible incentive effect on women to leave the labour market once they have children. The second reason concerns the financial coverage of the 'baby years', a measure introduced in 1988. This measure consists of periods during which the State pays the pension contributions of the parent who reduces or gives up work in order to raise a child (2 years for the first two children and 3 years for each additional child). These specific contributions were integrated into the general pension account in 2002, which was highly contested by Non-Governmental Organisations. In fact it was said that the 'baby years' contributions, perceived as a measure with a positive impact on gender equality, risked being sacrificed in order to finance the 'mother's pension', which was perceived as having a negative impact on gender equality.

3. Retroactivity of legislation

Luxembourg's pension system has not recently been amended with regard to gender inequalities.

Until 1976, the Social Minimum Income was different for women than for men, being to the advantage of men. No retroactive measure regarding the effect of this gender inequality on old-age pension benefit has been introduced.

It is also worth mentioning that the Government introduced a bill on the reform of divorce in 2003. According to this bill, the civil court would have to take pension rights into consideration when determining the amount of maintenance. The bill has already been under discussion for over seven years.

4. The World Bank Model

Luxembourg has a mandatory public old-age pension system. Occupational and private social security does exist, but on a voluntary basis.

B) STATUTORY OLD-AGE PENSION SCHEMES **(Schemes falling under Directive 79/7/EEC)**

1. Qualifying conditions

Non-standard work contracts, such as part-time or short-term contracts or seasonal contracts are covered by the pension scheme; occasional contracts, or low income contracts, cannot be covered by the pension scheme.

Part-time workers who work more than 64 hours per month take every month into consideration for the calculation for their pension. For part-time workers who do not work 64 hours per month, the hours worked are registered until they have 64 hours of work and a month is then taken into account.

Short-term or seasonal contracts are covered.

In Luxembourg, every period of work is covered by the old-age pension system.

However, occasional contracts are not covered if their duration do not exceed three months per year. Low incomes for independent workers are not even covered if the earnings do not exceed one-third of the minimum social salary.

As explained earlier, pension rights are subject to a minimum contribution in order to obtain a pension at the age of 65 years old: 10 years of contributions are needed. To obtain a pre-pension at the age of 60 years, 40 years of obligatory or voluntary contributions must have been accumulated. To obtain a pre-pension at 57 years old, 40 years of work contributions are needed.

Periods of unemployment are usually not taken into account for pension rights. Exceptions are those periods when a person receives unemployment benefit.

2. Old-age pension amount

The pension amount is based on lifelong earnings, which takes into account the length of contributions and the amount paid. Old-age pension benefits are made up of two parts. The first one is a fixed amount per year of insurance (EUR 489.98 per year on 1 March 2009). The second part is calculated according to the total income during the insurance period (1.85 % of the total amount).

All part-time workers have the possibility to pay a voluntary amount to either reach 64 hours more quickly (every month) or to pay more per month to obtain a higher pension.

Automatic indexation concerns all workers and those on old-age benefit. Every time a certain group of products costs 2.5 % more, an automatic indexation of 2.5 % is allocated to all workers and those on old-age benefit.

Every two years an examination of the minimum old-age pension is carried out and, if necessary, the amount is adapted.

Old-age pensions are limited to five times the minimum old-age pension. This ceiling is coupled to the contributions which cannot be calculated higher than five times the minimum social salary.

3. Periods of caring

Periods of maternity leave or parental leave

Maternity leave is 16 weeks. This leave can be extended due to exceptional reasons. This is for example the case when the birth takes place after the envisaged date of confinement. Periods of maternity are taken into consideration for pension rights and their amount for mothers during the whole period when they are away from work for maternity reasons.

Periods of parental leave (6 months for full parental leave or 12 months for half-time leave) are also taken into consideration for pension rights.

Periods of interruption of employment due to the bringing up of children

24 months for the first and second child and 48 months starting from the 3rd child are credited for pension rights and their amount on demand by the parent who stops working to raise children.

4. Exceptions, Article 7.1 of Directive 79/7

Widowed persons are entitled to a survivor's pension (widows and widowers). There are no exceptions based on gender. As already mentioned, the survivor's benefit is equal to 100 % of the flat-rate benefit plus 75 % of the annual increment. The cumulation of an old-age survivor's pension and personal earnings is subject to a limit.

Divorced persons are also entitled to a survivor's pension which is reduced with regard to the number of years of the marriage.

Luxembourg does not recognise the splitting of pensions in the event of divorce, which means that divorced spouses who have reduced or interrupted their work during their marriage do encounter difficulties in building up their own pension rights.

C) OCCUPATIONAL OLD-AGE PENSION SCHEMES

(Schemes falling under Article 157 TFEU, Directive 86/378/EEC, as amended by Directive 96/97/EC, now Articles 5-13 of the Recast Directive 2006/54/EC)

1. Coverage

In Luxembourg, the legal framework for occupational pension schemes was introduced by the Law on occupational pension schemes of 8 June 1999.

The principle of autonomy prevails as regards occupational pension schemes. However, the law only applies to schemes covering all employees or a precise category of employees working in a company.

In companies where a scheme has been agreed upon, participation is in principle mandatory. But, if the scheme requires contributions from employees, those who are already working in the company at the moment when the scheme is established participate voluntarily.

Each company can define the organisation, the membership conditions, the financial part and the benefits of its scheme. Thus it has to draw up a pension regulation document which has to indicate defined dispositions, among which are the conditions for membership. Art.16 of the Law of 8 June reproduces Article 6 of Directive 86/378/EEC as amended.

By end of 2009, some 1825³⁴⁶ companies had established occupational pension schemes in Luxembourg.

2. Calculation of old-age pensions and contributions

The calculation of old-age pensions and contributions must be fixed by the pension scheme regulation document. The law does not determine how pension amounts have to be related. It does not refer to minimum contributions, insurance or employment conditions.

³⁴⁶ http://www.mss.public.lu/publications/rapport_activite_mss/rap_act_2009.pdf, accessed 30 May 2010.

3. Actuarial factors

The Luxembourg legislator has reproduced Article 6 of Directive 86/378/EEC as amended. It allows for different levels of benefit to be determined, in so far as may be necessary to take account of actuarial calculation factors which differ according to sex in the case of defined contribution schemes.

In the case of funded defined benefit schemes, certain elements such as:

- conversion of part of a periodic pension into a capital sum,
- the transfer of pension rights,
- a reversionary pension payable to a dependant in return for the surrender of part of a pension,
- a reduced pension where the worker opts to take early retirement,

may be unequal where the inequality of the amounts results from the effects of the use of actuarial factors which differ according to sex at the time when the scheme's funding is implemented.

4. Caring credits

According to Art. 16. of the Law of 8 June 1999, suspending the retention or acquisition of rights during periods of maternity leave or leave for family reasons which are granted by law or by agreement and are paid by the employer is forbidden.

5. Vesting and reimbursement rules

If the worker leaves the company without having qualified for a pension, he or she may be paid if one of following applies:

- the worker leaves to join a company outside Luxembourg;
- the worker is 50 years of age or more upon departure;

Or:

- if the benefits are to be paid monthly, the amount of the benefits does not exceed the social minimum wage;
- if the benefits are to be paid in the form of capital, its amount does not exceed the multiple of ten times the social minimum wage.

The pension regulation document has to fix the terms for affiliation to the scheme. However, the minimum period of work and affiliation in order to become entitled to rights must not exceed ten years. In any case, the employee's rights relating to his/her personal contributions are maintained.

If the worker leaves the scheme without having qualified for a pension, his or her rights must be guaranteed. This also does apply in the case of dismissal because of ineptitude.

The right to have a contribution transferred must be guaranteed.

6. Pensionable age

According to Art.16. of the Law of 8 June 1999, different pensionable ages for men and women are prohibited.

7. Civil servants

The Law of 8 June 1999 applies to both the private and public sector. However, the amount of the pension for civil servants is limited by the Law.

The general old-age pension scheme for civil servants was modified in 1999. Thus the total old-age pension cannot exceed the pension that civil servants would have been entitled to under the previous public old-age pension scheme which was 4/5 of the last month's earnings.

A) GENERAL QUESTIONS

1. The old-age pensions system

For more than 50 years in the Republic of Macedonia the old-age pension system was organized on a Pay-As-You-Go (PAYG) basis.³⁴⁷ The pension reform was officially initiated in 1997, when a project to reform the pension system was set up within the Ministry of Labour and Social Policy. The project was a joint venture by the Macedonian Government, experts from the Pension and Disability Fund, consulting firms, the trade unions and other groups that were affected by the reform. It was financially supported by the World Bank, which financed the design of the pension reform, as well as the legislative framework and the management of the project. However, during this process, there were no public debates and participation by the wider population was insufficient.

After 2000, the three-pillar system was introduced (also called the mixed pension scheme): the first pillar, which is obligatory and by definition operates as a PAYG system; the second pillar, again obligatory, but which operates as a privately managed Defined Contribution pension scheme; and the third pillar, which is a Defined Contribution model but is voluntary.³⁴⁸

There are differences between men and women in calculating the pension base in percentage terms depending on the length of pensionable service. Different percentages should close the gap because of the earlier retirement of women.

The old-age survivors' pensions are statutory schemes and they are gender-neutral. However, there are differences in the age when men or women could become eligible for a survivor's pension (45 for women, 55 for men).

A specific procedure has been developed for people who do not qualify for statutory pensions because of disability and/or reduced work capacity. These people receive remuneration in the form of salary (if they are able to work) or a disability pension (if they cannot work at all). There is additional social assistance for people who receive a pension on the basis of disability if the pension does not amount to the minimum prescribed by law. However, at present more than 70 000 people (31 %) over the age of 65 are not covered by pension benefits. Also, there is a significant number of people over 55 who are declared to be a 'technological surplus'. Those people are not eligible for a pension and at the same time they cannot find any work. After three years they lose the right to receive social assistance on the basis of unemployment. Currently there are daily strikes as workers demand at least EUR 100 (6 000 denars) per month until they reach pensionable age. Data based on sex are not available.

Social assistance for those who are not included in or do not qualify for statutory pensions is regulated by the Law on social protection³⁴⁹ and this functions as a safety net.

With the last amendments to the Law on social protection, a new form of support for women with more than four children has been introduced: 'A mother who has

³⁴⁷ <http://www.mtsp.gov.mk/?ItemID=682DD19B3BD7BD498CB69A5C3C863E45>

³⁴⁸ Law on pension and disability ('invalidsko') insurance, Official Gazette No. 80/1993 and the subsequent amendments in 2000-2009 (<http://www.pravo.org.mk/documentDetail.php?id=493>); Law on voluntary capital-financed pension insurance, Official Gazette No. 7/2008 (<http://www.pravo.org.mk/documentDetail.php?id=791>); Law on obligatory capital-financed pension insurance, Official Gazette No. 29/2002 (<http://www.pravo.org.mk/documentDetail.php?id=633>).

³⁴⁹ Law on social protection, Official Gazette No. 79/09

given birth to a fourth child from January 2009 has the right to financial aid. This is consistent and significant aid. The right under paragraph 1 of this article shall be exercised by mothers who have cared for children until their 18th birthday and who are unemployed and do not receive a pension after age of 62. The right under paragraph 1 cannot be obtained if the mother has been deprived of parental rights concerning any of the children.³⁵⁰

2. Old-age pension reforms

With the reforms of the old-age pensions system from 2000³⁵¹ the age limit for receiving an old-age pension was changed (gradually, starting in 2000, from 58 years for women and ending with 62 for women and 64 for men in 2007). The fixed age of 62 (without the possibility for women to choose) could be considered as a negative change (especially for women working in industry or in more difficult working conditions).

Parametric changes to the PAYG system are the following: an increase in the retirement age (64/62), age as an exclusive condition with a minimum service requirement of 15 years, a decrease in the replacement rate³⁵² (80 % => 72 %), a change to the pension indexation method (50 % CPI, 50 % wage growth), and a ceiling on second-pillar contributions (three times the average wage).

The old-age pension reforms generally do not favour the low-income population and they specifically have a very negative impact on women as they make up a substantial part of the lower paid population and the number of employees who have non-standard working patterns (part-time, fixed-term contracts, occasional work, low-paid jobs). With these changes it is becoming almost impossible to be eligible for a full pension (80 % of the average lifelong income). This can only be reached with 35 years of pension insurance for women and 40 years for men. This scheme particularly does not favour the shorter working periods of women or extra work on the basis of fixed contracts.

Increasing the level of contributions (by more than 10 % from the initial level), increasing the minimum years which are necessary for retirement (by 5 % for males and 10 % for females), changing the formula for calculating pension benefits in terms of estimating the average payment and reducing the percentage of the average payment, together with more strict requirements for retirement have a very negative influence on the position of women.

According to the amendments in 2006³⁵³ a person who received a pension could still be in employment. However, according to the law, such persons could only receive 50 % of their pension. But even this possibility was withdrawn with of the amendments to the Law in 2008.³⁵⁴ From 1 January 2009 the beneficiary of a pension cannot be in receipt of such a pension if he/she is still working. There are some exceptions, however: company directors, judges and prosecutors, as well as university professors. All of these categories are on the higher pension levels.

According to the changes in 2008,³⁵⁵ during pregnancy leave and sick leave the pension basis is calculated with remuneration for salary (which reduces the pension

³⁵⁰ Art.70, Law on social protection, Official Gazette No.79/09

³⁵¹ Official Gazette No.24/2000

³⁵² The replacement rate is the highest percentage of salary that could be obtained in the form of a pension.

³⁵³ Law on pension and disability insurance (amendments) No.70/06

³⁵⁴ Law on pension and disability insurance (amendments), No.161/08

³⁵⁵ Art. 3, Law on pension and disability insurance (amendments), No.161/08

basis as it is calculated according to the average salary). This means that some women (with higher salaries than average) receive an allowance which is lower than their salary while they are away on maternity leave.

Gender equality is not mentioned in connection with the reforms of the pension system and these reforms do not take into consideration the fact that men and women have different working patterns, the lower participation rates of women in the formal labour market, lower pay and fragmented careers due to care activities.

In cases of part-time work, fixed-term contracts and occasional jobs, the same regulation for a pension is used (proportional to working time).³⁵⁶ In practice this is a very obvious factor which reduces the pension basis. First, it is impossible to attain the full number of necessary years without being in full-time employment. Only when work is on a part-time basis because of having to care for a disabled child is this considered to be full-time work. Second, there are bound to be unemployment gaps when one has changed one's employment on several occasions. Third, as it is always much easier for the employer to dismiss part-time employees or not to engage additional persons on fixed-term contracts there are many cases in practice where employers do not pay pension contributions for these workers. According to the law part-time workers enjoy the same protection against dismissal as full-time workers; however, it is much easier for an employer to claim that there is no need for part-time workers.

3. Retroactivity of legislation

The transition rules in the process of changing the pension system are the same for women and men: all persons hired on or after 1 January 2003 must join a reformed pension system (PAYG + fully funded). Those hired before 1 January 2003 had a once-only option to join voluntarily (up to 31 December 2005). Those joining a reformed system had their future solidarity benefits reduced.

The valorisation of pensions from previous years is done according to the average salary in the last calendar year previous to the one in which the person attains the right to a pension.³⁵⁷

For people who do not fall under the second pillar, until 2015 the highest pension cannot be more than 80 % of the average salary in the non-economic field in the previous year (as is defined by law), increased by 2.7 times. Old-age pensions are not recalculated according to the new regulation. There is an adjustment to all pensions according to monthly calculations.³⁵⁸

According to Article 193-a (Law on pension and disability insurance),³⁵⁹ the lowest and the highest amount of pension realized before the new regulation will be harmonized with the percentage applied to other pensions.

There are no measures to compensate retroactively the disadvantages suffered by discriminated applicants in the past.

4. The World Bank Model

The reform followed the standard three-pillar approach, with a mandatory reformed PAYG system (pillar I) and a mandatory fully-funded system (pillar II). Pillar I, which is financed on a PAYG basis, provides for defined pensions according to a

³⁵⁶ Art. 48, Labour law (revised), 'Official Gazette' of the Republic of Macedonia, No. 16/2010

³⁵⁷ <http://www.mtsp.gov.mk/WBStorage/Files/PIO.pdf>

³⁵⁸ <http://www.mtsp.gov.mk/?ItemID=3D5BC91E39F0FD4784B9D90A04F3FC03>

³⁵⁹ <http://www.mtsp.gov.mk/WBStorage/Files/PIO.pdf>

predetermined formula, in addition to providing disability and survivors' pensions and a minimum social pension.

Pillar II consists of a new, fully-funded pension insurance scheme. This scheme covers private and public-sector employees, civil servants and self-employed persons who have participated in the publicly managed social security scheme for the first time on or after 1 January 2003. Participation is voluntary for persons covered by the publicly managed social security scheme before 1 January 2003. The switching period for this category ended on 31 December 2005. Persons covered may join any open pension fund by entering into a membership contract with the pension company administering the fund, the choice of which cannot be influenced by their employer. Contributions are made solely by employers at the rate of 7.42 % of pay. Self-employed persons must make their own contributions at the same rate. Additional voluntary contributions are not permitted. Individuals choose their provider, not their employer. As this is a DC scheme, benefits depend on asset accumulation in individual accounts. If the accumulated asset is insufficient to buy such an annuity product, the members should receive a lump-sum payment. This insurance provides one part of the old-age benefit (additional to the old-age benefit from the PAYG system). In the case of the disability or the death of the member, assets from the individual account are transferred to the PAYG public pension fund which provides the full amount of the disability or the survivor's pension. If no one makes use of the survivor's pension, the assets from the individual account can be inherited by those who are entitled to inherit from the deceased. The retirement age is 64 for men and 62 for women with a minimum of 15 years pensionable service. A withdrawal from the pension fund before retirement age is not allowed, except in the case of disability or death. If the sum of the PAYG and the fully-funded pension benefit are lower than the minimum pension, the PAYG fund will pay an additional amount up to the minimum pension.

Pillar III, which is currently in the process of being established, is, like pillar II, fully funded, but is open to membership on a voluntary basis.

The most important and most significant problem of the three-pillar system is the transfer of the differences, which produce the pay gap between the salaries of women and men, to the pension system which, in turn, produces the pension gap between women and men. Employees in low-paid and precarious jobs, where women are disproportionately represented, cannot afford to save a great deal and often fail to do so even if the law has supposedly made retirement savings schemes mandatory. For most of these employees the third pillar is practically useless.

B) STATUTORY OLD-AGE PENSION SCHEMES **(Schemes falling under Directive 79/7/EEC)**

1. Qualifying conditions

The qualifying conditions for a pension are age and a minimum pensionable service. The conditions are defined in the Law on pension and disability insurance: the qualifying age is 64 for men and 62 for women, with at least 15 years of pensionable service. In the funded scheme the amount of the pension depends on the duration and the amount of investment (savings) by each individual beneficiary.

The legal framework was enacted in 2000 and started to be implemented from 1 January 2006. The changes were made despite the fact that almost all of them were perceived by the general public as being very unpopular, and there were many reactions from the side of the trade unions.

Non-standard work contracts, such as part-time or short-term contracts, seasonal contracts, occasional contracts, or low-income contracts are covered by the pension scheme. However, in practice persons working on the basis of non-standard work contracts (especially persons seasonally engaged by individual agricultural holdings) are not insured and no payments are paid into pension funds. At the end of the day, those receiving an agricultural pension only make up 0.96 % of all persons who receive a pension.³⁶⁰ At the same time, women are twice as likely to be engaged in the seasonal sector.³⁶¹ Even when there are no problems with payments and insurance, it is still very difficult to fulfil the necessity years for a full pension.

The pension right is subject to a minimum employment period (15 years). For contributors who have at least 15 years of social insurance, the replacement rate for full insurance service is 80 %. For contributors who currently have less than 15 years of social insurance, the replacement rate will decrease during the following 40 years to 72 % for full insurance service. For contributors who will join the second pillar, the replacement rate for full insurance service is 30 % (the full pension is 80 %, of which 30 % belongs to the 2nd pillar). The number of pensioners who received the minimum pension in December 2008 was 82 110, which was 30 % of the total number of pensioners. Only first-pillar members are entitled to a maximum pension (the maximum pension = the average net wage times 2.7). For survivors' pensions the conditions are the following: the deceased was the beneficiary of the pension and the deceased had had pension insurance for 5 years. Those entitled to a survivor's pension are: the spouse, the parents, the children, family members and other members of the extended family.

The special conditions and the minimum hours' threshold are mentioned in the acquisition of rights pertaining to specific employment (the armed forces, the police).

Workers with earnings and careers will not be in an inferior position compared to the average standard which qualifies for a pension. However, the amount of money for pensions is much lower when there are longer absences from work because of caring for a sick member of the family or due to pregnancy leave.

Periods when people receive unemployment benefit are taken into account for pension rights.³⁶²

2. The amount of the old-age pension

The amount of the old-age pension is calculated on the base of lifelong earnings and on the basis of the contributions paid over one's full-life career (except for the Ministry of the Interior, where it is based on the best 10 selected periods of employment).

Gender-specific life expectancy tables are taken into consideration when calculating pension amounts.

The contributory period of 35 years for women and 40 years for men is required for a full old-age pension entitlement. The old-age statutory pension schemes do not have flat-rate benefits.

There is a minimum amount of old-age pension for those who meet the qualifying conditions.³⁶³ It is 41 % for women with 30 years of pensionable service (for men it is

³⁶⁰ Women and men in Macedonia, State Statistical Office, 2008 (page 9)

³⁶¹ Women and men in Macedonia, State Statistical Office, 2008 (page 57)

³⁶² Art. 11, Law on Pension and Disability Insurance, 'Official Gazette' of the Republic of Macedonia, No. 80/93 and its amendments in 2000

³⁶³ Art. 34, Law on Pension and Disability Insurance, 'Official Gazette' of the Republic of Macedonia, No. 80/93 and its amendments in 2000

35 years of pensionable service); 38 % for women with 20 years of pensionable service (for men it is 25 years of pensionable service); 35 % for less than 20/25 years of pensionable service.

Calculating the pension amount for non-standard workers and part timers is done on the basis of full working days (a working day being 8 working hours). This means that all working hours are compiled and the pension is calculated on the basis of the total amount of working hours.

An alignment of the old-age pension takes place according to the life expectancy index to 80 % and the index of the average net salary of all employees in Macedonia to 20 %.

There is a ceiling on benefits and this is not coupled with a ceiling on contributions.

3. Periods of caring

The periods of parental leave (9 months for one child or 1 year for more than one child) are taken into consideration for pension rights. The pension is calculated on the basis of compensation for salary which is received during parental leave.³⁶⁴ With this calculation caring periods count for less than the full crediting of work periods for pension purposes.

With the last amendments to the Law on social protection³⁶⁵ a mother who has given birth to her fourth child from January 2009 onwards and who has cared for her children up until their 18th birthday and who is unemployed and does not receive a pension after age of 62 will be entitled to a lifelong benefit.

The periods of interruption to employment due to raising children as well as caring for a disabled child are taken into account for pension purposes. The earnings basis is the compensation received during this period. The compensation is calculated as the average sum of all salaries during the last 12 months.³⁶⁶ If the employee has not received a salary during the last 12 months, then the calculation is on the basis of the minimum wage. These provisions are not gender-neutral. There is confusion concerning the terminology which sometimes mentions the mother, sometimes the parent as the care provider.

Standardization, including a minimum provision of care credits in gender equality EU legislation in the field of social security could be very positive in stimulating a gender-neutral approach.

4. Exceptions, Article 7.1 of Directive 79/7

The pensionable age and the possible consequences for other benefits (Article 7.1 a))

The Law on Pension and Disability Insurance³⁶⁷ establishes the general age for retirement: 64 years (men) or 62 years (women) and at least 15 pensionable years (i.e. working years covered by pension insurance). The Law on Pension and Disability Insurance provides for different calculation criteria in special cases.³⁶⁸

³⁶⁴ Art. 170, Labour law (revised), 'Official Gazette' of the Republic of Macedonia, No. 16/2010

³⁶⁵ Law on social protection, Official Gazette No.79/09

³⁶⁶ Art. 112, Labour law (revised), 'Official Gazette' of the Republic of Macedonia, No. 16/2010

³⁶⁷ Law on Pension and Disability Insurance, 'Official Gazette' of the Republic of Macedonia, No. 80/93 and its amendments in 2000

³⁶⁸ The general calculation scheme is provided in Article. 18 of the Law on Pension and Disability Insurance, 'Official Gazette' of the Republic of Macedonia, No. 80/93

Concerning the fixing of ages for occupational pensions, this contradicts Article 104 of the Labour Law:

- (1) The employer will terminate the employee's contract of employment when the employee reaches 64 years old and has 15 years of pensionable service.
- (2) The employer, at the request of the employee under paragraph (1), may extend the contract of employment up to 65 years of age, unless the law determines otherwise.³⁶⁹

A different pensionable age for men and women does not have any consequences for other benefits.

Arguments for equalizing the pensionable age in the Republic of Macedonia are the following: women will have a higher pension basis, the years for schooling and higher qualifications will not shorten the working period for women, a longer life expectancy allows women to work longer.

For	Against
	Pregnancy leave
The same number of years	Caring for the children and the family

Arguments against equalizing the pensionable age in the Republic of Macedonia are the following: years of pregnancy leave and caring for children and the family shorten the pension period for some women, and difficult factory work or early employment which means that women are 'tired' (less educated women start their working life at 15 years of age, if a pension is possible at 65, this means a 50-year working period).

The equalisation process started in 2000 and ended in 2009 with last amendments to the Labour law.³⁷⁰ According to this article, employment ends when the employee turns 64 (with a minimum of 15 years of pensionable service). According to the Law on pension and disability insurance the pensionable age is different, according to the Labour law it is not.

Earlier pensionable ages for women do not tend to lower the amount of their pensions. The main difference is the number of women and men receiving pensions. Of the total number of people receiving pensions in Macedonia, women comprise 48 % (approximately 100 000). At the same time 238 000 women are identified as housewives. There are no data on the average age when men and women leave the labour market in Macedonia.

There are no measures to compensate retroactively the disadvantaged sex for any loss suffered in the past.

I do think that the exception concerning the pensionable age can be eliminated by the gender equality EU legislation on statutory social security. A transitory period would be necessary to eliminate this exception and its consequences for other benefits (specifically connected with caring for children, pregnancy leave and protection concerning some kinds of work or night shifts). I do not think that the different pensionable age in favour of women discriminates against men because it compensates for the unequal perception of women and men in specific working fields, higher positions for men in the management structure and specific violations to which women could be exposed during work. It also addresses unequal labour market

³⁶⁹ Labour law (revised), 'Official Gazette' of the Republic of Macedonia, No. 16/2010

³⁷⁰ Art. 104

conditions and working patterns or care activities carried out by women within the family.

Advantages granted to persons who have brought up children (Article 7.1 b))

Caring advantages exist in the Macedonian old-age pensions system. These caring advantages are partially gender-neutral. There are also some exceptions connected with protective measures because of pregnancy and parenting.³⁷¹ There are certain presumptions in favour of women in the recognition of these advantages, which means that men are entitled to these advantages as second-choice claimants, that is only if women do not take advantage thereof.

Within the framework of the whole situation in Macedonia it could be questioned whether this exception should be updated because it perpetuates the traditional division of family roles in raising and caring for children. This exception could be eliminated by the gender equality EU legislation on statutory social security. A transitory period would be necessary to eliminate this exception. This long-lasting traditional behaviour could not be simply eliminated with the adoption of legislation.

Old-age or invalidity benefit entitlements or increases in long-term benefits by virtue of the derived entitlements of a wife (Article 7.1 c) and d))

In the Macedonian system there are benefits and supplements by virtue of the derived entitlement of any of the spouses.³⁷² The benefits are equally granted to men and women with differences concerning the years when the benefits could be earned (45 for women and 55 for men). In the case of divorce the benefits are the same if there is a court decision to that effect.

I do think that these exceptions are outdated and thus can be eliminated by the gender equality EU legislation on statutory social security, except for the situation of the non-registered marriage and registered partnerships.

C) OCCUPATIONAL OLD-AGE PENSION SCHEMES

(Schemes falling under Article 157 TFEU, Directive 86/378/EEC, as amended by Directive 96/97/EC, now Articles 5-13 of the Recast Directive 2006/54/EC)

1. Coverage

The mandatory pension insurance scheme covers domestic and foreign citizens between the ages of 18 to 70, regardless of their employment status, on a voluntary basis. This means that a person who is already a member of the mandatory pension insurance scheme can also be a member of a voluntary pension insurance scheme. Also a person who is not covered by mandatory pension insurance can be a member of a voluntary pension insurance scheme. Additionally, a person can be a member of an Occupation Pension Scheme financed by his/her employer or association. In this way a person might have one voluntary individual account and one occupational account. There are no sectors of the economy where occupational pension schemes do not operate.

The tax regime is EET. Pension contributions and investment income are tax exempted and the payment of pension benefits is taxed.

Permitted types of fees are: a percentage of contributions (max. 7 %) and a percentage of assets (max. 0.15 % monthly). Transfer fees are permitted during the

³⁷¹ Art.161, Labour law (revised), 'Official Gazette' of the Republic of Macedonia, No. 16/2010

³⁷² Art. 72-73, Law on Pension and Disability Insurance, 'Official Gazette' of the Republic of Macedonia, No. 80/93 and its amendments in 2000

first year of participation. The fee must be the same for everyone. There are exceptions: fees can decline as years of participation increase or fees for occupational pension schemes might be different.

The author could not find any data on the participation rate of men and women in occupational pension schemes.

2. Calculation of old-age pensions and contributions

Contributions are made by the person in question, by a third party or by the sponsor of an occupational pension scheme (the employer or association). The amount and the period during which contributions are paid are determined by the free choice of the person paying the contribution.

3. Actuarial factors

Pension benefits can begin up to 10 years prior to the standard retirement age in the mandatory pension system: 52 for women, 54 for men. Permitted payment options are: a lump-sum payment, periodic withdrawals, annuity purchase, a combination thereof. There is a mandatory lump-sum payment for small account balances.

4. Caring credits

Caring periods for which the employer pays a remuneration are taken into account.

5. Vesting and reimbursement rules

As this is a DC scheme, benefits depend on asset accumulation in individual accounts. Benefits can be withdrawn as a lump-sum, a life annuity, a programmed withdrawal or a combination in case of old age, disability or death. Pension benefits can be withdrawn no earlier than 10 years before the legal retirement age for the PAYG system, except in cases of disability or death.

6. Pensionable age

The Law on Pension and Disability Insurance³⁷³ establishes the general age for retirement: 64 years (men) or 62 years (women) with at least 15 pensionable years (i.e. working years covered by pension insurance).

Concerning the fixing of ages for occupational pensions, this contradicts Article 104 of the Labour Law:

- The employer will terminate the employee's contract of employment when the employee reaches 64 years of age with 15 years of pension service.
- The employer, at the request of the employee under paragraph (1), may extend the contract of employment up to 65 years of age, unless the law determines otherwise.³⁷⁴

7. Civil servants

There are no occupational funds for civil servants. They are covered by the Law on pension and disability.

The personal mandatory scheme covers civil servants who have participated in the publicly managed social security scheme for the first time on or after 1 January 2003. Participation is voluntary for the persons covered by the publicly managed social security scheme before 1 January 2003. The switching period for this category ended

³⁷³ Law on Pension and Disability Insurance, 'Official Gazette' of the Republic of Macedonia, No. 80/93 and its amendments in 2000

³⁷⁴ Labour Law (revised), 'Official Gazette' of the Republic of Macedonia, No. 16/2010

on December 31, 2005. The persons covered may join any open pension fund through entering into a membership contract with the pension company administering the fund, the choice of which is not influenced by their employer.

MALTA – *Peter G. Xuereb*

A) GENERAL QUESTIONS

1. The old-age pensions system

The statutory system in Malta is based on the pay as you go system. It is a defined benefits system. The so-called ‘two-thirds’ retirement pension (first pillar) is income related and is granted to those who started paying national insurance contributions in 1979 or later. Some earlier systems are still in place for those with vested rights. The system was recently amended by amendments to the Social Security Act of 1987 (Chapter 318 of the Laws of Malta) in order to gradually equalise the retirement age for this statutory ‘retirement pension’. Previously, men retired at 61 while women retired at 60.

There is also a survivor’s and widow’s pension which falls under the statutory pensions regime. The other possible pension is the ‘old-age pension’ (a non-contributory pension) which is a means-tested benefit received by those who cannot maintain themselves and who have not contributed to the statutory pension via national insurance contributions over their working life. It is gender-neutral.

Occupational old-age pensions have also been covered by the government’s review of the pensions system. The review started in 2004 and was completed in 2006, but its conclusions have still not been fully put in place. The Social Security Act now makes provision in Article 64B for occupational schemes and the related Regulations have been passed to regulate occupational pensions once they are established. However, practically all occupational pensions were abolished in the 1980s as part of the then Labour government’s ‘equalisation’ policy. It seems they could come in as either direct contribution or direct benefit schemes. In an effort to bring Maltese law into line with EU law, Regulations were enacted in 2005 (the Equal Treatment in Occupational Security Schemes Regulations (Legal Notice 317) of 2005, henceforth referred to as the OSS Regulations). While these prohibit discrimination *inter alia* as to retirement age, Article 4 (2) (h) of the regulations still provides for an exception in so far as it may be necessary to take account of actuarial factors, which differ according to sex in the case of defined contribution schemes; and provided that in the case of defined benefit schemes certain elements (including: the conversion into a capital sum of part of the periodic pension, the transfer of pension rights, a revisionary pension payable to a dependant in return for the surrender of part of a pension, a reduced pension where the worker opts to take early retirement) may be unequal where the inequality results from the effects of the use of actuarial factors differing according to sex, at the time when the scheme’s funding was implemented

The public service pension still applies to those in the civil service before 1 January 1979 as well as to Members of Parliament, the police, the armed forces and the correctional service. It is governed by the Pensions Ordinance of 1939, and the pension schemes of the armed forces, police and similar are governed by specific laws and regulations. In general these make specific provision including for retirement at an earlier age than the statutory retirement age on health grounds. Arguably, these should be regarded as occupational pensions. Retirement in the public service was

always at 60 for both men and women (Article 7 of the Pensions Ordinance). However, it seemed that a man who retired at 60 would begin to receive his service pension, but there appeared to be an anomaly. While a woman in the relevant age bracket who retired at 60 would also receive her statutory (social security) retirement pension, a man in the same age bracket appeared to have to wait until the age of 61 before doing so. This anomaly has now been removed.

The model is still the three-pillar model, although occupational schemes still need to be introduced in Malta. Their introduction has apparently been delayed due to the government's view that in financial and economic terms this is not an opportune time for their introduction. The third pillar functions normally.

2. Old-age pension reforms

The main innovation has been the putting in place of an equalisation of retirement ages scheme combined with later retirement. Reforms in 2007 to the Social Security Act mean that the retirement age for men and women is gradually being equalised to 65 in the period between 2007 and 2027. The first equalisation will occur in 2014, with women and men in a certain age bracket both retiring at 62. The new retirement age of 65 applies to all who were aged 45 or under on the 1st January 2007. Those aged 55 or over on that date were not affected. However, women aged 55 on that date were given the option of retiring at 61 (rather than at 60 as previously obliged to do), that is at the same age as men of the same age group.

It seems that little or no attention has been paid to the different working patterns of men and women. Unfortunately, no study appears to exist on the possible deleterious effects on women as a result of their different working patterns. A rather formal approach would appear to have been taken. On the whole, there is no change in the position of those with non-standard working patterns, so that the pension derivable is based on the number of contributions made. The lengthening of the period of payment of contributions to 40 years makes it necessary for all to work longer but also more difficult for women to receive a full pension (which will also be less in relative terms than now) at the end of their working lives. The adequacy of pensions (the minimum level of pension) remains an issue.

3. Retroactivity of legislation

As indicated in the answer to the previous question, different retirement ages now apply to different age cohorts. However, these will apply in stages, and will apply equally for men and women. The government position was that there was no need for compensatory measures. Nor has there been any recalculation of pensions already drawn. No levelling down of measures was put in place.

4. The World Bank Model

Not applicable.

B) STATUTORY OLD-AGE PENSION SCHEMES (Schemes falling under Directive 79/7/EEC)

1. Qualifying conditions

The right to, and the rate of, a pension depend on three factors: the contribution conditions, the pensionable income, and the maximum pensionable income. A minimum number of payments are required (one year). The required number of years for the payment of a full pension has been lengthened with the retirement age being

set in stages moving up to 65. At the moment, a person becomes entitled to a pension at the full rate if he or she has a yearly average of 50 paid and credited contributions per year over a period of 30 years. Persons born between 1952 and 1961 will have to have such an average over a period of 35 years. Persons born in 1962 or later will have to have this average over a period of 40 years. There is then a capping of the pension at two-thirds (hence the designation of the pension as ‘the two-thirds pension’) i.e. where the average is 50 the full rate of pension is arrived at by multiplying the pensionable income by $\frac{2}{3}$. In the case of an employed person, the pensionable income is calculated on the average wage/salary earned during the three best consecutive calendar years in the last ten years of employment. However, as from 2027, both for employed and self-employed persons the pensionable income will be calculated on the average earnings of the best ten years of the full 40 years. Most workers will get the two-thirds pension which places the average pension at a maximum of two-thirds of the full pension. This discriminates between those who receive a full pension (Members of Parliament and some others) and those who will get two-thirds but without gender discrimination.

The qualifying conditions can of course mean that someone who has not paid contributions for the required period will not receive the full pension as accruing to someone who has been in full-time employment for the full number of years as applicable to his or her age bracket. Vertical part-timers and others in non-standard employment will not have paid sufficient contributions to receive the maximum allowable amounts.

Periods of unemployment are catered for with the crediting of contributions.

2. The amount of the old-age pension

In principle the retirement pension amount is based on the number of contributions made as well as on the final salary. In calculating the latter amount, the average of the best three years of the last ten years’ earnings are taken into account. However, the pension granted will be at a maximum of two-thirds of final salary but is in any event again capped at the maximum pensionable income (MPI) of EUR 17 470 per annum for those born up to 31 December 1951 plus the official increase in the cost of living until this year. For those born thereafter (thus creating a difference depending on the date of birth), and in stages up until the end of 2013, the MPI will be raised by three tranches to EUR 20 964 per annum. From 2014, the MPI capping will then be increased annually by 70 % on wage increases and 30 % on price inflation, as a basket of the two. Social security contributions will be adjusted in line with the changes in the MPI. The ceiling on benefits is coupled with a ceiling on contributions.

Gender-specific life expectancy tables are not taken into consideration in calculating the pension amount.

The length of contributory periods varies depending on the age bracket involved, and the recent reforms provide for the period to gradually increase from 30 to 40 years of contributions. The new 40-year requirement for the maximum (two-thirds) first pillar pension was introduced for all those aged 45 or less on 1 January 2007, and will make it more difficult for women to reach the maximum pension while maintaining rights to a full pension.

In the case of non-standard workers and especially part-time workers, the pension amount calculation depends on a pro rata calculation. This of course means that it is impossible to reach a maximum pension.

The kind of pensions indexation used in Malta is under some flux. Since 2006, the national minimum pension guarantee is pegged to not less than four-fifths of the

minimum income for married persons maintaining a spouse, and two-thirds in the case of any other person. The proposal is that it should be pegged to not less than 60 % of the national median income. Also, as from 2014 the MPI will be increased by the equivalent of 70 % on wages and 30 % on inflation. Pensioners are fighting hard to have their pensions increased by the full cost of living increase on an annual basis and related to a specific basket of goods and services, arguing that the normal retail price index (RPI) does not reflect the actual needs and lifestyle of pensioners.

3. Periods of caring

Periods of maternity leave (14 weeks paid) and parental leave (one year unpaid in the public service, three months or more otherwise) are taken into account. Periods of interruption for caring purposes are contribution-credited up to two years under recent changes to the Social Security Act (Article 6).

I would certainly think that there is scope for introducing minimum provisions on care credits in the gender equality EU legislation in the field of social security. I believe that any Maltese government would also be in favour, as both main parties are well disposed to encouraging women to enter, and remain in or return to, the labour market, reducing any unnecessary burden on public resources, while at the same time being supportive of the family and family values.

4. Exceptions, Article 7.1 of Directive 79/7

The pensionable age and the possible consequences for other benefits (Article 7.1 a))

There are mandatory retirement ages by law. In some cases it can be deferred. By a recent amendment to the law, there is now no loss of pension rights if one continues to work after retirement.

As indicated above, the retirement age has now been equalised for men and women. There was very little argument about this in Malta. Everybody seemed to accept the necessity also of the raising of the retirement age for demographic reasons in the face of pension non-sustainability in the alternative. The first equalisation will take place in 2014, when men and women reaching the age of 62 will be retiring together. No compensatory measures have been considered necessary.

Crediting mechanisms in relation to pensionable age are in place.

As to the average age when men and women leave the labour market and on the years of service periods accrued when they retire, further research would be needed but unofficial information is to the effect that the average age lies around the age of 57.

In Malta, albeit in a staged process, we have in principle eliminated the different retirement age for men and women. It seems to me that the exception can no longer be supported in an age of free movement, especially if a large number of Member States have or intend to equalise the retirement age. It is a technical question whether a short or long transitory period would be needed, but I believe that if one were to be prescribed then it should be as short as possible. I also believe that it should be combined with the right to continue working without a loss of pension. In this way, society as a whole stands to gain.

Advantages granted to persons who have brought up children (Article 7.1 b))

In Malta contributions are credited for such a purpose. Malta would seek to retain this, of course. Men and women with joint caring responsibilities can decide among themselves as to who should withdraw from work and benefit from credited

contributions, but of course it is usually the woman who does so, for reasons which are well known. Equality should also feature in this sphere.

Old-age or invalidity benefit entitlements or increases in long-term benefits by virtue of the derived entitlement of a wife (Article 7.1 c and d))

Data is periodically published by the National Statistics Office (NSO). On the point of substance, these refer mainly to our so-called non-contributory supplementary allowance. This is means tested on both incomes where applicable. It cannot be paid directly to the non-working spouse, and the splitting of the right is either by agreement or by a Court order in the event of separation (divorce does not exist in Malta). It seems to me that the exceptions may well be outdated and that serious thought should be given to the matter of their removal and to a transitional period for their removal which is of the shortest possible duration, while legislating at the European level for a fair solution.

C) OCCUPATIONAL OLD-AGE PENSION SCHEMES

(Schemes falling under Article 157 TFEU, Directive 86/378/EEC, as amended by Directive 96/97/EC, now Articles 5-13 of the Recast Directive 2006/54/EC)

1. Coverage

The government's White Paper on Pensions Reform of 2004 had suggested that the second-pillar scheme should be introduced on a voluntary basis but then be made compulsory after a transitional period. This policy remains. However, progress on this has been very slow. There is no second pillar in place in Malta as yet. The Social Security Act was amended to make provision for it (Article 64B) and Regulations were enacted in 2005. These are the Equal Treatment in Occupational Security Schemes Regulations (Legal Notice 317 of 2005, henceforth the OSS Regulations) which prohibit discrimination on grounds of sex in principle (see below for reference to actuarial factors). However, this has not yet been activated.

It follows that data are not currently available on occupational pensions.

2. Calculation of old-age pensions and contributions

Not yet applicable.

3. Actuarial factors

The system is not yet in operation, apparently due to general economic and fiscal conditions, but the framework legislation is in place. While the 2005 Regulations prohibit discrimination inter alia as to retirement age, Article 4(2)(h) of the regulations still provides for an exception in so far as it may be necessary to take account of actuarial factors, which differ according to sex in the case of defined contribution schemes; and provided that in the case of defined benefit schemes certain elements (including: the conversion into a capital sum of part of the periodic pension, the transfer of pension rights, a revisionary pension payable to a dependant in return for the surrender of part of a pension, a reduced pension where the worker opts to take early retirement) may be unequal where the inequality results from the effects of the use of actuarial factors differing according to sex, at the time when the scheme's funding was implemented.

4. Caring credits

Not yet applicable.

5. Vesting and reimbursement rules

Not yet applicable.

6. Pensionable age

Not yet applicable.

7. Civil servants

Civil servants' pensions are covered by the Pensions Ordinance for those in service up to 1979, and for some other special (privileged) categories such as Members of Parliament. In my view this would probably qualify as an occupational pension. Contributions are not paid separately towards it and it is at least arguable that the pension is earned as a matter of the conditions of employment; this is what certain pensions associations would argue. The scheme is paid for out of the Consolidated Revenue Fund (public funds, including taxes). The pension amount is related to the last salary (in this case the actual final year salary) and no revisions occur thereafter. The scheme applies in principle irrespective of gender without distinction as to the pensionable age, the payment of credits or benefits, or different rules for the calculation of the pension. There was no need to introduce the equalisation of the pension age as this was the same (60 years) for both men and women; nor were compensatory measures necessary. Both men and women could retire early by being 'boarded out'. The amount of pension depended/depends on the number of years of service.

THE NETHERLANDS - *Rikki Holtmaat*³⁷⁵

A) GENERAL QUESTIONS

1. The old-age pensions system

The Dutch pension system is based on three pillars. The first pillar consists of the publicly managed statutory pension, provided by the State according to the General Old Age Pensions Act (*Algemene Ouderdomswet*, AOW). This statutory scheme is organized on a Pay-As-You-Go basis.³⁷⁶ The scheme is based on a Defined Benefit system. Although the system is based on the three-pillar model, the first Dutch pillar rather deviates from the first pillar when compared to most of the other EU Member States. It is based on a universal system which applies to every inhabitant in the country and is not a social security scheme that applies solely to the working population.

The second pillar consists of occupational pensions. Most pension schemes are compulsory. Occupational pension schemes are funded according to the requirements determined by the Pensions Act (*Pensioenwet*). The occupational schemes are mainly based on the Defined Benefit system (DB system). The number of Defined Contribution schemes (DC schemes) is increasing, however. Voluntary contributions by employers in the second pillar are regarded as pay.

The third pillar is formed by private pension provisions.

³⁷⁵ With the help of Dr Emilie Schols.

³⁷⁶ This means that they are not paid from a fund, but from premiums that are paid by people who are currently contributing.

In certain circumstances a statutory scheme (called the Surviving Dependents Act; *Algemene nabestaandenwet*, Anw) provides for survivors' pensions. The benefit is partially means tested. Only income from work carried out influences the amount of the benefit. Occupational survivors' pensions do not influence the benefit.

Most occupational schemes provide for survivors' pensions. Survivors' pensions are gender-neutral.

In the Netherlands there is – due to the universal structure of the first pillar – no safety net (zero pillar) especially for older people. Elderly people can, however, according to the Work and Social Assistance Act (*Wet Werk en Bijstand*, WWB) and the Social Support Act (*Wet Maatschappelijke Ondersteuning*, WMO), apply for assistance (such as a supplement to their income (WWB)³⁷⁷ or home care (WMO)) according to the same conditions as younger people.

2. Old-age pension reforms

During the last decade (as far as the old-age pension system is concerned) a couple of reforms have taken place. There have been no reforms whatsoever in the statutory scheme. There is, however, a bill which aims to voluntarily defer the pensionable age and a bill to gradually raise the pensionable age in the statutory scheme.

There are no plans to make a stronger link between contributions and benefits. Defined Contribution Schemes are generally regarded as schemes of low quality which lack solidarity.

Most pension reforms have taken place in the second pillar. Almost all Final Pay Schemes have been transformed into Average Pay Schemes and sometimes into Defined Contribution Schemes.

In the tax laws the pensionable age for occupational pensions has been raised to the age of 65. Due to this rise in practically all schemes the pensionable age has been raised. At the same time, deductible income³⁷⁸ has in most cases been reduced. In a number of schemes the financing of survivors' pensions has changed (from funding into risk premiums,³⁷⁹ which means that premiums are paid into pension funds) and the level of survivors' pensions has been lowered. There is, however, no book reserve for survivors' pensions as there is only coverage on the basis of an annual risk premium.

These reforms have taken place in order to limit the costs of pensions. No special attention has been paid to the possible gender effects of the reforms. Neither was modernization a purpose.

The reforms, however, have not hindered gender equality. They have relieved the existing disadvantages for workers with non-standard (e.g. flexible) working patterns and low paid jobs, such as women.

³⁷⁷ Although the system is universal, it may occur that an inhabitant has not lived long enough in the Netherlands to have the right to the full amount of benefits. The total amount of benefits will not surpass the amount that is eligible on the basis of the AOW.

³⁷⁸ To make an allowance for the first-pillar pension, occupational pensions in the second pillar are assessed on the basis of earnings after the deduction of an offset - the franchise or the deductible income. This means that pension entitlements in the second pillar are not granted over the whole salary. A part of the salary (the deductible income) is not taken into account. The deductible income used to be related to the benefits from the first pillar for a couple. This was gradually lowered. Nowadays most deductible incomes are related to the benefits out of the first pillar for one of the partners.

³⁷⁹ Instead of creating a value by funding, an annual risk premium is paid for the death risk. If the premium is no longer paid, the death coverage no longer exists.

3. Retroactivity of legislation

The change from Final Pay Systems to Average Pay Systems has eliminated the disadvantage for people with non-standard working patterns like women. There is no retroactivity. Furthermore, in most schemes the deductible income has been lowered. The reduction of the deductible income has relieved the disadvantage (for low paid employees) of the use of a high deductible income. There is no retroactive effect. Furthermore, a curtailment of the waiting period has taken place, i.e. the period during which an employee has to wait until he/she can become a member of the scheme. No measures have been taken to compensate past disadvantages.

4. The World Bank Model

Not applicable.

B) STATUTORY OLD-AGE PENSION SCHEMES

(Schemes falling under Directive 79/7/EEC)

1. Qualifying conditions

The AOW entitlement takes no account of the number of years the beneficiary has been in employment and is unrelated to earnings. Due to this structure there is no zero pillar system specifically for the elderly. (People of retirement age can rely on general social assistance schemes, like the WWB and the WMO.)

The number of insured years is taken into account. Every inhabitant in the Netherlands between the ages of 15 and 65 is insured. If, during that period, a person does not live in the Netherlands for some period(s) of time, the benefits will be cut by 2 % for each year. The eligibility for benefits is not means tested.

2. The amount of the old-age pension

The statutory pension system provides for flat-rate benefits which are related to the statutory minimum wage (or the wages floor). The levels of benefits, however, are dependent on the pensioner's private situation and the number of insured years. There are pension levels for cohabiting partners (each partner receiving 50 % of the wages floor), for single householders (70 % of the wages floor) and for AOW claimants with a dependent child under the age of 18 (90 % of the wages floor). State pension recipients with a partner below the age of 65³⁸⁰ are entitled to a supplementary payment when the younger partner has no income. This supplementary payment will be abolished for recipients who reach the age of 65 after 2014.

During the 50-year accrual period (from 15-65) contributions are to be paid by inhabitants up to a taxable income of approx. EUR 33 000. Inhabitants without an income do not have to pay contributions. A couple who both have jobs will pay twice the premium as compared to a couple with only one breadwinner.

There are no plans to change this system. There is only one political party which intends to relate AOW entitlements to the years with earnings or caring responsibilities. All other parties intend to keep the AOW as it is (with – mostly – the pensionable age being raised).

The contributions (17.9 % of the mentioned level of taxable income) are nowadays not sufficient to pay the benefits. In addition to the contributions, public resources are employed.

As the benefits are related to the wages floor, the indexation follows this floor.

³⁸⁰ This is only the case if the younger partner has no or only a small income.

If a pensioner's income, including the AOW, is less than the social minimum, he/she can apply for assistance according to the Work and Social Assistance Act (WWB). Allowances from the WWB are, however, means tested.

There is no minimum vesting period. The state pension is subject to a 2 % deduction for each year the recipient has not been insured during the 50-year accrual period. There are large numbers of elderly people who are affected by this deduction.

3. Periods of caring

Inhabitants are insured regardless of whether or not they have paid jobs and regardless of whether or not they have care responsibilities.

4. Exceptions, Article 7.1 of Directive 79/7

The pensionable age and the possible consequences for other benefits (Article 7.1 a))

The mandatory retirement age is 65. This age is (and always has been) equal for men and women. The age cannot (yet) be deferred. A claimant can be in receipt of an old-age pension when still working.

The age when men and women leave the labour market is increasing. The net participation rate of men between the age of 55 and 65 years increased from 50.6 % in 2002 to 56.8 % in 2008. The participation rate of women between the ages of 55 and 65 years increased from 22 % in 2002 to 32.8 % in 2008. Non-employment is concentrated in the group of people above the age of 60. However, the participation rate among this group also increased from 12 % in 1996 to 28 % in 2008. The average age when employees leave the labour market increased to almost 62 in 2008. Some 36 % of men between the ages of 60 and 65 are participating in the labour market, as against 17 % of women.³⁸¹ The fact that they leave earlier than 65 is still possible due to a great number of early retirement arrangements for employees born before 1950. Self-employed people used to work longer.

Advantages granted to persons who have brought up children (Article 7.1 b))

Inhabitants are insured under the first pillar (AOW), regardless of whether they have jobs or bring up children. As long as the inhabitant in question has no earned income, no contribution is required.

Old-age or invalidity benefit entitlements or increases in long-term benefits by virtue of the derived entitlements of a wife (Article 7.1 c) and d))

There are no such benefits or supplements. Those would not fit within the universal structure of the Dutch first pillar. People who have never had a paid job will be eligible for a statutory pension.

C) OCCUPATIONAL OLD-AGE PENSION SCHEMES

(Schemes falling under Article 157 TFEU, Directive 86/378/EEC, as amended by Directive 96/97/EC, now Articles 5-13 of the Recast Directive 2006/54/EC)

1. Coverage

Compulsory industry-wide funded schemes are applicable to approximately 75 % of scheme members. Besides these industry-wide schemes, there are company pension funds and company schemes organised by insurance companies. Approximately 11 %

³⁸¹ 'Vijftigplussers op the arbeidsmarkt,' CPB sociaal economische trends 2^e kwartaal 2010.

of employees do not have a pension scheme. Especially in the field of business services there is a relatively high number of companies which do not have a pension scheme at all.

It is however remarkable that most employees who are not members of a pension scheme do work in a company where there is a pension scheme for other employees. In the Netherlands it is still possible to exclude certain categories of employees from the pension scheme (as long as the exclusion does not lead to indirect discrimination against certain groups).

According to the latest report (dating from December 2009, regarding the situation in the year 2007)³⁸² the share of women among all persons without a pension scheme (9 %) is somewhat lower than the share of men among persons without a pension scheme (11 % for men).³⁸³ There were some efforts to reduce the percentage of workers who do not have a pension scheme. The mentioned report makes clear that these efforts have so far failed to be successful.

2. Calculation of old-age pensions and contributions

Most pension schemes are earnings related. During the last couple of years Final Pay Schemes have almost vanished. Most schemes are nowadays based on Average Pay. The replacement rate including the benefits from the statutory scheme after full service (40 years of service) used to be 70 % of the final salary. However, the yearly accrual in average pay has mostly increased (from 1.75 % a year in the Final Pay Scheme to approx. 2 % a year in the Average Pay Scheme). The changeover to Average Pay has lowered the possible replacement rate. This is especially due to the (partial) drop in indexation. Due to the situation on the financial markets at the beginning of this last decade and the financial crisis in 2008, the indexation of pension rights is increasingly uncertain. Furthermore, the drop in the interest rate and the increasing life expectancy have an enormous effect on the funding of schemes³⁸⁴ and therefore on the indexation capacity of these schemes. (This means: if these are DB schemes, adjustments are necessary and this will result in an enormous rise in pension premiums.)

The fact that indexation is not automatically applied (i.e. it is always conditional and is only allowed as far as the fund has enough assets) has a decreasing effect on the level of the old-age pension during the vesting period and affects, from the pensionable age onwards, especially pensioners with a high life expectancy, such as women.

Pensions are in general not related to the whole salary. The former replacement rate of 70 % was meant to include the first two pillars.

To make an allowance for the first-pillar pension, employee pensions in the second pillar are assessed on the basis of earnings after the deduction of an offset - the franchise (the deductible income). The level of the deductible income varies from approx. EUR 10 000 to approx. EUR 20 000. Applying a deductible income to the employee pension assessment has a direct impact on the level of the pension that one can possibly accrue under second-pillar schemes.

³⁸² CBS, Witte vlekken op pensioengebied 2007, The Hague: CBS 2009.

³⁸³ Regarding employees with an earned income above the level of the statutory minimum wage, 10 % of those people are not members of any scheme. If employees with an income below the level of the statutory minimum wage are also taken into consideration, 11 % of employees are not members of any scheme. Unfortunately, there are no figures available on the difference between men and women if low earners are also taken into consideration.

³⁸⁴ Pension funds have to calculate their liabilities on the basis of long-term duration.

Employees with lesser earnings might – if a high deductible income has been applied – be unable to qualify for a pension. The use of a deductible income is anyway to the detriment of employees with low paid jobs. The lower the earned income, the lower the employee pension - when expressed as a percentage of that income - that it is possible to accrue. There is a disproportionate discrepancy in pension remuneration.

The accrued pension rights of women are lower than the accrued pension rights of men. The arrears of the past have not yet been made up. There is, however, a smaller difference in the level of accrued pension rights for younger women due to the increased labour participation of women and the fact that the exclusion of women from a pension scheme is no longer permitted.

The average level of entitlements out of occupational schemes was (at the end of 2005) for women in the ages 60 to 65 years approx. EUR 2 000 and for men around EUR 12 000. In the ages between 30 and 35 years the level of accrued pension rights for men was approximately double.

There are no longer any minimum conditions, such as long waiting periods. Pension rights are vested immediately when an employee becomes a member of the scheme. In the past it was permitted to allow an employee to wait for a certain period (a year in most cases) before he or she could become a member of the scheme. The waiting period for vesting pension rights is now limited to two months (except for temporary workers; for those workers the waiting period is limited to 26 weeks).

Since 1994³⁸⁵ part-time workers are no longer at a disadvantage. The deductible income is lowered according to the part-time percentage. Therefore, compared with full-time workers who earn the same salary, the pension accrual of the part-timer is considerably higher. Corresponding to the Court of Justice's case law (Helmig C-399/92, C-409/92, C-425/92, C-34/93, C-50/93 and C-78/93), part-time workers accrue per hour worked the same pension amount as a full-time worker. This equal treatment is usually restricted to contracted hours and does not include overtime for part-time workers.

Periods of disability are mostly taken into account for the accrual of a pension. Periods of unemployment are not taken into account. However, for those who become unemployed before 1 January 2011 (and are older than 40 years) there is the possibility of a temporary accrual of pension rights in the last applicable scheme according to the Pension Insurance Advance Payment Fund (FVP).

In the case of divorce, old-age pension rights are split up between partners as far as the pension rights have been accrued during their marriage. Partners, however, are entitled to deviate from this rule if they so wish.

As far as survivors' pensions are funded, the pensioner has – before the pensionable age - the possibility to convert the survivor's pension into a higher old-age pension (or an allowance as from an earlier age) if his or her spouse agrees. As far as survivors' pensions are financed by risk premiums, the pensioner has – before the pensionable age – the possibility to convert a part of his or her old-age pension into an ongoing coverage for the surviving spouse. Agreement by the spouse to do so or to omit making this change is not required.

3. Actuarial factors

Gender-related actuarial factors are used by occupational funds and insurance companies for funding purposes. The contributions and benefits are, however, gender-

³⁸⁵ Before that time it was usual for part-time workers to be excluded from the pension scheme.

neutral in both Defined Benefit Schemes as well as in Defined Contribution Schemes. Voluntary contributions in the second-pillar scheme are regarded as pay. The contributions are gender-neutral as well. So are the benefits out of the voluntary contributions.

Also in the case of a conversion or surrender the benefits should be (and in fact always are) gender-neutral. This is laid down in the Equal Treatment for Men and Women in Employment Act (*Wet Gelijke Behandeling mannen en vrouwen bij de arbeid, WGB*).

In the Netherlands occupational pensions are generally not applicable to self-employed persons. The self-employed are dependent on pension savings in the third pillar. Gender-related actuarial factors are used in the third pillar and therefore result in different contributions or benefits for men and women.

If a self-employed person is a member of a compulsory occupational scheme for professional practitioners, equal treatment rules are applicable. The number of self-employed persons in a compulsory scheme is however very small compared to the huge number of self-employed people that do not participate in such schemes.

There is some awareness of the fact that the life expectancy of people in low paid jobs is lower than the life expectancy of people with a higher income. These differences are not taken into account.

4. Caring credits

Caring credits are unknown in Dutch occupational pension schemes. During the period of maternity leave (approx. 4 months) pension rights will continue to accrue. It depends on the scheme whether there is an accrual of pension rights during periods of parental leave. If so, it depends on the pension scheme whether the employer will continue to pay its part of the premium.

Periods for raising children or other care responsibilities are not taken into account for the accrual of a pension. As far as I know, there have been no (indirect) discrimination claims by workers for formerly denied care advantages.

Almost every scheme provides for a survivor's pension (for men and women) on a mandatory basis. The level of this pension has recently been lowered in quite a number of schemes.

5. Vesting and reimbursement rules

According to the Pensions Act (*Pensioenwet*) there is no minimum vesting period. When leaving the scheme, the employee is entitled to his or her accrued pension rights. The pension fund or the insuring company is however – as far as the pension scheme allows for this – entitled to surrender the pension two years after leaving the scheme if the pension amount is small (i.e. less than approx. EUR 420 on an annual basis). Employees who change jobs and leave the pension scheme have the right to transfer any vested pension rights to the pension fund or the insurance company of the new employer.

6. Pensionable age

Since decades (the Barber case) there are no different pensionable ages for men and women. Rather quickly after the judgement in the Barber case the pensionable age for men and women was equalized. The lower pensionable age for women was raised to the pensionable age for men. As a consequence of the Court of Justice's case law, men did not apply for a lower pensionable age. They did apply for an equalization of

the calculation of pension rights (i.e. the level of the deductible income) and equalization in the field of survivors' pensions.

No measures have been taken to compensate the disadvantaged sex retroactively for losses suffered in the past.

A deferral of the pensionable age is possible – depending on the scheme – but this is however due to tax laws which are limited to persons who are still in work.

NORWAY - *Else Leona McClimans*

A) GENERAL QUESTIONS

1. The old-age pensions system

The old-age pension system in Norway is mainly based on the National Insurance Scheme (NIS), which is one part of the statutory pension system.³⁸⁶ The National Insurance Scheme (NIS) through the National Insurance Act (NIA) has been the platform of the welfare state since 1967. The NIS provides a minimum old-age pension for all residents of Norway, as well as a supplementary pension based on income from employment. Both schemes build on the notional defined contribution (NDC) schemes.

Old-age pension is in addition to the benefits received under the NIS also constituted by the various forms of employment-related pensions and benefits. These include, among others, supplementary pension schemes for public civil servants organized through the Public Service Pension Fund,³⁸⁷ and a compulsory supplementary pension scheme in employment organized through insurance companies,³⁸⁸ which are financed by employers and employees through contributions and taxes. Both of these are also statutory. Occupational pension systems are in principle increasingly becoming defined contribution schemes (DC). The main legislative sources for these schemes are provided in Annex 1.

In Norway, the system of old-age pensions is not constructed around the traditional three pillars. However, in relation to the old-age pension for employees when structured according to the pillars, it can be seen as consisting thus of both the old-age pension granted under the NIS (first pillar) complimented by the compulsory supplementary pension scheme in employment (second pillar) as well as possible voluntary old-age savings and insurance schemes that the employee has invested in during the course of employment (third pillar).

The legislative framework is in relation to old-age pensions gender-neutral. However, there are marked gender imbalances in pensions, as men and women lead different lives in terms of periods of paid employment and periods of unpaid care work. As unpaid work in the family is not compensated fully, the structure of the insurance scheme reflects this. Facts published by the Norwegian Welfare and Labour Administration (NAV) show that men on average receive an annual pension of NOK 185 097, (approx. EUR 21 523) while women on average receive only NOK 134 188 (approx. EUR 15 603).³⁸⁹

³⁸⁶ See the National Insurance Act of 28 February 1997 (*Folketrygdloven*).

³⁸⁷ See the Act on the Public Service Pension Fund of 28 Junly 1949 No. 26 (*SPK-loven*).

³⁸⁸ See the Act on the Compulsory Supplementary Pension Scheme in Employment (*OTP*) of 21 December 2005 No. 124. These schemes are designed within the framework of the Act on the Defined Benefit Pension Scheme and the Act on the Defined Contribution Pension Scheme.

³⁸⁹ See NAV, <http://www.nav.no/805355393.cms> accessed on 10 March 2009.

2. Old-age pension reforms

A pension reform was approved by Parliament in 2009, which is in the process of changing several of the key principles on which the old-age pension both under the NIS and within the occupational schemes is constructed and calculated. In the newly approved system, all working years and all income from work will count when the pension is to be calculated. Furthermore, in the new system, the old-age pension will be accessible between 62 years and 75 years. The legislative changes are expected to be passed by Parliament (*Stortinget*) during the spring of 2011.

In 2001, a Pensions Commission was established to consider fundamental changes to the pension scheme because of population forecasts dooming the financial sustainability of the national insurance system in a 30-50 year perspective. Another reason was that the National Insurance Scheme has developed a flatter distribution profile than originally intended and that the growing number of work-related supplementary pension schemes and individual pension schemes necessitated an overall review of the system. The government stated that they intended that the revised pension system should hold a good income redistribution profile, a good gender profile, as well as being user-friendly.³⁹⁰

The Commission presented its report in 2004.³⁹¹ One of the main topics of this debate was gender equality, with particular focus on the differences between men's and women's pensions.³⁹² The main objections to the proposal was that the new rules will be detrimental to women, as women under the new system will earn less than now, as the system with 'best-year' counting (the 20 best years) will be abolished as the basis for calculations, and all years' income will have equal weight in the calculation. This will imply that women and people with weak ties to the employment sector will fall behind, as in the upcoming system they will be penalized even more than now for not working full time and for staying at home with their children etc. However, in 2005 the largest political parties in the Parliament (*Storting*) reached an agreement on certain important guidelines for further work on changing the pension system, effective from 2010 (in reality 2012).³⁹³ This agreement is based on the principle that the new pension system must reward economic activity more than the current system does. Work in the home and the care of small children must be rewarded in a more comprehensive manner than under the current system. The new system was partly approved in Parliament on 28 May 2009. Key elements of the new system include the introduction of a lifelong pension earning, a life expectancy ration and a new indexation in the NIS. The Government has signalled a need for 'a closer look at the provisions regarding the temporarily employed and part-time employees'.³⁹⁴ This has not yet been published.

The system currently approved will imply that all years and all income will be registered and included. The connection between income from work and the pension received will become pronounced in the new system. There is a clear connectivity between the savings-component of the pension system, as the deposit paid during

³⁹⁰ For an overview of the Norwegian pension system before the amendments, see http://www.regjeringen.no/upload/AID/temadokumenter/pensjon/2007/Chapter1_Governmental_White_Paper_No_2006-2007.pdf, accessed 26 November 2010.

³⁹¹ Government White Paper, NOU 2004:1 Modernised Social Insurance – Sustainable Pensions for the Future, which preceded Report No. 12 (2004-2005) to the Storting – Pension reform – security for pensions.

³⁹² In 2004 the Centre for Gender Equality collected one million signatures to protest against the proposal.

³⁹³ Recommendation No. 194 (2004-2005) to the Storting (Parliament).

³⁹⁴ Se Proposition to the Odelsting No. 5 (2006-2007) p 8.

years of employment will be better reflected in the payment once the person retires. In the public debate, there is disagreement regarding how this in reality will work out in relation to the gender dimensions of the new system. The Equality Ombud has been sceptical about abolishing the previous 20-year rule,³⁹⁵ as she points out that this is a rule that has worked well for women who have had periods in which they have not been in paid employment. The ‘20-year rule’ has led to a redistribution profile that has been high in the current system, and there are diverging opinions as to the redistributive aspects of the new system. Researchers who have worked with the economic aspects of women and pension/social security are not that sure how the pension reform will turn out, and if the new system will be more gender-equal than the old system.³⁹⁶

In my opinion, the key challenge in both the old and the new pension system under the NIS for women is that the division of labour that is agreed within the family/cohabitants/partners based on stereotypical gender roles cannot be reflected in terms of pension credits. Under the current system, pension credits are individual credits. Because women in general earn less than men, many couples agree that the woman will work reduced hours, for example when children are small. In a short-term economic and practical perspective this may be a rational thing to do; however, women lose out in terms of investment in their own old-age pension, by earning few pension credits. Both women’s lower income and the stereotypical gender roles are decisive for how women lose out. Several legal scholars have suggested sharing the pension points between the couples when one does not work or works part-time, and this is a result of a mutual decision by the couple. These suggestions have so far not been explored by the politicians. The ruling perspective is that pension points are individual private property.

3. Retroactivity of legislation

The pension system has been amended ‘with a gender profile’ as referred to above, but the gender aspect is not entirely clear. The current changes are ongoing, but already accrued pension points/pension rights are not altered/diminished. Pensions are in principle not retroactively calculated, but adjustments are made if irregularities are found.

4. The World Bank Model

Not applicable.

³⁹⁵ The principle of the ‘20 best years’ calculation method implies that the final pension is calculated based on the so-called final credit figure (*sluttpoengttall*), which is calculated based on an average of the twenty best years of the retired person’s highest yearly credits. This rule does not have a clear or desired redistributive profile. The consequence of the 20 best years principle varies unsystematically between persons with the same life income and who have paid the same amount into the NIS, but who have had different employment histories and income profiles over the years. Workers who have had a very low income, or have worked in a small part-time position, or have not worked continuously over a long period of time, will have very little invested in the system. Many of these employees will only receive the minimum benefits, which in terms of payment are so low that it is difficult to survive on the pension alone.

³⁹⁶ See an article by the Ombud published on 17 April 2008 at <http://www.ldo.no/no/TopMenu/Aktuelt/Nyheter2/2008/Pensjonsreformen-vil-ramme-kvinner/> and, in contrast, a speech delivered by Charlotte Koren at the Centre for Gender Research at the University of Oslo dated February 2006 and titled ‘A new social insurance system: more gender-equal than the old one?’ at http://www.stk.uio.no/til_nedlasting/mars08_Koren.pdf. See also Koren, C. (2006) Har vi en mannfolketrygd? I Clarhäll, J., Stensbak, H.: RØST: Kvinner og cash. Radikalt økonominettverks skriftserie 2006-01. Oslo: Radikalt økonominettverk, s. 63-72.

B) STATUTORY OLD-AGE PENSION SCHEMES
(Schemes falling under Directive 79/7/EEC)

1. Qualifying conditions

NIS basic pension – the minimum universal pension – the social assistance old-age pension

Old-age pension under the National Insurance Scheme consists of a basic pension plus possibly a supplementary pension or a special supplement depending on the work or services, as well as income-tested supplements for children and the spouse.

All residents in Norway are entitled to become members ('insured') of the NIS, and are thus in principle eligible to receive an old-age pension. This also forms the safety net for elderly people. In the NIS, the total insurance period equals the total residence period. In order to qualify to receive the basic pension – the minimum universal period – it is necessary to be 'insured' for at least three years between the age of 16 and the year they become 66.

The minimum pension is calculated based on the length of the insurance period and is independent of previous income and the contributions paid. It is thus a minimum amount of NIS basic pension at a flat rate, eligible for all who are 'insured' under the NIS. The basic 'insurance period' means years of residency in Norway. The fact that the minimum pension is based on residency in Norway leaves all residents and all who are 'insured' under the system with a basic minimum income during old age. To receive a minimum pension it is necessary to have 40 years of residency in Norway. For an unmarried pensioner, this minimum old-age pension at a full rate is currently NOK 136 296 annually (approx. EUR 15 848). The gender perspective in terms of the recipients of minimum pensions is notable: In figures published in 2007, among all old-age pensioners, pensioners with minimum rights constitute 28.2 %. Among the pensioners with minimum pension rights, in 2007 women accounted for 87.7 %, men accounted for 12.3 %. However, a total of 41.4 % of all female pensioners received only the minimum pension.³⁹⁷

For people with less than full residency (40 years), the minimum pension is reduced proportionally. For residents with less than 40 years residency, an additional means-tested benefit ('*supplerende stønad*') is awarded annually upon application to ensure that these residents also receive a minimum pension.³⁹⁸ The means-tested benefit is assessed against personal wealth, income and the partner's income.

The NIS has been set up to reward full-time employees working continuously during their career. This makes it difficult, if impossible, for part-time workers, or workers who have not worked continuously during their career to benefit fully from the National Insurance System regarding their old-age pensions. This is particularly evident in relation to the supplementary pension under the NIS.

NIS supplementary pension ('tilleggspensjon')

The supplementary pension scheme is built on the premise that one receives what one has paid in. Thus, a system of credit points is awarded each year. Full credits are given for annual incomes up to 6 G (NOK 421 536 approx. EUR 48 216), and limited credits are given for salaries between 6 and 12 G (NOK 843 072 approx. EUR 96 432). Salaries above 12 G are disregarded.

³⁹⁷ As of 6 August 2007, accessed on <http://www.nav.no/805355393.cms> on 28 June 2010.

³⁹⁸ See Act on means-tested additional benefits for people with short residency in Norway (*Lov om supplerende stønad til personar med kort butid i Norge*) of 29. April 2005 no. 21.

Pension credits are calculated annually based on income from work, so-called 'pension-giving income'. Pension credits are only calculated for 'pension-giving income' above 1 G. When the annual income is less than 6 x G, the pension credits are calculated in the following way:

Income minus 1 G divided by 1 G equals the credit point figure.

For income between 6 G and 12 G, only $\frac{1}{3}$ of the income is included in the calculations. Income over 12 G is not included. The highest pension credit that can be accrued one year is 7.00. An income of 12 G will thus be calculated in the following way:

– 552 864 minus 69 108 (1 G) divided by 1 G equals 7.00.

The amount of the supplementary pension also depends on the number of pension-earning years and the yearly pension credits. Full accrual is achieved after 40 years, although the calculations of payment are based on the person's 20 best income years. Special rules are given for vulnerable groups, for example the scheme that covers young disabled persons, which gives annual credits when the sole income is an invalidity benefit, to avoid young disabled persons becoming minimum pensioners upon reaching retirement.³⁹⁹ Periods of unemployment, periods of illness/disability are given pension credits which are taken into consideration when benefits are calculated in the same manner as for all other income.

Special supplement ('særtilllegg')

A particular feature of the current system that was introduced especially for pensioners (women) who had little or only a small supplementary income is called the 'special supplement'. A full special supplement is payable if the insurance period is at least 40 years, which is the case for NIS members. Residency is counted as an insurance period. The special supplementary pension is reduced proportionally where the insurance period is shorter, as it might be for immigrants. If the pensioner has a right to a supplementary pension from the NIS or from an occupational pension scheme, this is deducted from the special supplement.⁴⁰⁰ The special supplement is of special importance to home workers and part-time workers. When the special supplement increases, the number of minimum pensioners increases. This is because the special supplement is often used as a tool to improve the economic situation of minimum pensioners. However, this is an unfortunate incentive for women who have worked part time and have a low supplementary pension: when the special supplement increases, it might increase to become higher than their supplementary pension, and thus they are considered minimum pensioners. It was suggested that a gender analysis be carried out to assess the consequences of this.⁴⁰¹ This analysis was not carried out, and is now probably not relevant, as in the new system it is proposed to abolish the special supplement and to introduce a system with a guaranteed income similar to the minimum pension. This new proposal might be better for women with a small part-time position, but more detrimental to those who have never worked and never received invalidity pension through which they have gained pension credits.

2. The amount of the old-age pension

With the new rules on old-age pensions currently underway, the NAV has initiated a series of campaigns in which they aim to describe how the new system will affect the

³⁹⁹ See NIA article 3-21.

⁴⁰⁰ See NIA article 3-3.

⁴⁰¹ As proposed in the government White Paper NOU 1999:13 Women's Health, point 11.1.3.1.

calculation of old-age pensions.⁴⁰² The new system is based upon a flexible retirement pension allowing the drawing of a pension at the age of 62, and that a portion can be drawn while still working. This allows for a combination of work and retirement without the pension being reduced.⁴⁰³ The system of calculation/earning an old-age pension under the new rules will imply that all years in work until the pensioner reaches 75 years count towards the pensionable income. The personal pension accumulation is expressed in a pension fund adjusted each year. This is increased each year by 18.1 % of pensionable income up to 7.1 x the national insurance basic amount (G). This is also the ceiling on benefits.

3. Periods of caring

Periods of care for small children are taken into consideration and credited for pension right and amount purposes, but only if the employment relationship lasts during the leave. All periods of maternity leave or parental leave are taken into consideration and credited for pension rights and amount purposes. This is an important limitation for many women, as it is at the beginning of their career that most employees are in irregular work, and might thus be between jobs during maternity leave – and thus not accrue pension points during leave.

Periods of interruption of employment due to bringing up children – Care credits

Periods of interruption of employment due to raising children are credited through *care credits* which are included in the calculations regarding the supplementary pension.⁴⁰⁴ 'Persons' (in principle gender-neutral and accessible for both men and women, but in reality women) who are taking unpaid leave to care for children under 6 years of age and for disabled, sick or elderly people at home are credited with 4.5 pension points in the supplementary pension scheme, corresponding to pension entitlements based on an income from work of NOK 281 024 (approx. EUR 32 677), called *care credits*. The care credits are automatically assigned to the mother if the parents do not give notice that the care credits should be assigned to the father. All mothers of small children are given these credits, but if they are working outside the home, with a higher pensionable income of 4.5 credits, their care credits are disregarded. As this was introduced in 1992, it will only have effect as of around 2020.⁴⁰⁵ Interestingly, the Equality Ombud was the only party that participated in the consultation around this legislative change that had objections to this proposed change. The Ombud is sceptical towards tools and incentives that in their form contribute to keeping people out of the employment arena, and which contribute to upholding and reproducing traditional gender roles in families. She is quoted as saying 'With the level of care credits as low as the proposed, it seems as the Ministry

⁴⁰² For an overview of the new calculations, see in English http://www.nav.no/kampanje/_binary?download=true&id=425139

⁴⁰³ See http://www.nav.no/kampanje/_binary?download=true&id=425137

⁴⁰⁴ See Hege Brækhus, *Omsorg som vilkår i trygderetten (Care as a condition in Social Security Legislation)*, in Holgersen, Krüger and Lilleholt (ed.), Nybrott og odling, Bergen 2002, p 405-419.

⁴⁰⁵ Researchers such as Tove M. Bolstad have pointed to the anacronism that women born between 1935 and 1963 are not awarded care points, and have suggested that these women be given care points with retroactive effect. These women belong to the generation where a high percentage of women were not employed outside the home, but stayed at home with their children when they were small. These women are not eligible for care points.

still sees women as the main care providers in relation to small children' (author's translation).⁴⁰⁶

A minimum provision on care credits might be introduced in EU legislation in the field of social security.

4. Exceptions, Article 7.1 of Directive 79/7

Pensionable age and the possible consequences for other benefits (Article 7.1 a))

The general retirement age is 67 for both women and men. This is also when the old-age pension as a main rule is initiated, unless the employee decides to retire early according to a contractual early retirement scheme, which can be accessed at 62 years. However, it is possible to work until 70 years, but the pension for an employee between 67 and 70 is reduced by 40 % of the exceeding income. At 70 years, if the employee decides to continue to work, and is allowed to do so by his or her employer, the employee will receive both an old-age pension as well as earned income in full. Early retirement for non-health-related issues is only available for those who have access to pension schemes outside the national insurance scheme, such as the agreed early retirement schemes or occupational pension schemes with special retirement ages.

There are a number of mandatory retirement age limits set for various occupations, which require employees to stop working at an earlier age. This is legislated through special occupational legislation, and supplemented by occupational pension systems. Furthermore, the system of contractual early retirement is highly developed, with five different schemes working in parallel, which enables employees in certain groups to retire at 62 years and start receiving a pension. The pensioner will continue to earn pension points in the NIS as if they had worked until 67 years.

Advantages granted to persons who have brought up children (Article 7.1 b))

There are no caring advantages in the Norwegian old-age pension system apart from the elements as described above.

Old-age or invalidity benefit entitlements or increases in long-term benefits by virtue of the derived entitlements of a wife (Article 7.1 c) and d))

Women and men are in principle treated equally in survivors' benefits and the same ages are in all cases used as a determining factor for eligibility.⁴⁰⁷ As with most other benefits under the NIA, the legislation is worded in a gender-neutral manner. However, as men and women have unequal pay, a consequence of the pay gap, men and women also receive unequal pensions. Although it is normally men who receive most money through the social security system, it is women who benefit the most through the system of the survivor's pension, as they have accrued lesser benefits in their own name.⁴⁰⁸ The benefit aims to compensate the loss of the provider.

There is a special Act regarding the curtailment of benefits between spouses in relation to benefits from the National Insurance Scheme,⁴⁰⁹ which the EFTA court

⁴⁰⁶ Proposition No. 37 (2008-2009) to the Storting: Legislating changes in the National Insurance Act – a new old-age pension (om lov om endringer i folketrygdloven (ny alderspensjon)) p. 41.

⁴⁰⁷ See NIA chapters 16, 17 and 18.

⁴⁰⁸ Kjønstad, Asbjørn and Aslak Syse (2008) *Social Welfare Rights I (Velferdsrett I)*, Gyldendal Oslo, p. 356.

⁴⁰⁹ See the Act in question, the *Lov om samordning av pensjons- og trygdeytelser* of 6 July 1957 No. 26.

found to be a breach of Directive 86/398/EC as it discriminated against widowers.⁴¹⁰ The discriminating section was amended in 2009. The Act on the curtailment of benefits in itself has not been tested from a non-discriminatory point of view.

C) OCCUPATIONAL OLD-AGE PENSION SCHEMES

(Schemes falling under Article 157 TFEU, Directive 86/378/EEC, as amended by Directive 96/97/EC, now Articles 5-13 of the Recast Directive 2006/54/EC)

1. Coverage

Occupational old-age pension schemes include, in addition to the occupational old-age scheme under the NIS as described above, among others supplementary pension schemes for public civil servants organized through the Public Service Pension Fund,⁴¹¹ a compulsory supplementary pension scheme in employment organized through insurance companies,⁴¹² and a compulsory occupational injury benefits scheme,⁴¹³ financed by employers and employees through contributions and taxes. These are mandatory and cover in principle all employees.

The introduction of the compulsory supplementary scheme stipulates that the employer must buy insurance that covers 2 % of pensionable income for contribution-based systems, thus there are in principle no sectors of the economy where occupational pension schemes are not operative. This gives the broad framework for all employers to introduce an occupational pension scheme for their employees, at a minimum level. Employers who already have a pension scheme must ensure that the scheme satisfies the minimum requirements of the Act. The Act does not apply to employers who already have a pension scheme in accordance with the law or a collective agreement for state or municipal employees. The employer's contribution towards the compulsory occupational injury scheme depends upon the risk related to the enterprise. What kind of systems the employer can buy into is determined by a number of legal regulations as referred to above.

A key issue from a gender-equality point of view is that in a number of instances workers are not covered by the schemes, such as insurance agreements operating with conditions requiring that a person has to work at least 14 hours per week before qualifying for membership in a supplementary pension system.⁴¹⁴ A 14 h/w equals a 38.5 % position in occupations with reduced working hours, which is the case for many publicly dominated female professions such as nurses and care workers. The arguments for keeping such a threshold is, in addition to the negligible administrative burden they imply, that part-time workers with small employment contracts have nothing to gain from joining the pension fund, as they will eventually receive less from the scheme than what they will pay (they pay 2 % of their gross salary) by being members. Many part-time workers combine various small employment contracts that are each too small to be considered, but that in total give a higher per cent work contract. This can be work for the same or many different employers. Particular

⁴¹⁰ EFTA Court Judgment of 30 October 2007, Case No E-02/07.

⁴¹¹ See the Act on the Public Service Pension Fund of 28 July 1949 No. 26 (*SPK-loven*).

⁴¹² See the Act on the Compulsory Supplementary Pension Scheme in Employment (*OTP*) of 21 December 2005 No. 124. These schemes are designed within the framework of the Act on the Defined Benefit Pension Scheme and the Act on the Defined Contribution Pension Scheme.

⁴¹³ See the Act on Occupational Injuries Benefit Scheme of 16 June 1989 No. 65 (*lov om yrkesskadeforsikring*).

⁴¹⁴ See the SPK Act article 5, which is a condition laid down in the Public Service Pension Fund to the effect that employees are not included in the occupational pension schemes if they have a working week of less than 14 hours. Similar is the KLP scheme for municipal employees.

challenges arise in instances where a person by contract has a very little per cent position, but in reality works up to a full-time position by taking on additional work. In some systems, where it is the norm rather than the exception to work more than the working contract implies, such as in the health-care services, a number of the collective agreements are specific that pension rights are accrued according to the actual time worked, not time according to contract.⁴¹⁵

A similar limitation is that employees with less than a 20 % position are excluded from occupational pension schemes. Through the compulsory supplementary pension scheme, employers and employees may agree on using the Act on a Defined Benefit Pension Scheme and the Act on a Defined Contribution Pension Scheme as frameworks for their pension schemes. The aim of the compulsory supplementary pension scheme is that all workers should be part of an occupational pension scheme. However, through both the underlying schemes, part-time workers with less than 20 % of a full-time position and workers in temporary positions of less than 20 % annually do not have the right to join the compulsory occupational pension schemes, unless it is stated otherwise in the underlying regulation covering the pension agreement between the employer and the insurance company.⁴¹⁶ Workers with a 20 % position or more have a right to join the scheme. The legal preparatory work does not specify why the threshold has been set at a 20 % position, but argues that there needs to be a limit downwards: in enterprises with a high number of part-time workers, such as students working part time as well as in enterprises with a high turnover of staff, there is a need for rules that limit membership in pension schemes so as not to create unnecessary administrative burdens.⁴¹⁷

The above threshold has never been tested in court. However, in a recent Master's thesis, the author argued that the rule was discriminatory, which I agree with.⁴¹⁸ With the new system of old-age pension underway, there is furthermore even less objective justification for keeping workers with a low employment percentage out of the occupational pension schemes.

Another key issue seen from a gender-equality point of view is that a certain time of employment is required before rights to membership/benefits are earned. In many schemes there is a threshold for pension payment which gives a three-year grazing period upon entry into civil servants' pension schemes. This is unfortunate for people with looser ties to the employment market. If the employee stops working or is dismissed within this first three-year period, the accrued pension credits in the occupational schemes are lost.

2. Calculation of old-age pensions and contributions

Depending on the pension scheme, pensions are both earnings-related and contributions-related, as there is a correlation between the contribution paid into the system and the actual level of the person's earnings. Until now, a strong emphasis has

⁴¹⁵ In the Basic agreement (HTA) in the collective bargaining area with the association of local and regional authorities (KS), chapter 2 para. 2.1.1, it is specified that if the actual working hours including overtime exceed 14 hours per week, based on a quarterly average calculation, the employee will be included in the pension fund.

⁴¹⁶ See the Act on a Defined Benefit Pension Scheme article 3-5(1) and the Act on a Defined Contribution Pension Scheme article 4-2(3).

⁴¹⁷ See NOU 1998:1 p 128-130 and Ot. Prp Nr 47 (1998-199) point 5.2.

⁴¹⁸ Tårnesvik, Didrik: Discrimination of part-time workers, with a focus on the conditions for membership of the occupational insurance schemes (*Diskriminering av deltidsarbeidere, med fokus på tjenestepensjonslovenes krav til medlemskap*), Unpublished paper, Master's thesis at the Faculty of Law, University of Oslo, November 2007.

been placed on the final salary, but with the introduction of the new system the pension calculation will be based more on earnings every year and all years. In relation to the OTP, the pension right is subject to a minimum contribution, as described above.

In relation to occupational pension schemes, periods of unemployment are not taken into account for the accrual of pension rights.

3. Actuarial factors

Gender as an actuarial factor when calculating insurance premiums

In the Gender Equality Tribunal case 1/2004, the practice of six different insurance companies was found to be a breach of the Gender Equality Act (GEA) Article 3,⁴¹⁹ as the companies all used gender as an actuarial factor when calculating insurance premiums in relation to injury, sickness and invalidity insurances. The Tribunal ordered the companies to abolish their discriminatory practice within two years. The two-year time-limit was given with the understanding that the companies needed some time in order to change their practice and to find other actuarial factors than gender. In 2005 (Equality Tribunal Case 9/2005) the insurance companies asked for this time-limit to be extended until Directive 2004/113/EC would be implemented in the EEA agreement and thus in Norwegian law. A majority of the Tribunal found that the circumstances of the case were such that the two-year limit was upheld. The directive was implemented in the EEA agreement as of 28 May 2010, but the issue of the use of actuarial factors is not yet fully resolved.

In a recently released White Paper on the Scope of Activities of Insurance Companies, the question of using gender as an actuarial factor is discussed.⁴²⁰ In relation to the debate on the increased individualization of premiums, the principle of equality between groups is discussed in relation to how far a company might attempt to differentiate a risk without breaking with the initial principles of insurance enterprises: to even out risks on the collective. It is noted that it is limited how far gender may be utilized as a characteristic in which to differentiate risk.⁴²¹ Furthermore, the Commission suggests that the principles of the current legislation be continued, but noting that the insurance company might be prevented from giving weight to different risks linked to different groups of clients, even though the company might have actuarial factors and statistics that build on their justification to give weight to these factors. One example is the difference between men and women linked to different kinds of risks.⁴²²

Gender as a specific condition for old-age insurances

In insurance plans in contribution-based systems, gender can be a factor which is used for the payment into the system by the company, but not as criterion through which payment is made. In the Act on a Defined Contribution Pension Scheme gender is defined as a criterion, as Article 5-2 gives a right to utilize a principle on proportionality. In the contribution plan, consideration given to the different life expectancy between women and men may be taken into account. For schemes where the pension premiums will be converted into a premium, in the utilisation of the rules a higher premium or percentage shall be used for women than for men, so that the

⁴¹⁹ See the Act on Gender Equality (GEA) of 9 June 1978 No. 45 (*Likestilling*)

⁴²⁰ White Paper 2008:20 on The Scope of Activities of Insurance Companies, pp. 37-39.

⁴²¹ Ibid p. 72.

⁴²² Ibid p. 141.

yearly pensions that the contributions will yield are independent of the gender of the employee.⁴²³ It can be argued that this kind of legislation, where women are more costly employees than men under certain circumstances, will make it more difficult for women to obtain work. In reality, though, few employers have a complete understanding of the effects of occupational pension schemes and thus this fear might be overestimated. In principle, though, these kinds of rules are unfortunate from a gender perspective.

4. Caring credits

Specific caring advantages as such are not provided by occupational schemes, but maternity/parental leave are taken into consideration and credited for pension rights and amount purposes on condition of the existence of an established working relationship during the leave.

5. Vesting and reimbursement rules

In principle, to have a right to a pension, there is a need to be a member of the pension system upon retirement. However, once a person has qualified as a member of the pension system as described in the three-year grazing period above, there is a system of deferred pension, in which the period of employment is calculated proportionally upon the receipt of a pension. For people in many temporary different positions, this might lead to little or no pension credit accrual at all in the occupational scheme. However, this three-year rule is good for non-Norwegians working only part of their life in Norway, as it guarantees, for example, foreign employees with three years or more of employment a right to a deferred, proportional pension in the Norwegian system upon old age, regardless of where they are living at the time of their pension.

6. Pensionable age

The pensionable age for men and women in occupational schemes is the same.

POLAND – Eleonora Zielińska⁴²⁴

A) GENERAL QUESTIONS

1. The old-age pensions system

The current Polish system of social insurance has a common and unified character, in the sense that one legal act from 1998⁴²⁵ covered not only workers, but also persons engaged in an activity other than under an employment contract (whose pecuniary benefits were paid from the social security scheme and which were previously the subject of reform in separate legal acts). The situation of persons engaged in the agricultural sector is governed by a separate act from 1990⁴²⁶ and although subsequent governments had envisaged the need to harmonize the old-age benefits of farmers and

⁴²³ Act on a defined contribution pension scheme article 5-2 No. 2.

⁴²⁴ With Tomasz Lasocki and Magdalena Szczepańska, Insurance Law specialists at the Faculty of Law and Administration, Warsaw University.

⁴²⁵ Law on the Social Insurance System of 13 October 1998, Dziennik Ustaw of Republic of Poland (Journal of Laws of the Republic of Poland – hereinafter JoL) 1998 no. 137, item 887, with subsequent amendments.

⁴²⁶ Agricultural workers are governed by the Act on Social Security for Farmers of 20 December 1990. Uniform text – JoL. 1998, no. 7, item 25, with subsequent amendments.

their relatives with the benefits for other workers, it still remains in force. Totally distinct from the general system are the military and the police, public prosecutors and judges who have separate old-age pension systems, based on a method of income maintenance (in the absence of contributions, their retirement benefits depend solely on earnings before retirement).⁴²⁷ The old-age benefits granted according to the new system of social insurance are paid out of one, two or three sources, called pillars (according to the World Bank system). Pension schemes under pillar one and pillar two may be considered to be part of the European first pillar targeted by Directive 79/7/EEC. In both pillars the insurance has a compulsory character and is based on the performance of work in one of the legally defined relationships, regardless of the income derived therefrom (among the flexible forms of employment only work performed within a contract concluded for specific work (a special kind of contract under the Polish Labour Code which is limited to the performance of indicated task is not subject to insurance). One's date of birth constitutes the main criterion of whether one is covered by the old or by the new system⁴²⁸ (miners are an exception, as they are all covered by the previous old-age pension system). The first pillar is based, similar to the old system (before the 1999 reform),⁴²⁹ on the so-called 'intra-generation agreement', i.e. Pay As You Go (PAYG), in which money paid by persons who are currently working is transferred to retired persons. The contributions are financed by both employers and employees. In this pillar an insured person receives a benefit calculated according to the National Defined Contribution formula (NDC). The system is managed by ZUS (Zakład Ubezpieczeń Społecznych – the Social Insurance Institution). The second pillar is a common and mandatory system based on the Defined Contribution formula (DC). The contributions are financed by employees and are further invested. This system is managed by OFE (Otwarte Fundusze Emerytalne – Open Pension Funds). The current old-age pension system does not include any allowances for those who have a very low level of benefit that would allow them to receive a guaranteed pension (a so-called 'minimum pension'). Insured persons in a very specific and difficult economic situation may however receive financial help from social assistance. The Polish old-age compulsory pension system does not provide for any survivors' pensions, although it does guarantee inheritance to funds accumulated in individual accounts in the second part of the system if the insured has died before retirement or within three years thereafter. However, this regime may change as work on Second-Pillar Lifelong Pensions (Ustawa o dożywotnich emeryturach kapitałowych) is still in progress.

2. Old-age pension reforms

According to the instigators of the pension reform that took place a decade ago, one of its main objectives was to create an individual pension account for each insured person. Compulsory old-age pension insurance, both in the first and second pillar, is based on a defined contribution formula (the first on NDC and second on DC), which determines the entitlement to and the amount of a pension from the accumulated

⁴²⁷ See the scheme: annex

⁴²⁸ The new system is obligatory for persons born after 31 December 1948, which means that their future benefits will not be calculated within the defined benefit formula (DB). Persons born before 1 January 1949 are excluded from the new retirement system because the new rules could result in an important decrease in their benefits. Persons born between 31 December 1948 and 1 January 1969 could have chosen by the end of 1999 whether to allocate the whole of their contributions to the 1st pillar or whether to share them between the 1st and 2nd pillar.

⁴²⁹ The new system entered into force on 1 January 1999.

funds. In this way, one of the two factors determining the amount of benefit is the amount of contributions (the second factor is the expected life expectancy). For this reason, there are no elements such as non-contributory periods or pension privileges (e.g. early pensions), which could create a distinction between the legal situation of insured persons based on sex (this kind of solution was used in the old system). As the future benefit is dependent on contributions usually calculated on an income basis, the prospective lower pensions for women will be a consequence of differences in the level of earnings received by insured persons of different sex. The legislature has decided not to level out these disparities by creating a system of subsidizing the contributions of women. However, gender equality seems to be achieved by applying a uniform coefficient of life expectancy. Women who live statistically longer would have lower benefits; however, the application of a uniform rate will increase benefits for women at the expense of men (according to GUS (the Central Statistics Office) data for 2007, the average life expectancy for men was 71 years, and for women 79.7 years). Although disparities in the labour market are not eliminated at the stage when pension assets are accumulated, the pension system intends to compensate this at the time of calculating the benefits.

Filling in social roles, such as caring for offspring, are covered by the old-age pension in both pillar systems as follows. Old-age pension contributions for persons receiving maternity allowance (or an allowance which equals the maternity allowance) are calculated from the base which is equal to the amount of that benefit. In the case of leave to raise a child the calculation base will be 60 % of the average monthly wage in the previous quarter (31st December 2011, the contribution base represents the amount of the minimum wage - that is the lowest salary guaranteed by law). The contributions of these persons are financed from the state budget. Please note that old-age insurance cover for those who remain outside the labour market because of motherhood is dependent on being entitled to benefits under the Act on Social Insurance Benefits for Sickness and Maternity. This means that taking care of children in the earliest period of their lives will not always lead to an increase in the amount of the pension. The increase will only apply to the parent who is entitled to social insurance.

Working in flexible job forms formally does not adversely affect one's future pension. Among the flexible forms of employment (fixed-term contracts, part-time, staff leasing, teleworking), the civil form of employment (mandate (order) contracts, contracts for specific work, agency contracts), self-employment, and cottage industry contracts are all covered by compulsory types of social insurance (including old-age insurance). An exception is the contract for specific work. There is no minimum income ceiling, which is the basis for exclusion from compulsory insurance (unlike e.g. in the German system). Thus, earning any income under the mentioned contracts provides an increase in retirement assets. In this way, a woman who chooses one of the flexible forms of employment does not have her future pension amount adversely affected.

It should be noted that the reformed old-age pension system has eliminated many doubts which existed in the previous pension regime, like the privilege of early retirement for women (see the Constitutional Tribunal's decision of 23 October 2007, ref. P 10/07⁴³⁰). On the other hand, controversies still arise due to retirement age differences between men and women (the Ombudsman had filed an application to the

⁴³⁰ See more on this judgment: Eleonora Zielińska. Polish report (in:) European Gender Equality Law Review 2008–1. European Network of Legal Experts in the field of gender equality.

Constitutional Tribunal to examine the constitutionality of this arrangement⁴³¹), or applying a uniform rate of life expectancy, which can be a challenge for those pension institutions (i.e. private institutions which deal with the payment of pension companies (2nd pillar) - if called upon) whose clients will be mostly women.

3. Retroactivity of legislation

The last change to the old-age pension law due to gender inequality was as a consequence of the Constitutional Tribunal's decision (ref. P 10/7 from 23rd of October 2007) and concerned the right to early retirement for men with thirty-five-year contributory and non-contributory insurance periods. However, these changes relate to the previous old-age pension system.

4. The World Bank Model

The classic division of security for old age into three pillars provides that the first pillar, which is the most common, is organized by the state. The second is made up of those instruments that are organised by an employer. Those pension schemes which lie within the future beneficiary's sphere of individual foresight have been placed in the 3rd pillar.

An element of the pension system in Poland in which insured persons gather their contributions in the FUS (Fundusz Ubezpieczeń Społecznych – the Social Insurance Fund) is defined as the first pillar pension system. The second pillar is where insured persons purchase units of account in the OFE.⁴³² The third pillar in Poland includes PPE (Pracownicze Programy Emerytalne – Occupational Pension Schemes⁴³³) and IKE (Indywidualne Konta Emerytalne – Individual Retirement Accounts⁴³⁴). The names used in the Polish system do not strictly correspond to the Western (classic) typology, however. The FUS can undoubtedly be qualified as a classical first-pillar scheme. In this typology Occupational Pension Schemes (PPE) are an example of the second pillar, and Individual Retirement Accounts (IKE) are third-pillar pension schemes.

The classification of OFE still gives rise to a great deal of controversies. Currently the European Court of Justice is divided about the legal nature of the assets gathered in OFE. Because of this, the constitutive elements of this part of the Polish old-age pension system have to be analyzed in order to classify that institution according to the Western three-pillar model.

All insured persons in the new pension system are members of one of the OFE (a decision on whether to join was only left for those who were born by the end of 1968). The mandatory insurance in OFE is the same as the obligation to pay contributions to the first pillar. It means that there is no possibility to expand the

⁴³¹ www.rpo.gov.pl/pliki/12650291150.pdf, accessed 25 May 2010.

⁴³² Units of account may be described as shares in the OFE. An employee buys an unit in the form of his/her contribution. The value of a single unit refers to assets owned by the Fund. The purpose of the Fund is to keep the economic value of the contributions paid by the employee (e.g. in 2010 the employee bought an unit to the value of PLN 50 and the Fund has 1 000 000 units and assets totalling PLN 50 000 000. The employee is going to retire in 2050. So his/her unit will be recalculated as an amount of money. In 2050 the Fund has 2 000 000 units and has assets worth PLN 200 000 000. It means that the employee will sell his/her unit bought in 2010 for PLN 50 for PLN 100 in 2050).

⁴³³ Law on Occupational Pension Schemes (Ustawa o pracowniczych programach emerytalnych) of 20 April 2004 (JoL 2004 no. 116 item. 1207).

⁴³⁴ Law on Individual Retirement Accounts (Ustawa o indywidualnych kontach emerytalnych) of 20 April 2004 (JoL 2004 r. no. 116 item. 1205).

assets in OFE without paying contributions to FUS, as well as the payment of contributions exclusively to FUS, while if one is a member of OFE. Additionally, besides the difference in the retirement age, which is a consequence of the division in the first element of the system, sex is not a diversifying criterion in the second element of the system.

The sole source of funding in this part of the pension system is contributions which are transferred to the fund. OFE are managed by private entities called PTE (Powszechnie Towarzystwa Emerytalne – Common Pension Companies). All of the assets gathered by an insured person during his/her career will be used to purchase the second part of his/her old-age pension. The assets collected in OFE are inherited. OFE should be classified as first-public instruments, not third-individual instruments, and certainly not second-pillar schemes. The evidence for this is based on the source of the funding - compulsory contributions that have certain features of a tax. With compulsory membership and widespread participation, the contribution ceiling also demonstrates that it should be classified within the first pillar. Moreover, the part of the future old-age pension which will come from OFE, together with the part from FUS, is a basic pension, whose minimum amount is guaranteed by the state. The only practical difference which is perceptible to the insured is related to a method of adjustment. The FUS index is linked to the inflation rate, which is determined annually by a regulation by the minister responsible for social security. Maintaining the real value of assets in the valuation of OFE is achieved by calculating the value held by the fund's assets. This is a consequence of the PAYG method in FUS and the capital method in OFE. On the other hand, an argument for including OFE within the third pillar is the fact that they are managed by private entities - PTE. However, the counterargument to this is the fact that private entities invest funds according to strict rules of law. Therefore, private management is limited to the selected and limited financial instruments indicated by the state. Due to the fact that the institution of OFE does not contain any elements of appropriate occupational pension schemes, organized by employers, surely it cannot be qualified as a classical second-pillar scheme? Similar problems occurred in the case of the classification of e.g. the Danish social security system. Ultimately, ATP and SP are treated as two of three parts of the public pillar. The only fundamental difference between the Danish ATP and SP and the Polish OFE is the fact that in Denmark one public institution manages these elements, while in Poland there are several private pension funds. The difference can be explained by the nature of the labour market. In order to achieve maximum efficiency in management, the Polish government had to entrust the management of public resources to the private sector. In contrast to Denmark, only a private employer is able to recruit top managers.

Chart: Methods for classifying the reformed Polish old-age pension system.

The World Bank's Classification

I st pillar: Social Insurance Fund (FUS), managed by the Social Insurance Institution (ZUS)	II nd pillar: Open Pension Funds (OFE), managed by Common Pension Companies (PTE)	III rd pillar: a) Individual Retirement Accounts (IKE) b) Occupational Pension Schemes (PPE)
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Classification used in Western Europe

I st pillar: a) Social Insurance Fund (FUS), managed by the Social Insurance Institution (ZUS) b) Open Pension Funds (OFE), managed by Common Pension Companies (PTE)	II nd pillar: Occupational Pension Schemes (PPE)	III rd pillar: Individual Retirement Accounts (IKE)
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B) STATUTORY OLD-AGE PENSION SCHEMES (Schemes falling under Directive 79/7/EEC)

1. Qualifying conditions

In the reformed old-age pension system a woman who reaches 60 years of age will be entitled to retire, while a man will have this right upon attaining 65 years of age. In the new old-age pension system there are no additional conditions such as the length of the insurance period (it occurs only as a condition for entitlement to a guaranteed amount (*emerytura gwarantowana*), that is, one that is granted if a pension is calculated as falling below a certain minimum). It means that the type of insurance does not affect the acquisition of the right. The only determinant of a pension's value is the amount accumulated from contributions.

There are no minimum earnings that allow one to cease paying the contribution (this issue is regulated differently in German law). Furthermore, if the income based on a legal title to the insurance does not reach a certain level, the basis of the contribution is the minimum wage (the insured person still pays a contribution related to the amount of money that he/she earns). In this way, an insured person who is engaged in flexible forms of employment increases his/her pension rights.

All existing pension privileges are treated as dampening entitlements.

2. The amount of the old-age pension

In the common old-age pension system benefits are calculated by dividing the accumulated pension capital (as the sum of the adjusted contributions gathered in FUS) by the average life expectancy (the same tables are used for both sexes). In this way, the amount of a 'new old-age pension' will depend on the income from the retiree's entire working life. The pension formula implies that in the common old-age pension system terms such as full-age pension, full old-age pension or flat-rate benefits are not used. A minimum pension, defined as the value of the benefit below which a pension will not be paid, does not exist. It means that if, when acquiring a right to a pension, the pension capital is very low, this will imply that an extremely low benefit will be paid out. A 'guaranteed pension' is a different type of benefit than a 'minimum pension'.

The type of employment relationship does not affect the amount of the pension. Thus, insured persons engaged in flexible forms of employment will acquire a pension which is of the same amount as a person employed as a full-time employee if the contributions were of the same amount.

Although there is no maximum pension as such, due to defining the maximum contribution base (30 times the average salary), pension benefits should not exceed a certain amount.

The receipt of unemployment benefit also provides an insurance entitlement, and therefore increases the pension entitlement.

Retirement benefits are adjusted by the index which is based on increases in the prices of consumer goods and services. Since only a few women have already retired under the reformed system (the first group of men will only retire under the new pension system in 2014) no data on the replacement rate between pensions and wages are available.

3. Periods of caring

The period of remaining outside the labour market due to motherhood can take two forms, which are protected by the old-age pension system. The first one is the period during which maternity allowance is received (or an allowance which is equivalent to a maternity allowance). It provides an insurance entitlement. Contributions for this period shall be financed from the state budget. The contribution's base is the amount of the allowance. Although the pension law does not differentiate between the situation of insured persons based on gender, access to maternity/paternity benefit is different for men and women. The Polish system strongly favours the role of the mother in the first period of a child's life. The father can only take over the mother's right to maternity benefit after 14 weeks. Additionally, this benefit will be available to the child's father during paternity leave for 2 weeks (maternity leave ranges from 20 to 37 weeks). However, this issue is beyond the scope of the old-age pension system and falls under sickness insurance. The other protected form of remaining outside the labour market due to motherhood is being on parental leave. As in the case of maternity benefit, the contribution is financed from the state budget. During the period of parental leave the insured is not entitled to any benefit. As a consequence, the contribution base is calculated in a different way. The base will finally amount to 60 % of the average monthly salary (until the end of 2011 this is the minimum wage). Paying contributions during these periods provides an increase in pension rights. The legislature has not set a maximum contribution period for receiving an allowance during maternity or parental leave. On the other hand, a person whose income is higher than 60 % of the average salary (until the end of 2011 the minimum wage) and who remains on parental leave will discover that his/her rate of growth concerning his/her pension entitlement will diminish compared to before taking such leave.

On the basis of the above-mentioned arguments, it should be noted that remaining outside the labour market because of motherhood is treated as any other entitlement to insurance.

Resigning from employment because of the need to care for a family member provides an entitlement to insurance after passing the income criterion. It means that this situation is only protected in terms of the poorest people profiting from social assistance. The basis of contribution is the amount of the family's income per capita.

4. Exceptions, Article 7.1 of Directive 79/7

Pensionable age and the possible consequences for other benefits (Article 7.1 a))

Retirement risk is defined in Poland as the right to leave the labour market after reaching a certain age. Due to the fact that this is a right, but not an obligation, the legislature does not compel people who reach retirement age to leave the labour market. Any exceptions to this rule are treated cautiously and must be examined as to whether the provisions in question are in accordance with the Constitution (see the decisions of the Constitutional Tribunal in cases concerning the following occupations: teachers (28th of March 2000, K 27/99), pharmacy managers (13th of June 2000, K 15/99), university lecturers (24th of September 1991 Kw 5/91), civil servants (K 15/97) and local government employees and state officials (5th of December 2000, K 27/99). Moreover, attaining retirement age shall not be considered as a reason for dismissal (Resolution of the Supreme Court of 21 January 2009⁴³⁵). Another risk component states that a necessary element is leaving the labour market (termination of employment). However, from 1 January 2009, the legislature decided to introduce the privilege of excluding from the definition of risk the requirement of terminating employment. As a consequence, after attaining retirement age, the entitled person may receive an old-age pension without leaving his/her job. Another privilege is that continuing in employment, after reaching the retirement age, does not result in the suspension of the right to benefit (such a suspension took place in the case of pensioners under the old system, who had taken early retirement, until they reached retirement age).

Poland has still not decided to align the retirement age for men and women. Women acquire the right to a pension at the age of 60, while men do so at the age of 65. The differentiation in the retirement age was a certain advantage for women in the previous pension system. However, after the reforms it appears that in some aspects it also results in negative consequences.

As an example of indirect diversity in accessing benefits is the case of depriving men, born after 1948 and having contributed for many years, of the right to early retirement. The previous old-age pension system provided the possibility of early retirement five years before attaining pensionable age (for women aged 55 years with a 30-year insurance period (a basic insurance period for women was 20 years) and men at the age of 60 years with a 35-year insurance period (the basic insurance period was 25 years). Some of those insured under the new system (i.e. born after 31 December 1948) were allowed to remain in the 'old system' and to take advantage of this privilege if they met the conditions by the end of 2008. This rule has led to a situation where two persons of different sex with long insurance periods, who were born in 1949, are in a different legal situation. The woman was able to meet the age requirement, because in 2008 she was 59, and thus was able to choose the calculating formula (DC or DB). The man in the same situation was not yet 60 years of age and was denied the right to this form of benefit.

While speaking of the need to align the retirement age, the first argument put forward is the amount of the future benefit, particularly in the defined contribution system. The correct assumption is that earlier retirement means a shorter period of retirement capital accumulation and the application of a less favourable ratio of life expectancy. The new pension system will lead to very different retirement benefits to

⁴³⁵ Ref. IIPZP 13/08. See further: Eleonora Zieñska. Polish report (in:) European Gender Equality Law Review 2009–1. European Network of Legal Experts in the field of gender equality.

the detriment of women, thereby increasing the risk of poverty and social exclusion. Furthermore, employers will prefer to employ a 50-year old man, because they may assume that such a worker will be interested in working for at least 15 years, not just 10 as in the case of women.

Supporters of maintaining a diversified retirement age on grounds of sex often rely on the fact that the retirement age of 60 is not an obligation for women, and they can continue their careers for longer, thereby increasing the amount of their pension. A lower retirement age for a woman allows her to fulfil her duties as a grandmother which often plays an important role in educating a new generation in Polish society. Thirdly, the actual average retirement age for women is 56 years (ZUS, 2006). This therefore means that women themselves are interested in earlier retirement, despite the fact that they will be granted lower benefits.

The process of equalizing the retirement age in Poland is still at the stage of public discussion. In 2007, the Ombudsman placed the issue of the different retirement age before the Constitutional Tribunal, which can be understood as an attempt to have this difficult political issue decided by the Tribunal's judges.

The new old-age pension system does not provide the possibility to lower the retirement age. According to ZUS, in 2006 men retired at the age of 59.7 and women at 56.⁴³⁶ When quoting these figures, it should be remembered that they can only refer to the previous old-age pension system, because the new system has not yet entered the distribution phase.

Advantages granted to persons who have brought up children (Article 7.1 b))

Currently, the pension system does not provide any pension benefits associated with bringing up children, with the exception of being entitled to insurance as described above.

Old-age or invalidity benefit entitlements or increases in long-term benefits by virtue of the derived entitlements of a wife (Article 7.1 c) and d))

The system does not establish any allowances for women for the loss of the breadwinner. This function is provided by the survivor's pension, which falls within the scope of invalidity insurance. Accessibility to the pension is the same for both genders. After a person who is entitled to a survivor's pension reaches retirement age, the survivor's pension is replaced by the old-age pension, which cannot be less than the previous benefit.

OFE summary

As has been mentioned, the Polish third pillar, which corresponds to Directive 86/378/EEC as amended by Directive 96/97/EC, encompasses different forms of voluntary insurances, including the occupational scheme called 'Workers' Retirement Programs (PPE)' created in 1998 by employers for their workers (and currently regulated on the basis of the Act of 2004) and, since September 2004, in addition, a new private scheme, the so-called 'Individual Forms of Savings (IKE)'. Participation in PPE (Pracownicze Programy Emerytalne – Occupational Pension Schemes) is not related to coverage by the new retirement system. Therefore, also workers who are subject to the old retirement rules of the Polish 1st pillar (due to their age) may join this programme on voluntary basis subject to the condition that they have been

⁴³⁶ Source: Bożena Kłos, Wiek emerytalny kobiet i mężczyzn (Retirement of women and men), Indos, no. 3/2008.

employed in the relevant enterprise for at least three months on a contract under the Labour Code. An employee who has reached the age of 70 cannot access such a scheme. A person working for several employers can be a member of more than one scheme. It is important to note that a collective labour agreement may not create any additional conditions for accessing a scheme that has not been mentioned in the Act. The law has provided the possibility to choose one of the following types of PPE schemes: a pension fund, an agreement for the employer to pay the employees' contributions into an Investment Fund, an agreement on group life insurance. For the creation of PPE it is necessary to conclude a collective labour agreement on creating an employee pension scheme and an agreement with a financial institution as well as creating a Pension Fund or deciding on the purchasing of shares of an existing pension fund and to register the PPE in a public office. The contributions are financed by the employer, but a basic contribution cannot be higher than 7 % of the employee's wage. At the same time, a basic contribution to a scheme is not an element of the contribution base in the compulsory system. Payments from PPE are possible at the employee's demand after his/her 60th birthday; at the employee's demand after his/her 55th birthday if he/she is entitled to a pension within the compulsory system; and obligatory after an employee's 70th birthday as well as after the employee's death at the demand of his/her heir(s).

Conclusion

In conclusion, it should be stated that the reformed Polish old-age pension system does not show significant disparities in treatment between men and women. The difference in the retirement age for men and women is the main factor in differentiating their legal situation. In the absence of the possibility of an unambiguous judicial determination of this factor as being discriminatory or not, the decision on its abolition will belong to legislative bodies.

Another element of the system which, in our opinion, will be the subject of future discussion is the application of the same mortality tables in calculating retirement benefits especially in the context of funded pensions.

Last but not least, it should also be noted that the predicted differences between the pension benefits of men and women should not be perceived as a consequence of the malfunctioning of the pension system, but as an implication of the inequality prevailing in the labour market.

PORTUGAL – *Maria do Rosário Palma Ramalho*

A) GENERAL QUESTIONS

1. The old-age pensions system

Before directly answering the questions asked, it is necessary to give a brief overview of the Portuguese social security system in order to make it possible to understand the system as a whole. In Portugal, most of the social security provisions fall under the scope of Directive 79/7/EEC and at the national level the situations contemplated by this Directive are covered by the Social Security General Law (Law No. 4/2007, from 16 January 2007). This Law establishes two social security systems: the first one is the 'system of social citizenship protection', which integrates three subsystems: the 'social action subsystem' (intended to promote actions in the social area), the 'solidarity subsystem' (intended to eradicate poverty in situations that do not fall

under the ‘contribution’ system), and the ‘family protection subsystem’ (intended to compensate people for specific family charges);⁴³⁷ the second one is the ‘contribution system’, which is intended to compensate the social risks of persons with a professional activity based upon the contributions of employers and employees.⁴³⁸ This last system integrates social protection related to sickness, invalidity and old-age pensions, family allowances (in situations related to maternity, paternity and adoption), unemployment, accidents at work and occupational diseases, in the sense of Directive 79/7/CEE.

The rights granted by this general legislation are developed by specific legislation and each benefit is granted under specific conditions. The old-age pension as a statutory pension falls under the ‘contribution system’, and is governed by Decree-Law No. 187/2007, from 10 May 2007.

The Portuguese legislation regarding occupational social security systems is Decree-Law No. 12/2006, from 20 January 2006, and Decree-Law No. 307/97, from 11 November 1997: the first law governs the trust funds that deal with professional social security schemes; the second has transposed Directive 86/378/EEC into the Portuguese legal system, together with the changes introduced by Directive 96/97/EC. Occupational social security systems are intended either to complement or to replace the legal and public statutory social security system (Article 1 of Decree-Law No. 307/97, from 11 November 1997). Old-age pensions, as well as invalidity pensions and survivor’s and other family support pensions can integrate these systems (Article 4 of Decree-Law No. 307/97, from 11 November 1997).

However, professional social security systems are rare in Portugal and they can differ amongst each other.

After this brief introduction, we will try to answer directly all the questions asked.

According to the legislation that deals with the old-age statutory pension (Decree-Law No. 187/2007, from 10 May 2007), this pension system is organized on a Pay-As-You-Go basis, in the sense that the pension relies on contributions by the employer and the employee during his or her active working life, but is actually paid out of the contributions of active workers.

Also, this pension is typically based on a Notional Defined Contribution system, in the sense that participants have a hypothetical account containing all contributions made over their working lives, credited at a certain rate of return and, at the time of retirement, pension benefits are calculated by taking into consideration the contributions accrued in the notional account and the life expectancy factor (Article 26 and ff. of Decree-Law No. 187/2007, from 10 May 2007).

Occupational pension schemes are rare in Portugal as we said earlier. The main area in which specific social security subsystems exist is the financial sector, especially in banking. In these cases, the systems are established in collective agreements and may differ from company to company: in some cases, the system is based on a complementary pension (meaning that the company grants a social security benefit to the worker to complete the benefit that he already has from the general statutory social security system), while in other cases it is based upon a substitutive full pension for which the company is fully responsible. As far as we know, these systems rely mostly on defined contribution schemes, meaning a scheme in which the

⁴³⁷ Law No. 4/2007, Article 6 and ff. (the citizenship system - «*sistema de protecção social de cidadania*»); Article 29 and ff. (the social action system - «*subsistema de acção social*»); Article 41 (the solidarity social system - «*sistema de solidariedade social*»); Article 44 and ff. (the family protection system - «*sistema de protecção da família*»).

⁴³⁸ Law No. 4/2007, Article 50 and ff («*sistema previdencial*»).

total amount of the pension is not predetermined, but, in some cases, these systems are changed into a defined benefit scheme.

The traditional three-pillar model is applicable in Portugal in the sense that the system has in principle a statutory nature, but professional social security systems are allowed, and people can also enter into private insurance contracts in order to reinforce their own social security protection during old age. However, in practice the system relies mostly on statutory public pensions, since the right to public social security protection in old age is a fundamental right under the Portuguese Constitution (Article 63 No. 3) and the other pillars of the system are, in general, optional and complementary to the first pillar.

Old-age survivors' pensions are contemplated both in statutory and occupational schemes, and are gender-neutral.

In Portugal, the safety net for those persons who do not qualify for statutory pensions, because they do not comply with their legal requirements, is established in the above-mentioned 'solidarity subsystem', which is one of the subsystems of the social security system (as described earlier) that intends to eradicate poverty in those situations that do not fall under the 'contribution' system. This system provides for old-age pensions for those who have no other sources of income. The construction of this system is gender-neutral.

2. Old-age pension reforms

The Portuguese Social Security System has been subject to an overall reform for the past decade, mostly for reasons related to the economic sustainability of the system itself.⁴³⁹ In this sense, new principles on the subject have been developed by the Law, such as reinforcing the economic strength of the system and promoting active ageing.

In the pursuit of these goals several legal measures regarding old-age pensions have been approved by Decree-Law No. 187/2007, from 10 May 2007, such as new rules to calculate the old-age pension, a maximum limit for this pension, a pension bonus for those who choose not to apply for their pension as soon as they fulfil the age requirement, and a reduction in the pension for those who acquire it before reaching that age because they comply with other alternative requirements (for instance, a certain number of working years).

In a global overview, these measures seem to be gender-neutral, but some of them can in fact have discriminatory results against women. The best example of these discriminatory effects is the present rule regarding the formula to calculate the amount of old-age and invalidity pensions: unlike the previous rule, this rule takes into account not only the best ten years of the last fifteen years of contributions to the social security system, but all the years of contributions to calculate the value of the pension.⁴⁴⁰ This formula may have a disproportionate effect on women's and on men's pensions, since the salary gender gap is often more relevant at the beginning of one's career than in the final years of work. We have no information as to whether the

⁴³⁹ One must take into consideration that the system has both a universal vocation, in the sense that every citizen has the right to social security protection, and a public nature, depending almost exclusively upon the National Budget for Social Security, which is part of the National Annual Budget. In this situation, the problem of the economic sustainability of the system is of major significance.

⁴⁴⁰ This new formula to calculate the value of old-age pensions was introduced by Decree-Law No. 35/2005, from 19 February 2005, which changed Decree-Law n. 329/93, from 25 September 1993. The same rule is now contemplated in Article 29 of Decree-Law No. 187/2007, from 10 May 2007.

gender factor was even taken into consideration when this measure was approved, but we cannot ignore this negative effect.

We think that, as a whole, the reform of the social security system in Portugal has not taken into consideration the fact that men and women have different working patterns, with women having lower participation rates in the formal labour market, lower pay and fragmented careers due to care activities. With the exception of leave and part-time work due to maternity and paternity reasons, which are taken into consideration for the purpose of building up pension rights (Article 22 of Decree-Law No. 91/2009, from 9 April 2009), these reforms have not taken into account the issue of gender equality.

3. Retroactivity of legislation

The Portuguese pension system has not recently been amended due to gender inequalities, but only under the general scope described earlier.

Under this general reform, pensions which are not yet paid have to be recalculated in accordance with the new formula. In general, the result is a reduction in the pensions, not only because the period taken into account to calculate the pension involves the whole career of the worker, but also because a lifetime expectancy factor to estimate the amount of the pension and the upper limit of the pension have been introduced in the calculation formula.

We have no knowledge as to whether the legislator considered any gender side-effects in these new rules that have a general nature.

4. The World Bank Model

Not applicable.

B) STATUTORY OLD-AGE PENSION SCHEMES (Schemes falling under Directive 79/7/EEC)

1. Qualifying conditions

According to Decree-Law No. 187/2007, from 10 May 2007, access to an old-age pension depends upon several conditions. These conditions are related to a minimum contribution period (15 years of work with paid contributions), to an age requirement (in general, the pensionable age is 65 years old for men and women, except for some professions involving higher risks or quicker physical deterioration, in which the pensionable age is lower), and to a minimum period of contributions per year (120 days per year) – Articles 10, 11, 12, 19 and 20 No. 1 of Decree-Law No. 187/2007, from 10 May 2007.

Not only standard labour contracts but all types of labour contract (such as part-time or short-term contracts or seasonal contracts, occasional contracts, and low-income contracts) are covered by the statutory pension scheme. In fact, even in years in which the worker does not reach the minimum period of 120 days of contributions, the periods of effective work carried out are added to each other until they reach the time-limit imposed to count as a contribution year for the purpose of building up a right to an old-age pension. Although these minimum limits are applicable regardless of the sex of workers they can, however, have a different result for men and women since the rate of women with precarious jobs and with career breaks for several reasons is higher.

2. The amount of the old-age pension

In Portugal the amount of the old-age pension is based on lifelong earnings, since it is calculated on the basis of the contributions paid over one's full life career, with an upper limit of 40 years of work. Gender-specific life expectancy tables are taken into consideration when calculating the amount of pension - Articles 26 and 28 of Decree-Law No. 187/2007, from 10 May 2007.

The minimum contribution period needed for a full old-age pension entitlement is 15 years, considered together with the age requirement (Articles 11 and 19 of Decree-Law No. 187/2007, from 10 May 2007). There is a minimum amount of old-age pension for those who meet the qualifying conditions (Article 44 of Decree-Law No. 187/2007, from 10 May 2007), but this minimum amount depends on the number of years with paid contributions.

There is a ceiling on these pensions, and they are calculated based on the salary of the worker and the number of contributory working years, to which the pension index is applied (the pension index formula depends on the number of working years) plus the sustainability factor that has to do with the life expectancy table in the year of retirement – Articles 34 and 35 of Decree-Law No. 187/2007, from 10 May 2007.

3. Periods of caring

Periods of care like maternity leave or parental leave are credited for the building up of pension rights as if they corresponded to effective working time with paid contributions (so exactly under the same conditions as they would count if effective work had been carried out, and upon the basis of the salary of the worker if he was actually working) - Article 22 of Decree-Law No. 91/2009, from 9 April 2009.

Other periods of interruption to employment due to raising children (for instance, long-term leave) or within the household to care for disabled or other dependants are not taken into account for this purpose.

The credits are taken into consideration regardless of the employment position of the claimant and the provisions in this area are gender-neutral and are not based on the traditional 'one care provider' model. To our knowledge, there are no automatic mechanisms for allocating care credits to women/mothers in our system, since the worker (the mother or the father), when taking advantage of these periods of leave, simply has to communicate to the social security services that he/she will take a certain leave to which a certain benefit is attached.

We think that a minimum provision on care credits in the gender equality EU legislation in the field of social security would generally be useful.

4. Exceptions, Article 7.1 of Directive 79/7

Pensionable age and the possible consequences for other benefits (Article 7.1 a))

In Portugal, the retirement age is fixed at 65 years old both for men and women. However, this is not a mandatory age as it depends upon the worker's intention to apply for retirement when he/she reaches this age, provided he/she meets the other requirements to have access to a pension (a minimum number of working years with paid contributions, for example). Only for public servants is there an age limit on continuing to work, which is fixed at 70 years old (Article 31 No. 2 of Law No. 12-A/2008, from 27 February 2008, and Article 254 of Law No. 59/2008, from 11 September 2008).

Also, a claimant can receive an old-age pension and continue working, if he/she so wishes and the employer accepts the situation.

In Portugal, the equalization of the pensionable age for men and women was approved in 1993.⁴⁴¹ By that time, arguments were introduced to the effect that the equalization had only taken place for economic reasons. Also, the application of this new rule during the transitory period resulted in some problems especially because there was an adjustment period to implement the new age limit, but the minimum period of contributions was also changed at the same time (from a minimum of 10 years work with paid contributions to a minimum of 15 years) and the new rule on this minimum period had no transitory period.⁴⁴² However, since this transitory period came to an end quite some time ago, this rule no longer gives rise to any problems.

In Portugal, aside from the credits related to maternity leave and parental leave (described above), there are no crediting mechanisms in relation to the pensionable age for persons who have raised children or performed other care work within the family.

We have no data on the average age when men and women leave the labour market in Portugal.

We think that the exception concerning the pensionable age could be eliminated from the gender equality EU legislation on statutory social security, but, if this is the case, a transitory period would be advisable to prevent any side-effects relating to the consequences of a sudden elimination (as occurred in Portugal).

Advantages granted to persons who have brought up children (Article 7.1 b))

With the exception of maternity leave and parental leave, no other care periods grant specific advantages in the old-age pension system in Portugal and no presumptions are established in favour of women in that respect.

We think that this exception has been updated because it perpetuates the traditional division of family roles in child upbringing and caring, and therefore it should be eliminated from the gender equality EU legislation on statutory social security.

Old-age or invalidity benefit entitlements or increases in long-term benefits by virtue of the derived entitlements of a wife (Article 7.1 c) and d))

In Portugal, there is an allowance attached to the fact that a person has a dependant wife/husband to take care of, provided he/she has no significant income - this allowance is called '*Complemento de cônjuge a cargo*'. This allowance is equally granted to men and women so it cannot be seen as an exception to gender equality in favour of women, even if, in fact, women benefit more than men from this allowance.

We have no data on the number of men and women benefiting from these benefits or supplements.

⁴⁴¹ Before this period, women could retire at 62 and men at 65.

⁴⁴² Due to this rule, many women, especially in the agricultural sector, had their retirement immediately postponed for five years, not because of the new age rule, but because they had contributed to the social security system only during the minimum period of 10 years and, with the new rule, they lacked 5 years of contributions.

C) OCCUPATIONAL OLD-AGE PENSION SCHEMES

(Schemes falling under Article 157 TFEU, Directive 86/378/EEC, as amended by Directive 96/97/EC, now Articles 5-13 of the Recast Directive 2006/54/EC)

1. Coverage

Before answering the questions, there are some general remarks that need to be made. As was said earlier, the Portuguese legislation regarding occupational social security systems is Decree-Law No. 307/97, from 11 November 1997, which has transposed Directive 86/378/EEC into Portuguese law, together with the changes introduced by Directive 96/97/EC, and Decree-Law No. 12/2006, from 20 January 2006, that governs the trust funds that support these systems.

Professional social security systems are intended either to complement or to replace the legal and public statutory social security system (Article 1 of Decree-Law No. 307/97, from 11 November 1997). Old-age pensions, as well as invalidity pensions and survivors' and other family support pensions can integrate these systems (Article 4 of Decree-Law No. 307/97 and Article 6 No. 1 of Decree-Law No. 12/2006, from 20 January 2006).

Decree-Law No. 307/97, from 11 November 1997, establishes a gender equality principle in this area (Article 6) and prohibits discriminatory practices such as, for instance, rules establishing different ages to be eligible for social benefits and, more specifically, a different age for women and men as a condition for having access to an old-age pension (Article 7 No. 1 c) and f)).

Besides these general rules, which are binding on all occupational social security systems, these systems differ significantly among themselves, due to their private nature and also depending on the complementary or replacing nature of each of them. When they are complementary to the statutory social security system, professional occupational systems are built upon the model of the statutory old-age pension system that they mean to complement. When they replace the legal system (which is very rare) they are built upon private conditions, usually agreed upon in collective agreements or in private pension plans within companies, which are impossible to trace.

Under these circumstances our answers to the questions asked are necessarily brief and are of a general nature.

Participation in professional social security schemes can be voluntary or mandatory. When the professional system is intended to replace the statutory one, the participation is usually mandatory. However, as we said earlier, professional social security schemes are quite rare in Portugal (especially on a replacement basis), since there is a constitutional right to public protection by means of social security.

In general, the conditions for having access to these systems are similar to those of the public statutory social security system, especially if they are complementary systems. In any case, non-discrimination rules in this area are applicable. We are not aware of any specific membership limitation in occupational old-age pension funds, such as minimum periods of employment, a minimum of hours worked per week, minimum earnings per year, or restrictions on access for seasonal and part-time work, short-term contracts, or low-wage earners or certain categories of workers. We have no data on men and women's participation rate in occupational pension schemes.

2. Calculation of old-age pensions and contributions

According to Decree-Law No. 12/2006, from 20 January 2006, that governs the trust funds that support professional social security systems, pension amounts can be

earnings-related or contributions-related, or they can have a dual nature. Also, these plans can be subject to a contribution by the worker or can be totally financed by the employer (Article 7).

The law does not establish specific qualifying conditions for workers within these schemes. When they complement the general statutory scheme (which is the common situation), the conditions are necessarily the same. When the schemes replace the statutory social security scheme, anti-discrimination rules established in Decree-Law No. 307/97, from 11 November 1997, also apply. We are not aware that these schemes specifically affect situations like part-time or precarious jobs.

3. Actuarial factors

As far as we know, the actuarial factors used by these pension schemes are the same as those used by statutory pension schemes. Decree-Law No. 307/97, from 11 November 1997, establishes as a general principle that actuarial rules used to determine the amount of pension cannot be discriminatory and must promote gender equality (Article 7).

4. Caring credits

There are no specific rules regarding the effects of care periods in old-age pensions in professional social security systems. Since the rule that establishes that maternity leave and parental leave periods are considered as effective work for the purposes of building up the right to an old-age pension is a general rule in the Labour Code and its complementary legislation (mainly Article 22 of Decree-Law No. 91/2009, from 9 April 2009), this rule is also binding on professional social security schemes. In this same sense, Article 7 No. 1 of Decree-Law No. 307/97, from 11 November 1997, qualifies any different treatment related to pensions as a result of these forms of leave as discrimination and prohibits such practices.

We have no knowledge of any discriminated workers having applied for formerly denied caring advantages under these schemes.

5. Vesting and reimbursement rules

When the worker leaves the scheme without having qualified for a pension, he earns the right to have his/her contributions transferred to another trust fund (Article 9 of Decree-Law No. 12/2006).

As far as we know this right is not conditional upon a minimum insurance/membership period within the fund.

6. Pensionable age

Specifically concerning the age requirement, Decree-Law No. 307/97, from 11 November 1997, prohibits gender discriminatory practices such as, for instance, rules establishing different ages to be eligible for social benefits and, more specifically, different ages for women and men as a condition for having access to an old-age pension (Article 7 No. 1).

A transitional period to adapt the national system to the equalized retirement age has not been established by this law. In practice the problem of a different age requirement could only arise, in the past, in old-age complementary occupational pensions, since the conditions for having access to these pensions accompany the conditions for having access to the statutory old-age pension which professional pensions are meant to complement (in the sense that the complementary pension is due when the statutory pension is also due). Therefore, given the fact that, when the

retirement age for men and women became the same in Portugal (in 1993), the general social security law established a transitional period for the practical implementation of this equalization and this transitional period was also valid as far as the professional old-age pension was concerned, provided it had a complementary nature. However, this transitional period came to an end quite some time ago, so this problem has now been resolved.

7. Civil servants

In Portugal, civil servants traditionally had a specific social security system, but the more recent trends are to unify the general statutory social security system.

There is no tradition whatsoever of occupational funds for civil servants in Portugal.

The civil servants' pension scheme is also a Pay as You Go system, supported by employees' contributions. The pension amount is related to the amount of the previous salary and also to the length of the civil servant's career.

This scheme has no discriminatory features on grounds of gender, such as different pensionable ages, benefits/supplements/service credits reserved only for women or only for men, or different rules for calculating the pension for men and women.

Our previous remarks regarding the equalization of the pensionable age in statutory social security schemes, as well as caring periods, and the calculation of pensions, also apply to civil servants.

ROMANIA – *Roxana Teșiu*

A) GENERAL QUESTIONS

1. The old-age pensions system

The pension system in Romania has undergone numerous reforms over the past five years aimed at improving the sustainability of the system. These changes were driven by the need to address the demographic structural changes represented by the increasingly aging population. The modified system currently has three components: Pillar I, Pillar II and Pillar III.

Pillar I of the pension system is the public pension system, which is compulsory. Pillar I is also called the pay-as-you-go system. The public pension system gives a right to receive a pension when the retirement age is attained, following a full contribution period for which the duration is stipulated by law. In addition, the law provides for an early pension or an early partial pension up to 5 years before the official retirement age is reached, based on a pro-rata pension right. Early pensions or early partial pensions are recalculated when the retirement age is reached for those people who meet all the legal requirements and are entitled to a pension for full-length service.

Retired persons who receive pensions for full-length service but continue to work and contribute to the system after having attained the official retirement age shall be entitled to an increased pension which is recalculated on an annual basis.

In 2006, the public pension system covered 5.8 million pensioners out of a total 6 million retirees. The 200 000 difference was represented by retired persons from the Ministry of the Interior, the Defence Ministry, the Romanian Intelligence Service SRI and the Justice Ministry. These pensions are paid directly from the state budget based

on a different pension formula. The pensions of independent farmers, after having being paid from the state budget, have been included in the Social Security Budget from 2006 onwards.

This system is financed by the social security contributions paid by both employers and employees. The employers' contribution rate is based on the category of work. In 2010 employers' contributions represent 19.5 % for normal working conditions. Employees' individual contribution rate is 9.5 %. The total social security contribution is 29 %.

The Pillar II pension is a privately-managed compulsory pension and consists of a mandatory system of individual pension funds contained in the portfolios of private companies.

The Pillar III pension is formed by voluntary contributions by the insured into different pension funds or to insurance companies specializing in this field.

2. Old-age pension reforms

According to the 2005-2009 Government Ruling Programme, a consistent package of legal measures was adopted with the aim of reforming the social security field in 2005. These measures were focused on three main objectives:

- The financial consolidation of the public pension system and ensuring appropriate revenues for retired persons within the system;
- The restructuring of the social security public system by eliminating a number of non-contributive rights and outsourcing a number of indemnities supported by the social security budget;
- The introduction of new financing and management alternatives to a number of pensions, such as privately managed capitalized pensions, aimed at ensuring a secured and adequate revenue for future pensioners.

The reform of Pillar I aimed to create a more equal distribution and to improve the actual ration of contributions/rights with the specific objective of increasing the general level of the rights received by the insured.

The main features of the reformed system were the gradual increase in the standard retirement age to 60 years for women (from 57 years) and 65 years for men (from 62 years) by 2014 and an increase in the minimum contribution period for both men and women from 10 years to 15 years. In addition, a new calculation formula was introduced based on a scoring system according to the actual revenue from the entire period of service.⁴⁴³ Hence, the new calculation system amounted to a redistribution based on the contribution principle. The revised calculation method consists of accumulating the monthly revenues and transforming them into scoring points. The average number of points is then multiplied by the value of the pension point as established by law.

An important element of the Pillar I system was represented by transferring a number of contribution rights to the health system, such as leave and an indemnity for temporary work incapacity, the rights for sickness prevention and the recovery of working capacity, as well as leave and an indemnity to care for sick children.

The reform of the pension system in Romania provided for the introduction of the Pillar II system as of 1st January 2007. This pillar will provide an opportunity for a supplementary pension in addition to the public system pension, which means that pensioners can receive additional revenues.

⁴⁴³ The previous calculation method was based on revenues relating to a limited period of employees' full service.

No measure has so far been taken by the Romanian Government to compensate, retroactively, the disadvantaged sex for any disadvantages/losses in the past. These reforms have taken into consideration the fact that men and women have different working patterns, with women having lower participation rates in the formal labour market, lower pay and fragmented careers due to caring activities.

3. Retroactivity of legislation

Changes to the Romanian pensions system have not been accompanied by impact studies designed to assess any potential gender-based impact. Several non-governmental organisations⁴⁴⁴ and independent researchers have produced studies and engaged in research with regard to assessing the possible shortcomings concerning gender equality in the foreseen reforms of the social security system and the changes in the legal framework legislation. The efforts of non-governmental organisations were acknowledged and supported by the International Labour Organisation.

At the time of initiating the 2005 reforms, the Government aimed to increase pensions by approximately 30 % in real terms up to 2008, as compared to the level in 2004. In order to achieve such a target, the pensions established under the legislation which was in force before 1 April 2001 were recalculated in 2005. The entire pension recalculation and the payment of these pensions as approved by Law No. 78 of 2005⁴⁴⁵ were implemented in 4 phases: in March, July, September and December 2005. The recalculation targeted all public pensions which existed prior to 1st April 2005.

4. The World Bank Model

The entire pension system in Romania has undergone significant changes over the last decade. The three-pillar model set up as the basis of the system currently represents all of reforms structurally linked to pensions. During the past five years there has been an analysis of the viability of the pension system, with the accent being placed on the public pension system. Despite the Government's ambitious objectives relating to the reform of the social security field, unfortunately this analysis did not seem to point to a consistent and coherent reform pattern and was not able to offer a solution to the demographic decline and the lack of any solution to address the increase in the amount of pensions. The number of legal changes adopted over the last decade is significantly high,⁴⁴⁶ thereby contributing to the increasing hesitation in clarifying the legal provisions relating to the pension system and leading to confusion among an entire segment of the population, i.e., pensioners. Consequently, the reforms undertaken in the pensions field, even if they have not so far targeted the fundamental principle of the equity of the system, will be continued and taken to their conclusion in order to assess the viability of the pension system and to take the changes to the next level.

⁴⁴⁴ 'The Impact on Women of the Pensions Reform', available at <http://www.reforma-pensiilor.ro/uploaddocs/Toolkit%20medial.pdf> last visited on June 1st 2010, Center for Partnership and Equality and International Labor Organisation, 2006, Bucharest.

⁴⁴⁵ Law No. 78 of 7 April 2005 on the recalculation of pensions in the public pensions system, approving Governmental Ordinance No. 4 of 2005, published in the Official Gazette No. 301 of 11 April 2005.

⁴⁴⁶ 38 laws, 40 governmental ordinances, 51 governmental decisions and 32 other types of legal norms such as instructions by the Minister of Labour.

The Romanian pensions system, as set up by the existing legal framework, contains a mandatory funded scheme under Pillar II.⁴⁴⁷ Pillar II includes privately-managed obligatory pensions. The mechanism for these pensions consists of reducing the individual contribution rate and transferring the resulting amounts to the privately-managed pension funds.

B) STATUTORY OLD-AGE PENSION SCHEMES (Schemes falling under Directive 79/7/EEC)

1. Qualifying conditions

Employees' pensions are determined by multiplying the pension points with the pension point value, which is laid down in the social security budget law every year. The system aims to ensure a pension of 45 % of the average wage in the year of retirement for an employee with a full career. By 2015, a full old-age pension will be payable to men aged 65 with 35 years of service and women aged 60 with 30 years of service. Early retirement up to 5 years before attaining pensionable age is possible if a full service period has been obtained.

According to the legal provisions of Law 19 of 2000, the following periods are assimilated to the pension contribution period:

- Periods during which employees are covered by social insurance rights, such as unemployment, child care, ordinary sickness, and labour-related illness;
- Periods of university studies;
- Military service.

2. The amount of the old-age pension

The standard retirement age will become 60 years for women and 65 years for men.⁴⁴⁸ By 2015 the minimum value of the contribution period will become 15 years for both women and men⁴⁴⁹ and the complete contribution period will be 35 years for men and 30 years for women.⁴⁵⁰ Thus, the only aspect which respects the equality principle is the minimum contribution period.

According to the provisions of Law 19 of 2000 both employees and employers contribute to the old-age pension scheme. Employers' contributions are differentiated, as follows, based on the risks associated with the work:

- 20.8 % for normal working conditions
- 25.8 % for difficult working conditions
- 30.8 % for special working conditions

⁴⁴⁷ The mandatory funded scheme is addressed by Law No. 411 of 2004 as modified and completed by Law No. 23 of 2007.

⁴⁴⁸ At present (April 2010 – July 2010) the retirement age is 58 years and 10 months for women, and 63 years and 10 months for men. Information available on the website of the Minister of Labour, Family and Social Protection <http://www.mmuncii.ro/ro/articole/0000-00-00/pensia-pentru-limita-de-varsta-984-articol.html>, last visited on 5th June 2010.

⁴⁴⁹ At present (April 2010 – July 2010) the minimum contribution period is 12 years and 8 months for both women and men. Information available on the website of Minister of Labour, Family and Social Protection <http://www.mmuncii.ro/ro/articole/0000-00-00/pensia-pentru-limita-de-varsta-984-articol.html>, last visited on 5th June 2010.

⁴⁵⁰ At present (April 2010 – July 2010) the complete contribution period is 27 years and 8 months for women and 32 years and 8 months for men. Information available on the website of Minister of Labour, Family and Social Protection <http://www.mmuncii.ro/ro/articole/0000-00-00/pensia-pentru-limita-de-varsta-984-articol.html>, last visited on 5th June 2010.

The individual contribution to the social security fund, payable on a monthly basis by the insured person, is 10.5 % irrespective of the working conditions.

According to the provisions of Article 78 of Law 19 of 2000, the pension amount is based on the number of pension points earned by each employee. The number of points is calculated for each employee on a monthly basis as follows: the monthly gross salary earned by the employee for which social contributions were paid is divided by the average monthly gross salary calculated at the national level and communicated by the National Institute for Statistics each month.

Early pensions or early partial pensions will be recalculated when the retirement age is reached for those who meet all the legal requirements and are entitled to a full-service pension. Retirees who receive pensions for a full service, but continue to work and contribute to the system after having attained the official retirement age, shall be entitled to an increased pension which is recalculated on an annual basis.

3. Periods of caring

Periods of maternity leave and parental leave for up to two years are taken into consideration and credited for pension rights and amount purposes. Any other period of care within the household, such as caring for disabled family members, home care etc. are not credited or taken into account for pension rights and amount purposes.

4. Exceptions, Article 7.1 of Directive 79/7

Pensionable age and the possible consequences for other benefits (Article 7.1 a))

According to the legal provisions of Law No. 329 of 2009,⁴⁵¹ pensioners within the public system benefiting from a pension granted by the state pension system who are also employed on the basis of an individual labour contract with central or local public institutions or authorities, national state companies or private companies whose social capital is predominantly state owned cannot receive a pension and a salary if the net pension is lower than or equal to the average gross salary as used as a calculation basis for establishing, on an annual basis, the social insurance budget.⁴⁵²

Up to 9 December 2009, pensioners who were in receipt of a pension as granted under the public system together with a salary as prescribed by Law No. 329 of 2009 were requested to express their written intention to continue to receive a pension while terminating their individual labour contract or to request that their pension be suspended while they continued their employment relationship.

Advantages granted to persons who have brought up children (Article 7.1 b))

Women who have attained a full contribution period, who have given birth to at least 3 children and who have raised them for up to 10 years are entitled to a reduced standard pensionable age as follows:

- A one-year reduction in the pensionable age for 3 children.
- A two-year reduction in the pensionable age for 4 or more children.

A significant debate on the draft Single Wage Law has currently emerged among all the key actors in Romanian society. This legal initiative is designed to offer a concentrated set of measures in the field of wages primarily aimed to address the

⁴⁵¹ Article 17, Chapter IV of Law No. 329 of 2009 on the reorganisation of certain authorities and public institutions, reducing public expenses and fulfilling the framework agreements with the European Commission and the International Monetary Fund, published in the Official Gazette No. 761 of 9 November 2009.

⁴⁵² For 2009, the average gross salary was RON 1 693.

critical position of Romanian society as result of the global economic crisis. Although, initially, the draft did not consider the duration of parental leave as representing a basis for calculating the length of service allowance, following pressure by the trade unions the Government has recently announced the adoption of the amendments proposed by the trade unions. Consequently, parental leave granted for up to 2 years, or up to 7 years in the case of a child with disabilities, will be assimilated in the overall length of service. Although, according to the legal provisions of the Labour Code, the individual labour contract is suspended, its entire duration will be considered to be part of the length of service and the employee will benefit, after returning from parental leave, from the monthly gross salary received before taking this leave.

Old-age or invalidity benefit entitlements or increases in long-term benefits by virtue of the derived entitlements of a wife (Article 7.1 c) and d))

The beneficiary of a survivor's pension may receive the pension along with income from a professional activity if the gross monthly income is not higher than one quarter of the average gross wage. The children and the surviving spouse shall be entitled to a survivor's pension if the deceased was a pensioner or was entitled to a pension.

The level of this type of pension will be established as a percentage of the average annual score realized by the deceased, differentiated based on the number of surviving persons as follows:

- a) For one survivor – 50 %;
- b) For two survivors – 75 %;
- c) For three and more survivors – 100 %.

At the end of 2008 around 12.1 % of public pensioners received a survivor's pension.

C) OCCUPATIONAL OLD-AGE PENSION SCHEMES

(Schemes falling under Article 157 TFEU, Directive 86/378/EEC, as amended by Directive 96/97/EC, now Articles 5-13 of the Recast Directive 2006/54/EC)

1. Coverage

Employees aged under 35 years on the date of the entry into force of the legislation targeting the occupational pensions scheme were obliged to contribute to the scheme. For employees aged between 35 and 45 years this contribution is optional. The amounts channelled into privately-managed pension funds are gradually increasing by 0.5 % over an 8-year period until they reach the level of 6 %. The basis of the Pillar II scheme will be commercial companies established exclusively for the purpose of managing the pension funds in question. The Private Pension System Supervisory Commission is the institution which specializes in authorization, regulation and supervision. This Commission has as its main responsibility checking the extent to which commercial companies are prudentially investing the assets of the privately-managed pension funds.

The Commission is responsible for monitoring the way managers meet their obligation to prudently invest the assets of the privately-managed pension funds, especially by taking the following rules into account:

- a) Investing for the benefit of participants and their beneficiaries;
- b) Investing so as to ensure security, liquidity and profitability;
- c) Investing primarily in instruments traded on a regulated market;
- d) Investing in derived financial instruments only for reducing the risk of the investment or for facilitating the efficient management of the portfolio;

- e) Appropriately diversifying assets so as to avoid excessive dependence on certain assets, issuers or groups of commercial companies and to avoid concentrated risks relating to the assets in their entirety. Contributions to a pension fund shall be recorded in individual accounts that ensure the participant's ownership of the net assets, with the money to be invested by the managers, according to the pension scheme provided by the legislation. Under the current legal provisions, each pension fund will have to attract at least 50,000 participants. Persons who fail to sign up with a fund manager within the deadline stipulated by the law will be automatically assigned to fund managers based on a random formula.

2. Calculation of old-age pensions and contributions

Starting on 1st January 2008, the 2 % share of the social contributions payable by employees aged under 35 years are now channelled into privately-managed pension funds. Employees aged between 35 and 45 years on the date of the entry into force of the occupational pensions scheme had to decide whether or not to contribute to the scheme, participation being optional.

Unfortunately, very little information is available on the websites of the relevant institutions in Romania with regard to the functioning of this scheme and awareness and information campaigns have been more or less absent. The scheme is very complicated and employees have little understanding thereof. Hence the decision to contribute to the occupational scheme is not based on a full understanding thereof. By opting to contribute to such a scheme, contributions towards the public pension will be diminished, as the 2 % contribution to the Pillar II scheme emanates from the social contributions paid by the employees. Such a situation creates a disadvantage especially for employees with low incomes, as the accumulated fund will have a low value. The risk of contributing to the scheme is that once such a decision is made, it cannot be reversed and the employee cannot fall back on the pension granted in the public system. As women more generally rely on low-paid jobs as compared to men, the scheme will have a greater impact on them if they do not take a decision by also acknowledging the above mentioned risk.

Information related to actuarial factors, caring credits, vesting and reimbursement rules are not yet available, as by 2011 the Government has to adopt legal provisions with regard to the functioning of the Pillar II scheme.

7. Civil servants

Currently, the public pensions system is addressed by more than 80 distinct legal instruments, including Law 19 of 2000 on the public pensions system,⁴⁵³ as modified by more than 50 distinct legal instruments over the last 10 years. For a number of categories of civil servants such as the police force, the army, civil servants working in the penitentiary system, magistrates and MPs there are distinct pension schemes. On the other hand, civil servants are addressed by Law No. 188 of 1999.⁴⁵⁴ The 1999 Law on civil servants specifies that civil servants who are employed by the following public services can benefit from special statutes:⁴⁵⁵

⁴⁵³ Law No. 19 of 17 March 2000 on the public pension scheme and other social insurance rights published in the Official Gazette No. 140 of 1 April 2000, as modified by 51 distinct legal instruments.

⁴⁵⁴ Law No. 188 of 8 December 1999 regarding the statute of civil servants, republished in the Official Gazette No. 365 of 29 May 2007, the text having been renumbered.

⁴⁵⁵ Article 5(1) of Law No. 188 of 1999.

- The specialized structures of the Romanian Parliament;
- The specialized structures of the Presidential Administration;
- The specialized structures of the Legislative Council;
- The diplomatic and consular services;
- The customs authority;
- The police and other structures of the Ministry of Internal Affairs and Administrative Reform;
- Other public services as determined by law.

The categories of civil servants mentioned above benefit from special pension schemes. It is estimated that in Romania out of 5.8 million pensioners, approximately 180 000 benefit from special pension systems. Due to the vast legal framework addressing the public pensions system currently in place it is extremely difficult to provide a detailed outline of the various components of the pension schemes available for civil servants. However, some common principles are described below.

The reform of the public pensions system has, for the year 2009, recalculated the special pensions obtained by diplomats, MPs, magistrates, the army, police officers and the secret service, according to the equality principle, and they are now based on the same mechanisms which already applied to other categories of retired persons. For the police and the army the current mechanism which is used to calculate their pension is a percentage, varying between 60 % and 64 % (depending on the working conditions), of the average monthly gross income from the last six months. The standard retirement age is 55 years.

The average standard retirement age for other socially insured persons under the National Social Insurance Budget is around 62.5 years. Another advantage of this special professional category is the level of the individual social contribution, which is 5 %, substantially lower than the standard level of 10.5 %. Law No. 19 of 2000 lays down the categories of workers covered by the public pension scheme as follows:⁴⁵⁶

- Persons who perform work based on an individual labour contract.
- Civil servants.
- Persons who perform work in elected positions or who are appointed to positions within the executive, legislative and juridical authorities for the entire duration of their mandate.
- Unemployed persons.

Persons who are in one of the following situations:

- a) Unique associates and limited partners.
- b) Company administrators and managers who perform their activity based on a management contract.
- c) Members of family associations.
- d) Persons authorized to perform independent activities.
- e) Persons employed by international institutions if they are not covered by the respective institutions' social insurance schemes.

Under the above provisions, civil servants are covered by the provisions of Law 19 of 2000 regarding the pension system and other social insurance rights. In addition to the provisions of Law 19 of 2000, several distinct categories of civil servants are currently covered by special laws that have set up special pensions systems.

Members of the armed forces benefit from a special pension set up by Law No. 264 of 2001 regarding state military pensions.⁴⁵⁷ Police officers benefit from state

⁴⁵⁶ Article 5(1) of Law 19 of 2000.

⁴⁵⁷ Law No. 264 of 2001 of 7 April 2001 on the military state pensions republished in the Official Gazette No. 742 of 14 October 2002

pensions as provided for under Law No. 179 of 2004.⁴⁵⁸ Magistrates are entitled to a special pension that has been established by distinct legal provisions.⁴⁵⁹ All the above-mentioned categories of civil servants benefit from distinct legal provisions with regard to the calculation of pensions and the old-age pension.

SLOVAKIA – Zuzana Magurová

A) GENERAL QUESTIONS

1. The old-age pensions system

The Slovak pension system has undergone a major reform in 2005 which split the statutory old-age pension scheme (survivors' benefits included) into two tiers:

1st – the mandatory public insurance scheme, based on mandatory contributions and defined benefit, financed on a pay-as-you-go basis, managed by the Social Insurance Agency and governed by the Act on Social Insurance,⁴⁶⁰ and

2nd – the voluntary/(mandatory)-funded⁴⁶¹ defined contribution scheme with a saving component, managed by private pension funds, and governed by the Act on Old-Age Pension Savings⁴⁶² which came into effect as of 1st January 2005. Participation in the system was made open to all workers, but it was mandatory for new entrants. Workers had until June 2006 to decide whether to contribute exclusively to the 1st pillar (18 % of one's salary) or to split contributions between the 1st and the 2nd pillar (9 % of one's salary to each system). The decision for workers was made irreversible. As from 1st July 2006 until 31st December 2007 the system was mandatory for all new entrants. Since then, the 2nd pillar has become purely voluntary and individuals born after 31st December 1986 who enter into a contract with the pension management company (PMC) within 6 months after their first employment are allowed to become members.

The 2nd pillar represents citizens' savings in personal PMC accounts. They transfer to these accounts 50 % of their old-age pension savings contributions, i.e. 9 % of their wages. PMC invest this money for the purpose of their valorization. Upon retirement the saver will use the money left in his account to purchase annuity from a commercial life insurance company. The Social Insurance Agency, that collects contributions and manages the 1st pillar, retains its dominant position. The activities of PMCs are supervised by the Financial Market Authority.

There is also a 3rd voluntary private saving supplementary scheme governed by the Act on Supplementary Pension Savings.⁴⁶³

In the individual European countries the 2nd pillar is usually perceived as an occupational supplementary pillar – i.e. based on the participating persons rather than the method of financing. In Slovakia the 2nd pillar is categorized according to the method of financing or state guarantees, rather than according to the participating

⁴⁵⁸ Law No. 174 of 17 May 2004 regarding state pensions and other social security rights for police force published in the Official Gazette No.

⁴⁵⁹ Law No. 303 of 2004 on the statute of judges and prosecutors published in the Official Gazette No. 826 of 13 September 2005.

⁴⁶⁰ Act No. 461/2003 Coll. of 30 October 2003, effective from 1 January 2004.

⁴⁶¹ Although the 2nd pillar is not actually a real 2nd pillar (as understood by some European countries), but a part of the first pillar, for better transparency I will maintain the 3-pillar classification in this text.

⁴⁶² Act No. 43/2004 Coll. of 13 January 2004, effective from 1 January 2005.

⁴⁶³ Act No. 650/2004 Coll. of 26 October 2004, effective from 1 January 2005.

persons, because the parties are (or may be) identical. Specifically for employees we have only established the so-called third pillar.

A comparison of the systems in place in the individual countries shows that the difference between the 2nd pillar in the European and Slovak perception from the view of their mission is especially the fact that the Slovak 2nd pillar does not supplement, but partially replaces (substitutes) the 1st pillar. At the same time the risk is divided in such a way that the participant in the Slovak 2nd pillar only risks half of his pension. The Slovak 2nd pillar therefore seems to be a part of the 1st, or from a formal point of view it *contracts out (opts out)* from half of the 1st pillar. Consequently we have a quasi-two-level pension guaranteed by the Government in Slovakia – one level is reserved for those who participate in the 1st pillar only and the second (half) for those who also participate in the 2nd pillar. It means that the 2nd pillar is only a substitution for half of the 1st pillar, i.e. it is not its complement.

The question of the position of the Slovak 2nd pillar was hitherto answered by the new coordinating Regulation No. 883/2004 that in its annexes concerning the Slovak Republic states that ‘mandatory old-age pension saving’ is subject to coordination, although with the exception that in its case the amount of benefit is calculated from the actually paid contributions and not using the pro-rata approach which is used for calculating the benefit from the pay-as-you-go pillar. Based on the method of elimination, the concept of ‘mandatory old-age pension savings’ may only correspond to the so-called Slovak 2nd pillar, although its ‘mandatory’ character may be questionable – in view of the regulation allowing voluntary entry and, during certain periods (2008, 2009), even the voluntary abandonment of the scheme. This is indeed envisaged by the coordinating Regulation. Moreover, as this Regulation does not explicitly relate to the European 2nd pillar (occupational supplementary pension schemes), the Slovak so-called 2nd pillar must be regarded from the point of view of the European law as a capitalization part of the 1st pillar (in the European perception).

The Slovak 2nd pillar of pension security is actually not really a 2nd pillar scheme. It is rather a part of the 1st pillar which has two forms – the first is purely public and the second is combined.⁴⁶⁴

According to the Law on Social Insurance⁴⁶⁵ (1st pillar) from the old-age insurance system the following are provided:

- an old-age pension;
- an early old-age pension;
- a widow’s pension and a widower’s pension; and
- an orphan’s pension.

The retirement age has now been equalised for men and women at 62 years. The survivor’s pension is gender-neutral and widows and widowers are entitled to the pension on an equal basis. This pension represents 60 % of the insured deceased person’s old-age pension, early old-age pension or invalidity pension.

According to the Social Security Act the social security scheme consists of 5 independent sub-schemes (sickness insurance, old-age insurance (1st pillar), accident insurance, guaranty insurance and unemployment insurance). Mandatory sickness insurance, old-age insurance and unemployment insurance become obligatory on the same day – for employees on the date of commencing employment and for self-employed persons if business income was higher than twelve times the assessment basis. The Act regulates the personal scope of sickness, old-age and unemployment

⁴⁶⁴ T. Gábriš ‘Pension Security in Slovakia within the Context of International and European Law’ *Právny obzor*, 93, issue 2, 2010, p. 101–116.

⁴⁶⁵ Act No. 461/2003 Coll. of 30 October 2003, effective from 1 January 2004.

insurance by defining the payer of contributions to sickness insurance, which is then also the payer of contributions to old-age and unemployment insurance. An employee who has mandatory sickness insurance and a self-employed person who has mandatory sickness insurance have mandatory pension insurance. To the group of persons insured under the compulsory scheme, for which contributions are paid by the State, belong persons who take care of a child aged up to 6 years, persons who take care of a child suffering from long-term unfavourable health conditions aged between 6 and 18, persons who receive an allowance for caring for a severely handicapped person, and persons receiving a pension as a result of an accident at work. A person having voluntary pension insurance may be a natural person having attained 16 years of age and who has his/her permanent residence on the territory of the Slovak Republic. It is an option for students and voluntarily unemployed persons, for whom their period of study and unemployment are not included in their length of service, to voluntarily register themselves in the insurance scheme.

According to the Act on Old-Age Pension Savings⁴⁶⁶ (2nd pillar) old-age savings are savings in the personal account of the saver. The aim of this saving is, together with the old-age insurance according to the Law on Social Insurance, to provide the saver with an income in old age, and also to provide the saver's survivors with an income in the case of his or her death. The law distinguishes between:

An old-age pension, an early old-age pension which the saver receives in the form of a programme withdrawal with life annuity, or in the form of life annuity, and a survivor's/widow(er)'s/orphan's pension.

2. Old-age pension reforms

The legislative basis for the functioning of the pre-reform pay-as-you-go system in Slovakia was the Act on Social Security.⁴⁶⁷ The social security reform started immediately after November 1989. The participation of self-employed persons in the social security scheme was amended; pensions were increased according to the growth in wages; price adjustments were made; and changes in the costs of living were introduced. The payment of contributions to the pension security schemes was regulated by Act No. 274/1994 Coll. on the Social Insurance Agency.⁴⁶⁸

Two institutionalized forms of providing pension benefits existed. The compulsory public defined benefit pension scheme had a dominant position. It was financed on a current basis by intergenerational reallocation (*pay-as-you-go*, *PAYG*). It meant that economically active persons, employers and the State paid contributions to the basic pension security fund of the Social Insurance Agency, from which the contributions paid were immediately allocated to pensions. The insured persons paid contributions from an amount not exceeding three times the average wage and the amount of their pensions was calculated from this amount. Compulsory contributions represented approximately 28 % of the assessment base of the gross wage. The amount of pension was limited. This scheme is a so-called 1st pillar scheme within the reform process.

Besides the pay-as-you-go pension scheme, a voluntary supplementary pension scheme existed. It was regulated by the Act on the Supplementary Pension Insurance of Employees⁴⁶⁹ which was later called a 3rd pillar scheme in the reform process. It consisted of the option given to citizens to voluntarily pay an arbitrary amount into his

⁴⁶⁶ Act No. 43/2004 Coll. of 13 January 2004, effective from 1 January 2005.

⁴⁶⁷ Act on Social Security No. 100/1988 Coll.

⁴⁶⁸ Act on the Social Insurance Agency No. 274/1994 Coll.

⁴⁶⁹ Act on the Supplementary Pension Insurance of Employees No. 123/1996 Coll.

or her account kept at the supplementary pension insurance company, where employers could contribute over and above their employee's contributions.

The initial reform that was reflected in the Act on Social Insurance⁴⁷⁰ envisaged a one-segment system – a compulsory basic pillar social insurance scheme (based on the pay-as-you-go principle) combined with a voluntary supplementary pension scheme (based on the employee/employer principle and on the funded old-age pension supported by the state and commercial additional pension insurance).

At the end of 2002 and the beginning of 2003, the reform was modified. The modification consisted of a two-component system of basic (compulsory) pension insurance (based on a combination of the pay-as-you-go and funded pension schemes) and old-age pension savings combined with voluntary supplementary pension savings.

Until the end of 2003, each person was entitled to an old-age pension after a minimum of 25 years of work and attaining the minimum age - men 60, women 53-57 years of age depending on the number of children raised.

The new Act on Social Insurance⁴⁷¹ (1st pillar) introduced several changes to the system. In pension insurance the mandatory period of participation stabilised at 10 years, claims for a widow's and widower's pension were equalized, and a gradual unification of the retirement age for women and men at 62 was introduced.

Another substantial change in the pay-as-you-go pillar was the change in calculating the amount of the pension, which depended on the number of years worked, the personal wage during the whole working life of an individual, the development of the Slovak economy, and whether the individual retires before or after attaining retirement age. The limitation on the amount of the pension was abolished. Also the pension formula was changed. It now provides a higher pension to those who earned more and paid higher contributions during their working life. This should increase motivation to pay contributions and eliminate evasion.

In 2006, by means of the amended Social Insurance Act, the group of persons insured under the compulsory scheme, for which contributions are paid by the State, was changed – it was extended to persons who take care of a child aged up to 6 years, persons who take care of a child suffering from long-term unfavourable health conditions aged between 6 and 18, persons who receive an allowance for caring for a severely handicapped person, and persons receiving a pension as a result of an accident at work.

The so-called major amendment of the Social Insurance Act⁴⁷² was very important. By this amendment, from 1 January 2008 the number of years of pension insurance required for entitlement to an old-age pension increased from 10 to 15 years. However, transition provisions in the Act specifically regulate situations where the insured person had already attained retirement age before a determined date. If the insured person had already attained retirement age in the period between 1 January 2004 and 31 December 2007 and had not achieved at least 15 years of pension insurance by 31 December 2007, then such a person is entitled to an old-age pension if he or she had achieved a pension insurance period of at least 10 years.

By this act⁴⁷³ the Act on Old-Age Pension Savings was also amended. The 2nd pillar of the old-age pension savings was opened up, which allowed persons who had voluntarily joined this pillar to leave it. Since 1st January 2008 the 2nd pillar has been

⁴⁷⁰ Act on Social Insurance No. 413/2002 Coll., as amended by Act No. 639/2002 Coll. which has never been effective and was abolished by the Act on Social Insurance No. 461/2003 Coll.

⁴⁷¹ Act on Social Insurance No. 461/2003 Coll. of 30 October 2003, effective from 1 January 2004.

⁴⁷² Act No. 555/2007 Coll. effective from 1 January 2008.

⁴⁷³ Act No. 555/2007 Coll. effective from 1 January 2008.

purely voluntary. A change occurred when employees entering their first employment are not now obliged to enter the 2nd pillar, but they can decide within a period of 6 months whether or not to enter this pillar.⁴⁷⁴

During preparations for the reform, and indeed up to now, no analyses dealing with the impacts of the reform on women and men have been made. The reform did not take into account different working patterns and different remuneration. It did not deal with the issue whether lower wages paid to women and the career break required in order to care for children will affect the amount of women's pensions in any way. The World Bank's analysis⁴⁷⁵ noted that the pension reform would bring the greatest benefits to persons with a high income. On the other hand, it would put persons with a low income at a disadvantage, especially women who are mothers. While in the old 'pay as you go' pension pillar the state offered certain advantages to mothers (e.g. earlier retirement), in the new scheme this advantage was omitted. Certain changes occurred, e.g. the state started to pay contributions to the insurance scheme for women receiving a maternity or family allowance, but this amount is much lower than that which a woman would pay from her income.

An employed father pays contributions to his own account, whereas his wife who takes care of their common children and the household will have saved much less when she retires. If a woman is not employed at all and only takes care of the household and the children, she will actually save *nothing*. Dropping out of a career logically means dropping out of savings. For women this is much more significant; based on the World Bank's data an average man misses 2 years of his career during his paternal years, while women miss 8 to 9 years because of the fulfilment of their maternity duties. Of course, the amount then saved in women's pension accounts will be consequently lower.

After returning to work the situation of women will not improve very much – mothers with small children are actually not in a 'favourite staff category' as far as employers are concerned. They are often forced to accept work below their qualification level and, of course, are thereby paid less. Moreover, working women whose income is lower than that of men will need a longer period to save a sufficient amount for a pension, if they succeed at all.

Some studies aiming to provide gender equality information only contain sporadic and marginal information about the pension reform, most frequently information about the equalization and the extension of the retirement age. O. Pietruchová⁴⁷⁶ has

⁴⁷⁴ At the finalizing of this report elections have taken place in Slovakia. The new government will be composed of parties that were in opposition during the last 4 years and that prepared the pension reform in the years 2003-2004. The outgoing government changed the initial legal regulation of pensions and the Social Insurance Agency ran into debts. The new government coalition plans to restore the old-age savings situation that existed before 2006 and so to remove changes made to the 2nd pension pillar by the outgoing government. It plans to introduce the minimum guaranteed pension at the amount of the subsistence minimum, so that the registration for the 2nd pillar will again be mandatory for graduates. At present people who have registered themselves for the second pillar pay 9 % to the Social Insurance Agency and 9 % to the pension management companies. Slovakia is one of the few countries where the same contributions are paid to both the private and the state pillar. According to experts, one of the possibilities for getting the Social Insurance Agency out of debt is to reallocate contributions in order to increase the percentage of contributions to the Social Insurance Agency.

⁴⁷⁵ Slovak Republic: Pension Policy Reform Note, Main Report December 2, 2004, Document of the World Bank

⁴⁷⁶ O. Pietruchová *Whose work? Whose pension? Gender Mainstreaming as a tool for gender sensitive pension reform in Slovakia*, Rosa-Mayreder-College, Master programme in International gender research & feminist policy, Vienna 2005-2006

been the only author who has analysed the impacts of the pension reform on women in our country. She referred to warnings by the World Bank of the potential disadvantages of the pension reform for women, to which the authors of our pension reform never paid any attention.

3. Retroactivity of legislation

However, as a result of the pension reform, differences in the amount of pensions occurred. With the aim being to close the gap between pensioners paid under the 'old' pension scheme and pensioners paid under the 'new' pension scheme, the amendment of the Social Insurance Act⁴⁷⁷ provided that old-age pensions awarded before 1 January 2004 would be calculated anew, because they had not taken into account the achieved wage to the full amount. The amount of the old-age pension awarded according to regulations valid until 31 December 2003 was calculated anew, without being limited by the maximum amount of any pension and the amount of the pension not taking into account the amount of the average monthly wage in excess of SKK 10 000 (EUR 332) was revised. Adjustments and increases that had belonged to the pension in individual years were also reflected in the new determined amount of the old-age pension.

In the following period, with effect from 1 January 2009, pensions awarded before 1 October 1988, the amount of which were calculated according to the then average monthly wage of SKK 3 000 (EUR 99.50), were calculated anew.

4. World Bank Model

We are one of the countries that has used the World Bank model. The capitalization reform of pension security in Slovakia was based on the Chilean model that was also recommended by the World Bank. Unlike the Chilean model contributions in Slovakia are paid regularly on a monthly basis and the obligation of the employer to pay contributions for his employees was maintained, i.e. the total amount of contributions equals the contribution of the employee plus contribution of the employer, due to which the burden is divided between both of them. Furthermore, the risk is divided so that each participant in the 2nd pillar in Slovakia also participates in the 1st pillar, in which one is entitled to 50 % of the pension which one would receive if one had participated in the 1st pillar only. In Slovakia, in view of potential participation in all three pillars, we can rather talk about the mixed system based on the principle of basic and supplementary pillars, which is in line with the recommendations of the World Bank that also recommended the division of risk among several pillars. As was mentioned above the Slovak 2nd pillar of pension security is actually not really a 2nd pillar scheme. It is a part of the 1st pillar and thus is regulated by Directive 79/7.

B) STATUTORY OLD-AGE PENSION SCHEMES **(Schemes falling under Directive 79/7/EEC)**

1. Qualifying conditions

Old-age insurance entitles the insured person to the following benefits: an old-age pension, an early old-age pension, survivors' benefits (a widow's, widower's and an orphan's pension).

⁴⁷⁷ Act No. 310/2006 Coll. with effect from 1 August 2006

An insured person is entitled to an old-age pension if he/she has been insured for an old age pension for at least 15 years and has reached the minimum retirement age: 62 years (for men since 2006 and for women after 2015).

The qualifying condition for entitlement to an early old-age pension is the attainment of at least 15 years of insurance, but being 2 years short of attaining pensionable age. There is no right to an early old-age pension and the pension will not be more than 1.2 times the amount of the subsistence minimum. In the case of early retirement pension benefits will decrease by 0.5 % for each month of early retirement.

Late retirement is also allowed and each month of later retirement increases the pension by 0.5 %.

2. The amount of the old-age pension

The amount of the pension which is paid by the Social Insurance Agency is calculated in the same way as for insured persons who pay contributions to both the 1st and the 2nd pillars. The amount of the second part of the pension in the 2nd pillar which is paid by the pension management companies depends on the amount of money that the members save in their personal accounts and on the yield of the pension funds. As the law on the 2nd pillar has been in effect from 2005 and the minimum period of insurance contributions is 15 years, the first pension benefits from the 2nd pillar will be paid as late as in 2020.

The amount of the old-age pension which is paid by the Social Insurance Agency depends on the amount of the assessment basis (i.e. the gross income) in the decisive period. On this basis the average personal wage point (POMB) will be determined, depending on the period of old-age pension insurance (i.e. the length of service). The general decisive period for this purpose is the number of calendar years between the year 1984 and the year preceding the calendar year in which entitlement to a pension has arisen. The amount of the old-age pension is also determined by the actual pension value (ADH), which is changed each year by the Ministry of Labour, Social Affairs and Family depending on economic developments. If entitlement to a pension arises in 2010, the decisive period for which gross income will be taken into account will be the period 1984 to 2009. The amount of old-age pension benefits will be calculated as follows: the POMB will be multiplied by the number of years of the pension insurance period and by the ADH (in 2009 it was EUR 8.9955, in 2010 it is EUR 9.2246). Example: the insured person fulfilled conditions for entitlement to an old-age pension on 1 January 2009 and from this date he/she applied for an old-age pension. The value of his POMB was 1.0012 (which means that his/her assessment basis was close to the level of the average wage in the economy – EUR 744.50). As of 1 January 2009 he/she had paid contributions to the pension scheme during 16 434 days, which represents a 45.0247-year insurance period ($16\,434 : 365 = 45.0247$). The ADH for the year 2009 was EUR 8.9955. The amount of old-age pension to which he/she is entitled as from 1 January 2009 was calculated as follows: $1.0012 \times 45.0247 \times 8.9955 = \text{EUR } 405.60$ per month (rounded off to the above 10 cents). From 1 January 2009 the amount of the pension increased by 6.95 %, which means an increase of EUR 28.20 to EUR 433.80 per month.

The average amount of old-age pension benefits in 2010 is EUR 351.31. The amount of minimum or maximum pensions is not determined. The minimum pension has been abolished, and people who have pensions which are too low will have no further guaranteed income, except for social assistance, if they qualify.

An employee pays old-age insurance to the amount of 4 % of the basis for assessment (usually equal to the gross wage). The employer on behalf of the

employee pays the old-age insurance of 14 % of the basis for the employer's assessment.

Gender-specific life expectancy tables are not taken into consideration in calculating the pension amount.

3. Periods of caring

The only advantage for parents who do not work and take care of their children is that they are classified within the category of persons who are insured under the compulsory pension scheme and whose contributions are paid by the State. The periods of maternity leave and parental leave are taken into account for purposes of pension insurance as periods actually worked.

4. Exceptions, Article 7.1 of Directive 79/7

Pensionable age and the possible consequences for other benefits (Article 7.1a)

The pensionable age introduced by the Act on Social Insurance⁴⁷⁸ has been gradually extended and has now been equalized for women and men at 62 years, although the Act still contains some exceptions to the general provision and provides for a gradual equalization of the currently diversified pensionable ages for women depending on the number of children raised.

The qualifying condition for entitlement to an early old-age pension 2 years before reaching pensionable age is having attained at least 15 years of insurance. This pension will then be no higher than 1.2 times the subsistence minimum.

The claimant can receive an old-age pension and still continue to work.

While public opinion on this issue, particularly among women, still favours an earlier retirement age for women, support for equalizing the ages is growing. Thus, public education is needed to bring home the point that retaining the earlier retirement age for women under the new pension reform would be highly disadvantageous for women. Furthermore, it is also necessary to ensure that enough jobs are available for older women, which is not the case in the present situation. Already today, older women have difficulties in remaining employed or finding a job. If a high proportion of older women remain unemployed and live on social security income, the equalization of the retirement age will neither improve the position of the state budget, nor women's pension fund.

Besides, further analysis is needed to assess how raising women's pensionable age will influence the social position of families which is still rather strong in Slovakia. Particularly older women providing child care for their grandchildren in many cases allows a younger generation of women to enter the labour market. If these 'family services' will not be possible and no longer available, it is necessary to ensure that there are sufficient and affordable child-care services.

C) OCCUPATIONAL OLD-AGE PENSION SCHEMES

(Schemes falling under Article 157 TFEU, Directive 86/378/EEC, as amended by Directive 96/97/EC, now Articles 5-13 of the Recast Directive 2006/54/EC)

In Slovakia, it is not possible to distinguish between statutory pension schemes and occupational schemes. The social insurance system does not contain a specific regulation of occupational social security schemes. Some provisions of the Act on

⁴⁷⁸ Act No. 461/2003 Coll. of 30 October 2003, effective from 1 January 2004.

Supplementary Pension Savings,⁴⁷⁹ however, could be considered as laying down certain conditions for occupational social security schemes.

Coverage

The Act on Supplementary Pension Savings⁴⁸⁰ regulates the voluntary supplementary pension scheme – the so-called third tier of the pension system in Slovakia. The aim of this act is to enable an insured person – an employee according to the Labour Code e.g. a professional dancer, to gain additional pension old age or during invalidity and to enable his or her survivors to gain an additional pension income in case of the death of the insured person. Participation by employers and employees in this system of pension insurance and the level of the contributions which the employee has to pay can be agreed upon in a collective agreement.

The minimum period of supplementary old-age pension savings is 10 years and the minimum age is 55 years for a lifelong or temporary supplementary old-age pension. The minimum period of supplementary service pension savings is 5 years and the minimum age is 40 years for a lifelong or temporary supplementary service pension. In this pillar actuarial factors are used.

Civil servants

In general the civil servants scheme is no different from the general scheme which applies to other categories of workers.

The principal Slovak public/civil service legislation is contained in two separate laws: the Act on Performing Work in the Public Interest⁴⁸¹ (this law covers employees of state administrative authorities, municipalities, regional bodies, legal entities set up by any of the previous bodies, etc. (public servants)) and the Act on State Service.⁴⁸² The Act on State Service covers employees - clerks of courts, judicial trainees at the courts, judicial trainees at the Prosecution Service (civil servants). This Act does not relate to constitutional representatives - Members of Parliament, the President, government members, the President and Vice-President of the Supreme Audit Office, judges at the Constitutional Court, other judges, prosecutors and the public guardian of rights (ombudsman), and the Director of the Bureau of National Security.

Legislation for specific groups of civil servants, such as members of the Police Corps, the Slovak Intelligence Service, the Bureau of National Security, the Prison Service and Judicial Guards, the Railway Police, customs officers, professional military personnel (so-called 'power branches') is contained in separate laws. These groups of professionals do not participate in the public system administrated by the Social Insurance Agency. The Act on Social Insurance does not relate to them as they are covered by special occupational pension schemes. Their employers (the Ministry of Defence and the Ministry of the Interior) pay contributions to special funds associated with the ministerial budget.

⁴⁷⁹ Act No. 650/2004 Coll. of 26 October 2004, effective from 1 January 2005.

⁴⁸⁰ Act No. 650/2004 Coll. of 26 October 2004, effective from 1 January 2005.

⁴⁸¹ Act No. 552/2003 Coll, as amended.

⁴⁸² Act No. 312/ 2001 Coll., as amended by the Act No. 400/2009 Coll.

SLOVENIA – *Tanja Koderman Sever*

A) GENERAL QUESTIONS

1. The old-age pensions system

Since the introduction of the last pension reform in 2000 (hereinafter the last pension reform) following the adoption of the new Pension and Invalidity Insurance Act in 1999⁴⁸³ (hereinafter the PIIA) the Slovene old-age pensions system includes a compulsory pension and disability insurance (the statutory pension scheme), a supplementary pension and disability insurances (the occupational pension scheme) and a pension and invalidity insurance scheme on the basis of personal pension savings accounts (a voluntary savings scheme). The difference between the first two systems is immense, because pensions from compulsory insurance are paid from the current contributions of the insured persons on the Pay-As-You-Go basis (hereinafter the PAYG system), while the additional occupational pillar is based on the principle of investment. Supplementary pension insurance is divided into compulsory and voluntary pension insurance. Compulsory supplementary pension insurance is compensation for the insurance period with an increase and is intended for people performing particularly hard work and work which is harmful to health, or work that cannot be performed successfully after a certain age. Voluntary supplementary pension insurance is the insurance where the insured persons pay amounts into their accounts, so that after retiring they can obtain a supplementary pension, since the current system of compulsory insurance will not be able to provide them with adequate pensions in the future. This insurance is stimulated by tax relief for payments up to a certain amount. The voluntary supplementary insurance can be collective, where premiums are paid by the employer, or individual, where premiums are paid by the insured person. The current compulsory supplementary pension system has features of the Defined Benefits System (hereinafter the DB system), because the amount of the occupational pensions is already predetermined. And the voluntary supplementary pension system has features of the Defined Contributions System (hereinafter the DC system). Slovenia's pension system is based on the World Bank Model.

As in many other countries of the EU, a reform of the pension system in Slovenia is a topical issue which is currently on the political agenda. According to a proposal by the Ministry of Labour, Social and Family Affairs⁴⁸⁴ the first set of measures relating to the modernization of the current system shall come into force on 1 January 2011 and the second on 1 January 2015. The first set of measures mainly pursue specific objectives, such as an increased share by active scheme members, greater dependence between the amount of contributions paid and the amount of pension benefits, the transparency of the system, and the establishment of an efficient supplementary pension scheme that will serve the purpose for which it had been designed by the last pension reform. The second set of measures relates to the establishment of a new pension system in Slovenia. The pension and disability insurance which will enter into force in 2015 is based on the principle of the multi-pillar system which includes the zero pillar, the first pillar, the second pillar and the

⁴⁸³ Zakon o pokojninskem in invalidskem zavarovanju (ZPIZ-1-UPB4, *Uradni list RS*, No. 109/2006), <http://www.uradni-list.si/1/content?id=76020>, accessed 12 June 2010.

⁴⁸⁴ Modernization of the pension system in the Republic of Slovenia – Safe age for all generations, http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti_pdf/word/document_moderisation.pension.system_final.doc, accessed 12 June 2010.

third pillar. In the statutory pension scheme the system of the Notional Defined Contribution system (hereinafter the NDC system) will be introduced. In this system, the paid contributions of the insured person are recorded in his/her personal pension savings account. Personal pension savings accounts are virtual because the contributions in the PAYG system are used to pay the rights of pensioners. The transformation of the current PAYG system from the DB system to that of the NDC would mean that it would be necessary to introduce a strong redistributive element (the zero pillar) which would provide everyone with a universal income and would be linked to the entry age of 65, or an eventual later retirement. The current compulsory pillar could therefore be transformed into two parts, where the social or the zero pillar would provide a universal pension that would guarantee security in old age while the first pillar would provide a subsequent payment of a certain actuarial pension whose amount would be determined in advance according to the preliminary formula taking into account the expected life expectancy of men and women. The current system of the compulsory supplementary pension scheme shall be transformed into the DC system following the practice of the voluntary supplementary pension system in the Republic of Slovenia. The amount of occupational pensions would no longer be determined, but it would depend on the amount of funds collected in the personal pension savings accounts at the time of enforcing the right to the occupational pension.

We have old-age survivors' pensions in statutory and occupational pension schemes. They are gender-neutral.

In the Slovene pension system there is a special social security right which is granted regardless of the number of years making up the pension qualification period. This is a state pension which is granted to a person over the age of 65 who has resided in the Republic of Slovenia for at least 30 years between the age of 15 and 65, has a permanent residence in the Republic of Slovenia, and is not entitled to any other pension whatsoever and whose own income does not exceed the income ceiling for entitlement to the pension support allowance for retired persons whose pension is under the regulated minimum. The state pension amounts to 33.3 % of the minimum pension rating base. There are no gender differences in acquiring the right to a state pension.

2. Old-age pension reforms

The last pension reform brought radical changes to the pension system that were needed if Slovenia wanted to secure pensions which would allow a safe age and a smooth payment of pensions also in the future with regard to declining birth rates, increased life expectancy and a changing ratio between the active and inactive population. With this reform the Slovene government enforced stricter retirement conditions but did exclude gender equality in relation to the determination of the pensionable age and the completion of the pension qualifying period. However, the forthcoming reform in 2011 will equalize the full pensionable age for men and women and the minimum age for early retirement. The conditions will change gradually with adjusted longer transitional periods, particularly for women and men, as the entry conditions are different due to the current differences in the pensionable age. Nevertheless, gender equality will be furthermore excluded with regard to the completion of the pension qualifying period for women and men. After the completion of the transitional period, retirement will be possible with a minimum 15-year insurance period at 65 years of age, and early retirement with at least 38 years of

pensionable service for women or at least 40 years of pensionable service for men with a minimum age of 60 years.

With regard to the modified socio-political, demographic and economic assumptions and projections the current PAYG system is not able to guarantee adequate pensions and the sustainability of public finances. Therefore the last pension reform and particularly the new pension reform which is currently in progress have given priority to financial aspects of the reform rather than to gender equality aspects. Therefore different working patterns, lower participation rates in the formal labour market, lower pay and career breaks have not been taken into consideration. However, they are not detrimental to those who have non-standard working patterns, such as part-time, fixed-time contracts, occasional jobs and low-paid jobs.

Nevertheless, the reforms have not and could not hinder gender equality. Regarding the equalization of the pensionable age, they even mean a step forward for gender equality.

3. Retroactivity of legislation

According to the last pension reform the pension beneficiaries who have asserted their rights before the new law came into force retained their rights at least to the extent defined by the former law and are subject to the new indexation system under the new law.

The reform in progress is divided into two sets of changes that build upon each other in parallel and refer to different groups of individuals by taking their age into account. The first set of measures refers to the modernization of the current system, having effect from 1 January 2011. In the upgraded pension system all insured persons born before 1960, or those who are at least 55 years old on 1 January 2015, could still assert their rights. The second set of measures relates to the establishment of a new pension system in Slovenia, with effect on 1 January 2015, which would include all insured persons who were born in 1960 or later, and are less than 55 years old on 1 January 2015. The parallel nature of the two pension systems is expected to expire in 2025, when the new pension scheme would be fully and finally introduced.

Since both reforms enforced or will enforce stricter legal conditions and since the pension systems cannot cope with rapid interventions, they decided to pursue the principle of a gradual change in the conditions. The introduction of a higher full pensionable age (65 years), the new higher minimum age (60 years), the system of incentives for remaining longer in employment and deductions for every missing month until they have reached full pensionable age will be carried out gradually, with adjusted longer transitional periods.

Pensions were not and will not be recalculated retroactively. Besides, there are no measures to compensate retroactively the disadvantages suffered by the discriminated applicants in the past since there were no such cases of discrimination.

4. The World Bank Model

The current Slovene three-pillar model is indeed based on the World Bank Model but differs considerably from systems introduced in other European countries due to a different system for providing a supplementary pension and disability insurance. The system of the compulsory supplementary pension and disability insurance (for employees in jobs deemed to be hazardous or with a limited term) is therefore regarded as part of the first pillar and the system of voluntary supplementary pension and disability insurance is regarded as falling within the second pillar. So in fact there is no obligatory supplementary insurance for all. Therefore our pension system will be

modernized and transformed into a four-pillar system which in my opinion will be more useful for gender equality purposes within the EU legislative framework. The new zero pillar which is to be introduced will be based on the fundamental principles of redistribution and solidarity, the right to a universal pension aimed at preventing poverty and providing basic social security for old age.

As I have already mentioned above, in our system there is a mandatory funded pension scheme set up under the World Bank Model but only for employees in jobs deemed to be hazardous or with a limited term. Although it is regarded as a part of the first pillar, there are no exclusions of gender equality in relation to the pensionable age or the completion of the pension qualifying period. The conditions for the acquisition of an occupational pension therefore do not differ with respect to the gender of the insured person.⁴⁸⁵

B) STATUTORY OLD-AGE PENSION SCHEMES **(Schemes falling under Directive 79/7/EEC)**

1. Qualifying conditions

Non-standard work contracts such as part-time, short-term contracts, seasonal contracts or occasional contracts are covered by the pension scheme. There is no minimum hours threshold. An insured person who has fulfilled the conditions for entitlement to an old-age pension may acquire the right to a partial pension if he or she is employed for a maximum one half of the full-time basis. A partial pension amounts to one half of the old-age pension to which he/she would be entitled on the date of assertion according to the completed pension qualifying period, the pension rating base and his/her age. In the case of seasonal workers who carry out seasonal work or work with an uneven distribution of working time on the basis of the fixed-term employment contract without interruption for at least three months in a year, and who accumulate more working hours than is laid down for full-time work, the working hours can be, at his/her request, calculated as working days with full working hours. Those working days are included in the worker's years of service as if he/she had spent them at work.

According to the current system an old-age pension is attained at a defined age and after the completion of a pension qualifying period. There are still differences as regards minimum conditions for entitlement to an old-age pension between women and men. An old-age pension is therefore granted to an insured person when he or she has attained:

- 58 years of age, if he/she has completed a pension qualifying period of 40 years (men) or 38 years (women)⁴⁸⁶ or;
- 63 years of age (men) or 61 years of age (women), if he/she has completed a pension qualifying period of 20 years or;
- 65 years of age (men) or 63 years of age (women), if he/she has completed an insurance period of at least 15 years.

These qualifying conditions and the abovementioned legislation regarding part-time workers do not hamper the pension right of non-standard workers, such as part-time, temporary or occasional workers.

Under the proposed modernization of the current pension system the incentives for remaining longer in employment, and therefore being insured, will increase.

⁴⁸⁵ Article 284/2 of the PIIA-1.

⁴⁸⁶ This provision will become fully enforceable in 2014. Until 2013 the conditions for women will remain even more favourable under transitional provision 398/1 of the PIIA-1.

Periods of unemployment which are taken into account for pension rights and amount purposes are periods when unemployed persons receive unemployment benefit and unemployed periods before retirement for which contributions towards pension and invalidity insurance are paid by the Employment Service of Slovenia until the conditions for entitlement to a pension are fulfilled.

2. The amount of the old-age pension

The amount of the old-age pension is based on the monthly average of salaries which an insured person has received or the insurance bases from which his or her contributions were calculated in any one of the successive 18 years of insurance after 1 January 1970 which is the most favourable for the insured person. The insurance year is considered to be a calendar year during which an insured person received a salary or a salary compensation for at least 6 months and during which contributions, calculated from the insurance base, were paid for at least six months. According to the proposed reform a longer, 35-year period of insurance will be introduced. It will be introduced gradually starting at the beginning of 2011.

No gender-specific life expectancy tables are taken into consideration when calculating the amount of the old-age pension.

For a full old-age pension entitlement women have to complete a 38-year pension qualifying period which for men this is 40 years. The amount of the old-age pension is calculated according to the completed pension qualifying period, the pension rating base and the person's age. An old-age pension is therefore assessed from the pension rating base in a percentage which is determined according to the completed pension qualifying period. The percentage for an insured person with an insurance period of 15 years amounts to 35 % (for men) and 38 % (for women) of the pension rating base and this increases by 1.5 % for each completed year in the pension qualifying period. Therefore, for example, a woman who was employed for 38 years and whose monthly average earnings in the best 18 years were EUR 1 000 will have a pension amounting to EUR 725.

In order to ascertain the pension rating base, the salary earned by an employee in each insurance year on the basis of part-time work is calculated at an average amount which corresponds to the salary earned on the basis of full-time work. The amount which corresponds to the salary based on full-time work for each insurance year is calculated so that the total amount of the salary which serves for the calculation of the pension rating base, and which was received by the employee for a year of insurance, is divided by the number of hours when he/she was employed part time. The amount obtained is multiplied by the annual number of full-time working hours as stipulated by the law or collective agreement. Such an amount shall be considered as the salary which serves for the calculation of the pension rating base.

The rules governing the pension and disability law currently provide that pensions are indexed depending on the increase in average monthly salaries paid to employees by legal persons, as published by the Statistical Office in the Official Journal of the Republic of Slovenia. It takes into account the evolution of average gross salaries. In future, the applicable pension indexation regime will have an even stronger effect on the increase in a pension fund deficit. It is therefore necessary to examine the possibility of changing the indexation in a manner that preserves the real value of the recognized and measured amounts of pensions in order to ensure the financial sustainability of the pension fund.

In the current very non-transparent pension system the factor of solidarity between individuals or redistribution within a generation, otherwise typical for social

transfers, is strongly present. Thus the system incorporates vertical solidarity between active and retired generations (contributions are compulsory and proportional according to the contribution base; insured persons with higher salaries and incomes pay contributions from the bases which are not limited, while their rights are limited by setting the maximum pension rating base); horizontal solidarity among pensioners (the maximum ratio between the lowest and the highest pension for an equally long insurance period is 1:4), and solidarity among pensioners who retired in different periods.

3. Periods of caring

Periods of maternity leave and parental leave taken by workers who were insured pursuant to the Parental Protection and Family Benefits Act before the day of the commencement of the individual type of parental leave and are exercising the rights to parental benefits are treated as being equal to periods of work and are included in the insurance period. The duration of maternity leave in Slovenia is 105 days and the duration of parental leave is up to 260 days. Furthermore, persons who are not entitled to parental leave also have the right to parental benefits if they had been insured at least twelve months during the past three years prior to exercising the right to parental benefits. Contributions to the compulsory pension and disability insurance are paid from the basis for the calculation of parental benefits. The basis for the payment of contributions is the last 12 salaries of the worker. If the worker was no longer employed as in the latter case, 55 % of the minimum salary is taken into consideration. Besides, non-working parents, who are not insured under compulsory insurance on other grounds and take care of a child during his or her first year, are entitled to the parental allowance according to parenthood regulations and are included in the compulsory insurance if the child has Slovene nationality and his/her permanent residence in Slovenia.

The time when an insured person or a pension recipient was not covered by an insurance due to care and attendance provided to his or her child up to the age of three can be taken into account for the completion of the pension qualifying period and the assessment of a pension if he or she has paid compulsory insurance contributions. The coefficients for fixing the insurance contributions to be paid are determined by the Institute for Pension and Invalidity Insurance.

The period of time under compulsory insurance, in which an insured parent was employed part time due to caring for his/her child up to the age of three, or six if one of the parents nurses and cares for two children, or up to the age of eighteen due to care having to be given to a person with a serious physical impairment or to a moderately, seriously or severely mentally handicapped person in accordance with the regulations governing the rights related to parenthood, shall likewise be considered as a period of full-time employment. In those cases the employer must ensure the worker's right to his/her salary on the basis of actual working hours, while the Republic of Slovenia must ensure the payment of social security contributions for the difference between the actual hours worked and full-time work on the basis of a proportional share of the minimum salary.

People who have the status of a family attendant according to the Social Security Act and are offering help to adult persons who are seriously handicapped in their mental development or movement, and therefore require assistance to perform all their basic vital functions, have the right to a partial payment for lost income to the amount of the minimum salary or to the proportional part of payment for lost income in the case of part-time work. From those payments insurance contributions are paid.

Family attendants cease to perform their tasks due to the express wish of the disabled persons or family attendants, due to changes in the necessities of disabled persons, due to performing obligations and tasks contrary to the law, or due to the death of family attendants or disabled persons.

All the above-mentioned provisions are gender-neutral because Slovenia's caring credit system is not based on the traditional one care provider model.

Caring periods for pension purposes are not disregarded.

I think that it is feasible to include a minimum provision on care credit in the gender equality EU legislation in the field of social security.

4. Exceptions, Article 7.1 of Directive 79/7

The pensionable age and the possible consequences for other benefits (Article 7.1 a))

According to the current rules, persons may be entitled to retire when they fulfil the minimum requirements. One of these requirements is the retirement age which is 63 years for men and 61 years for women. The full retirement age of an insured person may be lowered by virtue of having children and caring for them for at least five years. The lowering of the pensionable age for each child born or adopted is gender-neutral. In addition, the pensionable age of a woman can be lowered due to inclusion in a compulsory pension and invalidity insurance before the age of 18. This is not gender-neutral. However, the minimum required retirement age can be lowered to at most 56 years of age for women and to at most 58 years of age for men due to the different full pensionable age. According to the pension reform which is in progress, lowering the retirement age due to having children will most probably be eliminated.

Retirement at the above-mentioned retirement age is not compulsory, so insured persons may decide whether to retire or remain at work because, as a rule, the status of an insured person is incompatible with the status of a pensioner. If a person decides to retire, the system allows a gradual transition to the passive generation by arranging a partial retirement. This allows the worker to remain in employment or to take up part-time employment and to receive a partial pension. After the termination of the employment relationship and taking up partial retirement, the insured person may apply for a full old-age pension. In this case, the insurance period completed during partial retirement, and the salary from that period are taken into account in reassessing the pension. Besides, the insured person may require, if this is more favourable, that he or she obtains only a percentage increase in addition to the old-age pension, based on the insurance period completed during partial retirement. Persons who re-enter full-time post-retirement employment or become self-employed, and thus obtain a salary or pay for work, are reactivated. While the pensioner is included in the compulsory insurance, his or her pension rights are suspended, and his or her pension begins to be paid once again when he or she terminates the employment or the activity (which is the basis for inclusion in the scheme) in the increased percentage based on the insurance period obtained during the time of re-insurance.

The pensionable age for men and women is still different. This, of course, has consequences for other benefits such as, for example: for the pension support allowance for retired persons whose pension is under the regulated minimum and is therefore obtained earlier by women than men; for the lowering of the full retirement age by virtue of having children; for determining the percentage for the acquisition of an entitlement to an old-age pension (the minimum percentage for an insured woman with an insurance period of 15 years amounts to 38 % and for men 35 % from the pension rating base) etc.

According to the pension reform which is in progress the pensionable age will be equalized. The introduction of a new, higher full pensionable age, which is equal for both sexes will take place gradually, with adjusted longer transitional periods. In this reform there are no measures to compensate retroactively the disadvantaged sex for any loss suffered in the past. Arguments for the equalization of the pensionable age in Slovenia are:

- the EU recommendations such as equalization and
- the elimination of gender stereotypes.

The arguments against equalization are:

- there is still a need for positive discrimination in order to compensate for unequal labour market conditions and working patterns or for caring activities carried out by women within the family and
- women have more difficulties in finding employment after a certain age.

In the current system the amount of pensions in general does not differentiate due to gender. However, pensions for women are indirectly lower due to existing inequalities in the labour market which are mirrored in the pension scheme.

In my opinion an exception concerning the pensionable age can be eliminated by the gender equality legislation on statutory social security. The elimination of this exception should take place gradually with adjusted longer transitional periods.

We have data on the average age when men and women leave the labour market and on years of service accrued when they retire. The average age when leaving the labour market in December 2009 was 62 years of age for men and 58 years and 1 month for women. The average years of service accrued were 33 years for women and 37 years and 6 months for men.

Advantages granted to persons who have brought up children (Article 7.1.b))

Besides the above mentioned advantages under the current legislation, the following caring advantages still exist:

The lowering of the retirement age for retiring persons to a certain defined age for each child born or adopted with Slovene citizenship if the insured person has cared for the child for at least five years. The parents shall mutually agree which of them shall benefit from this lowering of the pensionable age. If no such agreement is reached the parent who, for a predominant part, benefited from his or her right to parental leave shall be the one entitled to have the retirement age limit lowered. If none of the parents have claimed their right to parental leave or both of them has claimed it, it is the insured woman who shall be entitled to have the retirement age limit lowered.

In my opinion we can retain this exception.

Old-age or invalidity benefit entitlements or increases in long-term benefits by virtue of the derived entitlements of a wife (Article 7.1 c) and d))

These benefits and supplements do not exist in Slovenia. I think that they should be eliminated by the gender equality legislation on statutory social security, but gradually with adjusted longer transitional periods.

C) OCCUPATIONAL OLD-AGE PENSION SCHEMES

(Schemes falling under Article 157 TFEU, Directive 86/378/EEC, as amended by Directive 96/97/EC, now Articles 5-13 of the Recast Directive 2006/54/EC)

1. Coverage

Participation in occupational old-age pension schemes is voluntary. There is only one exception: people who are engaged in particularly hard work and work which is harmful to health or work which cannot be performed successfully after a certain age. For them a mandatory funded pension scheme has been set up.

The membership limitation for participation in the compulsory supplementary pension insurance scheme which is compensation for the insurance period with an increase is intended for people engaged in particularly difficult and harmful work, or work which cannot be performed successfully after a certain age. The list of those jobs is determined by the Minister for Labour, family and social affairs with the consent of the relevant trade unions and employers' associations. To the voluntary supplementary pension insurance scheme only persons included in the compulsory pension insurance scheme or persons already exercising rights deriving from this insurance may join. The voluntary supplementary pension insurance scheme can be collective, where the premium is paid by the employer, or individual, where the premium is paid by the insured person.

We do not have gender-segregated data on the participation rate in occupational old-age pension schemes. The only data available are data on the percentage or number of people included in occupational old-age pension schemes. In the voluntary supplementary pension scheme 56.78 % of those included in the compulsory pension and disability insurance were participating in December 2009. And in the compulsory supplementary pension insurance scheme 39 306 people were participating in December 2008.

2. Calculation of old-age pensions and contributions

On the basis of the compulsory supplementary insurance the insured person can be entitled to an occupational pension or to a reduced occupational pension. The occupational pension is payable in monthly amounts from the time of the acquisition of the occupational pension to the fulfilment of the conditions for obtaining a pension under statutory insurance. And the reduced occupational pension is payable in monthly amounts from retirement under statutory insurance to the time of the death of the insured person. The current system of the compulsory supplementary pension scheme has features of the DB system because the amount of the occupational pension is already determined. Thus, the amount of the occupational pension is equal to the amount of the old-age pension to which the person in question would be entitled under the statutory pension scheme. Due to inclusion in the compulsory supplementary pension insurance an insured person has one quarter of the period of his/her membership in the compulsory supplementary pension scheme added to the actual insurance period for the fulfilment of the requirements for acquiring the right to an old-age pension. Besides, the current system provides for different contribution rates for particular categories of employees while providing the same rights. According to the pension reform which is currently in progress the current system will be transformed into a DC system following the practice of the voluntary supplementary pension scheme in the Republic of Slovenia. The amount of the occupational pension will no longer be predetermined, but will depend on the amount of funds collected in the personal pension savings accounts at the time of acquiring

the right to an occupational pension. As mentioned, the voluntary supplementary pension scheme is based on the DC system where the amount of the pension is not predetermined. Therefore an insured person assumes the investment risk with minimum guaranteed returns on the paid insurance premium. The minimum guaranteed return is the annual rate of return which shall not be lower than 40 % of the average annual interest on Government Stocks with maturity exceeding one year.

The right to an occupational pension or a reduced occupational pension under compulsory supplementary pension insurance is not subject to minimum contribution, insurance or employment conditions. On the contrary, the right to a supplementary occupational old-age pension under voluntary supplementary pension insurance can be acquired if an insured person has attained the age of 58 years, is already obtaining an old-age statutory pension and if at least 120 months have passed since his or her entry into the voluntary supplementary insurance. The early supplementary old-age pension can be acquired if an insured person has attained the age 53 years, is insured for that right and has been insured under the voluntary supplementary insurance for at least 180 months. Minimum and maximum premium amounts payable under the pension scheme are determined. These conditions do not hamper the pension rights of non-standard workers, such as part-time, temporary or occasional workers. Regarding workers with a lower income it needs to be mentioned that participation in the voluntary supplementary pension scheme is almost impossible due to the very low income.

Periods of unemployment are not taken into account for pension rights under the compulsory supplementary pension scheme. For pension rights under the voluntary supplementary pension schemes periods of unemployment are taken into account if monthly premiums are paid.

3. Actuarial factors

A supplementary pension under the voluntary supplementary pension insurance scheme is calculated with the application of adequate actuarial factors which take into consideration the life expectancy of the insured person on the basis of adequate mortality tables. Taking into account the higher life expectancy of women, the amount of the supplementary pension paid is lower for women than men. No other factors which would determine differences in life expectancy are taken into account by actuarial factors. Actuarial factors are used only to determine the amount of the voluntary occupational pension and are used within the limits of Article 9.1. h) and j) of Directive 2006/54/EC.

4. Caring credits

There are no caring advantages provided by occupational schemes. For pension rights under the voluntary supplementary pension schemes periods of maternity leave, parental leave and other periods of care are taken into account if monthly premiums are paid.

5. Vesting and reimbursement rules

The operator of a mutual pension fund is entitled to withdrawal costs at a percentage (which is usually less than 1 %) of the purchase value at its disbursement. The maximum percentage of withdrawal costs allowed is stipulated by the Minister of Finance. Withdrawal by the insured person is possible on the basis of a written statement of withdrawal. The period of notice for a withdrawal is laid down in the pension insurance scheme and should not exceed three months. The transfer from one

pension scheme to another is only permitted if both pension schemes concerned are recognized as pension schemes on the basis of which tax relief can be granted and if the voluntary supplementary insurance premium was paid over a period which is not less than 36 months. The pension scheme provider from which an insured person has withdrawn is entitled to the reimbursement of costs incurred due to the transfer of funds at the amount specified in the pension scheme (which is usually less than 1 % of the purchase value at the time of the transfer).

6. Pensionable age

Conditions for the acquisition of rights under voluntary supplementary insurance do not differ in respect of the gender of the insured person.

7. Civil servants

The Slovene old-age pension system is no different for civil servants.

SPAIN – Berta Valdés de la Vega⁴⁸⁷

A) GENERAL QUESTIONS

1. The old-age pension system

The old-age pension scheme in Spain is regulated by the Real Decreto Legislativo 1/1994 (Ley General de Seguridad Social) and the statutory scheme is organized on a pay-as-you-go basis, where the pensions are paid from the contributions of active workers and their employers. The scheme is a defined contribution system where the contributions that the employers and workers have to pay every month are predetermined. The old-age pension participants have pensions in statutory schemes which are gender neutral and are based on the traditional three-pillar model. The system includes a social assistance old-age pension component for those who are not included in or do not qualify for a statutory pension. The requirements are to be 65 years old, and to have lived in Spain for at least ten years since the age of 16, where two of those years must be immediately before the date of application. Also the income of the applicant must not be over EUR 4 755.80 per year.

2. Old-age pension reforms

The reforms of the old-age pension system in the last decade have all gone in the direction of increasing the number of years necessary in order to be entitled to the old-age pension, both directly, by increasing the number of years of contribution required from 10 to 15, and indirectly, by eliminating the contributions of the two-yearly bonus salaries, which are no longer included in the calculation of the minimum period of contribution. All this in practice makes it more difficult for women to obtain an old-age pension, due to the fact that the majority of part-time jobs in Spain are occupied by women, and the law requires longer periods of contributions for these contracts compared with full-time occupation.

Although this is partially rectified by applying coefficient corrections on the real hours worked (1.5) in retirement and invalidity pensions, in practice it still does not

⁴⁸⁷ This report has been elaborated by Juan López Gandía (University of Valencia) and Berta Valdés (University of Castilla-La Mancha).

eliminate the difference between part-time and full-time workers and therefore creates indirect discrimination against female workers.

3. Retroactivity of legislation

The pension system was recently (2007) amended to eliminate any gender inequalities, and from then on women who give birth to a child and are not actively working around that time still receive 112 days of contributions in order to be entitled to an old-age pension. This reform is applied immediately to new pensions but no retroactive measures have been taken. Also, in 1998 the difficulties that part-time workers experience in order to reach the minimum period of contribution were partially rectified by applying coefficient corrections on the real hours worked (1.5) in retirement and invalidity pensions, although in practice this still does not eliminate the difference between part-time and full-time workers and therefore creates indirect discrimination against female workers. However, this coefficient correction is applied to all contributions paid throughout the worker's lifetime. This makes the reform retroactive, because it also applies to contributions made before 1998.

4. The World Bank Model

Not applicable.

B) STATUTORY OLD-AGE PENSION SCHEMES (Schemes falling under Directive 79/7/EEC)

1. Qualifying conditions

The conditions for access to old-age pensions in Spain include non-standard work contracts, such as part-time or short-term contracts or seasonal contracts, or occasional contracts. All these workers are covered by the pension scheme. However, the pension rights are subject to a minimum period of contribution of 15 years, two of which must be immediately before the date of application. Periods of unemployment are taken into account for pension rights and amount purposes. The time spent unemployed is included when calculating the minimum period of contribution, and if the worker is entitled to unemployment benefits the *Instituto Nacional de Seguridad Social* (INSS) contributes during the period that the unemployment benefit is paid. The periods of unemployment without right to benefits are also included when calculating the minimum period of contribution, as long as the worker actively continues to seek employment and remains registered in the unemployment office. In this case, these periods are later calculated for amount purposes on the basis of a minimum wage which is updated every year. However, there also is a social assistance benefit for unemployed workers over the age of 52 where the INSS contributes for amount purposes of the pension, exceeding the minimum wage, 125 % to be exact. Women experience more difficulties in order to reach this minimum period of contribution, due to the fact that the majority of part-time jobs in Spain are occupied by women, also seasonal contracts, and the law requires longer periods of contributions for these contracts compared with full-time occupation, especially for vertical part-time workers, because for part-time work the periods of contribution are calculated in working hours and not in days. However, there is no minimum-hours threshold. Although this is partially rectified by applying coefficient corrections on the real hours worked (1.5) in retirement and invalidity pensions, and seasonal contracts have a specific coefficient, in practice it still does not eliminate the

difference between part-time and full-time workers and therefore creates indirect discrimination against female workers.

The situation has been made worse in practice because indirectly the minimum period of contribution has been increased by eliminating the contributions of the two-yearly bonus salaries which are no longer included in the calculation of the minimum period of contribution.

2. The amount of the old-age pension

The amount of pension is based on the salary of the 15 working years immediately prior to the date of application. The last two years are taken into account as their nominal value and the other 13 years are updated according to the index price rate. A minimum amount of old-age pension is guaranteed, and there is a ceiling on benefits coupled with a ceiling on contributions. The law requires longer periods of contributions for part-time workers compared with full-time occupation, especially for vertical part-time workers, because for part-time work the periods of contribution are calculated in working hours and not in days. Although this is partially rectified by applying coefficient corrections on the real hours worked (1.5) in retirement and invalidity pensions, in practice it still does not eliminate the difference between part-time and full-time workers and therefore creates indirect discrimination against female workers.

3. Periods of caring

Periods of maternity and parental leave are credited for pension rights and amount purposes, as in those cases the national insurance system continues to contribute 100 % of the salary for old-age pension. And women who give birth to a child and are not actively working around that time still receive 112 days of contributions in order to be entitled to old-age pensions. The first year of employment interruption due to bringing up children and due to the care of dependent relatives is credited when calculating the minimum period of contribution required.

4. Exceptions, Article 7.1 of Directive 79/7

The pensionable age and the possible consequences for other benefits (Article 7.1 a))

The pensionable age is equal for men and women. There is no mandatory retirement age imposed by legislation, although in practice, the majority of collective agreements impose retirement at the age of 65. However, it can be deferred. A participant can receive an old-age pension and still work, although it has to be part-time, and in this case the pension is paid in the proportion of the hours not worked. Earlier pensionable ages are the same both for men and women and lower their amount of pension in both cases. These earlier pensionable ages are not directly discriminatory on grounds of gender, although indirectly they may have discriminatory features due to the fact that the kind of work that has to be carried out in order to be able to be eligible for earlier pensionable ages in some cases is mainly carried out by male workers (such as sailors, miners, railway workers). However, the exclusion from part-time retirement, after the reform of 2007, of part-time workers and seasonal contracts indirectly discriminates against women. Also, the elimination of the contributions of the two-yearly bonus salaries when calculating the minimum period of contribution will indirectly affect more female workers, who have a shorter working career and will therefore experience greater difficulties from now on to reach the minimum period of contribution, especially when working on special contracts, such as domestic workers.

Advantages granted to persons who have brought up children (Article 7.1 b))

The Spanish system includes caring advantages. The first year of employment interruption due to bringing up children and due to the care of dependent relatives is credited when calculating the minimum period of contribution required for retirement. There is also a maternity leave of 16 weeks for the first child and 2 additional weeks for every other child born, which is included when calculating the minimum period of contribution, and the amount of pension that the INSS contributes for is 100 % of the worker's salary during this period. The 6 weeks after birth have to be taken by the mother but the other 10 may be taken by the father or shared between them. The father is entitled to the complete period of leave if the mother dies giving birth or if the mother works but is not entitled to maternity leave. The minimum period of contribution required in order to be entitled to maternity leave is 180 days in the last 7 years or alternatively 360 days throughout the worker's life. However, if the mother is under 21 there is no minimum period of contributions required and if the mother is between 21 and 26 the period of contribution required is lowered to 90 days in the last 7 years or alternatively 180 days throughout the worker's life. There is also a paternity leave for the father of 13 days, for the first child, and 2 additional days for every other child born, which is taken into account to reach the minimum period of contribution, and the amount of pension that the INSS contributes for is 100 % of the worker's salary during this period. Caring advantages are formally gender neutral, although in practice the majority of workers that take up these rights are still women.

Old-age or invalidity benefit entitlements or increases in long-term benefits by virtue of the derived entitlements of a wife (Article 7.1 c) and d))

The minimum amount of old-age pension is higher if the pensioner has a dependent spouse and it also depends on the income of both spouses. However, there is no supplement that can be paid directly to the non-working spouse as such, for example in the event of separation or divorce.

C) OCCUPATIONAL OLD-AGE PENSION SCHEMES

(Schemes falling under Article 157 TFEU, Directive 86/378/EEC, as amended by Directive 96/97/EC, now Articles 5-13 of the Recast Directive 2006/54/EC)

1. Coverage

Participation in occupational old-age pension schemes is voluntary and is not related to the Public Social Security System. In 2007, the Law regulating occupational funds reformed the previous regulation and now requires a minimum period of contribution of at least two years in order for participants to be entitled. These schemes are regulated by collective agreements as improvements of the basic statutory pension and therefore do not exist in all sectors of the economy or in all companies.

2. Calculation of old-age pensions and contributions

The occupational funds provide for pensions paid by the contributions accrued over the years by the pensioners and the employers themselves, according to the criteria of capitalization. They are funded schemes with defined contributions but not defined benefits, therefore the total amount of the pension is not predetermined, but depends upon factors such as the total amount of contributions accrued or the results of the management of the resources set aside by means of periodical contributions. This generally applies, except when they are meant to be an improvement of the public statutory pension scheme, in which case both contributions and benefits are defined.

In the first case, the right to a public pension is not required to be entitled to the occupational funds and the only requirement is that the participant has reached the age of 65 and has stopped working. In the second case, entitlement to a public pension is required, as the occupational funds act as an improvement of that public pension and the amount of the occupational funds will depend on the links in place with the basic statutory public pension.

3. Actuarial factors

In 2007, the Law regulating occupational funds reformed the previous regulation and now requires a minimum period of contribution of at least two years in order to be entitled. However, gender-specific actuarial factors are used to determine the period of benefits, taking into account the different life expectancy of women and determining that this is not a discriminatory practice.

4. Caring credits

The occupational fund schemes do not contemplate specific measures to enable women to access earlier pensionable ages if they have been caring for children or relatives nor other caring advantages in these cases. These caring advantages are only included in the public statutory pension scheme.

5. Vesting and reimbursement rules

In the public statutory pension scheme, the contributions made throughout the worker's lifetime are not returned if they fail to meet the requirements for entitlement to pension when reaching the age of 65. In the case of occupational funds, this is also true when they are meant to be an improvement of the public pension. However, if they do not have this role, the worker is entitled to benefits when he reaches the age of 65 even though he is not entitled to a public pension, and only in exceptional cases predetermined by law may the worker have the right to the benefits before reaching the age of 65, for example in the event of unemployment, invalidity, illness or death. The right to the transferral of contributions from one fund to another fund is limited if the occupational funds act as an improvement of the public pension. In this case, the worker can only transfer contributions if his contract is interrupted or comes to an end.

6. Pensionable age

There are no legal differences in this matter, although such points may be included in collective agreements. However, it is not common because when occupational funds are regulated in collective agreements they are normally related to the legal age of retirement, which is the same for both men and women.

There are no differences in the case of self-employment workers either, who have the same age of retirement as employees. Therefore, as the requirements for being entitled to pension are the same as the ones for employees, and are the same both for men and women, there is no need to apply Article 11 a) of Directive 2006/54/EC, neither to the public statutory scheme, nor to the occupational funds.

In Spain there have been no problems with discriminatory features on the grounds of age in the occupational funds, as they are referred, either by law or by collective agreements, to the statutory legal age of retirement at 65. Therefore there is no need to apply C-262/88 *Barber* and other cases.

7. Civil servants

There is a mandatory retirement age of 65, imposed by legislation. There are different schemes for different categories of civil servants and they are set up and regulated by statute regulations. Both employees and employers pay into the scheme. The schemes are organized on a pay-as-you-go basis, where pensions are paid from the contributions of active civil servants and their employers. The scheme is a defined contribution system, where the contributions that the employers and workers have to pay every month are predetermined. There are additional occupational fund schemes for civil servants, which are created and regulated by collective agreements. Neither the statutory schemes nor the occupational funds include any discriminatory features on grounds of gender.

SWEDEN – Ann Numhauser-Henning

A) GENERAL QUESTIONS

1. The old-age pensions system

The Swedish pension system was introduced in 1998. The main pillar in the new system is *an earnings-related pension* based on lifelong average earnings.⁴⁸⁸ The scheme is in the main organised as a pay-as-you-go (PAYG) scheme and the pension as a notional defined contributions pension (NDC). However, part of the pension is invested in *a prefunded branch (premiépension, premium pension)*, where the amount of the pension is calculated in the same way as under a private insurance scheme. This, too, is of course a DC scheme. As explained below, the contributions to the statutory scheme are paid by the employers as a payroll tax. This tax amounts to 18.5 % of the total wages. 16 % is accounted for in the individual's account in the NDC scheme. The state is then obliged to transfer the another 2.5 % of the pensionable income to the pension fund⁴⁸⁹ chosen by the individual. There is also a safety net in the form of *a guaranteed pension*, granted only to those who are not entitled to a work-based pension amounting to the guaranteed level.⁴⁹⁰ All rules on statutory pensions are gender-neutral and the pensionable age has always been the same for men and women under the Swedish statutory system.

There has never been a Bismarckian funding system in Sweden. The pension system is co-ordinated with the tax system. According to the main rules, pension rights are calculated on the basis of taxable income. The scheme is an NDC scheme financed by employers' and employees' contributions and to some extent general tax revenue. The earnings-based part of the social security system is thus financed mainly through employers' contributions that are managed as a payroll tax. Employers' contributions are paid even on the pay exceeding the upper earnings limit for benefits awarded (there is a 'ceiling' of 7.5 *inkomstbasbelopp*/income base amounts)⁴⁹¹ and amount to 10.21 % for old-age pensions and 1.70 % for survivors' pensions within a

⁴⁸⁸ *Lagen (1998:674) om inkomstgrundad pension*, Act on an Earnings-Related Pension. As of 1 January 2011 all rules on old-age pensions will be included in the new 2010:110 Social Security Code (Section E, Benefits of Old Age).

⁴⁸⁹ There are hundreds of private pension funds to chose from, all monitored by the Premium Pension Authority.

⁴⁹⁰ *Lagen (1998:702) om garantipension*, Act on a Guaranteed Pension. This regulation, too, will be included in the 2010 Social Security Code, see above.

⁴⁹¹ The income base amount was SEK 48 000 in 2008 or approximately EUR 4 800.

total of 28.02 % of social security contributions.⁴⁹² (Corresponding social security contributions are paid by self-employed persons themselves). From an economic point of view, social security contributions of this kind cannot be regarded as insurance fees, but as a special payroll tax. However, there are no difficulties in distinguishing this special payroll tax from other taxes since the contributions to the earnings-related pension scheme are treated separately from other state revenue. A general old-age pension contribution is paid by employees themselves, calculated as a percentage of the taxable income from work amounting to 7 % of income not exceeding 8 basic income amounts.⁴⁹³ Contributions are in the first place collected by the state, also contributing to the financing of old-age pensions by an amount calculated on social security benefits giving rights to pensions.⁴⁹⁴ This contribution amounts to 10.21 % of most social security benefits such as sickness benefits, parental leave benefits, unemployment benefits, etc.

The income-related pension is thus calculated according to lifelong average earnings. There is no ‘maximum qualification period’ and no rule that the pension amount must be calculated according to the income earned during ‘the best years’. There is not even a pensionable age in this earnings-related scheme. An insured person can claim his/her pension from the age of 61 and can postpone his/her pension for an indefinite period of time. The time when a pension is claimed influences the amount of the pension according to gender-neutral actuarial principles. The new Swedish pension system is thus extremely flexible. A person who carries on working after attaining the ‘normal’ pensionable age continues to accumulate new pension rights. A claimant can choose to take out a fraction of his/her accrued pension rights, i.e. $\frac{1}{4}$, $\frac{1}{2}$ or $\frac{3}{4}$ of a full pension. He can also choose to claim a pension from only one of the two branches of the scheme (the PAYG branch and the prefunded branch) and to postpone payments from the other branch. A claimant can also cease to claim a pension already being paid, for instance when he or she obtains a new job. The pension can also be received parallel to work.

There are no ‘insurance periods’ in the earnings-related pension scheme. It is only the pensionable income that counts. However, for pension rights to be calculated this income in any given year has to amount to at least 42.3 % of the current *prisbasbelopp*/basic amount.⁴⁹⁵ It is of no consequence whether this income is earned during one month or twelve months and we are talking about an amount that includes most so-called ‘flexible’ employment arrangements. Both accumulated pension rights and pension payments are tied to the average earnings index. The crucial aspect is the value of the aggregated pension rights at the time when the pension is claimed.

The amount of pension from the prefunded branch will depend on the value of the fund when the pension is drawn. If the pension has not been recalculated into a pension with fixed annuities, the amount of pension will vary each month. This part of the scheme is financed as the main branch only just described above. Employers’ contributions are thus levied as a payroll tax on total wages. Contributions are in the first place collected by the state. Pension rights (‘the defined contribution’) amount in total to 18.5 % of the pensionable income. 16 % is accounted for in the individual’s account in the NDC scheme. The state is then obliged to transfer another 2.5 % of the pensionable income to the pension fund chosen by the individual. There are many, in

⁴⁹² *Socialavgiftslag (2000:980)*, Act on social security contributions.

⁴⁹³ *Lag (1994:1744) om allmän pensionsavgift*, Act on general old-age contributions.

⁴⁹⁴ *Lag (1998:676) om statlig ålderspensionsavgift*, Act on State old-age contributions.

⁴⁹⁵ SEK 42 400 in 2010 (approximately EUR 4 200).

the main private, pension funds to choose from but there is a legal requirement that the calculation of pensions is made in a gender-neutral way.

The guaranteed pension is 'earned' through residence in the country and awarded in proportion to the duration of residence. The qualifying period for a full pension is 40 years of residence and a minimum requirement is a qualifying period of three years. This period is between the ages of 16 and 64. The years between 16 and 24 are only taken into account if the claimant's work has provided an entitlement to a pension in Sweden. Consequently, foreign students who spend a couple of years in Sweden will normally not be entitled to a guaranteed pension. The Swedish earnings-related pension is deducted when calculating the amount of a guaranteed pension. Pensions from private or occupational pension schemes are not deducted when calculating the amount of guaranteed pension. Moreover, the guaranteed pension is not means-tested in relation to other earnings. The guaranteed pension cannot be claimed before the age of 65 which can thus be said to correspond to the 'normal' pensionable age in Sweden. The amount of benefit is calculated according to the consumer price index. Unlike an earnings-based pension, the guaranteed pension is not tied to an earnings index.

To top up the statutory old-age benefits there are four main occupational pension schemes based on central collective agreements which cover almost the entire working population. There are thus four main schemes, one for state employees, one for employees in the municipal sector, one for non-manual workers in the private sector and one for manual workers in the private sector. The two public sector schemes are combined DC and DB schemes – only the DC branch is prefunded – whereas the two current private sector schemes are prefunded DC schemes.

Generally speaking, there is no longer a survivor's pension in Sweden. What does exist is a gender-neutral transitional 'adjustment pension' system.⁴⁹⁶ Such an adjustment pension is based on the deceased person's prior income and is paid out during 12 months to a survivor who is not yet 65 years of age or older living together with a minor or having cohabitated with the deceased for at least five years prior to his or her death. Such an adjustment pension can be prolonged until the youngest child is at least 12 years old and ceases if the surviving spouse remarries. Previously, there was a right to a survivor's pension, but only for women. According to transitional rules there are still some such pensions being paid to women who were married to the deceased back in 1989. Such pension also ceases once the survivor remarries. Nevertheless, still in 2008 33 % of all women pensioners aged 65 years or older also had a widow's pension.⁴⁹⁷ Within the prefunded branch of the statutory earnings-related pension scheme it is possible to choose to add a survivor's protection. The conditions must be gender-neutral. The same normally applies to any prefunded branch of the occupational schemes. In the municipality sector scheme, however, there is a general survivor's benefit scheme.

Pensions are supplemented by a number of means-tested benefits, among them the new Elderly Income Support Benefit, not related to the number of years of residence. The Elderly Income Support Benefit Act,⁴⁹⁸ a means-tested and residence-based benefit designed to complement general statutory pension schemes was introduced on 1 January 2003. Elderly income support benefit is awarded to persons resident in Sweden who are 65 years of age or older. It is a complement to the statutory earnings-based pension, the guaranteed pension and housing benefits. It is means-tested at

⁴⁹⁶ *Lagen (2000:461) om efterlevandepension och efterlevandestöd för barn.*

⁴⁹⁷ *Socialförsäkringen i siffror 2009*, the Social Insurance Authority, Stockholm 2010.

⁴⁹⁸ *Lagen 2001:853 om Äldreförsörjningsstöd.*

individual/household level and paid out as a supplement amounting to the difference between the individual's/the household income and a reasonable living standard as defined in Sec. 4 of the Elderly Income Support Benefit Act. It is gender-neutral in its design.

2. Old-age pension reforms

The new pension system was thus introduced in 1998, the result of a broad political agreement covering all political parties. There has, strictly speaking, thus not been any reform within the last ten years.

The previous Swedish statutory pension system was composed of a *folkpension*, which was awarded at the same flat-rate amount to all, and an earnings-related supplementary pension. A *folkpension* was based on nationality and residence. All Swedish citizens, residing in Sweden, were entitled to a full *folkpension*. Non-nationals were also entitled to a *folkpension*, but only after rather long periods of residence. Following the EEA agreement, which made Regulation 1408/71 applicable to Swedish social security legislation, the old *folkpension* was changed into a *pro rata temporis* pension calculated according to the number of years of residence in Sweden. Now, the *folkpension* has been replaced by the 'guaranteed pension' granted only to those who are not entitled to a work-based pension amounting to the guaranteed level. It is constructed in the same way as the *folkpension* after 1992, i.e. as a pension calculated according to the number of years of residence. The supplementary earnings-related scheme was based on work performed in the country. It was a defined benefits scheme, a full pension requiring 30 years of work and calculated as 60 % of average earnings (up to the 'ceiling') during the 15 best paid years.

The new earnings-related pension scheme is thus based on lifelong earnings, a change which generally speaking was to the detriment of women, who to a larger extent than men were working part-time. (The earlier scheme was, generally speaking, not so detrimental to women since only the best 15 years were taken into consideration.) As is described below, at the general level, this was 'compensated' by fairly generous pension rules for child-rearing years. Another characteristic of the Swedish pension scheme which is apt to compensate structural differences among men and women is the fact that in the earnings-related pension scheme most social security benefits – such as parental leave and (also part-time) unemployment benefits – provide a right to a pension. There is also the possibility among spouses and cohabitants to transfer pension rights amongst themselves to compensate for differences in pension rights. This is, however, a voluntary system requiring agreement between the parties concerned.

As for the generations adhering to the old pension system (born before 1938) 16 % of women as compared to 3 % of men had a pension at a guaranteed level only. Among those born in 1938 or later 3 % of women as compared to 1 % of men had only a guaranteed pension. Supplementary elderly income support of 64 % was paid out to women – added on to their lower pensions – as compared to 36 % to men. All figures refer to 2008.⁴⁹⁹

3. Retroactivity of legislation

The described pension reform was general in its nature and did not concern formally gendered rules. The new rules on how to earn and calculate pensions were

⁴⁹⁹ *Socialförsäkringen i siffror 2009*, National Insurance Authority, Stockholm 2010.

nevertheless only introduced gradually, people born before 1938 wholly and those born 1938-1953 partially still calculating pensions in accordance with the old system.

4. The World Bank Model

Not applicable. I consider the two branches – the earnings-related as well as the prefunded – of the earnings-related Swedish scheme to be part of the first pillar.

B) STATUTORY OLD-AGE PENSION SCHEMES (Schemes falling under Directive 79/7/EEC)

1. Qualifying conditions

As was already indicated above in Section 1, the earnings-based pension scheme takes into consideration lifelong earnings starting at the age of 16. A minimum requirement, however, is that the income during a certain year amounts to at least 42.3 % of the current *prisbasbelopp*/base amount.⁵⁰⁰ This is a fairly low amount which means that the system covers most flexible workers and it cannot really be said to hamper the pension rights of non-standard workers. Any DC system based on lifelong earnings is, however, less convenient for workers with a low income, be it for low paid or part-time workers. This is somewhat compensated, though, by the fact that unemployment benefits and other social security benefits also provide rights to a pension.

A full guaranteed pension requires 40 years of residence in Sweden and a minimum requirement is three years of residence.

2. The amount of the old-age pension

The earnings-related pension is thus an NDC scheme based on the individual's lifelong earnings. The pension is recalculated every year on the basis of the notional pension entitlements of the individual taking into account the official *delningstall*/divisor for the age group concerned. To this end, pension rights are generally indexed in line with the growth in incomes among the economically active in Sweden.⁵⁰¹ Moreover, the pension balances of deceased persons are redistributed each year to the surviving insured in the same birth cohort. Finally, life expectancy for the age cohort (men and women) concerned is taken into account. As was already indicated, there is a ceiling to statutory pensions amounting to 7.5 income base amounts.

In the prefunded branch, pensions are decided by the return on the fund selected by the pension saver.

The guaranteed pension amounts to 2.13 price base amounts for single persons and 1.9 each for married people per annum. In order to further wage-work, earnings-related pensions up to about 3 basic amounts per year are not entirely deducted from the guaranteed pension allowing a small additional pension. We should recall, however, that the guaranteed pension is also calculated in accordance with the years of residence in Sweden.

⁵⁰⁰ SEK 42 400 in 2010 (approximately EUR 4 200).

⁵⁰¹ However, there is a 'balancing' mechanism built into the scheme. Under certain demographic and economic conditions, it is not possible to 'earn interest' according to the growth in average income with a fixed contribution – indexation must be suspended in such a situation. 'Balancing' occurs when the balance ratio – the division of the assets in the system with pension liability – exceeds one (1), i.e. assets are greater than liabilities. See further Orange Report, Annual Report of the Swedish Pension System 2008, published by the *Försäkringskassan* (National Insurance Agency).

3. Periods of caring

A parent who stays at home or reduces her/his working hours to take care of a child under four years of age is credited with pension rights corresponding to her/his earnings before the child was born or to 75 % of the national average earnings. These generous pension rights for parents who stay at home are not really consistent with general Swedish family policy, which encourages both parents to work full time after the period of parental benefit has expired. Pension rights for child-rearing years have, as indicated above, been introduced mainly in order to avoid women's pensions being lower in the new system than in the previous one. A large group of Swedish women work only part time when they have small children. This did not affect the amount of pension under the old pension scheme, since pension rights were calculated according to 'the 15 best years'. In the new system, which is based on lifelong average earnings, the rules on pension rights for child-rearing years compensate for the loss of pension rights that would otherwise occur. There is a rule which requires that both the parent and the child must reside in the country in order to be entitled to pension rights for 'child-rearing years'. However, there is also another condition: the beneficiary must have been accredited with a pensionable income of a certain level for at least five years before the age of 70. Pension rights for child rearing are automatically given to the parent with the lowest income in the year concerned, regardless of sex. There is a possibility to transfer pension rights for child-rearing years to a spouse, though, as long as the above conditions are fulfilled. The construction of the child-rearing years can thus be said to lie on the border line between old-age pensions and family benefits and are of a gender-neutral design.

4. Exceptions, Article 7.1 of Directive 79/7

The pensionable age and the possible consequences for other benefits (Article 7.1 a))

There is no mandatory retirement age imposed by legislation but Section 33 of the (1982:80) Employment Protection Act gives the employer a right to terminate the employment without just cause when an employee reaches 67 years of age. After 67 there is also a non-restricted right for the employer to abide by fixed-term contracts. As was already indicated, it is perfectly possible to combine a pension with employment if the employee so chooses.

The right to statutory sickness benefits are somewhat restricted after 65 years of age. Moreover, there is no right to unemployment benefits after the age of 65.

Advantages granted to persons who have brought up children (Article 7.1 b))

See above Section B.3 on especially calculated pension rights for child-rearing years. As was already indicated above, many social security benefits are taken into account when calculating pensionable income/entitlements, among them parental leave benefits and benefits for caring for severely ill relatives.

Old-age or invalidity benefit entitlements or increases in long-term benefits by virtue of the derived entitlements of a wife (Article 7.1 c) and d))

There are no such derived benefits within the Swedish system.

C) OCCUPATIONAL OLD-AGE PENSION SCHEMES

(Schemes falling under Article 157 TFEU, Directive 86/378/EEC, as amended by Directive 96/97/EC, now Articles 5-13 of the Recast Directive 2006/54/EC)

1. Coverage

Almost all employees are covered by one of the occupational social security pension schemes, based on collective agreements at the central national level. There are four main schemes, one for state employees, one for employees in the municipal sector, one for non-manual workers in the private sector and one for manual workers in the private sector. These occupational schemes are designed to 'top up' statutory schemes and cover all employees in the respective sector, whether organised or not. The schemes for employees in the public sector and for non-manual workers in the private sector are very significant for high-salaried staff, since their pensions are calculated even on parts over the upper earnings limit in the statutory pension scheme.

Generally speaking, there are no difficulties in distinguishing these schemes from the statutory schemes. Entitlement to benefit is based on work in the country. There are no lengthy qualification periods.

All occupational pension schemes are gender-neutral both as regards the pensionable age and the calculation of benefits. (Equality in occupational pension schemes is regulated in a very subtle way by the general prohibition on discrimination in working life contained in Chapter 2 Sec. 1 of the (2008:567) Discrimination Act tacitly covering pay (and thus occupational pension schemes) discrimination.⁵⁰²

The state sector scheme – PA 03 – is designed partly as a DB scheme, partly as a DC scheme. The scheme has a gender-neutral design and the pensionable age is 65 years for both sexes. A full pension in the DB part of the scheme requires 30 years of work (from 28 years of age). This part of the pension is calculated on average income during the last five years prior to retirement. Another branch of the scheme is designed as an individual prefunded DC scheme. All contributions to the state occupational scheme are made by the employer. There is also a survivor's pension.

The municipal sector scheme – KAP-KL – from 2006 this is a combined DC and DB scheme. The DC branch of the scheme covers all employees in the sector from 21 years of age. The DB scheme applies additionally to employees earning more than 7.5 income base amounts aged 28 or more. There is a survivor's pension part of the scheme.

The non-manual workers in the private sector – the ITP1 – scheme from 2007 is a DC prefunded scheme. It is only fully applicable to employees born in 1981 or later – for others an earlier DB scheme applies. According to the DC scheme contributions are paid by the employer for employees aged 25 years or older. Contributions can – but not must – also be paid after 65 years of age. The 'normal' pension age is 65 years but a (lower) pension can be paid out from 55 years of age. It is possible to choose a survivor's protection.

⁵⁰² There is but one case of an occupational pension scheme, to my knowledge, which until rather recently contained a discriminatory rule on a different pensionable age for men and women, 'The pension plan for employees in public insurance, PAF'. According to this plan, women employees who in 1991 had already reached 28 years of age were entitled to retire at the age of 60, whereas men in a similar situation had a retirement age of 65. As of 1 January 2005 the Public Insurance entities became part of the State and its employees, thus state employed. In 2006 an agreement was reached on how to terminate these discriminatory practices. The agreement implied that the right to early retirement was phased out at the same time as this right – immediately – was made gender-neutral. The agreement states that any person born before 1950 can retire at 60 years of age, if born between 1950-54 at 61, between 1955-59 at 63 and between 1960-1963 at 64.

The current *blue-collar workers in the private sector scheme*⁵⁰³ was concluded in 2007. It covers all workers from the age of 25. It is designed as a DC scheme in parallel to the scheme for non-manual workers in the private sector. The pension age here, too, is normally 65 years of age. It is possible to choose a survivor's protection.

There are no occupational social security schemes for the self-employed.

2. Calculation of old-age pensions and contributions

The DB part of *the state scheme* covers 60 % of wages above 7.5 base amounts (the statutory scheme's ceiling) based on average earnings during the last five years. The prefunded branch is paid out by the fund chosen according to the capital available and expected longevity based on gender-neutral actuarial factors. Contributions to this part of the scheme are – also – made by the employer and amounts to 2.5 % + 2 % of the total wages, paid to the individual DC scheme for employees who are 23 (or 18 if locally agreed) years of age or older to a fund chosen by the individual.

In *the municipal sector scheme – KAP-KL* – contributions of 4.5 % are paid by the employer on wages up to 30 income base amounts. The DB branch is not prefunded but implies 'a promise' of a future pension calculated as 55 % of the end wages between 7.5-20 income base amounts and 27.5 % of the end wages between 20-30 income base amounts.

The non-manual workers in the private sector – the ITP1 – scheme from 2007 is a DC prefunded scheme. Contributions are paid by the employer. Contributions are 4.5 % on wages below the ceiling and 30 % above the ceiling. Contributions are paid out to the fund chosen by the employee and pensions are paid out in accordance with the return of the fund in question.

The blue-collar workers in the private sector scheme is thus a DC prefunded scheme. Contributions are paid by the employer. When fully implemented (in 2012) contributions will be 4.5 % on wages below the ceiling and 30 % above the ceiling. Contributions are paid out to the fund chosen by the employee and pensions are paid out in accordance with the return of the fund in question.

3. Actuarial factors

These must always be gender-neutral.

4. Caring credits

- *State sector scheme*: there are no special rules on this, but collectively agreed 'parental wages' may be part of the income forming the basis of the employer's contributions and thus the individual DC pension.
- *The municipal sector scheme*: contributions are paid also during parental leave.
- *The blue-collar workers in the private sector scheme* contains a child-rearing credit compensating for 13 months of parental leave per child.

5. Vesting and reimbursement rules

In *the municipal sector DB scheme* vested pension entitlements can be transposed to a pension with (indexed) fixed annuities to be paid out at 65 years of age. The prefunded branch is accumulated as in the other schemes. According to *the two prefunded pension schemes in the private sector* pension capital is private property and it can be moved from one fund to another without any problems.

⁵⁰³ *Avtalspension SAF-LO* 2007.

6. Pensionable age

The rules on the pensionable age in any occupational scheme are gender-neutral. The general pension age in the four main occupational schemes described here is 65 years of age. There is usually an option to leave earlier at a somewhat lower pension taking life expectancy into account.

7. Civil servants

Not relevant.

TURKEY – Nurhan Süral

A) GENERAL QUESTIONS

1. The old-age pensions system

The public old-age pension in Turkey is a pay-as-you-go (PAYG) defined benefit scheme which consists of (i) a minimum pension (a flat-rate basic pension plus a means-tested special supplement) and (ii) a non-actuarial earnings-based supplementary pension, all integrated into the state budget. The old-age pension scheme has its historical roots in the tradition of redistributive minimum protection during old age.⁵⁰⁴

Structure of the pension system

<i>Public pensions</i> – Turkey has an earnings-related public pension scheme with an income-tested safety net and a flat-rate supplementary pension
<i>Private pensions: occupational (mandatory)</i> – Mandatory occupational pension plans for financial sector institutions (first-pillar substitute funds; defined benefits) – Mandatory occupational pension plans for the Armed Forces (Oyak) and the employees of the state-owned coal mining enterprise (TTK): defined benefits and defined contributions
<i>Private pensions: occupational (voluntary)</i> – Occupational pension plans: defined benefits, defined contributions or hybrid
<i>Private pensions: personal (voluntary)</i> – Personal pension plans: defined contributions – Collective (group) pension plans: defined contributions

Source: OECD Global Pension Statistic

There are old-age pensions in statutory and occupational schemes and gender-neutral terminology is used. There is a non-contributory system providing for social assistance (means-tested benefits; safety-net benefits) to the destitute above 65 years of age and destitute disabled persons with at least a 40 % loss of bodily functions.⁵⁰⁵

⁵⁰⁴ Dirk Verbeken, The Pension Reform Challenge in Turkey, *ECFIN Country Focus*, Vol. 4, Issue 3, 16.02.2007, Economic Analysis from the European Commission's Directorate-General for Economic and Financial Affairs http://ec.europa.eu/economy_finance/publications/publication10067_en.pdf, accessed 22 May 2010.

⁵⁰⁵ Law on the Payment of Salaries to Destitute Turkish Citizens Above 65 Years of Age (*65 Yaşını Doldurmuş Muhtaç, Güçsüz ve Kimsesiz Türk Vatandaşlarına Aylık Bağlanması Hakkında Kanun*), Law no. 222, Official Gazette 10.07.1976. No. 15642.

2. Old-age pension reforms

The 1999 and 2006 reforms were introduced to rectify a system that has gone too far in that it makes it possible for female and male workers to retire at the ages of 38 and 42 respectively. These reforms were given less force not only by very long transitory periods and decisions by the Constitutional Court, but also by stakeholders that are not searching for a 'greater good for all' but only voice the interests of their social basis.

Parliament passed a law to reform social insurances in May 2006 so as to attain a better balance between contribution and benefit parameters in the medium term, but the Constitutional Court ruled that these reforms were unconstitutional and repealed the Law on the basis of constitutional provisions on the special prerogatives of civil servants.⁵⁰⁶ A revised Law on Social Insurances and General Health Insurance was passed by Parliament in April 2008.

This reform:

1. integrated the dispersed social security institutions, SSK (Social Insurances Institute), ES (Pension Fund for Civil Servants), and Bağ-Kur (Institution Representing Tradesmen, Craftsmen and Other Self-Employed Persons), under one body (SGK - the Social Security Institution);
2. launched a general health insurance system covering all citizens and integrating all health insurance benefits;
3. subjected social benefits to the same criteria; and
4. established a new retirement insurance programme.

The individual pension system (the private pension scheme) was a part of the social security reform based on a DC system. It is a complement to the statutory system.⁵⁰⁷

3. Retroactivity of legislation

The 1999 and 2006 reforms were mainly introduced to rectify the social security system that was endangering and resulting in great losses for the national economy. Turkey introduced the 2006 comprehensive pension reform, which aims to unify the currently disperse system and to reduce the significant - and rapidly growing - social security deficit from 4.8 % of GDP in 2005 to less than 1 % of GDP by 2035. The cumulative value of the deficits over the 1997-2007 period, plus their debt-servicing cost, amounted to roughly 110 % of GDP or 1½ times the total public debt.⁵⁰⁸

Compatibility with the IMF recommendations, the WB model and the EU *acquis*, for example the equalization of the pensionable age for both genders so as to be compatible with Directive 79/7/EEC, complemented the main reason for this reform. Issues of gender equality did not constitute a ground for the reforms for basically

⁵⁰⁶ If the basic parameters of the system were to remain unchanged an annual deficit of more than 3 % of GDP would be projected until 2030, with a further deterioration toward 6-7 % of GDP thereafter (World Bank, 2006b). If the reforms were actually implemented along the initially intended 2006 parametric changes, the pension system would still have continued to face a yearly deficit above 2 % of GDP until 2025, and would have stayed in deficit – albeit declining – over the projection period. With the 2008 reform the social security deficit will gradually decline to 2 % of GDP around 2030 and is projected to level off at around 1 % of GDP in the long term (OECD *Economic Surveys Turkey* 2008).

⁵⁰⁷ IOPS Country Profiles – TURKEY, December 2009 <http://www.iopsworld.org/dataoecd/63/13/39626338.pdf>, accessed 17 May 2010.

⁵⁰⁸ Dirk Verbeken, The Pension Reform Challenge in Turkey, ECFIN Country Focus, Vol. 4, Issue 3, 16.02.2007, Economic Analysis from the European Commission's Directorate-General for Economic and Financial Affairs.

three reasons. Firstly, the urgent deficit problem; secondly, the assumption that the gender-neutral terminology used in Turkey's social security legislation would not give rise to gender inequalities, and, thirdly, the compatibility with the proposed models was already considered to have addressed these issues. The 2006 reform will gradually phase out the different pensionable ages. Equalization at the age of 65 will be realized in 2048.

4. The World Bank Model

The WB report, *Averting Old-Age Crisis: Policies to Protect the Old and Promote Growth*, pointed to the privatization of social security systems as the only solution to the crisis in the PAYG system which is caused by an ageing population. The WB and IMF have pointed to the necessity for social security reform in Turkey as part of its major general policy, which is to decrease public expenditure. The EU emphasizes the importance of enhancing social security by increasing state support but, in the final analysis, the EU does not say anything which is any different from the IMF or WB. The EU encouraged Turkey to follow agreements and stabilization programmes with the IMF and to follow reforms and programmes supported by the WB and in which the IMF and WB advised Turkey to continue reforms in its EU accession process.⁵⁰⁹ In order to establish a more sustainable system, fiscal targets have been set, in line with IMF recommendations. These targets are (i) a combined deficit (fiscal transfers) of the pension and public health systems of below 4.5 % of GDP over the period 2005-2007, (ii) a fiscal deficit by the pension system in the year 2015 to be, under the reform, 1 % of GDP lower than the deficit for the same year under the base system, and (iii) a total deficit of the pension system of less than 1 % of GDP in the long run. It is thereby important that the budget constraint avoids relaxing efficiency in the public sector. Informality should not be encouraged via unreformed transfer schemes. This would amount to an erosion of forward-looking policies, even if the fiscal rule is adhered to.⁵¹⁰

A country note from a report by the OECD entitled 'Going for Growth 2010',⁵¹¹ calls for reforms relating to retirement plans, especially stressing the need for the removal of retirees' entitlement to severance payments. The organization made this same recommendation in 2007 and 2009, and it reiterates this in this year's report. Moreover, the note stated that no action has been taken regarding this inhibitor to growth since its recommendation – a point which is all the more striking as it is the only recommendation where the government has not taken any action to resolve the issue. On the topic of retirement, the OECD calls for Turkey to reduce incentives for early retirement and introduce a health insurance contribution for young retirees. An employment restrictiveness index calculated by the OECD shows Turkey to be 2.5 for regular employment and 4.8 for temporary employment on a scale of 0 to 6, with 6 being the most restrictive. The OECD average is 2 and 1.7 for regular and temporary employment, respectively. Most striking, though, is that neither figure has changed for Turkey since 2003.

⁵⁰⁹ Adem Y. Elveren 'Social Security Reform in Turkey: A Critical Perspective', *Review of Radical Political Economics* 40 No. 2 (Spring 2008) pp.212-232.

⁵¹⁰ Dirk Verbeke, The Pension Reform Challenge in Turkey, ECFIN Country Focus, Vol. 4, Issue 3, 16.02.2007, Economic Analysis from the European Commission's Directorate-General for Economic and Financial Affairs http://ec.europa.eu/economy_finance/publications/publication10067_en.pdf, accessed 22 May 2010.

⁵¹¹ <http://www.oecd.org>, accessed on 19 May 2010.

B) STATUTORY OLD-AGE PENSION SCHEMES **(Schemes falling under Directive 79/7/EEC)**

1. Qualifying conditions

All workers, typical or atypical, civil servants and the self-employed are covered by the statutory (compulsory) old-age pension schemes. As of February 2010, there are 8 900 000 workers, 2 870 824 self-employed, and 2 232 394 civil servants covered by the statutory insurance scheme.⁵¹² According to data from March 2010, the number of active people has increased to 15 million with the number of passive people around 9.2 million. Finding a balance between ‘actives’ (those who are working) and ‘passives’ (those who are not working – retirees) is a serious problem for all countries. How many workers finance how many retired people? When we look at the EU and OECD averages, the figure is around 3½ to 4 workers [per retired person]. While this figure changes from country to country, when it drops below four workers, the system starts to have a deficit. After the negative interventions, this figure dropped to 1.78 in Turkey (2.06 in 2008). Men paid premiums for 25 years and then received retirement pensions for 27 years while women paid premiums for 20 years and received money from the system for 33 years. No system could keep this up. Also, according to data from the Turkish Statistics Institute (TurkStat), the rate of illegal employment is around 43 %. This is a very high rate corresponding to more than 9 million workers. The Social Security Institution is working alone and with other institutions and organizations to reduce informal work situations. While it is still not enough, 500 000 illegal workers were identified and registered within two years.⁵¹³

In the Turkish system, the insurance period and premium-paid periods are not equivalent. The insurance period starts when one enters employment for the first time and expires at the time of final exiting the workforce. During the total insurance period, there may be periods of employment and unemployment. Premium-paid periods (contribution periods) are those periods of employment for which premiums are paid to the state social security organization. Each month is considered to be 30 days and a year is 360 days.

Frequent legal amendments resulted in a very complicated pensionable age scheme. Today, there are different pensionable ages on the basis of the date of first entering the social security system, i.e. becoming insured. There are three groups:

- those who became insured before 8 September 1999;
- those who became insured between 8 September 1999 – 30 April 2008; and
- those who became insured after 30 April 2008.

For each group, there are also long transitory periods. With the 1999 reform, the pensionable ages were fixed at 58 and 60 for female and male workers, respectively, with at least 7 000 premium-paid days (19 years, 5 months, 10 days). The 1999 reform introduced a gradually increasing minimum age scale that largely preserved the early-retirement rights of the existing workforce. Following an appeal to the Constitutional Court by the opposition party against the 1999 reform law, the Court annulled the transition periods on the basis that they were too short to protect those in the system. The new transitional chart was introduced in May 2002. This chart takes the effective date of the law (May 23, 2002) as the basis for those who have already completed specified insurance periods, premium-paid days and attained the necessary ages (Law no. 506, provisional Art. 81).

⁵¹² <http://www.sgk.gov.tr>, accessed on 17 May 2010.

⁵¹³ Interview with Emin Zararsız, Head of the Social Security Institution, 25 May 2010, Zaman newspaper.

Conditions for qualifying for retirement for those employed after 23 May 2002 (1999 reform)

	Age Women Men	No. of premium-paid days	Total insurance period (yrs)
Option 1	58 60	7000	-
Option 2	58 60	4500	25

Transitory Retirement Scale (1999 Reform)

Insured women			Number of premium- paid days	Insured men		
Insurance period completed on May 23, 2002 (yrs)	Total insurance period (yrs)	Age		Insurance period completed on May 23, 2002 (yrs)	Total insurance period (yrs)	Age
18 and above	20	40	5000	23 and above	25	44
17-18	20	41	5000	21.6 - 23	25	45
16-17	20	42	5075	20 - 21.6	25	46
15-16	20	43	5150	18.6 - 20	25	47
14-15	20	44	5225	17 - 18.6	25	48
13-14	20	45	5300	15.6 - 17	25	49
12-13	20	46	5375	14 - 15.6	25	50
11-12	20	47	5450	12.6 - 14	25	51
10-11	20	48	5525	11 - 12.6	25	52
9-10	20	49	5600	9.6 - 11	25	53
8-9	20	50	5675	8 - 9.6	25	54
7-8	20	51	5750	6.6 - 8	25	55
6-7	20	52	5825	5 - 6.6	25	56
5-6	20	53	5900	3.6 - 5	25	57
4-5	20	54	5975	2.8 months, 15 days - 3.6	25	58
3-4	20	55	5975	-	-	-
2 years, 8 months 15 days - 3	20	56	5975	-	-	-

Minimum pension eligibility ages (2006 Reform)

Date of fulfilling the required premium-paid days (7,200 for workers and 9,000 for civil servants and the self-employed)	Pensionable ages	
	Women	Men
1.5.2008-31.12.2035 Option 1	58 (7200 premium-paid days)	60 (7200 premium-paid days)
Option 2	61 (5400 premium-paid days)	63 (5400 premium-paid days)
1.1.2036-31.12.2037	59	61
1.1.2038-31.12.2039	60	62
1.1.2040-31.12.2041	61	63
1.1.2042-31.12.2043	62	64
1.1.2044-31.12.2045	63	65
1.1.2046-31.12.2047	64	65
1.1.2048 onward	65	65

From 2036 to 2048, the pensionable age will be increased from the current 58 years for women and 60 years for men to 65 years for both genders. The number of contribution days required for a full pension will also increase – from the current 7 000 to 7 200 for new entrant workers and 9 000 for civil servants and the self-employed.

According to the circular of 13 May 2004 by the Insurance Premiums Directorate of the Social Insurances Institution, where a premium form to be filled out by management specifies work for less than 30 days in a month, the information and documents to this end have to be attached to the form. For example, a written contract

for part-time work or call work shall be attached to the form. Atypical workers such as part-timers or on-call workers may be utilized on an hourly basis. Each working period of 7.5 hours within a month shall be considered as a one-day period. If there is a remaining period (an unemployment period), for example if the total working period in a month is 20 days, then premiums may be paid for the remaining period (10 days) solely by the atypical worker. In other words, mandatory and voluntary insurance periods shall be aggregated in the calculation of the insurance period and premium-paid days.

Contributions (premiums) for covered persons amount to 14 % of monthly earnings. Employers pay 18.5 % of their monthly payroll. Minimum and maximum monthly earnings limits apply for contribution and benefit purposes, both for covered persons and employers.⁵¹⁴ As from 1 July 2004, the minimum amount of daily earnings subjected to contributions is the daily basic wage determined for those above 16 years of age and the ceiling is 6.5 times the daily minimum wage. If an atypical worker's monthly earnings exceed the minimum amount, then his monthly earnings shall serve as a basis for the calculation of premiums. If his monthly earnings are less than the minimum, then the minimum wage will serve as the basis. Where the earnings are less than the minimum, it shall be solely the employer which will have to pay the premiums for the amount between the earnings and the minimum wage. For a part-timer utilized by various employers, the premiums are calculated separately on the basis of each of his earnings. Where the total amount of paid premiums exceeds the amount of premiums corresponding to the maximum amount, his share from the exceeding part shall be returned to him upon his application to the Social Security Institution. There are no atypical civil servants; they work as indeterminate full-timers. Where a civil servant resigns after working for at least 10 years, he may apply to the Social Security Institution within a period of six months and undertake the payment of his contributions on a monthly basis for entitlement to retirement. Following resignation, he may work for some time as an employee or a self-employed person. Upon its termination, he may, if he desires to be a civil servant retiree, apply within six months to pay his contributions for entitlement to retirement. A good opportunity for anyone over 18 years of age who is not covered by a state social security scheme is to become 'voluntarily' insured. This person shall pay contributions to the Social Security Institution until he becomes employed and his voluntarily insured periods are pensionable and will be aggravated with compulsorily insured periods.

Conditions for entitlement to an old-age pension have been simplified for certain categories of workers, namely those with a loss of working capacity at the time of entry into work, miners, prematurely 'aged' workers, women workers with disabled children and women workers on the occasion of giving birth.

Conditions for entitlement to an old-age pension for miners

Insurance period (years)	Premium-paid days	Age
20	7200	55

Those workers who have attained 55 years of age and are medically determined to be prematurely 'aged' are entitled to receive old-age pensions upon the fulfilment of 5 400 premium-paid days. (See also: Periods of caring).

⁵¹⁴ IOPS Country Profiles – TURKEY, December 2009.

2. The amount of the old-age pension

The 2006 reform brought important changes as regards old-age pensions:

- A gradual increase in the retirement age to 65.
- A decrease in the accrual rate to 2 %.
- The valorisation of past earnings by the Consumer Price Index (CPI) + 30 % of GDP real growth.
- Indexation of pensions to CPI.

For the period after 1 October 2008, benefits are calculated on the basis of 2 % of the insured's average annual earnings for each 360-day period. For the period before 1 October 2008 special conditions apply to the calculation of benefits. Deferred pension benefits are calculated in the same way as old-age pension benefits. The periodic pension benefit index mechanism is an annual adjustment based on a combination of the CPI and GDP figures announced in December every year. If the insured person does not qualify for an old-age pension, he is paid a lump sum which is equal to the total employee and employer contributions. The Ministry of Labour and Social Security supervises the public pension system, while the Social Insurance Institution administers it.⁵¹⁵

The pension allocation formula is as follows:

- Average monthly earnings x replacement rate = amount of pension.
- Annual earnings serving as a basis for the calculation of premiums are updated by using the updating coefficient pertaining to each year, until the present value of all past earnings at the time the pension claim is made.
- Average daily earnings = (updated past earnings + current earnings) / total number of premium-paid days.
- Average daily earnings x 30 = Average monthly earnings.

The replacement (accrual) rate is 2 % for each 360 premium-paid days. Each month is considered to be 30 days and a year is comprised of 360 days. Old-age, invalidity or survivors' pensions cannot be less than 35 % (40 % if there is a spouse or child) of the minimum wage in January of the year in which death has taken place or the pension claim has been made. Increases are made to the amount of pensions in January and July according to the inflation rate in the preceding six-month period.

3. Periods of caring

There is no credit for periods spent out of paid work in order to care for children.⁵¹⁶

There is no parental leave or filial leave. There is a draft law relying on the former EU directive on parental leave. It has to be reconsidered in the light of the new directive of 8 March 2010. The total working periods of women workers who have a disabled child are increased by 0.25. This is reserved to women. This period is also deducted from the age limit. If a female worker is the mother of a disabled child in need of constant care, she will be entitled to early retirement: 90 extra pensionable days will be added to each year of service (Law no. 5510, Art. 28). It is the Social Security Organization Health Board⁵¹⁷ that determines the child's condition on the basis of the relevant by-law.⁵¹⁸ There is preferential treatment for women workers when giving birth. In some schemes, the worker can make up for any unpaid leave by way of extra

⁵¹⁵ IOPS Country Profiles – TURKEY, December 2009.

⁵¹⁶ Gender Brief Prepared by the OECD Social Policy Division, March 2010 version, <http://www.oecd.org/dataoecd/23/31/44720649.pdf>, accessed 24 May 2010.

⁵¹⁷ Sosyal Güvenlik Kurumu Sağlık Kurulu.

⁵¹⁸ Article 15, By-Law on Incapacity to Work and Schemes for Invalidity (*Çalışma Gücü Ve Meslekte Kazanma Gücü Kaybı Oranı Tespit İşlemleri Yönetmeliği*), Official Gazette, 11 October 2008.

contributions. During a period of unpaid maternity leave, neither the worker nor the employer will be expected to contribute. The worker may, if she chooses, pay contributions for the statutory (compulsory) maternity leave but the employer will not have a duty to contribute. If the worker pays contributions for the statutory maternity leave period, this period counts as pensionable service. Also, where a worker resigns due to pregnancy or giving birth, she may, if she so chooses, pay contributions for at most the two-year period during which she remains unemployed. This two-year period starts with the birth and the worker may benefit from this provision for two separate births (Law no. 5510, Art. 41). In this way, she will continue being covered by the SSK, the social security institution for workers. Those who are unemployed and who become voluntarily insured are covered by Bag-Kur, the Institution Representing Tradesmen, Craftsmen and Other Self-Employed Persons.

4. Exceptions, Article 7.1 of Directive 79/7

The pensionable age and the possible consequences for other benefits (Article 7.1 a))

There is no compulsory retirement age for workers and the self-employed, but there is a compulsory retirement age for civil servants. This age is generally 65, with exceptions for various civil servants, such as 67 for academics, 52 for the police, 60 for police inspectors, 58/60 for the head or chief head of the police force, and different ages for different ranks in the military.⁵¹⁹ A civil servant / worker / self-employed retiree may work on a self-employed basis after retirement on condition that a 14 % (15 % in 2011 onwards) deduction called a ‘social security support premium’ is made from their retirement salaries. A civil servant / worker / self-employed retiree may once again work as an employee by paying a ‘social security support premium’ to the Social Security Organization. This premium equals 30 % of the worker’s wage and of this 30 %, 7.5 % is the worker’s and 22.5 % is the employer’s share. The employer shall also pay premiums for employment injuries and occupational diseases. For those who enter into employment for the first time after 1 October 2008, their retirement salaries will be cut if they re-enter the labour market.

There were strong reactions and protests in labour circles (workers and their organizations) in 1999 and 2006 against the increase in the retirement ages. ‘Work till you drop’ and ‘retirement in the grave’ were the most used slogans. The equalization of retirement ages was not of any concern to labour and management circles.

The average life expectancy at birth is 72 years: 69 for men and 74 for women. The average life expectancy is not taken into account in the calculation of benefits.

⁵¹⁹ Retirement Fund Act, Law no. 5434, Art. 40. Official Gazette 17.07.1949, No. 7235. A civil servant may retire voluntarily after the completion of 25 years of service and after having attained the prescribed age (58 for women and 60 for men for the time being).

Advantages granted to persons who have brought up children (Article 7.1 b))

Caring advantages are not gender-neutral. Maternity leave⁵²⁰ and additional leave⁵²¹ are limited to women. Unless there is a provision to the contrary in the individual and collective labour contract, there will be no pay by the employer during maternity leave; the worker will be paid a maternity allowance which equals sick pay by the social security organization (Law no. 5510, Art. 18). A female civil servant, on the other hand, shall be paid her full salary by the employing public institution during her maternity leave. There is no paternity leave except for a three-day leave for civil servants when their wives give birth. Women workers can make maternity leave a pensionable period. 90 extra pensionable days will be added to each year of service for a female worker who is the mother of a disabled child in need of constant care to entitle her to early retirement. Men are not entitled to these advantages as second-choice claimants and there have been no such demands to this effect.

Old-age or invalidity benefit entitlements or increases long-term benefits by virtue of the derived entitlements of a wife (Article 7.1 c) and d))

Conditions for entitlement to an old-age pension for workers with a loss of working capacity at the time of entry into work

Loss of working capacity	Insurance period (years)	Premium-paid days	Age
60 %	15	3960	-
50 %-59 %	16	4320	-
40 %-49 %	18	4680	-

Survivors' insurance: Under Law no. 5510, effective from 1 October 2008, the conditions to be entitled to survivors' benefits are:

- 1 800 premium-paid days for the insured deceased.
- A 5-year insurance period and 900 premium-paid days for the insured deceased.
- The death of the insured while he was receiving old-age or disability benefits.
- The death of the insured while he was active but at the same time entitled to old-age or disability benefits.

The remaining spouse and children (legitimate, illegitimate, adopted) are the beneficiaries. The parents are beneficiaries subject to certain conditions. The benefits are survivors' benefits, a lump-sum payment, a marriage payment and a funeral payment. The remaining working spouse is entitled to 50 % of the old-age or disability benefit of the deceased. The remaining non-working spouse is entitled to 75 % of the old-age or disability benefit of the deceased if s/he is without a child with survivors' benefits. A male child is considered to be a dependant until he reaches 18 years of age. This age limit is increased to 20 if he is undertaking secondary

⁵²⁰ There is compulsory maternity leave of 16 weeks. The 8-week antenatal resting period may be reduced to 3 weeks at the request of the worker and the approval of a doctor, and the unused period is added to the 8-week postnatal resting period. If there is a multiple pregnancy, two more weeks are to be added to the antenatal leave. These antenatal and postnatal resting periods may be increased with a medical report on the basis of the worker's health and the nature of the work to be performed. If there is an early birth as a result of which part of the antenatal leave is not used, this part cannot be added to the postnatal leave. The total period of maternity leave in Turkey is compulsory.

⁵²¹ The worker, if she so requests, has to be granted unpaid leave for up to six months (one year for public officials) following the postnatal period. The two periods, compulsory and additional, run consecutively to give an entitlement to 16 weeks (18 in the case of a multiple pregnancy) plus 6 months leave. There can be no gap between the two periods.

education and to 25 if he is a student in tertiary education. If the male child is disabled and non-working (with a 60 % loss of working capacity), there is no age limit. There is preferential treatment for female children: there is no age limit as long as the female child is unmarried, divorced or widowed and is not covered by the state social security scheme. In October 1996, the Constitutional Court ruled that such preferential treatment for female children did not violate Article 10 of the Constitution on equality before the law. This is incompatible with EU Directive 79/7. This rule may also discourage women from taking up paid employment. Each child is entitled to 25 % of the old-age or disability benefit of the deceased. If the female child marries, her two years of survivors' benefits shall be paid to her upon marriage. In other words, the marriage payment equals two years' survivors' benefits. Following the marriage payment, the female child cannot receive survivors' benefits as long as she remains married. This advantage (the marriage payment) cannot be claimed by the male child.

C) OCCUPATIONAL OLD-AGE PENSION SCHEMES

(Schemes falling under Article 157 TFEU, Directive 86/378/EEC, as amended by Directive 96/97/EC, now Articles 5-13 of the Recast Directive 2006/54/EC)

Mandatory occupational pensions

Turkey does not have a single law regulating occupational pensions but separate laws for each mandatory occupational pension. In these laws, the same rules apply to both genders.

First-pillar substitute funds: Institutions in the financial services sector such as banks, insurance companies, reinsurance companies, the stock exchange and chambers of commerce had their own occupational pension plans, commonly known as 'first-pillar substitute funds', prior to the effective date of the Social Insurances Law (Law no. 506) on 1 August 1964. These institutions have set up their own defined benefit (DB) occupational pension plans. The Social Security and General Health Insurance Law (Law no. 5510) determined their transfer to the Social Security Institution. The transfer is to be completed by 2013 with a two-year extension allowed by law to the Council of Ministers. 17 funds are subject to transfer. The funds pay 79 388 pensions. Those covered by these funds in December 2010 amount to 105 707⁵²² and when dependants are taken into account, 310 850 individuals benefit from the funds.⁵²³

There are two mandatory second-pillar schemes in which membership is mandatory. *OYAK*,⁵²⁴ the pension fund for the armed forces, and *Amele Birliği*⁵²⁵ (Workers' Unity), the pension fund for the workers of TTK,⁵²⁶ the state-owned coalmining enterprise, and *Çatalağzı* Thermal Power House⁵²⁷ are the other mandatory occupational schemes operating under separate legislation. These schemes operate under separate legislation and combine defined benefit and defined

⁵²² <http://www.sgk.gov.tr> accessed 20 May 2010.

⁵²³ IOPS Country Profiles – TURKEY, December 2009.

⁵²⁴ Ordu Yardımlaşma Kurumu Kanunu, Law no. 205 (Official Gazette 09.011.1961, No. 10702).

⁵²⁵ Ereğli Kömür Havzası Amelebirliği Biriktirme ve Yardımlaşma Sandığı Kanunu (Law no. 151 on Amele Birliği), Official Gazette 10.09.1937. By-law (Ereğli Kömür Havzası Amelebirliği Biriktirme ve Yardımlaşma Sandığı Yönetmeliğinde Değişiklik Yapılmasına Dair Yönetmelik), Official Gazette 13.11.2009, No. 27405.

⁵²⁶ Türkiye Taşkömürü Kurumu.

⁵²⁷ TEAŞ (Türkiye Elektrik Üretim Anonim Şirketi) Çatalağzı-B İşletme Müdürlüğü ile Türkiye Elektrik İletim Anonim Şirketi Genel Müdürlüğü 5. İletim Tesis ve İşletme Grup Müdürlüğünün Havza-i Fahmiyye sınırları içindeki işyerleri.

contribution (DC) elements. These schemes cover around 210 702 active participants.⁵²⁸ The *OYAK* Law requires deductions from salaries for a period of at least ten years to provide entitlement to old-age pensions upon exiting the armed forces for any reason whatsoever. There is no age limit and the same rules apply to both genders. The *TTK* fund was established in 1923 for coalminers and was the first social security fund. The *TTK* fund provides assistance for various reasons such as temporary incapacity, occupational accidents, loans, support for education, funeral and mortuary expenses. Upon leaving the workforce for any reason whatsoever, the participant will be paid a lump-sum payment corresponding to the total number of days for which a membership fee was paid. There is no age limit and the same rules apply to both genders. It has to be noted that women are prohibited from working as miners, but women employed in other jobs by these institutions will benefit equally from this fund.

Voluntary occupational funds established by undertakings

Occupational plans are established on a voluntary non-profit foundation basis by private-sector companies and there are estimated to be some 250 voluntary occupational pension funds that operate either as a DB, DC or a combination of both, on a voluntary basis, for purposes of enhancing the benefits available under the state social security system. They operate under general provisions for non-profit organizations and foundations. The Treasury has recently been granted the authority to supervise these plans in terms of actuarial soundness. The 2001 Private Pension Savings and Investment System Law⁵²⁹ (Law no. 4632) allows members of such schemes to transfer all their vested rights to the personal private pension system (Article 26). A new occupational private pension system is planned to be introduced in line with the EU *acquis* on occupational pension systems in the future.⁵³⁰

Institutions operating social security schemes including non-compulsory occupational retirement business

Where there is an institution for occupational retirement provision established separately from any sponsoring undertaking for the purpose of providing retirement benefits on the basis of an agreed contract, the situation is regulated by Law no. 4632. This law lays down the terms and provisions for a private pension system. The underlying idea in the law is that the individual and occupational retirement pensions have to be developed in order to be relied upon as a complement in the future. The Undersecretariat of the Treasury is to regulate and supervise the overall voluntary pension system. The Capital Markets Board is to regulate and supervise the pension investment funds, ensuring fair trading in the capital markets, and protecting investors. The Private Pension System which was founded by Law no. 4632 was activated on October 27, 2003. At the end of 2008, there were 11 companies, 10 of

⁵²⁸ OECD Private Pensions Outlook 2008; Undersecretariat of the Treasury Directorate General of Insurance (Department for Private Pensions), A Brief Report on the Turkish Private Pension System.

⁵²⁹ Bireysel Emeklilik Tasarruf ve Yatırım Sistemi Kanunu.

⁵³⁰ Undersecretariat of the Treasury, A Brief Report on the Turkish Private Pension System, http://www.turkischeconomy.org.uk/Turkish_Private_Pension_System.doc (accessed 15 June 2010).

whom also provide life insurance policies, only one company works purely as a pension company.⁵³¹

Any person over 18 years of age, employed or unemployed, may participate in the (voluntary) personal private pension system. Employers can make voluntary contributions to the individual retirement accounts of their employees which are called Group Personal Pension Plan arrangements. Participation in the personal private pension system in the form of groups constitutes a crucial potential for the development of the system.⁵³² Employers can make contributions to the private pension accounts of their employees and deduct these contributions from their corporate tax base as a business expense.

The private pension sector is growing rapidly. In addition to the 21 % increase in the number of contracts by 2008, the accumulation value and contribution amounts have increased by 39 % and 34 %, respectively. When the distribution of participants according to the type of contract is analyzed, it can be seen that approximately 78 % thereof are individual pension contracts and 22 % are group contracts.

Pension System General Indicators

Million TRY	2004	2005	2006	2007	2008
<i>No. of Contracts</i>	349 011	725 822	1 208 341	1 600 157	1 932 686
<i>Individual</i>	281 389	563 250	930 213	1 237 844	1 501 412
<i>Group</i>	67 622	162 572	278 128	362 313	431 274
<i>No. of Participants</i>	337 897	696.508	1 101 700	1 494 601	1 756 597
<i>Total Accumulation</i>	287.9	1 219.2	2 835.6	4 603	6 400.4
<i>Total Contribution</i>	288.3	1 050.6	2 439	4 173.5	5 608.1

Undersecretariat of the Treasury, Insurance&Pension Annual Report - 2008

Participants are entitled to retirement benefits when they reach the age of 56 and have been saving under the scheme for at least 10 years. The retirement age applies to both genders and is lower than the statutory retirement age which is 58 for women and 60 for men for the time being with the goal being to attract more people into the private system. The completion of ten years is compulsory and therefore if it is not completed, the retirement age will increase. Benefits can take the form of a lump sum, a programmed withdrawal or an annuity.

Savers may pay the pension company an entrance fee up to half of the gross monthly minimum wage for each pension account, an annual management fee of up to 3.65 % and a contribution fee up to 8 %. Employer-sponsored plans are liable to lower management fees. Other than the maximum limits, fees are unregulated but are reducing due to the intense competition in the pension market. By the end of 2008, the average contribution fee was 4.1 % and the average annual fund management fee was about 2.26 %.⁵³³

Participants may deduct contributions from their income tax base up to a ceiling of 10 % of their gross monthly income. The total deductions in any one year may not exceed the threshold of the gross annual minimum wage level. The total amount of employee and employer contributions is similarly capped. An employer's contributions to an individual pension system on behalf of its employee are deductible as

⁵³¹ Undersecretariat of the Treasury, Insurance&Pension Annual Report-2008 <http://www.treasury.gov.tr/irj/portal/anonymouse?NavigationTarget=navurl://e7805e8da34e87ac6b4612ac63b57801&LightDTNKnobID=385097062> (accessed 26 May 2010).

⁵³² Undersecretariat of the Treasury, A Brief Report on the Turkish Private Pension System,

⁵³³ IOPS Country Profiles – TURKEY, December 2009.

business expenses from the corporate tax base up to a ceiling of 10 % of the employee's monthly gross salary or up to the annual minimum wage level. Investment returns and capital gains are tax-exempt. As for benefits, where a participant withdraws benefits and has contributed to the system for less than 10 years, they are taxed at a rate of 15 %. Where the participant has contributed for at least 10 years, but is under 56, benefits are taxed at a rate of 10 %. If the participant has contributed for at least 10 years and is 56 or older, benefits are taxed at 3.75 %. Annuity payments are exempt from income tax.

Only licensed pension companies may offer individual pension products. Funds are invested through pension mutual funds that serve as investment vehicles. Mutual funds are managed by portfolio management companies, not by the pension companies, which are paid commission. There were some 1.7 million participants by the end of December 2008. There are currently 12 pension companies with 120 pension mutual funds. At the end of 2008 the total portfolio value of pension mutual funds amounted to approximately TL 6.4 billion (USD 4.2 billion). Individual participants may choose any pension company they wish and are entitled to change companies once a year. They also choose the funds that suit them and may switch between those offered by the same company up to six times a year. A pension company's provision must include at least three funds with different portfolios for each.⁵³⁴

THE UNITED KINGDOM – *Aileen McColgan*

A) GENERAL QUESTIONS

1. The old-age pensions system

Pensions in the UK are organised on the traditional three pillars, basis and supplementary state pensions being supplemented by occupational and private pensions. The state pension scheme is organised on a PAYG basis and the amount payable thereunder depends on years of National Insurance contributions made or otherwise credited to the worker (see further below) and, to a certain extent, on the level of earnings (again see further below). Occupational pension schemes may be either DB or DC. The former is becoming increasingly rare, especially outside the public sector. Survivors' pensions may be paid under both state and occupational schemes and are moving towards gender neutrality (again see further below). Those who are not entitled to state pensions may qualify for means-tested social assistance and people aged over 80 are entitled to a non-contributory pension if they do not qualify for the basic state pension or have only a small state pension. It is GBP 57.05 a week in 2010 and is payable only to those who live in Great Britain at the time of the claim and have done so for at least 10 years during the 20 years since their 60th birthday.

Those aged over 60 may be entitled to additional 'Pension Credit' which is payable on the basis of need and which brings pensioner income up to the minimum income guarantee (GBP 132.60 in the case of a single person per week in 2010, GBP 202.40 in the case of a couple). Those who have caring responsibilities, are severely disabled or have certain housing costs can qualify for higher levels of 'pension credit'.

⁵³⁴ IOPS Country Profiles – TURKEY, December 2009.

Many older people are also eligible for a variety of benefits to help with television licence payments etc. and to free public transport.

2. Old-age pension reforms

The basic trend in the UK is towards equalization irrespective of sex, though the gradual nature of many changes will have the effect of entrenching the male breadwinner model for some years to come. Further, the very low level of the state pension and the ensuing dependence of pensioners on occupational and/or private pensions disproportionately disadvantages women whose coverage by occupational and private pensions is significantly lower (see further below). A 2007 study rated the UK's state pension the worst in the EU, this on the basis that an average UK earner retiring that year would receive only 17 % of their salary in pension benefits by comparison with an average of 57 % across the EU with UK figures approximating EU averages only for the most poorly paid workers.⁵³⁵ The survey concluded that there had been a shift over time in responsibility for pension provision from the state towards employers and individuals with the UK having the largest funded private system in Europe which resulted in the UK coming fifth overall after Denmark, the Netherlands, Sweden and Ireland.

Having said this, recent reforms to the state pension scheme have attempted to further gender equality. The state scheme traditionally consisted of a basic state pension and an earnings-related supplementary state pension. The previously income-related second pension has recently been replaced by a flat-rate (but contribution-based) second state pension and significant efforts have been made to reduce the pension poverty experienced by many women whose fractured working lives have traditionally resulted in inadequate coverage by state, occupational and private schemes.

Prior to 2010, the minimum years' contributions required to found entitlement to any basic state pension was 10-11, while the number required to qualify for a full basic state pension was 44 in the case of men and 39 in the case of women. This was equalised down to 30 years in April 2010 with no minimum period of contribution. Prior to 2010, those who stayed at home caring for children or sick or disabled persons were entitled to Home Responsibilities Protection, which reduced the number of years required to earn a maximum state pension to 20 (but not below). As of 2010, changes designed to try to ensure coverage for those who have taken time out of the workforce to discharge caring responsibilities include the replacement of HRP with National Insurance Credits which will allow parents and carers to build up qualifying years through weekly credits for both the basic and additional State Pensions. After 2010 there is no limit on the number of years that credits can be given in respect of, and up to 22 years of HRP can be converted into NI Credits.

3. Retroactivity of legislation

The recent amendments to state pensions are mentioned above. They have been driven in part by gender equality concerns. They are not retrospective but are concerned with pension entitlement going forward. Those retiring on or after 10 April 2010 are subject to the reduced requirements for a maximum state pension, and up to 22 years' HRP can be converted into NI Credits.

⁵³⁵ *Personnel Today* 14 November 2007, reporting the results of an independent barometer survey by Aon Consulting.

4. The World Bank Model

The three-pillar model still describes the structure of old-age pensions in the UK.

The Pension Act 2008 will result, in 2012, in the introduction of quasi-compulsory occupational pension schemes. Employers of anyone aged between 22 and 65 and earning over GBP 5 000 a year will be required automatically to enrol them into private pension schemes from which the employees can choose to opt out. Employers will be required to contribute to the schemes which can be run by the employer or bought into by the employer from the private sector or via 'personal accounts', a default provision run on behalf of the state. Employers must match employee contributions of 4 % if employees do not choose to opt out. Those who earn less than GBP 5 000 p.a. or fall outside the age bracket for automatic enrolment will be entitled to be enrolled in a pension scheme on request with the same contribution obligations imposed on their employers. The impact on women workers and those men whose earnings are low (disproportionately those who are disabled or from an ethnic minority) is likely to be significant, though entitlement to pension payments in old age do have the effect of reducing entitlement to means-tested benefits such as pension credit, with the effect that questions are sometimes raised as to the utility of saving for retirement for those at the bottom end of the income hierarchy.

B) STATUTORY OLD-AGE PENSION SCHEMES

(Schemes falling under Directive 79/7/EEC)

1. Qualifying conditions

Entitlement to State pensions (basic and secondary) is based on having reached state pensionable age (currently 65 in the case of men, 60 in the case of women, to be equalised at 65 between 2010 and 2020) and having made adequate National Insurance contributions over the course of one's working life. NI contributions are made by the self-employed as well as employees (and employers) but are made only by those earning in excess of the relevant threshold (currently GBP 4 940 p.a. in the case of employees, GBP 5 075 for those who are self-employed), so those (disproportionately women) who have very low earnings will not make the relevant contributions to maximise their entitlement to A basic state pension (or in some cases to qualify at all).

Prior to 1977 married women could elect to pay reduced NI contributions and to rely on their husbands' pensions alone. While this election has not been possible for over thirty years, there are still many women who as a result of their pre-1977 choice will face very reduced pension entitlement in old age.

The implementation as of April 2010 of the Pension Act 2008 has reduced the number of years of contributions required for a full basic state pension from 44 in the case of men and 39 in the case of women to 30 across the board. (While the 39/44 rule looked like discrimination in favour of women, women were far less likely than men to qualify for the state pension at its maximum level or at all as a result of women's concentration in lower-paying jobs and their often fractured employment histories. Historically, many women failed to qualify for a maximum or, in many cases, any state pension, the latter because those who made contributions for less than 25 % of the 39/44-year period received *no* state pension despite their contributions. Exclusion from entitlement on this basis was much more common among women, many of whom had significant periods of earning less than the level at which NI contributions became payable.)

Those who have contributed for less than the maximum number of years have their basic pension payments reduced pro rata. Those who stay at home caring for children or sick or disabled persons are entitled to some protection, discussed further below.

NI contributions are credited during periods of unemployment in respect of which Job Seekers' Allowance is payable, but women are less likely than men to qualify for JSA during periods of unemployment. JSA can be contributions-based or means-tested. Women are less likely to qualify for the first as they are disproportionately concentrated in low paying jobs in which NI contributions (on which contributory JSA depends) are not payable, and are less likely to qualify for the second as they are disproportionately likely to be 'secondary' earners excluded from entitlement by their partners' earnings.

There is also an additional state pension which until 2002 was the State Earnings Related Pension (SERPS), which was based on the level of earnings between 1978 and 2002 and very disproportionately advantaged male workers, and since then this has been replaced by the Second State Pension which is intended to benefit low and moderate earners, as well as to facilitate access to enhanced pensions to some carers and to those with long-term illness or disability.

It is possible to opt out of the State Second Pension in order to take out another second pension such as a work, personal or stakeholder pension at any time. The amount of the second state pension depended, in respect of periods of contribution prior to 2010, on the earnings on which NI contributions were paid and the earnings the worker was regarded as having. Prior to 2010, second state pension entitlement was built up at different rates depending on earnings (earnings up to GBP 13 000 in 2007/08, earnings between GBP 13 000 and GBP 30 000 and earnings between GBP 30 000 and GBP 34 840). This changed in 2010. Those who are treated as if they are making contributions (e.g., during caring periods) are treated as doing so at the lowest of the three levels. They earn just over GBP 1 a week of state second pension for each year they are treated as contributing and there is no cap on years to be counted in this way. From 2010/11 there are only two bands (the upper two bands being brought together) and flat-rate State Second Pension will be worth around GBP 1.50 a week (on 2007/2008 figures) for each year in respect of which contributions were made or are treated as having been made.

2. The amount of the old-age pension

The basic state pension is GBP 97.65 per week in 2010, GBP 156.15 in the case of a man and wife where the latter has opted to pay the reduced 'married women's NI contribution. The amount of pension payable is reduced according to the years of NI contributions made (or credited) below the maximum (30 years). Otherwise, the amount of basic state pension does not depend on earnings although the supplementary element does as described above. Currently, and until 2012, the state pension is indexed to retail price inflation. The Government recently announced that the link to earnings, removed in 1980, would be restored in 2012.

3. Periods of caring

Prior to 2010, those who stayed at home to care for children or sick or disabled persons were entitled to Home Responsibilities Protection, which reduced the number of years required to earn a maximum state pension to 20 (but not below). The system changed in 2010 to try to ensure coverage for those who have taken time out of the workforce to discharge caring responsibilities with HRP being replaced by National

Insurance Credits which allow parents and carers to build up qualifying years through weekly credits for both the basic and additional State Pensions.

Prior to 6 April 2010, only those (disproportionately women) in receipt of Child Benefit (a non-means-tested benefit payable to the primary carer, assumed to be the woman in case of heterosexual couples living together, though such couples can elect for the man to receive it) could be eligible for HRP. National Insurance Credits, which allow parents and carers to build up qualifying years through weekly credits for both the basic and additional State Pensions, are available for parents in receipt of Child Benefit for children aged under 12, as well as approved foster carers and those caring for at least 20 hours a week for people who are in receipt of various disability-related benefits. After 2010 there will be no limit on the number of years that credits can be given in respect of, and up to 22 years of HRP will be converted to qualifying years.

People can also be deemed to have made NI contributions in respect of years in which they are in receipt of a Carer's Allowance or Statutory Adoption Pay or Statutory Maternity Pay.

4. Exceptions, Article 7.1 of Directive 79/7

Pensionable age and the possible consequences for other benefits (Article 7.1 a))

There is no mandatory retirement age in the UK though there is a 'default' retirement age of 65 at which workers will not be able to challenge forced retirement by their employers (unless the employer actually operates a higher retirement age for the job in question). Entitlement to a state pension does not depend on having retired but workers can choose to defer the state pension in the case of women over 60 and men over 65, in each case with the effect that the level of pension eventually payable increases and if pension is deferred for a minimum period of one year the worker can choose to take the difference in a lump sum at the point when the pension is claimed. State pensionable age is currently 60 for women, 65 for men, to be equalised at 65 between 2010 and 2020 with the age rising to 66 by 2026, 67 by 2036 and 68 by 2046. Some benefits, such as Reduced Earnings Allowance, are payable only until state pensionable age and so entitlement ceases at different ages for men and women. The lawfulness of this was challenged unsuccessfully under Directive 79/7/EC in *Hepple v Adjudication Officer* Case C-196/98 [2000] ECR I-03701 and at the European Court of Human Rights in *Stec v UK* (2006) 43 EHRR 47. Differential pensionable age also has repercussions for (for example) entitlement to Job Seeker's Allowance (payable in respect of unemployment) which stops at pensionable age. The decision to equalise the state pensionable age in the UK was taken some time ago. The main arguments at the time related to the age at which equalisation should occur.

No steps have been taken retrospectively to compensate men for their higher pensionable age. There are no credits available in relation to pensionable age in relation to childcare responsibilities etc. The different state pensionable ages for men and women did not impact directly on amounts payable except insofar as they might have made it more difficult for women to secure adequate contribution years. In mid 2008, according to the Office of National Statistics, the average age of retirement for men who had worked past 50 was 64.6, the figure for women being 61.9.⁵³⁶

⁵³⁶ BBC News 18 October 2008, <http://news.bbc.co.uk/1/hi/business/7685757.stm>.

Advantages granted to persons who have brought up children (Article 7.1 b))

See the answer immediately above. There is a presumption in favour of women when it comes to National Insurance Credits (formerly HRP) in that it is available to the recipient of Child Benefit which, in a heterosexual couple, is the woman in the absence of an agreement to the contrary. In my view the presumption is justified by the disproportionate share of childcare responsibility borne by women, and the fact that Child Benefit can be awarded to a man who is the primary carer of children or (in a couple) where this is agreed.

Old-age or invalidity benefit entitlements or increases in long-term benefits by virtue of the derived entitlements of a wife (Article 7.1 c) and d))

Supplements to the primary, but not to the secondary, state pension are available in respect of married women who have paid the reduced married woman's NI contribution, from the date the husband reaches state pensionable age. This is not means tested. Spouses and civil partners can choose to receive basic state pension based on the contributions of their spouses/civil partners rather than their own, to a maximum 60 % of the basic state pension, when both parties have reached state pensionable age. Prior to May 2010 this benefit was available only to wives, and men will not be able to benefit from contributions paid by male civil partners until April 2015. Women will be able to benefit from contributions paid by female civil partners after May 2010. It is not means tested. Pension splitting is available in respect of the supplementary state pension (SERPS or Second Pension) but not the basic pension, and divorcees who have not remarried may substitute their former spouses' records prior to the termination of the marriage.

C) OCCUPATIONAL OLD-AGE PENSION SCHEMES

(Schemes falling under Article 157 TFEU, Directive 86/378/EEC, as amended by Directive 96/97/EC, now Articles 5-13 of the Recast Directive 2006/54/EC)

1. Coverage

Participation in occupational schemes is voluntary and, prior to 2012 (see above), there has been no obligation for employers to provide such schemes which tend to apply to more privileged workers. In 2007, about 26.7 million people benefited from membership of occupational pension schemes, 8.8 million being employee members (down from 9.2 million in 2006) with 9.4 million having preserved pension rights (this combined 18.2 million being of around 29 million in employment in 2007); and 8.5 million pensioner members (up from 8.2 million in 2006), this of a total 11.6 million people of pensionable age. In 2007-2008, state benefits including state pension accounted for 42 % of pensioners' gross income with a further 24 % deriving from occupational and 4 % from personal (third-pillar) schemes, the remainder being comprised of earnings and investment income.

According to the Office of National Statistics, Occupational Pension Schemes Annual Report 2007, there were in that year 54 110 occupational pension schemes in the UK (down from over 100 000 in 2000). The number of open schemes in 2007 was 28 810. 53 800 of the total 54 110 schemes were in the private sector, of which 26 680 were open. 130 of the 310 public sector schemes were open.

Most large, closed private sector schemes are defined benefit schemes. Over 90 % of open single section private sector schemes in 2007 were defined contribution; 82 % of these were very small schemes (2 to 11 members), of which 80 % had 2-4 members. (These schemes, though extremely numerous, together account for less than

1 % of active members). The number of open single section private sector defined benefit schemes has fallen sharply in recent years (from 18 350 in 2000 to 3 470 in 2006 and 2 240 in 2007). Since 2000, there has been little change in the total number of public sector schemes (310 in 2007), but a big increase in the numbers of closed public sector schemes. The number of open schemes fell from 250 in 2000 to 130 in 2007.⁵³⁷

Final salary schemes are much more beneficial to members than are contributions-based schemes. In 2007, for example, members contributed an average 4.9 % and employers 15.0 % to private sector defined benefit schemes while the contribution rates for defined contribution schemes were 2.6 per and 6.4 % respectively. (14 % of members of active defined benefit schemes and 24 % of members of active defined contribution schemes did not involve employer contributions in 2007). Since 2000, there has been an upward shift in members' and employers' contribution rates for private sector defined benefit schemes, but not for defined contribution schemes.

The sheer number of occupational schemes makes it quite impossible to make general assertions as to whether, for example, membership limitation schemes apply. Discrimination against part-timers would, however, breach domestic as well as EU law unless objectively justified. In 2006, earnings below the lower earnings limit qualified for contributions for only 77 % of active members of occupational pension schemes. (This will disadvantage women who tend to earn less).

The proportion of men as active members of pension schemes fell from 77 % in 1953 and 69 % in 1975 to 40 % in 2006 in the public sector and from 81 % in 1953 and 82 % in 1975 to 67 % in private sector schemes in 2006. It should be noted, however, that in the period an increasing number of schemes (representing 53 % of members in 2006) did not respond to questions as to the sex of their members. In private sector schemes length of service restrictions on membership were uncommon, applying to open schemes covering only 6 % of active members (down from 17 % in 2004).

Membership limitations by minimum periods of employment, age etc. are rare but lower-paid workers are less likely to benefit from occupational pension schemes, at least in the private sector. It is also evident that women are still significantly less likely to be covered by private sector schemes (although women accounted for 40 % of private sector workers in 2006 they amounted to 33 % of active pension scheme members, while they accounted for 65 % of public sector employers but only 60 % of public sector scheme members in that year). Those who work part-time should not be denied access to schemes (since this will be indirectly discriminatory on grounds of sex) but pension schemes are less likely to exist in low-pay sectors (including casualised sectors) where women predominate.

2. Calculation of old-age pensions and contributions

Private sector defined benefit schemes generally defined final pensionable earnings using the best year's earnings of the last few years of employment, or the average of the last best years. (The most popular accrual rate for private sector schemes in 2007 was 60^{ths}; for the public sector, the most popular accrual rate was 80^{ths} plus an

⁵³⁷ Daffin C. (2006), *Occupational Pension Schemes Annual Report*, Office for National Statistics, www.statistics.gov.uk/downloads/theme_population/Occ-pension-2006/OPSS_Annual_Report_2006.pdf and S. Levy S. (2007), *Occupational Pension Schemes Annual Report*, Office for National Statistics, http://www.statistics.gov.uk/downloads/theme_population/Occ-Pension-2007/OPSS_Annual_Report_2007.pdf.

additional lump sum equivalent to 3/80^{ths}.) 95 % of defined contribution schemes provided a lump sum as well as a pension at normal retirement age and many defined benefit schemes allow members to exchange some of their annual pension for a lump sum on retirement on the basis of a 'commutation rate'. Almost all active members of defined benefit schemes (all of those in the public sector) were offered benefits on ill-health retirement in 2007 and most defined contribution schemes also offered such benefits, although the proportion of active members covered declined from 89 % in 2004 to 84 % in 2006. In almost 50 % of defined benefit schemes the benefits payable were based on salary together with full service to the point of retirement and the full period of potential service.

Benefits in defined benefits schemes are generally based on the final salary with a multiplier depending on years of membership of the scheme, a factor which self-evidently disadvantages women who are less likely to have uninterrupted periods of employment. Where contributions-based schemes are concerned, interruptions to earnings and the impact of the gender-wage gap are also very significant because they reduce the level of the 'pot' built up over one's working life.

Occupational pension schemes generally being employer-specific, credit for periods of unemployment would not be expected. To the best of my knowledge, the duration of participation in the fund and the amount of the contributions paid in would not generally influence the kind of investments granted by the fund to the claimant or, in turn, the average yield rate granted

3. Actuarial factors

Defensible actuarial factors may discriminate between men and women in occupational schemes if they reflect the difference in life expectancy between men and women and are designed (in defined benefit schemes) to provide equal periodical pension benefits for men and women, or which result in different lump-sum payments from commuted periodical pensions or parts of such pensions; or a different periodical pension granted in exchange for a lump-sum payment; or which relate to money purchase benefits, or transfer credits and associated rights, or transfer payments, or periodical pensions on early or deferred retirement, or payments made in respect of voluntary contributions.

4. Caring credits

The sheer number and variety of occupational schemes makes it impossible to state whether caring advantages are provided by occupational schemes except that such schemes are required by law to count any period of paid maternity leave (now available for a year) or paid paternity leave (two weeks) as pensionable service with benefits being based on the salary before going on leave in the case of defined benefit schemes and the amount of contributions made by a woman or man in a defined contribution scheme dependent on actual earnings (the employer having to continue with any contributions during the period of paid leave). Unpaid paternity or maternity leave does not count as pensionable service but some occupational schemes allow the employee to make up any unpaid leave by way of extra contributions while in defined contribution schemes employees on unpaid leave may contribute if they chose to do so during unpaid leave. The same is true in respect of unpaid parental leave.

5. Vesting and reimbursement rules

All occupational pension schemes must offer members with preserved pension entitlements the option of a transfer payment on leaving pensionable employment.

They are not legally required to provide preserved pensions to leavers with less than two years' pensionable service (the maximum 'vesting period'), but any member who leaves after 3 months' pensionable service in an occupational pension scheme is entitled to a cash transfer sum which might be used to acquire rights under another occupational pension scheme or personal pension scheme, or to a refund of his or her own contributions.⁵³⁸

6. Pensionable age

Occupational schemes are not permitted to operate different pensionable ages for men and women, this as a result of the decision of the ECJ in *Barber* and domestic legislative changes following therefrom. Pensionable age tends to be in the region 60-65. Occupational pension schemes do not cover the self-employed. Self-employed people may make use of third-pillar (private) pension schemes. Private pensions are not considered 'pay' for the purposes of Article 141 and the legality of any differential treatment as regards sex will fall to be determined under the non-employment provisions of the Sex Discrimination Act which would not permit different pensionable ages according to sex.

⁵³⁸ Occupational Pension Schemes (Early Leavers: Cash Transfer Sums and Contribution Refunds) Regulations 2006.

Annex I

European network of legal experts in the field of gender equality Direct and indirect gender discrimination in old age pensions (The application of Article 157 TFEU, Directive 2006/54/EC and Directive 79/7/EEC)

Questionnaire

INTRODUCTORY REMARKS

Demographic and structural problems, such as the ageing of the population, changing family patterns, lowering of the fertility rate, have made reforming of pensions systems crucial on the political agenda of many Member States and EEA Countries. This has often lead to a stronger link between contributions and benefits, the increasing of pensionable age, moving from Pay-As-You-Go (PAYG) to funded schemes or from Defined Benefits (DB) to notional defined contribution schemes (NDC) or defined Contributions schemes (DC) and so forth.¹

A particularly crucial issue of the reformers is that of pensionable age in both statutory and occupational funds, as it is shown by the Court of Justice case law on these issues.² The consequences of this case law pursuing the equalization of pensionable age in the domestic pensions systems will be analysed in the report. Here particular attention will be reserved to the admissibility of retroactive measures which amount to levelling down.

The pensions reforms, which have taken place or are in progress in most EU Member States and EEA Countries, are among the factors which increase the at-poverty risks of women of pensionable age; this is due to their low pension amount or

¹ In the Pay-as-you-go schemes, the payment of contributions by the pensioners are relevant for qualifying conditions and pensions amount purposes, but pensions are then actually paid out of the contributions of active workers. The funded schemes provide for pensions paid by the contributions accrued over the years by the pensioners themselves, according to the criteria of capitalization.

Schemes with defined contributions (DC) are those in which the total amount of the pension is not predetermined, but depends upon factors such as the number of contributions accrued or the results of the management of the resources set aside by means of periodical contributions; contributions to these schemes are, on the other hand, predetermined. The notional defined contribution schemes (NDC) give to participants a hypothetical account containing all contributions made over their working lives, credited at a certain rate of return; at the time of retirement, pensions benefits are calculated taking into consideration the contributions accrued in the notional account and the life expectancy factor.

Schemes with defined benefits (DB) are those where the intended total pension payment is established *a priori*: for this pre-arranged total the contribution is periodically adjusted according to factors such as the variations in the general economic situation, the variations in the profits of the investments of capital made by the fund and so forth.

² See: C-46/07 *Commission v Italy*; C-559/07 *Commission v Greece*; C-351/00 *Pirkko Niemi v Finnish Government*; C-366/99 *Griesmar v Ministre de l'Économie, des Finances et de l'Industrie and Others*; C-7/93 *Bestuur van het Algemeen Burgerlijk Pensioenfonds v Beune*; C-262/88 *Barber v Guardian Royal Exchange Assurance Group*; C-110/91 *Moroni v Collo GmbH*; C-408/92 *Constance Christina Ellen Smith and Others v Avdel Systems Limited*; C-50/99 *Jean-Marie Podesta v Caisse de Retraite par répartition des Ingénieurs Cadres & Assimilés (CRICA) and Others*; C-200/91 *Coloroll Pension Trustees Limited v James Richard Russell and Others*.

to their failure to qualify under the statutory schemes. Women pensioners run higher poverty risks than men as a consequence of the inequalities existing between men and women in the labour market: women get lower pay; their employment rate is lower than men; they are more often than men employed in non standard working patterns, such as part time work, for example; they have often fragmented careers due to the performance of caring functions.³ These differences in work patterns are then mirrored, often in the form of indirect gender discriminations, by the pension schemes. All the more so when: the pension system is based on the lifetime employment record of the claimants; the schemes are based on actuarial principles (which means the use of gender related actuarial factors); there is a strong link between benefits and contributions (such as there is in the defined contributions schemes, for example); benefits are earning related. In this context, the crucial features of the statutory old age pension system to be analysed by our report are those concerning: qualifying conditions, pension amount, derived rights, caring periods, exceptions to Directive 79/7/EC.

As regards the occupational old age pensions schemes, which are also deeply involved in the processes of reforming old age pensions, they are increasingly run according to insurance principles and thus under the criteria of capitalization, and this might give rise to many gaps in terms of social protection. Among them, should be considered the following: if the higher life expectancy of women is taken into consideration, the women pension can be lower or their contribution rate higher than those provided for men (moreover, a higher contribution rate can discourage employers to take on women); the contribution record (that is the number of contributions accrued over a working life) is impaired by earnings inferior to the average standards and irregular career, as the insurance principles are here rigorously applied. In substance, as regards occupational schemes, the application of actuarial principles can result in social inequalities and this can give rise to indirect discrimination based on gender, which are once more stemming from the different women working patterns. In this prospect, the features to be analysed as regards occupational funds in this report are: coverage, calculation of benefits and contributions, use of actuarial factors, caring credits, vesting and reimbursement rules

The purpose of the report, which follows the 2007 Report of the Gender Network *Social security and gender: report on Directive 79/7/EEC and Directive 86/378/EEC as amended by Directive 96/97/EC*, is that of highlighting the most relevant features of direct and indirect gender discrimination in the statutory and occupational old age pensions systems. This with the aim of offering a contribute to the reflection – foreseen in the *Roadmap for Equality Between Men and Women 2006-2010* – on the reinforcement of the effectiveness of gender equality legislation in the field of old age pensions.

The gender equality legislation in the field of old age pensions is based on the traditional occidental three pillars scheme: that is, Directive 79/7/EEC on statutory social security schemes; Directives 86/378/EEC, as amended by Directive 96/97/EC, now Articles 5-13 of the Recast Directive 2006/54/EC as regards occupational funds; Directive 2004/113/EC in relation to private insurances.

³ The employment rate is calculated by dividing the number of persons aged 15 to 64 in employment by the total population of the same age group. See on this issues EU data of Eurostat, in <<http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home/>>, accessed 6 March 2010.

This model may run in some difficulties in the light of the choice made by many Central and Eastern Countries members of the different World Bank Model (WBM).⁴ The WBM is made of the following pillars: a first mandatory public pillar; a second privately managed mandatory savings pillar; a third voluntary savings pillar; a more recent fourth pillar made of additional private pensions savings and occupational pensions, which has been used in order to better represent the latest pensions reforms. The main difference between the two models rests in the second pillar, which is occupational, on the one model, and privately managed, mandatory and financed by a share of social security contributions, on the other.

Moreover, this model has been shaken in some of the EU Member States by the ECJ case law on civil servants old age pensions schemes, which regards as occupational pension schemes traditionally classified as basic statutory schemes by the national legislator.⁵ The definitions of occupational pension schemes as pay is crucial in the light of the fact that no exceptions (except positive action) is admitted by the EU gender equality legislation on pay; on the other hand, the EU legislation on both occupational and statutory funds allows for several exceptions to gender equality.

Certainly, the great difficulty of reforming in the social security field is due to the extreme difference of the various Countries pensions systems; the anti-discriminatory legislation, however, is a crucial instrument to reach common standards in social protection. In this perspective, as old age pensions are part of the set of instruments geared to lower the risk of poverty for older women, the report fits within the *European Year of Combating Exclusion and Poverty*.

Responsible for the report are:

Simonetta Renga (main author), Dora Molnar-Hidassy, Genoveva Tisheva.

The national reports should not exceed *10 pages (5.000 words)*.

The deadline for the national experts is *31 May 2010*.

QUESTIONS FOR THE LEGAL EXPERTS OF THE NETWORK

A) General questions

1. The old-age pensions system

- Please, describe very briefly your old age pensions system (provide in annex the main legislative sources). Please pay, for example, attention to the following aspects:
 - is the statutory scheme organized on a Pay-As-You-Go basis (PAYG) or funded (see footnote 1))?
 - is the statutory pension scheme based on the Defined Benefits (DB) system? Is the statutory pension scheme based on Defined Contributions (DC) or Notional defined Contribution (NDC) systems (see footnote 1))?

⁴ In Central and Eastern Europe, several countries were influenced by the World Bank Model: between 1998 and 2002, a full or partial shift to the WBM was carried out in **Hungary, Croatia, Bulgaria, Estonia, Slovakia, Poland, Latvia, Czech Republic and Slovenia**, even though according to different features.

⁵ C-46/07 *Commission v Italy*; C-559/07 *Commission v Greece*; C-351/00 *Pirkko Niemi v Finnish Government*; C-366/99 *Griesmar v Ministre de l'Économie, des Finances et de l'Industrie and Others*; C-7/93 *Bestuur van het Algemeen Burgerlijk Pensioenfonds v Beune*.

- are occupational pensions DB schemes or DC schemes (see footnote 1)?
- Is the traditional three pillars model used in your Country?
- Have you old age survivors pensions in statutory or occupational schemes? Are survivors pensions gender neutral?
- Is there in your system a safety net, that is to say a social assistance old age pension, for those who are not included or do not qualify for statutory pensions? Please, describe it briefly paying attention to possible gender discrimination features of it.

2. Old-age pension reforms

- Please, describe the impact on gender equality of the reforms of the old age pensions system which have taken place during the last decade.
- Did these reforms have different effects for the building up of old age pensions of women and men? Please pay, for example, attention to the following aspects:
 - Have these reforms taken into consideration the fact that men and women have different working patterns, with women having lower participation rates in the formal labour market, lower pay and fragmented careers due to care activities?
 - Have these reforms been detrimental for all those (mainly women) who have non standard working patterns, such as part time, fixed term contracts, occasional jobs, low paid jobs?
 - Have these reforms taken into account the issue of gender equality? Please explain.
 - Have these reforms hindered gender equality? Please explain.

3. Retroactivity of legislation

- Have your pensions systems recently amended for gender inequalities?
- If yes, are these reforms to be applied immediately to new pensions? Are pensions recalculated for people whose pensions have been calculated prior to the changes?
- Are pensions retroactively recalculated? For how long? In better or in worse?
- Has the domestic legislator taken measures to compensate retroactively the disadvantages suffered by the discriminated applicants in the past? Has the domestic legislator made any adjustments of contributions eventually involved in the equalization excessively difficult in practice for the person discriminated against (see C-231,232,233/06 *National Pensions Office v Emilienne Jonkman and Others*)?
- Has the legislator taken retroactive measures which amounted to levelling down in order to amend for gender inequalities? Are there progressive measures when advantages are minored?

4. Questions only for Member States whose system is based on the World Bank Model

- Do you reckon that the three pillars model is still able to describe the structure of old age pensions schemes and thus useful for gender equality purposes in EU legislative framework?
- Is there in your pensions system a mandatory funded pensions schemes set up under the World Bank Model? Please, describe it briefly paying attention to possible gender discrimination features of it.
- The mandatory funded pensions schemes established in Eastern Europe, which are managed by private pension funds and financed by a share of public social security contributions, do fit in the three pillar model? Can they be regarded as

part of the first pillar and thus be regulated by Directive 79/7 or of the third and consequently fall within the scope of Directive 2004/113?

B) Statutory old-age pension schemes
(Schemes falling under Directive 79/7/EEC)

1. Qualifying conditions

Please describe the qualifying condition for access to old age pension. Please pay attention, for example, to the following aspects:

- Are non standard work contract, such as part time or short term contracts or seasonal contract, or occasional contracts, or low income contracts, covered or not by the pension scheme? Do exclusions of non standard workers from coverage affect considerably more women than men? Can these exclusions be regarded as necessary to achieve a social policy aim as stated by the CJ in C-317/93 (*Inge Nolte v Landesversicherungsanstalt Hannover*) and fulfil the requirements of objective justification?
- Is the pension right subject to minimum contribution, insurance or employment conditions? Is there a trend to extend the insurance or contribution period required for eligibility? Is there a minimum hours threshold?
- Do these qualifying conditions hamper the pension right of non standard workers, such as part time, temporary, occasional workers? Are vertical part timers (that is, those whose work is executed full-time, but only in certain fixed periods during the week/month/year) particularly at disadvantage in fulfilling the contributions for pension right purposes (see on the issue the Opinion of Advocate general in joined cases C-395/08 and C-396/08 *Istituto Nazionale della Previdenza Sociale (INPS) v Tiziana Bruno and Others*)? Are workers with earnings and careers inferior to the average standard enabled to qualify for pensions?
- Are periods of unemployment taken into account for pension right and amount purposes?

2. The amount of the old-age pension

Please, describe how old age pensions are calculated in your system. Please pay attention, for example, to the following issues:

- Is the pension amount based on the last salary, on life-long earnings or on the best selected spells of employment?
- Is the pension amount calculated on the basis of the contributions paid over the full life career or over shorter career periods or are the best selected spells of contributions to be taken into account?
- Are gender specific life expectancy tables taken in consideration in calculating the pension amount?
- How long is the contributory periods needed for a full old age pension entitlement? Has the old age statutory pension scheme flat rate benefits? Is there in your system a minimum amount old age pension for those who meet qualifying conditions?
- How are non standard workers and especially part timers treated as regards pension amount calculation?
- Which kind of pensions indexation is used in your country?
- Is there a ceiling on benefits? If yes, is it coupled with a ceiling on contributions or not?

3. Periods of caring

Please, describe if and how periods of caring are taken into account or credited for the building up of pension rights. Please pay attention, for example, to the following aspects:

- Are periods of maternity leave or parental leave taken into consideration or credited for pension right and amount purposes?
- Are periods of interruption of employment due to the bringing up of children credited or taken into account for pension right and amount purposes? Is any other period of care within the household (care of disabled, home-care) credited or taken into account for pensions right and amount purposes? How long is the caring period taken into consideration and which is the earning base for calculating credits? Do caring periods count less than the full crediting of work periods for pension purposes? Are credits recognised regardless of the employment position of the claimant? Are these provisions gender neutral? Do you reckon that your caring credit system is still based on the traditional one-care givers model? Are there automatic mechanisms of allocating caring credits to women/mothers or to the main care givers?
- Are caring periods disregarded (rather than awarded) for pension purposes?
- Would you think feasible to include a minimum provision on care credits in the gender equality EU legislation in the field of social security?

4. Exceptions to Article 7.1 Directive 79/7

Pensionable age and the possible consequences for other benefits (Article 7.1 a))

- Is there a mandatory retirement age imposed by legislation? If yes, can it be deferred? Can a claimant get an old age pension and still work?
- Is pensionable age equal for men and women? Please pay attention, for example, to the following issues:
 - If there still is a different pensionable age for men and women, which are the consequences for other benefits (see: C-154/96 *Louis Wolfs v Office National des Pensions (ONP)*; C-196/98 *Regina Virginia Hepple and Others v Adjudication Officer*; C-207/04 *Paolo Vergani v Agenzia delle Entrate Ufficio di Arona*), such as early retirement schemes (see C-139/95 *Livia Balestra v Istituto Nazionale della Previdenza Sociale (INPS)* and C-303/02 *Peter Haackert v Pensionsversicherungsanstalt der Angestellten*)?
 - Can you please refer the arguments for and against the equalization of pensionable age in your Country?
 - Is there in your system a process of equalizing pensionable age? Are there in this process long transitional arrangements? Has the legislator taken measures to compensate retroactively the disadvantaged sex (generally men) for any loss suffered in the past?
 - Are there crediting mechanisms in relation to pensionable age for persons who have brought up children or have performed other care work within the family? Are these credits as regards pensionable age gender neutral?
 - Earlier pensionable ages for women are prone to lower their pensions amount in your system (see C-377-384/96 *August De Vriendt and Others v Rijksdienst voor Pensioenen*)? Consider that this effect can be particularly important in NDC or DC pension schemes, especially if average life expectancy is taken into account in calculation of benefits.

- Have you data on the average age when men and women leave the labour market in your country? Have you data on the years of service periods accrued when they retire?
- Do you think that the exception concerning pensionable age can be eliminated by the gender equality EU legislation on statutory social security? Would a transitory period be necessary to eliminate this exception and its consequences for other benefits? Do you feel that the different pensionable age in favour of women does not discriminate against men because it compensates for unequal labour market conditions and working patterns or for the caring work carried out by women within the family?

Advantages granted to persons who have brought up children (Article 7.1 b))

- Do caring advantages exist in your old age pensions system? Are caring advantages gender neutral? Please pay attention, for example, to the following aspects:
- Are there presumptions in favour of women or of the main care-giver in the recognition of these advantages? Are men entitled to these advantages as second-choice claimants, that is only if women do not take them up?
- Do you reckon that this exception is updated because perpetuate the traditional division of family roles in child upbringing and caring? Do you think that this exception can be eliminated by the gender equality EU legislation on statutory social security? Would a transitory period be necessary to eliminate this exception?

Old-age or invalidity benefit entitlements or increases in long-term benefits by virtue of the derived entitlements of a wife (Article 7.1 c) and d))

- Are there in your system these benefits and supplements? Have you data on the number of men and women benefiting of these benefits or supplements?
- Are these benefits and supplements equally granted to men and women? Please pay, for example, attention to the following aspects:
 - Is the supplement means tested on the dependent spouse's income?
 - Can the supplement be paid directly to the non-working spouse? Is there in your system the splitting of pensions rights between spouses, for example in the event of separation or divorce?
- Do you reckon that these exceptions are updated and thus can be eliminated by the gender equality EU legislation on statutory social security? Would a transitory period be necessary to eliminate this exception (see C-420/92 *Elizabeth Bramhill v Chief Adjudication Officer*)?

C) Occupational old-age pension schemes

(Schemes falling under Article 157 TFEU, Directive 86/378/EEC, as amended by Directive 96/97/EC, now Articles 5-13 of the Recast Directive 2006/54/EC)

1. Coverage

- Is participation to the schemes mandatory or voluntary? Are there sectors of the economy where occupational pensions schemes are not operative?
- Are there membership limitation in occupational old age pensions funds, such as minimum periods of employment, minimum of hours worked per week, minimum earnings per year? Are there restrictions to access for seasonal, part time (see C-50/96 *Deutsche Telekom AG v Lilli Schröder* and C-246/96 *Mary Teresa*

Magorrian and Others v Eastern Health and Social Services Board Department of Health and Social Services), short-term contracts workers or low wage earners(see C-256/01 *Debra Allonby v Accrington & Rossendale College and Others*)? Are there certain categories of staff excluded from coverage?

- Have you data on men and women participation rate to occupational pensions schemes?

2. Calculation of old-age pensions and contributions

- Are pensions amounts earning related or contribution related? In the first hypothesis, is the final salary taken into consideration or are limited periods or career averages taken into account for the purpose of pension amount? Can the calculation of pension amount or of contributions be linked to particular wage elements?
- Is the pension right subject to minimum contribution, insurance or employment conditions? Do these qualifying conditions hamper the pension right of non standard workers, such as part time, temporary, occasional workers? Are part timers particularly at disadvantage in fulfilling the contributions for pension right purposes? Are workers with earnings and careers inferior to the average standard enabled to qualify for pensions? Please, pay eventually attention to the following issues:
 - Are periods of unemployment taken into account for pension right and amount purposes?
 - Does the duration of the participation to the fund and the amount of the contributions paid in influence the kind of investments granted by the fund to the claimant and in turn the average yield rate granted?

3. Actuarial factors

Do occupational funds use gender related actuarial factors? To which extent are gender specific actuarial factors used (to determine benefits or contributions, for conversion of lump sum in annuity, to transfer credits, etc.)? Are these used within the limits of Article 9.1, h) and j) of Directive 2006/54/EC (see C-200/91 *Coloroll Pension Trustees Limited v James Richard Russell and Others* and C-152/91 *David Neath v Hugh Steeper Ltd* on employers contributions)? Are actuarial factors used in setting the workers contributions in self-employed schemes (see on that Article 11, c) Directive 2006/54/EC)? Is just the different life expectancy of women taken into account by actuarial factors or other factors which determine differences in life expectancy are also considered?

4. Caring credits

Are caring advantages provided by occupational schemes? Are these provisions gender neutral? Please pay eventually attention to the following aspects:

- Are periods of maternity leave or parental leave taken into consideration or credited for pension right and amount purposes? Are periods of interruption of employment due to the bringing up of children credited or taken into account for pension right and amount purposes? Is any other period of care within the household (care of disabled, home-care) credited or taken into account for pensions right and amount purposes? Are the caring periods for which the employer pays a remuneration taken into account (see Article 9.1, g) Directive 2006/54/EC)?

- Have discriminated workers applied for formerly denied caring advantages as a consequence of the Court of Justice case law on the issue (see C-366/99 *Griesmar v Ministre de l'Économie, des Finances et de l'Industrie and Others* and C-206/00 *Mouflin v Recteur de l'académie de Reims*)?

5. Vesting and reimbursement rules

Can you describe the vesting and reimbursement of contributions rules when the worker leaves the scheme without having qualified for pension? Is the right to the paid in contributions (by the worker and by the employer) conditioned to a minimum insurance/membership period within the fund? Is the right to the transferral of contributions (paid in by the worker or the employer) from a fund to another conditioned upon a minimum period of insurance/membership in the fund?

6. Pensionable age

- Are there different pensionable ages for men and women in occupational schemes? Are there different pensionable ages for men and women in occupational schemes for self-employed workers (Article 11, a) Directive 2006/54/EC)? If yes, are there consequences stemming from different pensionable ages for other benefits?
- Has the national legislator equalized or is planning to equalize pensionable age as a consequence of the case law of the European Court of Justice (C-262/88 *Barber v Guardian Royal Exchange Assurance Group*; C-110/91 *Moroni v Collo GmbH*; C-408/92 *Constance Christina Ellen Smith and Others v Avdel Systems Limited*; C-50/99 *Jean-Marie Podesta v Caisse de Retraite par répartition des Ingénieurs Cadres & Assimilés (CRICA) and Others*; C-200/91 *Coloroll Pension Trustees Limited v James Richard Russell and Others*)? Have discriminated men applied for a lower pensionable age as a consequence of the Court of Justice case law?
- Has the national legislator equalized or is planning to equalize pensionable age for employees as a consequence of the enactment of Article 11 of Directive 2006/54/EC (which makes possible the deferral of the application of equality in pensionable age only for the self employed pensions funds)? Does the equalization provide for a transitional period? Is there in your legislation a clause which protects reasonable expectations in the continuation of existing pensions rules? Has the Member State taken measures to compensate retroactively the disadvantaged sex for the losses suffered in the past?

7. Civil servants

Please answer this question only if the old-age pension system is different for civil servants

Please describe the main differences of the civil servants old age pensions. Please pay, for example, attention to the following issues:

- Are there in your countries occupational funds for civil servants which can be qualified as occupational on the light of the case law of the CJ, and in particular of C-46/07 *Commission v Italy* and C-559/07 *Commission v Greece* (see also: C-51/00 *Pirkko Niemi v Finnish Government*; C-366/99 *Griesmar v Ministre de l'Économie, des Finances et de l'Industrie and Others*; C-7/93 *Bestuur van het Algemeen Burgerlijk Pensioenfonds v Beune*; see Article 7.2 Directive 2006/54/EC)? Are these basic or supplementary schemes? Are the schemes set up and regulated by statute or by collective agreements or employers' regulations (see C-457/98 *Commission v Greece*)? Is the civil servant scheme different from a

sort of general scheme which applies to other categories of workers and to persons who have not worked at all? Does it concerns only a particular category of workers?

- Do both employees and employers pay into the scheme? Is it the benefit paid by reason of the former employment relationship? Are the schemes financed by general taxation resources and eventually to what extent? Are they PAYG schemes or funded (see footnote 1)?
- Is the pension amount related to the amount of previous salary? Is it related to the duration of employment?
- Has the scheme discriminatory features on grounds of gender, such as: different pensionable ages; or benefits/supplements/service credits reserved only to women or only to men; or different rules for calculating the pension for men and women (see, for example, C-366/99 *Griesmar v Ministre de l'Économie, des Finances et de l'Industrie and Others*, C-7/93 *Bestuur van het Algemeen Burgerlijk Pensioenfonds v Beune* and C-206/00 *Mouflin v Recteur de l'académie de Reims*)? Have the discriminatory features been equalized or is there a reform planned in order to reach gender equality as a consequence of the Court of Justice case law quoted above? Does the equalization provide for a transitional period? Is there in your legislation a clause which protects reasonable expectations in the continuation of existing pensions rules? Has the Member State taken measures to compensate retroactively the disadvantaged sex for the losses suffered in the past? Have discriminated men applied for a lower pensionable age or any other formerly denied advantage as a consequence of the Court of Justice case law on the issue? If women had (or still have) the option of early retirement, did they in that case receive a lower pension compared to a woman that would work until reaching the normal pensionable age?

D) Recommendation at the EU level

Please describe possible changes to be made in order to update and recast the EU legislation on gender equality in the field of social security.

Annex II

Legal sources

AUSTRIA

- General Social Security Act
- Act on Social Security for Persons Engaged in Trade and Commerce
- Act on Social Security for Farmers
- Act on Social Security for Self-employed Persons
- Act on Social Security for Notaries Public
- Act on the Social Insurance Fund for Artists

BELGIUM

All available at www.juridat.be, last accessed on 15 June 2010.

- Paid workers: Special Powers Royal Decree no.50 of 24 October 1967.
- Occupational pension schemes: Act of 28 April 2003.
- Civil servants' pensions: Act of 21 July 1844.

BULGARIA

- Code of Social Insurance Prom. SG. 110/17 Dec 1999 (Title amended, SG 67/29 July 2003)
- Law on the Public Social Insurance (PSI) Budget (annually adopted for the respective year)
- Ordinance on the Employment and Social Security Relations of Bulgarian Nationals Posted Abroad by Bulgarian Employers
- Ordinance for Pensions and Insured Periods 2000 (Title changed – State Gazette 19/2003)
- Ordinance for Categorization of Labour at the Time of Retirement – promulgated in SG issue 123/23.10.1998.
- Instruction № 13 of 31.10.2000 On the implementation of the Ordinance for the Categorization of Labour at the Time of Retirement
- Financial Supervision Commission Act – promulgated in the State Gazette issue 8 of 28 Jan., 2003 in effect as of 1 March
- Markets in Financial Instruments Act; promulgated in the SG, issue 52 from 29 June, 2007
- Law on Measures against Market Abuse with Financial Instruments, additional mandatory pension insurance fund; Passed by virtue of Decision No. 65-N of 19 September 2006 of the Financial Supervision Commission, promulgated in the SG, issue 83 of 13 October 2006
- Ordinance on trustee councils of the additional mandatory pension insurance funds and the advisory councils to the additional voluntary pension insurance funds; passed by virtue of Decree No. 29 of the Council of Ministers dated 18 February 2005, promulgated in the SG, issue 19 of 1 March 2005, in force as of 1 March 2005
- Ordinance No. 36 of 15 November 2006 on the technical reserves to a fund for additional voluntary pension insurance by professional schemes, passed by virtue of Decision No. 69-N of 15 November 2006 of the Financial Supervision Commission, promulgated in the SG, issue 96 of 28 November 2006
- Ordinance No. 19 of 8 December 2004 on the order for the setting aside of pension reserves by pension insurance companies which manage universal

pension funds and/or additional voluntary pension insurance funds, passed by virtue of Decision No. 30-N of 8 December 2004 of the Financial Supervision Commission, promulgated in the SG, issue 110 of 17 December 2004, in effect as of 30 December 2004

CROATIA

- Zakon o mirovinskom osiguranju, Narodne Novine 102/98, 127/00, 59/01, 109/01, 147/02, 117/03, 30/04, 177/04, 92/05, 43/07. [Pension Insurance Act, Official Gazette No. 102/98, 127/00, 59/01, 109/01, 147/02, 117/03, 30/04, 177/04, 92/05, 43/07].
- Zakon o mirovinskim osiguravajućim društvima i isplati mirovina na temelju individualne kapitalizirane štednje, Narodne Novine 106/99, 63/00, 107/07. [Act on pension insurance associations and the payment of pensions based on individual capitalized savings, Official Gazette No. 106/99, 63/00, 107/07].
- Zakona o obveznim i dobrovoljnim mirovinskim fondovima, Narodne Novine 49/99, 63/00, 103/03, 177/04, 71/07 [Act on Mandatory and Voluntary Pension Funds, Official Gazette No. 49/99, 63/00, 103/03, 177/04, 71/07].
- Zakon o posredovanju pri zapošljavanju i pravima za vrijeme nezaposlenosti, Narodne Novine br. 80/08 [Act on mediation in employment and on rights during unemployment, Official Gazette No. 80/08].
- Zakona o roditeljskim i roditeljskim potporama, Narodne Novine 85/08, 110/08. [Act on maternity and parental support, Official Gazette 85/08, 110/08].

CYPRUS

- The Social Insurance Law No. 41/1980 as amended up to Law Nos. 22(I)/2009, 93(I)/2009 and last amendment Law No. 112(I)/2009 Official Gazette 4218 of 06 November 2009 and Regulations as amended.
- The Social Pension Law No. 25(I)/1995 as amended up to Law No. 155(I)/2005. The Council of Ministers' Decision No. 59.160 dated 10.12.2003 for the Special Allowance.
The Council of Ministers' Decision No. 69.209 dated 5 August 2009 for the Benefit to households of pensioners with low income Scheme.
- The Public Service Pensions Law No. 97(I)/1997 as amended up to Laws Nos. 37(I)/2010, 94(I)/2010.
- The Foundation, Registration, Operation and Monitoring of Funds of Professional Retirement Benefits Law No. 146(I)/2006 as amended by Law No. 81(I)/2007 and Regulations as amended.
- The Foundation, Operation and Registration of Provident Funds and Relevant Issues Law No. 44/81 as amended up to Laws Nos. 130(I)/2002, 75(I)/2005.

CZECH REPUBLIC

- Act no. 155/1995 Coll., on Pension Insurance
- Act no. 306/2008 Coll., amending Pension Insurance Act no. 155/1995 Coll
- Act no. 582/1991 Coll., on the organisation and implementation of social security
- Act no. 42/1994 Coll., on state-contributory supplementary pension insurance and amending certain acts related to its introduction
- Act no. 198/2009 Coll., on equal treatment and on the legal means of protection against discrimination and on amendments to some laws
- Act No. 218/2000 Coll., on the state civil service

DENMARK

- Consolidated Act no. 484 of 29 May 2007 on social pensions with later amendments.
- Consolidated Act no. 942 of 2 October 2009 on supplementary pension schemes for employed persons (Arbejdsmarkedets Tillægspension – ATP).
- Consolidated Act no. 775 of 29 August 2001 with later amendments on equal treatment of men and women in insurance, pension and similar financial services.
- Consolidated Act no. 230 of 19 March 2004 on pensions for civil servants with later amendments

ESTONIA

No list included

FINLAND

- Employees' Pensions Act (395/2006).
- The Seamen's Pensions Act (1290/2006).
- The Self-Employed Persons' Pensions Act (1272/2006).
- The Farmers' Pensions Act (1280/2006).
- The Municipalities Pensions Act (549/2003).
- The State Employees' Pensions Act (1295/2006).
- The Evangelical Lutheran Church Pensions Act (261/2008).
- The Evangelical Lutheran Church Survivors' Pensions Act (258/1970).
- The Act on Pensions of the Orthodox Church (985/2006).
- Pension provisions based on Section 13 of the Act on the Social Insurance Institution of Finland (731/2001).
- The provision on pensions laid down in Section 11(2)(6) of the Act on the Bank of Finland (214/1998).
- The Provincial Administration Act (ÅFS 54/2007) in the province of Åland for the purpose of applying certain current state rules to state pensions.

FRANCE

- Article L. 351-1 to Article L. 353-6 Code de la Sécurité Sociale
- Article L.815-1 to L.815-6 Code de la Sécurité Sociale
- Article R. 351-1 to R.355-6 Code de la Sécurité Sociale
- Code des pensions civiles et militaires de retraite

GERMANY

All available (in German) at: www.gesetze-im-internet.de

- Law on the Pensions of Civil Servants and Judges in the Service of the Federation (*Gesetz über die Versorgung der Beamten und Richter des Bundes* (*Beamtenversorgungsgesetz – BeamtVG*) of 24 August 1976, newly published 24 February 2010 (Official Journal Part I (*Bundesgesetzblatt Teil I*) of 2010, p. 150); <http://www.gesetze-im-internet.de/bundesrecht/beamtv/gesamt.pdf>, accessed 25 July 2010.
- Law to Improve Occupational Pensions (*Gesetz zur Verbesserung der betrieblichen Altersversorgung* (*Betriebsrentengesetz – BetrAVG*)) of 19 December 1974 (Official Journal Part I (*Bundesgesetzblatt Teil I*) of 1974, p. 3610), last amended by the Law of 21 December 2008, (Official Journal Part I of 2008, p. 2940);

- <http://www.gesetze-im-internet.de/bundesrecht/betravg/gesamt.pdf>, accessed 25 July 2010.
- Social Code No. VI (*Sozialgesetzbuch (SGB) Sechstes Buch (VI) – Gesetzliche Rentenversicherung*) of 19 December 1989, newly published on 19 February 2002 (Official Journal Part I (*Bundesgesetzblatt Teil I*) of 2002, pp. 754, 1404, 3384), last amended by the Law of 15 July 2009 (Official Journal Part I of 2002, p. 1939);
http://www.gesetze-im-internet.de/bundesrecht/sgb_6/gesamt.pdf, accessed 25 July 2010.
 - Social Code No. XII (*Sozialgesetzbuch (SGB) Zwölftes Buch (XII) – Sozialhilfe*) of 27 December 2003 (Official Journal Part I (*Bundesgesetzblatt Teil I*) of 2003, p. 3022), last amended by the Law of 30 July 2009 (Official Journal Part I of 2009, p. 2495);
http://www.gesetze-im-internet.de/bundesrecht/sgb_12/gesamt.pdf, accessed 25 July 2010.

GREECE

- Article 4(2) of the Constitution: ‘Greek men and women have equal rights and obligations’, Greek Parliament’s website:
<http://www.hellenicparliament.gr/Vouli-ton-Ellinon/To-Politevma/Syntagma>, last accessed on 30 October 2010.
- Act 1846/1951 on the ‘Social Security Institute’ (IKA):
<http://www.ika.gr/en/home.cfm>, last accessed on 30 October 2010.
- Act 1876/1990 ‘on collective agreements’, OJ A 27/8.3.1990: OJ website
<http://www.et.gr>, last accessed on 30 October 2010.
- Act 3029/2002: ‘reform of the social security system’ OJ A 160/11.7.2002: OJ website <http://www.et.gr>, last accessed on 30 October 2010.
- Presidential Decree 169/2007: ‘Codification, under the title “Civil and Military Pensions Code” of the provisions in force regarding civil and military pensions’ OJ A 80/2007: OJ website <http://www.et.gr>, last accessed on 30 October 2010.
- Acts 4169/1961 and 2458/1997 on the Organisation of Agricultural Social Security (OGA): http://www.oga.gr/EN/index_en.php# accessed 30 October 2010.
- Act 3655/2008: ‘administrative and organisational reform of the social security system’ OJ A 58/3.4.2008, OJ website <http://www.et.gr>, last accessed on 30 October 2010.
- Act 3845/2010 ‘measures for implementing the mechanism of support of the Greek economy by the Euro area Member States and the IMF’, OJ A 65/6.5.2010: OJ website: <http://www.et.gr>, last accessed on 30 October 2010.
- Act 3847/2010 ‘Redetermination of Christmas, Easter and annual leave allowances for pensioners of the State’, OJ 67/11.5.2010: OJ website: <http://www.et.gr>, last accessed on 30 October 2010.
- Act 3863/2010, ‘New social security system and related provisions, regulation of employment relationships’, OJ A 115/15.7.2010: OJ website: <http://www.et.gr>, last accessed on 30 October 2010.
- Act 3865/2010 Act 3865/2010 ‘Reform of the pension system of the State and related provisions’, OJ 120/21.7.2010: OJ website: <http://www.et.gr>, last accessed on 30 October 2010.

HUNGARY

- Act LXXX of 1997 on the beneficiaries of social insurance benefits and private pensions and coverage of these services. (Social Security Act)
- Act LXXXI of 1997 on social insurance benefits relating to pensions (Pensions Act)
- Act LXXXII of 1997 on private pensions and private pension plans (Private Pensions Act)
- Act XCVI of 1993 on voluntary mutual insurance funds,
- Act CXVII of 2007 on occupational pensions and their institutions (Occupational Pensions Act)

ICELAND

- Act No. 78/2007 on Occupational Retirement Funds
- Act No. 129/1997 on Mandatory Pension Insurance and the Activities of Pension Funds amended by Law No. 13/2009
- Income Tax Act No. 90/2003
- Act on Social Security No. 100/2007
- Pension Act for the Elderly No. 113/1994
- Act on the Affairs of the Elderly No. 125/1999
- The Farmers' Pension Fund Act No. 12/1990
- The Seamen's Pension Fund Act No. 45/1999
- Nurses' Pension Fund Act No. 2/1997
- Law on the Pension of the President of Iceland, Cabinet Ministers, Members of Parliament and Supreme Court Justices No. 141/2003

IRELAND

- Superannuation Acts 1834 to 1963
- Pensions Act 1990 to 2004
- Employment Equality Acts 1998 - 2008
- Protection of Employees (Part-Time Work) Act 2001
- Protection of Employees (Fixed-Term Work) Act 2004
- Public Service (Miscellaneous Provisions) Act 2004
- Social Welfare Consolidation Act 2005 (as amended)
- Financial Emergency Measures in the Public Interest Act 2009
- Social Welfare (Consolidated Contribution and Insurability) Regulations 1996 (as amended)

ITALY

- Decree 30/12/1992, No. 503, Provisions on the reorganisation of the social security system for public and private employees under Article 3 of Act No. 421/1992, in OJ No. 305/1992 Ordinary Supplement
- Act 08/08/1995, No. 335, Reform of statutory and occupational pensions, in OJ No. 190/1995 Ordinary Supplement
- Decree 16/09/1996, No. 564, Implementation of Article 1, par. 39 of Act No. 335/1995 on notional contributions and the recovery of wasted contributions, in OJ No. 256/1996 Ordinary Supplement
- Act 08/03/2000, No. 53, on Sustaining Motherhood and Fatherhood, Time for Care and for Vocational Training, and Coordination of Hours in Municipal Public Services, in OJ No. 60/2000

- Decree 26/03/2001, No. 151 on Sustaining Motherhood and Fatherhood, in OJ No. 96/2001 Ordinary Supplement
- Act 23/08/2004, No. 243, Provisions on statutory pensions and delegating acts to the Government in the field of social security, for the promotion of occupational funds and occupation and for the reorganization of social security and social assistance funds, in OJ No. 222/2004
- Decree 05/12/2005, No. 252, Discipline of occupational funds, in OJ No. 289/2005 Ordinary Supplement
- Decree 02/02/2006, No. 42, Provisions on totalising contributions, in OJ No. 39/2006
- Decree 11/04/2006, No. 198, Code of equal opportunities between men and women under Article 6 of Decree No. 246/2005, in OJ No. 125/2006 Ordinary Supplement
- Act 24/12/2007, No. 247, Provisions for the implementation of Protocol 23.7.2007 between the Government and trade unions on work and competitiveness to favour equity and sustainable growth as well as provisions on social security, in OJ No. 253/2007
- Act 6/8/2008, No. 133, Conversion in the Act of Decree No. 112/2008 on urgent provisions for economic development, simplification, competitiveness, stabilization of public spending and tributary equalization, in OJ No. 195/2008 Ordinary Supplement
- Art. 22 *ter*, Act 3/8/2009, No. 102, Provisions on access to pensions, in OJ No. 179/2009 Ordinary Supplement
- Decree 25/1/2010, No. 5, Implementation of the Directive 2006/54/EC, in OJ No. 29/2010

LATVIA

First pillar

First tier

- The Law on Statutory Social Insurance (*Par valsts sociālo apdrošināšanu*), Official Gazette No. 274/276, 21 October 1997.
 - Regulations of the Cabinet of Ministers No. 230, ‘Regulations on mandatory statutory social insurance contributions from the state budget and statutory social insurance special budgets’ (*Noteikumi par valsts sociālās apdrošināšanas obligātajām iemaksām no valsts pamatbudžeta un valsts sociālās apdrošināšanas speciālajiem budžetiem*), Official Gazette No. 91, 13 June 2001.
 - Regulations of the Cabinet of Ministers No. 1577, ‘Regulations on the division of statutory social insurance contributions among social insurance risks’ (*Noteikumi par valsts sociālās apdrošināšanas iemaksu likmes sadalījumu pa valsts sociālās apdrošināšanas veidiem 2010.gadā*), Official Gazette No. 204, 29 December 2009.
- The Law on State Pensions (*Par valsts pensijām*), Official Gazette No. 182, 23 November 1995
 - Regulations of the Cabinet of Ministers No. 1046, ‘Regulations on the applicable planned periods of paying out old-age pensions for the purpose of their calculation’ (*Noteikumi par vecuma pensijas aprēķināšanai piemērojamiem plānotajiem vecuma pensijas izmaksas laikposmiem*), Official Gazette No. 198, 19 December 2008.

Second tier

- The Law on State-Funded Pensions (*Valsts fondēto pensiju likums*), Official Gazette No. 78/87, 8 March 2000.
- Regulations of the Cabinet of Ministers No.42, Regulations on typical pension insurance agreements (*Mūža pensijas apdrošināšanas tipveida noteikumi*), OG No.106, 18 March 2003

Second pillar

- The Law on Private Pension Funds (*Par privātajiem pensiju fondiem*), Official Gazette No. 150/151, 20 June 1997.
- The Law on Insurance Agreements (*Par apdrošināšanas līgumu*), Official Gazette No. 188/189, 30 June 1998.

Long-term service pensions

- The Law on Long-Term Service Pensions for the Military (*Militārpersonu izdienas pensiju likums*), Official Gazette No. 86, 1 April 1998.
- The Law on Long-Term Service Pensions for Employees of a Certain Rank at the Ministry of the Interior (*Par izdienas pensijām Iekšlietu ministrijas sistēmas darbiniekiem as speciālajām dienesta pakāpēm*), Official Gazette No. 100/101, 16 April 1998.
- The Law on Long-Term Service Pensions for Prosecutors (*Prokuroru izdienas pensiju likums*), Official Gazette No. 181, 3 June 1999.
- The Law on Long-Term Service Pensions for Judges (*Tiesnešu izdienas pensiju likums*), Official Gazette No. 107, 7 July 2006.
- The Law on Long-Term Service Pension for Artists of State and Municipal Orchestras, Choirs, Concert Organizations, Theatres and the Circus (*Valsts un pašvaldību profesionālo orķestru, koru, koncertorganizāciju, teātru un cirka mākslinieku izdienas pensiju likums*), Official Gazette No. 106, 7 July 2004.

Third pillar

- The Law on Insurance Agreements (*Par apdrošināšanas līgumu*), Official Gazette No. 188/189, 30 June 1998.

LIECHTENSTEIN

Legislation of Liechtenstein is accessible on the Internet www.gesetze.li (Lilex Liechtenstein) accessed on 3 June 2010.

- Gesetz über die Alters- und Hinterlassenenversicherung, AHVG, amended by LGBI. 2009 No. 358.
- Gesetz über die betriebliche Personalvorsorge, BPVG, LGBI. 1988 No. 12, amended by LGBI. 2007 No.13
- Verordnung zum BPVG, BPVV, LGBI. 2005 No. 288
- Pensionsversicherungsgesetz, PVG, last amended by LGBI. 2009 No. 387

LITHUANIA

- Law on State Social Insurance of 21 May 1991, No. I-1336, State Gazette, 1991, No. 17-447.
- Law on State Social Insurance Pensions of 18 July 1994, No. I-549, State Gazette, 1994, No. 59-1153.
- Law on the Reform of the Pension System in the Republic of Lithuania of 3 December 2002, No. IX-1215, State Gazette, 2002, No. 123-5511;

- Law on the Accumulation of Pensions of 4 July 2003, No. IX-1691, State Gazette, 2003, No. 75-3472.
- Law on the Accumulation of Occupational Pensions of 4 July 2006, No. X-745, State Gazette, 2006, No. 82-3248.
- Law on the Voluntary Accumulation of Supplementary Pensions of 3 June 1999, No. VIII-1212, State Gazette, No. 55-1765.
- Law on State Pensions for Public Servants and the Military 13 December 1994, No. I-693. State Gazette, 1994, No. 99-1958.
- Law on State Pensions of 22 December 1994, No. I-730, State Gazette, 1994, No 101-2018.
- Law on State Pensions for Scientists of 22 December 1994, No. I-732. State Gazette, 1995, No. 1-4.
- Law on State Pensions for Judges of 2 July 2002, No. IX-1011. State Gazette, 2002, No. 73-3088.

LUXEMBOURG

- Loi du 28 juin 2002 portant création d'un forfait d'éducation.
- Loi du 8 juin 1999 relative aux régimes complémentaires de pension et portant modification a) de la loi modifiée du 4 décembre 1967 concernant l'impôt sur le revenu, b) de la loi modifiée du 24 mai 1989 sur le contrat de travail, c) de la loi modifiée du 18 mai 1979 portant réforme des délégations du personnel et d) de la loi modifiée du 6 mai 1974 instituant des comités mixtes dans les entreprises du secteur privé et organisant la représentation des salariés dans les sociétés anonymes.
- Loi du 28 juillet 2000 ayant pour objet la coordination des régimes légaux de pension et modifiant.
 - a) le Code des assurances sociales,
 - b) la loi modifiée du 26 mai 1954 réglant les pensions des fonctionnaires de l'Etat,
 - c) la loi du 3 août 1998 instituant des régimes de pension spéciaux pour les fonctionnaires de l'Etat et des communes ainsi que pour les agents de la Société nationale des Chemins de Fer luxembourgeois.

FYR of MACEDONIA

- Law on Pension and Disability Insurance, 'Official Gazette' of the Republic of Macedonia, No. 80/93 (in the period 1993-2009 the 19th changes were made to this law). 2000: Law on Modifications and Amendments to the Pension and Disability Insurance Law which establishes a mixed system of mandatory old-age provisions consisting of a publicly managed social security scheme and a mandatory private pension scheme,
- Law on Voluntary Fully-Funded Pension Insurance, 'Official Gazette' of the Republic of Macedonia, No. 7/08,
- Law on Mandatory Fully-Funded Pension Insurance, 'Official Gazette' of the Republic of Macedonia, No. 29/02
- Law on Social Protection, Official Gazette No. 79/09
- Labour Law (revised), 'Official Gazette' of the Republic of Macedonia, No. 16/2010

Additional to these laws there are more than 50 secondary regulations prepared or drafted for the detailed regulation of specific elements of mandatory and/or voluntary fully-funded pension insurance.

Key regulatory and supervisory authorities

- Ministry of Labour and Social Welfare, responsible for the overall design of the pension policy and disability insurance in Macedonia as well as the supervision and control of the implementation of the necessary policies.
<http://www.mtsp.gov.mk>
- Agency for the Supervision of Fully-Funded Pension Insurance (MAPAS) which regulates and supervises mandatory and voluntary pension companies and their mandatory and/or voluntary pension funds, custodians and the operations of foreign asset managers in the Republic of Macedonia.
<http://www.mapas.gov.mk/en/index.asp?lan=en>
- Pension and Disability Insurance Fund of Macedonia which administers the publicly-managed social security scheme and collects contributions.
<http://www.piom.com.mk/>

MALTA

- Social Security Act of 1987, Chapter 318 of the Laws of Malta. Available at <http://www2.justice.gov.mt/lom/home.asp>, accessed 28 May 2010.
- The Pensions Ordinance 1939, *ibid*.
- The Equal Treatment in Occupational Security Schemes Regulations, Legal Notice 317 of 2005. Available at <http://www.doi.gov.mt/EN/legalnotices/2005>, accessed 29 May 2010.

NORWAY

- Act on National Insurance of 28 February 1997 No. 19 (*Folketrygdloven*).
- Act on the Public Service Pension Fund of 28 June 1949 No. 26 (SPK).
- Act on a Compulsory Supplementary Pension Scheme in Employment of 21 December 2005 No. 124 (OTP)
- Act on a Defined Benefit Pension Scheme of 24 March 2000 No. 16 (*Foretakspensjonsloven*).
- Act on a Defined Contribution Pension Scheme of 24 November 2000 No. 81 (*Innskuddspensjon*).
- Act on Individual Pension Schemes of 27 June 2008 No. 62 (IPA)
- Act on Insurance Contracts of 16 June 1989 No. 69 (*Forsikringsavtaleloven*)
- Act on the Limitation Period for Claims of 18 May 1979 No. 18 (*Foreldelsesloven*)
- Act on Gender Equality (GEA) of 9 June 1978 No. 45 (*Likestilling*)
- Act on the Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal of 10 June 2005 No. 40 (*Diskrimineringsombudsloven*)

THE NETHERLANDS

The (Dutch) text of these laws can be found at the government's website: www.overheid.nl, accessed 7 May 2010).

- The General Old Age Pensions Act (*Algemene Ouderdomswet, AOW*)
- The Pensions Act (*Pensioenwet, PW*)
- The Surviving Dependants Act (*Algemene nabestaandenwet, Anw*)
- The Work and Social Assistance Act (*Wet Werk en Bijstand, WWB*)
- Social Support Act (*Wet Maatschappelijke Ondersteuning, WMO*)
- Equal Treatment for Men and Women in Employment Act (*Wet Gelijke Behandeling mannen en vrouwen bij de arbeid, WGB*)

POLAND

- Law on the Social Insurance System (Ustawa o systemie ubezpieczeń społecznych) of 13 October 1998 (unified text: JoL 2009 no. 205 item. 1585 with amendments);
- Law on Social Insurance Fund Pensions (Ustawa o emeryturach i rentach z Funduszu Ubezpieczeń Społecznych) of 17 December 1998 (unified text: JoL 2009 no. 153 item. 1227);
- Law on the Organisation and Functioning of Pension Funds (Ustawa o organizacji i działaniu funduszy emerytalnych) of 28 August 1997 (JoL 1997 no. 139 item. 934);
- Law on Individual Retirement Accounts (Ustawa o indywidualnych kontach emerytalnych) of 20 April 2004 (JoL 2004 r. no. 116 item. 1205);
- Law on Funded Pensions (Ustawa o emeryturach kapitałowych) of 21 November 2008 (JoL 2008 no. 228 item 1507);
- Law on Occupational Pension Schemes (Ustawa o pracowniczych programach emerytalnych) of 20 April 2004 (JoL 2004 no. 116 pos. 1207);
- Law on Transitory Pensions (Ustawa o emeryturach pomostowych) of 19 December 2008 (Jol 2008 r. no. 237 item. 1656).

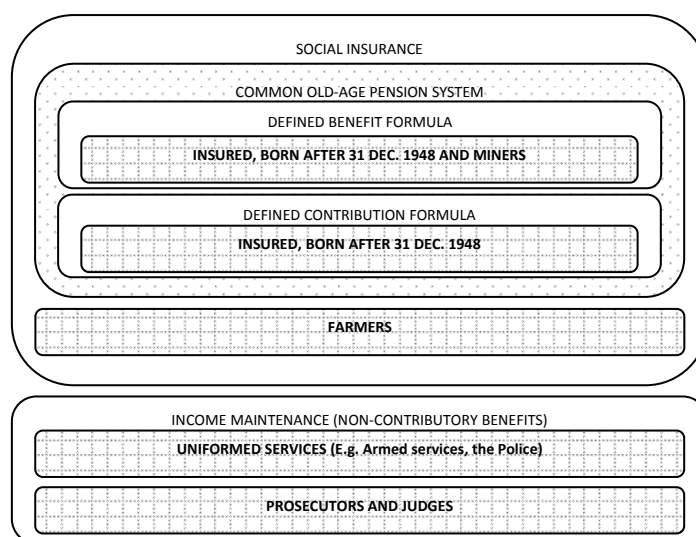


Chart: The classification of the Polish old-age pension system by the method of social security used for each group.

PORTUGAL

All available on www.dre.pt, accessed 3 June 2010.

- The Portuguese Constitution Decree-Law No. 307/1997, from 11 November 1997
 - Occupational social security systems
- Decree-Law No. 12/2006, from 20 January 2006 - Occupational social security systems and trust funds
- Law No. 4/2007, from 16 January 2007 - Social Security General Law
- Decree-Law No. 187/2007, from 10 May 2007 – Old-age pensions
- Law No. 12-A/2008, from 27 February 2008 - Public servants' legislation
- Law No. 59/2008, from 11 September 2008 - Public servants' legislation
- Law No. 7/2009, from 12 February 2009 – The Labour Code
- Decree-Law No. 91/2009, from 9 April 2009 - Social security allowances for maternity and paternity reasons

ROMANIA

No list included

SLOVAKIA

- Act No. 461/2003 Coll. on Act on Social Insurance of 30 October 2003
- [Act No. 43/2004 Coll.](#) on Retirement Pension Savings, status as of 1 January 2009
- [Act No 650/2004 Coll.](#) on Supplementary Pension Savings, status as of 1 January 2009

SLOVENIA

<http://www.mddsz.gov.si/en/legislation/>

- Pension and Invalidity Insurance Act (ZPIZ-1-UPB4, Official Journal, No. 109/2006)
- Parental Protection and Family Benefits Act (ZSDP-UPB2, Official Journal, Nos 110/2006, [10/2008](#))
- Social Security Act (ZSV-UPB2, Official Journal Nos [3/2007](#), [23/2007](#), 41/2007)

SPAIN

All texts are available on <http://www.boe.es/>, at the time of writing.

- Real Decreto Legislativo 1/1994, de 20 de junio que aprueba el texto refundido de la Ley General de la Seguridad Social. BOE de 29 de junio 1994.
- Ley 40/2007, de 4 de diciembre, de medidas en materia de Seguridad Social. BOE núm. 291, de 5 de diciembre 2007.
- Real Decreto 304/2004, de 20 de febrero, por el que se aprueba el Reglamento de planes y fondos de pensiones. BOE 48/2004, de 25 de febrero de 2004.
- Real Decreto Legislativo 4/2000, de 23 de junio, por el que se aprueba el texto refundido de la Ley Sobre Seguridad Social de los Funcionarios Civiles del Estado. BOE 28 de junio 2000.
- Real Decreto Legislativo 670/1987, de 30 de abril, por el que se aprueba el Texto Refundido de la Ley de Clases Pasivas del Estado. BOE 27 de mayo 1987.
- Real Decreto Legislativo 1/2002, de 29 de noviembre, por el que se aprueba el texto refundido de la Ley de Regulación de los Planes y Fondos de Pensiones. BOE 13 diciembre 2002.

SWEDEN

- *Lagen (1998:674) om inkomstgrundad pension*, Act on an Earnings-Related Pension
- *Lag (1998:702) om garantipension*, Act on a Guaranteed Pension
- *Socialförsäkringslag (1999:799)*, Social Security Act
- *Lag (2000:461) om efterlevandepension och efterlevandestöd*, Act on Survivors' Pensions
- *Socialavgiftslag (2000:980)*, Act on Social Contributions
- *Lag (2001:853) om äldre försörjningsstöd*, Act on Elderly Income Support Benefit

TURKEY

- The Constitution, Art. 60: Everyone has the right to social security. The state shall take the necessary measures and establish the organization for the provision of social security.

<i>Compulsory (state) social security schemes</i>	Law no.	Official Gazette	Coverage
Social Security Institution Law (<i>Sosyal Güvenlik Kurumu Kanunu</i>)	5502	20.05.2006	Integrated in the SSK, ES, and Bağ-Kur
Social Insurances and General Health Insurance Law	5510	10.06.2006	short and long-term risks and benefits
Pension Fund Law (<i>Emekli Sandığı Kanunu</i>) (obsolete law with some articles still in effect)	5434	17.06.1949	civil servants
Social Insurances Law (<i>Sosyal Sigortalar Kanunu</i>) (obsolete law with some articles still in effect)	506	29.07.1964	industrial workers
Law on Tradesmen, Craftsmen and Other Self-Employed Persons (<i>Esnaf ve Sanatkarlar ve Diğer Bağımsız Çalışanlar Sosyal Sigortalar Kanunu</i>) (obsolete law with some articles still in effect)	1479	14.09.1971	self-employed
Agricultural Workers' Social Insurances Law (<i>Tarım İşçileri Sosyal Sigortalar Kanunu</i>) (obsolete law with some articles still in effect)	2925	20.10.1983	agricultural workers employed on a temporary basis in the private sector
Unemployment Insurance Law (<i>İşsizlik Sigortası Kanunu</i>)	4447	08.09.1999	workers upon the loss of employment
Law for the Evaluation of Employment Terms of Turkish Citizens Working Abroad under Social Security Systems (<i>Yurt Dışında Bulunan Türk Vatandaşlarının Yurt Dışında Geçen Sürelerinin Sosyal Güvenlikleri Bakımından Değerlendirilmesi Hakkında Kanun</i>)	3201	22.05.1985	aggregate of periods worked in Turkey and abroad

<i>Compulsory occupational pensions</i>	Law no.	Official Gazette	Coverage
Armed Forces' Pension Fund Law (<i>Ordu Yardımlaşma Kurumu Kanunu</i>)	205	09.01.1961	Military personnel
Ereğli Coal Miners' Savings and Support Law (<i>Ereğli Kömür Havzası Amelebirliği Biriktirme ve Yardımlaşma Sandığı Kanunu</i>)	151	10.09.1937	The state owned Ereğli coalmining enterprise workers and Çatalağzı Thermal House workers

<i>Non-contributory system providing for social assistance (means-tested benefits; safety-net benefits)</i>	Law no.	Official Gazette	Coverage

Law on the Payment of Salaries to Destitute Turkish Citizens Above 65 Years of Age (65 Yaşını Doldurmuş Muhtaç, Güçsüz ve Kimsesiz Türk Vatandaşlarına Aylık Bağlanması Hakkında Kanun)	2022	10.07.1976	Destitute aged and disabled
Law on Social Assistance and Solidarity Fund No. 3294 (Sosyal Dayanışma ve Yardımlaşmayı Teşvik Kanunu)	3294	14.06.1986	Fund
General Directorate for Social Services and Child Protection (Sosyal Hizmetler ve Çocuk Esirgeme Kurumu Kanunu)	2828	27.05.1983	Social services and child protection
Law on the Issuance of Green Cards for Citizens who are Incapable of Paying for Health-Care Services (Ödeme Gücü Olmayan Vatandaşların Tedavi Giderlerinin Yeşil Kart Verilerek Devlet Tarafından Karşılanması Hakkında Kanun)	3816	03.07.1992	Citizens unable to pay for health care

Private pensions	Law no.	Official Gazette	Coverage
Private Pension Savings and Investment System Law (Bireysel Emeklilik Tasarruf ve Yatırım Sistemi Kanunu)	4632	07.04.2001	Any person over 18 years of age

THE UNITED KINGDOM

- The Social Security Contributions and Benefits Act 1992
- The Social Security Administration Act 1992
- The Pension Schemes Act 1993
- The Pensions Act 1995
- The Pensions Act 2008

