# Social Protection in Europe : What Model, what Rules ?

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# Social protection in Europe: what model, what rules? The topic of the pension reforms

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From a very general point of view, one can consider that the so called « European social model » is a reality, especially talking about the way that – historically – was founded in Europe the welfare state based on the recognition of social rights today considered as fundamental within the European and international legal order[1]. However, even regarding the welfare state as consubstantial to the European capitalism in general terms, any observer can see some differences from one national system of social protection to another[2]. Actually, there are several models of welfare in Europe, if we focus on the way that are put together the market, the state and the society in each country[3].

Nevertheless, the European Commission and the European Council refer to the European social model in some official documents. But it's not like describing precisely a unique social system. What is expressed by those institutions is much more a general idea, a kind of an affirmation, that developing some social policies and applying some minimum labour standards must be considered as a whole and a way to the economical cohesion and competitiveness, especially for an economy based on knowledge[4]. This view – which is a normative one – stresses on the need to modernize the European social model in order to adapt it to the globalisation. So the model is both a goal and a challenge: Europe must achieve an efficient economy which means an economy founded on quality at work provided by a friendly and efficient social background.

In fact, nowadays, most European welfare states have to face a crisis and to adapt themselves in the context of global competition. This is true for most of the "original" European member states, so what a challenge for the European central and eastern countries that had to reform deeply their social systems in order to fit the rules of the market economy and join the European Union. So the point is to know in which direction the national systems of social protection are going by now: what model, what rules for an enlarged European Union?

In this context, the European Union tries to build a framework that should be able to guide the evolutions and adaptations of the national systems of social protection. The

[1] The Social Charter of the Council of Europe (1961); the Community Charter of the fundamental social rights of workers (1989); The European charter of fundamental rights (2000); also the ILO regulations.
[2] See ESPING-ANDERSEN, G., *The three Worlds of welfare capitalism*, Cambridge, Polity Press, 1990.
[3] C. CROUCH, « L'Etat, le social et le marché », in *L'Etat à l'épreuve du social*, Ed. Syllepse, 1998, pp. 131-138.
[4] See, for instance, the document about the adoption by Poland of the "social model and of the European strategy for employment" signed on 29th January 2001, during the process of enlargement. This document just refers to the goals established for the EU during the Lisbon Summit of March 2000, especially the goal of becoming "the world's most competitive and dynamic knowledge-based economy, capable of sustainable economic growth with better jobs and greater social cohesion".

European Commission adopted on July 1999 a communication about a "concerted strategy in order to modernize the social protection" and later on, the Council of Lisbon (march 2000) fixed 4 main goals for the ten next years among which is set "the durability of the European system of social protection". But what is *the European system of social protection*?

This papers aims to address this question, dealing especially with the topic of the pensions reforms in Europe. Can the *Open Method of coordination* launched in 2001 in the field of pensions (by the Council of Laeken) be considered as a binding frame for the national social policies and legislations? Can the pension reforms in some European countries (Germany, France, U.K.) be compared with the polish one? Beyond the differences, what kind of convergences can be observed?

# 1. The Open Method of Coordination as a framework for the pensions reforms in Europe

## 1.1. About the Open Method of Coordination in general

The expression "open method of coordination" was initially used at the Lisbon Summit of March 2000. However, one can consider that the process started with the Delors' White Paper *Growth, Competitiveness and Employment* in 1993, followed in 1994 by the Essen Summit during which where established five main priorities to fight unemployment in Europe, as those decisions expressed the will to coordinate the national policies within a European framework. The *Essen strategy* failed, but the concept of a new regulatory instrument – a kind of a soft law – in order to deal with some politically sensitive issues as employment had emerged. So it was carried on and improved[5] through the Amsterdam Treaty that institutionalized the European employment strategy[6].

So, the Open Method of Coordination was first experimented in the field of employment policies[7]. But actually the OMC is a "generic" notion as it consists in a general framework for political action that is to be applied in various economical and social areas. The method aims to coordinate at European level some policies considered as falling under the sovereignty of the member states. Thus it has been implemented in the field of

[5] *The general orientation adopted since Essen remained the same but the method did change*, according to S. REGENT, "The open method of coordination: a new supranational form of governance ?"*European Law Journal, Vol. 9. n° 2, April 2003, pp. 190-214.*

[6] The Amsterdam Treaty signed on 2nd October 1997 (come into force on 1st May 1999) includes a new Title about Employment (art. 125 to 130 ECT). The employment is addressed as a « common interest issue » which justifies that the Member States – which keep being sovereign in that field – can nonetheless oblige themselves to coordinate their action, in a certain way. Article 128 ECT defines the procedures that have to be applied as it defines the various steps for the implementation of the so-called *coordinated strategy for employment*.

[7] A similar process can be observed in the area of the EMU, with the economic policy coordination. The so called "Broad Economic Policy Guidelines" (BEPGs) are a European tool set by the EC Treaty (art. 99§2). The national economic policies are considered as a common interest issue, which implies a coordination handled by the Council (art. 99§1). This coordination is produced through recommendations adopted at European level and also by the mean of recommendations directed to each member state on the basis of priorities defined by the Council (with the "qualified majority") for a three years period, in general. So the national economic policies must conform with the BEPGs and this is controlled through a multilateral monitoring process.

employment[8], and later on was extended to the social protection:  the OMC was used to coordinate the national policies against poverty and social exclusion[9] and, as we'll see, was implemented in the extremely sensitive field of pensions. The peculiarities of each area imply some specific adjustments of the general scheme and one can observe that, according to the various areas, the process is more or less formalized on the legal ground (actually, the process is legally formalized in the case of the European employment strategy, because the procedural mechanism of the coordination is set by the Treaty itself). Nevertheless, the *method* is based on a common scheme: some guidelines (in the case of the employment strategy) or some common objectives (in the field of social protection) are defined by the Commission (proposals) and the Council (adoption) within a process of *governance* which includes the consultations of various European institutions and committees[10]. The EU member states are then supposed to translate the European guidelines into *national action plans*. In these plans, each member-state describes the policies and the means that are implemented or planned in its country in order to comply with the European objectives. Afterwards, the national plans are evaluated by the Commission and the Council. The evaluation is based on the principle of benchmarking, which means that it aims at putting the stress on the *best practices*. The process is completed by a joint report on the implementation of the guidelines/the objectives in the concerned area. This joint report is drawn up by the Commission and the Council and addressed to the European Council.

Can the open method of coordination be considered as a legal frame producing binding effects? Surely the OMC differs from the traditional community method based on law and aiming to approximate the national legislations. It's much more a kind of a "soft law" and a new mode of governance in which "the objective is not to prescribe uniform rules or to deliver policy outcomes. Instead, it organises a learning process in order to promote the exchange of experiences and best practices"[11]. The guidelines and the common objectives adopted by the European institutions about employment, social inclusion or pensions are *not* legal provisions. Moreover, within the process of coordination, there is no real legal sanction – even if the Treaty empowers the Council to address recommendations to the member states, as a result of the evaluation of their employment policies, according to the European employment strategy. In this way, the OMC can be seen as an alternative to the European harmonisation through community legislation. Regulation is provided here by a procedural approach, "a peer pressure process". Convergence is not an official purpose. Nevertheless, one can consider that this process can lead – in fact – to some convergences in the European countries' social policies. If so, it would mean that this method, which is not a legal one, is able to produce some kind of binding effects.

### 1.2. Dealing with the pensions

[8] The Employment Title of the Amsterdam Treaty was first implemented by the Luxembourg Summit in November 1997. At this meeting, the Commission presented its proposals for the draft 1998 Employment Guidelines.

[9]The OMC about « social inclusion » was launched by the Lisbon Summit and the main objectives were adopted during the Nice Summit on December 2001.

[10] S. REGENT, « The open method of coordination: a new supranational form of governance ? », *European Law Journal, vol. 9, n° 2, April 2003,* p. 190-214. The White Paper about *The European governance* (European Commission, Brussels, 25th July 2001, COM(2001) 428 final) recognizes the innovative and positive contribution of the OMC in the way that it can help in creating a new structure of government more efficient and democratic in the EU. This will be verified, nonetheless, if all the participants (the member states, the regions, the social partners, the NGOs, the European institutions) are effectively involved in the process of decision making related to the open method of coordination.

[11] S. REGENT, *op. cit.*

a) The political background

The Lisbon Summit called for an integrated approach towards achieving an economic and social renewal, which meant modernising the European social model, investing in human resources and fighting against social exclusion. The OMC was supposed to be used in those areas. The European Council especially underlined the necessity to study the future evolution of the social protection in a long-term run, with a very special attention to the viability of the retirement pensions schemes till 2020 and beyond if necessary. Three main principles were approved in 2001 by the Göteborg Summit, aiming at modernising the pension schemes: adequacy of the pension systems to reach their social goals; financial sustainability; ability to face the evolutions of the needs of the society (modernisation of pension systems).

A joint report made by the Social Protection Committee and by the Economical Policy Committee, directed to the European Council of Laeken on December 2001, advocated that an open method of coordination should be launched in the field of pensions, “in order to help the member states to elaborate step by step their own policies so they can provide some adequate pensions and maintain, in the same time, the financial viability of the pensions systems and face the challenge of the evolution of the needs in the society”. In accordance with the three main principles fixed in Göteborg, eleven common objectives were adopted and the member states were supposed to draw up national strategy plans about pensions for September 2002.

The common objectives:

- objective n°1: preventing social exclusion
- objective n°2: enabling people to maintain living standards
- objective n°3: promoting solidarity
- objective n°4: raise employment levels
- objective n°5: extend working lives
- objective n°6: making pension systems sustainable in a context of sound public finances
- objective n°7: adjust benefits and contributions in a balanced way
- objective n°8: ensure that private pension provisions is adequate and financially sound
- objective n°9: adapt to more flexible employment and career patterns
- objective n°10: meet the aspirations for greater equality of women and men
- objective n°11: demonstrate the ability of pension systems to meet the challenges

Thus, there was a political consensus to commit the EU in a supranational strategy for a coordination of the pension reforms in Europe and the Barcelona Summit in 2002 called for a speed up in the reform of the retirement pension schemes. The Commission and the Council were delegated to draw up a Joint Report on the basis of the national action plans in which each member state described the methods implemented in order to reach the eleven common objectives.

b) The content of the European strategy in the field of pensions

The Joint Report by the Commission and the Council on adequate and sustainable pensions was approved on 6th March 2003 by the Council[12]. First of all, it expresses a common point of view about the challenge of population ageing and its implications for the maintenance of adequate and sustainable pensions. The report states that – till then - all the European countries have achieved pension systems so that old age is no longer synonymous with poverty. But as this situation is now threatened by the ageing process, the Commission exposes the different ways to maintain the adequacy of the pension systems towards the risk of poverty. It is said that, in the future, many member states expect to maintain the level of adequacy, *inter alia*, through allowing individuals to earn additional pension rights by postponing their retirement. The report stresses on the fact that the pension provisions should tighten the link between contributions and benefits. The report also observes some trends on the ground of complementary pension schemes: some countries encourage the social partners to establish sector-wide pension schemes based on mandatory collective agreements and by improving access to personal voluntary schemes provided by employers. While most pension income continues to be provided by first-pillar schemes – still considered as the best way for solidarity - member states are also promoting increased private provisions of pensions.

Second, about financial sustainability, the report states that it should be the priority, as it is "a necessary precondition for an adequate provision of pensions in the future". The European approach of financial sustainability is based on raising employment rates – but the report asserts that higher employment rates won't solve the whole problem – reducing public debt levels and reforming pension systems. On the ground of employment, the report admits that, in many cases, the reforms aiming to increase the effective retirement age fall short of what is required to achieve the Stockholm and Barcelona targets[13]. In the field of public finances, it seems that many countries aim at using budgetary surpluses for reducing public debt or building up reserve funds, but the Commission considers that further pension reforms are needed. Especially, financial sustainability of funded pension provision depends on the sound governance of the funds and on the performance of financial markets, so the risks for funded pension provision can be reduced through effective supervision and prudent management.

Third, talking about "the modernisation of pensions systems", the report explores the ways to deal with the new situations on the labour market: part-time, temporary, self-employed and mobile workers. It states that the statutory schemes respond well to the challenge of providing pensions for atypical workers. However, the situation in the second-pillar schemes (occupational pension schemes) is considered as non satisfactory, because in many company plans, the full rights are given only to full time workers who remain with the same employer. The report also stresses on the necessity to take into account the evolving social and economic roles of men and women.

A global analysis of the OMC in the field of pensions suggests it doesn't provide *a priori* the EU member states with a model of pensions. In this way, the Joint Report cannot be compared with the World Bank report published in 1994 which describes a "three pillars model" which influenced some national reform as we'll see[14]. The Joint Report is finally a

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[12] Joint report by the Commission and the Council on adequate and sustainable pensions, Council of the European Union, Brussels, 10 March 2003, ECOFIN 76, SOC 115, 7165/03.

[13] Those targets are : employment rate of 50% by 2010 for older workers (instead of 38,5% in 2002) and an increase in the effective retirement age by five years by 2010.

[14] *Advertising the Old-Age Crisis: Policies to protect the old and promote growth*, World Bank, 1994. The "three pillars model" is described this way : the fist pillar, financed by taxes or by social contributions, has a

subtle exercise in which the Commission and the Council try to show the way by putting the stress on some national good practices and common trends. Thus, even though the UE doesn't wish to impose a "one way" model and doesn't refer to the "three pillars" in this way, the report suggests that adequacy should be reached by diversifying the pension rights which was precisely the slogan of the Polish reform, as we'll see.

Actually, it seems that the national paths followed by the member states to comply with the objective of financial sustainability have integrated the "three branches strategy" defined by the Council of Stockholm (March 2001) and incorporated in the "Broad Economic Policy Guidelines" (BEPGs) set in 2002. Those three branches are: increasing the employment rates; reducing the public debt and adapting the pension schemes themselves. So it's clear that the reforms are guided by economical principles justified on the political ground by the "financial threat" due to a social fact: the ageing process in our societies. For the Commission and the Council, this implies a concerted action at European level: if the member states are still entitled to conceive and to manage the pension systems, according to the principle of subsidiarity, it is widely admitted, nowadays, that the adequacy and viability of the pension schemes are transnational challenges[15].

## 2. The main characteristics of some reforms at national level : the path dependency

From a comparative point of view, one can observe a general trend that consists in reducing the rights to a pension within the social insurance systems and in promoting the rights settled on other basis as occupational schemes or private plans. However, the reforms, changes and evolutions in each country are in general strongly determined by the rule of "path dependency". This means that in the welfare states, the social institutions as pension systems - which depend on the original and historical choices made by each Nation – *naturally* resist the radical reforms[16]. The Bismarck influenced systems are principally reformed by modifying the formula of the basic pension, i.e. the pension provided by the National insurance system for workers. In those cases, the reforms aim at strengthening the contributive nature of the pension rights, i.e. making the final pension more proportional to the contribution of the individuals. In the Beveridge influenced systems, there is a tendency to transform universal benefits into means-tested benefits. In Great Britain, especially, the sustainability of the public pension is not that problematical, because of the cutting off policies led by the former governments since the 1980's. As those systems are traditionally based on an active role of private pension schemes, the reforms aim at extending the access of those schemes to the whole population and the Government tries to make them more secure. In Poland as in other eastern and central European countries, the reform aims at establishing a system which mixes the "pay as you go" principle and the "money purchase" scheme. In these countries, especially in Poland, the reform implemented under the influence of the World Bank modifies

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redistributive function and provides for the pensions of the poorest. The second pillar is compulsory, individual or occupational, financed by capitalization (money purchased). The second pillar obliges all the individuals to save for their future retirement but doesn't aim at redistributing. The third pillar is non compulsory, private and voluntary savings based. It is supported by tax incentives and it must allow the individuals to choose where and how they should invest their income all life long.

[15] See the introduction of the Joint Report 2003, p. 10.

[16] For an explanation of this theory in the French academic literature, see B. PALIER, *Gouverner la sécurité sociale* PUF, Paris, 2002.

deeply and radically the former system so one can say the "path dependency" is much more operative in the "old" European welfare states.

### 2.1 The pension reforms in Germany and in France

The German and the French system both belong to the "Bismarckian" model, based on social insurances which provide earnings-related pensions[17]. The main difference, if one considers the pension system as a whole, is that in Germany, complementary pensions are widely provided by company level occupational schemes, which are voluntary ones, while in France, employers and employees have to be members of a complementary pension scheme which belongs to a National Union of complementary pension schemes established by a national and inter-sector based collective agreement[18]. Nevertheless, the reforms in both countries seem to follow a rather similar path, as they don't affect those traditional complementary systems. They focus on the basic pension systems and on the way to promote new private pension schemes.

In Germany, the reform first focused on the basic pension, through the 1999 Act. This legislation restricts the criterions for the access to a full pension, so it should prevent the people to retire early. It also aims at maintaining the contributions rate on the long term. According to the new formula, a rise in the contributions to the basic social insurance system or to the voluntary private pension funds should produce an effect on the level of the pensions, because the rise will be deduced from the salary that is taken in account to calculate the pension of the individuals and to establish the index for the annual adaptation of pensions. This strategy is justified by the fact that the State (the National budget) finances 37% of the pensions. The objective is to reduce this contribution in order to reach 31% in the future (2030). A second Act adopted in 2001 deals especially with the complementary pension schemes but also concerns the basic pension. It states that the maximum amount of the basic pension will be fixed at 67% of a standard limited salary, after 45 years of contribution, which means a reduction of 3% of the actual "replacement rate"[19]. This should be compensated by some important tax incentives to support the new private pension funds created by the 2001 legislation. The reform also aims at improving the pensions for women. Some pension rights are given as a compensation of children care, even for persons who weren't subjected to the national social insurance because they were out of the labour market.

In France, in 1993, a first "reform wave" had modified the formula of the social security basic pension for the employees. The system has been made more "contributory" which doesn't mean that the contribution rate to the system has been increased. What is increased is the period of contribution within the national insurance system expected from the individuals to have a right to a "full rate" pension. Before the reform, it was 37,5 years. Since the 1st January 2003, it is 40 years. A second "reform wave" affected the French system,

[17] In Germany, the basic pension from the social security system provides 60% of the income of the retired population in the western part of the country, and it's more than 90% in the eastern part. In France, the compulsory systems for workers (including the basic pension from the social security and the complementary pension from the AGIRC/ARRCO system described below) provide more than 75% of the income of the retired persons.

[18] In France, there are two National Unions of complementary pension schemes : the AGIRC created by a national collective agreement in 1947 for the executives employees; The ARRCO created in 1961 by a national collective agreement for the non executive employees. Both of those complementary systems are "pay as you go" ones. A statutory legislation, in 1972, made them compulsory for all employers and employees.

[19] This is an effect of the rise of the contribution rate from 19,5% which was the rate in 2001 to 20% in 2020 and 22% in 2030.

through the 21st August 2003 Act (*Loi portant réforme des retraites*) which continues with the prospect of enlarging the contribution period. From 2009, the individuals will have to prove having contributed one additional period of 3 months per year, so they'll have to mention 41 years of contribution for a full rate pension in 2012. As in 1996, the complementary pension systems had also been reformed (by national collective agreement) by acting on the level of the future complementary pensions, the "replacement rate" will be reduced for the employees who retire in the future. That's why the new legislation aims at rebuilding the legal frame of the voluntary pension schemes based on individual or collective savings, especially by creating two kinds of private pension plans supported by tax incentives. The 2003 reform also affects the pension rights of the public sector employees (civil servants): though the nature of the civil servants' pension remains different[20], the new legislation harmonizes the periods of contributions required from them to be entitled to a full rate pension. As for the employees of the "private sector", the legislation requires 40 years of contributions under the pension system[21]. Like the German reform, the French one tries to improve the pensions for women. Under the new legislation, each year spent on children care is taken into account as an equivalent of 3 months contribution within the national insurance[22]. But unlike the German regulation, the French one provides these "surpluses" only to women who are ruled by the national insurance, which principally means the employees.

### 2.2 The pension reform in Great Britain

The recent legislations dealing with pensions in GB neither affected the way the "basic state pension" is determined nor the way the pensions are re-evaluated. Actually, the State pensions in GB (i.e. the basic pension and the complementary public pension[23]) are very low levelled and the risk of poverty is still real for a part of the population. The Government means to improve the economical situation of the old, but it does so by strengthening the private pension schemes. The objective of the reform is to reverse the present ratio according to which about 60% of the income of the retired persons is provided by the State pensions and about 40% is provided by private schemes. In the future, it should be 40% from the State and 60% from the private schemes. The main problem in GB is to make the private plans reliable. Traditionally in this country, were developed the occupational (collective) pension schemes in which, in many cases, the employers are committed to provide a pre-defined pension to their employees. However, these plans are mostly settled in the very big firms and are now considered as too expansive by the employers. Moreover, from the 80's were also widely promoted *personal pension schemes*[24]. These are individual forms of savings known as "money purchase" schemes. In 1993, more than 5 million persons had opted for this kind of complementary pension scheme but the sustainability of this system is in question since the "Maxwell affair".

The Government's strategy first aimed at restructuring the public complementary pension system. Thus, the *Wages and retirement pensions Act* 1999 has deeply modified the SERPS (*State Earnings Related Pension Scheme*) which had been created in 1975 for the

[20] For the civil servants, the pension is not provided by a National social insurance. It is directly paid by the State's National budget. The civil servants' pension is conceived as a continuation of the salary (the full pension is 75% of the ultimate salary).
[21] The harmonization process is progressive: it'll take 5 years, from 2004 to 2008 to apply the new regulation to the civil servants.
[22] Within a limit fixed at 24 months per child.
[23] In GB, the complementary public pension is compulsory for the employees, except if their employer provides them with a "contracted out" private pension scheme.
[24] Stimulated by the Social Security Act 1986.

employees (but which came into force in 1978). The SERPS is replaced from April 2002 by a new system: the *Second State Pension*. This new scheme has been shaped in order to focus the protection on the lowest income earners (employees)[25], so the formula for the calculation of the pension is more profitable to them. In some cases, some people whose earnings are under the lower limit of the contributory system will be given rights as if they had contributed at the minimum level. However, the regulation states that the new system will only provide flat rate pensions when the new private plans called *stakeholders pension schemes* works to full capacity, i.e. about 5 years after being launched. Then, the *Welfare Reform and Pensions Act* 1999 created the so called *stakeholders' pension schemes* which are a new kind of personal plans conceived as more secure and less expansive. Those plans have been shaped, in theory, to offer a private solution to people who earn medium level wages (from 10 800 £/year to 24 600£ that are 37 845 euros). So they should be profitable to the employees in small and medium size companies which usually don't provide occupational pension schemes and also to the self-employed. The new plans effectively appear in April 2001.

### 2.3 The pension reform in Poland

To a foreign observer, the striking thing in the 1998 Polish reform is the structural changes in the pension rights. In a way, it's a brand new system that is built on the World Bank's model of the "three pillars". However, the strategy followed by the Government seems to have avoided a too radical change for the elderly population. Thus, the persons who were born before the 1st January 1949 keep being ruled by the former system of National Insurance which provides "defined benefit" pensions. For the persons who were born after the 31st December 1948, the pension in the first pillar is transformed into a "defined contribution" system. The main difference is that, in this case, the pension isn't determined buy the period spent under the National Insurance as it depends much more on the amount of contributions paid in the system, and also on the average life expectancy of the individual[26]. Nevertheless, this first pillar remains a "pay as you go" and non funded system. It's based on the technique of the "notional accounts" according to which an individual fictive account is created for each member of the National Insurance. Another fundamental aspect of the reform is the creation of a compulsory complementary pension system based on "money purchase schemes" (capitalisation). This system can be considered as a "second pillar" according to the World's Bank model[27]. Each individual has to contract for a retirement pension with an Institution which supplies some "open funds" schemes. However, this second pillar is very closely linked to the first pillar as the contribution for both systems is global[28] and also because the right to a supplementary minimum pension will be granted if the addition of both pensions doesn't reach a certain minimum amount. The polish reform also aims at implementing a "third pillar" based on employees' pension schemes and on individual private schemes. This system is voluntary and non compulsory. It is supported by some tax incentives[29] and is considered as a

[25] The system is more attractive and profitable to the persons who earn less than 10 800 £ per year (in 2002-2003).
[26] The reform introduces an actuarial factor in the formula.
[27] One shall notice that the second pillar, as it is described in the EU documents, is rather different from the World Bank's one. What is called second pillar in the European literature is every kind of occupational schemes, were they compulsory or not, based on the pay as you go principle or funded ones (see, for instance the report called *The pension issues in the new Member States*, Pragma Consulting, April 2005, Mechelen, Belgium)
[28] The employees have to pay a contribution which is 19,52% of the salary, under a top. One part (12,22%) finances the basic pay as you go system; the other one (7,3%) finances the complementary money purchase scheme.
[29] The employees' contributions to an employee pension scheme (third pillar) are not considered as part of the wages and aren't taken into account as a basis for the National Insurance contributions; if the employer supports

part of the whole system of social protection as the reform aims at providing "security through diversity".

This summary comparative round makes rather clear that the national pension reforms depend on various paths. Nevertheless, some converging trends can be observed. What emerges from the national policies and new regulations is a tendency to increase the role of the individual in the responsibility towards the old-age risk.

## 3. A converging trend: the increased individual responsibility in the old-age risk

The increased individual responsibility can be observed from a double point of view: first, the individuals have to seek (economical) security by maintaining themselves in the labour market; second, they're supposed to enter a strategy in which their pension will be the result of some individual savings through adequate forms of personal pension schemes.

### 3.1 Security through the maintenance of the individuals in the labour market

One main idea in order to face the problem of demographic imbalance within the pension systems is that employment is the best way to provide security and to prevent from social exclusion. So the European reforms generally aim at making longer the career and the contribution period within the National Insurance pension systems. Among the various techniques used to reach this goal, three principles emerge from the national regulations.

*a) Making more flexible the regulation of pensionable age*

It seems like the various Governments haven't run the risk of officially changing the legal norm about pensionable age and of postponing the retirement time for the whole population. It's well known that the evolution of the European welfares during the XXth century, thanks to the social security law, has been to reduce the pensionable age which is generally set at 65 in compliance with the ILO regulation[30]. So the recent reforms just stop this movement and, in some cases, aim at harmonizing the pensionable age between men and women[31].

The French policy about the pensionable age is particularly typical of the trend which consists in making the norm more flexible without changing the legal threshold. In France, since 1982, the legislation allows the persons (men and women) who have contributed for a "full period" to retire at 60 and to obtain a full rate pension from the National Insurance system. As we've seen, the 1993 and the 2003 reforms have just increased the period of contribution under the National Insurance required as a "full period" (from 37,5 years to 40 years and more in the future). So, in theory, people still have a right to retire at 60 years old in France, which remains an important social symbol in this country. Nevertheless, actually, less and less persons will be entitled to retire at 60 for it would mean they've started their career under the age of 20. So the people will have to stay employed till 65 years old because the regulation gives a right to a "full rate" pension at this age. Moreover, the French legislations

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the plan, his contributions will be considered as a load and he will be entitled to some tax rebates. The savings that are invested into individual accounts are tax exempted.

[30] See for instance the ILO convention n° 102 (1952).

[31] In GB, the legal pensionable age was 65 for the men and 60 for the women. It'll be harmonized to 65 for both till 2020.

introduces the principle of actuarial neutrality which means that the individuals will assume the responsibility of their own choices: they'll have a right to an underrated pension if they quit early the labour market; on the opposite, they can increase their pension rights if they choose to keep on working after the legal age of retirement. This system is also experimented in other countries. In Great Britain, the flexibility has been introduced a long time ago as the legislation makes possible to postpone the retirement for 5 years, so it means the men can work till 70 years old and have a right to an *increment for deferred pension*[32]. Under the new regulation, the possibility to postpone the retirement is even more flexible as there will be no time limitation from 2010.

b) Limiting the possibilities of early retirement.

This is another general trend. However, the national regulations have to deal with various situations. In some cases, the legislation aims at correcting the individual behaviours. In Poland, for instance, the former pension system widely allowed people to retire early. Things have changed with the new regulation (1998) and the people who remain in the former system (those who were born before 1949) can use the opportunity of an early retirement till the end of 2006. For the others, as we've seen, the level of the pension will be directly linked to the amount of contributions, so they should try to keep on working for a longer time.

In other cases, the reforms have to implement radical changes in the managerial practices within the firms, especially when the common practice is to push the elderly out of the employment before the pensionable age. This practice was widely spread in France, thanks to some public policies which had made it easy. On the legal ground, an employer cannot dismiss an employee because of his old age and the legal provisions prevent an employer to lead an employee to retirement if the employee doesn't comply with the social security conditions for a "full rate" pension. Nevertheless, the French legislation has implemented various plans making easier the redundancies of employees at the age of 57. On the basis of an agreement settled between the firm and the State, the 57 years old employees – threatened by collective redundancies measures - who whish to retire can be entitled to a *special allowance system* : until they reach the legal pensionable age, their wage will be quasi maintained thanks to the *Fonds National de l'Emploi* (National Fund for Employment)[33]. The legislation also developed some gradual retirement plans – through another sort of "NFE agreements" – for the 55 years old employees who accept to be part-timers till the pensionable age, while their employer commits himself into employing young workers in the same time. Beside those "State supported plans", some firms also implemented company plans for early retirement, totally financed by the employers[34]. The 2003 French reform tries to limit theses practices for the future. The employers will have to pay a special tax on the company plans for early retirement and the legislation repeals the gradual retirement plans from the 1st January 2005.

c) Widening the possibilities of combining the pension and some employment incomes.

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[32] See WIKELEY, OGUS and BARENDT, *The Law of Social Security*, Butterworths, 5th Ed. , p. 610.

[33] So the system is partially financed by the State. The employer has also to finance a part of the *special allowance* (this part is fixed by the agreement).

[34] In some cases, the employers contract with a private insurance company in order to manage this kind of company « social policy ».

On this ground, the British law can be seen as more flexible than others. In GB, the so-called *retirement condition* – which means the individual has to retire in order to be entitled to the pension – has been repealed in 1989. So it's easy to combine the pension and some employment incomes for persons who have reached the pensionable age. From a comparative point of view, however, one should take into account that this feature fits more "naturally" a flat rate pension system – as the British one – than earnings related pension systems based on the "Bismarckian model". In the "continental countries", the legal status of the retiree is conceived as a substitution to the status of employee, so the legislations tend to limit the possibilities of combining both. Nevertheless, the reforms in France, in Germany and in Poland show some changes. In Germany, the regulation makes possible to continue a reduced employment with the former employer. In this case, the employee who has reached the pensionable age will receive a partial pension. The new legislation also rules the possibility to combine the pension and some wages when the retiree comes back on the labour market. From now, there is no more limitation if the individual is 65 years old or more. In France, for the employees, the retirement condition remains as the regulation states that the employment relation with the former employer must stop in order to be entitled to the pension. However, the new legislation (2003) states that the individual can be re-employed by his/her former employer 6 months after having been entitled to the pension. He can also be employed by another employer or self employed with no delay. In those cases, the pension and the professional incomes can be fully combined under a top[35]. In Poland, the possibilities of combining depend on the age of the individuals: the 60 years old women and the 65 years old men can combine the pension and all kind of professional incomes with no limit. For the retirees who haven't reached these ages, the combination is limited[36].

So the national policies aim at basing the security for the elderly on employment and work. They're based on the individual freedom/the individual responsibility in one's own choices but this requires a full "employability" from the people, which actually depends on the individual skills and physical capabilities. What is occurring is that the insurance based systems tend to be shaped for the persons who can really *manage* the old-age risk. Another problem lies in the attitude of the employers and of the employees/the trade unions towards the question of the *normal* age for retirement. Shall the employers keep longer their "seniors" employed? What about the "old unemployed" and their effective possibilities of getting an employment and stay on the labour market as long as necessary in order to build an adequate pension right? Will the trade unions accept the new prospect which means getting rid of the idea that the welfare systems have provided a *right to retire from work* before being totally exhausted? As we see, the financial background of the reforms leads to ignore or to underestimate social and sociological issues. It makes sure that such regulations won't be efficient if they're not related to some strong and active employment policies for the seniors.

### 3.2 Based-on savings social security

As the new social policies aim at encouraging people to be "active", the new regulations encourage them to be individually provident in the prospect of the old-age risk. Here comes again the old liberal principle of the "based-on savings" *social* security or social protection. So the question is: why and under which conditions this form of protection can be

[35] The top is the individual's ultimate wages, before he reaches the pensionable age. If the combined pension and professional incomes exceed this limit, the pension will just be temporally stopped.

[36] No limit if the professional incomes are no more than 70% of the average income ; the pension is partially limited if the professional incomes are between 70% and 130% of the average income; the pension is temporally stopped when the professional incomes exceed 130% of the average income.

still considered as *social*? Referring to the "three pillars model", one can consider that in every country, more or less, a place has been given to some individual savings plans for retirement or old age. This is precisely what is called the "third pillar". However, what has to be seen is a shift from collective to individual forms of pension within the whole systems. It means that the financial responsibility towards the old-age risk tends to be more individual, or individualized, even within the first and second pillars, i.e. the National Insurances and the occupational pension schemes provided by the employers.

Thus, in some cases (Poland), this principle directly enters the National Insurance (first and second pillar) system[37]. More than a technical change, it's a kind of a "philosophical revolution" as it aims at making people aware that their future doesn't any longer depend on the State, but on their own behaviour.

The principle of based-on savings security also spreads in the field of occupational pension schemes. Here, the British system can be seen as forerunner. From the post 2nd World War, had emerged and were developed many company pension schemes, provided by the employers, collective and generally based on the *final salary* and known as *defined benefits schemes*. This was the main form of complementary pension schemes. Let's notice that the situation was the same in Germany and in France though the role played by those plans remained weak in France, because of the implementation of inter-sector based-on collective agreement pension schemes[38]. With the *final salary schemes*, the employer assumed an important responsibility. This was accepted because the employers needed to maintain durably the workforce, so the employees were obliged to stay in the firm till the pensionable age in order to be entitled to the company pension scheme. Nowadays, the main change is the re-evaluation of the companies' responsibility towards the old-age risk. In Great Britain, the *Money Purchase* or *defined contributions* schemes tend to replace the final salary scheme[39]. The defined contributions schemes are still based on collective plans, managed by some *trusts*, which means that they're financed both by employers and employees contributions. However, in this form, the employer isn't committed in paying a pre-determined amount as a pension. The pension is only the result of the money invested by the trustees on the financial market for the members of the pension fund. This situation can also be observed in other countries, especially in Germany and in France. These kinds of plans are considered as more adequate to mobile employment (the rights are definitively acquired, even if the employee quits the company before the pensionable age to be employed in another one).

Moreover, in many European countries, one can observe the emergence and raise of voluntary money purchased individual schemes. It's rather clear that the Governments whish to make easier for the whole population the access to those kinds of plans. The recent national regulations show some similar features or objectives: the plans must be cheap (low cost of management); they must be secure; and above all, they must be widely opened, that's why, in general, they are supported by tax incentives and can be supplied through various ways: either

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[37] The « notional accounts » in the first pillar and the compulsory "money purchase schemes" in the second pillar.

[38] The part of the « second pillar », i.e. the occupational pension schemes and especially the company pension schemes, differs from a country to another. The main explanation for these differences is the level of the pensions provided by the 1st pillar. The company plans and the pension funds are much more developed in countries in which the basic pension is low rate. In 1999, the part of the company plans was 40% of the whole pensions expenditures in GB; 7% in Germany and only 1,7% in France (Source : Joint Report by the Commission and the Council on adequate and sustainable pensions 2003).

[39] See J. CARBY HALL, "Whence and what art thou. Collective bargaining in occupational pensions ?", *Managerial Law*, vol. 46, n° 4/5, p. 21.

through the companies – especially those in which there is no "traditional" occupational pension scheme- or directly through the market. In Poland, the legislation provides two new forms: some company pension plans based on an agreement between the employer and the employees and which consist in managing collective savings[40]; some individual accounts for retirement which effectively appeared in September 2004 and are to be settled through an individual contract with an institution (bank, insurance company, investment fund, …). In GB, the Welfare Reform and Pensions Act 1999 has created a new form, the *Stakeholders Pension Schemes*, implemented since the year 2001. It's another kind of *money purchase scheme* so it means that the financial risk lies on the individual. According to the legislation, the employers' duty only consists in making sure that, if there is no occupational scheme within the company, every employee can have access to a stakeholder plan appointed by the employer and certified by the administration[41]. In Germany, the "Riester reform" in 2001 has instituted a new form of complementary pension scheme implemented in 2002 which differs from the traditional occupational pension schemes. This form is flexible as the individuals can have a direct access to the "Riester plans" through a contract with a financial institution, or be supplied a Riester plan by their employer, generally through a collective agreement. In both cases, the savings are individual, even if the employers can also add their own contribution. In France, two new forms of complementary private pension schemes were created by the 2003 reform. One is purely individual and is called "*PERP"*[42]and the other is considered as collective for it has to be offered to all the employees by their employer through a collective agreement. Nevertheless, the system is voluntary. This collective form called "*PERCO"* [43] is a kind of salary-based-on savings (the employer and the employees decide to save a part of the wages and invest them in order to have an amount which will be distributed when the employee reach the pensionable age).

At this time, the success of these new forms of "based-on savings" security is still moderate. In GB, one year and a half after the implementation of the stakeholder pension schemes, most employers had informed their employees of their new rights, but only 10% of the population had effectively contracted. In Poland, on June 2005, 269 650 individual plans had been contracted, while in France, at the same time, there were 1 470 000 "PERP"[44]. More successful seems to be the German reform, as about 5 millions "Riester Plans" have been contracted.

To conclude: is there a European model in the field of pensions? The answer is no if a model means a normative frame in which the legal national systems are supposed to be harmonized. What can be observed in Europe are some convergences due to a common approach of the problems and a certain consensus about the ways to solve them. However, the social protection remains a national issue. Because of the lack of a real political European

[40] In Poland the implementation of company plans is very recent. About 105 000 employees were active members of those kind of plans in 2004 (source : *Rocznik Ubezpieczen I Funduszy Emerytalnych 2004/Insurance and Pension Funds Yearbook 2004*, PRZEGLAD RYNKU/MARKET REVIEW).

[41] Are concerned by the new legislation the employers who employ at least 5 employees.

[42] *Plan d'épargne retraite populaire*.

[43] *Plan d'épargne retraite collective*.

[44] Source : opracowanie własne na podstawie raportu rocznego - Commission de contrôle des assurances, des mutuelles et des institutions de prévyance, Rapport 2004, s. 55 i n. oraz danych zamieszczonych na stronie internetowej Fédération Française des Sociétés d'Assurances www.ffsa.fr i Komisji Nadzoru Ubezpieczeń i Funduszy Emerytalnych www.knuife.gov.pl.

Union, the European institutions and the member states have invented the OMC which weakness is to lead to a technical approach of political and social problems. The shift from social/collective forms of protection towards the old-age risk to more individualized schemes, for instance, is something that has to be addressed in really democratic areas. So once again, Europe is in question.