CHAPTER 9

The Changing EU "Pension Programme": policy tools and ideas in the shadow of the crisis

(Final draft)

Igor GUARDIANCICH and David NATALI

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Introduction

Pensions policy in Europe is a typical example of nation-state-based policies. Together with a few other areas of public intervention, old-age retirement schemes have contributed to the set-up of contemporary welfare states. Yet they are increasingly at the top of the European Union (EU) agenda and its interest in economic growth and prosperity.

The aim of the present chapter is to summarize the main traits of what we call the "EU pension programme", which is made up of three main fields of intervention: the completion of the EU pension market; the financial sustainability of pension programmes; and the broader modernization of national old-age retirement systems. While the first area is related to EU law (the Community method), the two latter dimensions have been progressively integrated into the EU economic and social governance (both contained within the European Semester that avails itself of several legal bases underpinning Macroeconomic and Fiscal coordination as well as the socioeconomic objectives of the Europe 2020 agenda). The key issue explored in this chapter is the evolution of the EU pension programme before and after the economic and sovereign debt crises as well as its (potential) influence on the "new pension mix" in the Member States. Looking back at the past decades of EU policy decisions in the field, we develop two research questions: has the EU pension programme influenced the pension mix in the Member States?; and, has the EU pensions programme changed since the emergence of the economic and financial crisis?

Our main finding is that the various instruments devised by the EU work at cross-purposes. On the one hand, progress in EU legislation on occupational pensions is consistent with the objective of shifting the logic of retirement systems from a mono- to a multi-pillar design, whose chief aim is to diversify risk between the labour and financial markets, while improving the adequacy of retirement benefits in the context of an increasingly mobile workforce.

On the other hand, the European Semester's guidelines have often been detrimental to the multi-pillar logic. The justified recommendation to increase the official retirement age (and link it to life expectancy), which leads to higher statutory benefits, has the unintended effect of crowding out supplementary schemes. Moreover, and quite surprisingly, the crisis and the

renewed focus on fiscal consolidation have put pension privatization under stress. The need to safeguard budgetary sustainability has been prioritized, thereby promoting cost-containment in both public and private retirement schemes. Privatization through mandatory pension funds has never been prioritized by the EU and has been gradually abandoned in several Member States, thereby putting emphasis on voluntary schemes. Hence, our interpretation of the redefined EU pension programme is that the EU's overall stance towards multi-pillarization is ambivalent at best, and fraught with tensions between its various priorities.

The chapter is structured as follows. Section one focuses on the EU's role in the context of the broader global pension reform plan proposed by International Organizations in the last decades. Section two provides a summary of the key dimensions of the EU pension programme since the 1990s. We refer to three key dimensions: the completion of the single occupational pension market, the financial sustainability of public retirement systems, and the modernization of pension systems promoted through the Open Method of Coordination (OMC). The three elements are now at the core of two main governance modes: EU legislation on the one hand, and the coordination of economic and social policy through the European Semester on the other. Section three sheds light on the crisis and the consequent destabilization of the EU pension programme. Fiscal consolidation has been prioritized, thereby having an impact on both the modernization of pensions and the development of the single pensions market at both EU and national levels. Section four concludes by providing a reflection on future reform trends across the European Union.

1. Pension reforms and the role of the EU

The influence of International Organizations (IOs) on pensions policy is not a recent phenomenon. As Orenstein (2003) has stressed, in the second part of the 20th century IOs, such as the International Labour Organisation (ILO), contributed to the promotion of more generous and unified national pension systems. The post-war consensus was then questioned in the 1970s as a consequence of the economic and employment crises that negatively impacted on national welfare states. Gradually, other IOs started to propose alternative views, which prioritized efficiency and economic growth rather than coverage and adequacy. In the context of marked population ageing, persistent administrative problems in developing countries, and financial and budgetary strains in the more developed world regions, pension privatization became the new pension paradigm by the mid-1990s (Orenstein, 2013). This entails the full or partial replacement of social security pension schemes with pension systems based on individual, private savings accounts.

The World Bank (WB) had a leading role at the global level to diffuse the multi-pillar pension model, together with the more ambiguous stance of the Organisation for Economic Coordination and Development (OECD) and the much less enthusiastic support of the International Monetary Fund (IMF). The European Union came on board rather late through a number of Directives that started appearing in the late 1990s as well as by addressing the pension policy challenges through the Lisbon Strategy, that is, a structured policy programme and a complex toolkit made up of regulation and coordination. We refer here to a EU pension programme and not a paradigm, in that the European institutions, *in primis* the Commission, have never proposed a blueprint for pension reforms but rather a more complex set of principles and guidelines. This meant that the Member States were left with sufficient room

for manoeuvre (compatible with the subsidiarity principle espoused in the Treaties) to design their own pension systems (Table 1).

Table 1. Evolution of the EU pension programme

	Goals	Instruments	Measures
2000–9	Market integration	Law	Regulation of the pension market
	Fiscal discipline	Economic coordination (SGP)	Cost-containment on public pensions
		Social and employment coordination (Social OMC)	Spread of supplementary pensions
2010–15	Market integration	Law	Regulation of the pension market
	Fiscal discipline	European Semester (Macroeconomic and Fiscal surveillance)	No expansionary interventions/Prolonging working life
	Modernization	European Semester (Europe 2020)	Support for supplementary pensions

The EU has favoured domestic policy changes through a "holistic" approach and according to three lines of action: market integration; the hardening of fiscal, monetary and economic discipline; and the modernization of national social and employment policy (European Commission, 2012). The first dimension, that is, the completion of the single market for pensions, includes the coordination of social security schemes, the launch of pan-European pension funds and the regulation of occupational schemes. The second dimension is focused on the financial sustainability of pensions systems through the Stability and Growth Pact as well as macroeconomic and fiscal coordination. The third dimension entails the broader modernization of retirement systems using soft law mechanisms, such as the OMC, thereby focusing on the adequacy, sustainability and safety of pensions.

Since the 1990s, private funded pensions have become a fundamental component of the EU's programme (Natali, 2015). These have been linked to all the three dimensions mentioned above. In the words of EU decision-makers, "more private sector funded provision can help reduce explicit public finance liabilities", and "people need to be aware of possibilities for raising their level of retirement income through the build up of supplementary pensions and extra entitlements" (EPC-SPC-European Commission, 2010: 2–4). While the EU has invited the Member States to monitor the risks related to financial markets, it has also encouraged the build-up of supplementary entitlements through private pension funds (European Commission, 2012).

As was stated in the Introduction, the coherence of the guidelines included in the EU pension programme is far from taken for granted. By contrast, its multi-dimensionality is based on complex balances between the different priorities. As Bekker (2014a) stresses with reference to the EU economic governance, such complex architecture can either generate complementary effects, or at times, coordination mechanisms may work at cross-purposes, thereby pursuing contradictory goals, especially in the context of changing socioeconomic circumstances.

This has indeed been the case since the eruption of the financial crisis in 2008. Fiscal sustainability has become the key priority for the EU, with important consequences for the

spread of supplementary pension funds. The budgetary costs of privatization have led policymakers to reconsider their strategies regarding the role of supplementary pension funds.

At the European level, a shift in the instruments employed to pursue the three goals delineated above has taken place (Table 1). For instance, the EU has increasingly proposed prolonging working life as a decisive strategy to improve the sustainability of the public pension pillar. Instead of pursuing direct cutbacks to public benefits, the raising of the legal and effective retirement age simultaneously promotes sustainable and adequate pensions. In sum, the EU pension programme has in the last decades undergone a revision of the balance between different priorities and instruments, thereby increasing the risks of contradictions.

2. The EU pension programme up to the Great Recession (the 1990s–2008)

The present section shows that, before the Great Recession, the three dimensions of the EU pension programme (market integration, fiscal discipline and modernization) were balanced. The need for fiscal sustainability meant cost-containment for public pension schemes. In turn this was consistent with the spread of pension funds, in line with the growing role of the pension market and its contribution to economic growth. Both points were complementary with the modernization of pensions programmes.

2.1 Completion of the pensions market

The first line of EU action has to do with the completion of the internal market, which entails the two fundamental freedoms, to labour mobility and to the provision of (financial) services, both relevant for supplementary private pensions.

The heterogeneity of private occupational and individual pension schemes across the EU, their complexity and political salience implied that the European institutions were subject to pressures by the Member States, European agencies, and individual stakeholders with diverging interests. The Commission's approach in dealing with the thorny issue was very cautious (it produced various Green Papers and consulted thousands of stakeholders) and incremental with respect to the substance, thereby leading to the legislation of a fragmented array of coordination, safeguard and prudential rules (Haverland, 2007; Hennessy, 2013; Mabbett, 2009; Oliver, 2009).

The main reason for the approach being incremental was the existence of a regulatory gap affecting migrant workers' non-statutory occupational pensions. Since 1957, the Commission has acknowledged that ensuring the freedom of movement of workers requires active, positive integration measures, such as the coordination of social security rights. However, the so-called Coordination Regulations were designed for the six founding Member States. Of these only the Netherlands started developing supplementary pension plans as early as 1949 (Guardiancich, 2015). The legal basis of the Regulations (Article 51 EEC, later Article 42 EC and Article 48 TFEU, which invites European institutions to remove social security obstacles to labour mobility) considers only statutory arrangements (ILO, 1990, 2–3). This interpretation was not univocal at the beginning. In Vaassen Göbbels (1965), the Court of Justice of the EU (CJEU) extended the scope of coordination to "contractual agreements concluded by employers to implement a legal obligation to set up a sickness insurance scheme

for their employees". However, owing to the potential conflicts arising from private arrangements considered as part of social security, the EU legislator rejected the extension. The CJEU was brought into line in Commission v. France by stating that non-statutory mandatory schemes are not automatically covered (Baugniet, 2014: 170–2). Such approach fostered a regulatory gap that lasted 40 years and whose effect was the lower legal protection of supplementary pension rights for migrant workers.

The reason for legislative fragmentation is that the Commission took a holistic, dual approach (social and economic) to deal with pensions and the internal markets for labour and financial services. The social worker-oriented approach generated the Coordination Regulations, the Safeguard Directive and the Supplementary Pension Rights Directive. The economic internal-market approach resulted in the IORP Directive and the recent effort to amend it (Baugniet, 2014: 217–18). The differences are not only reflected in the legal bases and substance but also in the initiators of legislation, respectively, DG Employment and DG Internal market, thereby neatly indicating that the Commission is not a unitary actor, especially in the field of pensions.

2.2 The coordination regulations

The EU coordination regime is "the most advanced (and complex) multilateral system worldwide of legal provisions on the portability of social security benefits for migrants" (Holzmann et al., 2005: 7), thereby encouraging labour mobility. The subsidiarity principle is respected as Members States are free to determine the details of their social security systems. Five principles guide the Regulations (ILO, 2010: 2). First, only one legislation is applicable; hence, all economically active and non-active persons are subject to the legislation of the Member State in which they work or reside (*lex loci laboris aut domicilii*). Second, equal treatment implies that persons to whom the Regulation applies enjoy the same benefits and have the same obligations in a Member State as its citizens. Third, the aggregation of periods applies where national legislation requires the completion of a certain period of insurance, employment, self-employment, or residence for one to be entitled to various benefits, thereby guaranteeing a unified career (every day counts) to mobile workers. Fourth, exportability means that social security benefits are paid throughout the EU and prohibits Member States from reserving benefits to residents only. Finally, the principle of good administration refers to the obligation of the institutions of Member States to cooperate, provide mutual assistance, and exchange data for the benefit of citizens.

As mentioned above, the main limitation of the Coordination regulations is their material scope limited to statutory schemes, which creates a regulatory gap by excluding the bulk of supplementary pension plans (i.e. collective agreements among the social partners, collective contracts with employers, individual contracts with financial providers). The only exceptions are schemes recognized as obligatory by the public authorities, to date applied only to the French pension schemes ARRCO and AGIRC.

2.2.1 The safeguard directive

The first attempt at improving the security of supplementary pension schemes was Directive 98/49/EC, whose material scope encompasses most occupational pension plans. Even though the Directive's recitals state that "the social protection of workers is ensured by statutory social security schemes complemented by supplementary social security schemes", this did

not translate in more than minimal levels of protection to mobile workers (Baugniet, 2014: 242). The gap between rhetoric and substance lasted at least until the adoption of the Supplementary Pension Rights Directive in 2014.

Despite the Safeguard's legal base being Article 42 EC (Article 48 TFEU), the aggregation principle is applied only to posted workers, who remain insured in the original scheme during the period of their posting to another Member State. Both the posted worker and the employer are exempted from paying contributions in the host Member State. The workers, instead, who move to another Member State enjoy equal treatment vis-à-vis workers who remain within the same Member State but for whom contributions are no longer being made into the scheme, with regard to the preservation of supplementary pension rights and to information requirements only (Kalogeropoulou, 2006: 103). Exportability is guaranteed, in that pension schemes have to make payments in other Member States of all benefits due to workers, net of any taxes and transaction charges that may be applicable.

2.2.2 The IORP directive

The Institutions for Occupational Retirement Provision (IORP) Directive has an impact on supplementary pension portability, but it essentially deals with financial services rather than with the social and welfare aspects of pensions. In fact, its legal base is Article 47(2) EC concerning the activities of self-employed persons, Article 55 EC on the provision of cross-border services and Article 95(1) EC on the approximation of laws in the establishment and functioning of the internal market.

In essence, the IORP Directive is a rather comprehensive prudential framework for occupational pension funds across the EU. It is designed to elevate European pension funds to a minimum standard regarding three main dimensions:

i. *Investment requirements.* IORPs have to ensure the adequate coverage of pension commitments through the application of the Prudent Person Principle (PPP) and quantitative limits regarding self-investment.

ii. *Governance requirements.* IORPs are obliged to possess professionally qualified governing bodies, sound administrative procedures and adequate internal control mechanisms to ensure that they are fit to carry out their day-to-day operations.

iii. *Information requirements.* IORPs manage two information streams: they provide statements to members and beneficiaries and have reporting duties to supervisory authorities. The main thrust of the Directive is that funds have to be transparent towards plan members by clearly communicating the target level of benefits, risk exposure and investment management costs.

In addition to the prudential dimension, the Directive also foresees the *de facto creation* of a single market for occupational pensions by establishing the freedom for authorized pension funds to provide cross-border services in the EU. The Directive imposes two reciprocal obligations to Member States: to allow employers to sponsor IORPs located in other Member States; and to allow IORPs to accept sponsorship from employers from other Member States. It introduces mutual recognition based on minimum common prudential rules and simplifies compliance with financial service issues, as there is only one regulator per transnational fund. Moreover, it prescribes an authorization procedure for cross-border provision and regulates

continuing supervision. In sum, the IORP Directive aims to create a single market of competing providers that follow detailed prudential rules and are subject to supervision, thereby opening up a potentially massive space for the Europeanization of second pillar old-age protection (Guardiancich, 2011).

Yet, scholars are rather sceptical regarding the Directive's potential, and this has been partly borne out in practice, as the market for cross-border IORPs is still in its infancy despite a decade of experimentation. Whereas Haverland (2007: 899) argues that "[t]he European pension fund directive will lead neither to a full liberalization of pension markets, nor to the establishment of a European social policy regime", Hennessy (2013: 73) warns that "it is unlikely that there will be an upsurge in cross-border pension portability anytime soon". The authors decry the persistence of technical obstacles that prevent the liberalization of pan-European occupational pensions and the omission of several social policy elements, which are the essence of the protection against longevity risk. They attribute both lacunae to the compromises aimed at preserving different European pension traditions.

All in all, the EU promoted the development of supplementary pensions through legislation on the portability of pension rights and the more effective regulation of pension funds, with the first attempt at a true pan-European pension market.

2.3 Financial sustainability and social adequacy of pensions

The second line of the EU pension programme is about the need to improve the long-term financial sustainability of public pensions: policymakers are asked to review the pension promise in view of what the economy can support. The EU encourages policy measures, such as more limited benefit indexation, a stricter link between payroll taxes and benefits, and the increased retirement age, in that they help containing public spending. The EU coordination of budgetary policy has been particularly keen to promote these measures.

The European fiscal framework was designed in 1991 and then included in the Maastricht Treaty, which entered into force two years later. To safeguard the sustainability of public finances following the introduction of the euro, the European Council of Amsterdam of 1997 then adopted the Stability and Growth Pact (SGP) (Diebalek et al., 2006). The SGP was eventually reformed in 2005 and 2010. The Maastricht Treaty consisted of a preventative arm focusing on multilateral surveillance and the avoidance of excessive deficits, and a dissuasive arm tackling excessive deficits once they arise (Coeuré and Pisani-Ferry, 2005).

While the SGP did not concern pensions policy, it represented a source of indirect pressure on pension institutions. It establishes binding and quantitative policy objectives (the 3% of public deficit/GDP threshold), while governments were free to choose their own paths for convergence. Co-ordination was thus established through benchmarking, peer pressure and the structured process of multi-level surveillance. In case of non-compliance, sanctions are (or should be) activated.

Concerning pensions directly, the Council for Economic and Financial Affairs (Ecofin) and related technical committees explicitly monitored the long-term sustainability of retirement programmes (Pochet and Natali, 2005). In 1997 the Council of Ministers of Economic and Financial Policy (Ecofin) and its technical bodies (the Economic Policy Committee, EPC) addressed pension reforms. The principal recommendation was to contain benefits, as the

main instrument for guaranteeing the solvency of public schemes. The EPC first recommended delaying the age of retirement. A second recommendation was to move away from a solidarity-based system to a pension system based on individual contributions. A third recommendation was to gradually increase the role of funded schemes (Natali, 2008).

The first version of the SGP was widely criticized (see Begg and Schelkle, 2004). For some, the lack of any reference to structural reforms, especially those related to social policies (those more affected by negative demographic trends), represented a crucial limitation (Beetsma and Oksanen, 2007: 12). In March 2005, the European Council agreed on fundamental changes to the SGP that were consistent with a more flexible approach to sound fiscal policy. The revised Pact dedicated much attention to structural reforms to be adopted in order to enhance the "growth-oriented nature of the Pact" (Angelaki and Natali, 2010).

Particular attention was thus paid to pension innovations introducing multi-pillar systems that include a mandatory, fully-funded pillar. In line with a more flexible understanding of stability, such reforms were favoured because of the consequent improvement in the long-term equilibrium of the public budget and the increase in potential economic growth. The Council agreed that an excessive deficit reflecting the adoption of pension reforms, owing to the so-called dual payment problem, should be carefully considered. In other words, the Commission and the Council were asked to assess the development of budgetary policies while considering the net cost of the pension reform for the initial five years of its implementation (Beetsma and Oksanen, 2007).

2.4 Safeguarding pensions adequacy through modernization

The third line is focused on the need to provide adequate protection for the elderly. This has been consistent with providing pension benefits to protect those in need and to pursue consumption smoothing (similar income levels before and after retirement). This more "social" guideline has been at the core of the Open Method of Coordination (OMC) on pensions. Active ageing and the need for raising employment rates and productivity is another key issue at stake: governments should promote opportunities for people to work more and longer, making pension and employment policy mutual supportive.

The coordination of pension reforms through the Open Method of Co-ordination (OMC) is a direct and soft(er) version of integration. It does not include any sanctions except moral pressure. Qualitative common objectives are set and Member States freely decide to pursue them. In other words, while providing policy players with a relatively clear agenda, it leaves ample room for national contextualization. Benchmarking is aimed at measuring national performance and progress. Peer review and political monitoring are part of an iterative process for joint evaluation. Compared to the SGP, it is a much weaker form of governance (Lodge, 2007: 346). It is a flexible instrument seeking to harmonize ideas and knowledge rather than institutions or legislation.

The Stockholm Council in 2001 officially launched the OMC on pensions on a three-year basis. The process involved defining some major policy guidelines, then adopting a more precise set of policy objectives, adopting National Strategy Reports by the member states, and the Joint Report on safe and sustainable pensions by the Commission and the Council. After this first cycle of policymaking, a new phase started, and a new round of national reports was implemented in July 2005.

The formulation of common objectives aimed to achieve greater policy convergence between EU Member States in line with both economic and social goals. Eleven objectives for pension reform were agreed, around three pillars: social adequacy, financial sustainability and modernization (e.g. responding to changing socio-economic needs). After the first years of implementation, in 2003 the Commission proposed streamlining the work on social inclusion and pensions together with the planned work on health and long-term care to form an integrated process. The aim was twofold: to create a stronger process and to integrate better with the Lisbon process, in particular the Broad Economic Policy Guidelines (BEPGs) and the European Employment Strategy (Natali, 2008). The Commission proposed a structure for reporting and evaluation across the three fields and a timetable synchronized with the renewed Lisbon Strategy. The final element, that is, the adoption of new common objectives for the three strands, was implemented from 2006 onwards. The Council's Conclusions of October 2003 agreed to streamline the co-ordination of social inclusion and social protection.

In 2005, the Commission proposed the following common objectives (subsequently accepted by the Council) for a streamlined OMC on social protection and social inclusion (including pensions, health and long-term care, and anti-poverty policies). The primary concern was to promote good policymaking for a high level of social protection and social cohesion, while ensuring good interaction with the revised Lisbon priorities of growth and employment and with the need to bridge the implementation gap identified in the review of Lisbon. Such broad objectives were then followed by more precise goals referring to each policy area: social inclusion, pensions and health and long-term care.

In the case of pensions, the three key objectives were refined as follows: to guarantee adequate retirement incomes for all and access to pensions which allow people to maintain, to a reasonable degree, their living standard after retirement; to ensure the financial sustainability of public and private pension schemes, notably by supporting longer working lives and active ageing; ensuring an appropriate and fair balance of contributions and benefits, and promoting the affordability and ensuring the security of funded and private schemes; to ensure that pension systems are transparent, well adapted to the needs and aspirations of women and men and the requirements of modern societies, demographic ageing and structural change; and to ensure that people receive the information they need to plan their retirement and that reforms are conducted on the basis of the broadest possible consensus (Natali, 2012a).

Analysts have stressed the fact that the streamlined coordination of social policies has not delivered. The new simplified architecture needed a specific toolkit for a mutual reinforcing of the economic and employment dimension on the one hand and social policies on the other. "Feeding in" and "feeding out" instruments – aimed at improving coordination between the different parts of the coordination process – should have been provided to reinforce the link, but they were in fact weak (Zeitlin, 2010). The whole social coordination process was characterized by the lack of official policy targets, no formal guidelines for the national reporting activity and no formal recommendations. These developments highlight the gradual reduction in the visibility of the OMC in the framework of European socio-economic strategies (Barcevicius et al., 2014).

3. The EU pension programme in the shadow of the economic and financial crisis, 2009–14

After the beginning of the crisis, the instruments devised by the EU to pursue its pension programme have partly changed. With respect to the internal pension market, this has been framed by the Green Paper on Pensions (European Commission, 2010) as a problem of removing obstacles both to labour and capital mobility within the EU. Hence, the drive towards its completion has more or less continued unabated.

These legislative interventions have an ambivalent effect on the pension mix. On the one hand, the new laws reinforce the responsibility and accountability of pension funds towards members, beneficiaries and national regulators. On the other hand, the Directives impose costs on providers and sponsors, who may either reduce the supply of supplementary pensions (unlikely) or hedge themselves against the risks entailed, for example by shifting from defined-benefit to defined-contribution designs (much more probable).

What has instead changed profoundly is the balance between sustainability and adequacy. As a consequence of the crisis, demographic ageing is perceived as even more challenging than before. Hence, the fiscal side of pensions has been prioritized at the expense of their adequacy and modernization. Even though some of the instruments to achieve the long-term sustainability of old-age retirement simultaneously improve the adequacy of future benefits (in particular, the promotion of longer working lives and, complementarily, of the employability of older workers), this shift has an unambiguous effect on complementary pensions. These are systematically undermined through a number of mechanisms embedded in the European Semester process.

Hence, it is rather straightforward to state that the EU pension programme in the post-crisis period includes instruments that potentially work at cross-purposes, and that they might need a recalibration in the future.

4. Further completion of the EU pension market

2.

4.1 The Supplementary Pension Rights Directive

After nine years of negotiations, the Supplementary Pension Rights Directive saw the light in April 2014, thereby at least partly closing the regulatory gap that afforded much lower protection to mobile workers relying on non-statutory (occupational) pensions vis-à-vis statutory ones. Several reasons underscored the impossibility of finding an agreement among Member States in the Council, and all can be traced back to the heterogeneity of supplementary pension arrangements across the EU. The new Directive is framed in terms of removing the obstacles to the exercise of free movement of workers and strives to set minimum common requirements for occupational pension acquisition, preservation and information. To cut a long story short, the pensions lobby was fiercely opposing the Directive by appealing to the subsidiarity principle, stating both that the details of social security are outside the EU's competence and that more favourable conditions for workers may force employers to close down several occupational pension schemes, owing to increased costs. At a substantive level, vesting periods were the bone of contention, owing to profound disagreement, especially with German employers, as to whether occupational pensions represent loyalty benefits or instruments of social protection (Baugniet, 2014: 250; Guardiancich, 2016).

The breakthrough happened in early 2013 through a series of *escamotages*. The Lisbon Treaty entered into force, thereby changing the voting requirement of Article 48 TFEU (the Directive's original legal base) from unanimity to Qualified Majority Voting (QMV). Notwithstanding this, Article 48 presupposes the application of the aggregation principle to occupational schemes and this is deemed extremely impractical by the Commission, which should not interfere with their functioning owing to subsidiarity. Hence, the basis was ultimately changed to Article 46 TFEU. On the free movement of workers (also requiring QMV), which implied a change in the geographical scope of the Directive from all to cross-border movements only.**[?]** The dual presence of QMV and restrictions in scope meant than the Member States could neither appeal to subsidiarity any longer nor effectively arrange blocking minorities. The issue then became to find a suitable compromise to get the reluctant Member States (Austria, Germany, Luxembourg) voluntarily on board.

In addition to excluding the usual suspects (closed plans, insolvency schemes, individual pension arrangements outside an employment contract, rules on invalidity and survivorship, etc.) two major novelties are present in the Directive: (i) it is not retroactive, meaning that it applies only to periods of employment falling after its implementation; (ii) it applies only to workers moving between Member States, thereby excluding the majority of shifts in employment, which happen within single countries. These appease both Germany, that feared retroactivity, and those Member States (Ireland, the Netherlands, the UK) that are supplementary pensions veterans and that deem internal portability to be a national affair. With respect to acquisition, the new draft is relatively bold. It prescribes a combined waiting plus vesting period of up to three years and a minimum vesting age of 21. Reimbursement rules have been only marginally changed: in DC schemes the outgoing worker is now entitled either to the investment value or to the sum of her contributions. The rules regarding preservation have stayed basically unchanged since 2007. Only, Member States have to determine a minimum threshold under which low-value vested rights may be reimbursed to the outgoing worker to avoid excessive administrative costs.

Despite the many attempts at watering down, the Directive improves the rights of pension fund members and beneficiaries. Even though the costs that will have to be borne by sponsors for its adoption may sometimes be substantial (see e.g. Rößler, 2015 for Germany), it is unlikely that it will have a negative impact on overall coverage.

4.1.1 IORP II

In March 2014, the Commission proposed a revision of the IORP Directive, which is now being negotiated at the trialogues, both the Council and the Parliament (rapporteur Brian Hayes, EPP) having produced their positions. The IORP II Directive has been widely criticized for its excessive regulatory requirements and prescriptive nature (Eatock, 2015). It was therefore considerably softened during the search for a compromise. Additionally, the first proposal included a fifth objective of introducing a harmonized solvency standard for IORPs, the so-called Solvency II, a standard developed for insurance companies and deemed to be too prescriptive, especially to DB pension funds. The shelving of this pillar of the Directive at the behest of five opposing Member States (Belgium, Germany, Ireland, the Netherlands and the UK) cleared the path for the future adoption of both IORP II and the Supplementary Pension Rights Directive (see below) (Guardiancich, 2016).

The four current aims are as follows. The first objective is to ensure the soundness of occupational pensions and better protect pension scheme members and beneficiaries, by

means of: new governance requirements on key functions (risk management, internal audit and so on); new provisions on remuneration policy, conflicts of interest, etc.; self-assessment of the risk-management system (through a Risk Evaluation for Pensions, now called Own Risk Assessment); a requirement to use a depositary (an entity in charge of the safe-keeping of beneficiaries' assets); and enhanced powers for supervisors, including on stress testing. Both the governance requirements have been relaxed (administrators have to be collectively deemed fit and proper, and individually only if they sit in key functions), and the Own Risk Assessment has been simplified.

The second objective is to better inform pension-scheme members by introducing a standardized Pension Benefit Statement (PBS) at EU level that provides clear information about their individual pension entitlements. The rapporteur has considerably reduced the prescriptive burden of the informational part.

The third objective is to remove obstacles for cross-border provision of services, by making it easier to operate a pension scheme subject to the social and labour law of another Member State and for fund assets to be transferred across Member States, notably by introducing a pension-fund transfer procedure. One of the key problems, as noted by the industry, was the requirement for DB schemes to be fully funded at all times. After various iterations this stipulation is no longer there. It is, however, questionable if this simplification by itself will drastically increase the appetite for cross-border solutions, given the costs and procedural difficulties in setting up pan-European funds.

Finally, the fourth objective was to encourage occupational pension funds to invest long-term in growth, environment and employment-enhancing economic activities, by modernizing investment rules to allow IORPs to invest in long-term financial assets, changing provisions on investment restrictions to make sure IORPs can invest in infrastructure, unrated loans.

Given, however, that the Directive is still being discussed, if its coming into being is not disputable any longer, its content may still be subject to significant changes. Its impact on the future pension mix is, hence, still unknowable as the Directive contains both elements that encourage the wider supply of complementary pensions and elements that reduce it.

5. A more unified coordination of financial sustainability and social adequacy

Over time, both economic and social policy coordination have changed. In the wake of the recent economic crisis in particular, SGP has been revised. New measures have been included in the so-called Six Pack, Two Pack and the Fiscal Compact to reinforce EU surveillance of member states and coercion in the case of non-compliance. As for more social coordination being concerned, in 2010 a new strategy Europe 2020 replaced the Lisbon Strategy. The former includes all the instruments for recalibrating social policy (de la Porte and Heins, 2014). Still, in 2010, the European Semester was developed in order to coordinate ex ante national budgetary, economic and social policies. As we will see below, pensions policy has been at the core of this monitoring exercise (Pochet and Degryse, 2013).

The strategy Europe 2020 now embeds the instruments for recalibrating social policy, in particular the EES. In the EU's revamped strategy to deliver "smart, sustainable and inclusive" growth, the aim of increasing labour market participation to 75 per cent by 2020

stands stronger than ever (Marlier and Natali with Van Damme, 2010). The link with the SGP is much closer as well, since Europe 2020 is integrated into the European Semester. Contrasting with the pre-crisis period, the European Semester now takes account of the whole economy via the Macroeconomic Imbalance Procedure (MIP), and not just budget deficits and public debt. This is because it became clear to European actors that taking account of budgetary discipline alone would not suffice for economic growth.

In 2010, the European Semester was developed in order to coordinate ex ante the budgetary and economic policies of Member States and to increase coherence among different policies. More specifically, EU-level discussions take place prior to the Member States drawing up their annual draft budgets and on a broader palette of policy areas (with accompanying indicators), including macroeconomic imbalances, financial sector issues, and structural reforms. The European Semester is launched by the European Commission (DG ECFIN) via an Annual Growth Survey (AGS) (Zeitlin and Vanhercke, 2014).

The 2011 AGS, for example, focused on fiscal consolidation, labour market reforms, and "growth enhancing measures" (Vanhercke, 2013). Following the AGS, Country-Specific Recommendations (CSRs) are presented to Member States on the basis of a DG ECFIN proposal that must be approved by Ecofin through QMV and is then to be endorsed by the European Council.

The Six Pack and the Fiscal Compact aim to reinforce the policy aims of the European Semester and to enhance EU surveillance of Member State policies and coercion in the case of non-compliance. Both initiatives provide the European institutions with more surveillance power vis-à-vis Member States' national budgets than in the pre-crisis period and are designed to reinforce the implementation of the SGP and the European Semester within which they are embedded.

5.1 The European semester and pensions

The first Annual Growth Survey (European Commission, 2011) set the train in motion regarding the fiscal consolidation measures to be adopted in order to increase the sustainability, but at the same time also the adequacy of national pension systems. The first AGS contained five key measures: (i) increase the retirement age and link it to life expectancy; (ii) reduce early retirement schemes, improve the employability of older workers and promote lifelong learning; (iii) support complementary private savings to enhance retirement incomes; (iv) avoid adopting pension-related measures that undermine the long-term sustainability and adequacy of public finances; (v) review, on behalf of the Commission, the IORP Directive and new measures in line with the 2010 Paper on Pensions (European Commission, 2010; Angelaki and Natali, 2010).

Hence, the European Semester espouses a three-pronged strategy, which is based on higher retirement age and restricted eligibility, labour markets for elderly workers and enhanced voluntary savings. In general, the Commission sees pension reforms not as a one-off event but as a continuous process, which applies to Member States in a differentiated manner, similar to the Lisbon process: where you are does not matter, but rather the distance that you have travelled. There are three considerations to be made regarding this strategy and its impact on the public–private pension mix in individual Member States.

First, in the context of generalized austerity that accompanied the first years of the European Semester it is hard to imagine that financial means to support voluntary pension savings could

be freed, especially when more spending and not savings are needed. After the first AGS, the issue of subsidizing or incentivizing supplementary pensions has been left off the table within the European Semester, but it is now partly back as the economic situation improves. Moreover, no amount of legislation aimed at completing the single market for occupational pensions is able to supplant well-developed national social dialogue. In fact, in those Member States where this is not the case, complementary pensions are vastly underdeveloped.

Second, the rules governing the Stability and Growth Pact, which became more rigid within the European Semester, have had a negative impact on the mandatory private pillars established throughout Central and Eastern Europe. Even though these were not genuine occupational pension schemes and were plagued by various inefficiencies (poor returns, low diversification, high fees), several countries have temporarily reduced contributions to private funds (Estonia, Hungary, Latvia, Lithuania, Poland, Romania and Slovakia), changed rules for membership (Bulgaria, Croatia, Hungary, Poland and Slovakia), or nationalized private assets outright (Hungary and Poland) in order to replenish public budgets (Naczyk and Domonkos, 2015; Guardiancich, 2013). EU institutions have tried to follow a stringent approach to pension reforms in line with the prioritization of fiscal consolidation. This is proved by the debate on the application of the SGP in the wake of the crisis. In August 2010, the Ministers of Finance of nine Member States (Poland, Bulgaria, the Czech Republic, Hungary, Latvia, Lithuania, Romania, Slovakia and Sweden), in a letter addressed to the Economic Affairs Commissioner and the President of the European Council, stressed that the coordination of national economic policies should take into account pension reforms. They demanded that the cost of pension reform be excluded from public debt and deficit figures, in order to avoid EU disciplinary actions. Commissioner Olli Rehn, in a letter to these countries, said that while the request was justified, it was not possible to accept it under the current accounting system (Hirose, 2011; Natali, 2015).

Third and finally, the explicit recommendation thought up by the European Commission to link the statutory retirement age to life expectancy, on the basis of the pioneering reforms in Denmark, is a measure that balances future pension stability with its adequacy. As there is no silver bullet, beneficiaries have to accept that they must save more, receive lower benefits or work for longer, thereby postponing retirement. Of the three, the latter option is the most palatable, provided that the labour markets are ready to move into uncharted territory. However, at the same time, a solution that increases the adequacy of public pensions necessarily crowds out private savings, thereby at least theoretically clashing with the other objective of the European Semester's recommendations.

For the modernization of pensions systems we refer to the increased emphasis on active ageing (again retirement age) and the actual focus on the interplay of labour market policies and retirement schemes. The White Paper *An Agenda for Adequate, Safe and Sustainable Pensions* was published by the Commission in January 2012. The White Paper was in line with the prominent focus on the EU's economic and financial objectives and the proposed austerity paradigm for Member States. Yet the document recognized the importance of fully activating the EU's labour potential: increasing employment rates, not only among older people, but also for the younger generation, women, migrants, and people with a low level of education. It then stressed that active ageing should be defined in terms of more and better jobs. The quality of employment, better working conditions, lifelong learning and more effective training are taken to be preconditions for extending working careers and increasing the retirement age (Natali, 2012a).

As regards the efficacy of the three-pronged European Semester strategy, the 2015 Ageing Report (European Commission, 2015: 61–4) shows that the combined effect of reduced benefits, lesser access to early retirement and higher statutory retirement ages implies that for the first time the overall projection for the EU and, partly, for the Eurozone is a reduction in average pension spending between 2013 and 2060. The peak is reached sometime around 2037, when expenditures start gradually declining (ibid., 74–5).

Hence, the recommended fiscal stability measures have undoubtedly borne fruit. This is unsurprising, in light of the fact that of the two main pillars on which the European Semester rests, the fiscal sustainability leg (SGP) is still much stronger than the social leg (Europe, 2020), and often prevails over it (Pochet and Degryse, 2013; Bekker, 2014b).

Still, there is no real legal basis for issuing Country Specific Recommendations (CSRs) based just on adequacy concerns, which are, however, a pressing issue in several countries. For example, in Latvia, overall old-age pension spending is bound to decline for an already low 7.7 per cent of GDP to 4.6 per cent by 2060, with severe repercussions on the poverty rates of pensioners. So far, most adequacy-related "recommendations" were contained in the more detailed Country Reports. De facto, however, the situation is slowly evolving.

There has been a shift, with the swearing in of the Juncker Commission regarding the overall number and detail of the recommendations, which now prioritize more general themes. If, as Clauwert (2015: 15) shows, the number of recommendations regarding pensions has only marginally abated throughout the years, the explicit mention of fiscal sustainability appears much less in recent CSRs that in the past, while the cohesion and comprehensiveness of Country Reports has increased. In addition, a change in course for 2016 and future years can be expected. The EPSCO Council, in fact, in October 2015 endorsed the conclusions of the Pension Adequacy Report (SPC and DG EMPL, 2015), which are worth quoting in full:

> The report on ageing states that, despite the very sharp increase in people aged 65 years or more, the average expenditure on pensions for the EU of 28 should not be higher in 2060 than it was in 2013. However, risks in terms of sustainability of public finances may result not only from the absence of reforms to reduce future expenditure but also from the converse situation, where reforms mean that an increasing number of older people do not receive an adequate income, i.e. an income which enables them to lead a decent life. It is therefore of the utmost importance to ensure that pension adequacy is monitored both from the point of view of constraints on public finances and from that of social objectives.

As a consequence of this ongoing shift, it may be expected that from a benefit adequacy and modernization point of view, the Commission will revert to more widespread recommendations for expanding the coverage and importance of supplementary schemes, as soon as interest rates in the Eurozone and the wider EU rise above the zero mark. (Also, some Member States outside of it are affected.)

6. Conclusion

The present chapter has aimed to shed light on the changing EU pension programme. While the EU has maintained the key principles at the core of its strategy in this policy field – namely, market integration through the spread of supplementary pension funds across the Member States, financial sustainability of pensions in line with fiscal discipline, and the modernization of pensions with the aim of safeguarding their adequacy – their internal coordination and implementation has changed in the last decades. The recent economic and financial crisis represented in many respects a turning point that led to a destabilization of the previous articulation of the EU's priorities and its toolkit.

As is shown above, while the completion of the pension market remained at the core of the EU agenda and has seen important progress, fiscal discipline has been further prioritized, especially in the first years of the application of the European Semester. This has consequently contributed to reducing policymakers' room for supporting pension privatization everywhere, especially in the eastern part of Europe. What is more, the emphasis on prolonging working life through increased pensionable age in order to square the circle between cost-containment and benefit adequacy has led to a potential greater role for public pensions in maintaining the income prospects of future pensioners. This could lead, at least in some countries, to a crowding-out effect for supplementary pension funds.

These developments do not imply that the privatization trend is going to be completely reversed. It is in fact to be expected that the growing concerns regarding future benefit adequacy will rekindle interest in the near future. Nevertheless, pension funds will probably be different from in the past; they will probably be voluntary rather than mandatory schemes, and with a different weight in the future pension mix.

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Queries on References

These references are not mentioned in the chapter-text. Please *either* delete them from the References, *or* mention them in the chapter-text: Gal 2011; Natali 2012b.

These items have different dates in the References from in the text. Please say which is the correct date: Hennessy 2013 in text = 2014 in Refs; de la Porte and Heins 2014 in text = 2015 in Refs.

Also: Coeuré and Pisani-Ferry in the text = Pisany-Ferri in the Refs : please say which spelling is correct.

Responses IG :

- Gal, 2011 to be deleted.

- (Natali, 2012a) on page 14, 3rd para., becomes (Natali, 2012b)

- the correct date for de la Porte and Heins is 2015

- Pisani-Ferry