

Scope of coordination system in the pension field

VC/2010/1536

Dalila Ghailani

Researcher, European social observatory

ghailani@ose.be

Administrative Commission for the Coordination of Social Security Systems

Brussels, 20th June 2013



www.ose.be

Outline

- ❑ The Project and its aims
- ❑ The EU legal framework
- ❑ Identified gaps
- ❑ Futures scenarii
- ❑ The White Paper 2012

I. The Project: aims and deliverables

The research questions:

- What is the current EU Framework on Pensions and its impact on the free movement of persons?
- How has this framework been affected by two decades of pension reforms at national level?
- What are the main gaps in EU legislation ?
- What is the most promising strategy to plug such gaps and to improve protection of pension rights ?

The deliverables:

- Review of EU legal framework and of the literature on Pension reforms
- Survey on ~~the~~ Scope of the coordination of Pension Systemsq
- Updating of the map of EU countries pension schemes (based on CEIOPS 2010)
- Synoptic table about future strategies to improve coordination and portability

II. From coordination to portability: the EU legal framework

The current EU legal framework

- Regulations 883/2004
- Directive 98/49
- Proposed Directive no. 570 of 2005

Lacunas and weaknesses

The role of the ECJ

The current legal framework

	Regulation 883/2004	Directive 98/49/EC	Portability Directive (Draft Proposal)
Obj.	To simplify and modernise Reg 1408/71	To protect members of supplementary pension schemes	To remove obstacles to the acquisition, preservation, and transferability of supplementary pensions
Material Scope	All legislation on old-age benefits In social security branches	Supplementary pensions	Supplementary pensions
Funding	PAYG and FF	FF, Book Reserves, PAYG	FF, Book Reserves, PAYG
Exclusion	Contractual provisions	Schemes covered by Reg 1408/71	Schemes covered by Reg 1408/71
Provisions	Aggregation of periods Pro-rata Prevention of benefits overlapping Exportability of pension rights	Equality of treatment Exportability Adequate information No transferability	Acquisition of supplementary pension rights Preservation of dormant rights Transferability of benefits (then removed) Adequate information

Lacunae and weaknesses in the relevant existing legislation

- ❑ Exclusion of non-statutory schemes from the material scope of Regulation 883/2004
- ❑ Lack of transferability of supplementary pension rights in Directive 98/49/EC
- ❑ Waiting and vesting periods: a lack of harmonisation
- ❑ Lack of fiscal coordination and the consequent limits to transferring pension rights
- ❑ Failure of the draft directive on portability: from an ambitious portability directive to a directive on minimum requirements

The role of the ECJ

- ❑ Regulation 1408/71 (current 883/2004): not applied to supplementary pensions: *Commission v/ France* (C-57/90); *Commission v/ Belgique* (C-275-83)
- ❑ But application of art. 39 & 42 EC (now 45 et 48 TFEU): *Commission v/ France* (C-35/97), *Serher* (C-302/98)
- ❑ 10th March 2011, *Casteels v/British Airways* (C-379/09) : an opportunity to re-launch the debate on supplementary pensions!

III Some future scenarii

- ❑ Recalibration of Regulation 883/2004: new demarcation line
- ❑ Voluntary declarations to extend application of regulation
- ❑ Extension of the material scope of regulation 883/2004
- ❑ New Portability Directive
 - Re-emergence of Draft Directive : *Casteels vs. British Airways*), ART. 45-48 TFEU
 - Lisbon Treaty: from unanimity to majority
- ❑ Change in the scope of IORP Directive

IV. The White Paper on Pensions

- Focus on supplementary pensions

- Legislative proposals:

- extension of material scope of reg. 883/2004

- revision of IORP Directive

- new « portability directive » proposal !

Thank you for your attention!

For further information, see the report
« Scope of the coordination system in the
pension field »

http://www.ose.be/FR/projets/reseaux_eur_oopens.htm