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Life insurance in relation to pensions both state and private

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LIFE INSURANCE IN RELATION TO PENSIONS BOTH STATE AND PRIVATE

General Report

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A. INTRODUCTION

1. Importance of the theme

1. By retaining "life insurance in relation to pensions both state and private" as one of the subjects of its IXth World Congress, AIDA has selected a theme which counts among the most important contemporary issues in many countries of the world, at least in industrialized societies[1]. As the Korean report explains, aging was not considered a problem when the country was still at an agricultural, family-oriented stage. It has become a serious financial issue in all

[1] This is not the first initiative of AIDA in the field of pensions. During the VIth World Congress of the Association, held in London in 1982, a Working Group on Pensions was created under the presidency of Professor Leo Mok of the Netherlands. This Working group has been especially active, organizing several conferences, and publishing an impressive *International Handbook on Pensions Law*, in cooperation with the British Association of Pension Lawyers (Graham and Trotman, London, 1989, 705 pp.). The Working Group was later presided by Prof. van Huizen, and now by Mr. de Lange (who wrote the Dutch report for this IXth AIDA Congress).

countries where older people are often left to live by themselves or in retirement homes, and cannot rely any more on much solidarity from their relatives.

When they reach the age of retirement, people must face the disappearance of their salary or professional income, and thus the problem of their own financial survival, as well as that of their dependents.

In some cases the problem presents no acuity as the retiring person possesses other financial resources than the lost salary, which may be sufficient for its needs. That is however far from being a common situation, and even in that case, an important loss of income will be experienced.

2. Pensions intend to replace, at least partly, the lost income. An important concept, in this respect, is that of "replacement ratio", the percentage of income during active life that the pension represents. It can be accepted that there will be a certain decrease of income after retirement, but a significant percentage of the earlier gains should be kept if one wants to keep a similar standard of living. Figures about effective or desired replacement ratios are hard to establish, and also to compare. One has to know whether figures are calculated on the basis of gross or net income (the latter method gives a more appropriate piece of information), and which is the precise basis for comparison (usually an average salary calculated on the last few years before retirement). One must also realize that the same replacement percentage does not have the same meaning for people of different wage levels. Also, a comparison of replacement ratios can be misleading is one does not also consider other factors that contribute to a standard of living, such as the availability of free medical care (see the Danish report), free public transportation for the elderly (as in Ireland) or the level of owner-occupied housing (see the Australian report).

Due to those difficulties, this report will never attempt to quote replacement rations given by some national reports. Such data should be examined in their own respective contexts.

3. Retirement benefits come from three main sources, now traditionally designated as the "three pillars" - to which a "forth pillar" is sometimes added.

The first pillar is provided by the State. Many countries have set up a more or less developed system of Social Security, which provides State protection against different risks, including old age. After retirement, people who benefit from the system receive a State pension which will partly replace the lost income.

The other pillars provide additional resources to fill part of the gap between the State pension and the lost income. The second pillar consists in pension plans organized by enterprises or professional associations to the benefit of their retired employees or members. The third pillar is built individually by the person concerned, who can save or take some insurance coverage to supplement the resources it will get from the two preceding sources.

A fourth pillar is sometimes mentioned. It refers to the possibility to keep some paid activity after retirement.

4. The "three pillar" concept seems to have originated in Switzerland, where the system has even been inscribed in the Constitution after a popular *"votation"* which took place in 1972. The Dutch report suggests another presentation, that of a building with several floors. The ground floor is made of public pensions. It is obligatory. The first floor above it, more or less obligatory, consists in supplementary pension schemes organized by companies. Still above, individuals may build an extra-floor with their private additional pension arrangements.

5. Categorization is not always easy. In some countries like France, social security is complemented by compulsory retirement schemes applicable to employees, which are difficult to characterize as first or second pillar systems. They are compulsory and organized at the national level, like the first pillar, but they only concern employees, and the State plays no part in their financing, which would tend to considering them as part of the second pillar - the approach retained by the French national report. A similar situation is described in Denmark, about the supplementary labor market pension. Another problem of classification appears about some forms of group insurance, which the U.K. report considers as *"personal pension provisions on a group basis"* belonging to the third pillar, and not to the second; a similar presentation appears in the Danish report. Also, some national reports fail to distinguish between second and third pillars in their description of existing schemes, which sometimes causes problems of interpretation.

The discussions are not purely academic. The classification of a pension scheme into one pillar or another may determine or exclude the application of a special taxation treatment, or of some mandatory rules, e.g. in European community law.

6. This three-pillar system is currently the center of very vivid debates in many parts of the world. The main issue is that due to the demographic evolution, the State pension systems in many countries seem to be heading towards insolvency in a rather near future, unless contributions to it are sharply increased and/or benefits sharply diminished - two socially and politically unpleasant prospects. In order to keep pensions at a satisfactory level, more and more attention is given to the second and third pillars, which could alleviate the decline of State pensions, and should thus be encouraged.

This is where life insurance comes to play an important part. Social Security rests on solidarity, i.e. some mutualization of the risks, but it is not insurance : among other factors, it is not based on contractual arrangements. On the contrary, life insurance occupies a significant position in second and third pillar formulas. This demonstrates the importance of the theme of our general report, while putting it into perspective.

2. Difficulties and limits of general report

7. The difficulties of the task of general reporters are well known. National reports come from many countries, and their answers to the questionnaire are sometimes difficult to compare - local situations can be very different, and the questionnaire can never be perfectly adequate for all countries. Also, some national reports are very detailed, others more laconic. Many AIDA sections could not send a report (and many countries do not have AIDA sections), which is detrimental to achieving a really global view of the subject. Some reports came very late, when this general report was almost completed.

8. The general reporters, however, feel very privileged to have received twenty national reports of excellent quality, whatever has just been said about their diversity of presentation. We want to thank the following AIDA sections for their contributions : Argentina, Australia, Belgium, Brazil, the Czech Republic, Denmark, El Salvador, Finland, France, Germany, Hungary, Italy, Japan, Korea, Morocco, the Netherlands, Norway, Switzerland, the United Kingdom and the United States. Together, these twenty reports provide an exceptional source of documentation on the theme of life insurance in relation to pensions in many important parts of the world.

9. During the preparation of this Congress the idea came up of having separate reports on the developments of European Union law concerning both themes. This plan could not materialize, which is unfortunate due to the interest and importance of some of these developments, certainly about the theme of the present report. We shall try to make up for this gap by stressing the European aspects of

different questions. Several national reporters have of course mentioned them.

10. What could be done about preparing a general presentation of the contents of those contributions ? We could have attempted to sum up, in an organized way, all the information contained in the national reports. This will not be our method. The subject matter of pensions is extremely technical, and a detailed compilation of all the information submitted by the various countries would have been rather tedious. This approach would also have been made difficult by the diversity in the degree of elaboration of the various national reports.

Another important aspect is that the problem of pensions is undergoing constant reforms in most countries; many national reports, received some time before the Congress, have announced that updating will certainly be necessary, a situation that makes a detailed synthesis even more difficult. A special case is that of formerly Socialist countries of Central Europe, where the system of pensions is under total reorganization as well as all aspects of the economic and social life; the Czech and Hungarian reports describe a transitional situation that cannot be compared to other countries having submitted reports, even though some indications are given about reforms under consideration - perhaps some developments will be announced at the Congress.

Under those conditions, we felt it more adequate, and hopefully more interesting, not to attempt to give a full description of each of the systems concerned, but instead to submit a broader presentation of the main issues involved. National reports will of course be regularly referred to, as examples of the different solutions described, especially when they contain original developments on some aspects. This general report, however, will in no way be a susbtitute for the wealth of information contained in the national reports themselves.

11. There are problems of definitions. The subject is pensions, but what are "pensions" ? The Dutch report deals extensively with that

question, which has been at the center of very thorough scientific discussions in the Netherlands. The practical aspects are evident, as "pensions" are subject to specific legal rules in several respects : pension protection against creditors, pension division after divorce, transfer of pension rights when an employee changes company, equal treatment of men and women in respect to pension rights, tax favors for pension contributions or benefits. Tax law ususally defines its scope with great detail, but it is often less evident to formulate a private law definition of the word '"pension". The concept cannot cover all forms of provisions made for the future (such as savings, investments, etc...).

The Dutch report examines the views of several authors, and concludes that there is a pension in the private law sense *"in the situation where a pension sponsor has a socially justifiable provision-related relationship with a pension recipient. The need to make provision is brought by the realisation of a pension risk, and the resulting obligation to make subsistence provision takes the form of making periodic payments or causing periodic payments to be made"*. This definition certainly expresses an interesting position, but it is debatable whether it can provifde a world-wide standard, as situations are so diversified.

12. Also, international comparisons call for statistical figures, and unhappily, the available statistics are often unreliable, and certainly impossible to compare with scientific accuracy. Accounting rules vary from country to country, as well as the definitions of the different relevant concepts.

13. Another aspect to consider is that the subject of pensions is far from being a purely legal question; it is also, and mainly, a social, economic and political matter. To consider it from a purely legal point of view would be an unduly restrictive approach. The questionnaire and the national reports did not fail to put the subject in the broad perspective it deserves. This general report will follow the same approach. However, for a presentation at a World Congress of AIDA,

we shall devote some special attention to certain legal problems, especially in the last part of our presentation.

B. THE FOUR PILLARS

1. First pillar : State pensions

Introduction

14. The idea that the State should intervene to provide financial help to citizens in need appeared during the Industrial Revolution, in consideration of the hardships and economic insecurity of the conditions of life of the new class of wage-earners working in industrialized urban environments. In Germany, Chancellor Otto von Bismarck established the first social insurance programs in 1883-84, including old-age insurance in 1889. Such initiatives gradually spread to other countries, mainly after the crisis of 1929. Keynes and his disciples contributed to a large extent to the idea of a "Welfare State'", that would provide "cradle-to-grave security" to its citizens.

Several models of "welfare State" developped, such as the so-called "Bismarck model" (also called "contributive model"), where social coverage rests on a compulsory form of insurance connected with the exercice of an economic activity, and the so-called "Beveridge model" (also called "distributive model"), consisting in a broader solidarity benefiting all citizens. In the former model, based on professional allegiance, employees are entitled to a pension to be financed by joined contributions of themselves and their employers, often complemented by an additional subsidy from the State. In the Beveridge model, on the other hand, a pension is provided to all citizens of a certain age, irrespective of their having been employed, and it is financed by the State budget.

It will be seen that both models are now often combined, in various proportions, with pension schemes covering the whole population irrespective of earlier involvement in economic activity, and other schemes linked to previous employment of the beneficiary.

15. Social security covers other risks than old-age financial needs, such as sickness, invalidity and unemployment. In accordance with the theme of this Congress, this report will only cover old-age financial needs, i.e. pensions for the retired (and their surviving relatives, although this aspect will hardly be covered in this general presentation).

16. The "first pillar" of pensions is thus constituted by Social security. Systems are of course very different from country to country, depending on the degree of economic development, and on the respective histories of social relations. Social security is non-existent, less developed or less efficient in some parts of the world. Several national reports (such as Brazil, El Salvador, Korea and Morocco) point out that some segments of the population do not have Social Security coverage (only 13 % of the active population is covered in El Salvador). Where Social Security is better organized, it is more or less generous (the Australian report, for instance, admits that the public retirement system is not in line with that of comparable countries), and the schemes of organization vary considerably.

Description

17. The following outline of the main features of first pillar systems is essentially based on the information contained in the national reports. It will be brief, as it is not the central subject matter of this report; we shall abstain from entering into description of some special regimes existing in many countries, for instance for public servants. Second and third pillar systems cannot however be understood without some knowledge of the first pillar pensions they complement.

18. In some countries, the State provides a basic national pension to all its citizens of a certain age, irrespective of their previous involvement in an economic activity (the "Beveridge model"). This model was prefigured by the system set up in the United Kingdom as early as 1908, when a budget-financed pension was granted to people over 70, in case of need.

Nowadays, in Denmark, everybody is entitled to the national pension, *"when attaining the age of 67, regardless of income and wealth and previous attachment to the labour market"*. In Finland, each citizen is guaranteed a minimum pension coverage for old age and disability. Norway also provides almost everyone with a basic pension. In Japan too, a basic national pension covers all citizens having reached the age of 65, regardless of sex and occupation.

19. Beveridge-style national pensions, however, stand rarely alone. In the United Kingdom, the *"State earnings related pension scheme"* (SERPS) comes above the basic State pension. SERPS is payable by the State *"in respect of earnings in excess of that covered by the basic pension up to a ceiling known as the Upper Earnings Limit"*. In Finland, the basic amount of the national pension is accompanied by a supplementary pension, reduced in accordance with second-pillar benefits. In Norway, if the basic pension insures everyone with a minimum income, a supplementary pension is also granted depending on the individual's earned income. In Japan, the basic national pension is complemented by an occupation linked Employee Pension Plan for all employees of the private sector and another Mutual Aid Association plan for retired public servants on the other side.

20. In apparently more numerous countries, first pillar schemes are essentially based on the Bismarck model, i.e. on previous economic involvement.

Such a scheme was originated in 1889 in Germany, when workers became entitled to a pension that was going to be financed by joint contributions of themselves and their employers. The system has naturally been enlarged and modified several times in the following century, but its basic principle remains the same nowadays. Both employers and employees pay a certain contribution calculated on the gross salary up to a certain ceiling, and the Federal government adds a subvention.

Systems based on professional allegiance also exist in several other countries, such as Belgium, France, Italy and the United States. The French national report stresses the relative complexity of the first pillar in that country, with no less than twenty different basic systems, but they are all linked to professional activities. In Italy too, *"compulsory income related pensions are constituted within the framework of a profession"*. In Belgium, employers and employees also pay their respective contributions to Social security, part of which is devoted to pensions, and the State has paid an additional subsidy (up to 1994). A similar arrangement is described in the Swiss report. The United States Social Security System is *"based on employment rather than being a universal benefit program for all citizens"*.

21. In such countries, provision is however usually made to insure a pension to people who have not themselves been in a position to pay contributions. Dependents normally continue to receive part of the pension after the first beneficiary's death. Also, some people have inevitably remained outside the system, and they are often granted some minimal benefits : guaranteed income to elderly people in Belgium, social non-contributory pension in Italy, different measures described in the Swiss report, etc...

22. A basic national pension granted to every citizen of a certain age, irrespective of his or her previous involvement in economic activity, is logically financed from the State budget itself. This happens in Denmark. However, it is not always purely the case. In Finland, for instance, both employers and employees contribute to the national pension, but employees' contributions are not deductible, and regarded as *"a kind of special tax"*.

The Bismarck model, on the other hand, calls for contributions from the working population, often complemented by contributions from employers, and sometimes also by State subsidies. The three sources of financing are present in countries such as Belgium, Germany and Italy. State subsidies, however, are not present everywhere. For instance, they are not provided in France, nor in the United States. Employers bear the whole burden of first-pillar pension financing in the Netherlands.

The case of self-employed people is special, since by definition, there are no distinct employers to contribute for them. Their own contributions can only be supplemented, in certain countries, by state subsidies.

Financing

23. First-pillar systems generally work on a "pay-as-you-go" basis (also called "distribution" or "repartition"), i.e. the outlays of a year are covered by the income of the same year. No savings are built up for the future. If the resources are insufficient to pay the pensions due, contributions and/or taxation are raised. This is possible and adequate because the first pillar rests on a very broad solidarity, covering the largest number of contributors and beneficiaries.

Very few exceptions appear in the national reports. El Salvador mentions that funding was practiced in the past for State pensions, but has now been abandoned in favor of repartition. Brazil still has a mixed system for public servants' pensions.

Supervision

24. First-pillar pensions are normally managed and paid by State institutions, which are subject to the respective countries' controls and regulations for such institutions.

Problems

25. The shortcomings of State pensions are stressed everywhere. Even under favorable conditions, they never bring a satisfactory replacement rate above a certain level of income. A pay-as-you-go system is very vulnerable to the demographic evolution which, in many countries, leads to a significant aging of the population. Life expectancy is constantly increasing, which gradually alters the proportion of retired people (the beneficiaries of pensions) to that of active people (those who contribute) . A diminishing number of people have to finance the pensions of an increasing group. It is obvious that this leads to great difficulties : either pensions are gradually reduced, or contributions are gradually increased, in either case an unpleasant and politically sensitive development.

Many national reports emphasize this major problem. In the U.K., the Government Actuary has *"indicated that this demographic time bomb is scheduled to explode in the early decades of the 21st century"*; steps are being taken to avert this *"disaster"*, such as incentive schemes to opt out of the SERPS (see below), but *"it is recognised that the beneficial effects of these measures will not be felt until after the timed explosion"*. The French report predicts that in the year 2040, the ratio between people over 60 and people over 15 will be 50 % higher and retirement contributions should be 50 to 100 % higher than nowadays, which would be unbearable. Hard times will start around 2002/2010, when "baby boomers" born just after World War II will start retiring. According to the German report, Germany, in 2010, will have 60 retired people for 100 contributors, and the ratio will increase to 88 for 100 in the year 2030 ! It means that soon, each contributor will have to pay the full pension of a retired person; the "generation contract" on which the pension system rests (active people paying for the retired) will not be manageable any more. Similar developments are predicted in national reports from Belgium, the Czech Republic, Denmark, Finland, Hungary, Japan, Korea, the Netherlands, Norway and Switzerland.

Not all countries experience the same development, at least not with the same intensity. The U.S. report voices similar concern about the demographic evolution, but quotes estimates according to which the system will still remain solvent for about 75 years. The Australian report also worries about the demographic evolution, but admits the likelihood of the population aging is slower than in many countries overseas. The Brazilian population is gradually aging, but remains essentially young. Relatively favorable statistics also appear in the report from El Salvador.

26. Another criticism often voiced against the first pillar is that public management is often inefficient. Resources are insufficient and allegedly mismanaged. Among other problems, the Italian report mentions considerable evasion in the payment of contributions. The Japan report also mentions similar abuses.

Here, criticism can lead further than the consideration that public pensions should be complemented by other sources; it sometimes brings up proposals to privatize Social security in general, including the first pillar of pensions. In Belgium, privatization of Social Security has recently been suggested by a major party. The subject is debated in the Brazilian report, due to the threatening collapse of the present system. The Salvadorian government is conducting a study on such privatization. The Argentinian report is especially critical of the way Social Security and State pensions have been managed so far, but privatization of the pension system might be unconstitutional in that country.

Of course, not only legal, but mainly political, or even ideological choices are at stake here. The U.S. report considers that *"each individual has the responsibility for determining and providing for needed retirement income ...."* ; a debate is also going on in that country between the respective advocates of privatization and, on the contrary, reinforcement, of Social Security.

27. Whatever the future of such proposals may be, state pensions now experience great difficulties in many places, and their future is bleak, due to the demographic evolution - and to an economic situation where a high level of unemployment diminished the resources. Except for people with very low income, State pensions do not provide an adequate replacement ratio, and this situation will continue to deteriorate in the future. This demonstrates the importance of complementary sources of income for old age, such as those provided by the second and third pillars.

2. Second Pillar : occupational schemes

Introduction

28. The second pillar of pensions consists in arrangements made by enterprises for their retired personnel, or some categories of it (and often also their surviving dependants), in order to provide them with a complementary income above the state pensions. Such schemes also develop under the sponsorship of professional associations (doctors, lawyers, etc...) for the benefit of their members. It is a further expression of that professional solidarity already present in the Bismarck model of state pensions.

Such initiatives have gradually appeared and developped in most industrialized countries. In Germany, which was also to become the forerunner of the first pillar, some employers started to make arrangements for their personnel as early as around the middle of the XIXth century.

The second pillar, however, is not always present. In Argentina, the strong inflation has made it impossible so far to set up private insurance plans. In some countries, second-pillar schemes are limited to specific sectors, such as education (Korea), banking, the armed forces or the public sector (El Salvador).

Compulsory and non-compulsory schemes

29. In contrast to the organization of the first pillar, employers' schemes, in many countries, are not compulsory. Companies may, but must not, set up such a scheme. In a company that has one, employees are not always obliged to join the scheme. Freedom at both levels is described for instance in the Dutch report. The voluntary character of employer retirement income programs is also stated in several other reports, such as those of Italy (where payment of an important severance pay, however, is compulsory; see below). Morocco and the United States. In the U.K., it is even against the law to compel an employee to join its employer's superannuation arrangement

However, there are countries where some second-pillar systems have been made compulsory, either by law or otherwise. For example, in France, two compulsory schemes have been organized respectively for executives (*"cadres"*) ("AGIRC") and other employees ("ARRCO"), in accordance to collective agreements negotiated between labor and management. In Denmark and Finland, the second-pillar pension scheme is compulsory. In Switzerland, part of the second pillar is compulsory by law, part optional. The former part corresponds to the so-called "coordinated" or "insured" salary, amounting to four times the annual minimal simple old-age legal pension. In Australia, a special charge is imposed on employers who do not provide a minimum level of superannuation support in respect of their employees, thus making superannuation pratically compulsory.

A distinctive feature of some systems consists in the compulsory payment of a severance pay to retiring employees. The Italian *"Trattamento di fine rapporto"* ("TFR") is a lump sum, amounting by law to one month salary for every year of service, and it is always due upon retirement as some kind of compulsory saving. In Korea, payment of a lump-sum severance pay is even the prevailing retirement system.

An intermediate situation is that of countries where supplementary pension schemes are not made compulsory by law, but through the effect of collective labor agreements. It is for instance the case in Belgium, in certain sectors (e.g. the oil industry, gas, electricity). Otherwise there is no obligation for the employer. On the other hand, however, when a scheme is organized, staff members who fall under the category defined in the pension scheme must be affiliated.

30. Where adhesion to a second pillar scheme is not compulsory, it is often encouraged by the State, as an element of solution to the problems encountered by the first pillar. Tax incentives constitute the most prevalent method. They will be discussed below.

Management schemes

31. Second pillar schemes are managed in various ways. An enterprise may decide it will pay the pensions itself, taking or not the precaution to build up reserves for that purpose. It may create a separate legal entity, or resort to such an entity created for a group of enterprises. It may call on an outside institution with appropriate competence and experience, such as an insurance company.

32. Direct undertakings by the enterprise are common in certain countries. It is the dominant system in Germany, where such undertakings are represented by provisions on the liability side of the balance sheet ("book reserves"). Japan also mentions the existence of in-house schemes.

Self-management by the enterprise is extremely risky, especially if no reserve is created. Even in that case, as the German report explains, the enterprise may have to face losses and liquidity problems when benefits have to be paid, and beneficiaries may lose all their rights to a complementary pension if the enterprise goes bankrupt. In some countries, measures have been taken. In Germany, where reserves are made, enterprises take their own reinsurance (*"Rückdeckungsversicherung"*), and a "Pension Security Fund" also provides compulsory insolvency coverage. In Italy, in case pension funds are internal, employees must be entitled to appoint half of the auditors of the fund. In the Netherlands, internal management is admitted only in exceptional cases. Several countries prohibit such internal management and impose the intervention of an outside entity (see for instance the reports from Brazil, Denmark, Finland and Switzerland.

33. Outside entities created by the enterprise take various legal forms, depending on the applicable law : pension funds, *Unterstützungskasse*, non-profit associations, foundations, mutual associations, even captive insurance companies.

To give a few examples, in Belgium, the law authorizes enterprises to set up autonomous pension funds, which in turn will decide whether to administer themselves, or to resort to a third party (insurer, bank, consultant), on the understanding that the administrators of the fund will remain liable and that the employer will have to compensate any deficit of the fund. In the Netherlands, both "corporate" and "company" (actually sectorial) pension funds are authorized, as independant legal entities. In Italy, the setting-up of such independant entities is also authorized; pension funds may not manage their investments and provide pensions themselves, but they enter into a contract with an insurance company, an investment body or another specialized entity. The Swiss and Finnish reports also give precise descriptions of the forms of outside entities accepted in those countries.

In some countries, occupational pension schemes are usually set up as trusts with one or more trustees; this is described in reports from common law countries such as Australia and the U.K., but also in the Dutch report. A trust arrangement separates the assets of the scheme from those of the employer; the trustees then either manage the scheme themselves, investing through stockbrokers, property agents, or other professional investment advisers, or they resort to the services of an insurance company.

34. Pension schemes can also be trusted to independant institutions, either directly by the entreprise or by the outside entity it has created.

Insurance companies play an important part in this respect, offering specific formulas such as group insurance, or offering to manage the pension scheme.

Group insurance is a collective form of life insurance. The policy is concluded by the enterprise, for the benefit of its personnel. The German report stresses the advantages of such a resort to group insurance : it relieves the enterprise from administration of the system, it has all the flexibility and different formulas of life insurance, it is safe against insolvency (thus there is no need for insolvency insurance), life insurance is not affected by the demographic evolution as pay-a-you-go systems are, and there are tax advantages.

The part played by group insurance in the second pillar varies : it seems to be important in countries like Belgium, Brazil or the Netherlands, whilst it is described as having little development so far in France. In the U.S., life insurance, in group plans, is primarily purchased for death protection, less so for supplementing retirement income.

In certain countries, insurance companies can offer flexible products such as unit-linked or Universal life policies (see for instance the repports from Belgium, Norway, the U.K. and the U.S.). That is not the case everywhere (see the reports from Denmark and Finland, but changes are anticipated in both countries).

Insurance companies are not welcome everywhere in the field of pensions. The Hungarian report mentions that a draft law expressly forbids constitution, administration and operation of professional pension funds through insurance companies.

Other independant entities can also be called to manage pension schemes in certain countries, such as financial institutions (see for instance the Danish report).

Benefits

35. What is promised under the second pillar is a pension that will come above the state pension. In many cases, the respective benefits are independant (see for instance the Danish report). However, it is not always the case.

First, it can be provided that State benefits will be off-set from pension scheme benefits (or reduced in accordance with the employment pension)

In some countries, one acceeds to the second pillar by "contracting out" of part of the first pillar. This is the case in the U.K., where individuals may opt out of SERPS (the State Earnings Related Pension Scheme described above) either individually, or when their employer has arranged a collective pension scheme. A similar situation is analyzed in the Japanese report.

Another situation arises when claims to a public pension are subject to requirements related to the level of icome. The Australian report describes the so-called "double-dipping" practice, by which some people take early retirement and receive their second-pillar benefits in the form of a lump-sum, which they hasten to dissipate in time to become financially eligible for the public age pension.

36. Usually, benefits take the form of annuities (the most adequate replacement of salaries), but payment of a lump-sum is sometimes possible; this arrangement has just been mentioned about Australia; it is also available, and sometimes the dominant practice, in countries such as Belgium, Denmark, France, Italy, Japan and the U.K.; on the contrary, such payments are not practiced in Finland. Certain national

reports also describe the provision of spouses' pensions for death after retirement, as well as benefits in case of death in service.

37. The level of second-pillar pensions varies very much. Figures are given in the various national reports, either in absolute values or in percentages of previous income, but we shall not attempt to compare them. These figures have to be interpreted in relationship to the respective first pillar benefits, and the submitted data are all subject to the difficulties mentioned above about replacement ratios.

38. Inflation is a problem in all countries, even though situations differ considerably. In some parts of the world its level does not usually rise above a few percents a year, while elsewhere the value of the money can deteriorate at a two-digit rate every month.

Inflation naturally has a negative impact on pension schemes, and several reports point out funded systems are more vulnerable that pay-as-you-go schemes. This impact can be countered by adequate investments (see, for instance, the reports from Switzerland and the United Kingdom), interest rates superior to the rate of inflation (Denmark, the Netherlands, Switzerland) and indexation of benefits (Brazil, Germany, Finland). Here again, each country has its specific situation and more or less adequate remedies.

39. What can be said is that there are two basic systems in respect to providing benefits from a pension plan : "defined benefits" and "defined contributions" schemes. In the former type, also known as "final salary" scheme, the amount of the pension is determined in advance, and the necessary contributions are estimated. The beneficiary is guaranteed a certain result, and the risk of having to adjust the contributions has to be borne. In "defined contributions" schemes, on the contrary, contributions are fixed, and it remains to be seen what amount of pension will be reachable, according to the future evolution of demography and investment returns. The first system puts the risks on contributors, the second on beneficiaries.

Both systems appear concurrently in many countries, but with variations. In France, defined contributions seem to be the rule, except for public servants. In Denmark, defined benefits schemes have largely been abandoned, because of the risk of inflation and the difficulties involved when the employee changes its job. In Belgium and the Netherlands, on the contrary, defined benefits schemes are the more popular. The Japanese second-pillar systems are also conceived as defined benefit arrangements.

The U.S. report explains that defined benefit schemes are still dominant, but their position has been changing in recent years. Their potential for cost efficiency and flexibility in providing lifetime income for retirees have earned them continued support from large employers, but they are losing the small plan market. Defined contributions have other advantages, such as offering participants more opportunity for involvement and control (e.g. selection of investment vehicles, additional voluntary contributions), but with the corresponding responsibilities to determine whether the future benefit will be sufficient for retirement income needs. The same report also describes different forms of defined contributions plans and explains how they can be used to address different employer obligations.

Financing

40. Second-pillar schemes are often financed by contributions from both employers and employees (see for instance the reports from Denmark, Finland, Switzerland and the U.K.). In some countries, however, most of it (in the U.S.) or all of it (in Australia) is financed by employers only. On the other hand, there are schemes where employers' contributions are optional (Second Pillar "C" in France), or where contributions are to be paid by employers and/or employees (Italy).

41. If State pensions are organized on a pay-as-you-go basis, second-pillar occupational pension schemes are often funded. This may be felt as a necessity due to the narrower circle of people involved, and thus

to the lower level of solidarity. It is more difficult to implement a system where a generation pays for the preceding one. Funding can be individual (capitalization is organized at the level of each beneficiary) or collective (calculations are made for a group of the same age bracket).

One form of funding or the other seems to be the rule for second-pillar schemes in countries like Australia, Belgium, Denmark, Germany, Italy, Japan and Switzerland.

This is not, however, the universal rule, and some complementary occupational pensions are also organized on a pay-as-you-go basis; this is for instance the case in the State sector in the U.K. (but not in the private sector). In the U.S., employers have a choice of funded or unfunded plans (the latter formula for executives). The different systems coexist in Brazil. A mixed system is described by the Finnish report.

France provides a significant case where the compulsory schemes of complementary pensions ("ARRCO" and "AGIRC") are not funded, but rely on repartition. This is made possible as such compulsory schemes concern large groups of people, where solidarity can operate well. Repartition can also contribute to some social benefits other than pensions, like the financing of retirement homes, specialised medical institutions or home assistance.

Supervision

42. Supervision of occupational pension schemes, obviously, is a major problem. Contributions are made for many years in consideration of a promise to offer additional resources after retirement. An enterprise or a separate entity is trusted with important funds, with the purpose to receive payments in the future, when acute needs will have to be met. As the recent Maxwell scandal in the U.K. testifies, pension funds may be mismanaged, through incompetence or fraud.

Insolvency can be remedied by some forms of insurance or guarantee, as examplified in Germany when the scheme is managed by the entreprise itself (see above). In Finland, pension funds and foundations must also take credit insurance to cover losses. Some forms of guarantee through insurance are described in the report from Japan. In the U.S., benefit plans are protected by a Federal agency, the Pension Benefit Guaranty Company.

Preferably, however, insolvency should be avoided, and it can be the case (or at least the risk can be largely diminished) through adequate supervision. Yet the degree of supervision varies considerably from country to country, and it depends on the kind of entity in charge of managing the scheme.

From that viewpoint, the safest formula is probably that of trusting management of the scheme to an insurance company. In most countries, the insurance sector is subject to close supervision; in the European Union, such supervision has been largely harmonized through a series of directives. Credit institutions and some financial service companies are also usually subject to supervision. It is also the case of those Institutes that operate within the French compulsory second-pillar schemes. In Switzerland, where second-pillar coverage is also largely compulsory, supervision of all involved institutions is well organized.

Supervision is less developped, and sometimes missing, with other formulas.

Pension funds are not controlled everywhere. In Morocco, for instance, there is no supervision on the institution (the C.I.M.R.) set up by employers to manage the supplementary pension schemes. On the contrary, pension funds and similar entities are supervised in countries such as Belgium, Brazil, Denmark and Italy, either under specific rules or under the same supervision applicable to other financial services. In the Netherlands, where pensions must be organized outside the company, all pension executors are subject to the Insurance supervisory authority. Varying degrees of supervision are carefully analyzed in the Finnish report. Comparisons, of course, have to be very careful as usual. It can happen, for instance, that pension funds are controlled by the same supervisory board as insurance companies, but submitted to different, often less rigorous, prudential rules.

Common law trustees are simply subject to a *"legal duty ... to invest the scheme assets in the way a prudent man would do in looking after the funds of a person for whom he felt morally bound to provide"* (U.K. report), which is not very reassuring except where the level of ethics is especially high. The U.K. report describes the recommendations made by the Goode Committee after the Maxwell scandal, which include the supervisory intervention of a Pensions Regulator. A Superannuation Industry Supervision is being organized in Australia.

43. Another way to control the management of pension funds and the like is to give future beneficiaires certain rights of information and participation. This appears in several national reports. In the Netherlands, the administration board of pension funds must include an equal employee representation. In Italy, contributing employees must be entitled to appoint half the members of the board of directors and half of the auditors of outside entities created by enterprises. Similar developments are described in Belgium and in Switzerland.

3. Third Pillar : personal provision

44. It is left to all individuals facing the financial problems of old age to decide whether the income they will derive from first and possibly second pillar sources will be sufficient for their needs and those of their dependants. In some cases, other sources of income available to them (real estate, securities, etc...) will more or less adequately fill the gap remaining between the salary of their active life and the replacing pension(s). They may also be in a position where the assets they have accumulated will spare them some expenses and thus reduce the need

for extra income : obviously, the situation of a retired person is different if he or she owns a house and does not have to pay for renting one. Reference is often made to such other forms of provisions for the future, for instance in the Dutch (which again reflects about the difficulty to define the word "pension") and the Swiss reports.

All factors having been considered, one may however conclude that first and second pillar pensions will not be sufficient. The solution is then to provide for another additional pension arranged on an individual basis. The person concerned about its financial situation after retirement may purchase some products which will give it the wanted additional income in old age.

45. What are these products ? They are often life insurance policies, but also other products offered by insurance companies and other institutions such as banks (or, e.g. in the U.K., entities such as friendly societies, building societies or unit trust managers). In many countries, in connection with the *"bancassurance"* phenomenon, new mixed products are appearing, often difficult to categorize.

National reports describe various forms of third-pillar investments. Special forms of old-age savings are organized in Belgium, with tax advantages, with banks and insurance companies. The Australian report explains that there is a current move from insurance policies towards alternative forms of savings, such as superannuation savings accounts established with banks and various other institutions. Finland lists several types of schemes resulting from private initiative : bank savings rank first, and the loss of popularity of life insurance is also reported. Private savings accounts with banks, as well as capitalization plans are popular in Brazil; however, such savings accounts are more aimed at avoiding monetary erosion than at serving as pension benefits. In the U.S., life insurance is not widely used for retirement savings (but rather primarily for death protection); deferred annuities contracts, on the contrary, are growing very rapidly, and they are also offered by life insurance companies.

If life insurance seems to be declining, or less successful as a pension provision in several countries, its distinct advantages are stressed in the Swiss report. Insurance contract law has many positive aspects, such as the possibility of designating third-party beneficiaries with a very favorable status, a useful characteristic when one of the concerns is the protection of close relatives. The strong points of life insurance are also emphasized in the German report.

46. In some countries, the borderline between second and third pillars can be blurred. In Denmark, for instance, personal pension schemes are also established upon agreement with the employer, who pays the contributions (to be reimbursed or not by the employee). Finland describes a similar situation. It has also been said that group insurance taken by an enterprise for the benefit of its employees, typically considered as belonging to the second pillar in most countries, is characterised as a personal pension provision in the U.K. report.

47. First pillar coverage is compulsory, second pillar is or is not so. Third pillar, by its nature, is never compulsory. It depends on the individual to decide whether it needs complementary coverage, and whether it can afford it.

48. In principle, first- and second-pillar benefits are not reduced because of the presence of third-pillar additional resources. This is said in the Swiss report. It may however be different in some cases. In the U.K., individual pensions may be arranged in connection with '"contracting out" of SERPS (see above, a similar situation concerning the second pillar). When the public pension is subject to an income and assets means test, as in Australia, it is of course liable to be reduced because of third-pillar benefits.

49. For the same reasons they often provide encouragement to second pillar schemes, public authorities tend to incite people to enter some third pillar arrangements. The limits and increasing problems of public pensions justify the development of private ones, also at the individual level. Such encouragements most often also take the form of

tax incentives, similar to those attached to the second pillar. They will also be considered below.

4. Fourth Pillar : post-retirement work

50. An individual, finally, may think of increasing its post-retirement resources by continuing to work for money (a similar, but not identical situation is that of deferred retirement : see below). This is called the "fourth pillar", and it is not available everywhere.

Some countries are rather liberal. They allow post-retirement work with no or with few limitations (see the reports from Brazil, the Czech Republic, France, Hungary and Morocco). On the contrary, such activities are strictly limited, i.e. largely forbidden, in some other countries (e.g. Belgium and El Salvador).

51. Where they are allowed, fourth-pillar earnings may have no effect on the pensions received under the other pillars. However, they will naturally lead to a reduction of pensions that are income-related (for instance, the public pension in Australia). In Denmark and Norway, earning a professional income after the age of 67 may affect the right to receive the national pension until reaching the age of 70.

C. PARTICULAR PROBLEMS

1. Taxation and tax incentives

52. The whole matter of pensions is dominated by important tax aspects. Pensions can be considered as deferred income. If benefits are to be taxed when they accrue, the contributions that will gradually build up the necessary resources should then be deductible from the taxable income from which they are withdrawn. This may seem to be

logical; besides, for public authorities wishing to encourage pension schemes, such a taxation treatment provides an important incentive.

This general conception is present in most countries, as most national reports testify.

This general report can only give a broad outline of the main relevant problems. Tax law is especially complex. No national report could hope to give a complete analysis of its tax system, and some are extremely brief on the subject. It would be tedious, and especially imprudent, to attempt to go into any detail in this final synthesis. The similar observation we have made about this report in general is even more true concerning taxation aspects. We will restrain ourselves to pointing out the main questions, with a few examples, while leaving it to the individual reports for more specific developments.

53. Compulsory Social Security contributions are normally not taxed. Second- and third-pillar contributions are usually deductible to a large extent, under certain conditions. Those tax advantages may be similar or different from one pillar to the other, they can differ between employers' and employees' respective contributions (a country may prefer to encourage one or the other form of financing), they may depend on the compulsory or voluntary character of contributions and on the characteristics of the pension plan (amount of promised benefits, funding system, abidance by the applicable regulations, non-discriminatory character between employees, etc...). Some forms of contributions may be non-deductible, or subject to a reduced rate of taxation. As can be expected, there are often different rules for certain categories of beneficiaries, such as public servants, teachers, self-employed people, etc...

54. A frequent condition for a favorable tax treatment is that contributions are paid to an entity located on the national territory. In the European Union, this condition may seem to be contrary to the right to free provision of services, as it will discourage nationals from

making pension arrangements with an insurer or another institution from abroad.

The European Court has rendered an important decision on the subject in the Bachmann case (January 28, 1992). Belgian authorities had refused the tax deductibility of the sickness and invalidity as well as life insurance contributions Mr. Bachmann, a German citizen employed in Belgium, paid to German institutions. Belgian income tax legislation, indeed, provides such deductibility only for payments made to Belgian institutions. Mr. Bachmann claimed such a provision was contrary to different articles of the Treaty of Rome.

The Court confirmed that in principle, it was against the Rome Treaty provisions concerning free circulation of workers (art. 48) and free provision of services (art. 59) for a State to link tax deductions to the payment of contributions to a local institution. However, the Court conceded that this requirement could be justified by the need for a State to ensure the "cohesion" of its tax system, since the deductibility of contributions is linked to the future taxation of benefits. If a State had to accept the deduction of contributions paid abroad, it should then be allowed to tax the future benefits, which might be problematic.

The Court admitted this justification only in the current state of community law, in the absence of a satisfactory solution. A difficulty for the local tax administration is to be informed as to the timetable of payment of benefits and their amount, and European authorities are thinking to organize an adequate exchange of information system. This will not solve all problems. A peculiarity of the Bachmann case, which has influenced the Court, is that Mr. Bachman, after a brief stay in Belgium, was going to move back to Germany, where he would receive the benefits, and be taxed on them. Besides organizing the information of national authorities, it is also - and mainly -) necessary to develop solutions which will take international mobility into account.

55. Pension schemes accumulate and invest considerable funds. Are investment returns and capital gains taxable ? The information given by national reports is especially scarce on the subject. The answer seems to be negative in several countries. On the other side, Denmark, for instance, describes a "real interest tax" on returns above a certain percentage.

56. If contributions have been exempted from taxation, it can only be considered as a tax deferral, and benefits normally accrue to the beneficiary's income the year they are paid, to be then subject to taxation. In some countries, however, reduced taxation rates are then applicable.

A special problem arises when the benefit takes the form of a lump-sum, coming on top of other income, and thus liable to be subject to a high level of taxation. Corrective measures are often present, for instance in the form of a reduced rate of taxation, or in the conversion of the capital into a fictive annuity which will be taxed over the following years.

57. Benefits payable in case of death to the employee's spouse or dependants may be subject to inheritance tax, buit exemptions are sometimes provided (as in Denmark, the Netherlands, or Switzerland)

58. Another aspect is that of the taxation of entities taking part in pension schemes. The main problem in certain countries seems to be the existence of discriminations between different types of entities. Pension funds, for instance, may be subject to a more favorable taxation than insurance companies or other financial institutions. There may also be taxes on insurance premiums, and not on contributions to pension funds.

59. Tax advantages for pensions schemes result from a policy decision. In certain countries, there have been conflicts between the Finance and Pensions Ministries, the former showing little enthusiasm for the tax exemptions fostered by the latter. This is mentioned in the U.K.

report. In Norway, at the same time cutbacks were decided in the National Insurance Scheme's pension benefits, tax incentives for securing personal old age pensions were reduced.

A similar type of contradiction (though not related to tax advantages) became apparent in Belgium in the recent past. The official policy is to encourage the second pillar in rescue to the faltering State pensions, but late 1993, an income moderating regulation temporarily prohibited the creation of new occupational pension schemes or the development of existing ones.

2. Age of retirement

60. The age of retirement varies from country to country. Within the same country, there are often differences between men and women, as well as between public and private pensions.

61. When the age for retirement is fixed, it can for instance be in principle 65 years for men and 60 for women (Australia, Belgium, Brazil, the U.K.), or 60 for men and 55 for women (Italy, subject to a coming change to 65 and 60), or 65 for men and 62 for women (Switzerland - a current and controversial plan is to raise the age to 64 for women); where there are no differences between sexes, the age can for instance be 63 or 65 (Finland) or 67 (Denmark, Norway). National reports give more details about those figures. There are often exceptions to the normal age, and rules can be different for public servants and the self-employed. Flexibility is organized in some countries. Several national reports add that full pension rights also suppose a determined number of active years before retiring (Belgium, Brazil, France, Italy).

62. Anticipated and delayed retirements are usually possible, with some effects on pension rights. In countries such as Belgium and France, some forms of anticipated retirements are organized for people laid-off from an enterprise in difficulty, with a pension supplement to

unemployment benefits. Denmark links partial pension and unemployment benefits in case of early retirement. More generally, Japanese legislation permits some cumulation of pension and unemployment benefits, which is said to lead to some "double-dipping" abuses.

63. Rules about retirement age are normally more flexible with regard to private pension plans, though tax advantages may be subject to some conditions.

64. A real political dilemma is apparent about the retirement age, as the problem of unemployment calls for lowering the age of retirement, whereas the pension crisis could be eased by the opposite measure. Situations seem to be quite different among the countries which have submitted reports. Some of them encourage early retirement (Korea), some others late retirement (Brazil). Japan claims the highest rate of continued activity among elderly people, and France has one of the lowest in Europe. In 1993, a resolution of the Council of the European Communities invited Member States to develop flexibility in retirement ages, in order to imprive adaptation to the demographic evolution.

3. Sex discrimination

65. The subject of sex discrimination was usually ignored when many of the pension schemes were initiated. Nobody gave a special thought, for instance, to the facts that retirement ages were very often different for men and women, or that a widow would receive a pension, but not a widower.

In many countries, the feminist movement has since engendered a deep awareness of sex discriminations, which most frequently turned against women. The concern, however, goes both ways, as several of the problems related to pensions deal with discriminations against men.

66. Different ages requirements for retirement apparently constitute such a discrimination. Substantial developments have occurred on the subject in the European Union.

Already in 1957, article 119 of the Treaty of Rome provided for equal remuneration for men and women. Over the years, several decisions of the European Court of Justice gradually contributed to the interpretation of that provision, especially as regards its application to pensions. Second-pillar benefits (as opposed to Social Security) were considered to come under the scope of article 119 by the Defrenne decision of 1971. In the Burton case of 1982, however, the Court held that different age requirements were admissible in an enterprise pension scheme, as they were access conditions not subject to article 119 of the Treaty. Then a Directive of July 24, 1989, implementing the principle of equality of treatment between men and women in second-pillar schemes, still authorized discriminations concerning the age of retirement as long as Social Security requirements contained such discriminations (which are still admitted, to some extent, under a Directive of 1979).

67. Then came the Barber case, in 1990. Mr. Barber was a member to a voluntary pension scheme set up in his enterprise, which set the retirement age at 62 for men, and 57 for women; however, in case of laying-off, the pension would be immediately due to men aver 55 and women over 50. Mr. Barber was laid-off when he was 52. He received some indemnification, but normally he was not entitled to the pension - which a women the same age would have been entitled to under the same conditions. Mr. Barber invoked illegal sex discrimination. This time, contrary to the earlier Burton decision, and in spite of the 1986 Directive, the European Court held that article 119 of the Treaty forbids setting different ages for retirement according to sex, even though such discrimination would be aligned to legal first-pillar rules. Several commentators consider that the 1986 Directive itself violates article 119.

This decision has had a profound impact in Europe, causing many enterprises to modify their second-pillar schemes in order to erase the age distinction. The Barber case, however, brought up several problems of interpretation (especially concerning the transitional application of the principles stated), some of which were solved by an interpretative Protocol adopted at the Maastricht summit of 1991.

68. More recently, in other important decisions (Ten Oever, Birds Eye Walls, Moroni, Neath), the European Court of Justice has gradually developped its doctrine concerning sex discrimination in second-pillar schemes, and further decisions are expected in the near future (such as the Coloroll case). In the Ten Oever case, the Court condemned discriminations about survivors' pensions in second-pillar schemes. Another important aspect was decided in the Neath case. As far as the level of contributions are concerned, male and female employees' contributions must be equal, since they are elements of the remuneration. On the contrary, employers' contributions can be different for men and women, since the duration of such payments is longer for the latter sex. Regarding benefits, annuities must be equivalent, but lump-sums can be higher for women as their longevity is higher.

69. These developments concern the second pillar. First pillar systems, as already said, may still contain certain discriminatory rules. However, in the Van Cant case of 1993, the European Court of Justice condemned national Social Security regulations which, while introducing same-age retirement rules for both sexes, would still maintain different modes of computing pension rights based on the different ages previously in force. Personal third pillar schemes are also not affected by article 119 of the Treaty.

70. Rules against sex discrimination naturally exist in other parts of the world. The Australian report explains the consequences of pension schemes of the *Sex Discrimination Act (Commonwealth) 1984*; the *Australian Human Rights and Equal Opportunity Commission* considers that this Act renders differenciated retirement ages illegal. The

Finnish report describes how survivors' pensions are now granted to widowers as well as to widows.

71. Some types of discrimination are often considered as still acceptable, when they are based on objective differences. The type of occupation can justify different retirement ages. Mainly, the objective fact that mortality tables are different for men and women is generally held as justifying insurance premiums differentiated between sexes; this is pointed out in several reports (Australia, Belgium, Denmark, Finland, Norway) (however, one will remember the European Court of Justice interpretation about second-pillar employees' contributions mentioned above). Is there also an objective difference between sexes as to disability expectations ? The Finnish report gives a negative answer, but the opposite opinion is expressed in the Norwegian report.

4. Transfers

72. An important and difficult question is that of transfers between pension schemes. "Vertically", is is possible to transfer some rights accrued under one of the pillars to another pillar ? "Horizontally", may one transfer rights accrued under one scheme to another scheme of the same pillar ? (Other aspects of this problem appear on the international scene; they will be considered below).

Terminology can be misleading. The above questions often fall under the heading *"portability"*, seen as a synonym to *"transferability"*, but *"portability"* can also refer to the possibility of having a pension paid abroad.

73. Transfers from one pillar to the other are impossible or difficult when the respective systems are extremely different : repartition or capitalization, contributions coming from different sources.

Thus, transfers between the first and the second pillars are impossible in Denmark, although with an exception : persons entitled to receive public servant pension but who wish to pass to the private sector can obtain a kind of severance compensation based on the value of the pension seniority. Transfers from the second to the third pillar are often possible : see the Australian and Danish reports.

74. Transfers from one scheme to another within the same pillar are normally easier, if the systems are analogous. El Salvador mentions that within the systems imposed by the Government, reserves can be transferred in case the beneficiary changes employer or activity. Such transfers within the same pillar, however, mainly concern the second pillar. Difficulties may come from the attitude of employers, who often consider pension schemes as ways to retain their personnel. Technical problems are also present, as some values will have to be calculated to be transferred. Differences have to be made between defined benefits and defined contributions schemes.

Such transfers are reported to be possible in Argentina, in the capitalization system, whether collective or individual. The Belgian report also mentions the possibility, in case of change of employer or activity, of transferring reserves even between group insurance and pension fund or vice-versa, and without taxation; a pending bill tends to facilitate the transfer, or even to make it mandatory, in order to protect employees and to encourage mobility.

On the contrary, the Finnish report states that reserves cannot be transferred if the person changes employer or activity. In the United States, with the exception of programs for academics, portability is reported to be very rare. A move from one employer to another *"requires either retention of limited rights in one employer's plan and starting anew in another or cashing out of the previous one and reinvesting... ; ...employer contributions to defined contribution plans are also lost if not fully vested when the employee leaves"*.

5. International aspects

75. Several reports contain some developments about the international aspects of pensions. The subject is very broad. The questionnaire prepared by the general reporters only gave some examples of possible questions, mainly the problems linked with international mobility of employees. Other aspects concern the possible international or regional harmonization of prudential rules concerning pension institutions, or of the tax regime of pensions, or of the law applicable to the pension scheme. Another matter is that of the possibility of insurance companies and other institutions dealing with pensions to establish themselves in another country, or to offer their services abroad, and reciprocally the possibility for an enterprise or an individual to make pension arrangements with a foreign institution.

International mobility

76. International mobility of employees is a subject of growing concern, especially with multinational companies. The United States report describes the importance of such companies in the world economy, and demonstrates that *"it is no mere coincidence that the leading countries for transnationals are also the leading countries with private pension assets"*. The U.K. report is the most detailed in covering the different problems related to international mobility. A partial summary will be given here, as an example of problems to be met; solutions, naturally, are not the same everywhere. Due to the paramount importance of tax incentives, tax considerations are dominant.

When U.K. employees are sent abroad, a distinction is made between a permanent and a non-permanent transfer. In the former case, if the employee is still liable to pay U.K. income tax, it can remain in the U.K. pension scheme under certain conditions; in the latter case, no further benefits should accrue to the U.K. scheme, and already accrued benefits remain in principle in the approved scheme. In some cases, transfer to a non-U.K. system may be achieved (reciprocal transfer arrangements with Ireland, Jersey, Guernsey and the Isle of Man, special arrangements for transfers of staff to the European Communities, other transfers approved by the Revenue). Joining a non-U.K. scheme is possible, but its benefits will not be transferable to an approved U.K. scheme without approval of the Inland Revenue.

When foreign employees, on the contrary, are seconded to the U.K., their non-U.K. employer can establish an approved scheme in the U.K. under some conditions described in the U.K. report. If they are still associated with a non-U.K. scheme, tax relief on their contributions to that scheme is possible if the Revenue considers the scheme corresponds to a U.K. approved scheme.

The U.K. report also develops the problems arising in connection to the self-employed and to personal pension schemes.

77. The Danish concurs in stressing the fact that tax factors lead *"to a considerable fixation of the establishment of pension arrangements to the country of residence"*. For instance, if the tax-liable person moves abroad and wishes to take its pension savings along by terminating the arrangement, the insurance company must withhold a provisional duty of 70 % of the pension capital. Legislative action was taken in 1992 to prevent Danish expatriates from placing pension capital abroad immediately before moving back to Denmark, an initiative with several unfavorable side-effects that has prompted reactions from the insurance industry. More details are given in the Danish report about the tax impact on the pension scheme of international mobility. An interesting evolution concerns double-taxation agreements : while in the past most of those agreements signed by Denmark awarded the country of residence the right to taxation of pension benefits, the trend is now to give that right to the country that has allowed tax deductibility of the contributions during the savings.

78. Australian public age pensions may continue to be paid in any country a pensioner wishes; an Australian resident transferred overseas to work for an Australian company may continue

membership of an Australian Superannuation Fund; the Australian report comments on the tax consequences, also in the case of non-resident employers contributing in Australia in respect to non-Australian residents, or to Australian residents sent off-shore.

79. Other reports deal more briefly with some of the consequences of international mobility. The U.S. report explains that Social security benefits are payable to U.S. citizens regardless of place of residence; "totalization agreements" with twelve countries coordinate U.S. benefits with applicable foreign systems in order to avoid dual or no coverage situations. The Finnish report also considers the importance the role of social security and tax agreements between Finland and other countries. The French reports stresses the very liberal approach of first-and second-pillar compulsory schemes : such pensions can be paid anywhere in the world. Japan reports no involvement in international agreements; an employee sent abroad usually remains insured within the framework of its company or group of companies.

International harmonization

80. In the European Union proposals are being prepared by two different Directorates General (Social Affairs and Financial Services), aiming at removing barriers to the transfer of complementary occupational pension rights between Member States. The future of such proposals is uncertain; a suggested non-binding resolution already failed to be adopted in late 1992.

81. Yet, according to the U.S. report, the great differences between the national systems lead to demands from multinational companies for *"more consistency of treatment of employees under the now widely varied forms of public and private pension arrangements around the world"*, though it is conceded *"it will be many years before multinational companies can establish uniform pension arrangements for all their employees"*.

82. In the European Union, some steps have been taken towards some degree of harmonization. Prudential rules applicable to insurance companies and banking institutions have been harmonized to an important extent by successive directives. A draft directive relating to *"the freedom of management and investment of funds held by institutions for retirement provisions"* was issued in 1991 and amended in 1993, but the prospects for its adoption seem to be rather dim at the present stage. Harmonization proves to be especially difficult on a subject where national systems are so different.

An important obstacle remains with the lack of harmonization of tax law. Insurance directives have left the matter to local legislation. The Bachmann case was discussed above.

Harmonization of insurance contract law was attempted in earlier times, but all efforts in that direction have been abandoned, at least temporarily, in favor of the complex conflicts of law rules contained in recent directives. Most of the time, when the pension scheme implies the conclusion of insurance contracts, the applicable law will be that of the country of each contracting enterprise.

Freedom of establishment and of provision of services

83. To what extent may insurance companies and other institutions dealing with pensions to establish themselves in another country, or offer their services abroad, and to what extent, reciprocally, may an enterprise or an individual to make pension arrangements with a foreign institution ?

The last question is partly answered in the some reports, usually in a restrictive or negative way. In Japan, an employer may transfer a pension scheme to a foreign insurance company only if that company is authorized to do business in Japan; a multinational company or a group of companies may not provide a single pension scheme and freely chose the company of establishment. Still temporarily outside the E.U., Finland does not allow employers to insure their employees working in Finland with a pension institution from abroad. At the present stage, a multinational company may not cover its Belgian employees with a single international scheme without creating a separate Belgian pension fund. In that respect, the Swiss report explains how multinational companies deal with international networks of insurance companies with branches or subsidiaries in the different countries, thus able to offer locally adequate schemes while giving the mother company full control on the global pension arrangements, and allowing for the necessary coordination between the local plans.

83. Those matters are developing in the European Union, though the situation is not identical for the different forms of entities involved in offering and managing pension schemes.

Liberalization is largely accomplished in the sector of banking, mainly through directives of 1977 and 1989.

The same can be said about the insurance sector, though progress was slower and more difficult. Freedom of establishment for life insurance was organized by a directive of 1979, and freedom of provision of services was implemented in two successive stages, through directives of 1990 and 1992. The common market for life insurance is effective since July 1, 1994. However, it was only at the last minute that group life insurance was included in the scope of the directive of 1990, with a transitory rule allowing Member States to prohibit their nationals from taking group insurance with a foreign insurer until the end of 1994 (according to the Commission, the directive of 1992 implicitly cancelled this transitory rule, but this is controversed).

Pension funds, finally, are excluded from the scope of life insutrance diotrectives, with the consequence that thhey cannot avail themselves, at the present stage, of the principles of freedom of establishment and of freedom of provision of services. We have already mentioned the existence of a draft directive concerning pension funds, but the chances of its adoption are very poor.

Obviously, liberalization is especially delicate concerning entities involved in second-pillar schemes. Difficulties result from the complexity and variety of the different national schemes, from their close link to Social Security systems, and from the taxation aspects. Meanwhile, the resulting discrepancies create obvious distorsions in competition.

D. CONCLUSIONS

84. We have attempted to give a general presentation of the organization of pensions in the different parts of the world, and to point out the principal problems, mainly on the basis of the wealth of information provided by twenty national reports coming from five continents.

The subject, obviously, is enormous. The many comparative studies on pensions which regularly appear in regional contexts, especially in Western Europe, all stress the difficulties of comparing very different situations. Needless to say, this conclusion will also be ours, after treating the subject on a much wider geographical scope.

We fully realize the limits and shortcomings of this synthesis. Once more, we want to invite consultation of the national reports themselves, which, respectively, have often been able to develop many points in a more thorough way.

85. The proposed theme was "Life insurance in relation to pensions, both State and private". The questionnaire prepared by the general reporters, the answers given by the national reporters and the above presentation covered the main aspects of the organization of pensions in general, in order to describe the context into which life insurance is called to play its part. Our final comments will attempt to stress the importance of that role.

Life insurance is absent from the first pillar, which is entirely in the hands of public institutions. It is present in the second and third pillars, and its importance is growing, in spite of increased competition.

Second-pillar arrangements are extremely diversified from one country to another, and different schemes often coexist in the same country. Life insurance comes in when the enterprise chooses to organize its pension plan in the form of group insurance, arranged with an insurance company. This system is the most common in certain countries; it is less developed in countries where direct undertakings by the enterprise are allowed and widely practiced, or where other types of outside entities (pension funds, trusts, foundations, special institutions) play a dominant part, because of usages or of the existence of compulsory schemes.

Life insurance is also very present in the third pillar, where other participants are less diversified. It does not mean competition is negligible; on the contrary, it is more and more demanding. Banking institutions, for instance, are offering different kinds of attractive products which appeal to increasingly demanding consumers. Insurance companies, however, have also started to diversify their products some time ago, to meet competition on its own territories.

86. The subject of pensions is of primordial importance - at least in countries that do not have to struggle with fundamental poverty. The demographic evolution is a source of major concern, as it will upset the solvency of first-pillar systems in many countries. This explains the vivid interest, and public encouragements, given to second- and third-pillar solutions. Life insurance, in that context, is called to play a growing part in the coming years. It is not the only actor, but it has distinctive favorable assets, such as the maturity and sophistication of its legal foundations, and the security provided by the regulations to which the sector is submitted.