

Shaping the future of retirement: Aspects of sustainability

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journals.sagepub.com/home/ejs**Hans van Meerten**

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Abstract

As of 2021, the world is facing several crises that will greatly impact on the ways in which our societies are shaped. This article provides a brief overview of the trends and opportunities that we think are crucial for the area of pensions in the years to come.

Keywords

Capital markets union, consumer protection law, European pension law, retirement, sustainability

Introduction

In 2021, the world is facing several crises that will greatly impact on the ways in which our societies are shaped. First and most recently, the global pandemic has put immense pressure on healthcare systems, stopped the world's economy in its tracks, triggered lockdowns and disturbed supply chains worldwide. Second, global warming and the climate crisis have changed how we approach innovation, shifting the focus towards green and sustainable investments and away from fossil fuels.¹ Third, an unprecedented ageing crisis will hit Europe over the coming decades (Eurostat, 2021) and will put a strain on pension systems (Feher and De Bidegain, 2020; OECD,

1. This trend is noticeable at a policy level and from market participants - for example, with the adoption of the Green Deal by the European Commission - and the pledge of asset managers and pension funds.

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2020). A fourth trend – namely, low market interest rates - has greatly impacted the sustainability of pension systems (ECB, 2020). This has triggered a worldwide reform - welcomed by some but not others - away from defined benefit schemes and towards (collective) defined contribution schemes (Van Meerten, 2020).²

All the above-mentioned crises and trends are in themselves problematic for adequate and sustainable pension provisions. After all, the impact of a shrinking inflow on premiums has severe consequences for the affordability of pension provision. Furthermore, the elderly are more affected by the pandemic, leaving them vulnerable and more likely to be hospitalized (Centers for Disease Control and Prevention, 2021). Climate change will affect economies globally and will have to be combatted, putting a strain on public finances, which are already under pressure due to the increasing costs of healthcare and government-sponsored retirement provisions (Xu, Soucat, Kutzin et al., 2019).³ In combination with low-interest rates - which are expected to remain low - and pension cuts - which are already happening in countries that are considered to have the best systems in the world - it is safe to assume that the sum of these crises will be greater than its parts.

Although the outlook for pensions might appear grim, a saying commonly attributed to Winston Churchill remains applicable: “Never let a good crisis go to waste” (Mutter, 2016). This paper will address some of the trends in the field of retirement that we think are of relevance for the next decade, and then explore some opportunities to address or mitigate the above-mentioned risks.

Current trends in retirement

The shift from Defined Benefit to Defined Contribution

As described in the introduction, the world is facing many changes. Not all are new; the World Bank, for example, noted the impact of demographic changes on pay-as-you-go systems as far back as 1994 (World Bank, 1994: 10) and even mentions the cumulation of issues for retirement provisions arising from healthcare and retirement spending (World Bank, 1994: 47). In essence, separating healthcare and retirement spending is not always clear cut, as they become increasingly intertwined. Increased spending on healthcare, the increased costs of state-funded pensions, and decreased tax revenues due to a drop in the working-age population might lead to greater dependency on private pensions, either occupational or individual.

This multi-pillared approach, as propagated by the World Bank in its report of 1994, sets a standard on sources of income but does not address the question of how to legally structure pension systems.⁴ Occupational schemes⁵ in particular divide into two groups: Defined Benefit (DB) schemes and Defined Contribution (DC) schemes (Schmidt, 2020: 97). The first scheme is based on a promised income at the start of retirement, while the latter scheme defines the contribution

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2. The Netherlands is moving away from DB schemes and towards DC ones, as is Germany and several other Member States. According to the Dutch legislator, this transition is necessary to bear the consequences of change to financial markets and to match the contemporary structures of the labour market, the preferences of society, and the personalisation of pensions.
 3. According to the World Health Organisation, the health sector is growing more rapidly than the economy. This is likely to become even more problematic with the demographic shift, as described above.
 4. A common critique of the World Bank report is that it is prescriptive, rather than descriptive, making it unsuitable as a framework for comparison.
 5. The World Bank itself does not define ‘occupational’ nor ‘personal’, but identifies two types of private pensions, which can be both occupational and individual.

rate during the accumulation phase and the income after retirement, dependent on the investment results on the capital markets.

Both systems have merits and flaws. In a good market environment, DB schemes seem to provide much-needed certainty, while DC schemes put the investment risk with the consumer, although this seems also common practice in some Dutch DB schemes operated by Institutions for Occupational Retirement Provision (IORP) (Van Meerten and Sandeep, 2020). However, in a bad market environment the promises made cannot be met, leading to a possible decrease in the level of promised retirement benefits,⁶ which might be harmful to consumer trust (for an overview of pure DB schemes, see: Bennett and Van Meerten, 2018; Bennett and Van Meerten, 2019; Van Meerten and Schmidt, 2019). Alternatively, DC schemes seem to provide for less certainty but seem more financially sustainable, as no legal certainty on a certain outcome is provided.⁷ For this reason, we expect that more and more plans will shift away from DB and towards (Collective) DC plans (Stevens, 2017).

Furthermore, occupational schemes are often paired with (life-long) annuities that guarantee the scheme member a lifelong income after retirement.⁸ However, as the pool of members decreases due to the demographic shift, and those who have vested rights to life-long annuities grow older, the scheme's funding comes under pressure. Currently, an appropriate response to the longevity risk remains to be implemented, and finding a sustainable solution is one of the challenges of the 21st century. One of those solutions is arguably moving towards a tontine-like structure, which is currently gaining more momentum in both academic literature and in practice (see, for example: Fullmer and Forman, 2020; Hoekstra, 2020).

The place of pensions in the internal market

Recently, the European Commission adopted their second version of a Capital Markets Union (CMU) Action Plan (European Commission, 2020a; 2020b). While the first version was adopted in 2015, it did not yield the expected results, as the internal capital markets remain fragmented (Lannoo and Thomadakis, 2019). Although many steps were set in light of the regulatory frameworks after the financial crises of 2008 and 2012, Europeans still have amongst the highest savings rates (Eurostat, 2020).

Although the first version of the CMU Action Plan did not yield the intended results, the topic remained high on Europe's priority list and even triggered Germany, France, and the Netherlands to install a joint High-Level Group to come up with recommendations for the European Commission (The Next CMU High-Level Group, 2019). The European Commission itself installed a High-Level Forum to come up with recommendations as well (High Level Forum, 2020).

The results of both reports were considered and adopted by the European Commission in their final Action Plan. The Action Plan consists of three main goals, which are heavily influenced by the global pandemic:

6. Under the memorandum and articles of association (or Pensions Regulations) of the Dutch legal form for IORPs (Stichting (and Article 134 of the Dutch Pension Act)), provision will be made for benefits to be reduced if the scheme is underfunded and cannot recover its Minimum Required Funding Level over a recovery period (which is currently 5 years on average).

7. The sustainability of DC retirement schemes in a European context needs further research.

8. For an overview, see EIOPA's Database of pension plans and products in the European Economic Area, accessible at their website <https://register.eiopa.europa.eu/registers/database-of-pension-plans-and-products-in-the-eea>.

1. Support a green, digital, inclusive, and resilient economic recovery by making financing more accessible to European companies.
2. Make the EU an even safer place for individuals to save and invest long-term.
3. Integrate national capital markets into a genuine single market (European Commission, 2020b).

In terms of the economic recovery of the European Union, pension providers have a big role to play. These providers, which include insurers, asset managers, and pension funds (or IORPs), have a long-term investing horizon, making them well-positioned to support the recovery and transition to a more sustainable economy. In our view, this makes pension providers as much of a financial institution as a social one, as they form a very large portion of the financial markets (Borsjé and Van Meerten 2015).⁹ However, as described above, there is a shift at the end of the social side: guarantees and certainty are harder to provide, as interest rates remain low. The possible consequences of this shift will be described below.

Besides the possibility for pension providers to support the recovery, other concrete recommendations made by the report include, for example, the adoption of a pension dashboard, which will allow European citizens to access detailed information on their supplementary pensions. Furthermore, it will allow the European Member States to assess if their pension systems have sufficient 'adequacy', a term used by the European Commission to monitor the level of pensions throughout the Union (European Commission, 2018).

As a multi-pillared approach is deemed optimal for ensuring adequate retirement provisions - meaning there is a system where there is a state pension, an occupational pension, and an individual pension (although these differ from country to country, and borderline cases exist (EIOPA, BoS-14/029)) - the European Commission issued a tender for research on automatic enrolment in occupational schemes, as in existence in the Netherlands and the United Kingdom. The goal is to issue best practices in auto-enrolment.

Pensions and IORPs

The European Commission's High-Level Group (HLG) of experts on pensions published their final report on the role of supplementary pensions in relation to old-age incomes as well as the development of pension markets within the EU. We will provide some short observations on this report, considering, for example, that auto-enrolment of pensions might be on the agenda in the revision of the IORP Directive. The report is therefore highly relevant for IORPs.

Foremost, there seems to be a divide between some of the detected problems and proposed solutions in the HLG's report. Amongst administrative obstacles - such as the communication and exchange between home and host supervisory entities - the main issue is arguably the complexity and unclarity of the application of the host state's national-level social, labour, and tax laws (SLT), especially in countries with a deep history of pension regulations, such as Germany (going back to Bismarck) and the Netherlands (where the role of trade unions is

9. This follows also from the legal basis of the IORP II Directive. The legal basis of the IORP II Proposal is to be found principally in the free movement of persons and services provisions and the ordinary legislative procedure (Article 114 TFEU) for the establishment of a common internal market.

very strong). Often, this may lead to a reluctance in accepting cross-border schemes for fear of losing national control.

The report rightfully acknowledges the burdensome nature of this divide and notes that while the home Member State is responsible for the administrative setup of the company, each cross-border plan is subject to the host Member State's rules on SLT. However, it remains up to the host Member State to determine what is and what is not part of its SLT (see, for example, the Dutch decision to impose the need for approval by a two-thirds majority of participants for cross-border transfers, which is not a requirement for domestic transfers; De Greef, Van Meerten and Van Zanden, 2020).

Furthermore, in response to these problems, the report rightfully calls on the EU and Member States to continue to tackle the barriers for cross-border provision. However, it does not give clear suggestions on how to balance the needed flexibility of SLT laws and the needed clarity for cross-border provisions. The call for a careful assessment of the IORP II rules before putting forward more legislation seems unaligned with the conclusions made. If there is a need for a more effective way to organise cross-border pension provision - which there is - such initiatives as a well-rounded and flexible occupational Pan-European Pension Product (PEPP) should be supported. So, for the CMU to work effectively, IORPs deserve some extra attention. The PEPP will be discussed below.

The green deal and the sustainability of pensions

Amidst the global pandemic, it has become increasingly clear that a focus on sustainability is needed to support the global economy. As described above, pension investments are at the heart of that economy and may serve a pivotal role in funding the investments needed for a green transition (European Commission, 2020c). As its top priority under Ursula von der Leyen, the European Commission presented the European Green Deal on the 11th of December 2019, which covers all sectors of the economy, notably: transport, energy, agriculture, buildings, and industries, such as steel, cement, information and communication technology, textiles, and chemicals. The aim is to make Europe the first climate-neutral continent by 2050 (European Commission, 2019b). After the withdrawal of the United States from the Paris Agreement, the EU found a new ally in its goals that might be surprising to some. In September 2020, China announced its aim to become climate-neutral by 2060 (McGrath, 2020a). With the election of Joe Biden as President of the United States, a third superpower joined the race towards climate neutrality (McGrath, 2020b) – on paper, at least.

The effects of the changing world for the European citizen

The shift of risk towards the individual and the PEPP

As explained above, multiple global trends have caused a shift in responsibility towards the individual. An ageing population, in the context of a global transition towards sustainability and low market interest rates, requires different solutions from traditional DB arrangements. Since in most occupational schemes, the bearer of risk is the individual (instead of the pension provider, as under DB schemes), it is also time to rethink legal protection. If an individual bears the investment risk of a financial service, should additional protection be given? A case certainly can be made. One of the initiatives coming from Europe is the PEPP, which tries to find a solution or answer to the trends and problems described above.

The Pan-European Pension Product (PEPP)¹⁰ was proposed by the European Commission in 2017¹¹ after a long period of development mainly by EIOPA (for example, see EIOPA, BoS-14/029 and EIOPA-16/457; for an overview, see Van Meerten, Minto and Van Zanden, 2020). Often referred to as the ‘prize’ of the Capital Markets Union, the PEPP is one of the few initiatives targeting the European Citizen directly by creating a label for personal pension products and ensuring a certain set of high product standards. In the words of Commission Vice-President Dombrovskis (European Commission, 2019a):

“Thanks to the agreement on a Pan-European Personal Pension Product, EU citizens will have more choice to save for their retirement while enjoying strong consumer protection. Personal pension providers will be able to sell the PEPP across the EU with one single registration, thereby channelling savings towards long-term investments. This, in turn, will lead to boosting jobs and growth in the EU. We regret that the portability of the PEPP and the role of EIOPA were weakened, but this agreement is an important first step towards building a true pan-European market for personal pension products.”

In essence, the PEPP is a consumer protection regulation that sets certain standards for the product itself as well as the way in which it is distributed. One of the iconic and highly debated features of the PEPP is the difference between the default option, called the Basic PEPP (which is strictly regulated), and alternative PEPPs, of which the PEPP provider may offer up to five. For the Basic PEPP, a fee-cap is mandatory, obliging providers to keep costs and fees below 1% except for costs related to the provision of capital guarantees. Currently, private pension schemes throughout Europe often have a relatively high fee structure in comparison to the United States, for example (Better Finance, 2020). Lower fees and capital market access for individuals may improve individuals’ incomes after retirement and fund the real economy through the capital markets (European Commission, 2020c). In our view, the deepening of capital markets throughout the EU may be an answer to the trends described above, at least to some extent.

A second feature of the PEPP is the use of so-called ‘sub-accounts’. Via these sub-accounts, a PEPP saver only has to purchase a single account, which will give access to at least two sub-accounts that comply with the Member State’s fiscal legislation. In the example below, a PEPP saver who enrolls in the PEPP may move from Belgium to the Netherlands and Germany without having to switch providers or product. Via this technique, issues around tax are avoided, as any European legislation around tax requires a unanimous vote of the Council.

Another interesting aspect of the PEPP is that it may take the form of a typical DC product, which is based on an underlying Life-Cycle or Target Date Funds (TFD) structure, as well as a guarantee-based product. The debate if both options should be allowed as a default option for the PEPP came down to the question if the consumer is better protected via certainty, but lower yields or less certainty but with higher potential outcome (for an overview of the positioning of the political parties, see In ‘t Veld, 2019). In essence, this was the same debate as described above. As a matter of compromise, both options were allowed. However, with the adoption of the technical standards of the PEPP, it seems the insurance industry obtained a small victory, as costs directly linked to the provision of capital guarantee-based products fall outside of the 1% fee-cap.

10. Regulation (EU) 2019/1238 of the European Parliament and of the Council of 20 June 2019 on a pan-European Personal Pension Product (PEPP).

11. Proposal for a Regulation of The European Parliament and of The Council on a pan-European Personal Pension Product (PEPP), 2017/0143(COD).

Another interesting element is the level of information required to be provided to the PEPP saver. The legislators chose not to use the existing PRIIPs Regulation¹² framework, but rather to create a standalone PEPP Key Information Document (KID) and PEPP Benefit Statement, partly based on the PRIIPs Regulation and the IORP-II Directive.¹³ Moreover, mandatory advice was installed for the Basic PEPP.

Consumer protection

As stated above, the PEPP is in essence a consumer protection regulation. We think that consumer protection deserves more attention when it comes to pensions. As stated, the shift from DB to DC schemes and the continuing pressure on national governments put the individual (more) at risk than in the past.

European consumer law could, and in our view should, serve a bigger role in the pensions landscape (Van Meerten and Schmidt, 2016). At the moment, most consumer protection regimes are limited in scope and not applicable to (occupational) pension products. European consumer law is, of course, a relatively young field. It became more prominent in EU law in 1975 with the adoption of a Resolution that contained five fundamental rights for the consumer.¹⁴ Currently, these principles are included in Article 169 of the Treaty of the Functioning of the European Union (TFEU) and consist of the following:

- The right of protection of health
- The right of protection of safety
- The right to the protection of economic interest
- The right to information and education
- The right of organisation of means

These principles are defined broadly. While the consumer should be protected against hazardous goods, consumer protection of financial services consists mainly of the latter three elements. These elements can be applied to all financial services, even though they might fall outside the scope of consumer protection, such as second pillar occupational schemes. Our current research focuses on that question: could the principles of European consumer law benefit the legal position of the scheme member or pension consumer?

Concluding remarks

The changing world requires new thinking of how we shape retirement. The following opinion was published by the Financial Times (Harding, 2021):

‘It is time to consider a more radical transformation, away from employer-based pensions towards large, permanent vehicles that can pour money into infrastructure and private equity if that makes sense.’

12. Regulation (EU) 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (text with EEA relevance).

13. Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs).

14. Council Resolution of 14 April 1975 on a preliminary programme of the European Economic Community for a consumer protection and information policy, OJ C 92, 25.4.1975, p. 1.

This is, of course, a delicate matter. The core question is: do the current social structures – with a strong role for social partners - still offer the pension participant adequate protection? In this article, we highlighted a few of the driving forces behind the change, as well as some possible ways to remedy them. An important field that we must explore over the coming years is EU consumer protection vis-a-vis pension products and arrangements.

To be clear: the above problems of EU Member States can only be solved on a European scale. In our view, the somewhat insufficient call for a European approach in pensions is a flaw that needs solving (Van Meerten and Van Zanden, 2018). The introduction of pensions in the discussion on both CMU and Green Deal is a good step, but – for now, it seems - only a small one.

Author note

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