The European Union and pensions: recent steps in “hard” legislation and “soft” co-ordination

Introduction

Pensions are more and more at the centre of the European debate. Notwithstanding the persistent pre-eminence of national governments, the European institutions have been taking a growing interest and role in the related policy-making process. In the last few years, hence, the interplay of national and supranational actors has become a key aspect of this debate. According to the Lisbon Strategy, the “pension issue” is dealt with by the EU according to three different (but complementary) dimensions (European Council, 2000). The first axis concerns the development of integrated, transparent and efficient financial markets by eliminating obstacles to investments in supplementary pension funds. In that respect, the Community method is used to implement such a strategy. The second one aims to face population ageing through the co-ordination of macro-economic policy (and especially of budget policies). In that sense, the Stability and Growth Pact and the Broad Economic Policy Guidelines represent the main instruments to be adopted. Finally, the third axis consists of the modernisation of social protection programmes through the improvement of their financial sustainability and the promotion of social integration and equality in an “active” welfare state. The Open Method of Co-ordination (OMC) on pensions (and to a lesser extent the other OMCs on social inclusion and employment) is the specific process introduced to favour a co-ordinated response to common challenges. All these procedures, introduced at
different times, now coexist in the European policy-making process (Pochet, 2003).

While the recent scientific literature is mainly focused on the implementation of soft modes of governance (see Palier, 2003; de la Porte and Nanz, 2004), this chapter aims to briefly summarise recent events in two different European arenas. The first part will be devoted to analysing the content and process related to the “hard” legislation introduced for occupational pension schemes (consistent with the reduction of public pension generosity). The second part will briefly refer to the main events of 2004 in the “soft” co-ordination of national pensions (through the OMC), with particular emphasis on the active role of the Commission and the Council (especially of the Social Protection Committee - SPC). Our concluding remarks will review the main features of the EU policy-making procedures, stressing the links between soft and hard interventions. From a normative point of view, both are increasingly focused on the greater role of supplementary pensions. From a procedural perspective, their comparison paradoxically shows that hard governance is more open and participative than soft governance.


As Pochet (2003) noted, EU action in the area of complementary pensions is based on two key aspects of the Treaty: free movement for people, services and capital; and the competition policy. According to the first goal, the EU adopted Directive 2003/41 on the Activity and Supervision of Institutions for Occupational Retirement Provision (1). In 1991, a phase of discussion started by means of a number of Commission communications and preparatory reports. In 1995, the first attempt to regulate the issue failed. A new phase, thus, started with the setting up of the High-level Group on the free movement of people and, in 1997,

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1 A first step towards the harmonisation of professional pension provision was implemented through Directive 98/49 of June 1998 to safeguard the portability of pension rights across the EU (Castegnaro and Jung 2003).
with the publication of the Green Paper on complementary pensions (CEC, 1997).

These different elements allowed the Commission to set out in October 2000 a proposal for a directive on institutions for occupational retirement provision (pension funds, superannuation schemes, etc.). The aim was to create a prudential framework at the EU level strong enough to protect the rights of future pensioners and to increase the affordability of occupational pensions. The draft directive did also seek to enable an institution in one Member State to manage company pension schemes in other Member States.

1.1 The Directive’s content and its potential outcomes

Directive 2003/41 on the Activities and Supervision of Institutions for Occupational Pensions (IORPs) was adopted in May and published in September 2003. It will be implemented in the EU countries (with a deadline fixed for September 2005). According to the Union’s aspiration to increase opportunities for a free market in services, it aimed to facilitate a pan-European market for occupational retirement provision and create a framework for the efficient operation of pension institutions and the defence of their members’ interests. IORPs are defined as “institutions, irrespective of their legal form, operating on a funded basis, established separately from any sponsoring undertaking or trade for the purpose of providing retirement benefits in the context of an occupational activity” (Article 6).

The new legislation is to apply to cross-border schemes but also to occupational schemes in one Member State only (but each country may exclude funds with fewer than 100 members).

More specifically, the Directive follows certain objectives. First, it aims to protect members and beneficiaries of pension funds. Institutions providing supplementary pensions, in fact, will be subject to detailed rules of operation and safeguards for their members. For instance, IORPs have to be registered in a national register, run by persons of good repute, and must have properly constituted rules, while their liabilities must be calculated and certified by specialists. Members and beneficiaries have then to be properly informed about their rights, the situation of the institution and the terms of the scheme. Competent authorities must conduct supervision of IORPs through inspections and

Second, it requires IORPs to be sufficiently funded. Sufficient and appropriate assets are required to cover the technical provisions (e.g. the liabilities of the schemes), with each Member State expected to impose detailed requirements. Occupational schemes must be fully funded while, in the case of a financial deficit, the scheme has to adopt a recovery plan. That exception is not admitted for schemes which undertake cross-border activity: they must be funded at all times.

Third, the Directive enables institutions to accept sponsorship by, and run a pension scheme for, a company located in another Member State. The new legislation allows for mutual recognition of Member States’ supervisory regimes. An IORP can manage the schemes of firms located in other Member States by adopting the prudential rules of the country where it is established (that is the so-called ‘home-country control’). At the same time, the social legislation of the host Member State (applicable to the relationship between the sponsoring undertaking and the members) will continue to apply (Castegnaro and Jung, 2003).

Fourth, it allows IORPs to follow an investment strategy tailored to the characteristics of their pension schemes. Pension institutions, in other words, have to follow the ‘prudent person principle’. Assets must be invested in the best interest of members and be widely spread at all times to guarantee the security, quality, liquidity, and profitability of the portfolio. Moreover, investment in shares and in risk capital should not be unduly restricted. Each Member State has the opportunity to subject occupational scheme institutions established within its jurisdiction to more detailed investment rules, but would not be able to prevent them from investing up to 70% of their portfolio in shares and corporate bonds and up to 30% in currencies other than those of the future pension liabilities. The Directive makes it possible for host Member States (where the company sponsoring the pension fund is located) to ask home Member States (where the pension institution is established) to apply quantitative rules to assets held by cross-border pension schemes. UNICE, the organisation of industrial and employers’ confederations of Europe, strongly favoured the ‘prudent person principle’, while the European Trade Union Confederation asked for more stringent
regulation (according to the proposed “Code of good practice” defined in 1998). That code stressed the need for the participation of workers’ representatives in the management of pension funds (Esposito and Mum, 2004).

As far as its (potential) outcomes are concerned, the new legislation affects occupational pension institutions (second pillar provision) covering about 25% of the EU labour force and manages assets of around €2,500 billion (29% of EU GDP). As a consequence, the new legislation is likely to be very significant, especially where institutions for occupational retirement provision are common. Its potential impact leaves, however, a certain degree of freedom to the Member States. First of all, the Directive provides a general framework for the activities of occupational schemes. It does not try to require Member States to introduce specific arrangements, for example about the tax treatment of contributions, funds and benefits. However, it enables pan-European institutions to operate according to the Financial Services Action Plan for the years 1999-2005 (Arnot, 2004). This is expected to be one of the major foreseeable effects. Its goal is to optimise the conditions in which these institutions operate, and to create a framework for prudential supervision. To sum up, it will provide a “passport” to IORPs wanting to accede to the single market. Such a first step towards the harmonisation of (supplementary) pension institutions is thus limited and leaves Member States ample room for manoeuvre in its implementation.

All countries will implement the EU legislation in this field through their own legislative processes. It is worth stressing the different perspectives on the potential outcomes at national level. In countries like the UK, the Directive is expected to have a limited effect on actual barriers to a common system of occupational schemes, if not to be a further threat to the development of a single (and efficient) pension market (Thompson, 2004). As noted by a representative of the British National Association of Pension Funds, “new EU rules could have a huge consequence for British company schemes […] continuing to provide a defined benefit pension is a hugely costly undertaking for any supervising employer. We know a number of firms have closed their schemes to new members but our concern is that greater numbers will also close future accruals because of these extra-costs” (Steed,
In other countries (e.g. Sweden), by contrast, the new rules are regarded as a key instrument to replace detailed national investment rules by a general principle of prudence with fewer restrictions on investing pension capital in private equity funds (Kullgren and Hogstrom, 2004).

1.2 The role of European institutions and actors in the legislative process

The legislative process is based on the key role of different players: the Council, the Commission and the Parliament. Moreover, the European Court of Justice plays a decisive role to ensure respect of the Treaty regarding (gender) equality and freedom of competition (Esposito and Mum, 2004).

As far as the occupational pension Directive is concerned, it was adopted at the end of a long process beginning with discussions dating back to the early 1990s (Pochet, 2003). Then, as from 2000, the EU took the final steps towards the adoption of new legislation. In October, the Commission adopted the proposal prepared by the Internal Market DG. According to the co-decision procedure, the Commission transmitted it to the Economic and Social Committee, to the Council and to the European Parliament (EP). The Council drew its conclusions in May 2001, while the EP held its first reading in July. An initial agreement on a common position was reached in June 2002 (the Council formally approved it in November). In March 2003, the EP adopted the text at second reading with some amendments. Finally the Council approved the Directive in May. In June 2003, the EP and the Council signed the definitive text.

An in-depth analysis of the legislative process reveals a more complicated and open interaction of actors, not limited to the EU institutions. As Math (2001) noted, in fact, various economic actors pushed for complementary social protection systems (usually embedded at national level) to be subject to European competition policy. This initiative was combined with that of the EU to create (and use) a broad network of interests providing knowledge about the issue.

In line with the recommendations of the High-level Group on the free movement of people (the Veil Group), for example, the Commission
set up a *Pensions Forum* which met for the first time in 2000. Its role is to help the Commission resolve problems linked with cross-border movement. It has indicated that the Commission is willing to increase the number of participants. It is composed of representatives of national governments and the social partners, as well as pension funds, insurance companies and investment companies, and finally fund members (Pochet, 2003).

That forum contributed to improving the dialogue between the Commission and the social actors. In June 2002, there was a first phase of consultation of social partners (European Trade Union Confederation, ETUC; Union of Industrial and Employer’s Confederations of Europe, UNICE; and European Association of Public Sector Employers, CEEP) on the portability of private pension rights. In the first part of 2003, during the legislative process, the ETUC criticised at different times the compromise reached by the Council and the Commission. It pressed the EP to include in the directive more obligations to inform not only members but also beneficiaries of pension funds, and to take into account the ETUC’s demand concerning the participation of social partners in determining strategic investment decisions (ETUC, 2003a). The final draft of the Directive took on board the ETUC request on information for fund beneficiaries, but not the one on their participation in the management of funds. In a broader sense, the European trade union movement reacted in a much more sceptical way to the increasing role of supplementary schemes. The ETUC Executive Committee argued that the adequacy of supplementary funds cannot be deemed satisfactory, in particular with respect to non-standard workers, and that “there is less or no solidarity in defined contribution systems” (ETUC, 2003b). Similarly, on the question of demographics, the Executive Committee criticised the EPC point of view that fully funded schemes can contribute to economic growth, while it says nothing about the current reduction in the value of financial assets (ETUC, 2003b).

Moreover, other interest groups and lobbies have been included in the forum. For example, the European Older People’s Platform (AGE) has been a member of the forum since 2001. AGE is a network of non-profit organisations of older people, involved in a range of policy and
information activities to put older people’s issues on the EU agenda. It is co-financed by its members and by the European Commission (AGE, 2003).

On 15 September 2003, the Commission launched a second phase of social partner consultations on the portability of supplementary pension rights. The ETUC adopted a resolution in October. In line with the first consultation, the ETUC came out in favour of a European initiative to eliminate obstacles to the mobility of workers. This should consist first of a legislative initiative related to fiscality and other obstacles to the transfer of pension rights, and then of a European framework agreement more focused on the legitimate role of social partners in managing occupational funds, the defence of national specificities concerning pension systems, equal treatment of mobile workers, etc.

The Confederation thus gave priority to the social dialogue at the European and national levels (ETUC, 2003c).

At the parliamentary level, therefore, the Pension Forum of the European Parliament was activated in 2003, at the initiative of Dutch MEPs (2). It is a platform for dialogue aimed at promoting the analysis and knowledge of first-pillar and funded occupational schemes, through the exchange of information between the Commission (DG Internal Market, DG Employment and Social Affairs, and DG Economic Affairs) and representatives of insurance institutions. It is mainly sponsored by pension funds for civil servants in the Netherlands. The European Insurance and Reinsurance Federation (CEA), the European Association of Paritarian Institutions of Social Protection (AEIP), and the EFRP are part of the steering committee of the forum (Esposito and Mum 2004). The CEA (European Insurance and Re-insurance Federation) brings together insurance companies from all 25 Member States and 5 non-EU countries. The European Association of Paritarian Institutions (AEIP) consists of paritarian institutions (where both employers’ and employees’ representatives have a managerial role) providing pension benefits and includes members from 5 EU states and Switzerland (Natali, 2004).

Private organisations are thus active in the field to obtain amendments and advance their interests – which are not always identical, as can be seen by the tension between the CEA and the EFRP (see Pochet 2003; Esposito and Mum 2004) over the Commission’s proposal on the activities of occupational retirement funds. In a certain sense, the organised interests have anticipated EU enlargement through the direct involvement of representatives of new members (and non-members as well). In 2003, the EFRP launched a second report proposing a strategy to deal with the emergence of pan-European occupational funds based on national sections (EFRP, 2003). The European Federation of Fund Managers (FEFSI) is another actor that tried to influence the EU decision-making process. It is the pan-European umbrella organisation of the investment funds industry in 19 EU Member States (including Poland, Hungary, Slovakia and Czech Republic), Norway, Liechtenstein, Switzerland and Turkey. Its annual report described Directive 2003/41 as a “[…] significant step forward towards a single market for financial services, (but) it did not reach what should have been its main goal, the creation of a true level playing field for all financial institutions. (Thus) FEFSI and its members will have to monitor carefully the transposition of the Directive into national legislation and encourage the national legislator ‘to go the right way’[…]” (FEFSI, 2003).

Another more subtle strategy adopted by private interests is to legitimise their demands by producing, or referring to, academic studies in the field. In this context, the role of the European Round Table of Industrialists (ERT), a group of about forty senior industrialists, is significant. The ERT set up a working party which produced a document entitled “European pensions, an appeal for reform—Pension schemes that Europe can really afford” published by the De Benedetti Foundation (ERT, 2000) and widely publicised in the media. The Foundation has links with leading researchers and university staff, and its work is presented as independent research. This argument adopted by one sector of European employers is in strong contrast to UNICE, which brings together national employers’ federations and has kept a very low profile on this issue. It was only in November 2001 that UNICE adopted a ‘Strategy Paper on Sustainability of Pensions’. UNICE points out clearly that ‘there is no single European model of pension system. A “one size fits all” solution is neither desirable, nor appropriate or feasible across the EU’. The EU should, therefore, play a fairly modest role.
A further complication derives from the new procedures to improve the effectiveness of EU legislation, and from the persistent role of the Court of Justice. On the first point, the Union adopted a new package of measures establishing a new committee structure to respond more efficiently to developments in the financial market and to ensure the consistent implementation of rules across the EU (CEC, 2003). In November 2003, new committees with regulatory and supervisory tasks were thus established. The role of the regulatory committees is to advise the Commission on technical implementing measures for directives laying down the framework principles to be followed on a given issue (that is the case of Directive 2003/41). In the case of supplementary pensions, the European Insurance and Occupational Pensions Committee (EIOPC) is part of the revised decision-making structure. This first level of committees is then supplemented by a second level of advisors. The Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS), at that further level, has the task of giving technical advice to the EIOPC in order to ensure the implementation of EU law in daily supervisory practice in the Member States.

As indicated above, the Court of Justice (ECJ) played an important role. Basic public pensions, like other social security mechanisms, are not subject to competition policy. Third pillar provision, however, is bound by competition rules. For other supplementary retirement income schemes (the second pillar), the situation is less clear. However, the Court of Justice is increasingly inclined to pronounce on this subject, and it tends to reinforce the liberal economic logic of the Rome Treaty (Pochet, 2003). The two most recent ECJ decisions concerned restrictions on cross-border contributions and payments. They are deemed contrary to the fundamental principles of the Treaty. The Danner case (October 2002) concerned the tax treatment of contributions paid by non-Finnish persons (resident in Finland) to funds located outside Finland. The Court ruled that the Finnish tax authority decision – that contributions paid to a German pension scheme by a German person resident in Finland would not be subject to the same tax relief as would have been possible in the case of a Finnish resident – was contrary to Article 59 of the Treaty of Rome. The Court rejected the argument put forward by the Finnish authorities that contributions to foreign arrangements...
should be taxed because of the lack of a guarantee of being able to tax pensions when they come into payment (Thompson, 2004).

The second case (the *Skandia case* of June 2003) was related to contributions paid to an occupational scheme issued by a non-Swedish company. Under Swedish legislation, in fact, contributions to an insurance company located in Sweden are tax-deductible, while contributions to a company located outside are not. The Court rejected the argument of the Swedish authorities that the different tax-treatment was to maintain effective fiscal controls and to preserve the integrity of the tax base. The ECJ then stated that there were no compensatory measures to offset the disadvantage suffered by an employer who chooses a foreign insurer (Thompson, 2004).

2. Soft co-ordination on pensions: between EU enlargement and the streamlining process

The Stockholm Council in 2001 officially launched the “soft” governance on pensions on a three-year basis (2001-2003). The process involved the definition of some major policy guidelines (June 2001), then the adoption of a more precise set of policy objectives (December 2001), the adoption of National Strategy Reports by the Member States (September 2002), and the Joint Report on safe and sustainable pensions by the Commission and the Council (March 2003) (see de la Porte, 2003). After this first cycle of policy-making, a new phase started, a new round of national reports being expected for July 2005 (see Table 1 for the next steps in the Pensions OMC).

Various European actors intervened to improve the definition of goals and strategies and to assess policies implemented by Member States.

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3 Different OMCs deal in fact with the pensions issue. The European Employment Strategy on the one hand addresses active ageing (in other words the need to improve employment rates among the elderly active population), while the OMC on Social Inclusion addresses the problem of poverty in old age (Natali, 2004).
### Table 1: The “new” phase of the pensions OMC (2004-2006)

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
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<tbody>
<tr>
<td>2004</td>
<td>December Guidence Note</td>
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<tr>
<td>2005</td>
<td>January-July Drafting of National Strategy Reports</td>
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<td>Spring * First Joint Report on Social Protection and Social Inclusion (focusing on social inclusion)</td>
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<td>15 July Submission of NSRs</td>
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<td></td>
<td>September Peer review</td>
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<td>November Discussion of a first draft of the Commission Services document on adequate and sustainable pensions in the SPC and EPC</td>
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<tr>
<td></td>
<td>December Finalisation of the Commission Services document</td>
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<tr>
<td>2006</td>
<td>Spring * Second Joint Report on Social Protection and Social Inclusion (focusing on pensions)</td>
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* Time schedule proposed by the Commission in the broad streamlined process.

Source: CEC (2004c).

In the following pages we will briefly summarise the main events of 2004. Then, we will show how the key actors in the process (the Commission and the Council) interacted. We will try to assess the outcomes of their activity, and its link with hard regulations.

#### 2.1 Strategic and “day-to-day” evolution of pensions OMC in 2004

In 2004, the OMC process was developed around three different, complementary and partly overlapping dimensions. The first dimension was to finalise the work in the OMC process on pensions in advance of the Spring European Council. To contribute to the “day-to-day” functioning of the OMC on pensions, the European institutions first dealt with the problem of indicators. As demonstrated by recent contributions to the literature (Salais, 2004; Natali and de la Porte, 2004; Peña Casas, 2004), the definition of “social” indicators for the assessment...
of the adequacy of pension provisions is decisive for the improvement of the OMC in this policy sector. Solidarity objectives, mainly of a qualitative nature, are difficult to quantify, assess and compare (much more so than economic indicators). These difficulties are mainly due to structural differences in pensions systems and to the multitude of factors that would need to be taken into account, many of them outside of the pension system, such as (the adequacy of) health care provision.

According to the agenda proposed at the beginning of the year, the Indicator Sub-Group (ISG) of the Social Protection Committee (SPC) has published a series of interim reports dealing with this challenge. Much of the effort of the ISG focused on the definition of theoretical replacement rates (the ratio of an individual's average pension to his/her average income before retirement), as a correct indicator to measure the income situation of the elderly population (SPC, 2003a and 2004a). A further aspect has been related to assessing the role of supplementary pillars in improving the adequacy of pension systems (SPC, 2004b). The definition of such information proved particularly difficult. As argued by Peña Casas (2004), the long-running debate on the definition of viable data on pensions has taken on some particular aspects. On the one hand, the action of the SPC has been highly related to national procedures. On the other, hypotheses for the definition of projections as to the adequacy of pension programmes have been heavily based on statistics from EU bodies other than the SPC. The Commission proposed partly overcoming these difficulties through the compilation of the latest available data and indicators from EU sources used for the National Strategy Reports. This is expected to allow Member States to assess their own position relative to others and to explain the differences (CEC, 2004d). This activity on indicators was finalised for the Spring Council and then for the Conference on “Second Pillar Pension Schemes between Solidarity and Free Market” held under the Dutch Presidency in November.

The second dimension was related to EU enlargement and, as stressed by the Social Protection Committee (SPC), the “need to give new Member States direct experience of the processes of policy cooperation on social inclusion and social protection” (SPC, 2004a). The new countries have been observers within the relevant committees (e.g. the SPC) since May 2003. In
addition, they have been engaged in bilateral work with the Commission in order to introduce more co-operation on social policies. Bilateral seminars have been organised to help identify present and future challenges around pensions and to share information concerning reforms implemented in recent years (4). This was to allow new Member States to participate fully in the second round of the pensions OMC from 2005 (CEC, 2004a).

Broadly speaking, the EU dealt with the enlargement process with the aim of revising its social agenda for the coming years. Consequently, the Commission established the High Level Group on the future of social policy in the enlarged EU. Its mandate was to identify the main challenges, opportunities and pathways for action over the period 2006-2010. In May 2004, the group completed a report for the Commission. It identifies the EU of 25 as a major challenge for the next social agenda. The main related issues were defined as the old Member States’ fears of widespread social dumping, and the apprehensiveness of new Members about coping with the challenges resulting from the transformation of their societies and economies. The OMC, in this changing context, is defined as a promising tool able to foster convergence around some common priorities while respecting national and regional diversities. The group recommended the OMC as a means of providing a comprehensive approach to steer reform to cater for old and emerging new risks (CEC, 2004c).

The “Guidance Note for the Preparation of the 2005 National Strategy Reports on Adequate and Sustainable Pensions” was thus consistent with the broad aim of promoting the integration of new Member States in the co-ordination procedures. In October, DG Employment and Social Affairs presented the preliminary version of the Guidance Note to the SPC and the EPC for adoption. The note aims to provide information to old, and particularly new, countries on the preparation of the new National Strategy Reports (NSRs) to be submitted by July 2005. Moreover, the DG defined the criteria which the Commission has to adopt to analyse

4 In December 2002, for instance, an international conference on the “Modernisation of social protection systems in Candidate Countries” took place in Brussels (Natali, 2004).
and assess them. This report defined a common format to facilitate the co-operation, the exchange of information, and the public debate within and among the Member States via the study of one’s own country situation with reference to that in other countries and at the EU level (CEC, 2004d).

The third dimension, lastly, was consistent with the progressive implementation of the streamlined policy co-ordination (of social inclusion and social protection) along the lines agreed in the Council’s Conclusions of October 2003. The first step was the proposal of an “Updated and Revised Timetable of Work for 2004 to 2006” based on the programme annexed to the Commission’s Communication of May 2003. In preparation for streamlining, particular emphasis was put on the evaluation of the first years of implementation of OMC procedures. In January 2005, the Commission will propose a draft questionnaire to be sent to Member States as well as to other key stakeholders in the social protection field (e.g. EU-level social partners, EU-level NGOs and EU-level associations representing regional and local authorities) (CEC, 2004f). As proposed by the Commission, “the evaluation of the OMC in the fields of pensions and social inclusion is intended to inform the decision to be taken by the European Council of Spring 2006 on the establishment of a full streamlined process” (CEC, 2004e). The Commission will then take stock of the responses and on this basis present an evaluation report at the end of 2005.

The preliminary version of the new Joint Report on Social Protection and Social Inclusion (to be discussed by the SPC at its December meeting) can be defined as the result of the first broader co-ordination of social policies. The draft proposed by the Commission already focused on the key targets for the future evolution of the European co-ordination process, and for the further reform of old-age programmes (CEC, 2004e). As to pensions, the report again proposed the three broad guidelines originally defined in the OMC process: financial sustainability, social adequacy, and modernisation (a). The Commission

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5 The report is in fact based on the Joint Report on adequate and sustainable pensions of 2003 and not on the new national reports.
stressed that future pension systems can provide adequate benefits only if they are financially viable. A major challenge is thus to obtain the long-term sustainability of pension programmes without jeopardising their effectiveness. To achieve such mixed and ambitious goals, the EU puts forward two main policy responses. Firstly, it appears crucial to raise the effective retirement age. Secondly, the increasing role of supplementary private programmes was adopted as a common goal. In both of these areas, the report notes that EU countries have been aware of the consequences of demographic ageing and consequently have achieved significant (but not decisive) progress. As far as the third axis of the pensions OMC is concerned, the modernisation of social protection programmes, the report identifies three different lines of action, on changing employment patterns, the improvement of gender equality and the provision of sound information to individuals to help them make difficult choices about their retirement (CEC, 2004e). From a procedural viewpoint, the report stressed the importance of maintaining key priorities to help address the most pressing issues. The Member States and the Commission are expected to assess how national strategies can be made more effective by the use of targets, benchmarking, etc. and to consult all the stakeholders on what further action could be needed to deal with social challenges. In this context, the streamlining process and the extension of co-ordination to include health-care should be used to create a stronger focus on implementation and synergies across the entire area.

If we compare the hard legislation mentioned above with the soft governance, they prove consistent with each other. Even if Directive 2003/41 was adopted as part of the Financial Services Action Plan aimed at strengthening the EU financial industry, its potential outcomes are in line with the EU Social Agenda (Gora and Kernan, 2004). The attempt to create a common framework for institutions providing occupational pensions is in line with objective 8 of the Open Method of Co-ordination (as indicated by the 2003 Joint Report on adequate and sustainable pensions). The EU in fact intends to ensure, through appropriate regulatory frameworks and through sound management, that private and public funded pension schemes can provide benefits with the required efficiency, affordability, portability, and security (Council of the European Union, 2003). This is with a view to a more
complicated architecture of pension arrangements that mix an (eroded) public pillar with supplementary private programmes. Directive 2003/41 is consistent with objectives 9 (adapt pensions to more flexible employment careers granting at the same time the access and the portability of pension rights) and also 11 (make pension systems more transparent and provide beneficiaries with information). The recent documents proposed in the OMC reinforced this general coherence. As argued by Palier (2003), the European agenda on pensions is thus consistent with the argument about the progressive erosion of public coverage and the parallel improvement of private programmes (implying more financial risks for their beneficiaries and higher contributions to pay).

2.2 The role of the European institutions and actors in the pensions OMC

The OMC process consists of a constellation of institutions each with a particular role and task. Here, we refer to two institutions that represent the key actors in the pension sector at European level: the Commission and the Council. Both have individual contributions to make to defining goals and guidelines, and to improving the effectiveness of the process. Moreover, they also share some responsibilities for the implementation of the co-ordination procedures (de la Porte and Pochet, 2002).

The Commission has a key role of co-ordination of the other actors interacting in the policy-making process. It proposes ideas and political options that will be discussed later by the other European institutions. Even if it is not explicitly related to the Open Method of Co-ordination on pensions, the report for the annual Spring European Council represents one of the cornerstones of the Commission’s activity in the wake of the Lisbon Strategy. The 2004 Report, ‘Delivering Lisbon, Reforms for the Enlarged Union’, was adopted in February and outlined the main priorities for Member States (see Table 2 for a brief summary of the main events of the year). It emphasised, moreover, the progress made in the first four years of the Agenda for a competitive job-creating and knowledge-based economy characterised by social cohesion.
Among the key priorities (together with improving investments and strengthening productivity), the promotion of active ageing was included to ensure higher employment rates and more viable public finances. In line with the first aim, the report showed the reduced impact of strategies adopted in some Member States; and consequently the need to take more action to promote active ageing as the key measure to implement in the coming years. According to the second goal, the Commission stated that “more has to be done to make national
To foster active ageing of elderly workers, the Commission proposed acting on four fronts (combined with pension reforms): removing disincentives for workers to work longer, discouraging early retirement, stimulating life-long learning, and improving working conditions (CEC, 2004a).

A further step stressing the importance of pension programmes (and their reform) for the development and modernisation of Europe is represented by the Scoreboard on Implementing the Social Policy Agenda adopted by the Commission at the beginning of March (CEC, 2004b). This communication to the Council, the Parliament, the Economic and Social Committee and the Committee of the Regions consisted of the monitoring of commitments and progress on some key issues. The modernisation of social protection was among them. Here, as well as in the report for the Spring Council, the need to bring pension spending under control was emphasised. In particular, the main priority to be implemented was to use the window of opportunity for reforms, before demographic ageing alters the age composition and thus the electorate.

As mentioned in the previous section, two other documents by the Commission were specifically geared to enhancing the effectiveness of the OMC on pensions especially in an enlarged EU: the already-mentioned Guidance Note for the Preparation of the 2005 National Strategy Reports on Adequate and Sustainable Pensions, and the Outline Draft of the Joint Report on Social Protection and Social Inclusion. The latter, in particular, proposed two policy responses to the ‘pension problem’: the raising of the effective retirement age, and the major role of privately managed schemes. This is consistent with the broad strategy of the EU in the past year.

The Council is usually defined as the other pillar of the OMC architecture (de la Porte and Pochet, 2002). It is a key actor providing technical knowledge and information on individual policy fields, especially through the work of its committees. The Social Protection Committee, in particular, has proved a decisive actor for the improvement of both the strategic and the “day-to-day” working of the OMC process. The work programme endorsed by the SPC at the beginning of 2004 clearly defined the main lines of action for that year.
The SPC acted to improve the technical basis for the other EU institutions’ activity. Firstly, it has worked on a study based on questionnaires completed by the Member States on how pension policies support the move to longer working lives. Secondly, as mentioned above, the Committee (especially the ISG) tried to improve knowledge about the adequacy of public and private pension programmes. In both these respects, the SPC co-operated with other actors (the Commission and the EPC).

From a normative viewpoint, the Council under the Dutch Presidency clearly pushed for a stepping-up of the role of supplementary pensions. In November, the Dutch Ministry of Social Affairs in co-operation with the Commission and national organisations of social partners and insurance companies organised a Conference on solidarity and the free market in second pillar schemes. The potentially growing role of occupational schemes was stressed as a solution to current challenges affecting old-age programmes. The conference was the occasion for academic actors close to the “liberal” viewpoint on pension funds to put forward their arguments in favour of a further growth of private schemes in pension systems. As to the social partners and their role in the OMC, it is particularly limited (especially if compared to the Social Inclusion OMC and the European Employment Strategy; de la Porte and Pochet, 2002). Their influence operates mainly through consultation by the Social Protection Committee. As for the ETUC, it created a working group on social protection in 1996. In February 2003, it published a communication on the Joint Report on pensions. It was a precise critique of some of its parts: e.g. the risk of subordination of the social goals to a pure economic logic, and the need to pay more attention to the financial viability of private supplementary schemes (and not only of the public pillar) (ETUC, 2003b).

What is more, the ETUC has set up another ad hoc working group on Pension Funds. The European trade unions have also tried to strengthen their co-operation with social NGOs. In 2001, the Platform

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of European Social NGOs and the ETUC adopted a joint communication on promoting the social dimension of the EU and in particular social protection (Natali, 2004). A further aspect which may improve the participation of interest groups in the pensions OMC is the reduced tensions between and within social actors. After a period of conflict before the turn of the century, the European social partners (ETUC, UNICE/UEAPME and CEEP) sent a lettre commune to the Commission on social protection and the streamlining of OMCs in this field in September 2003. On that occasion, the social actors declared themselves to be in favour of rationalisation, but stressed the need to take the specificity of each policy into account. Moreover, they called for enhanced inclusion of the social partners in the co-ordination process, and in the peer review phase in particular (ETUC, UNICE, UEAPME and CEEP, 2003). If compared to the role of liberal think-tanks favourable to the erosion of the public pillar, the social actors proved less effective in promoting closer co-operation with intellectuals and academics. The trade unions have not set up round tables like the ERT to define and promote an alternative agenda on these issues.

Conclusions

The analysis of both soft co-ordination of national pensions and hard legislation on occupational schemes has proved to be an interesting means of assessing the current role of EU institutions in that field. As regards the normative content of EU policy-making, two different but interrelated goals are increasingly important. The employability of the elderly, and the growing role for supplementary pension funds, are both expected to contribute to more sustainable social protection systems in the future. The latter point, in particular, has attracted attention from the European institutions. The Commission expressed its favourable attitude towards the development of occupational and individual schemes in the draft outline of the Joint Report on Social Protection and Social Inclusion, and in the Report for the Spring Council. The Council, especially under the Dutch Presidency, emphasised that strategy. In this context, the Social Protection Committee devoted part of its activity last year to improving knowledge about the adequacy of private (second and third) pillars. This seems consistent with the previous action of the Committee and its socially-oriented arguments.
The SPC (together with the Commission) stressed the need to improve the EU institutions’ technical knowledge as a decisive step towards assessing the viability and the adequacy of national pensions. According to the main preoccupation expressed in the scientific literature, the need for “better” indicators is at the top of the Committees’ agenda.

The interest in the growing importance of private institutions proved to be closely related to the other policy-making process under scrutiny in this chapter. Legislative rules approved in 2003 to regulate supplementary pension fund institutions are expected to influence (and favour) the development of a pan-European market in occupational schemes. The role of the different EU institutions was to reduce the barriers to that growth. The overall strategy is thus consistent with a reduced role for the public pillar and the consequent rise in resources to be used on financial markets through private pension funds. Despite the ETUC’s efforts, Directive 2003/41 is mainly concerned economic and financial issues while “social concerns” are not clearly expressed.

From a procedural point of view, then, “hard” governance proved much more open than the Open Method of Co-ordination in several respects. Experts are incorporated into the legislative process and also into the implementation phase. The new committee structure, based on different-level advisors (the EIOPC and the CEIOPS), aims to give more precise technical advice to the Commission on the adoption of implementing measures for directives (e.g. the one on occupational pensions). As regards the participation of social partners and civil society, therefore, the legislative process offers various opportunities. The Pensions Forum of the Commission, for example, has been the locus for social actors’ representatives and for social NGOs to express their opinions about the harmonisation of rules on the second pillar, and especially on the mobility issue. The Pension Forum of the European Parliament has constituted a further platform for dialogue and the exchange of information between the EU and representatives of insurance institutions. A number of private organisations are thus already part of the policy-making process and are able to intervene at different stages to defend the interests of their membership. Lobbies of fund managers and other economic and financial interests proved particularly effective in participating in the process and in involving academic experts.
The “soft” mode of governance, by contrast, has demonstrated less broad-based participation through the Social Protection Committee. The social partners have on several occasions regretted this lack of participation both at the European and at the national level. A more integrated approach by trade unions and civil society (as demonstrated by the joint communication of the ETUC and the European Platform of social NGOs in September 2003), together with a less adversarial relationship between social actors, seems to favour a less restricted network for the co-ordination of national pension systems.

Finally, as regards the enlargement process, the open nature of the legislative process allowed representatives of the organised interests in new Member States (and in non-members) to become involved, well before 1 May 2004. In the OMC process, the new countries are increasingly well integrated, as proved by their involvement in drawing up the new national reports for 2005.

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