



Reply to an ad hoc request for comparative analysis

Implementation of Directive 98/49/EC on safeguarding the supplementary pension rights of employed and self-employed persons moving within the European Union

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FreSsco - Free movement of workers and Social security coordination

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1 INTRODUCTORY REMARKS

The effectiveness of the free movement of workers implies the protection of statutory (first pillar) and supplementary pension rights of migrant workers who choose to exercise their rights within the European Union (EU). It is recognised that supplementary pension schemes have a varied role in national pension systems of Member States, and the level of protection offered by them may, while not being homogeneous, it may not be disregarded.

It should be noted from the outset that according to the instrument of reference which will be discussed in the process, supplementary pension scheme means any occupational pension scheme established in conformity with national legislation and practice such as a group insurance contract or pay-as-you-go scheme agreed by one or more branches or sectors, funded scheme or pension promise backed by book reserves, or any collective or other comparable arrangement intended to provide a supplementary pension for employed or self-employed persons.

Statutory pension rights are protected by Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems,¹ as amended, on the basis of important principles such as the principle of unicity of legislation, the principle of aggregation, and others. Because of their nature, supplementary pension rights, which do not always stem from legislation and which often reflect private initiatives, are protected through a different tool. Supplementary pension schemes may operate on a funded basis, where "funds" are established separately from the employer, receive contributions, invest them and pay the benefits. Other schemes are financed on a pay-as-you-go basis or combined with a funded approach as well as book reserves.

With the above in mind, the special nature and features of supplementary pension schemes have given rise to Council Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community² and to Directive 2014/50/EU of the European Parliament and of the Council of 16 April 2014 on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights (Text with EEA relevance).³ These legal instruments protect the rights of migrant workers in relation to supplementary pension schemes. It should be clear at this point that most supplementary pension schemes do not fall within the scope of Regulation (EC) No 883/2004. Furthermore, in the interest of clarity, it should be noted that no pension or benefit should be subject to both the provisions of Directive 98/49/EC and those of Regulation (EC) No 883/2004. Any supplementary pension scheme which falls within the scope of the coordination Regulations because a Member State has made a declaration to that effect under Article 1(l) of Regulation (EC) No 883/2004, cannot be subject to the provisions of Directive 98/49/EC.

Additionally, Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision⁴ (the 'IORP Directive', also known as the 'Pension Fund Directive'), as amended, aims at laying down rules for the taking up and pursuit of activities carried out by institutions for occupational retirement provisions. Directive 2003/41/EC facilitates cross-border mobility and is therefore related to the goals of Directive 98/49/EC.

¹ OJ L 166, 30.4.2004, p. 3 (Text with relevance for the EEA and for Switzerland).

² OJ L 209, 25.7.98, p. 46.

³ OJ L 128, 30.4.2014, p. 1.

⁴ OJ L 325, 23.9.2003, p. 10.

Against the above background, supplementary pension schemes have an important function in the protection provided to workers, as they complement the cover provided by the first and third pillar. Directive 98/49/EC not only applies to retirement pensions but also, where provided for, to invalidity and survivors' benefits. Supplementary pension schemes in Europe are highly sophisticated and diverse. This salient feature renders the evaluation of supplementary pension schemes in the light of EU principles a difficult task.

The Directive had to be transposed in the EU-15 Member States by 25 July 2001.⁵ In the new Member States transposition had to take place by 1 May 2004.⁶ Bulgaria had to transpose by 11 July 2006, Romania by 1 January 2007, and Croatia by 1 July 2013. According to Article 10 of the Directive, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by a specified date, or shall ensure by that date at the latest that management and labour introduce the requisite provisions by way of agreement. Member States are held *"to take all necessary steps to enable themselves at all times to guarantee the results imposed by this Directive [...]"*. Furthermore, *"when Member States adopt these provisions, these shall be accompanied by such reference at the time of their official publication [...]"*.

In this context, the purpose of the present report is to provide an overview of the implementation of Directive 98/49/EC on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community. Two implementation reports on the matter drafted by the European Commission (EC), the first of which was drafted in 2006, are to be noted.⁷

The present report is structured around five axes, namely: an introduction, an overview of the EU framework, the main findings, an analysis of problems and concluding remarks/recommendations (furthermore, the national reports on which this document is based are added as an annex II). Within the main findings section, the following items are addressed:

- equal preservation;
- cross-border payments;
- cross-border membership of posted workers;
- information provided to scheme members;
- the adequacy of cover of all the matters and persons subject to Directive 98/49/EC;
- measures adopted to protect the persons who are not trade union members in the event where Directive 98/49/EC was implemented by means of collective agreements;
- a list of problems faced by scheme members exercising their right to free movement;

⁵ See Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the Implementation of Council Directive 98/49/EC, Brussels, 26.01.2006 (COM(2006)22final), p. 3.

⁶ *Idem*.

⁷ Report on the implementation of Directive 98/49EC in the 25 Member States: COM (2006)22 Final of 26.01.2006 and its annex: SEC(2006) 82.

Report on the implementation of Directive 98/49EC in RO and BG: COM/2009/0283 final and its annex: SEC/2009/0813 final.

- a brief description of noteworthy administrative practices and case law since 2006/2009.

As already mentioned, the report is based on inputs provided by the national experts of the EU-funded network Free movement of workers and Social security coordination (FreSsco) which is run by Ghent University, Belgium.

2 OVERVIEW OF THE EU LEGAL FRAMEWORK

For the clarity of the discussion, it should be recalled that according to Directive 98/49/EC, supplementary pension schemes are considered to be any occupational pension schemes established in conformity with national legislation and practice such as a group insurance contract or pay-as-you-go scheme agreed by one or more branches or sectors, funded scheme or pension promise backed by book reserves, or any collective or other comparable arrangement intended to provide a supplementary pension for employed or self-employed persons. Furthermore, it should be clear that schemes which are covered by the term "legislation" as defined by Article 1(l) of Regulation (EC) No 883/2004, or in respect of which a Member State makes a declaration under that Article are excluded from the material scope of Directive 98/49/EC. According to the inputs of national experts for the purposes of the present report, there are supplementary schemes which fall under Regulation (EC) No 883/2004 in the case of Bulgaria (compulsory supplementary pension schemes) Switzerland, Denmark, Greece, France, Liechtenstein, Lithuania, Norway, Romania and Slovenia.

There is a variety of forms of supplementary pension schemes in the EU, in the EEA⁸, and in Switzerland, which range from schemes run on the basis of collective agreements (e.g. BE, DK, SE, CY and SI), to schemes offered by private entities, including life insurance companies (e.g. AT, CZ, DE, DK, FI, FR, HU, LT, NO, PL, PT and SK), or by supplementary pension institutions/funds (e.g. AT, DE, EL, FI, FR, HU, PL and PT). According to the reports of national experts, there are also supplementary pensions schemes based on setting aside book reserves in order to back the pension promise in Austria, Belgium, Germany, Luxembourg, Spain, and Sweden. It is observed that most Member States have adopted a combined approach of supplementary schemes which includes more than one form. An illustration of such an approach can be found, for example, in the Netherlands, where occupational schemes are subject to collective negotiations, which exist in parallel with industry-wide pension funds, company pension funds, and agreements with insurance providers.

Furthermore, supplementary pension schemes may be collective or individual, closed-ended (e.g. DK, HR and IT), open-ended (e.g. HR and IT), mandatory (e.g. in relation to a specific professional category) or voluntary (e.g. RO, SI and SK) or include a compulsory segment and a voluntary segment at the same time (e.g. BG). Furthermore, they may be open to employees on a voluntary or obligatory basis, based on the time of entry into service. The report concerning Iceland states that there are currently no supplementary pension schemes within the meaning of Articles 1 and 3(b) of Directive 98/49/EC.

All in all, it is clear that the landscape is highly diverse. In this context, the main rules of Directive 98/49/EC can be summarised as follows:

- A person who leaves a scheme because s/he moves to another Member State must not be treated differently than a person who leaves the scheme but remains in the same Member State, as far as his/her vested rights are concerned (Article 4).
- According to Article 3(d) of the Directive, "vested pension rights" means any entitlement to benefits obtained after fulfilment of the conditions required by the rules of a supplementary pension scheme and, where applicable by domestic legislation. The concept of "vested pension rights" is important especially for the operation of the above mentioned Article 4.

⁸ It should be noted that according to the national report on Iceland (please see Annex II to this report), there are currently no supplementary pension schemes in Iceland within the meaning of Articles 1 and 3(b) of Directive 98/49/EC. It is furthermore stated that all schemes subject to Article 8(3) of Act No 129/1997 on mandatory pension insurance and on the activities of pension funds (Declaration under Article 5 of Regulation (EEC) No 1408/71), are covered by the coordination Regulation.

- Member States should take the necessary measures to ensure that benefits under supplementary pension schemes are paid to members and former members as well as others holding entitlement in virtue of such schemes in all Member States, given that all restrictions on the free movement of payments and capital are prohibited under Article 63 TFEU (Article 5).
- Furthermore, a person posted to another Member State should be allowed to continue to make contributions to the scheme in his or her "home" Member State (Article 6). In order to facilitate the exercise of the right to free movement, national regulations should, where necessary, be adjusted so as to enable contributions to continue to be made to a supplementary pension scheme established in one Member State by or on behalf of workers who are posted to another Member State.
- Workers who exercise their right to free movement should receive adequate information from employers, trustees or other parties responsible for the management of supplementary pension schemes, especially in relation to the choices and alternatives available to them. Access to information stems from the duty of Member States to take measures in that regard (Article 7).

Member States have communicated to the EC the measures in place and/or adopted for the implementation of Directive 98/49/EC. In this context, as already mentioned, two reports were drafted by the EC on the implementation of the Directive in the light of the information provided by the Member States, one of which was already identified in the introductory part.⁹

In addition to the above, some findings stemming from the Court of Justice of the European Union (CJEU) shed light on interpretation aspects relating to Directive 98/49/EC.

In *Commission v Denmark*,¹⁰ and confirmed more recently in *Ruben Andersen*,¹¹ it was pointed out that even though Member States are free to leave the implementation of the Directive to representatives of management and labour, such possibility does not, however, discharge Member States from the obligation of ensuring, by appropriate legislative and administrative provisions, that all workers in the Union are afforded the full protection set out in the EU instrument. Furthermore, that state guarantee must cover all cases where effective protection is not ensured by other means, for whatever reason, and in particular cases where the workers in question are not union members, where the sector in question is not covered by a collective agreement or where such an agreement does not fully guarantee the principles laid down in the Directive.

⁹ See *supra* note 7.

¹⁰ *Commission v Denmark*, C-143/83, EU:C:1985:34.

¹¹ *Ruben Andersen*, C-306/07, EU:C:2008:355.

3 MAIN FINDINGS ON THE NATIONAL LEVEL

3.1 Coverage of basic principles

3.1.1 Equality of treatment as regards the preservation of rights

Article 4 of Directive 98/49/EC seeks to ensure that persons moving to another Member State should be in no worse situation than those leaving an employment and not making contributions to supplementary schemes but remaining within the same Member State.

More specifically, the Directive sets out that where a worker who has acquired vested rights under a supplementary pension scheme in one Member State moves to another Member State, those rights are to be preserved at least to the same extent as for workers leaving the occupation but remaining within the Member State in question.

Most national reports mention that there was no need to adopt specific measures to comply with Article 4. The reason reported for this is that the existing legal arrangements governing the preservation of vested rights do not discriminate between workers remaining in one Member State and those moving to another Member State. This was the case for Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Spain, Finland, Hungary, Italy, Liechtenstein, Lithuania, Malta, Norway, Slovenia, Slovakia, and Sweden. In some cases statutory provisions set out the principle of equality, which, through interpretation, should achieve the purpose sought by Article 4 (LI can be mentioned in that regard).

From this standpoint, the impact of the Directive appears to be limited, a point which will be further discussed later on.

Bulgaria, Switzerland, Germany, Greece, France, Croatia, Ireland, Latvia, Luxembourg, the Netherlands, Poland, Portugal, Romania and the United Kingdom have nevertheless provided, according to the national reports, for specific provisions in order to ensure equality of treatment as regards the preservation of rights. Concerning Portugal, the statutory provision on the rule of equal treatment as regards preservation of pension rights was considered by the relevant report as contributing to clarity and legal certainty. In the light of the inputs communicated to us, when a provision on equal preservation was adopted, it was noted in some cases that a positive rule had been set out aiming at ensuring the said principle (e.g. EL, HR and RO). Another legal technique would have been the explicit prohibition on discriminating rules, but this approach was not identified in the reports.

3.1.2 Cross-border payments

For migrant workers exercising their right to free movement within the EU, the unproblematic payment of supplementary scheme-related benefits throughout the EU is central to the effectiveness of free movement. This aspect is also related with the free movement of capital. With this in mind, according to the Directive (Article 5), benefits under supplementary pension schemes must be paid to members and former members, as well as to others holding entitlement under such schemes, in all Member States. This is an obligation placed on Member States. Moreover, such payments must be net of any taxes and transaction charges.

In some countries no legal provision was adopted in that regard (AT, BE, CY, CZ, DE, DK, EE, ES, HU, IT, LI, LT, PL, SE and SK). In the relevant cases, it was stated that domestic legal provisions or collective agreements were already in line with Article 5. This was in recognition of the fact that under the applicable legislation no discriminations were provided for in relation to payments between scheme members remaining in the country and those moving to another Member State. Furthermore, it was also reported that there was no need for the adoption of explicit measures as the relevant legislation operated on

the basis of free movement of capital provisions which allowed cross-border payments made under supplementary pension schemes.

In other Member States (BG, HR, EL, FI, FR, IE, LU, LV, MT, NL, NO, PT, RO, SI and UK) a specific domestic provision on the payments of benefits was adopted.

Consequently, Article 4 appears to have led to a change in the practice of some Member States only.

3.1.3 Cross-border membership of posted workers

Concerning posted workers who migrate within the EU, it is well established that during the posting, which is subject to a maximum period, the direct relationship between the employer and the posted worker continues, legally speaking, to exist. Ranging from the employees of multinational companies to other professional categories, posted workers' membership in supplementary schemes should not be hindered by discriminatory obstacles. It is not always certain that a new scheme is available abroad. Furthermore, a possible shift to a new scheme in the country of posting may be to the financial disadvantage of the posted worker as a result of rules differing from one Member State to another, including on the level of vesting conditions or vesting period, or the level of protection. Like posting in the same Member State, in the case of posting to another Member State, the migrant/posted worker should legitimately expect that s/he will not suffer any economic disadvantages concerning his or her supplementary pension rights as a result of the posting.

If a worker is going to work in another Member State for his or her employer for a short period of time, s/he needs to know the impact of this on his or her supplementary pension rights during this time, and adjust his or her planning accordingly. In the interest of the effectiveness of the free movement of workers, the continuation of the right to be under the supplementary scheme of the posting Member State should therefore benefit from enhanced legal certainty.

This enhanced legal certainty is sought by Directive 98/49/EC in Article 6. The latter lays down the right of employers and posted workers to continue to make contributions to the supplementary scheme established in the Member State of origin during the period of the posting to another Member State. Furthermore, where contributions continue to be made, the Member States have the duty to ensure that posted workers and employers are exempted from any obligation to make contributions in another Member State.

In the above context, benefiting from the right to remain in the scheme of origin during the period of posting is central to the protection of the posted worker.

Measures adopted to permit the payment of contributions by and on behalf of posted workers (Article 6(1))

The absence of the need to adopt specific measures giving rise to the continuation of payment of contributions during the posting was pointed out in the reports of Austria, Belgium, Cyprus, the Czech Republic, Germany, Denmark, Spain, Finland, Hungary, Ireland, Italy, Lithuania, Latvia, Malta, Poland, Slovenia and Slovakia. An additional argument used in some cases was that contracts and collective agreements on supplementary pension provisions in the Member State of origin remain applicable. In some cases it was also pointed out that compliance stems from the absence of statutory stipulations making illegal the payment of contributions to supplementary pension schemes during a posting.

In contrast to the above, there are Member States which have adopted explicit provisions aimed at ensuring the continuation of payment during posting. This is the case in

Bulgaria, Greece, France, Croatia, Luxembourg, the Netherlands, Portugal, Sweden and Norway. A noteworthy variation is noted in Greek legislation, where it is set out that the right to the continuation of the payment of contributions has to be exercised within thirty days from the receipt of the notification of the posting by the employee.¹² In Estonia, in the case of posting, the Estonian worker is considered to be resident, and is obliged to make contributions.¹³

Article 6 of the Directive goes one step further by setting out the duty to take measures on the exemption from contributions. As will be seen below, in case of posting, exemptions from contributions in the context of mandatory supplementary schemes are aimed at avoiding double payment of contributions by the employer or employees in the Member State of origin, and in the host Member State of the posted worker.

Measures on the exemption from contributions (Article 6(2))

In the context of Member States which have mandatory supplementary pension schemes, the exemption from contributions towards posted workers in the host country is vital for the effective operation of Article 6(1). The exemption is set out in Article 6(2). In this respect, the host Member State must ensure that posted workers and their employers are not covered by the compulsory scheme.

While certain Member States have pointed out that they did not need an explicit provision to implement Article 6(2) as there are no obligatory supplementary pension schemes in general or as there is no legislation which makes membership of a scheme compulsory (AT, CZ, CY, DE, ES, FI, FR, HU, IE, IT, LV, MT, PL, SE, SI, SK and the UK), in other Member States, specific provisions have been adopted in that regard (BE, BG, HR DK, EL, LU, NL, NO and RO). In the case of Estonia, for example, the absence of an obligation to make contributions to the Estonian pension scheme in the case of posting, as the worker is not considered to be a resident, is based directly on Article 12 of Regulation (EC) No 883/2004. In Lithuania, while no specific measures were adopted on the matter, the Law on the Accumulation of Occupational Pensions¹⁴ states that the payment of pension contributions on behalf of a posted worker by a sponsoring undertaking to another Member State shall continue for a period not exceeding the maximum period of posting set in the coordination Regulation, and the posted worker shall be granted the right to pay contributions to the pension fund, if s/he was paying them before. Furthermore, it is stated that it shall be prohibited to set in the rules of pension funds managed in Lithuania any provision requiring that a posted worker sent by another Member State to perform work in Lithuania participates in a pension fund or a pension association registered in Lithuania, if the duration of the posting in Lithuania does not exceed the maximum period of posting set in the coordination Regulation.

Against the above background, and in the light of the national reports, it is unclear to us to what extent there is a requirement laying down that the posted worker or his or her employer are exempt from any obligation to make contributions to supplementary pension schemes in another Member State. This statutory technique to the problem, which was discussed in the EC's above mentioned report on the implementation of Directive 98/49/EC,¹⁵ and which was considered uncertain by the EC services from the standpoint of its enforceability, was not mentioned in the national experts' input for the purposes of the present report. Against this background, it should be clear that under the Directive employees and/or employers must be exempted to pay twice contributions for the same period and for the same risks in the context of posting.

¹² Article 5 of Presidential Decree No 227/2004.

¹³ Paragraph 6 of the Funded Pensions Act.

¹⁴ Article 26.

¹⁵ See *supra* note 8, p. 8.

3.1.4 Information provided to scheme members

Supplementary pension schemes may constitute a vital component of income protection in old age as in certain instances they may provide a high benefit level. Consequently, clarity and adequacy of information prior to exercising the right of free movement is essential.

It is also noted that the institutions for occupational retirement provision which fall in its scope of application are required under the above mentioned Directive 2003/41/EC (the 'IORP Directive' or 'Pension Fund Directive') to provide their scheme members and beneficiaries with a range of information on matters affecting their benefits.

In this context, Member States are held to take measures to ensure that employers, trustees or other parties responsible for the management of supplementary pension schemes provide mobile workers with adequate information on their pension rights and on available options when moving to another Member State (Article 7). According to the Directive, "*such information shall at least correspond to information given to scheme members in respect of whom contributions cease to be made but who remain within the same Member State*".

In the vast majority of Member States (AT, BE, CY, CZ, DE, DK, EE, ES, HR, HU, IT, LT, PL, SE, SI, SK and UK) no specific measures with regard to information to be given to scheme members were adopted. This was in recognition of the argument that the information is identical for all scheme members regardless of whether they remain in their Member State of origin or move to another Member State.

In Switzerland and in Liechtenstein, there is a similar approach where the insurer has to inform the insured workers about the general situation of the scheme, as well as about their rights to benefits. The information must be given yearly. The relevant legal basis,¹⁶ which was not introduced in view of the implementation of Directive 98/49/EC, is presented as benefiting persons that fall into the scope of the free movement of workers.

In contrast to the above, a number of Member States (BG, EL, IE, LU, LV, MT, NL, NO, PT and RO) have explicitly adopted rules on the matter. It was stated in the Finnish report that statutory amendments were made pertaining to the harmonisation of Directive 2003/41/EU with an indirect impact on the right to adequate information under Directive 98/49/EC. In France, general measures were taken regarding the provision of information, such as the obligation for the providers to send to persons who cease to be members before exercising their rights, at the latest three months after the date of cessation, an information note on their pension rights, mentioning in particular the procedures and conditions according to which they can exercise their rights.¹⁷

3.2 The breadth of the matters covered, including self-employed persons and transposition through collective agreements

The question whether the existing legal, administrative and conventional framework covers all the matters and persons covered by Directive 98/49/EC, was also addressed in national reports. In the vast majority of the national reports (approximately 20 reports), the answer was positive with no significant reservation in that regard. Three reports answered that the legal framework covers the subject matter to the extent addressed in the questionnaire; in the case of one Member State, the report stated that while all

¹⁶ In the case of Switzerland, this is Article 86b *BVG*. In the case of Liechtenstein, this is Article 22 *BPVG* and Article 23 and 33 *PFV*.

¹⁷ For employed persons, see Article 58-IV (Social Security Code, Article L 914-2) of Law No 2002-73. For self-employed persons, see Article L-961-3 of the Social Security Code since *Ordonnance* 2006-344 of 23 March 2006.

matters had been covered by implementing acts, general terms and notions have been used, and no specific provisions were introduced related to leaving the country, cross-border payments¹⁸ or posting (HU), whereas in two other cases (IT and LV), significant reservations were expressed about the extent or quality of implementation on this point.¹⁹ The Latvian report also points out the difficulty in rightly interpreting the scope of Directive 98/49/EC, especially in the light of EU gender equality law.²⁰ The national report of one Member State (EL) stated in a firm manner that the material and personal scope of the Directive was not covered. The reason brought forward was the instability of the legal regime due to the crisis, which also impacts on the regime governing pensions.

3.2.1 Coverage of self-employed persons

As Directive 98/49/EC applies both to schemes of employed and self-employed persons, measures adopted in national systems in relation to the breadth of the Directive must clearly include self-employed persons.

In this respect, it is observed that in a number of jurisdictions the rights conferred on members do not distinguish between employed and self-employed persons (BG, EL, FI, HR, IE, LV, MT, RO, SK and UK). On the same note, self-employed persons were reported to be subjected in numerous Member States to the same regime as employed persons (EE, CZ, IS, IT, LT, NO and SI). In France, for example, the legislation aimed at ensuring, amongst others, equal preservation and cross-border payments stems from the Social Security Code both in relation to employed and self-employed persons, and in Greece the national measure transposing Directive 98/49/EC considers supplementary pension schemes as those intended to provide supplementary pension to employed or self-employed persons.

Against this background, the regulation of self-employed persons by the same supplementary pension scheme rules as employed persons may be subject to variations, including exceptions (DE, NL, and PL): for example, in the case of Poland, the national legal regime covers employed and self-employed persons but in the case of self-employed persons coverage extends to those who employ at least one employee; consequently, it is reported in the national report, that a self-employed person who does not employ any employees is not covered by the said regime, and may contribute to pension schemes concerning individuals. A similar situation appears to exist in Hungary, where self-employed persons may join the voluntary mutual insurance scheme in their capacity as employers. In the case of Germany, even though no specific pension scheme was reported to exist with regard to self-employed persons, the scope of application of relevant law was reported not to be confined to employees; in this context, self-employed persons may be subjected under certain conditions to the regime governing employed persons. In limited cases the legal provisions implementing Directive 98/49/EC were reported to be applicable only to employed persons (AT and ES), which might be attributed to the fact that no specific supplementary social security schemes for self-employed persons may exist. In one case (Belgium) a specific statute addressing supplementary pension schemes of self-employed persons was identified.

In addition to the German report which reported the absence of specific occupational schemes for self-employed persons, the reports on Latvia, Denmark, and Slovenia referred to the same point. Supplementary pension schemes for self-employed persons were considered to be limited in a few cases (IT and HR).

¹⁸ Except for foreign exchange regulations.

¹⁹ To name but a few cases, implementation was considered problematic in relation to Article 4 and 5 of Directive 98/49/EC.

²⁰ Mention is made on this point of Article 141 TFEU and Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, OJ L 204, 26.7.2006, pp. 23-36.

This highly diverse context is further corroborated by varied regimes depending on the Member State (CH, LI and LU). In the case of Sweden, where occupational pension schemes result from collective agreements between social partners at national/sector level, it was reported that collective insurance schemes do not cover, among others, self-employed persons; according to the national report, these categories should personally ensure that they obtain appropriate insurance cover, the potential of taking out occupational pension insurance being dependent on the corporate form. In the case of Cyprus, as Directive 98/49/EC has been covered as a matter of fact rather than through explicit transposition measures, the scope of the instrument was reported to be highly heterogeneous. In this respect, the national report appreciates that there are some difficulties in detecting the corresponding level of protection, a remark which can also be extended to self-employed persons.

All in all, despite this highly diverse context, the vast majority of national reports clearly did not point to any specific problems in relation to the protection of self-employed persons from the standpoint of the Directive.

3.2.2 Coverage through collective agreements

In the event that the Directive has been implemented by means of collective agreements, national reports had to describe the measures adopted to protect the persons who are not trade union members. This very important question gave rise, once again, to highly diverse inputs.

In Austria, Bulgaria, Switzerland, the Czech Republic, Denmark, Estonia, Spain, France, Croatia, Hungary, Ireland, Liechtenstein, Lithuania, Luxembourg, Latvia, Malta, the Netherlands, Norway, Poland, Portugal, Romania and the United Kingdom, Directive 98/49/EC was not implemented by means of collective agreements. The Belgian and Slovenian report stated that there is no discrimination on the basis of trade union membership. The Finnish report stated that coverage is not impaired by the absence of membership. In Italy, supplementary pension funds have been regulated by statute, and even though relevant legislation does not make reference to the Directive, it does leave to collective agreements the task of instituting pension funds within the framework of basic statutory principles. In this context, according to the Italian report, the position of workers with regard to membership is protected in the double sense that union members are not obliged to be part of a supplementary scheme since adhesion is explicitly qualified by legislation as voluntary, and non-union members may be part of a supplementary scheme negotiated by unions.

According to the Swedish report, Directive 98/49/EC was implemented by means of collective agreements. An employer is required to apply the collective agreement in force to all its employees regardless of membership. This point will be discussed in greater detail below when discussing case law on the position of the Swedish Labour Court.

With the above in mind, we can now focus on a more concrete manner on the problems identified in the report.

3.3 A list of problems

In the vast majority of Member States, including Switzerland, no special problems were reported pertaining to the free movement of workers in the framework of supplementary pension schemes (AT, DE, EE, FI, FR, HR, HU, IE, LT, LU, MT, NL, NO, PL, RO, SI, SK and UK). In these countries, the overall situation was considered in a straightforward manner to be smooth. This is likely to suggest that the implementation of Directive 98/49/EC has been rather smooth.

In the Cypriot and Latvian report no substantial problems were identified either, but both reports contained a similar observation on the need to collect more data on the matter in order to grasp a more comprehensive picture of the situation.

The Bulgarian report reported a lack of available information on problems faced by scheme members exercising their right to free movement.

Against this background, a small number of national reports pointed out varied problems:

The Belgian report, for example, identified a potential implementation gap in relation to Article 5 of Directive 98/49/EC on cross-border payments from the standpoint of non-discrimination²¹ as well as legal risks concerning a proper implementation of Article 6 and 7.

Some problems were also detected in Denmark concerning Article 6, including a reported case which touches the heart of the problem: according to this source, foreign companies had to establish collective agreements in Denmark and thus to pay supplementary pension contributions in the same country despite already doing so in the Member State of origin.

The Italian report identified broad as well as specific issues which impact on the proper implementation of Directive 98/49/EC. For example, the report points to the absence of the codification of rights such as the ones set out in Article 4, 5 or 6 of the Directive in the Italian legal order. In some cases, rights are deduced (e.g. cross-border membership and payment of contributions) from the voluntary character of membership rather than being clearly based on express provisions.

The report on Liechtenstein stresses the need for clarifications on certain technical matters, while the Spanish report shifts the focus on problems relating to taxation of contributions, which goes beyond the framework of Directive 98/49/EC but which is indirectly related to the latter. The report on Portugal identified a lack of clarity in relation to the protection of posted workers in Portugal as well as of Portuguese workers in another Member State in the context under discussion. More specifically, it is appreciated in the national report that the statutory regime in force does not clearly guarantee that during a posting in Portugal, when the payment of contributions is continued in another Member State, the posted employee and his or her employer are exempt from the obligation to pay contributions in Portugal. In the event where in the host State of the Portuguese posted worker there is no express provision exempting him or her from the obligation to pay contributions, if the Portuguese worker or his or her employer continues to pay contributions in Portugal, there may be room for legal uncertainty.

Interestingly, the only national report which identified issues concerning collective agreements and the membership of non-members was the Swedish report. This aspect will be discussed below.

3.4 Noteworthy administrative practices

The national reports did not substantially include any noteworthy administrative practices regarding the matter.²² This may suggest that the situation is in good order, or that there is a need for additional information from relevant sources on current practices. The Bulgarian report, for example, reported a lack of available information on administrative practices.

²¹ This is moreover the case as the Programme Law (I) of 24 December 2002 and the Law of 15 May 2014 are silent on cross-border payments.

²² Two circulars that shed light on technical aspects were identified in the report pertaining to Luxembourg (Circular 2009/01 and Circular 2013/01).

3.5 Noteworthy case law

Only limited national case law revolving around Directive 98/49/EC appears to exist. It is not excluded that additional national case law may be indirectly relevant to this area from the standpoint, however, of taxation matters (rather than of the Directive as such; in Spain, for example, there has been a case exploring the fiscal imposition of contributions paid to a complementary pension scheme by the Spanish subsidiary on behalf of a Greek subsidiary where the worker was posted²³).

Two cases were detected in the Danish report on the level of the Labour Court and the High Court of Eastern Denmark, with mention, however, that their current status remains unknown. Both cases concerned posted workers in Denmark by an Italian company, who had voluntarily become members of an industry association, and voluntarily concluded a collective agreement via the trade union, entailing the payment of pensions through a Danish pension company. The company paid for about three years for 24 posted workers. Subsequently, the company asked the pension entity to refund the pensions, as the posted workers were covered by the Italian supplementary scheme concurrently to the payment to the Danish system.

Additional cases were reported by the Finnish report with the focus on measures seeking to ensure adequate information²⁴; more specifically, the question was whether the company should actively inform those employees already retired, whether the information should be given personally, and whether the pension fund should compensate the loss of rights caused by a lack of information.

As already mentioned, according to the Swedish report, the Directive was implemented by means of collective agreements, and implementation benefits from the position of the Swedish Labour Court, which has repeatedly held that an employer is required to apply the collective agreement in force to all its employees regardless of membership.²⁵ However, a difficulty comes into play in this context when the employer chooses not to sign a collective agreement, in which case, according to the Swedish report, employees are not protected and would need to have an individual occupational pension agreement with the employer.

The Bulgarian report reported a lack of available information on case law.

The following chapter endeavours to analyse in a more structured manner some of the most important challenges which affect proper implementation of Directive 98/49/EC in national legal systems.

²³ TEAC 2130/2000, 4.4.2003 (EDD 2003/198605).

²⁴ Supreme Court Case KKO 2013:67.

²⁵ On the Swedish Labour Court holding that an employer is required to apply the collective agreement in force to all its employees regardless of membership to a union, see amongst others: AD 1944 No 37, AD 1991 No 49, AD 1977 No 49 and AD 1931 No 93.

4 ANALYSIS OF THE PROBLEMS

It can be said from the outset that the findings based on the national reports do not clearly indicate a massive trend of problems, difficulties or inconsistencies, which is moreover corroborated by the absence of voluminous national case law or significant administrative practice. In other terms, the limited challenges that appear to exist pertain, on the one hand, to different areas within the scope of the Directive, and, on the other hand, they do not stem from a big number of countries involved at each instance (the paragraph above on the identification of reported problems provides a confirmation of this).

A wider concern can be raised on whether Articles 4, 5, 6 and 7 of Directive 98/49/EC have actually given rise to significant changes in the legal system and practice of Member States in the direction of enhancing the rights of migrant workers or whether they tend to represent a confirmation of what was actually there before the Directive. This question cannot be answered in a firm manner, but it can contribute to understanding the complexity of the task of evaluation. It can be recalled on this point that certain reports from Member States mention that there was no need to adopt specific measures to comply with the said Articles. The reasons or arguments reported for this were similar, i.e. the existing legal arrangements did not make any discriminations between workers remaining in one Member State and those moving to another Member State or did not hinder the exercise of the rights stemming from the Directive.

As far as equal preservation, cross-border membership, and cross-border payment of posted workers are concerned these rights are for the most part reported to enjoy sufficient protection despite the absence, at least in the vast majority of cases, of explicit or codified work on the part of national legislatures. Nevertheless, the added value of the codification of these rights through Directive 98/49/EC to the benefit of migrant workers does not appear to lose, in our opinion, its interest, as the quality of the said protection may in some cases be viewed as questionable. Is, for example, the absence of the adoption of specific measures seeking to implement Article 4 on equal preservation on the grounds of the absence of statutory discriminations an adequate means for achieving the goals sought by the Directive? The same question may be raised in relation to cross-border membership of posted workers, cross-border payment of contributions, and exemption of contributions.

No trend has been detected concerning the quality of information to be provided to scheme members, even though the case law of a specific Member State (FI) touched upon very interesting questions on the matter (how should this duty to provide information be broken down? What are its features?).

In addition to the above, the vast majority of national reports point to a comprehensive coverage of the subject matter as set out by the instrument under discussion. It can be recalled on this point, that despite the highly diverse context of supplementary pension schemes in general, and in particular concerning self-employed persons, no specific problems or trends were detected or identified by the vast majority of national reports in relation to the protection of employed persons and self-employed persons.

Only a few reports actually made reservations on this level. From this point of view, it can be considered that implementation has been achieved properly. Yet, the degree of diversity involved can reasonably give rise to some scepticism as to whether the said coverage is as comprehensive as it can be considered at first glance.

There is diversity when it comes to collective agreements as well. This is despite the fact that only a small number of countries actually operate supplementary pension schemes through collective agreements. Collective agreements are not used for supplementary pension schemes in Austria, Switzerland, the Czech Republic, Denmark, Estonia, Greece, Spain, France, Croatia, Hungary, Ireland, Liechtenstein, Lithuania, Luxembourg, Latvia, Malta, the Netherlands, Norway, Poland, Romania and the United Kingdom. When

supplementary schemes are run through collective agreements, the problems detected above suggest that there is room for improvement. In Sweden, where Directive 98/49/EC was implemented by means of collective agreements, the Swedish Labour Court has repeatedly held that an employer is required to apply the collective agreement in force to all its employees regardless of membership.

5 CONCLUSIONS AND RECOMMENDATIONS

- In the light of the findings of the national reports and our analysis we can confirm that Directive 98/49/EC has given rise to explicit implementation measures only exceptionally, and that the rule for most Member States is the use of existing principles and practices for the purposes of the application of the instrument.

When, for example, and contrary to the relevant requirement²⁶ according to which implementation measures should include a reference to the Directive, no reference to the Directive can be found in a national system, it is questionable whether this practice itself can actually contribute to the effectiveness of rights sought by the instrument, as related rights cannot, at least at first glance, be identified.

On this point our recommendation would be to introduce a greater degree of visibility of transposition measures.

- Additionally, it is clear from national reports that there are many areas (identified throughout the report) where there has been no codification of rights stemming from the Directive. There is no doubt that the function of a Directive is to allow for flexibility and to take into account national particularities; at the same time, however, Directives seek to enhance protection through codification or other practices of equal weight, and on this point, there may be room for improvements.

Our recommendation on this point would be to seek to obtain a clearer picture of the extent of protection which migrant workers are granted, in the context of the Directive, under legal systems where the relevant rights have not been codified. At the same time, with regard to systems where these rights have been codified, we would recommend to investigate to what extent there is actual application. These aspects could not be fully ascertained on the basis of national reports.

- The question of membership of unions and possible obstacles to the rights granted by the Directive only substantially arose, according to the reports, in one country. This is a strong indication that there is no trend of problems in this direction.

We believe that there is room for the collection of more systematic data on this issue, in general, and in particular in relation to the protection of non-members. Access to information revealing problems in practice, especially through surveys to targeted groups, could contribute to a better understanding of possible problems. Inputs from SOLVIT on the national level could also enhance the quality and relevance of the data collected.

- We believe that the 'IORP Directive', also known as the 'Pension Fund Directive', has indirectly contributed to fostering the right to information set out in Directive 98/49/EC, even though the quality of the implementation could be enhanced on its own merit. Some uncertainty seems to exist as to the content of the right to information, including when and how the right to information should come into play.

The exchange of best practice experiences between Member States could help to improve this point.

Furthermore, Directive 2014/50/EU of the European Parliament and of the Council of 16 April 2014 on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of

²⁶ Article 10(1) of Directive 98/49/EC.

supplementary pension rights (text with EEA relevance) deserves special mention.²⁷ The Directive, which must be transposed by 21 May 2018, sets out rules aimed at facilitating the exercise of the right of workers to freedom of movement between Member States by reducing the obstacles created by certain rules concerning supplementary pension schemes linked to an employment relationship. Information rights are set forth in Article 6 of the Directive, notably including information on how a termination of employment would affect supplementary pension rights or information on the value and conditions governing dormant pension rights. Information shall be provided clearly, in writing, and within a reasonable period of time. As laid down in the instrument, Directive 98/49/EC represents an initial specific measure designed to improve the exercise of the right of freedom of movement of workers as regards supplementary pension rights,²⁸ whereas Directive 2014/50/EU is aimed at further facilitating worker mobility, by improving the acquisition and preservation of supplementary pension rights. In this context, Directive 2014/50/EU can reasonably be expected to create useful synergies for workers in the context under discussion with Directive 98/49/EC.

- While we appreciate that Regulation (EC) No 2560/2001 of the European Parliament and of the Council of 19 December 2001 on cross-border payments in euro²⁹ can help lower related charges, and that the EC, since its Communication COM(2001)214,³⁰ has been active in monitoring national tax rules hindering cross-border participation in pension schemes, there is room for improvement in the area of lifting obstacles to migrant workers when it comes to equal preservation, cross-border membership, and cross-border payment of posted workers, necessitating more positive measures.
- Last but not least, the above mentioned Directive on portability as well as the monitoring by the EC of certain taxation matters, may indirectly contribute to the goals of Directive 98/49/EC, and the relevance of the latter may thus be demonstrated with even greater focus. In the context where an affiliated worker wishes to work in another Member state and this case is not explicitly considered by the national legislature, the portability of vested pension rights to other pension funds, and the right to obtain redemption of the contributions may be subject to some conditions which might constitute an obstacle to the very same decision to work in another Member State. From this standpoint, any positive action supporting the Directive on portability and the monitoring by the European Commission of certain taxation matters, may be seen as positive for and relevant to the proper implementation of Directive 98/49/EC.

²⁷ OJ L 128, 30.4.2014, p. 1-7.

²⁸ See paragraph 4 of the preamble of Directive 2014/50/EU.

²⁹ OJ L 344, 28.12.2001, p.13-16.

³⁰ Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee – The elimination of tax obstacles to the cross-border provisions of occupational pensions, COM(2001)214.

ANNEX 1: QUESTIONNAIRE SENT TO FRESCO NATIONAL EXPERTS

Comparative ad hoc request

“Implementation of Directive 98/49/EC on safeguarding the supplementary pension rights of employed and self-employed persons moving within the European Union”

Questionnaire for national experts

I. INTRODUCTION

a) The legal framework

Council Directive 98/49/EC of 29 June 1998³¹ came into force in the Member States on 25 July 1998 and Member States had to adopt the necessary measures for its application at the latest 36 months following the date of its entry into force, i.e. no later than 25 July 2001.

According to its Article 10(1):

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 36 months following the date of its entry into force, or shall ensure by that date at the latest that management and labour introduce the requisite provisions by way of agreement. Member States shall take all necessary steps to enable themselves at all times to guarantee the results imposed by this Directive.

This Directive was a first, but very important step in removing obstacles to free movement relating to supplementary pensions.

The principal provisions could be summarised as follows:

- A person who leaves a scheme because he or she moves to another Member State must not be treated differently to a person who leaves the scheme but remains in the Member States, as far as his or her vested rights are concerned **(Article 4)**.
- According to Article 3(d) of the above Directive "vested pension rights" means any entitlement to benefits obtained after fulfilment of the conditions required by the

³¹ L 209 of 25 July 1998 p.46

rules of a supplementary pension scheme and where applicable by national legislation.

- Member States should take the necessary measures to ensure that benefits under supplementary pension schemes are paid to members and former members thereof as well as others holding entitlement under such schemes in all Member States, given that all restrictions on the free movement of payments and capital are prohibited under Article 63 TFEU (**Article 5**).
- A person posted to another Member State should be allowed to continue to make contributions to the scheme in his or her "home" Member State (**Article 6**). To this end and in order to facilitate the exercise of the right to free movement, national regulations should, where necessary, be adjusted in order to enable contributions to continue to be made to a supplementary pension scheme established in one Member State by or on behalf of workers who are posted to another Member State in accordance with Title II of Regulation (EEC) No 1408/71 (now Article 12 of Regulation (EC) No 883/2004).
- Workers exercising their right to free movement should be adequately informed by employers, trustees or others responsible for the management of supplementary pension schemes, particularly with regard to the choices and alternatives available to them (**Article 7**).

Member States have already transmitted to the Commission the measures in place and/or adopted for the implementation of Directive 98/49/EC and the Commission elaborated already two reports on its implementation on the basis of the information provided by the Member States.³²

It appeared that in some Member States this Directive was implemented by means of collective agreements.

However, recently the Commission services received some complaints in relation to the application of several provisions of Directive 98/48/EC in some Member States where the Directive was implemented mainly by means of collective agreements. According to the complainants, as some Member States did not adopt specific measures for the transposition of some provisions of Directive 98/49/EC, and as their transposition was left to the social partners, some supplementary pension schemes do not apply the principal provisions of this Directive (Article 4, 5 and 6). As a result, when cases are brought before the national courts because of a non-transposition, these courts do not always apply the principles contained in these provisions.

³² Report on the implementation of Directive 98/49EC in the 15 Member States : COM (2006)22 Final of 26.01.2006 and its annex : SEC(2006) 82
Report on the implementation of Directive 98/49EC in RO and BG: COM/2009/0283 final and its annex: SEC/2009/0813 final.

It should be noted that according to the second sentence of Article 10(1): *Member States shall also take all necessary steps to enable themselves at all times to guarantee the results imposed by this Directive.*

b) The case law of the Court of Justice of the European Union

According to a well-established case law of the CJEU, in particular case C-143/83,³³ confirmed more recently by case C-306/07,³⁴ although Member States may leave the implementation of the Directives to representatives of management and labour, this possibility does not, however, discharge them from the obligation of ensuring, by appropriate legislative and administrative provisions, that all workers in the Union are afforded the full protection provided for in the Directive. This state guarantee must cover all cases where effective protection is not ensured by other means, for whatever reason, and in particular cases where the workers in question are not union members, where the sector in question is not covered by a collective agreement or where such an agreement does not fully guarantee the principles of the Directive.

c) The Commission's position

The existing legal administrative and conventional framework for the implementation of Directive 98/49/EC should guarantee a full coverage of the material and personal scope of Directive 98/49/EC in accordance with the aforementioned case law of the CJEU.

Moreover, in Article 9 there is a standard clause on judicial protection to be introduced by Member States into their national legal system by adopting measures necessary to enable all persons who consider themselves wronged by failure to apply the provisions of Directive 98/49/EC to pursue their claims by judicial process after possible recourse to other competent authorities.

³³ *Commission v Denmark*, EU:C:1985:34.

³⁴ *Ruben Andersen*, EU:C:2008:355.

II. QUESTIONNAIRE

1. **Update of the measures adopted for the implementation of Directive 98/49/EC by comparison to the situation described in the Commission's implementation reports.**³⁵

You are requested to **review (and wherever needed, update) the information in the SEC documents**, reproduced below in table format in relation to each of the principal provisions of Directive 98/49/EC.³⁶

If any change occurred compared to the situation in 2006 (2009 for Bulgaria and Romania), please **amend the text directly**, thereby **working in the 'track changes' mode**, and **briefly describe the substance** of the new legislative or conventional framework.

[Were inserted per questionnaire, per Member State: tables taken from SEC(2006)82]³⁷

2.

i. Does the existing legal administrative and conventional framework **cover all the matters and persons covered by Directive 98/49/EC?**

ii. In the event that the Directive was implemented by means of **collective agreements, what are the measures adopted to protect the persons who are not trade union members?**

Reply:

3. Please provide, in relation to the application of the principal provisions of Directive 98/49/EC:

- i. **a list of problems faced by scheme members exercising their right to free movement;**
- ii. **a brief description** of any noteworthy **administrative practices** and **case law** that occurred since the last implementation report, i.e. 2006/2009.

³⁵ Report on the implementation of Directive 98/49/EC in the 25 Member States: COM (2006)22 final of 26.01.2006; and its annex: SEC(2006) 82; Report on the implementation of Directive 98/49/EC in RO and BG: COM/2009/0283 final; and its annex: SEC/2009/0813 final.

³⁶ These are: Article 2-3 (material scope), Article 4 (equal preservation), Article 5 (cross-border payments), Article 6 (cross-border membership of posted workers) and Article 7 (information to scheme members).

³⁷ Each expert/Member State was provided with a separate questionnaire which included the tables for that particular Member State. Croatia, Iceland and Liechtenstein received empty tables and were requested to complete them

Please **indicate**, for each element of response to this question, **to which principal provision of the Directive it refers**.

Reply:

ANNEX 2: COUNTRY SHEETS



AUSTRIA

1. Update of the measures adopted for the implementation of Directive 98/49/EC by comparison to the situation described in the Commission's implementation reports

Table 1: Material Scope

Country	Non-exhaustive list of supplementary pension schemes covered by Directive 98/49/EC - Brief description ³⁸ -	Non-exhaustive list of supplementary pension scheme covered by Regulation 1408/71/EEC (now Regulation (EC) No 883/2004)
Austria	<p>Entitlement to occupational benefits is based on a voluntary promise by the employer. Once an employer has made such a promise, occupational pension plans in principle can be set up in three different ways:</p> <ul style="list-style-type: none"> - direct promises backed by book reserves, - paying contributions to a pension fund separate from the employer, or - paying premiums for a life insurance contract which the employer places for his employees, either as a specific contract for each employee or a comprehensive contract for the entire staff (“betriebliche Kollektivversicherung”). 	

Table 2: Equal preservation

Country	Adopted measures to ensure equal preservation	Reference in the national provision
Austria	<p>No specific measures were adopted.</p> <p>As reason for this it is indicated that the existing legislation on the preservation of vested rights does not make a distinction between members remaining in the country and those moving within the Community.</p>	§§ 5, 6c, 7 and 13 of the BPG

³⁸ Based on information provided by the concerned Member State and by other stakeholders (in particular members of the Pensions Forum)

Table 3: Cross-border payments

Country	Adopted measures to guarantee cross border payments	Reference in the national provision
Austria	<p>No specific measures were adopted.</p> <p>As reason for this it is indicated that the existing legislation on the conditions on vesting of pension rights ensures cross-border payments.</p>	<p>§§ 5, 6c, 7 and 13 of the BPG and § 905 ABGB</p>

Table 4: Cross-border membership of posted workers

Country	Adopted measures to permit contributions by and behalf of posted workers, Article 6 (1) Exemption from contributions, Article 6 (2)	Reference in the national provisions
Austria	<p>-No specific measures were adopted.</p> <p>As reason for this it is indicated that, in case of a posting, the contracts related to supplementary pension provision in Austria remain applicable.</p> <p>-No specific measures were adopted.</p> <p>As reason for this it is indicated that it was already by law stipulated that the employer is not obliged to pay twice. Moreover, it is stated that there are no obligatory occupational pension schemes in Austria.</p>	<p>§ 7b (1) of the AVRAG (this provision will be replaced from 1 January 2017 by § 3 (3) LSD-BG, which will not result in any material changes, however.</p>

Table 5: Information provided to scheme members

Country	Adopted measures to ensure adequate information	Reference in the national provision
Austria	<p>No specific measures were adopted.</p> <p>As reason for this it is indicated that the range of information is harmonized with the content of the Directive and is identical for all scheme members regardless of whether they remain in their Member State of origin or move to another Member State.</p>	<p>§ 17 of the BPG and §§ 15 and 18 of the PKG</p>

LIST OF NATIONAL PROVISIONS

Country	National provisions communicated by the Member States concerning Directive 98/49/EC
Austria	<ol style="list-style-type: none"> 1. <u>Betriebspensionsgesetz</u> (Occupational Pensions Act, (BPG)), BGBl. No. 282/1990 as amended by BGBl. I No. 51/2001 44/2016 2. <u>Pensionskassengesetz</u> (Pension Funds Act, (PKG)), BGBl. No. 281/1990 as amended by BGBl. I No. 119/2004 68/2015 3. <u>Allgemeines Bürgerliches Gesetzbuch</u> (General Civil Code, (ABGB)), JGS No. 946/1811 as amended by BGBl. I No. 77/2004 43/2016 4. Employment Contract Law Adaption Act (AVRAG), BGBl. No. 459/1993 as amended by BGBl. I No. 100/2002; the respective provisions of AVRAG have been transferred to a new Act which is set into force on 1 Jan 2017: 5. <u>Lohn- und Sozialdumping-Bekämpfungsgesetz</u> (LSD-BG, Act for Fighting against illegal dumping of wages), BGBl. I 44/2016

2.

i. Does the existing legal administrative and conventional framework cover all the matters and persons covered by Directive 98/49/EC?

No measures have been adopted in Austria for the implementation of Directive 98/49/EC with respect to self-employed persons. The legal provisions mentioned (especially with regard to the *Betriebspensionsgesetz*) are applicable only to employed persons.

ii. In the event that the Directive was implemented by means of collective agreements, what are the measures adopted to protect the persons who are not trade union members?

The Directive has not been implemented by means of collective agreements. However, this would not cause any problems because collective agreements are applicable also to persons who are not members of that trade union which has concluded the respective agreement as long as their respective employer is member of the employers' organisation which is the other party concluding that contract (the so-called "*Außenseiterwirkung*" – outsider effect as laid down in § 12 of the *Arbeitsverfassungsgesetz – ArbVG* (General Labour Relations Act).

3.

i. List of problems faced by scheme members exercising their right to free movement

ii. Administrative practices and case law that occurred since the last implementation report, i.e. 2006/2009

No problems can be identified so far.



BELGIUM

1. Update of the measures adopted for the implementation of Directive 98/49/EC by comparison to the situation described in the Commission's implementation reports

Table 1: Material Scope

Country	Non-exhaustive list of supplementary pension schemes covered by Directive 98/49/EC - Brief description ³⁹ -	Non-exhaustive list of supplementary pension scheme covered by Regulation 1408/71/EEC (now Regulation (EC) No 883/2004)
Belgium	<p>Since the coming into force of the new law of 28 April 2003 on supplementary pensions (known as "the Vandebroucke law"), occupational pension schemes for workers can be divided into two categories:</p> <ul style="list-style-type: none"> - individual pension promises backed by book reserves, and - collective schemes that are set up through collective bargaining at company level or at sector level (managed by the social partners). <p>Art. 41-82 Programme Law (I) of 24 December 2002 laying down the framework for the supplementary pensions of self-employed persons.</p> <p>Art. 35-87 Law of 15 May 2014 containing various provisions create a specific framework for supplementary pensions for company managers.</p>	

Table 2: Equal preservation

Country	Adopted measures to ensure equal preservation	Reference in the national provision
Belgium	<p>No specific measures were adopted.</p> <p>As reason for this it is indicated that the existing legislation on the preservation of vested rights does not make a distinction between members remaining in the country and those moving within the Community.</p>	<p>Articles 13, 17 and Chapter V of the Law of 28 April 2003</p> <p>Articles 47 and 51 of the Programme Law (I) of 24 December 2002</p> <p>Article 40 of the Law of 15 May 2014 containing various provisions</p>

³⁹ Based on information provided by the concerned Member State and by other stakeholders (in particular members of the Pensions Forum)

Table 3: Cross-border payments

Country	Adopted measures to guarantee cross border payments	Reference in the national provision
Belgium	<p>No specific measures were adopted.</p> <p>As reason for this it is indicated that the existing legislation does not make any distinctions, in terms of payment, between members remaining in the country and those moving within the Community.</p>	

Table 4: Cross-border membership of posted workers

Country	Adopted measures to permit contributions by and behalf of posted workers, Article 6 (1) Exemption from contributions, Article 6 (2)	Reference in the national provisions
Belgium	<p>-No specific measures were adopted.</p> <p>As reason for this it is indicated that, in case of a posting, the contracts related to supplementary pension provision in Belgium remain applicable.</p> <p>-Specific legislation was adopted.</p>	Article 13 and 108 of the Law of 28 April 2003

Table 5: Information provided to scheme members

Country	Adopted measures to ensure adequate information	Reference in the national provision
Belgium	<p>No specific measures were adopted.</p> <p>As reason for this it is indicated that the range of information is harmonized with the content of the Directive and is identical for all scheme members regardless of whether they remain in their Member State of origin or move to another Member State.</p>	<p>Articles 9, 12, 26, and 31, 33/1, 33/2, and 39 of the Law of 28 April 2003</p> <p>Article 48 of the Programme Law (I) of 24 December 2002</p> <p>Articles 39 and 87 of the Law of 15 May 2014 containing various provisions</p>

LIST OF NATIONAL PROVISIONS

Country	National provisions communicated by the Member States concerning Directive 98/49/EC
Belgium	<p>Law of 28 April 2003 on supplementary pension schemes and tax provisions (known as the Vandebroucke law)</p> <p>Art. 41-82 Programme Law (I) of 24 December 2002</p> <p>Art. 35-87 Law of 15 May 2014 containing various provisions</p>

2.

i. Does the existing legal administrative and conventional framework cover all the matters and persons covered by Directive 98/49/EC?

Yes.

This includes self-employed persons. Article 41 of the Programme Law (I) of 24 December 2002 laying down the framework for the supplementary pensions of self-employed persons refers to the general definition of self-employed persons for the purposes of social security law, laid down in Royal Decree No 38 concerning the social status of self-employed persons. Rules regarding company managers in particular are laid down in Article 35-87 of the Law of 15 May 2014 containing various provisions, which create a specific framework for supplementary pensions for company managers.

ii. In the event that the Directive was implemented by means of collective agreements, what are the measures adopted to protect the persons who are not trade union members?

Pension schemes do not distinguish on the basis of trade union membership. The Law of 10 May 2007 prohibiting certain forms of discrimination, to which Article 14 and 54 of the Law of 28 April 2003 refer, prohibits discrimination based on trade union membership.

3.

i. List of problems faced by scheme members exercising their right to free movement

ii. Administrative practices and case law that occurred since the last implementation report, i.e. 2006/2009

Article 5 of Directive 98/49/EC

The Law of 28 April 2003 does not make mention of cross-border payments. The Law of 30 July 1981 penalising certain acts motivated by racism or xenophobia, to which Article 14 and 54 of the Law of 28 April 2003 refer, prohibits direct and indirect discrimination based on nationality. However, it may be seriously doubted whether courts would derive an export duty from this prohibition, which, moreover, can only be relied upon by non-Belgian citizens (as opposed to Belgian free movers). The silence of the Law of 28 April 2003, in combination with the limitations of the Law of 30 July 1981, creates a potential implementation gap, as the exportability is a matter for collective or individual labour agreements, firm-level work regulations, or unilateral acts of the employer.

The Programme Law (I) of 24 December 2002 and the Law of 15 May 2014 containing various provisions are silent on cross-border payments, leading to a similar possibility of pension contracts or pension regulations that do not provide in export.

Article 6 of Directive 98/49/EC

Article 108 of the Law of 28 April 2003 provides that Title II of that law⁴⁰ does not apply to employed persons who are posted in Belgium within the meaning of Title II of Regulation (EEC) No 1408/71. This might be an incomplete implementation of Article 6 of Directive 98/49/EC. Article 6(2) of Directive 98/49/EC only requires the exemption from the obligation to contribute *if* contributions are paid in another Member State. Article 108 of the Law of 28 April 2003, which contains no such proviso, appears overbroad.

Article 6(1) of Directive 98/49 is not visibly transposed in the Law of 28 April 2003. Whether or not the continuity of contributions is ensured depends on the collective or individual labour agreement, firm-level work regulation, or unilateral act of the employer. One may wonder, however, whether there is a need for legislative provisions reflecting Article 6(1) of Directive 98/49/EC, seeing as the individual employment contract and the collective labour agreements remain in force during the period of posting.

Article 7 of Directive 98/49/EC

Belgium seems to have placed the emphasis on the second sentence of Article 7 of Directive 98/49/EC, by not differentiating between purely domestic cases and cross-border cases. One may wonder whether that constitutes "adequate information" in all cases.

⁴⁰ Title II of the Law of 28 April 2003 spans articles 2-63/8, which set out the rights and obligations of the parties involved in supplementary pension schemes. Titles III and IV modify other laws, Title V contains final provisions, and Title I consists of a single sentence.



BULGARIA

1. Update of the measures adopted for the implementation of Directive 98/49/EC by comparison to the situation described in the Commission's implementation reports

Table 1: Material Scope

Country	Non-exhaustive list of supplementary pension schemes covered by Directive 98/49/EC - Brief description -	Non-exhaustive list of supplementary pension scheme covered by Regulation 1408/71/EEC (now Regulation (EC) No 883/2004)
Bulgaria	<p>The reply to the questionnaire sent by the Commission to Bulgaria indicates that the compulsory supplementary pension's schemes in Bulgaria are covered exclusively by Regulation 1408/71883/2004, as they have a legislative character.</p> <p>The supplementary schemes established under the transposition of the Directive cover only voluntary pension schemes.</p>	

Table 2: Equal preservation

Country	Adopted measures to ensure equal preservation	Reference in the national provision
Bulgaria	<p>Specific legislation was adopted.</p> <p>Persons insured under an occupational pension scheme whose contributions have been suspended as a result of moving from Bulgaria to another Member State shall preserve their rights to the same degree as insured persons no longer making pension contributions but remaining in Bulgaria.</p>	<p>§§ 1, 2 of Article 248a of the Social Insurance Code.</p>

Table 3: Cross-border payments

Country	Adopted measures to guarantee cross border payments	Reference in the national provision
Bulgaria	<p>Specific legislation was adopted.</p> <p>Payments to persons insured under occupational schemes, as well as other persons with rights under such a scheme, may be made in other Member States after deducting taxes and transaction charges.</p> <p>Payment is made net taxes and transaction charges, and no other deductions are allowed.</p>	<p>Article 248b with reference to, Articles 256 and 257 of the Social Insurance code.</p>

Table 4: Cross-border membership of posted workers

Country	Adopted measures to permit contributions by and behalf of posted workers, Article 6 (1) Exemption from contributions, Article 6 (2)	Reference in the national provisions
Bulgaria	<p>Specific legislation was adopted.</p> <p>Contributions to occupational pension schemes operating in Bulgaria are made by or on behalf of the posted scheme members when they are posted to another Member State.</p> <p>Specific legislation was adopted.</p> <p>When contributions under a occupational scheme are continued in another Member State, the posted worker paying the contributions, and where applicable the insuring company, are absolved from any duty to pay contributions under the occupational scheme in Bulgaria.</p>	<p>Article 230 (8) of the Social Insurance Code.</p> <p>Article 230 (9) of the Social Insurance Code.</p>

Table 5: Information provided to scheme members

Country	Adopted measures to ensure adequate information	Reference in the national provision
Bulgaria	<p>Specific legislation was adopted.</p> <p>The statutes and rules of the supplementary pension fund of the particular supplementary pension provider stipulate that the provider should provide detailed information to the pension holder.</p>	<p>Article 123h (2) of the Social Insurance Code.</p>

LIST OF NATIONAL PROVISIONS

Country	National provisions communicated by the Member States concerning Directive 98/49/EC
Bulgaria	Law of 11 July 2006, amending and complementing the Social Insurance Code.

2.

i. Does the existing legal administrative and conventional framework cover all the matters and persons covered by Directive 98/49/EC?

Bulgaria correctly transposed the provisions of Article 6 in its national legislation: Article 230, paragraphs 8 and 9 of the Bulgarian Social Insurance Code ensure cross-border participation of posted workers in schemes.

Directive 98/49/EC is part of the *acquis* of the Community, which Member States are required to transpose into their legislation before joining the European Union. The answers above given by Bulgaria to the European Commission show that the country has ensured the implementation of the aforementioned Directive before its accession.

Thus, the Law of 11 July 2006 amending the Social Security Code ensures the removal of obstacles that migrant workers may encounter in connection with the protection of supplementary pension rights. The proposal for a Directive of 20 October 2005 on improving the portability of supplementary pension rights is a further step which aims to improve the situation of mobile workers by ensuring their rights under supplementary schemes.

The relevant acts of the Social Insurance Code expressly recorded Council Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community.

National legislation is in conformity with the requirements of the Directive. No distinction is made between schemes for employed persons and schemes for self-employed persons. Paragraphs 1 and 2 of Article 248a of the Bulgarian Social Insurance Code ensure the preservation of vested pension rights of persons involved in insurance schemes when they move to live in another Member State.

ii. In the event that the Directive was implemented by means of collective agreements, what are the measures adopted to protect the persons who are not trade union members?

General protection afforded by the Labour Code.

3.

i. List of problems faced by scheme members exercising their right to free movement

ii. Administrative practices and case law that occurred since the last implementation report, i.e. 2006/2009

No information available in this regard.



SWITZERLAND

1. Update of the measures adopted for the implementation of Directive 98/49/EC by comparison to the situation described in the Commission's implementation reports

Table 1: Material Scope

Country	Non-exhaustive list of supplementary pension schemes covered by Directive 98/49/EC - Brief description ⁴¹ -	Non-exhaustive list of supplementary pension scheme covered by Regulation 1408/71/EEC (now Regulation (EC) No 883/2004)
Switzerland	<p>According to the Act of 25 June 1982, employees have to be covered by a supplementary pension scheme if they are covered by the public old age, disability and survivor insurance (AHV/IV) and if their yearly wage reaches a certain amount (Article 2 and 5 <i>BVG, Bundesgesetz über die berufliche Alters-, Hinterlassenen- und Invalidenvorsorge, BVG</i>, SR 831.40).). The scheme has to observe a certain minimum standard of protection but it may go further than the minimum required (Article 49 § 2 <i>BVG</i>); most of the schemes do the latter by insuring a larger amount of the income than the one mandatorily insured by the law (“voluntary or further going protection” “<i>weitergehende berufliche Vorsorge</i>”); certain rules of the <i>BVG</i> are binding for this part of the protection scheme. Only the benefits that are based on this non-mandatory part are covered by Directive 98/49/EC. Should also be covered by Directive 98/49/EC: pension funds that practice only the voluntary part; those funds are regulated by the Civil Code, but some rules of the <i>BVG</i> apply to them.</p> <p>According to the Swiss government, the <i>BVG</i> did not need to be modified in order to implement Directive 98/49/EC (<i>BSV Mitteilungen</i> 2000 No 5, p. 3).</p> <p>Besides the Act of 1982, the by-laws adopted by the insurers as well as contracts between the insurer and the insured persons are important sources that determine the rights (pensions, lump sums) and obligations (contributions) of the insured persons and their employers. In certain cases, the scheme pays out a vested benefit (<i>Freizügigkeitsleistung</i>) in cash.</p>	<p>As mentioned in the second column of the table, the <i>BVG</i> scheme sets out a minimum standard of protection, but an insurer may go further than that; Regulation (EC) No 883/2004 covers the mandatory part of the scheme, whereas Directive 98/49/EC covers the protection that goes further than the latter (see Annex II of the FMP Agreement). In other words, Regulation (EC) No 883/2004 only applies to benefits that are mandatory by law (“<i>obligatorische Minimalvorsorge</i>”).</p>

⁴¹ Based on information provided by the concerned Member State and by other stakeholders (in particular members of the Pensions Forum)

Table 2: Equal preservation

Country	Adopted measures to ensure equal preservation	Reference in the national provision
Switzerland	Interestingly enough, Article 89b <i>BVG</i> mentioned in the third column of this table does not apply to the voluntary part of the scheme (Article 49 § 2 <i>BVG</i>). As already mentioned above, according to the Swiss government, the <i>BVG</i> did not need to be modified in order to implement Directive 98/49/EC (<i>BSV Mitteilungen</i> 2000 No 5, p. 3).	The <i>BVG</i> was modified in order to implement Regulation (EC) No 883/2004. Several articles were introduced that repeat the coordination principles. Article 89b <i>BVG</i> states that persons that fall into the scope of the FMP Agreement may claim equality of treatment.

Table 3: Cross-border payments

Country	Adopted measures to guarantee cross border payments	Reference in the national provision
Switzerland	Article 89c <i>BVG</i> mentioned in the third column of this table does not apply to the voluntary part of the scheme (Article 49 § 2 <i>BVG</i>). There is no equivalent rule concerning the voluntary part.	In order to implement Regulation (EC) No 883/2004, Article 89c <i>BVG</i> states that residence clauses are prohibited.

Table 4: Cross-border membership of posted workers

Country	Adopted measures to permit contributions by and behalf of posted workers, Article 6 (1) Exemption from contributions, Article 6 (2)	Reference in the national provisions
Switzerland	<p>According to Article 5 <i>BVG</i>, only persons that are insured by the old age, disability and survivor insurance are also covered by the <i>BVG</i>. As a consequence, only posted workers that continue to be insured by the public system may keep their coverage in <i>BVG</i> while they are working abroad. This rule concerns only the part of the scheme that is mandatory by law (“<i>obligatorische Minimalvorsorge</i>”). There is no equivalent rule concerning the voluntary part.</p> <p>Article 2 j § 2 of the Ordinance (<i>OPP 2</i>) exempts detached workers from the obligation to be insured; as a consequence, those workers do not have to pay any contributions. This rule, however, only concerns the part of the scheme that is mandatory by law (“<i>obligatorische Minimalvorsorge</i>”). There is no equivalent rule concerning the voluntary part; it is also not necessary to have such a rule because the scheme is not</p>	Article 5 <i>BVG</i> ; Article 2 j § 2 <i>OPP 2</i> .

	mandatory.	
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Table 5: Information provided to scheme members

Country	Adopted measures to ensure adequate information	Reference in the national provision
Switzerland	According to Article 86b <i>BVG</i> , the insurer has to inform the insured workers about the general situation of the scheme (activities, finances, etc). The same article obliges the insurer to inform every insured person about his/her rights to benefits, the insured income, the contributions etc. The information has to be given yearly. This rule concerns both parts of the scheme: the one that is mandatory by law (“ <i>obligatorische Minimalvorsorge</i> ”) and the voluntary part (“ <i>weitergehende berufliche Vorsorge</i> ”). Article 86b <i>BVG</i> was not introduced in order to implement Directive 98/49/EC; however, it benefits persons also that fall into the scope of the FMP Agreement.	Article 86b <i>BVG</i> .

LIST OF NATIONAL PROVISIONS

Country	National provisions communicated by the Member States concerning Directive 98/49/EC
Switzerland	The FMP Agreement does not contain any rule that obliges Switzerland to communicate national provisions concerning 98/49/EC. The FMP Agreement only states that the Parties have to communicate new legislations.

2.

- i. **Does the existing legal administrative and conventional framework cover all the matters and persons covered by Directive 98/49/EC?**
- ii. **In the event that the Directive was implemented by means of collective agreements, what are the measures adopted to protect the persons who are not trade union members?**

The *BVG* covers all workers that earn at least CHF 21,150 per year. Self-employed persons do not fall under the scope of the mandatory insurance, but they may insure themselves on a voluntary basis; if they do so, the rules of the *BVG* apply to them as if they were mandatorily insured (Article 4 § 2 *BVG*). Furthermore, this law concerns old age, disability and survivors’ pensions. As a consequence, it applies to all persons and matters covered by Directive 98/49/EC. However, Directive 98/49/EC only concerns the voluntary part of the scheme (“*weitergehende berufliche Vorsorge*”); the question whether an employee benefits from the voluntary part mostly depends on the pension fund chosen by the employer. In Switzerland, the Directive was not implemented by law; it was not implemented by collective agreements either.

3.

- i. **List of problems faced by scheme members exercising their right to free movement**
- ii. **Administrative practices and case law that occurred since the last implementation report, i.e. 2006/2009**

We have checked the case law of the Swiss Federal Court, but very few court decisions refer to Directive 98/49/EC. Those decisions mention the Directive but mainly concern Regulation (EC) No 883/2004, which prohibits to pay back contributions to persons who leave Switzerland but are mandatorily insured in the social security system of a Member State (see *e.g.* *BGE* 137 V 181). Just for comparison, the case law concerning Regulation (EC) No 883/2004 is impressive; however, the case law related to Regulation (EC) No 883/2004 in the field of the *BVG* is very rare. We have not heard about special problems concerning the rights conferred by Directive 98/49/EC.



1. Update of the measures adopted for the implementation of Directive 98/49/EC by comparison to the situation described in the Commission's implementation reports

Table 1: Material Scope

Country	Non-exhaustive list of supplementary pension schemes covered by Directive 98/49/EC - Brief description ⁴² -	Non-exhaustive list of supplementary pension scheme covered by Regulation 1408/71/EEC (now Regulation 883/2004/EC)
Cyprus	<p>Supplementary pension schemes fall into the following broad two main categories:</p> <p>I- occupational — Pension schemes Funds (Ταμεία Συντάξεων) relating to specific professional categories including, amongst others, liberal professions and employees of the broader public sector. They are generally governed by special laws provisions. Entitlements in this context tend to be paid in the form of periodic payments or partly in the form of periodic and one-off payments.</p> <p>Some illustrations:</p> <ul style="list-style-type: none"> - in relation to lawyers, there are the Lawyers (Pensions and Allowances) Regulations 1966-2007, as amended (Περί Δικηγόρων (Συντάξεις και Χορηγήματα) Κανονισμοί 1966-2007); - concerning doctors and dentists, there is the Doctors and Dentists Pension Fund; - concerning the employees of the Cyprus Telecommunications Authority, there is a Pension Fund set out by the Pension Fund in the Telecommunication Services (Pensions and Allowances to the Employees of the Cyprus Telecommunications Authority) of 1976 and 1981, as amended (Ταμείο Συντάξεων στις Υπηρεσίες Τηλεπικοινωνιών (Συντάξεις και Χορηγήματα εις Υπαλλήλους της Αρχής Τηλεπικοινωνιών Κύπρου) Κανονισμοί του 1976 και 1981, όπως εκάστοτε τροποποιείται) which mainly cover employees in the broader public sector (compulsory), and; - other. <p>II. — Provident funds (Ταμεία Προνοίας) which may operate under collective agreements or accords between employers and employees and cover employees in the private sector (they can be voluntary or not). In this context, entitlements are paid in the form of one-off payments.</p> <p>Some illustrations:</p> <ul style="list-style-type: none"> - Provident Fund of Employees in the Hotel Industry (Ταμείο Προνοιας Υπαλλήλων Ξενοδοχειακής Βιομηχανίας); - Pancyprian Provident Fund of Members of the Pancyprian 	

⁴² Based on information provided by the concerned Member State and by other stakeholders (in particular members of the Pensions Forum)

	<p>Federation of Labour (Παγκύπριο Ταμείο Προνοίας Μελών της ΠΕΟ (Παγκύπρια Εργατική Ομοσπονδία));</p> <p>- Provident Fund of Employees of the Bank of Cyprus Group (Ταμείο Προνοίας Υπαλλήλων Συγκροτήματος Τράπεζας Κύπρου);</p> <p>- Concerning the employees of the Cyprus Telecommunications Authority, there is a Provident Fund set out by the Provident Fund in the Telecommunication Services (Allowances to the Employees of the Cyprus Telecommunications Authority Regulations of 1976 and 1981, as amended (Σχέδιο Προνοίας δια Χορηγήματα εις Υπαλλήλους της Αρχής Τηλεπικοινωνιών Κύπρου) Κανονισμοί του 1976 και 1981, όπως εκάστοτε τροποποιείται)</p> <p>- other.</p> <p>III. The Government Employees Pension Scheme (Κυβερνητικό Σχέδιο Συντάξεων); it is governed by the Government Employees Pension Scheme Laws of 1997 to 1999, as amended (Οι Περί Συντάξεων Νόμοι του 1997 έως 1999, όπως εκάστοτε τροποποιούνται), and is the result of collective negotiations.</p> <p>The said scheme provides retirement and survivors pensions to civil servants, members of the educational service, the police and the armed forces.</p>	
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Table 2: Equal preservation

Country	Adopted measures to ensure equal preservation	Reference in the national provision
Cyprus	<p>No specific measures were adopted.</p> <p>As reason for this it is indicated that the existing legislation on the preservation of vested rights does not make a distinction between members remaining in the country and those moving within the Community.</p>	

Table 3: Cross-border payments

Country	Adopted measures to guarantee cross border payments	Reference in the national provision
Cyprus	<p>No specific measures were adopted.</p> <p>But a more general legislation was adopted which stipulates that movement of capital and payments between residents (including organisations and other legal entities) of origin and residents of Member States shall be performed without any restriction.</p>	<p>Article 4 of the Capital Movement Act Law of 2003 (Ο Περί της Διακίνησης Κεφαλαίων Νόμος του 2003).</p>

Table 4: Cross-border membership of posted workers

Country	Adopted measures to permit contributions by and behalf of posted workers, Article 6 (1) Exemption from contributions, Article 6 (2)	Reference in the national provisions
Cyprus	-No specific measures were adopted. As reason for this it is indicated that, in case of a posting, the contracts related to supplementary pension provision in Cyprus remain applicable. -No specific measures were adopted.	

Table 5: Information provided to scheme members

Country	Adopted measures to ensure adequate information	Reference in the national provision
Cyprus	No specific measures were adopted. As reason for this it is indicated that the range of information is harmonized with the content of the Directive and is identical for all scheme members regardless of whether they remain in their Member State of origin or move to another Member State. The extent of information provided to scheme members depends on the provisions that the scheme is subject to. In the limited number of cases examined by us for the purposes of the questionnaire, the clauses (by-laws governing relevant Funds) or provisions (e.g. Regulations) setting out information for scheme members did not include any information on free movement within the EU and related rights. However, it cannot be excluded that related information may be provided to member schemes requesting so as a practice.	Article 18 of the Provident Funds Act⁴³

LIST OF NATIONAL PROVISIONS

Country	National provisions communicated by the Member States concerning Directive 98/49/EC
Cyprus	<ol style="list-style-type: none"> 1. The Pensions Laws of 1997 to 19989 Pensions Act (Law 97(1)/97) 2. The Lawyers (Pensions and Allowances) Regulations 1966-2007, as amended (Περί Δικηγόρων (Συντάξεις και Χορηγήματα) Κανονισμοί 1966-2007 2001 Regulations on Lawyers (Pensions and Allowances), KDP 17/2001 [sic] 3. The 1999 Regulations on Doctors (Pensions and Allowances) Regulations of 1999, KDP ΚΑΠ 295/99 4. 1981 Provident Funds Act (44/81)⁴⁴ 5. Capital Movements Act Law (Law 115(1)2003)

⁴³ [As noted below, this Law has been abrogated.]

⁴⁴ [This law has been repealed.]

2.

- i. Does the existing legal administrative and conventional framework cover all the matters and persons covered by Directive 98/49/EC?**

The matters appear to have been covered to the extent explained above.

- ii. In the event that the Directive was implemented by means of collective agreements, what are the measures adopted to protect the persons who are not trade union members?**

No provision explicitly preventing non-union members from joining a supplementary scheme negotiated by unions has been detected by us.

3.

- i. List of problems faced by scheme members exercising their right to free movement**

No problems have been detected by us through desk research for the purposes of the questionnaire. However, as Directive 98/49/EC is covered in Cyprus as a matter of fact rather than through explicit transposition, the material scope is highly heterogeneous and it is difficult, in our opinion, to detect the corresponding level of protection provided to migrant workers in this field.

- ii. Administrative practices and case law that occurred since the last implementation report, i.e. 2006/2009**

No administrative practices or case law have been detected or can be reported.



1. Update of the measures adopted for the implementation of Directive 98/49/EC by comparison to the situation described in the Commission's implementation reports

Table 1: Material Scope

Country	Non-exhaustive list of supplementary pension schemes covered by Directive 98/49/EC - Brief description ⁴⁵ -	Non-exhaustive list of supplementary pension scheme covered by Regulation 1408/71/EEC (now Regulation (EC) No 883/2004)
Czech Republic	<p>In the Czech Republic, there is an individual voluntary system of pension savings, regulated by the Act No. 427/2011 Coll., on supplementary pension savings. According to the competent authorities there is no supplementary pension scheme within the meaning of the Directive. The Act No. 426/2011 Coll., on pension savings, introduced a voluntary system of pension savings, where the participants could opt-out from the mandatory pension system with 3% of own contributions to the private system of pension savings. This system was however abolished as of 1.1.2016.</p> <p>Nevertheless, some information was provided on supplementary pension insurance.</p> <p>According to this information and additional information provided by other stakeholders this supplementary pension insurance The supplementary pension savings system works through individual contracts between the pension fund company (this being a shareholder company) and the plan holder (this being any person aged over 18) on a voluntary basis. The employer can contribute on behalf of the employee and this contribution (Sec. 10 of the Act No. 427/2011 Coll.) is tax-deductible for the employer as well as for the employee.</p> <p>This kind of voluntary scheme could be covered by the material scope of Directive 98/49/EC, Article 3(b) insofar it is concluded by the employer</p>	

⁴⁵ Based on information provided by the concerned Member State and by other stakeholders (in particular members of the Pensions Forum)

Table 2: Equal preservation

Country	Adopted measures to ensure equal preservation	Reference in the national provision
Czech Republic	<p>No specific measures were adopted.</p> <p>As reason for this it is indicated that if participants (including also self-employed persons) stop contributing, their titles remain. The contributions are transferable to another pension company; a pension company however has to have a residence in the Czech Republic.</p>	<p>§ 2a and § 21 Article 2, 7 and 8 of the Act No. 42/1994 Coll. §Sec. 27, 29-31 of the Act No. 427/2011 Coll.</p>

Table 3: Cross-border payments

Country	Adopted measures to guarantee cross border payments	Reference in the national provision
Czech Republic	<p>No specific measures were adopted.</p> <p>As reason for this it is indicated that The existing legislation prescribes that the provider shall be obliged to pay out a benefit abroad, in the amount laid down in the pension plan, if the participant does not have permanent residence in the territory of the Czech Republic and so requests.</p>	<p>§Sec. 21 (7)(3) and (8) of the Act No. 42/1994 427/2011 Coll.</p>

Table 4: Cross-border membership of posted workers

Country	Adopted measures to permit contributions by and behalf of posted workers, Article 6 (1) Exemption from contributions, Article 6 (2)	Reference in the national provisions
Czech Republic	<p>- No specific measures were adopted.</p> <p>As reason for this it is indicated that the participants can, as posted workers, still pay their contributions in form of subscription to the supplementary pension scheme established in the Czech Republic. A participant of the supplementary pension savings system can be any natural person.</p> <p>- No specific measures were adopted.</p>	<p>Sec. 2 of the Act No. 427/2011 Coll.</p>

Table 5: Information provided to scheme members

Country	Adopted measures to ensure adequate information	Reference in the national provision
Czech Republic	<p>No specific measures were adopted.</p> <p>As reason for this it is indicated that the range of information is harmonized with the content of the Directive and is identical for</p>	<p>§ 14 (3), § 17 (3) and § 26 (1) Sec. 133 of the Act No. 427/1994 2011 Coll. (as</p>

	all scheme members (be it employees or self-employed persons) regardless of whether they remain in their Member State of origin or move to another Member State.	amended)
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LIST OF NATIONAL PROVISIONS

Country	National provisions communicated by the Member States concerning Directive 98/49/EC
Czech Republic	<ol style="list-style-type: none"> 1. Act No. 427/1994 2011 Coll. (Supplementary Pension Insurance Savings Act) 2. Act No. 586/1992 Coll., on income taxes

2.

i. Does the existing legal administrative and conventional framework cover all the matters and persons covered by Directive 98/49/EC?

The existing legal framework covers the matters and persons covered by the Directive to the extent explained in the table above. The legal framework also covers self-employed persons.

ii. In the event that the Directive was implemented by means of collective agreements, what are the measures adopted to protect the persons who are not trade union members?

The Directive was not implemented by means of the collective agreements. There are actually no real occupational pension schemes, so there is no reason to cover the supplementary pensions by the collective agreement. At the same time, contributions paid by the employer to the supplementary pension savings of own employees are often subject to the collective agreement. This however cannot be considered as a real implementation of the Directive.

3.

i. List of problems faced by scheme members exercising their right to free movement

ii. Administrative practices and case law that occurred since the last implementation report, i.e. 2006/2009

Scheme members exercising their right to free movement can face problems with transfer of their contributions abroad, if they wish to do so. As explained above, the Czech legislation does not envisage that the contributions would be transferable to another pension company without a residence in the Czech Republic.

There are no noteworthy administrative practices. Case law which can be mentioned are the cases against the Czech Republic on the non-implementation of the relevant Directive, in which the CJEU held that the Czech Republic has failed to fulfil its obligations under Article 22(1) of Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision.⁴⁶

⁴⁶ *European Commission v Czech Republic*, C-343/08, EU:C:2010:14.



GERMANY

1. Update of the measures adopted for the implementation of Directive 98/49/EC by comparison to the situation described in the Commission's implementation reports

Table 1: Material Scope

Country	Non-exhaustive list of supplementary pension schemes covered by Directive 98/49/EC - Brief description ⁴⁷ -	Non-exhaustive list of supplementary pension scheme covered by Regulation 1408/71/EEC (now Regulation (EC) No 883/2004)
Germany	<p>Entitlement to occupational benefits is based on a voluntary promise by the employer. Once an employer has made such a promise, the employer can use five different ways to comply with his promise:</p> <ul style="list-style-type: none"> - finance his promise by book reserves (§ 1 (1) sentence 2 of the Occupational Pension Act), - contract with a support fund (institution where workers have no legal rights to benefits) (§ 1b (4) of the Occupational Pension Act), - contract in favour of his employees with a pension fund (§ 1b (3) of the Occupational Pension Act), - contract in favour of his employees with a pension investment fund (§ 1b (3) of the Occupational Pension Act), or - subscription of a (group) life insurance contract in favour of his employees (the employer must be the insurance holder) (§ 1b (2) of the Occupational Pension Act). <p>New since 2002: the employee has the legal right to convert part of their remuneration to occupational retirement provision (§ 1a of the Occupational Pension Act).</p>	

Table 2: Equal preservation

Country	Adopted measures to ensure equal preservation	Reference in the national provision
Germany	Specific legislation was adopted.	§ 1 b (1) sentence 6 of the Occupational Pension Act

⁴⁷ Based on information provided by the concerned Member State and by other stakeholders (in particular members of the Pensions Forum)

Table 3: Cross-border payments

Country	Adopted measures to guarantee cross border payments	Reference in the national provision
Germany	<p>No specific measures were adopted.</p> <p>As reason for this it is indicated that the existing legislation does not make any distinctions, in terms of payment, between members remaining in the country and those moving within the Community.</p>	

Table 4: Cross-border membership of posted workers

Country	Adopted measures to permit contributions by and behalf of posted workers, Article 6 (1) Exemption from contributions, Article 6 (2)	Reference in the national provisions
Germany	<p>-No specific measures were adopted.</p> <p>As reason for this it is indicated that, in case of a posting, the contracts related to supplementary pension provision in Germany remain applicable.</p> <p>-No specific measures were adopted.</p> <p>As reason for this it is indicated that occupational pension provision is voluntary.</p>	

Table 5: Information provided to scheme members

Country	Adopted measures to ensure adequate information	Reference in the national provision
Germany	<p>No specific measures were adopted.</p> <p>As reason for this it is indicated that the range of information is harmonized with the content of the Directive and is identical for all scheme members regardless of whether they remain in their Member State of origin or move to another Member State. Moreover, it is stated that the information obligations have recently been extended with effect from 1 January 2005.</p>	<p>Until: 31.12.2004: § 2 (6) BetrAVG</p> <p>From: 01.01.2005 to 31.12.2015: § 4a BetrAVG § 10a (1) VAG and § 113 No. 4 VAG (Annex Part D Section III)</p> <p>From 01.01.2016: § 4a BetrAVG § 144 VAG § 234 (3) sentence 1 Nr. 7 VAG § 237 (3) Nr. 9 VAG</p>

LIST OF NATIONAL PROVISIONS

Country	National provisions communicated by the Member States concerning Directive 98/49/EC
Germany	<ol style="list-style-type: none"> 1. Occupational Pensions Act (BetrAVG), BGBl I 1974, 3610 last amended by BGBl I 2015, 2553 BGBl I 2004, 1427 2. Insurance Supervision Law (VAG), BGBl I 2015, 434, last amended by BGBl I 2016, 1824 BGBl I 1993, 2 last amended by BGBl I 2004, 1427

2.

i. Does the existing legal administrative and conventional framework cover all the matters and persons covered by Directive 98/49/EC?

Yes (*cf.* above, 1.). With regard to self-employed persons, it has to be noted first that no specific supplementary pension schemes exist. Nonetheless, the scope of application of the Occupational Pensions Act is not limited to employees. According to § 17 (1) sentence 2 *BetrAVG* it also applies by analogy to persons not qualifying as employees, but who have been granted retirement pensions or invalidity or survivors' benefits on the occasion of their working for an undertaking (*"Die §§ 1 bis 16 gelten entsprechend für Personen, die nicht Arbeitnehmer sind, wenn ihnen Leistungen der Alters-, Invaliditäts- oder Hinterbliebenenversorgung aus Anlaß ihrer Tätigkeit für ein Unternehmen zugesagt*

worden sind.”). It is acknowledged that *inter alia* self-employed persons may fall under this rule and thus are to be treated like employed persons.⁴⁸

ii. In the event that the Directive was implemented by means of collective agreements, what are the measures adopted to protect the persons who are not trade union members?

The Directive was implemented by the aforementioned statutes (*cf.* above, 1.). It has to be added, though, that § 17 (3) of the Occupational Pension Act allows for stipulating diverging rules by labour agreements. No deviation to the detriment of workers is possible with regard to the rule ensuring equal preservation (§ 1 b (1) sentence 6 of the Occupational Pension Act).

3.

i. List of problems faced by scheme members exercising their right to free movement

At the outset, it has to be noted that the number of pensioners residing abroad has been rising continuously.⁴⁹

In case of workers or pensioners residing abroad, disadvantages might – generally speaking – arise from diverging rules with regard to taxation (double taxation agreements)⁵⁰ or social security. One possible issue is tax advantages for the conversion of part of the remuneration to occupational retirement provision. Examining this any further would go beyond the scope of this ad hoc request.

The German organisation for protecting consumer rights (*Verbraucherzentrale*), which advises consumers (also) on pension issues, was contacted to enquire about problems faced by scheme members exercising their right to free movement. According to the reply of the Bavarian section of the *Verbraucherzentrale*, no such issues are known (although specific legal issues are referred to specialised lawyers); the requests to the sections of Bremen and Saarland – also offering such advice – remained without any answer.

Some commentators draw attention to the fact that – beyond the rules contained in the directive and with reference to the CJEU’s ruling of 10 March 2011⁵¹ – free movement of workers does not only require non-discrimination with regard to the portability of claims, but also the abolishment of non-discriminatory obstacles like minimum periods for preserving claims in general. No specific problems of the German legislation are mentioned, though.⁵² Moreover, it has to be noted that such obstacles to the free movement of workers may be justified.⁵³

ii. Administrative practices and case law that occurred since the last implementation report, i.e. 2006/2009

No noteworthy administrative practice or case law could be detected.

⁴⁸ See only H.D. Steinmeyer, in: *Erfurter Kommentar zum Arbeitsrecht*, 17th edition 2017, *BetrAVG* § 17 paragraph 8.

⁴⁹ Cf. https://www.haufe.de/personal/entgelt/bav-im-ausland-was-arbeitgeber-wissen-muessen_78_362350.html (10 December 2016).

⁵⁰ Cf. H.D. Steinmeyer, *EuZW* 1999, 645, 647.

⁵¹ *Casteels*, C-379/09, EU:C:2011:131.

⁵² H.D. Steinmeyer, in: *Erfurter Kommentar zum Arbeitsrecht*, 17th edition 2017, *BetrAVG* § 1b paragraph 39. Cf. also *idem*, *EuZW* 1999, 645, 649. See further E. Eichenhofer, “Betriebsrenten im Europäischen und Internationalen Recht, in: *Funktion und rechtliche Ausgestaltung zusätzlicher Alterssicherung*”, *Studien aus dem Max-Planck-Institut für ausländisches und internationales Sozialrecht*, Band 34), 2005, 201.

⁵³ See also H. J. Willemsen/R. Döring, *BetrAV* 2011, 432 (439 f.).

A guideline of the Ministry of Finance deals with tax benefits (§ 3 No 63 of the income tax code) for payments to foreign pension schemes.⁵⁴

⁵⁴ <http://datenbank.nwb.de/Dokument/Anzeigen/472877/> (10 December 2016).



DENMARK

1. Update of the measures adopted for the implementation of Directive 98/49/EC by comparison to the situation described in the Commission's implementation reports

Table 1: Material Scope

Country	Non-exhaustive list of supplementary pension schemes covered by Directive 98/49/EC - Brief description ⁵⁵ -	Non-exhaustive list of supplementary pension scheme covered by Regulation 1408/71/EEC (now Regulation (EC) No 883/2004)
Denmark	Occupational pension schemes are the product of collective agreements between the social partners. Plans are administered via a closed pension fund or by an insurance company.	Compulsory law-based scheme covering all workers (known as ATP plan)

Table 2: Equal preservation

Country	Adopted measures to ensure equal preservation	Reference in the national provision
Denmark	No specific measures were adopted. As reason for this it is indicated that the respective collective agreements on preservation of vested rights do not make a distinction between members remaining in the country and those moving within the Community. Moreover, it is stated that the future introduction of a differing rule would not be in accordance with national provisions.	Section 20 and 21 of the FiL, and the FpkL ⁵⁶

Table 3: Cross-border payments

Country	Adopted measures to guarantee cross border payments	Reference in the national provision
Denmark	No specific measures were adopted. As reason for this it is indicated that payment of benefits is indirectly ensured by law as a rule notwithstanding Article 5 would not be "adequate and reasonable".	Section 20 and 21 of the FiL, and the FpkL

⁵⁵ Based on information provided by the concerned Member State and by other stakeholders (in particular members of the Pensions Forum)

⁵⁶ [It is unclear whether 'section 20 and 21' refer to §§ 20 and 21. If so, these are the same in the current law as amended. The main law ensuring the preservation of acquired rights and portability of acquired rights is the 'Financial Activity Act'. In Danish 'Bekendtgørelse af Lov om Finansiell Virksomhed', LBK No 182 of 18/02/2015, see <https://www.retsinformation.dk/pdfPrint.aspx?id=167820>.]

Table 4: Cross-border membership of posted workers

Country	Adopted measures to permit contributions by and behalf of posted workers, Article 6 (1) Exemption from contributions, Article 6 (2)	Reference in the national provisions
Denmark	-No specific measures were adopted. As reason for this it is indicated that, in case of a posting, payment of contributions to the supplementary pension scheme to which the worker belongs in Denmark is still possible. -Specific measures were adopted.	Implemented by various collective agreements

Table 5: Information provided to scheme members

Country	Adopted measures to ensure adequate information	Reference in the national provision
Denmark	No specific measures were adopted. As reason for this it is indicated that the range of information is harmonized with the content of the Directive and is identical for all scheme members regardless of whether they remain in their Member State of origin or move to another Member State.	Section 20 and 21 of the FiL, the FpkL and the Information Order

LIST OF NATIONAL PROVISIONS

Country	National provisions communicated by the Member States concerning Directive 98/49/EC
Denmark	<ol style="list-style-type: none"> 1. Financial Activities Act (FiL) (as amended by LBK no. 182 18/02/2015) 2. Supervision of Company Pension Funds Act (FpkL) 3. Various collective agreements 4. Accounting Order No 9733 of 20 October 2003 5. Information Order (Order No 609 of 14 July 1995)⁵⁷

⁵⁷ [It was not possible for us to identify to which specific Danish laws these orders refer. However, the main law ensuring the preservation of acquired rights and portability of those rights is the 'Financial Activity Act'.]

2.

- i. **Does the existing legal administrative and conventional framework cover all the matters and persons covered by Directive 98/49/EC?**
- ii. **In the event that the Directive was implemented by means of collective agreements, what are the measures adopted to protect the persons who are not trade union members?**

In Denmark, the Directive has been implemented by collective agreements. In addition, the Financial Activities Act ensures the preservation of acquired rights as well as their portability. We consider that this framework covers matters and persons covered by the Directive.

As an employee a person has entitlements in accordance with the collective agreement adopted for his or her sector or workplace without necessarily being member of a trade union. Self-employed are not part of the occupational pension scheme, but covered by the Danish public pension and eventually private pensions. The Financial Activity Act ensures the preservation of acquired rights and their portability. This law applies to all.

For the original implementation of the Directive in Denmark, see the government note from '*Finanstilsynet*', J. No 783/20-0002 of 22 January 1998.

3.

- i. **List of problems faced by scheme members exercising their right to free movement**
- ii. **Administrative practices and case law that occurred since the last implementation report, i.e. 2006/2009**

According to our information, issues have in particular concerned Article 6, where foreign companies have had to establish collective agreements in Denmark and thus to pay supplementary pension contributions in Denmark despite already doing so in the Member State of origin. As we replied to the previous ad hoc request on Denmark, March 2016, there are two current pending cases on the Danish implementation of Directive 98/49/EC in the Danish court system, in the Labour Court and in the High Court of Eastern Denmark, respectively. On examination these cases are apparently still pending, but currently their status is unknown. They may even be withdrawn.

Both cases concern an Italian company with posted workers in Denmark. They voluntarily became member of the Danish Construction Association (*Dansk Byggeri*) and through this voluntarily concluded a collective agreement through the trade union United Federation of Danish Workers (3F) entailing the payment of pensions to a Danish pension company. The company paid pensions for about three years for 24 posted workers. Subsequently, the company asked the pension company to refund the pensions, as the posted workers were covered by Italian supplementary pensions concurrent to the payments to the Danish pensions.

To our information, it is not Danish practice to reject disbursement of the supplementary pensions if the posted worker has ceased his or her work in Denmark and applied for disbursement of the pensions (*cf.* Article 4 and 5). Also in the two pending cases mentioned above, workers were to our information allowed the disbursement. Here, 8 of 24 posted workers applied for the disbursement of their Danish pension, which was granted.

We have not been able to identify new cases in the Danish court system concerning the implementation of Directive 98/49/EC.



1. Update of the measures adopted for the implementation of Directive 98/49/EC by comparison to the situation described in the Commission's implementation reports

Table 1: Material Scope

Country	Non-exhaustive list of supplementary pension schemes covered by Directive 98/49/EC - Brief description ⁵⁸ -	Non-exhaustive list of supplementary pension scheme covered by Regulation 1408/71/EEC (now Regulation (EC) No 883/2004)
Estonia	<p>According to Estonian authorities, Mandatory funded pension scheme, participation in which is compulsory for people born in 1983 or later and voluntary for people born in 1942 or later (with a descending schedule), fall under the scope of Directive 98/49/EC. The Directive was transposed by Funded Pensions Act. The Commission services are in process of evaluating these schemes.</p> <p>There is also a supplementary funded pension scheme (2 (3) of the Funded Pensions Act), but the conditions of this scheme are liberal, so it is more like a usual investment option, which you can cancel easily. So, it might not fulfil the criteria of supplementary pension scheme.</p>	

Table 2: Equal preservation

Country	Adopted measures to ensure equal preservation	Reference in the national provision
Estonia	<p>According to the competent authority national legislation was already consistent with this requirement.</p>	<p>§ 40 clause 2 of the Funded Pensions Act</p> <p>Article 40 and the following Articles of the Funded Pensions Act regulate entitlements to mandatory funded pension payments and how they are payed. Article 40 has changed in November 2008, but the right to receive the entitlements is still not connected with residence criteria.</p> <p>The rights of persons</p>

⁵⁸ Based on information provided by the concerned Member State and by other stakeholders (in particular members of the Pensions Forum)

		are also protected in an equal way before the pensionable age (the rights are preserved even if there is disruption of payment due to loss of employment or moving to another country). Also appropriate are the Estonian Central Register of Securities Act and the Investment Fond Act.
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Table 3: Cross-border payments

Country	Adopted measures to guarantee cross border payments	Reference in the national provision
Estonia	The existing legislation does not make any distinctions, in terms of payment, between members remaining in the country and those moving within the Community.	§ 41 (6) of the Income Tax Act

Table 4: Cross-border membership of posted workers

Country	Adopted measures to permit contributions by and behalf of posted workers, Article 6 (1) Exemption from contributions, Article 6 (2)	Reference in the national provisions
Estonia	-In case of a posting, the Estonian worker is still resident and obligated to make contributions. -In case of a posting to Estonia, the foreign worker is not obliged to make contributions to Estonian pension schemes, because he is not a resident.	§ 6 of the Funded Pensions Act Article 12 of Regulation (EC) No 883/2004

Table 5: Information provided to scheme members

Country	Adopted measures to ensure adequate information	Reference in the national provision
Estonia	<p>No specific measures were adopted.</p> <p>As reason for this it is indicated that the range of information is harmonized with the content of the Directive and is identical for all scheme members regardless of whether they remain in their Member State of origin or move to another Member State.</p> <p>General rules how to provide information, which come from the Investment Fond Act.</p>	<p>There is a lot of very adequate information about supplementary pensions on the special webpage administered by the Estonian Central Register of Securities.</p> <p>Available also in English: https://www.pensionikeskus.ee/en/ii-pillar/mandatory-funded-pension-ii-pillar/</p>

LIST OF NATIONAL PROVISIONS

Country	National provisions communicated by the Member States concerning Directive 98/49/EC
Estonia	<ol style="list-style-type: none"> 1. Funded Pensions Act, passed 14 April 2004 (RT2 I 2004, 37, 252), entered into force 1 May 2004 2. Income Tax Act, passed 15 December 1999 (RT1 I 1999, 101, 903; consolidated text RT I 2001, 11, 49), entered into force 1 January 2000 3. Social Tax Act, passed 13 December 2000 (RT¹ I 2000, 102, 675), entered into force 1 January 2001

2.

i. Does the existing legal administrative and conventional framework cover all the matters and persons covered by Directive 98/49/EC?

All the matters and persons should be covered by the Funded Pensions Act and other legal acts mentioned. Persons who are self-employed and have registered themselves as sole proprietors in the Estonian Commercial Register (see Article 3 of the [Commercial Code](#)) are covered by the Funded Pensions Act (see Article 6-8 of the Funded Pensions Act). According to Article 8 (2) of the Funded Pensions Act in the case of sole proprietors, the contribution period is one calendar year.

Everyone who has to pay social tax or whom the social tax should be paid by someone else, e.g. the employer, is covered by the Funded Pensions Act. All persons who are covered by the Funded Pensions Act are treated the same way in the context of entitlements and the preservation of rights etc.

ii. In the event that the Directive was implemented by means of collective agreements, what are the measures adopted to protect the persons who are not trade union members?

All the matters and persons should be covered by the Funded Pensions Act and other legal acts mentioned.

In Estonia, there is no tradition or practice of collective agreements, so none of the supplementary pension rights are guaranteed by them. All rights are envisaged by legal acts adopted by parliament and are applicable to all persons (in and outside trade unions).

3.

- i. List of problems faced by scheme members exercising their right to free movement**
- ii. Administrative practices and case law that occurred since the last implementation report, i.e. 2006/2009**

As the supplementary pension schemes were launched in the beginning of 2000 and beforehand there were no supplementary schemes, there is currently not much practice of payments from the pension funds. Also, according to my knowledge, there are no remarkable problems with contributions or preserving the pension rights due to the right of free movement.



1. Update of the measures adopted for the implementation of Directive 98/49/EC by comparison to the situation described in the Commission's implementation reports

Table 1: Material Scope

Country	Non-exhaustive list of supplementary pension schemes covered by Directive 98/49/EC - Brief description ⁵⁹ -	Non-exhaustive list of supplementary pension scheme covered by Regulation 1408/71/EEC (now Regulation (EC) No 883/2004)
Greece	<p>a) Occupational Insurance Funds established as non- profit private entities with legal personality based on the provisions of Law 3029/02(Article 1 and 8)</p> <p>The aim of occupational insurance funds is to provide occupational insurance protection to their members and beneficiaries, as a supplement to compulsory statutory social insurance benefits against the insurance risks of old age, death, invalidity, industrial accident, sickness, interruption of employment, etc.</p> <p>Occupational insurance funds are established on a voluntary basis in each company or sector(s) of employment on the initiative either of employees or employers or through an agreement between employees and employers as well as on the initiative of self-employed or independent professionals or farmers or their associations on the condition that the number of the insured members is over 100.</p> <p>Group Insurance Contracts, concluded between the employer and the insurance company in the sectors VII "management of group pension funds" or IX "works similar to social security"</p> <p>Here we note the definitions:</p> <ol style="list-style-type: none"> 1) "supplementary pension": the pension due to retirement provided for in the supplementary pension systems' provisions that have been set out in accordance to the national legislation and the practice. 2) "supplementary pension system": every occupational pension system due to retirement that has been set out in accordance to the national legislation and the practice and is related to an employment relationship or status which is intended to provide supplementary pension to employees or self-employed persons. <p>In continuation of the list we mention:</p> <ul style="list-style-type: none"> • Ministerial Decision with No 8889/122/2006 (Government Gazette No B 818/4.7.2006), 	<p>Article 29 sentence c of Law No 4387/2016 (Governmental Gazette A 85 12.5.2016) regarding the Unified Social Security System – Reformation of the security - pension system – Arrangements of the taxation on income and games of chance and other provisions, according to which, when for the attribution of a pension Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009, as well as the bilateral social security treaties, have to be applied, except for the cases where a separate pension entitlement is established with the time of insurance in a Greek insurance institution only.</p>

⁵⁹ Based on information provided by the concerned Member State and by other stakeholders (in particular members of the Pensions Forum)

regarding the Approval of Statute of the Geotechnicals Occupational Insurance Fund (Legal Person governed by Private Law)

According to Article 53 of the above, in relation to the successive insurance in several occupational insurance funds in Greece or Member States of the EU, the provisions of Article 7 paragraph 11 of Law 3029/2002 apply, in the version in which those are in force at every time in question, as well as the Decision on the Insurance Institutions 43/13 112003 of the Deputy Minister of Employment and Social Protection, as well as the provisions of the Presidential Order 227/2004, **with which Directive 98/49/EC was introduced in the national legislation.**

- Article 8 of Presidential Order 227/2004, according to which the insurance companies, which conclude insurance contracts in the insurance sectors (Article 13 of Legislative Decree No 400/70 as is currently in force), VII “group pension funds administration section” and IX “section of activities similar to social insurance”, take into consideration the provisions of Article 4, 5, 6 and 7 of Presidential Order 227/2004, so that the pension rights of employees and self-employed persons who participate in those contracts be assured (insured and beneficiaries), in the event that the insured move or their workplace is transferred in another Member State. **The rights of insured persons mentioned in those articles must be written in the general conditions of the insurance contracts.**
- **Article 48 of Ministerial Decision No 51020/20163/292 (Government Gazette No B 1307/26.08.2004) regarding the Statute Approval of the Economic Scientists Occupational Insurance Fund (Legal Person governed by Private Law)**, based on which upon successive insurance in several occupational insurance funds in Greece or other Member States, the provisions of Article 7 paragraph 11 of Law 3029/2002 apply, of the by this authorised issued Ministerial Decision on the Insurance Institutions 43/13.11.2003 and Directive 98/49/EC (L. 209/1998), as those apply in any time in question.
- The establishment of the Occupational Insurance Fund for the Personnel of the Hellenic Post (ELTA) – “TEA ELTA” as a Legal Person governed by Private Law with a non-profit character was realised in August 2004 with the Approval of the Statute by the Minister of Employment and Social Protection. “TEA-ELTA” was established after the agreement between the Panhellenic Federation of Postal Associations (“P.O.S.T.”) and “ELTA” (Provision No 4 of the National Collective Employment Contract 2003-

	<p>2004) in the frame of Law No 3029/2002 “Reformation of the Social Insurance System”, with provisions of which the institution of occupational-supplementary insurance systems is introduced, with a goal of providing the insured with supplementary insurance protection.</p> <ul style="list-style-type: none"> • Approval of the Establishment of the Ministry of Economic Affairs Insurance Fund (Ministerial Decision Φ51020/8370/117/6-5-2004) • Occupational Economic Scientists Fund (E.T.A.O. - Legal Person governed by Private Law) (Ministerial Decision Φ51020/20163/292/26-8-2004). • Casino Personnel Occupational the Insurance Fund – Legal Person governed by Private Law (Ministerial Decision Φ51020/20964/255/15-10-2008). • Approval of the Statute of the Occupational Insurance Fund of the Greek Section of the International Policemen Association Legal Person governed by Private Law. (Ministerial Decision Φ 51020//157/13) • Statute of the Occupational Insurance Fund of the Employees of Pharmaceutical Activities (Ministerial Decision Φ 51020/5352/121 Governmental Gazette B 412 2013) • Statute of the Occupational Insurance Fund of the Employees in the Food Commerce (Ministerial Decision Φ 51020/5054/113 Governmental Gazette B 410 2013). 	
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Table 2: Equal preservation

Country	Adopted measures to ensure equal preservation	Reference in the national provision
Greece	Specific legislation was adopted, covering employed and self-employed workers.	Article 4 (1) of the Presidential Decree No. 227/2004 According to Article 22 paragraph 4 of Law No 3846/2010, with decision of the Minister of Labor and Social Security, after the opinion of the National Actuarial Authority, it can be determined: the data that have to be provided by the Occupational Insurance Fund (hereafter “TEA”) to the competent Greek supervising authority (the Greek Ministry of Labor and Social Security) during the process of notification between the Greek supervising authority and the respective authorities of the receiving State, the starting time of the exercise of cross-border activity of a TEA, as well as the full financment of the technical provisions; furthermore, issues of communication and cooperation between the competent supervising authorities of the Member State of origin and the receiving Member State are

		arranged, as well as issues of continuous updating and exchange of information between the competent supervising authorities on important changes regarding the labor and social legislation of the receiving Member State in relation to the occupational pensions, additional investment limitations and additional information requirements and any other necessary details that regard the exercise of cross-border activity of TEAs.
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Table 3: Cross-border payments

Country	Adopted measures to guarantee cross border payments	Reference in the national provision
Greece	Specific legislation was adopted, covering employed and self-employed workers.	<ul style="list-style-type: none"> • Article 4 (2) of the Presidential Decree No. 227/2004 • In Greece the right to continuation of the payment of contributions has to be exercised within thirty (30) days from the receipt of the notification on the secondment by the employee him or herself, while in the aforementioned countries there is no special limitation for the exercise of this right. The relevant provisions of Luxembourg and Sweden state that the payment not only can but even has to be continued during the period of secondment. (Refers to the Commission's Report from the 26.01.2006 COM (2006) 22. • According to Article 108 of Law No 4099/2012 (Governmental Gazette No A 250/20/12/2012), in the event of a cross-border activity of an occupational insurance fund according to Article 22 of Law No 3846/2010 (Governmental Gazette No A 66) as is currently into force, at the Ministry of Labor, Social Security and Welfare there are also the Member States registered, in which the fund functions. This information is notified by the Ministry of Labor, Social Security and Welfare to the European Supervising Authority (European Insurance and Occupational Pensions Authority – hereafter “EIOPA”), which was established with Regulation (EU) No 1094/2010 (L 331/48).

Table 4: Cross-border membership of posted workers

Country	Adopted measures to permit contributions by and behalf of posted workers, Article 6 (1) Exemption from contributions, Article 6 (2)	Reference in the national provisions
Greece	<ul style="list-style-type: none"> - Specific legislation was adopted, covering employed and self-employed workers. - Specific legislation was adopted, covering employed and self-employed workers. 	<p>Article 5 (1) and (2) of the Presidential Decree No. 227/2004</p> <p>Article 5 (3) of the Presidential Decree No. 227/2004</p>

Table 5: Information provided to scheme members

Country	Adopted measures to ensure adequate information	Reference in the national provision
Greece	Specific legislation was adopted, covering employed and self-employed persons.	<p>Article 6 of the Presidential Decree No. 227/2004</p> <p>Article 8 of Presidential Order 227/2004, according to which the insurance companies, which conclude insurance contracts in the insurance sectors (Article 13 of Legislative Decree No 400/70 as is currently in force), VII “group pension funds administration section” and IX “section of activities similar to social insurance”, take into consideration the provisions of Article 4, 5, 6 and 7 of Presidential Order 227/2004, so that the pension rights of employees and self-employed persons who participate in those contracts be assured (insured and beneficiaries), in the case that the insured move or their workplace is transferred in another Member State. The rights of insured persons mentioned in those articles must be written in the general conditions of the insurance contracts.</p>

LIST OF NATIONAL PROVISIONS

Country	National provisions communicated by the Member States concerning Directive 98/49/EC
Greece	Presidential Decree No. 227/2004 of 3 November 2004 (OJ No. 212 of 5 November 2004 p. 5917) on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community, in accordance with the provisions of Directive 98/49/EC (L209/98)

2.

i. Does the existing legal administrative and conventional framework cover all the matters and persons covered by Directive 98/49/EC?

No, they are not covered and the main reason for this is the instable social security system that prevails in Greece due to the deep economic recession; of which the treatment – mistakenly – has an impact on the arrangements of the social security system and its constant changes with a view to find better solutions. This deficit applies

to both employed and self-employed persons. The matters that are, however, covered with respect to them, can be seen in the tables above.

ii. In the event that the Directive was implemented by means of collective agreements, what are the measures adopted to protect the persons who are not trade union members?

In Greece the Directive was transposed by Presidential Decree No 227/2004, which has the effect of a normal law and, as a result, applies to all employed and self-employed workers, regardless of whether they are members of the respective trade unions or not.

Rights and obligations comparable to the respective rights and obligations of the citizens of the European Union are provided to third-country nationals who reside legally in the EU and fulfil the rest of the conditions mentioned in Regulations (EC) No 883/2004, (EC) No 987/2009 and (EC) No 859/2003. More specifically and indicatively, according to Article 67 of Law 4251/2014 'Migration and Social Inclusion Code' and other provisions, it applies that the owner of a residence permit as a researcher has a right in equal treatment with the nationals as far as among others the sectors of social security are concerned, as they are stated in Regulation (EC) No 883/2004 on the coordination of social security systems for employees, self-employed workers as well as for the members of their families who move within the European Union. The specific provisions in the Annex of Regulation (EC) No 1231/2010 on the extension of the provisions of Regulation (EC) No 883/2004 and Regulation (EU) No 987/2009 to third-country nationals who are not already covered by those provisions only due to their citizenship, apply *mutatis mutandis*.

3.

i. List of problems faced by scheme members exercising their right to free movement

ii. Administrative practices and case law that occurred since the last implementation report, i.e. 2006/2009

Only indicatively mentioned, the inadequate protection of the right under question, as a result of which the persons that move from country to country in search for employment risk losing all or part of their rights, either acquired or in the process of being acquired, based on national law (*e.g.* in relation to pensions, health insurance, unemployment benefits and family allowances).

The difficult coordination of the social security systems, which results in the social security rights of the same nature which have been acquired in different Member States being able to be offset, without however the beneficiary being able to get an aggregation of rights higher than the highest pension to which s/he would be entitled, if s/he had acquired all their pension rights in one Member State (Regulation (EC) No 883/2004 and (EC) No 987/2009, last modified by Regulation (EU) No 1372/2013 and (EU) No 1368/2014).

Inadequate information which the prospective migrants need to have at their disposal on relevant matters, such as how the school education of migrants' children can be ensured or with regard to their health insurance, for which the CJEU has observed that, when the competent institution has approved that the socially insured moves to the territory of another Member State in order to receive healthcare there, the institution of the place of the benefit is obliged to provide the benefits in kind, according to the provisions for billing with sanitary care costs that it would apply, if the interested person were insured by it.⁶⁰ The permission for the movement to another country can be refused for the

⁶⁰ *Vanbraekel and Others*, C-368/98, EU:C:2001:400.

reason that there is no need in medical terms, only when the same or equally effective therapy can be provided to the patient in time in an institution contracted with the health fund in which they are registered.⁶¹

⁶¹ *Smits and Peerbooms*, C-157/99, EU:C:2001:404.



SPAIN

1. Update of the measures adopted for the implementation of Directive 98/49/EC by comparison to the situation described in the Commission's implementation reports

Table 1: Material Scope

Country	Non-exhaustive list of supplementary pension schemes covered by Directive 98/49/EC - Brief description ⁶² -	Non-exhaustive list of supplementary pension scheme covered by Regulation 1408/71/EEC (now Regulation (EC) No 883/2004)
Spain	<p>Pension liabilities The supplementary pension schemes can be voluntarily established taken on by the enterprises and they must be externalised. They can be implemented:</p> <ul style="list-style-type: none"> - by means of group insurance contracts, or - through pension plans attached to pension funds, - or using a combination of both. <p>The book reserving financing system is still allowed only in the financial services sector only for pension liabilities incurred before 9-5-1996 and for workers hired before 16-11-1999.</p>	

Table 2: Equal preservation

Country	Adopted measures to ensure equal preservation	Reference in the national provision
Spain	<p>No specific measures were have been adopted.</p> <p>As reason for this it is indicated that The existing legislation on the preservation of vested rights does not make a distinction between members workers remaining in the country Spain and those posted to another Member State moving within the Community.</p>	Preamble of the ICPETB Regulation ⁶³

⁶² Based on information provided by the concerned Member State and by other stakeholders (in particular members of the Pensions Forum)

⁶³ It explicitly mentions Directive 98/49/CE and clarifies that the regulation has a wider scope and applies irrespective of the Member State where the worker is posted.

Table 3: Cross-border payments

Country	Adopted measures to guarantee cross border payments	Reference in the national provision
Spain	<p>No specific measures were have been adopted.</p> <p>As reason for this it is indicated that Cross-border payments to beneficiaries in other Member States would be guaranteed by the general rules on external transactions, which are based on the freedom of movement for of capital established in the Treaty.</p>	Articles 1 and 3 of the Act Law 19/2003 on capital movements

Table 4: Cross-border membership of posted workers

Country	Adopted measures to permit contributions by and behalf of posted workers, Article 6 (1) Exemption from contributions, Article 6 (2)	Reference in the national provisions
Spain	<p>-No specific measures were have been adopted.</p> <p>As reason for this it is indicated that The fact of that a worker being is posted to another Member State does not affect the continuation of payment of contributions. Moreover, it is stated that there are no regulations prohibiting the payment of contributions when the worker is posted during a posting.⁶⁴</p> <p>-No specific measures were have been adopted.</p> <p>As reason for this it is indicated that In Spain there is freedom to establish supplementary pension schemes⁶⁵ and freedom of affiliation to said schemes if the worker has to pay contributions.⁶⁶</p>	<p>Article 41 of the Spanish Constitution</p> <p>Article 191-239 of the Revised Text of the General Social Security LawAct</p> <p>Article 1 of the PFP LawAct and</p> <p>Article 28 of the PFP Regulation, and</p> <p>Preamble of the ICPETB Regulation</p>

Table 5: Information provided to scheme members

Country	Adopted measures to ensure adequate information	Reference in the national provision
Spain	<p>No specific measures were have been adopted.</p> <p>As reason for this it is indicated that The extentrange of the information is harmonized complies with the requirements set out in content of the Directive and is identical for all scheme members regardless of whether they remain in their Member State of origin or move to another Member State.</p>	<p>Article 34 of the PFP Regulation, and</p> <p>Articles 34 and 39 (4) of the ICPETB Regulation</p>

⁶⁴ Article 28 of the PFP Regulation and Preamble of the ICPETB Regulation.

⁶⁵ Article 41 of the Spanish Constitution.

⁶⁶ Article 239 of the General Social Security Law.

LIST OF NATIONAL PROVISIONS

Country	National provisions communicated by the Member States concerning Directive 98/49/EC
Spain	<ol style="list-style-type: none"> 1. Recastvised Text of the Act Regulating Pension Plans and Funds Regulating Law, approved by Legislative Royal Decree 1/2002 of 29 November 2002 ("PFP LawAct") 2. Implementing Regulation of the complementary Regulation on implementing pension liabilities of enterprises with workers and beneficiaries, approved by Royal Decree 1588/1999 of 15 October 1999 ("ICPETB Regulation") 3. Pension Plans and Funds Implementing Regulation, approved by Royal Decree 304/2004 of 20 February 2004 ("PFP Regulation") 4. Act Law 19/2003, of 4 July, on legal arrangements on the movement of capital on capital movements, foreign economic transactions and the prevention of money laundering ("Law 19/2003 on capital movement") 5. Spanish Constitution 6. Recastvised Text of the General Social Security ActLaw, approved by Royal Legislative Decree 8/2015 of 30 October ("General Social Security Law")

2.

i. Does the existing legal administrative and conventional framework cover all the matters and persons covered by Directive 98/49/EC?

The legal framework covers all the matters and persons covered by Directive 98/49/EC.

There are no specific supplementary social security schemes for self-employed workers. Consequently, the national legislation does not envisage specific protection measures for them (general protection measures would apply).

ii. In the event that the Directive was implemented by means of collective agreements, what are the measures adopted to protect the persons who are not trade union members?

The Directive was not implemented in Spain by means of collective agreements.

3.

i. List of problems faced by scheme members exercising their right to free movement

ii. Administrative practices and case law that occurred since the last implementation report, i.e. 2006/2009

The only issues identified have to do with the taxation of the contributions paid in Spain (personal income tax) due to the lack of tax harmonisation in the EU. In 2003 the Central Economic Administrative Court (*Tribunal Económico Administrativo Central TEAC*)⁶⁷ ruled that the contributions to a complementary pension scheme paid by the Spanish subsidiary on behalf of a Greek subsidiary where the worker was posted are not subjected to taxation in Spain.

⁶⁷ [Resolución. TEAC 2130/2000 de 4 abril 2003 \(EDD 2003/198605\).](#)

More recently, in 2013 there was another administrative Resolution, in this case a binding Resolution of the Directorate General for Taxation (*Consulta Vinculante de la Dirección General de Tributos de 11-6-2013*), which considers that the bilateral convention (Spain-Italy) designed to prevent double taxation does not provide an ad-hoc solution to the problem of a worker who after being posted in Italy (2005-2007) kept making contributions to a Spanish pension scheme was asked to pay taxes on the pension received in 2011 in Spain.



FINLAND

1. Update of the measures adopted for the implementation of Directive 98/49/EC by comparison to the situation described in the Commission's implementation reports

Table 1: Material Scope

Country	Non-exhaustive list of supplementary pension schemes covered by Directive 98/49/EC - Brief description ⁶⁸ -	Non-exhaustive list of supplementary pension scheme covered by Regulation 1408/71/EEC (now Regulation (EC) No 883/2004)
Finland	Supplementary pension schemes are voluntarily set up by employers and can be arranged with: - a life insurance company (via group insurance policies), - a pension fund, or - a pension trust.	Certain voluntary supplementary pension plans set up according to the Act on Employment Pensions (known as "registered" plans); registration of new plans has not been possible from 2001 onwards. These supplementary pension schemes ended 31.12.2016: no payments or pension accrual is possible any longer. However, this has no effect on pensions already accrued. These supplementary pensions are covered by Regulation (EC) No 883/2004.

⁶⁸ Based on information provided by the concerned Member State and by other stakeholders (in particular members of the Pensions Forum)

Table 2: Equal preservation

Country	Adopted measures to ensure equal preservation	Reference in the national provision
Finland	<p>No specific measures were adopted.</p> <p>As reason for this it is indicated that the existing legislation on the preservation of vested rights does not make a distinction between members remaining in the country and those moving within the Community.</p> <p>To secure this amendments of Pension Funds Act (421/2003), Insurance Funds Act (420/2003) as well as Employees' Pension Act specifically state this.</p>	<p>Section 61 of the Pension Funds Act,</p> <p>Section 90a of the Insurance Funds Act,</p> <p>Employees' Pension Act 112 §</p> <p>Insurance Contracts Act</p>

Table 3: Cross-border payments

Country	Adopted measures to guarantee cross border payments	Reference in the national provision
Finland	Specific legislation was adopted.	<p>Section 61 of the Pension Funds Act,</p> <p>Section 90a of the Insurance Funds Act</p> <p>and Insurance Contracts Act</p>

Table 4: Cross-border membership of posted workers

Country	Adopted measures to permit contributions by and behalf of posted workers, Article 6 (1) Exemption from contributions, Article 6 (2)	Reference in the national provisions
Finland	<p>-No specific measures were adopted.</p> <p>As reason for this it is indicated that, in case of a posting, the contracts related to supplementary pension provision in Finland remain applicable.</p> <p>-Amendments of Employees' Pension Act 395/2006, 909/2010No specific measures were adopted.</p> <p>As reason for this it is indicated that there are no obligatory occupational pension schemes in Finland.⁶⁹</p>	<p>Sections 105 (354/2010), 150 and 149 (909/2010) of the Employees' Pension Act</p> <p>Section 7 of the Residence-Based Social Security Legislation Act</p>

⁶⁹ [This might not work in this context.]

Table 5: Information provided to scheme members

Country	Adopted measures to ensure adequate information	Reference in the national provision
Finland	<p>Amendments have been made to the Pension Funds Act and the Insurance Funds Act. No specific measures were adopted.</p> <p>As reason for this it is indicated that the range of information is harmonized with the content of the Directive and is identical for all scheme members regardless of whether they remain in their Member State of origin or move to another Member State.</p>	<p>Section 49a, 49b and 9 of the Pension Funds Act (Amended by Act 391/2006), Section 84a of the Insurance Funds Act (Amended by Act 392/2006⁷⁰) and Sections 8, 76 and 77 of the Insurance Contracts Act</p>

LIST OF NATIONAL PROVISIONS

Country	National provisions communicated by the Member States concerning Directive 98/49/EC
Finland	<ol style="list-style-type: none"> 1. Insurance Funds Act (1164/1992) 2. Pension Funds Act (1774/1995) 3. Insurance Contracts Act (543/1994) 4. Insurance Companies Act (1062/1979)⁷¹ 5. Acts amending the Insurance Funds Act (420/2003) and (391/2006) 6. Acts amending the Pension Funds Act (421/2003) and (392/2006) 7. Proposal for an act amending the Employment Pension Insurance Funds Act, the Pension Funds Act and the Insurance Funds Act (HE 221/2004+2002, p.5). See also the Proposal HE 156/2005. 8. Residence-Based Social Security Legislation (Implementation) Act (1573/1993)

2.

i. Does the existing legal administrative and conventional framework cover all the matters and persons covered by Directive 98/49/EC?

Yes, including self-employed persons, who are able to take supplementary pensions for themselves as any other persons.

ii. In the event that the Directive was implemented by means of collective agreements, what are the measures adopted to protect the persons who are not trade union members?

⁷⁰ [These amendments were made to fulfil the requirements set by Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision . However, they strengthened the norms securing the right to adequate information.]

⁷¹ [This act was overruled by Act 522/2008 from 1 October 2008 on.]

Yes, the legislation should be in order. It covers everyone, despite membership of the trade unions.

3.

i. List of problems faced by scheme members exercising their right to free movement

Inquiries to the Finnish Center for Pensions and the Ministry of Social and Health did not provide any specific problems. Supplementary pensions play a rather small role in the Finnish pension system; even though rather many get them, the amount paid is small.

ii. Administrative practices and case law that occurred since the last implementation report, i.e. 2006/2009

There have been a few court cases on supplementary pensions and some of them have had links to the themes of the Directive:

- a. Supreme Court Case KKO 2013:67 was about measures to ensure adequate information. Even though it handled the Sections of the Pension Funds Act implementing Directive 2003/41/EC, it ensured the idea of adequate information.

The question was whether the company should actively inform those employees already pensioned, whether this information should be given personally and whether the pension fund should compensate the losses of rights caused by a lack of information.

The court found that the Fund should inform – on the Fund’s own initiative – especially those no longer employed. The court also found that Section 49a of the Finnish Pension Fund Act offered better protection than Directive 2003/41/EC by demanding that this information should be given personally. Therefore, the Fund was ordered to pay pension retrospectively contrary to its own rules (which provided for the possibility to pay retrospectively for only 6 months).

There was also the question of the necessity of a preliminary ruling. The case was not easy – there were two dissenting opinions (duty to inform personally).

- b. The other cases dealt with *e.g.*
 - 1) venue, necessary steps taken by the state: the Supreme Administrative Court decided in a accident insurance case concerning equal treatment of men and women that since the question of right venue was unclear, it had to be solved in the client’s best interest (take the one the client had already turned to). The state had not taken the necessary steps to ensure people’s rights (KHO 2012:104);
 - 2) supplementary pension fees which could not be paid from Structural Funds; the fees had to be paid from other funds (Supreme Administrative Court KHO 23.2.2010/322);
 - 3) supplementary pension fees have to be continued to be paid even though the owner of the company changed (Supreme Court, KKO 2009:83).



FRANCE

1. Update of the measures adopted for the implementation of Directive 98/49/EC by comparison to the situation described in the Commission's implementation reports

Table 1: Material Scope

Country	Non-exhaustive list of supplementary pension schemes covered by Directive 98/49/EC - Brief description ⁷² -	Non-exhaustive list of supplementary pension scheme covered by Regulation 1408/71/EEC (now Regulation (EC) No 883/2004)
France	<p>Employed persons' supplementary pension schemes which are provided:</p> <ul style="list-style-type: none"> - by insurance companies, - by, up to 2009, supplementary pension institutions under the Social Security Code, or - by a provision in company accounts. <p>Self-employed persons' supplementary pension schemes which are set up on the initiative of the parties concerned and provided by self-employed persons' independent organisations.</p>	<p>Compulsory supplementary pay-as-you-schemes intended for certain professions:-</p> <ul style="list-style-type: none"> - non-established public sector (scheme known as IRCANTEC); - civil aviation professional pilots (scheme known as CRPNPAC); - self-employed persons in craft, industrial and trade professions and those in the agriculture sector. <p>Agreement-based pay-as-you-go pension schemes of which membership is compulsory by law:-</p> <ul style="list-style-type: none"> - Executives (scheme known as AGIRC); - Non-Executives (scheme known as ARRCO).

⁷² Based on information provided by the concerned Member State and by other stakeholders (in particular members of the Pensions Forum)

Table 2: Equal preservation

Country	Adopted measures to ensure equal preservation	Reference in the national provision
France	Specific legislation was adopted.	<p>1) Self employed persons: Article 58 I (Social Security Code, Article L 623 7) and Article 58 II (Social Security Code, Article L 723 25) of the Law No. 2002-73 Article L 961-3 of the Social Security Code, (since Ordonnance 2006-344 of 23 March 2006)</p> <p>2) Employed persons: Article 58 III (Social Security Code, Article L 913 3) of the Law No. 2002-73 Article L 913-3 of the Social Security Code (since Ordonnance 2006-344 of 23 March 2006)</p>

Table 3: Cross-border payments

Country	Adopted measures to guarantee cross border payments	Reference in the national provision
France	Specific legislation was adopted.	<p>1) Self employed persons: Article 58 I (Social Security Code, Article L 623 8) and Article 58 II (Social Security Code, Article L 723 25) of the Law No. 2002-73 Article L 961-4 of the Social Security Code (since Ordonnance 2006-344 of 23 March 2006)</p> <p>2) Employed persons: Article 58 V (Social Security Code, Article L 914 3) of the Law No. 2002-73 L 914-3 of the Social Security Code</p>

Table 4: Cross-border membership of posted workers

Country	Adopted measures to permit contributions by and behalf of posted workers, Article 6 (1) Exemption from contributions, Article 6 (2)	Reference in the national provisions
France	-Specific legislation was adopted as regards employees. -No specific measures were adopted. As reason for this it is indicated that there are no regulations prohibiting payment of contributions during a posting.	Article 58 V (Social Security Code, Article L 914-4) of the Law No. 2002-73 L 914-4 Social Security Code (since Law No. 2002-73)

Table 5: Information provided to scheme members

Country	Adopted measures to ensure adequate information	Reference in the national provision
France	No specific measures were adopted. But general measures regarding information were taken, such as the obligation for the providers to send to persons who cease to be members before exercising their rights, at the latest three months after the date of their ceasing to be a member, an information note on their pension rights, mentioning in particular the procedures and conditions according to which they can exercise their rights. According to the competent authority, these measures cover cases where workers leave the scheme because they "move to another Member State".	1) Self employed persons: Article L 961-5 of the Social Security Code (since Ordonnance 2006-344 of 23 March 2006)L-961-5 of the Social Security Code (since Ordonnance 2006-344 of 23 March 2006) 2) Employed persons: Article 58-IV (Social Security Code, Article L 914-2) of the Law No. 2002-73

LIST OF NATIONAL PROVISIONS

Country	National provisions communicated by the Member States concerning Directive 98/49/EC
France	Law No. 2002-73 of 17 January 2002 on social modernisation Ordonnance 2006-344 of 23 March 2006

2.

- i. Does the existing legal administrative and conventional framework cover all the matters and persons covered by Directive 98/49/EC?
- ii. In the event that the Directive was implemented by means of collective agreements, what are the measures adopted to protect the persons who are not trade union members?

French legislative provisions cover all workers, both employed and self-employed, under all supplementary schemes.

3.

- i. List of problems faced by scheme members exercising their right to free movement**
- ii. Administrative practices and case law that occurred since the last implementation report, i.e. 2006/2009**

I have found no information on problems.

In particular, there has been no case before the highest courts. No case either, to my knowledge, within the lower courts, which case law is available on line.



CROATIA

1. Update of the measures adopted for the implementation of Directive 98/49/EC by comparison to the situation described in the Commission's implementation reports

Table 1: Material Scope

Country	Non-exhaustive list of supplementary pension schemes covered by Directive 98/49/EC - Brief description ⁷³ -	Non-exhaustive list of supplementary pension scheme covered by Regulation 1408/71/EEC (now Regulation (EC) No 883/2004)
Croatia	Directive 98/49/EC covers third pillar voluntary pension schemes, that are operated by pension funds in the accumulations phase and pension insurance companies in the pay-out phase. Two types of voluntary pension funds can be established. First, " <u>open-ended pension funds</u> " (open to all persons, regardless of their age and employment status; employer's matching contributions are allowed and encouraged by tax legislation). Second, " <u>closed-ended pension funds</u> " (i. e occupational funds sponsored by employers, trade unions or other professional associations, hence participation is only allowed to employees or members respectively). Both of them represent funded and defined contribution schemes with individual retirement accounts. Occupational defined benefit schemes cannot be offered in Croatia.	There are no special supplementary schemes. However, there are many categories of persons that based on special legislation earn their pension under more favourable conditions based on their status (e.g. war veterans, workers in arduous and hazardous jobs etc.)

Table 2: Equal preservation

Country	Adopted measures to ensure equal preservation	Reference in the national provision
Croatia	Specific legislation was adopted. It is prescribed that if a member of a fund ceases to make payments into his or her personal account in the fund, he or she shall continue to be a member of that fund. The pension company should take all the measures necessary to ensure the preservation of vested pension rights of a member of a fund who no longer makes payments to that fund, also if he moved due to work or some other reason to another Member State or third country.	Art. 118 (5) and 119(4) of the Act on Voluntary Pension Funds (NN 19/2014)

⁷³ Based on information provided by the concerned Member State and by other stakeholders (in particular members of the Pensions Forum)

Table 3: Cross-border payments

Country	Adopted measures to guarantee cross border payments	Reference in the national provision
Croatia	Specific legislation was adopted. Pensions are regularly paid by the pension insurance company, and only exceptionally by the pension fund (in case the total value of assets is lower than 50,000 HRK). There are several pension payment option (partial withdrawals, temporary pension payments or life-time annuities). Pension Insurance Companies should pay pensions in all Member States without any limitations. It is prescribed that the costs of payment of pensions is borne by the Pension Insurance Company.	Art. 124 to 127 of the Act on Voluntary Pension Funds (NN 19/2014) Art. 104 of the Act on Pension Insurance Companies (NN 22/2014)

Table 4: Cross-border membership of posted workers

Country	Adopted measures to permit contributions by and behalf of posted workers, Article 6 (1) Exemption from contributions, Article 6 (2)	Reference in the national provisions
	Specific legislation was adopted. Provision ensure that in respect of a posted worker, payments continue to be made to his or her personal account in a closed-end fund or to an appropriate voluntary pension (occupational) insurance scheme in the Member State to which the worker is posted. The rules on preservation of vested pension rights apply.	Art. 119 of the Act on Voluntary Pension Funds (NN 19/2014)

Table 5: Information provided to scheme members

Country	Adopted measures to ensure adequate information	Reference in the national provision
	No specific measures were adopted. It can be justified by the fact that there are elaborate rules prescribing provision of various types of adequate information to scheme members related to their pension right, pension type choices, benefit payments etc., regardless of their place of residence.	Art. 190 of the Act on Voluntary Pension Funds (NN 19/2014) Arts. 70 to 71 of the Act on Pension Insurance Companies (NN 22/2014)

LIST OF NATIONAL PROVISIONS

Country	National provisions communicated by the Member States concerning Directive 98/49/EC
Croatia	Act on Voluntary Pension Funds (Zakon o dobrovoljnim mirovinskim fondovima), Croatian official gazette "Narodne novine" No. 19/2014 Act on Pension Insurance Companies (Zakon o mirovinskim osiguravajućim društvima) Croatian official gazette "Narodne novine" No. NN 22/2014

2.

i. Does the existing legal administrative and conventional framework cover all the matters and persons covered by Directive 98/49/EC?

Yes. The existing legislation covers all the matters and persons. Namely, as indicated in table 1 (material scope), there are two types of voluntary pension funds:

- 'open-end pension funds' (open to all persons, regardless of their age and employment status; employer's matching contributions are allowed and encouraged by tax legislation);
- 'closed-end pension funds' (*i.e.* occupational funds sponsored by employers, trade unions or other professional associations; hence participation is only allowed to employees or members, respectively).

Hence, it is possible for self-employed persons to become members of such closed-end funds (occupational funds) established by professional associations or other associations of self-employed persons (Article 120 of the Act on Voluntary Pension Funds). In that case, all the other legislative provisions mentioned in the above tables would apply to them equally.

However, it is important to note that currently 18 closed-end funds operate in Croatia. Most of them are linked to either big employers or trade unions. Only one of them is linked to a professional association, *i.e.* the Croatian Journalists' Association. Hence, members of the fund can be journalists, regardless whether they are employed or self-employed. For the moment, no other association has established a closed-end fund (occupational fund),

ii. In the event that the Directive was implemented by means of collective agreements, what are the measures adopted to protect the persons who are not trade union members?

Yes, the existing legislation covers all the matters.

3.

i. List of problems faced by scheme members exercising their right to free movement

ii. Administrative practices and case law that occurred since the last implementation report, i.e. 2006/2009

Nothing to report for the moment.



HUNGARY

1. Update of the measures adopted for the implementation of Directive 98/49/EC by comparison to the situation described in the Commission's implementation reports

Table 1: Material Scope

Country	Non-exhaustive list of supplementary pension schemes covered by Directive 98/49/EC - Brief description ⁷⁴ -	Non-exhaustive list of supplementary pension scheme covered by Regulation 1408/71/EEC (now Regulation (EC) No 883/2004)
Hungary	<p>Voluntary mutual insurance funds: individual contracts between the insurance funds (this being non-profit mutual savings associations) and fund members (this being any person aged over 16 years) on a voluntary basis. The employer can also contribute (wholly or partially) on behalf of the employee, although in this case there is and this contribution is no tax-reduction deductible for the employer as well as for the employee.</p> <p>A self-employed person may join the voluntary mutual insurance, if s/he is an employer. (Employers are treated within a broader context.) Self-employed persons are not allowed to join the voluntary mutual insurance fund on behalf of him or her.</p> <p>This kind of voluntary scheme is could be covered by the material scope of Directive 98/49/EC, Article 3(b) insofar it is concluded by the employer</p> <p>Occupational pension scheme: private company (limited by shares), operating on a funded basis, established separately from the sponsoring undertaking and the purpose of providing retirement benefits in the context of an occupational activity on the basis of an agreement or a contract agreed: individually or collectively between the employer(s) and the employee(s) or their respective representatives, or with self-employed persons, 'Member' means a natural person who obtains eligibility or is expected to acquire eligibility due to conditional eligibility for occupational pension plan benefits laid down in the statutes, joining agreement between the employer and the institution for occupational retirement provision, employment contract, and collective agreement based on his or her employment or employment described by the legislation of other EEA States. Members may be persons employed by a founder or an employer joining later and whose employment agreement includes the employer's commitment to pay the contribution. The employer may undertake to pay contributions taking into account the provisions of the relevant law regarding the</p>	<p>Mandatory private pension funds which covered only longevity risk (came into effect on 01.01.98) are not available any more. The second pillar system was completely deleted on 01.02.2011, and no longer exists. Members could choose to either step back to the mandatory state pension system (first pillar) without any compensation or continue memberships on a voluntary basis excluding themselves from the first pillar. Mandatory to join was for new employees (after 30.06.98 except for starting work in the year 2002).</p> <p>Point 14 of Article 2 of Act CXVII of 2007</p> <p>Point 23 of Article 2 of Act CXVII of 2007</p> <p>Para 4 Article 8 of Act CXVII of 2007</p>

⁷⁴ Based on information provided by the concerned Member State and by other stakeholders (in particular members of the Pensions Forum)

	principle of equal treatment. As of 1 July 2016 a member can also be a self-employed person who is treated as a joining employer.	
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Table 2: Equal preservation

Country	Adopted measures to ensure equal preservation	Reference in the national provision
Hungary	<p>No specific measures were adopted.</p> <p>As reason for this it is indicated that the existing legislation on the preservation of vested rights does not make a distinction between members remaining in the country and those moving within the Community.</p> <p>No specific measures were adopted in Act CXVII of 2007.</p> <p>As a reason for this it is indicated that the existing legislation on the preservation of vested rights does not make a distinction between members remaining in the country and those moving within the Community.</p>	Subsection 47/A of the Act XCVI of 1993

Table 3: Cross-border payments

Country	Adopted measures to guarantee cross border payments	Reference in the national provision
Hungary	<p>No specific measures were adopted.</p> <p>As reason for this it is indicated that the existing legislation does not make any distinctions, in terms of payment, between members remaining in the country and those moving within the Community. Moreover, it is stated that cross-border payments are not restricted.</p> <p>No specific measures were adopted in Act CXVII of 2007.</p> <p>As a reason for this it is indicated that the existing legislation does not make any distinctions, in terms of payment, between members remaining in the country and those moving within the Community. Moreover, it is stated that cross-border payments are not restricted.</p>	<p>However, there could be some differences between the voluntary mutual insurance funds according to their rules of procedures, e.g. cross-border payments made by the funds allowed on a Hungarian bank account and by post.</p> <p>In case of non-residents foreign exchange regulations shall be applied. (Point 3, Subsection 10 of the Act XCVI of 1993)</p>

Table 4: Cross-border membership of posted workers

Country	Adopted measures to permit contributions by and behalf of posted workers, Article 6 (1) Exemption from contributions, Article 6 (2)	Reference in the national provisions
Hungary	<p>-No specific measures were adopted.</p> <p>As reason for this it is indicated that there are no regulations prohibiting payment of contributions during a posting.</p> <p>-No specific measures were adopted.</p> <p>As reason for this it is indicated that it is not compulsory for foreign workers in Hungary to join a supplementary pension scheme within the scope of the present Directive.</p> <p>No specific measures were adopted in Act CXVII of 2007.</p> <p>As reason for this it is indicated that there are no regulations prohibiting payment of contributions during a posting.</p>	

Table 5: Information provided to scheme members

Country	Adopted measures to ensure adequate information	Reference in the national provision
Hungary	<p>No specific measures were adopted.</p> <p>As reason for this it is indicated that the range of information is harmonized with the content of the Directive and is identical for all scheme members regardless of whether they remain in their Member State of origin or move to another Member State.</p> <p>No specific measures were adopted, however, Act CXVII of 2007 contains a more detailed list of the compulsory information provided to scheme members.</p>	<p>Subsection 18 of the Act XCVI of 1993 (content of the constitution of the voluntary mutual insurance fund)</p> <p>Art 28 of Act CXVII of 2007</p>

LIST OF NATIONAL PROVISIONS

Country	National provisions communicated by the Member States concerning Directive 98/49/EC
Hungary	<p>Act XCVI of 1993 on Voluntary Mutual Insurance Funds</p> <p>Gov. decree Nr 281/2001. (XII. 26.) on the investment and management measures of the voluntary mutual insurance funds</p> <p>Act CXVII of 2007 on Occupational Pension and the Related Institutions</p>

2.

i. Does the existing legal administrative and conventional framework cover all the matters and persons covered by Directive 98/49/EC?

All matters have been covered by both implementing acts; however, both have used general terms and notions for e.g. members, commitments of members, contributions made by members and providing information to the scheme members. No specific provisions have been introduced linked to leaving the country, cross-border payments

(except for foreign exchange regulations) or posting. Differences might be laid down in the rules of procedure in accordance with the implementing act (see table 3). In spite of general terms used, Act CXVII of 2007 on Occupational Pension and the Related Institutions are more precise and detailed.

- ii. In the event that the Directive was implemented by means of collective agreements, what are the measures adopted to protect the persons who are not trade union members?**

Not applicable. The Directive was not implemented by collective agreements.

3.

- i. List of problems faced by scheme members exercising their right to free movement**

No problems have been found. Even in the case where the rules of procedures of the voluntary mutual insurance fund require a Hungarian bank account and postal address for cross-border payments, I was told that the voluntary mutual insurance fund transfers benefits also to foreign bank accounts.

- ii. Administrative practices and case law that occurred since the last implementation report, i.e. 2006/2009**

Not applicable.



IRELAND

1. Update of the measures adopted for the implementation of Directive 98/49/EC by comparison to the situation described in the Commission's implementation reports

Table 1: Material Scope

Country	Non-exhaustive list of supplementary pension schemes covered by Directive 98/49/EC - Brief description ⁷⁵ -	Non-exhaustive list of supplementary pension scheme covered by Regulation 1408/71/EEC (now Regulation (EC) No 883/2004)
Ireland	<p>There are two main types of voluntary supplementary pension:</p> <ul style="list-style-type: none"> - occupational pension schemes (ops) arranged by employers and - Personal Savings Accounts (PRSAs) under employer linked circumstances: i.e. if an employer is obliged to provide his employees with access to a specified PRSA and the employer must also contribute. 	

Table 2: Equal preservation

Country	Adopted measures to ensure equal preservation	Reference in the national provision
Ireland	<p>Specific legislation in respect of vested rights on a voluntary basis was adopted.</p> <p>For the rest the competent authority contended that national legislation was already consistent with this requirement. As reason for this it is indicated that the existing legislation on the preservation of vested rights does not make a distinction between members remaining in the country and those moving within the Community.</p>	Part III of the Pensions Act 1990 as amended by section 26 of the Pensions (Amendment) Act, 2002

⁷⁵ Based on information provided by the concerned Member State and by other stakeholders (in particular members of the Pensions Forum)

Table 3: Cross-border payments

Country	Adopted measures to guarantee cross border payments	Reference in the national provision
Ireland	Specific legislation was adopted.	Section 59 of the Pensions Act 1990, as amended by section 42 of the Pensions (Amendment) Act, 2002

Table 4: Cross-border membership of posted workers

Country	Adopted measures to permit contributions by and behalf of posted workers, Article 6 (1) Exemption from contributions, Article 6 (2)	Reference in the national provisions
Ireland	-No specific measures were adopted. As reason for this it is indicated that there are no regulations prohibiting payment of contributions during a posting. -No specific measures were adopted. As reason for this it is indicated that national legislation does not make membership of a scheme in Ireland compulsory.	

Table 5: Information provided to scheme members

Country	Adopted measures to ensure adequate information	Reference in the national provision
Ireland	Specific legislation was adopted	Occupational Pension Schemes (Disclosure of Information) (No. 2) Regulations, 1988 (S. I. No. 349 of 1988) (as amended), now replaced by Occupational Pension Schemes (Disclosure of Information) Regulations 2006 to 2013 (S.I. No. 301/2006, as amended up to and including S.I. No. 58/2013)

LIST OF NATIONAL PROVISIONS

Country	National provisions communicated by the Member States concerning Directive 98/49/EC
Ireland	<ol style="list-style-type: none"> 1. Pensions Act 1990 (as amended) 2. Pensions (Amendment) Act, 2002 (No.18 of 2002) (2002 Act) 3. Occupational Pension Schemes (Disclosure of Information) Regulations, 1998 (S.I. No. 349 of 1998) as amended by the Occupational Pension Schemes (Disclosure of Information) (Amendment) Regulations, 2003 (S.I. No. 4 of 2003), now replaced by Occupational Pension Schemes (Disclosure of Information) Regulations 2006 to 2013 (S.I. No. 301/2006, as amended up to and including S.I. No. 58/2013)

2.

i. Does the existing legal administrative and conventional framework cover all the matters and persons covered by Directive 98/49/EC?

As set out above, the national framework covers all of the matters and persons covered by Directive 98/49/EC. The legislative regime does not distinguish between employees and self-employed persons as such and thus appears to apply in equal measure to self-employed persons participating in relevant pensions schemes.

ii. In the event that the Directive was implemented by means of collective agreements, what are the measures adopted to protect the persons who are not trade union members?

This does not arise in the Irish context because, insofar as implementing measures have been necessary, they have been adopted by way of legislative measures.

3.

i. List of problems faced by scheme members exercising their right to free movement

ii. Administrative practices and case law that occurred since the last implementation report, i.e. 2006/2009

Having consulted with practitioners working in the field of pensions law and with relevant stakeholders, including the Pensions Authority, no material problems have been recorded in practice in respect of scheme members' exercise of their right to free movement in this context in Ireland. There does not appear to have been litigation in respect of these issues and there has been no case law of the Irish courts on Directive 98/49/EC or its national implementing measures.



ICELAND

1. Update of the measures adopted for the implementation of Directive 98/49/EC by comparison to the situation described in the Commission's implementation reports

Table 1: Material Scope

Country	Non-exhaustive list of supplementary pension schemes covered by Directive 98/49/EC - Brief description ⁷⁶ -	Non-exhaustive list of supplementary pension scheme covered by Regulation 1408/71/EEC (now Regulation (EC) No 883/2004)
Iceland	There are currently no supplementary pension schemes within the meaning of Articles 1 and 3b of the Directive in place.	All schemes subject to Article 8(3) of Act No 129/1997 on mandatory pension insurance and on the activities of pension funds (Declaration under Article 5 of Regulation (EEC) No 1408/71. OJ 2005/C 135/6 p. 11)

Table 2: Equal preservation

Country	Adopted measures to ensure equal preservation	Reference in the national provision
Iceland	No specific legislation has been introduced and there are no specific provisions respect of the preservation of rights of EEA nationals. National law ensures the equality of treatment as regards the preservation of pension rights stipulated in Article 4 of the Directive. Act No 129/1997 stipulates how the vested rights are preserved. Article 19 of the Act contains the following general prohibition concerning the preservation of pension rights: “[p]rovisions may not be made in the Articles of Association for earned pension rights to be reduced or lost if a pension fund member ceases his contributions to a pension fund.”	Article 3 of Act No 70/2004, along with the general provisions of Act No 129/1997

⁷⁶ Based on information provided by the concerned Member State and by other stakeholders (in particular members of the Pensions Forum)

Table 3: Cross-border payments

Country	Adopted measures to guarantee cross border payments	Reference in the national provision
Iceland	The implementing legislation does not address taxes and transaction charges. General taxation rules would apply in accordance with the general taxation legislation.	Article 3 of Act No 70/2004, along with the general provisions of Act No 129/1997

Table 4: Cross-border membership of posted workers

Country	Adopted measures to permit contributions by and behalf of posted workers, Article 6 (1) Exemption from contributions, Article 6 (2)	Reference in the national provisions
Iceland	The payments of contributions to supplementary pension schemes by and on behalf of posted workers are guaranteed under the same conditions as under Title II of Regulation (EEC) No 1408/71 (now Article 12 of Regulation (EC) No 883/2994). Both employees and employers are exempted from any obligation to make contributions to a supplementary pension scheme in Iceland, if they make contributions to such a scheme in another EEA State.	Article 3 of Act No 70/2004

Table 5: Information provided to scheme members

Country	Adopted measures to ensure adequate information	Reference in the national provision
Iceland	Specific legislation was adopted. According to Article 19.a.(2) of Act No 129/1997 added by Article 3(2) of Act No 70/2004: "Employers, pension funds and depositories of pension savings shall have information available to fund members moving to other member states of the European Economic Area, or to member states of the European Free Trade Association treaty [or the Faeroe Islands], on their earned pension rights from pension schemes as referred to in the first paragraph, by what means such rights will be preserved, whether such rights can be transferred to foreign funds and where they should turn when benefits fall due."	Article 3(2) of Act No 70/2004

LIST OF NATIONAL PROVISIONS

Country	National provisions communicated by the Member States concerning Directive 98/49/EC
Iceland	Act No 129/1997 on Mandatory Pension Insurance and on the Activities of Pension Funds, as amended by Act No 70/2004.

2.

- i. Does the existing legal administrative and conventional framework cover all the matters and persons covered by Directive 98/49/EC?**
- ii. In the event that the Directive was implemented by means of collective agreements, what are the measures adopted to protect the persons who are not trade union members?**

The existing legal administrative and conventional framework appears to cover all the matters and persons covered by Directive 98/49/EC.

All pension schemes currently operating in Iceland under Article 8(3) of Act No 129/1997 on Mandatory Pension insurance and on the Activities of Pension Funds are covered by the Declaration under Article 5 of Regulation (EEC) No 1408/71 (now Regulation (EC) No 883/2004).

According to Article 1 of Act No 129/1997 it applies to all pension funds and agreements on insurance coverage, as further provided by the Act. According to Article 1, the Act covers both employed and self-employed persons. According to Article 2(3) a pension fund member is "Anyone for whom payment of a contribution is made, who pays or has paid a contribution to a pension fund and is entitled to benefits from it, as further provided for in this Act." In case certain provisions of the Act would not apply to self-employed persons, this would be specifically mentioned.

No specific provisions were implemented as regards cross-border payments.

Specific provisions were adopted as regards posted workers' cross-border memberships. Furthermore, according to Article 8(4) of Act No 129/1997 pension funds established in other EEA countries may offer their services in Iceland with or without the establishment of a branch.

There are no specific provisions in respect of the preservation of rights of EEA workers. The general provisions of Act No 129/1997 apply. Article 19 of Act No 129/1997 contains the following general prohibition concerning the preservation of pension rights: "[p]rovisions may not be made in the Articles of Association for earned pension rights to be reduced or lost if a pension fund member ceases his contributions to a pension fund."

A specific provision was implemented in Article 19.a (2) (added by Article 3 of Act No 70/2004) providing for an obligation for pension funds to provide information concerning members that have moved to other EEA countries.

3.

- i. List of problems faced by scheme members exercising their right to free movement**
- ii. Administrative practices and case law that occurred since the last implementation report, i.e. 2006/2009**

There are currently no supplementary pension schemes within the meaning of Articles 1 and 3b of the Directive in place in Iceland.



ITALY

1. Update of the measures adopted for the implementation of Directive 98/49/EC by comparison to the situation described in the Commission's implementation reports

Table 1: Material Scope

Country	Non-exhaustive list of supplementary pension schemes covered by Directive 98/49/EC - Brief description ⁷⁷ -	Non-exhaustive list of supplementary pension scheme covered by Regulation 1408/71/EEC (now Regulation (EC) No 883/2004)
Italy	<p>All forms of collective complementary pension schemes are provided and regulated for by law. These are mainly two types:</p> <ul style="list-style-type: none"> - contractual pension funds ("closed" pension funds for workers of particular industries, companies etc. which are set up unilaterally or – as it actually happens – jointly by employers and workers), and through collective agreement. At the moment, there are 41 of such funds (see the list on the website of COVIP – the Authority for monitoring and regulating pension funds, at http://www.covip.it/?page_id=51). - open pension funds (to which an employee can only sign up if a contractual fund is unavailable) ⁷⁸. These funds are set up by banks, insurance companies or other financial institutions. Membership to such funds could be individual or even collective: in the latter case, collective membership to open funds are regulated by collective agreements. <p>Apart from the above mentioned two categories of funds, legislation also provides and regulates individual and pension plans, and “pre-existing” pension funds, meaning by that funds existing before 1992. A special regulation is provided for such funds.</p>	

⁷⁷ Based on information provided by the concerned Member State and by other stakeholders (in particular members of the Pensions Forum)

⁷⁸ This is not correct, since art. 3, para 3 of Legislative Decree 252/2005 explicitly affirms that membership to all supplementary pension funds is voluntary

Table 2: Equal preservation

Country	Adopted measures to ensure equal preservation	Reference in the national provision
Italy	<p>No specific measures were adopted.</p> <p>As reason for this it is indicated that the existing legislation on the preservation of vested rights does not make a distinction between members remaining in the country and those moving within the Community.</p> <p>As explained below in the Table on “List of national provisions”, the legislation existing at the time of the 2006 Commission Report has been repealed by a new 2005 legislation.</p> <p>However, nothing has changed with regard to the “equal preservation” issue. In the new legislation too, there are no specific provisions on vested rights of workers exercising their free movement rights. The only “transnational” provisions are dedicated to regulate the case of an Italian pension fund wishing to operate abroad and vice versa.</p>	<p>Articles 15bis and 15ter of Legislative Decree No 252/2005 (only related to the operation of Italian funds abroad and vice versa, not to the position of workers exercising their free movement rights).</p>

Table 3: Cross-border payments

Country	Adopted measures to guarantee cross border payments	Reference in the national provision
Italy	<p>No specific measures were adopted.</p> <p>As reason for this it is indicated that that cross-border payments are not restricted.</p> <p>No news.</p> <p>Cross-border payments are not restricted to the extent that they are not even mentioned in the national legislation. However, such statement refers to the payments which the worker is entitled to once s/he has reached his or her pension age. Different is the case with payments which the worker could require in the course of his or her working life, In such cases, even if there are no provisions explicitly restricting cross-border payments, there are however some rules which “de facto” could have the effect of restricting the movement of workers to other Member States.⁷⁹</p>	

⁷⁹ [see below, 3.i.]

Table 4: Cross-border membership of posted workers

Country	Adopted measures to permit contributions by and behalf of posted workers, Article 6 (1) Exemption from contributions, Article 6 (2)	Reference in the national provisions
Italy	<p>-No specific measures were adopted.</p> <p>As reason for this it is indicated that, in case of a posting, the collective agreements related to supplementary pension provision in Italy remain applicable.</p> <p>-No specific measures were adopted.</p> <p>As reason for this it is indicated that it membership of Italian supplementary pension schemes is voluntary.</p> <p>No news</p>	

Table 5: Information provided to scheme members

Country	Adopted measures to ensure adequate information	Reference in the national provision
Italy	<p>No specific measures were adopted.</p> <p>As reason for this it is indicated that the range of information is harmonized with the content of the Directive and is identical for all scheme members regardless of whether they remain in their Member State of origin or move to another Member State.</p> <p>No news</p>	<p>Article 4 and 17 (2) (h) of the Legislative Decree 124, and Article 3 (3) of the Ministry of Labour and Social Security Decree of 14 January 1997</p>

LIST OF NATIONAL PROVISIONS

Country	National provisions communicated by the Member States concerning Directive 98/49/EC
Italy	<ol style="list-style-type: none"> 1. Legislative Decree 124 of 21 April 1993 The 1993 legislation has been entirely repealed and substituted by a thorough new legislation: i.e. Legislative Decree No 252 of 5 December 2005. The coming into force of such new legislation was however postponed to 1 January 2007, and this is probably the reason why it was not mentioned in the 2006 Commission Report COM(2006)22 and SEC(2006)82. 2. Ministry of Labour and Social Security Decree of 14 January 1997. This Decree, regulating some practical and operational requirements of the pension funds, was never repealed. However, with the coming into force of the new 2005 legislation it has been sided by many other Decrees covering issues not directly relevant to the present questionnaire (such as the personal requirements of the funds' administrators; the procedure through which they can be appointed; the kind of financial investments they could do, and so on). The complete list of such Regulation can be found on the website of COVIP (the Authority monitoring pension funds) at http://www.covip.it/?cat=14.

2.

i. Does the existing legal administrative and conventional framework cover all the matters and persons covered by Directive 98/49/EC?

- Even if not explicitly qualified as a national implementing measure of Directive 98/49/EC, the Italian legislation regulating complementary pension schemes **does expressly cover self-employed persons as well** (Article 1, paragraph 2, lett b) of Legislative Decree No 252/2005). However, it must be underlined that most of the complementary pension schemes available for the self-employed are "individual" schemes offered by banks and other financial intermediaries. At present, the only negotiated "collective fund" regarding the self-employed is the *Fondo Sanità* for workers operating in the medical field.
- As **Article 4** of the Directive is concerned, the case of a worker adhering to a pension fund and wishing to leave it in order to work in another Member State is not explicitly considered by the national legislation. However, the portability of vested pension rights to other pension funds, and the right to obtain redemption of the contributions are subject to some conditions which might hinder the very same decision to work in another Member State (see below).
- As **Article 5** is concerned, the issue of cross-border payments is not regulated (and therefore not limited) by legislation.
- As **Article 6** is concerned, the situation of posted workers is not regulated by legislation. However, the explicit affirmation of the voluntary character of membership to supplementary pension funds could be indicated as a factor allowing a posted worker to continue paying contributions in his or her home State.
- As **Article 7** is concerned, an obligation for pension funds to duly and thoroughly inform members is provided by legislation "in accordance with the guidelines dictated by COVIP" (The Authority on supplementary pension funds).

In general, Article 18bis of Legislative Decree No 252/2005 (introduced in 2012), provides that the activity of COVIP must be with respect for and in compliance with EU law.

Recently, Law No 114/2015 has delegated the government to give implementation to Directive 2014/50/EU on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights. At the time of writing, however, the 2014 Directive has not been implemented yet.

ii. In the event that the Directive was implemented by means of collective agreements, what are the measures adopted to protect the persons who are not trade union members?

As said above, supplementary pension funds are regulated through legislation (Legislative Decree 202/2005). Such legislation – which in no way makes reference to Directive 1998/49/EC – does however leave to collective agreements the task of instituting pension funds within the frame of the basic principles dictated by legislation.

Within such a frame, the position of workers with regard to union membership is protected in the double sense that: a) union members are not obliged to be part of a supplementary scheme, since adhesion is explicitly qualified by legislation as voluntary; b) non-union members may be part of a supplementary pension scheme negotiated by unions.

3.

i. List of problems faced by scheme members exercising their right to free movement

In my opinion, the main obstacles to a full exercise of free movement rights for workers who are member of an Italian pension fund might arise from a) the provision regulating portability; b) the provision regulating capitalisation of contributions in the course of the working life; c) the provision relating to the tax regime of payments once the right to pension has matured.

- a) As concerns portability, the legislation provides that pension funds' members can only obtain portability of contributions after two years of membership (Article 14.6 of Legislative Decree 252/2005). Moreover, portability is granted only toward other pension funds "regulated by the present decree" (Article 14.7). The first requirement (the two-year membership period) is irrespective of nationality but it might indirectly jeopardise the position of those willing to change employment in other Member States. The second requirement is directly discriminatory insofar as it only grants portability toward Italian funds (the only ones who are "regulated by the present decree".)
- b) as concerns the possibility for a worker to capitalise during the course of his or her working life the contributions payed to the fund, Article 14.2.b of Legislative Decree 252/2005 provides that the worker may claim 50% of what it has matured only in the case of unemployment for more than 12 months. A similar possibility is not given to workers wishing to leave the fund not due to unemployment but rather because of their choice to work in another Member State.
- c) as concerns the tax regimes of payment, it could be interesting to talk about the interpretation given by the Italian tax authority (*Agenzia delle entrate*) in a case concerning a retired worker who had been member of an Italian fund and who was residing in Germany after the termination of his Italian employment contract. When he chose to capitalise his contributions by asking the Italian fund to convert his periodic rent into a one-off sum, the Italian tax agency decided that the taxation to be applied was not the (most favourable) one provided for pensions, since a one-off capitalisation payed by a pension fund cannot be qualified as a "pension". While such a different tax treatment between a periodic revenue and a capital sum payed to the same worker by the same pension fund appears less than reasonable, it is plausible to say that it might produce restrictive effects on free movement. Since the choice to capitalise a one-off sum could be the preferred option for someone moving to another Member State, a pejorative tax treatment of capitalisation with respect to periodic revenue could be a factor limiting the choice to move.

ii. Administrative practices and case law that occurred since the last implementation report, i.e. 2006/2009

See, as concerns tax regimes, the interpretation of the *Agenzia delle entrate* mentioned above under 3.i.c (Risoluzione No 40/E of 17.2.2009).

Provision of the Directive which this question refers to: Article 4 of the Directive.



1. Update of the measures adopted for the implementation of Directive 98/49/EC by comparison to the situation described in the Commission's implementation reports

Table 1: Material Scope

Country	Non-exhaustive list of supplementary pension schemes covered by Directive 98/49/EC - Brief description ⁸⁰ -	Non-exhaustive list of supplementary pension scheme covered by Regulation 1408/71/EEC (now Regulation (EC) No 883/2004)
Liechtenstein	<p>According to the Act of 20 October 1987, employees have to be covered by a supplementary pension scheme if they are covered by the public old age, disability and survivor insurance (AHV/IV) and if their yearly wage reaches a certain amount of money (Art. 3 § 1 and Art. 4 BPVG, Gesetz über die betriebliche Personalvorsorge, BPVG, Lilex 831.40).). The scheme has to observe a certain minimum standard of protection but it may go further than the minimum required (Art. 2 § 2 BPVG); most of the schemes do the latter by insuring a larger amount of the income than the one mandatorily insured by the law (“voluntary or further going protection” “<i>weitergehende berufliche Vorsorge</i>”); certain rules of the BPVG are binding for this part of the protection scheme. Only the benefits that are based on this non mandatory part are covered by Directive 98/49. Should also be covered by Directive 98/49 pension funds that practice only the voluntary part (Art. 2a BPVG); those funds are not regulated by the BPVG but by an Act concerning the supervision of Pension Funds: Gesetz betreffend die Aufsicht über Einrichtungen der betrieblichen Altersversorgung (Pensionsgesetz, PFG, Lilex 831.42.</p> <p>The Act of 20 October 1987 was modified in order to implement Directive 98/49 (see the Report of the Government to the Parliament from February 20 in 2001 (BuA 2001/04: http://bua.gmg.biz/BuA/default.aspx?nr=4&year=2001&content=ges).</p> <p>A modification of the BPVG was adopted by the Parliament in May 2016; the main part of this modification will enter into force in January 2018; the modification whoever does not concern Free movement of Persons issues.</p> <p>Beside the Act from 1987, the by-laws adopted by the insurers as well as contracts between the insurer and the insured persons are important sources that determine the rights (pensions, lump-sums) and obligations (contributions) of the insured persons and their employers. In certain cases, the scheme pays out a vested benefit (Freizügigkeitsleistung) in cash; according to Art. 30 of the Ordinance (Verordnung</p>	<p>As it is mentioned on the left side of the table, the BPVG-scheme sets out a minimum standard of protection but an insurer may go further than that; Regulation n° 883/2004 covers the mandatory part of the scheme whereas Directive 98/49 covers the protection that goes further than the latter (see Annex VI of the EEA-Agreement). In other words, Regulation n° 883/2004 only applies to benefits that are mandatory by law (“<i>obligatorische Minimalvorsorge</i>”).</p>

⁸⁰ Based on information provided by the concerned Member State and by other stakeholders (in particular members of the Pensions Forum)

	vom 20. Dezember 2005 zum Gesetz über die betriebliche Personalvorsorge, BPVV, Lilex 831.401), those sums may be invested in Fonds located in Switzerland or in the EEA.	
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Table 2: Equal preservation

Country	Adopted measures to ensure equal preservation	Reference in the national provision
Liechtenstein	The Act of 1987 does not contain any rules that treat nationals and foreigners differently. Art. 1a BPVG, introduced in 2016, even expressively says that the system is based on the principle of equality. The above mentioned by-laws do not contain discriminating rules either. Therefore it was not necessary to adopt a special rule concerning equal preservation.	An act adopted in 1992 prohibits payback of contributions to insured persons that leave Liechtenstein in order to settle in the EEA; this act was adopted in order to implement Regulation n° 883/2004; it ensures the preservation of vested rights because the persons keeps covered by the system; persons that settle outside the EEA can get their money back with the consequence that they are then excluded from benefits. According to Art. 12 § 4 b) BPVG, persons that leave Liechtenstein in order to settle in the EEA and that are submitted to a mandatory old age, disability and survivor insurance cannot obtain the pay out of a vested benefit.

Table 3: Cross-border payments

Country	Adopted measures to guarantee cross border payments	Reference in the national provision
Liechtenstein	The Act of 1987 does not contain any rules that exclude cross border payments. As a consequence, there are also no special rules that guarantee such payments.	

Table 4: Cross-border membership of posted workers

Country	Adopted measures to permit contributions by and behalf of posted workers, Article 6 (1) Exemption from contributions, Article 6 (2)	Reference in the national provisions
Liechtenstein	<p>According to Art. 3 BPVG, the insurance is mandatory for workers that are insured by the public old age, disability and survivor insurance. Furthermore, according to Art. 1 Ordinance (Verordnung vom 20. Dezember 2005 zum Gesetz über die betriebliche Personalvorsorge, BPVV, Lilex 831.401), only persons that are insured by the old age, disability and survivor insurance are also covered by the BPVG. As a consequence, posted workers that continue to be insured by the public system keep their coverage in BPVG while they are working abroad. This rule, however, concerns the part of the insurance that is mandatory by law ("<i>obligatorische Minimalvorsorge</i>"). To make sure that posted workers may also pay into the part that goes beyond the mandatory part ("<i>weitergehende berufliche Vorsorge</i>"), the legislator created Art. 7 § 8 BPVG. According to this rule the posted worker and the employer may continue to pay contributions during the time the worker is abroad; according to Art. 2 § 3 BPVG this rule is binding for the voluntary part of the protection scheme.</p> <p>Art. 3 § 3 lit f § 2 BPVG exempts detached workers from the obligation to be insured; as a consequence, those workers do not have to pay any contributions. This rule, however, only concerns the part of the scheme that is mandatory by law ("<i>obligatorische Minimalvorsorge</i>"). There is no equivalent rule concerning the voluntary part; it is also not necessary to have such a rule because the scheme is not mandatory.</p>	Art. 2 § 3 and 7 § 8 BPVG.

Table 5: Information provided to scheme members

Country	Adopted measures to ensure adequate information	Reference in the national provision
	<p>According to Art. 22 BPVG, the insurer has to inform the insured workers about the general situation of the scheme (activities, finances, etc.). The same article obliges the insurer to inform every insured person about his/her rights to benefits, the insured income, the contributions, etc. The information has to be given yearly. Art. 22 § 3 BPVG specifies that the insurer have to inform workers that leave the system about how to use the vested benefit (Freizügigkeitsleistung). Although it does not directly talk about persons leaving the country, it protects persons that fall into the scope of Free movement of workers. Art. 20 was modernized in 2005 (LGBl. 2005 Nr. 276).</p> <p>According to Art. 23 and 33 PFG, Pension Funds that belong to an insurer settled in the EEA have to inform the insured persons about their rights.</p>	Art. 22 BPVG; Art. 23 and 33 PFG.

LIST OF NATIONAL PROVISIONS

Country	National provisions communicated by the Member States concerning Directive 98/49/EC
Liechtenstein	On June 1 st 2012, the Government of Liechtenstein has made a communication in the sense of Art. 9 Regulation n° 883/2004; according to this communication, the Act of 1987 (BPVG) falls entirely into the scope of Regulation n° 883/2004. That does not mean that Directive 98/49 is not implemented by Liechtenstein. As mentioned above, Regulation n° 883/2004 covers the mandatory part of the complementary pension whereas Directive 98/49 covers the part that goes further than the minimum required by the law. The Government explained this in 2001, when the BPVG was modified in order to implement Directive 98/49; this situation was not modified in 2012 (also see our answer to question 3).

2.

- i. **Does the existing legal administrative and conventional framework cover all the matters and persons covered by Directive 98/49/EC?**
- ii. **In the event that the Directive was implemented by means of collective agreements, what are the measures adopted to protect the persons who are not trade union members?**

The *BPVG* covers all workers that earn at least CHF 20,880 per year, which means three quarters of an amount that corresponds to the yearly maximum pension paid by the public old age, disability and survivors' insurance (AHV/IV). Self-employed persons do not fall under the scope of the mandatory insurance, but they may insure themselves on a voluntary basis; if they do so, the rules of the *BVG* apply to them as if they were mandatorily insured (Article 5 § 3 *BPVG*). Furthermore, this law concerns old age, disability and survivors' pensions. As a consequence, it applies to all persons and matters covered by Directive 98/49/EC. However, Directive 98/49 only concerns the voluntary part of the scheme ("*weitergehende berufliche Vorsorge*"); the question whether an employee benefits from the voluntary part mostly depends on the pension fund chosen by the employer. In Liechtenstein the Directive was implemented by law and not by collective agreements.

3.

- i. **List of problems faced by scheme members exercising their right to free movement**
- ii. **Administrative practices and case law that occurred since the last implementation report, i.e. 2006/2009**

As mentioned above, on 1 June 2012, the Government of Liechtenstein made a communication in the sense of Article 9 of Regulation (EC) No 883/2004; according to this communication, the Act of 1987 (*BPVG*) falls entirely into the scope of Regulation (EC) No 883/2004. It seems that this communication has led to some misunderstanding. Referring to this communication, the Administrative Court of Austria seems indeed to consider that the non-mandatory part of a pension provided by the complementary pension scheme of Liechtenstein (and of Switzerland where the situation is similar) is concerned by Regulation (EC) No 883/2004, especially by Article 5(a) of this Regulation (as a consequence the health insurance contributions paid by the pension holder living in Austria are based on the whole pension, including the part that is not concerned by the Regulation). Also, in *Knauer*,⁸¹ the CJEU had answered to the Administrative Court of Austria that the occupational pension scheme of Liechtenstein (presented by the Austrian Court as a whole) and the statutory pension scheme of Austria are equivalent in the

⁸¹ *Knauer*, C-453/14, EU:C:2016:37.

sense of Article 5(a) of Regulation (EC) No 883/2004. It might be necessary to clarify this situation.



LITHUANIA

1. Update of the measures adopted for the implementation of Directive 98/49/EC by comparison to the situation described in the Commission's implementation reports

Table 1: Material Scope

Country	Non-exhaustive list of supplementary pension schemes covered by Directive 98/49/EC - Brief description ⁸² -	Non-exhaustive list of supplementary pension scheme covered by Regulation 1408/71/EEC (now Regulation (EC) No 883/2004)
Lithuania	<p>There are two three possibilities to establish supplementary pension schemes:</p> <ul style="list-style-type: none"> - pension funds (Law on supplementary voluntary pension accumulation), or - life insurance companies (law Law on insurance), or - occupational pensions (Law on the accumulation of occupational pensions, 2006), organised using pension association or “individual” life insurance contracts. <p>The policyholder can be the employer on an individual or collective (according to the collective agreement) basis.</p>	Statutory supplementary pension scheme provided for officers.

Table 2: Equal preservation

Country	Adopted measures to ensure equal preservation	Reference in the national provision
Lithuania	<p>No specific measures were adopted.</p> <p>As reason for this it is indicated that supplementary pension accumulation in pension fund is based on DC concept where accumulated assets belong to the participant and can therefore be transferred from one pension fund to another. Moreover, it is stated that legislation does not provide restrictions or any discriminative rules.</p>	

⁸² Based on information provided by the concerned Member State and by other stakeholders (in particular members of the Pensions Forum)

Table 3: Cross-border payments

Country	Adopted measures to guarantee cross border payments	Reference in the national provision
Lithuania	<p>No specific measures were adopted.</p> <p>As reason for this it is indicated that the accumulated assets are considered as property of the individual and any measures cannot restrict their payments abroad.</p> <p>With the exception of the Law on the accumulation of occupational pensions, which states that any discrimination in respect of pension beneficiaries on the grounds of their place of residence in a particular Member State shall be prohibited. It shall be prohibited to establish in the pension fund rules additional deductions for the payment of pension benefits for a pension beneficiary residing in the territory of another Member State, except for the deductions related to the implementation of the tax laws of the Republic of Lithuania and actual deductions for financial transactions related to transfer of pension benefits to the beneficiary.</p>	<p>Law on the accumulation of occupational pensions, Article 26</p>

Table 4: Cross-border membership of posted workers

Country	Adopted measures to permit contributions by and behalf of posted workers, Article 6 (1) Exemption from contributions, Article 6 (2)	Reference in the national provisions
Lithuania	<p>-No specific measures were adopted.</p> <p>As reason for this it is indicated that, in case of a posting, the labour contracts and all related duties (in that case, to pay contributions) remain applicable.</p> <p>-No specific measures were adopted.</p> <p>As reason for this it is indicated that there are no supplementary pension schemes within collective labour relations.</p> <p>The Law on the accumulation of occupational pensions states that: The payment of pension contributions on behalf of a participant who was posted by a sponsoring undertaking to another Member State shall continue for a period not exceeding the maximum period of posting set in Regulation (EEC) No 1408/71 and the participant shall be granted the right to pay contributions to the pension fund, if s/he was paying them before the business trip. It shall be prohibited to set in the rules of pension funds managed in the Republic of Lithuania the provisions requiring that a posted worker sent by another Member State to perform work in Lithuania participated in a pension fund of a pension association registered in the Republic of Lithuania, if the duration of posting in the Republic of Lithuania does not exceed the maximum period of posting set in Regulation (EEC) No 1408/71.</p>	<p>Law on the accumulation of occupational pensions, Article 26</p> <p>(Note: text of the document still mentions 1408/71 instead of 883/2004)</p>

Table 5: Information provided to scheme members

Country	Adopted measures to ensure adequate information	Reference in the national provision
Lithuania	No specific measures were adopted. As reason for this it is indicated that the range of information is harmonized with the content of the Directive and is identical for all scheme members regardless of whether they remain in their Member State of origin or move to another Member State.	Law on Supplementary voluntary pension accumulation

LIST OF NATIONAL PROVISIONS

Country	National provisions communicated by the Member States concerning Directive 98/49/EC
Lithuania	<ol style="list-style-type: none"> 1. Law on Supplementary voluntary pension accumulation 2. Law on Insurance 3. Law on the accumulation of occupational pensions

2.

i. Does the existing legal administrative and conventional framework cover all the matters and persons covered by Directive 98/49/EC?

Yes, it can be stated that the existing legal framework covers matters and persons covered by the Directive.

Self-employed persons are also covered under the same rules as employed persons.

Law on the accumulation of occupational pensions is applied to self-employed persons as well, only with the peculiarity that the role of the employer as one Party of the Fund must be association or other organisation structure of self-employed.

ii. In the event that the Directive was implemented by means of collective agreements, what are the measures adopted to protect the persons who are not trade union members?

The Directive was implemented only by means of statutory regulations.

3.

i. List of problems faced by scheme members exercising their right to free movement

Problems related to the rights of participants of pension funds (Law on Supplementary Voluntary Pension Accumulation) or contractors of life insurance (Law on Insurance) were not observed. As it was mentioned accumulated assets are considered as property of the individual and according legal regulation and legal principles can in no way be restricted (also payment abroad).

ii. Administrative practices and case law that occurred since the last implementation report, i.e. 2006/2009

The situation with accumulation of occupational pensions is the same, but the reason is different. From 2006, no occupational pension association was created.



1. Update of the measures adopted for the implementation of Directive 98/49/EC by comparison to the situation described in the Commission's implementation reports

Table 1: Material Scope

Country	Non-exhaustive list of supplementary pension schemes covered by Directive 98/49/EC - Brief description ⁸³ -	Non-exhaustive list of supplementary pension scheme covered by Regulation 1408/71/EEC (now Regulation (EC) No 883/2004)
Luxembourg	Supplementary pension schemes which are voluntarily introduced by the employer fall into two main categories: - internal schemes involving a pension promise backed by book reserves, or - external schemes in the form either of a pension fund or of group insurance.	

Table 2: Equal preservation

Country	Adopted measures to ensure equal preservation	Reference in the national provision
Luxembourg	Specific legislation was adopted.	Article 11 of the LRCP

Table 3: Cross-border payments

Country	Adopted measures to guarantee cross border payments	Reference in the national provision
Luxembourg	Specific legislation was adopted.	Article 7 of the LRCP

⁸³ Based on information provided by the concerned Member State and by other stakeholders (in particular members of the Pensions Forum)

Table 4: Cross-border membership of posted workers

Country	Adopted measures to permit contributions by and behalf of posted workers, Article 6 (1) Exemption from contributions, Article 6 (2)	Reference in the national provisions
Luxembourg	-Specific legislation was adopted. -Specific legislation was adopted.	Article 15 of the LRCP Article 15 of the LRCP

Table 5: Information provided to scheme members

Country	Adopted measures to ensure adequate information	Reference in the national provision
Luxembourg	Specific legislation was adopted.	Article 17 of the LRCP

LIST OF NATIONAL PROVISIONS

Country	National provisions communicated by the Member States concerning Directive 98/49/EC
Luxembourg	Supplementary Pensions Act of 8 June 1999 (LRCP) ⁸⁴

2.

i. Does the existing legal administrative and conventional framework cover all the matters and persons covered by Directive 98/49/EC?

No, because the Law of 8 June 1999 does not cover self-employed persons. On 7 March 2017, the government tabled a bill in parliament (No 7119), which will extend supplementary pension schemes to self-employed persons.⁸⁵ It must pass a complex procedure and the amended law of 8 June 1999 will enter into force in a couple of months.

Supplementary pension schemes for self-employed persons will offer the same guarantees as schemes for employees. However, they will need an approval from a public authority, which will check the conformity of the scheme with the legal requirements. This approval will authorise them to collect contributions from the self-employed persons.

ii. In the event that the Directive was implemented by means of collective agreements, what are the measures adopted to protect the persons who are not trade union members?

Not relevant.

⁸⁴ Memorial A N°74 of 17 June 1999. Website: <http://legilux.public.lu/eli/etat/leg/loi/1999/06/08/n5/jo>.

⁸⁵

http://www.chd.lu/wps/PA_RoleDesAffaires/FTSByteServletImpl?path=/export/exped/sexpdata/Mag/0001/096/2967.pdf.

3.

- i. **List of problems faced by scheme members exercising their right to free movement**
- ii. **Administrative practices and case law that occurred since the last implementation report, i.e. 2006/2009**

The only problem that has been discussed regarding supplementary pensions (Law 1999) and the moving of affiliated persons from a company in Luxembourg to a company abroad concerns the buyback of rights (Article 13 of Law 1999).

It has no direct link to the Directive.

Article 13 of Law 1999 provides that “(1) *in case of departure before the retirement age, the affiliated person may request the buyback of vested pension rights a) if the affiliated person moves to a company whose head office is located outside the Grand-Duchy of Luxembourg*”. In this case, the affiliated person must obtain the consent of the General Inspection of Social Security.

Two Circulars from the General Inspection of Social Security have addressed the case of affiliated persons who move to a company with a head office outside the Grand-Duchy of Luxembourg and who want to submit a request for the buyback of vested pension rights. The main problem concerns **the time limit to submit the request**.

In 2009, Circular 2009/01⁸⁶ gave some indications regarding the time limit for the request. Affiliated persons who were either unemployed or hired by another employer in Luxembourg since their dismissal from the company in which the vested pension rights were maintained, can submit a request for the buyback of the vested pension rights at the moment when they decide to move to a company with a head office abroad, even if this moment occurs some years later. They must then produce a document proving that they have been affiliated to the social security system of the Member State where the head office of their new employer is located. The General Inspection of Social Security will also accept requests from workers who move abroad in order to set up their own business.

In 2013, Circular 2013/01⁸⁷ came back to Circular 2009/01 in order to clarify the time limit for the request for the buyback of vested pension rights. “A reasonable time limit” of two years was defined. It will start from the moment when the affiliated person departs from a company located in Luxembourg and moves to a company with a head office outside Luxembourg. Periods of inactivity like unemployment, unpaid leave, stoppage of work due to family reasons or other reasons *etc* will be recognised as assimilated periods. In these cases, the time limit of two years will start at the hiring by the new employer with a head office outside Luxembourg.

⁸⁶ Circular 2009/01 – Ref. MK/mk/17022009-Q4F6-7FLN.

Website : http://www.mss.public.lu/legislation/legislation_pencom/lc_2009_01_aspdiv.pdf.

⁸⁷ Circular 2013/01 – Ref. 805xd30a1.

Website: http://www.mss.public.lu/legislation/legislation_pencom/lc_2013_01.pdf.

1. Update of the measures adopted for the implementation of Directive 98/49/EC by comparison to the situation described in the Commission's implementation reports

Table 1: Material Scope

Country	Non-exhaustive list of supplementary pension schemes covered by Directive 98/49/EC - Brief description ⁸⁸ -	Non-exhaustive list of supplementary pension scheme covered by Regulation 1408/71/EEC (now Regulation (EC) No 883/2004)
Latvia	Contracts can be concluded between a pension fund company and an employer with a view to his employees becoming members of a private pension fund.	

Table 2: Equal preservation

Country	Adopted measures to ensure equal preservation	Reference in the national provision
Latvia	Specific legislation was adopted.	Article 12 of the Law on Private Pension Funds

Table 3: Cross-border payments

Country	Adopted measures to guarantee cross border payments	Reference in the national provision
Latvia	No specific measures were adopted. As reason for this it is indicated that that cross-border payments are not restricted.	

⁸⁸ Based on information provided by the concerned Member State and by other stakeholders (in particular members of the Pensions Forum)

Table 4: Cross-border membership of posted workers

Country	Adopted measures to permit contributions by and behalf of posted workers, Article 6 (1) Exemption from contributions, Article 6 (2)	Reference in the national provisions
Latvia	-No specific measures were adopted. As reason for this it is indicated that there are no regulations prohibiting payment of contributions during a posting. Moreover, it is stated that it is stipulated by law that all members of a supplementary pension scheme shall be guaranteed the possibility of retaining their affiliated status. -No specific measures were adopted.	Law on Private Pension Funds

Table 5: Information provided to scheme members

Country	Adopted measures to ensure adequate information	Reference in the national provision
Latvia	Specific legislation was adopted	Article 12 of the Law on Private Pension Funds

LIST OF NATIONAL PROVISIONS

Country	National provisions communicated by the Member States concerning Directive 98/49/EC
Latvia	Law on Private Pension Funds, published in No 150/151 of the journal "Latvijas Vēstnesis" (Official Gazette) or "L.V." dated 20/06/1997

2.

i. Does the existing legal administrative and conventional framework cover all the matters and persons covered by Directive 98/49/EC?

It is questionable whether Latvian law explicitly covers all matters and persons covered by Directive 98/49/EC.

The following issues might be problematic.

First, there is one fundamental question from the perspective of EU law itself – the scope of Directive 98/49/EC. Article 3 and also the report on the implementation of Directive 98/49/EC in the 25 Member States,⁸⁹ in particular if the concept of "supplementary pension schemes" under EU free movement of workers' rights (Article 3(a) and (b) has to be understood as "occupational social security scheme" under the EU gender equality law.

Directive 98/49/EC and the report refer to the following criteria in defining what is a supplementary pension scheme:

⁸⁹ COM (2006) 22 final of 26 January 2006.

- 1) may be provided by national law or practice, collective or other comparable agreement;
- 2) is supplementary to the statutory social security scheme or replaces statutory social security scheme.

Under the EU gender equality law the occupational social security schemes may also be in case:

- 1) a pension concerns only a particular category of workers;
- 2) the amount of the pension is directly related to the period of service completed;
- 3) the amount of pension is calculated by reference to the employees' (civil servants' or state officials') last salary.⁹⁰

This means that in accordance with EU gender equality law, under occupational social security schemes fall also those schemes provided for the service or employment in the public sector.

Therefore, the question is if the scope of Directive 98/49/EC needs to be interpreted in conformity with EU gender equality law, in particular Article 141 TFEU and Directive 2006/54/EC as they are interpreted by the CJEU?

Latvia has reported as the only implementation measure of Directive 98/49/EC the Law on Private Pensions Funds. However, in Latvia there are several relevant pension schemes for the employees, civil servants and officials in place, which according to Article 141 TFEU and Directive 2006/54/EC as interpreted by the CJEU are considered as occupational social security schemes.

There are special long-term pension schemes for militaries, employees of the system of interior affairs, prosecutors, judges, employees of the state and municipal orchestras, choirs, concert organisations, theatres and circuses.⁹¹ Such pensions exist for some professions (like ballet dancers) as bridging pensions, *i.e.*, where an employee becomes entitled to such special-service pension before attainment of general old-age retirement age (currently at the age of 65⁹²). By the attainment of general retirement age a person is awarded old-age pension and special long-term pension is diminished in proportion to the amount of old-age pension. As a result an employee is entitled to the same amount of pension before and after entitlement of the long-term service pension. The main condition for the entitlement to such special long-term service pension is the length of service. Then the amount of the pension is dependent on the amount of the salary in the recent period of employment (service) prior the entitlement to special long-term pension. The fact is that in practice special long-term service pensions are higher than regular old-age pension.

Furthermore, self-employed persons are covered by the respective legal regulations in the same way as employees. In addition, there are no specific occupational social security schemes for self-employed persons in Latvia. Self-employed persons can only

⁹⁰90 *Pirkko Niemi*, C-351/00, EU:C:2002:480.

⁹¹ Law on Pensions for the Military (*Militārpersonu izdienas pensiju likums*) Official Gazette No 86, 1 April 1998; Law on Pensions for Employees of the System of the Ministry of Interior Affairs with Special Ranks (*Par izdienas pensijām Iekšlietu ministrijas sistēmas darbiniekiem ar speciālajām dienesta pakāpēm*), Official Gazette No 100/101, 16 April 1998; Law on Pensions for Prosecutors (*Prokuroru izdienas pensiju likums*) Official Gazette No 181, 3 June 1999; Law on Long-Term Service Pensions for Judges (*Tiesnešu izdienas pensiju likums*) Official Gazette No 7 July 2006; Law on Pensions for Artists of State and Municipal Orchestras, Choirs, Concert Organisations, Theatres, and Circuses (*Valsts un pašvaldību profesionālo orķestru, koru, koncertorganizāciju, teātru un cirka mākslinieku izdienas pensiju likums*), Official Gazette No 106, 7 July 2004.

⁹² The Law on State Pensions (*likums "Par valsts pensijām"*), Official Gazette No 182, 23 November 1995.

get a supplementary pension by accessing either a private pension fund or a life insurance voluntarily and on an individual basis.

None of the long-term pension laws referred to contain specific provisions for the case where an employee moves for work to another EU Member State. At the same time they do not contain the provisions restricting the right to such long-term pension rights in the event of moving to work in another EU Member State. Such laws do not seem to be applicable in a less favourable way to the employees who change their employment in Latvia or move for employment to another EU Member State.

Currently it is unclear if Latvia considers such special long-term pensions as falling under Regulation (EC) No 883/2004 or Directive 98/49/EC.

Another issue is that the supplements may be provided, especially for the case of disability or death, not under the Law on Private Pension Funds, but as private insurance agreements under the Insurance and Reinsurance Law (although not widespread in Latvia, since not many employers provide their employees occupational social security benefits in general).⁹³ The law contains no specific regulation on the retention of acquired rights. It is most likely because the relationship among an insurance company, an employer and an employee are established on the basis of an individual insurance contract and insurance contracts may contain a wide variety of possible solutions in the event of termination of employment.

Consequently, there are the following issues:

- 1) the material and personal scope from the perspective of EU law and consequently by Latvian law;
 - 2) a lack of explicit Latvian legal regulation on the cross-border situation and retention of acquired rights related to long-term special service pensions and insurance agreements.
- ii. In the event that the Directive was implemented by means of collective agreements, what are the measures adopted to protect the persons who are not trade union members?**

All measures are implemented by the means of the legislative provisions (normative acts).

3.

- i. List of problems faced by scheme members exercising their right to free movement**
- ii. Administrative practices and case law that occurred since the last implementation report, i.e. 2006/2009**

No relevant issues on the application in practice were detected. This is due to the fact that there is no specific information available on the problems faced by the employees exercising free movement rights. No relevant case law of national courts were detected.

⁹³ *Apdrošināšanas un pārāpdrošināšanas likums*, Official Gazette No 124, 30 June 2015.



1. Update of the measures adopted for the implementation of Directive 98/49/EC by comparison to the situation described in the Commission's implementation reports

Table 1: Material Scope

Country	Non-exhaustive list of supplementary pension schemes covered by Directive 98/49/EC - Brief description ⁹⁴ -	Non-exhaustive list of supplementary pension scheme covered by Regulation 1408/71/EEC
Malta	<p>Supplementary pension schemes fall into two main categories:</p> <ul style="list-style-type: none"> - occupational pension schemes governed by special law which cover some civil servants (employed before 1979), officers employed under the Police Act, the Malta Armed Forces Act and the Prisons Act (subject to the satisfaction of the legal requirements contained in the said Acts) or in some cases, their close relatives, and - nascent occupational retirement schemes ruled by the Special Funds (Regulation) Act, 2002 (SFA). There is still no licensed supplementary pension scheme under this Act. <p>The Retirement Pensions Act (Chapter 514 of the Laws of Malta), which was published by means of Act No. XVI of 2011 in the Government Gazette on the 5th August 2011, came into force on 1 January 2015. This Act repeals and replaces the Special Funds (Regulation) Act (Chapter 450 of the Laws of Malta), regulations and directives issued thereunder.</p> <p>The Retirement Pensions Act provides the legal framework for the licensing and regulation of retirement schemes, whether personal or occupational, retirement funds and service providers related thereto, as well as the requirement of recognition for persons carrying on back-office administrative activities. The scope of the Act is similar to that of the Special Funds (Regulation) Act, <i>i.e.</i> it provides for a regulatory framework for occupational retirement schemes, personal retirement schemes, retirement funds and service providers.</p> <p>Currently there are two Occupational Schemes (voluntary) licenced under the Retirement Pensions Act.</p>	

⁹⁴ Based on information provided by the concerned Member State and by other stakeholders (in particular members of the Pensions Forum)

Table 2: Equal preservation

Country	Adopted measures to ensure equal preservation	Reference in the national provision
Malta	No specific measures were adopted. According to the competent authority, the national legislation was already consistent with this requirement.	

Table 3: Cross-border payments

Country	Adopted measures to guarantee cross border payments	Reference in the national provision
Malta	Specific legislation was adopted as regards occupational pension schemes governed by special law covering part of the public sector. As far as occupational retirement schemes ruled by the Retirement Pensions Act (Cap. 514) SFA are concerned no specific legislation was adopted.	Article 22 of the Pensions Ordinance and Article 2 of the Widows' and Orphans' Pension Act Article 12 of the Fifth Schedule of the Police Act (Cap. 164) Article 17 of the Prisons Act (Cap. 260) Article 16 of the Civil Protection Pensions Regulations (Subsidiary Legislation 411.04)

Table 4: Cross-border membership of posted workers

Country	Adopted measures to permit contributions by and behalf of posted workers, Article 6 (1) Exemption from contributions, Article 6 (2)	Reference in the national provisions
Malta	Specific Directives were adopted as regards occupational retirement schemes ruled by the SFA. A specific paragraph is found in the Pension Rules for Occupational Retirement Schemes issued under the Retirement Pensions Act. Specific Directives were adopted as regards occupational retirement schemes ruled by the SFA. No specific measures were adopted since the Retirement Pensions Act (Cap. 514) does not prohibit the continuation of payment of contributions during a posting. No specific measures were adopted since under the Retirement Pensions Act (Cap. 514), membership of a supplementary pension scheme in Malta is voluntary	Article 1.2.1 (ff) of the Directives issued under the Special Funds Act Article 1.2.1 (gg) of the Directives issued under the Special Funds Act Paragraph 2.26 of Appendix II (Contents of the Scheme Document) to the Pension Rules for Occupational Retirement Schemes issued under the Retirement Pensions Act.

Table 5: Information provided to scheme members

Country	Adopted measures to ensure adequate information	Reference in the national provision
Malta	Specific provisions were adopted.	<p>Article 23 of the Pensions Ordinance</p> <p>Article 2.4.4 of the Directives issued under the Special Funds Act</p> <p>Section B.5.4 (Transfer of Retirement Rights), of Part B of the Pension Rules for Occupational Retirement Schemes, issued under the Retirement Pensions Act (Cap. 514).</p> <p>Article 13 of the Fifth Schedule of the Police Act (Cap. 164)</p> <p>Article 18 of the Prisons Act (Cap. 260)</p> <p>Article 17 of the Civil Protection Pensions Regulations (Subsidiary Legislation 411.04)</p>

LIST OF NATIONAL PROVISIONS

Country	National provisions communicated by the Member States concerning Directive 98/49/EC
Malta	<ol style="list-style-type: none"> 1. Regulations and Directives issued under the Special Funds (Regulation) Act (Cap. 450)⁹⁵ Retirement Pensions Act (Cap. 514) 2. Pensions Ordinance (Cap. 93) 3. Widows' and Orphans' Pensions Act (Cap. 58) 4. Malta Armed Forces Act (Cap. 220) 5. Police Act (Cap.164) 6. Prisons Act (Cap. 260) 7. Civil Protection Pensions Regulations (Subsidiary Legislation 411.04)⁹⁶

⁹⁵ [Please note that this legislation was repealed and replaced by the Retirement Pensions Act (Cap. 514) and Pension Rules issued thereunder.]

⁹⁶ [These regulations have been adopted on 10.05.2016 and that is why they were not notified in the Commission's report SEC(2006) 82.]

2.

i. Does the existing legal administrative and conventional framework cover all the matters and persons covered by Directive 98/49/EC?

According to the competent authority, the national legislation is consistent with the requirements of the Directive. I have inserted in the table above certain other provisions in relation to Articles 5 and 7 which were previously not notified.

As regards the personal scope in relation to self-employed persons, the Retirement Pensions Act does not distinguish between schemes for employed persons and schemes for self-employed persons. However, even though self-employed persons are not expressly referred to in the Retirement Pensions Act, the Retirement Pensions Act still intends to cover Occupational Retirement Schemes intended to provide supplementary pensions for self-employed persons.

As regards the other Ordinance/Acts/Regulations, these are applicable to civil servants and therefore not applicable to the self-employed.

ii. In the event that the Directive was implemented by means of collective agreements, what are the measures adopted to protect the persons who are not trade union members?

Not applicable.

3.

i. List of problems faced by scheme members exercising their right to free movement

Research on this issue and contacts with the competent authority did not lead to any evidence that shows that there were any problems faced by scheme members exercising their right to free movement.

ii. Administrative practices and case law that occurred since the last implementation report, i.e. 2006/2009

No such practices or case law arose since 2006. The major development in this field which occurred in Malta is a legal one whereby the Special Funds (Regulation) Act (Cap. 450) was replaced by the Retirement Pensions Act (Cap. 514) and came into force on 1 January 2015. The new Regulations and Pension Rules also came into force on 1 January 2015. A new set of Regulations and Pensions Rules have been issued under the Act to supplement the legal framework for the licensing and regulation of Retirement Schemes (both Occupational and Personal), Retirement Funds and Service Providers related thereto, as well as for the requirement of recognition for persons carrying on back-office administrative services.



THE NETHERLANDS

1. Update of the measures adopted for the implementation of Directive 98/49/EC by comparison to the situation described in the Commission's implementation reports

Table 1: Material Scope

Country	Non-exhaustive list of supplementary pension schemes covered by Directive 98/49/EC - Brief description ⁹⁷ -	Non-exhaustive list of supplementary pension scheme covered by Regulation 1408/71/EEC (now Regulation (EC) No 883/2004)
The Netherlands	<p>Entitlement to occupational benefits is based on a voluntary promise by the employer. Once an employer has made such a promise, he must use one of three following ways to comply with his promise:</p> <ul style="list-style-type: none"> - by joining an industry-wide pension fund, - by establishing a company pension fund, or - by entering an agreement with an insurance provider. <p>Occupational pensions are subject to negotiations between the social partners. When central organisations jointly set up a branch pension fund, they may ask the government to impose an obligation on all employers and employees within their particular industrial sector to participate in the industry-wide fund.</p> <p>On 1 January 2007 the <i>Pensioenwet (PW)</i> (Pensions Act) entered into force. The <i>PW</i> replaced the previous <i>Pensioen- en spaarsfondensenwet (PSW)</i> (Pension and Saving Funds Act). For what concerns the provisions relevant for Directive 98/49 the entry into force of the <i>PW</i> has not brought about substantive changes. The few changes that have occurred are terminological in nature.</p>	

Table 2: Equal preservation

Country	Adopted measures to ensure equal preservation	Reference in the national provision
The Netherlands	Specific legislation was adopted.	Article 55(4) PW (formerly Article 32e of the PSW)

⁹⁷ Based on information provided by the concerned Member State and by other stakeholders (in particular members of the Pensions Forum)

Table 3: Cross-border payments

Country	Adopted measures to guarantee cross border payments	Reference in the national provision
The Netherlands	Specific legislation was adopted.	Article 53 PW (formerly Article 32f of the PSW)

Table 4: Cross-border membership of posted workers

Country	Adopted measures to permit contributions by and behalf of posted workers, Article 6 (1) Exemption from contributions, Article 6 (2)	Reference in the national provisions
The Netherlands	-Specific legislation was adopted. -Specific legislation was adopted.	Article 97(1) PW (formerly Article 32g (1) of the PSW) Article 97(2) PW (formerly Article 32g of the PSW)

Table 5: Information provided to scheme members

Country	Adopted measures to ensure adequate information	Reference in the national provision
The Netherlands	Specific legislation was adopted.	Article 47 PW (Article 32h of the PSW)

LIST OF NATIONAL PROVISIONS

Country	National provisions communicated by the Member States concerning Directive 98/49/EC
The Netherlands	<ol style="list-style-type: none"> 1. 2007 Pensions Act (PW) (which has replaced the Pension and Savings Fund Act (PSW)). 2. 2000 Mandatory Participation in a Branch Pension Fund Act 3. 2005 Mandatory Participation in a Pension Scheme for Professional Groups Act (Bpr) 4. Pension Scheme for Political Office Holders 5. Act Introduction of an Age for Notaryship and the establishment of a Pension Fund for Notaries

2.

- i. Does the existing legal administrative and conventional framework cover all the matters and persons covered by Directive 98/49/EC?**

Yes. The Pensions Act (*PW*) also applies to self-employed persons (Article 3(2)), with the exception of two provisions. The first (Article 7 *PW*) concerns the duty of the employer to inform employees of a proposal to include pensions in the contract. The second (Article 9) concerns the transfer of pension duties in the event of transfer of an undertaking.

- ii. In the event that the Directive was implemented by means of collective agreements, what are the measures adopted to protect the persons who are not trade union members?**

Not applicable.

3.

- i. List of problems faced by scheme members exercising their right to free movement**
- ii. Administrative practices and case law that occurred since the last implementation report, i.e. 2006/2009**

Nothing to report.



NORWAY

1. Update of the measures adopted for the implementation of Directive 98/49/EC by comparison to the situation described in the Commission's implementation reports

Table 1: Material Scope

Country	Non-exhaustive list of supplementary pension schemes covered by Directive 98/49/EC - Brief description ⁹⁸ -	Non-exhaustive list of supplementary pension scheme covered by Regulation 1408/71/EEC (now Regulation (EC) No 883/2004)
Norway	Funded occupational pension schemes can be established with a life insurance company, pension fund, bank or securities fund management company, local and regional authorities pension funds. There are specific binding regulations (entered into force 1 January 2001) if the employer wants to obtain a tax deduction. Agreements on pension schemes for self-employed are also covered as well as a pension scheme for physicians. There exist also some collective pension schemes based on agreement where pensions are directly paid by the employer.	Benefits from the Norwegian public Service Pension Fund. Section 2 of the Act of 14. December 2001 no. 95.

Table 2: Equal preservation

Country	Adopted measures to ensure equal preservation	Reference in the national provision
Norway	Specific legislation was adopted.	Section 5 of the Act of 14 December 2001

Table 3: Cross-border payments

Country	Adopted measures to guarantee cross border payments	Reference in the national provision
Norway	Specific legislation was adopted.	Section 3 of the Act of 14 December 2001

⁹⁸ Based on information provided by the concerned Member State and by other stakeholders (in particular members of the Pensions Forum)

Table 4: Cross-border membership of posted workers

Country	Adopted measures to permit contributions by and behalf of posted workers, Article 6 (1) Exemption from contributions, Article 6 (2)	Reference in the national provisions
Norway	-Specific legislation was adopted. -Specific legislation was adopted.	Section 4 (1) of the Act of 14 December 2001 Section 4 (2) of the Act of 14 December 2001

Table 5: Information provided to scheme members

Country	Adopted measures to ensure adequate information	Reference in the national provision
Norway	Specific legislation was adopted.	Section 6 of the Act of 14 December 2001

LIST OF NATIONAL PROVISIONS

Country	National provisions communicated by the Member States concerning Directive 98/49/EC
Norway	Act on safeguarding the supplementary pension rights of employed and self-employed persons moving within the European Economic Area, Act 095 of 14 December 2001, which entered into force on 1 March 2002

2.

- i. **Does the existing legal administrative and conventional framework cover all the matters and persons covered by Directive 98/49/EC?**

Yes.

- ii. **In the event that the Directive was implemented by means of collective agreements, what are the measures adopted to protect the persons who are not trade union members?**

Not applicable.

3.

- i. **List of problems faced by scheme members exercising their right to free movement**
- ii. **Administrative practices and case law that occurred since the last implementation report, i.e. 2006/2009**

There do not seem to have been many problems related to this Directive, and there is no case law. A complaint from 2007 related to physicians' pension scheme led to an alteration of the Act, and this scheme is now listed in the material scope of the Regulation (Article 2 and 3 of the Directive).



POLAND

1. Update of the measures adopted for the implementation of Directive 98/49/EC by comparison to the situation described in the Commission's implementation reports

Table 1: Material Scope

Country	Non-exhaustive list of supplementary pension schemes covered by Directive 98/49/EC - Brief description ⁹⁹ -	Non-exhaustive list of supplementary pension scheme covered by Regulation 1408/71/EEC (now Regulation (EC) No 883/2004)
Poland	<p>Supplementary pension schemes are voluntarily set up by employers and can be arranged with in one of the following forms:</p> <p>a joint stock or mutual life insurance company, a pension fund, or an investment fund or foreign management.</p> <p>1) as a pension fund; 2) under an agreement on employers contributing employee's contributions to an investment fund; 3) under a group life insurance contract between employees and an insurance undertaking in the form of group life insurance with an insurance capital fund; 4) as a scheme managed by a foreign manager.</p>	

⁹⁹ Based on information provided by the concerned Member State and by other stakeholders (in particular members of the Pensions Forum)

Table 2: Equal preservation

Country	Adopted measures to ensure equal preservation	Reference in the national provision
Poland	Specific legislation was adopted.	Article 2, point 23 and 24, Article 7 points 7, 15-17, Article 6, paragraph 1, point 4 and paragraphs 15-17, Article 35 point 2 point 3, Article 35 a, Article 36 point 1a, Article 36 points 6-8 and point 9 of the Act of 20 April 2004 on Occupational Pension Schemes Act

Table 3: Cross-border payments

Country	Adopted measures to guarantee cross border payments	Reference in the national provision
Poland	No specific measures were adopted. As reason for this it is indicated that that cross-border payments are not restricted.	

Table 4: Cross-border membership of posted workers

Country	Adopted measures to permit contributions by and behalf of posted workers, Article 6 (1) Exemption from contributions, Article 6 (2)	Reference in the national provisions
Poland	-No specific measures were adopted. As reason for this it is indicated that a posted worker has a guaranteed right to join a supplementary pension scheme under the same rules as those applying to other workers. -No specific measures were adopted. As reason for this it is indicated that there are no compulsory supplementary pension schemes in Poland.	

Table 5: Information provided to scheme members

Country	Adopted measures to ensure adequate information	Reference in the national provision
Poland	No specific measures were adopted. But according to the competent authority, general legislative measures have been adopted in order to ensure that the relevant information is provided to scheme members.	Article 22 and Articles 35-36 of the Act of 20 April 2004 on workers' pension programmes occupational pension schemes

LIST OF NATIONAL PROVISIONS

Country	National provisions communicated by the Member States concerning Directive 98/49/EC
Poland	<ol style="list-style-type: none"> 1. Act of 17 November 1964 (Code of Civil Procedure) (Official Journal, 1964, No. 43, item 296, as amended) 2. Personal Income Tax Act of 26 July 1991 (Official Journal, 2000, No. 14, item 176, as amended) 3. Act of 20 April 2004 on Occupational Pension Schemes

2.

i. Does the existing legal administrative and conventional framework cover all the matters and persons covered by Directive 98/49/EC?

The Act of 20 April 2004 on Occupational Pension Schemes covers all employees and those self-employed persons who employ at least one employee (Article 5.4 of the Act). In consequence, a self-employed person who does not employ employees is not covered by the Occupational Pension Scheme. However, such a person may contribute to pension systems dedicated to individuals such as the Individual Pension Account (*IKE*) or Individual Pension Security Account (*IKZE*).

ii. In the event that the Directive was implemented by means of collective agreements, what are the measures adopted to protect the persons who are not trade union members?

Not applicable as the Directive was not implemented by means of a collective agreement.

3.

i. List of problems faced by scheme members exercising their right to free movement

No problems with the right to free movement.

ii. Administrative practices and case law that occurred since the last implementation report, i.e. 2006/2009

There are no court case regarding occupational pension schemes and no court cases regarding the right to free movement.



PORTUGAL

1. Update of the measures adopted for the implementation of Directive 98/49/EC by comparison to the situation described in the Commission's implementation reports

Table 1: Material Scope

Country	Non-exhaustive list of supplementary pension schemes covered by Directive 98/49/EC - Brief description ¹⁰⁰ -	Non-exhaustive list of supplementary pension scheme covered by Regulation 1408/71/EEC (now Regulation (EC) No 883/2004)
Portugal	Supplementary schemes provided: - by pension funds, or - by life insurance companies. Supplementary schemes may be introduced by the State, businesses, trade union associations, employers' associations and/or professional associations.	

Table 2: Equal preservation

Country	Adopted measures to ensure equal preservation	Reference in the national provision
Portugal	Specific legislation was adopted.	Article 5 of the Decree-Law No 428/99

Table 3: Cross-border payments

Country	Adopted measures to guarantee cross border payments	Reference in the national provision
Portugal	Specific legislation was adopted.	Article 6 of the Decree-Law No 428/99

¹⁰⁰ Based on information provided by the concerned Member State and by other stakeholders (in particular members of the Pensions Forum)

Table 4: Cross-border membership of posted workers

Country	Adopted measures to permit contributions by and behalf of posted workers, Article 6 (1) Exemption from contributions, Article 6 (2)	Reference in the national provisions
Portugal	-Specific legislation was adopted. -Specific legislation was adopted.	Article 7 (1) of the Decree-Law No 428/99 Article 7 (2) of the Decree-Law No 428/99

Table 5: Information provided to scheme members

Country	Adopted measures to ensure adequate information	Reference in the national provision
Portugal	Specific legislation was adopted.	Article 8 of the Decree-Law No 428/99

LIST OF NATIONAL PROVISIONS

Country	National provisions communicated by the Member States concerning Directive 98/49/EC
Portugal	Decree-Law No 428/99 of 21 October 1999

2.

i. Does the existing legal administrative and conventional framework cover all the matters and persons covered by Directive 98/49/EC?

Yes. According to Article 3 of Decree-Law No 428/99 of 21 October 1999, on the material scope of the latter, its aim is to protect the rights of members of supplementary pension schemes who move from one Member State to another whether the membership to such schemes is compulsory or voluntary, with the exception of schemes covered by Regulation (EEC) No 1408/71. On the other hand, according to Article 2 of the same Decree-Law, on its personal scope, such Decree-Law applies to workers and others holding entitlement, including self-employed persons, under supplementary pension schemes who have acquired or are in the process of acquiring rights in one or more Member States.

ii. In the event that the Directive was implemented by means of collective agreements, what are the measures adopted to protect the persons who are not trade union members?

In Portugal, Directive 98/49/EC was implemented by means of legislation.

3.

i. List of problems faced by scheme members exercising their right to free movement

Article 7(2) of Decree-Law No 428/99 does not guarantee clearly that during a posting in Portugal, where the payment of contributions is continued in another Member State, the employee posted and his or her employer are exempt from the obligations to pay contributions in Portugal. This lack of clarity could become a problem faced by EU scheme members exercising their right to free movement in Portugal, as well as by a Portuguese employee and by his or her employer exercising their right to free movement in another Member State the legislation of which does not expressly exempts them from the obligation to pay contributions in the latter Member State, where the payment of such contributions is continued in Portugal.

ii. Administrative practices and case law that occurred since the last implementation report, i.e. 2006/2009

No noteworthy administrative practices that occurred since the last implementation report were found. In any case the positive formulation of the rule of equality of treatment as regards preservation of pension rights provided for by Article 5 of Decree-Law No 428/99 has contributed to clarity and legal certainty in this respect. According to Article 5, workers and other persons holding entitlement who are members of a supplementary pension scheme and in respect of whom contributions cease to be paid to this scheme because they move to another Member State shall preserve vested pension rights acquired in these schemes, under the same conditions applicable to members who have ceased to make contributions but who remain in the national territory.

Since 2006 no case law on Decree-Law No 428/99 was found in accessible sites or published reports.



ROMANIA

1. Update of the measures adopted for the implementation of Directive 98/49/EC by comparison to the situation described in the Commission's implementation reports

Table 1: Material Scope

Country	Non-exhaustive list of supplementary pension schemes covered by Directive 98/49/EC - Brief description -	Non-exhaustive list of supplementary pension scheme covered by Regulation 1408/71/EEC (now Regulation (EC) No 883/2004)
Romania	Under the transposition of the Directive are covered voluntary supplementary pension schemes for employed and self-employed persons under the 'professional' criterion.	Professional soldiers, police officers, solicitors.

Table 2: Equal preservation

Country	Adopted measures to ensure equal preservation	Reference in the national provision
Romania	Specific legislation was adopted. Members of voluntary pension funds have the same rights and obligations and shall be treated in a non-discriminatory way if they decide to move to work or live in another Member State. They can choose to continue paying into a voluntary pension fund in Romania or into a different one.	Article 51 of the Law No 204 of 22 May 2006 on voluntary pensions.

Table 3: Cross-border payments

Country	Adopted measures to guarantee cross border payments	Reference in the national provision
Romania	Specific legislation was adopted. In the event that they move to work or live in another Member State of the European Union or country within the EEA, members and beneficiaries shall retain all voluntary pension rights they have acquired under voluntary pension schemes in Romania and their pensions shall be paid out in the other state to the value that remains after all taxes and expenses related to the payment have been deducted.	Article 77 (5) of Law No 2004/2006.

Table 4: Cross-border membership of posted workers

Country	Adopted measures to permit contributions by and behalf of posted workers, Article 6 (1) Exemption from contributions, Article 6 (2)	Reference in the national provisions
Romania	<p>Specific legislation was adopted.</p> <p>Any member of a voluntary pension fund who has been posted to another country shall be entitled to continue paying contributions for the duration of the posting.</p> <p>Specific legislation was adopted.</p> <p>Workers posted from another Member State to Romania are not obliged to contribute to a voluntary pension scheme in Romania.</p>	Article 77 (2) of the Law No 204 of 22 May 2006 on voluntary pensions.

Table 5: Information provided to scheme members

Country	Adopted measures to ensure adequate information	Reference in the national provision
Romania	<p>Specific legislation was adopted.</p> <p>The administrators of private pension funds have the responsibility to provide the scheme members with the adequate information.</p>	Article 103 of the Law No 204 of 22 May 2006 on voluntary pensions.

LIST OF NATIONAL PROVISIONS

Country	National provisions communicated by the Member States concerning Directive 98/49/EC
Romania	Law No 204, of 22 May 2006 on voluntary pensions.

2.

- i. **Does the existing legal administrative and conventional framework cover all the matters and persons covered by Directive 98/49/EC?**
- ii. **In the event that the Directive was implemented by means of collective agreements, what are the measures adopted to protect the persons who are not trade union members?**

In Romania Directive 98/49/EC has been transposed by Law No 204/2006 on voluntary pensions.

Presently there are no compulsory supplementary pension schemes, with the exception of schemes covered by Regulation (EC) No 883/2004.

The voluntary supplementary pension schemes are regulated by Law No 204/2006 on voluntary pensions.

Law No 204/2006 on voluntary pensions covers all the matters and persons covered by Directive 98/49/EC.

3.

i. List of problems faced by scheme members exercising their right to free movement

There are no problems faced by scheme members exercising their right to free movement.

All participants and beneficiaries of a voluntary pension fund have the same rights and obligations and benefit of a non-discriminatory treatment.

Participants and beneficiaries of a voluntary pension fund are entitled to equal treatment in the event that they move for work or move the residence to another country, a Member State of the European Union or the European Economic Area.

In the event of a move for work or a move of residence to another country, participants choose between paying further contributions to a voluntary pension fund in Romania or paying contributions to another pension fund.

Any person wishing to become a participant cannot be subjected to discriminatory treatment and no person shall be denied the status of participant if it is eligible.

In the event that the participants move to work or live in another Member State of the European Union or country within the EEA, members and beneficiaries shall retain all voluntary pension rights they have acquired under voluntary pension schemes in Romania and their pensions shall be paid out in the other State to the value that remains after all taxes and expenses related to the payment have been deducted.

Any member of a voluntary pension fund who has been posted to another country shall be entitled to continue paying contributions for the duration of the posting.

Workers posted from another Member State to Romania are not obliged to contribute to a voluntary pension scheme in Romania.

The administrators of private pension funds have the responsibility to provide the scheme members with the adequate information.

ii. Administrative practices and case law that occurred since the last implementation report, i.e. 2006/2009

There are no issues related to the implementation of the Directive.



SWEDEN

1. Update of the measures adopted for the implementation of Directive 98/49/EC by comparison to the situation described in the Commission's implementation reports

Table 1: Material Scope

Country	Non-exhaustive list of supplementary pension schemes covered by Directive 98/49/EC - Brief description ¹⁰¹ -	Non-exhaustive list of supplementary pension scheme covered by Regulation 1408/71/EEC (now Regulation (EC) No 883/2004)
Sweden	Occupational pension schemes are the product of collective agreements between the social partners at national/sector level.	

Table 2: Equal preservation

Country	Adopted measures to ensure equal preservation	Reference in the national provision
Sweden	No specific measures were adopted. As reason for this it is indicated that the respective collective agreements on preservation of vested rights do not make a distinction between members remaining in the country and those moving within the Community. There is one exception as regards the so called ITP agreement: section C contains provisions on the loss of general retirement provision when working abroad for Swedish employers.	

Table 3: Cross-border payments

Country	Adopted measures to guarantee cross border payments	Reference in the national provision
Sweden	No specific measures were adopted. As reason for this it is indicated that the existing legislation or the various collective agreements do not make any distinctions, in terms of payment, between members remaining in the country and those moving within the Community.	Collective agreements and 5 (7), 7 and 9 of the Act on special income tax for persons resident abroad.

¹⁰¹ Based on information provided by the concerned Member State and by other stakeholders (in particular members of the Pensions Forum)

Table 4: Cross-border membership of posted workers

Country	Adopted measures to permit contributions by and behalf of posted workers, Article 6 (1) Exemption from contributions, Article 6 (2)	Reference in the national provisions
Sweden	-Specific measures were taken. The various collective agreements require employers to pay contributions on behalf of posted workers without any specific limitations. -Specific measures were taken partially. Moreover, it is stated that pension agreements may contain provisions allowing individual agreements exempting workers and employers from any obligation to make contributions to supplementary pension schemes in other Member States.	Implemented by various collective agreements. Implemented by some collective agreements.

Table 5: Information provided to scheme members

Country	Adopted measures to ensure adequate information	Reference in the national provision
Sweden	No specific measures were adopted. As reason for this it is indicated that the range of information is harmonized with the content of the Directive and is identical for all scheme members regardless of whether they remain in their Member State of origin or move to another Member State.	Implemented by various collective agreements

LIST OF NATIONAL PROVISIONS

Country	National provisions communicated by the Member States concerning Directive 98/49/EC
Sweden	1. Various collective agreements 2. Act (1991:586) on special income tax for persons resident abroad.

2.

- i. **Does the existing legal administrative and conventional framework cover all the matters and persons covered by Directive 98/49/EC?**
- ii. **In the event that the Directive was implemented by means of collective agreements, what are the measures adopted to protect the persons who are not trade union members?**

In Sweden the Directive was implemented by means of **collective agreements**. Swedish occupational pension schemes vary significantly between different sectors of the labour market, such as private or public, but they also differentiate between blue-collar and white-collar employees. As a common feature they are all gender-neutral in relation to pension age and benefits, and they all form an important supplement to the mandatory public pension scheme.

The Swedish Labour Court has repeatedly found in its case law that an employer is required to apply the collective agreement in force to *all* its employees whether they are a union member or not (see for example AD 1944 nr 37, AD 1991 nr 49, AD 1977 nr 49 and AD 1931 nr 93).

However, if the employer has chosen not to sign a collective agreement – the employees are not protected and then need to have an individual occupational pension agreement with the employer. The percentages of employers who are bound by collective agreements are high in Sweden, approximately 90%, leaving primarily small businesses outside the scope of collective agreements; see further Swedish National Mediation Office, '*Siffror och diagram om medlemsantal, organisationsgrad och kollektivavtalstäckning*' (2014) available at: www.mi.se/files/PDF-er/ar_diagram_och_tabeller/ar_2014_diatab/yrkesverksamma.pdf.

Further, the collective insurance schemes do not cover managing directors of limited liability companies and self-employed persons. Managing directors and self-employed persons should therefore personally ensure that they obtain appropriate insurance cover. The potential to take out occupational pension insurance is dependent on the corporate form.

3.

- i. List of problems faced by scheme members exercising their right to free movement**
- ii. Administrative practices and case law that occurred since the last implementation report, i.e. 2006/2009**

The complexity and lack of transparency of tax rules may result in pensioners facing problems when exercising their right to free movement.

Moreover, a national government inquiry has recently analysed which measures should be taken to transpose Directive 2014/50/EU on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights into Swedish law. The Inquiry's assessment is that, in a Swedish context, a 'supplementary pension scheme' is to mean regulations that give employees the right to an occupational pension, i.e. mainly collective agreements and individual occupational pension agreements.

The Inquiry notes that Swedish collective agreements already seem to meet the Directive's requirements in the relevant sections. This also applies to individual agreements. It can thus be noted that the Directive's practical significance for Swedish conditions is limited. Despite these conditions, the Inquiry's assessment is that a legal regulation is needed for the Directive to be transposed into Swedish legislation. This is due to the fact that there are currently no legal obstacles to drawing up conditions in occupational pension agreements that conflict with the Directive's provisions.

Finally, there is an ongoing discussion/debate in Sweden on regulating posted workers, supplementary pensions *etc* as being an unfamiliar phenomenon for Swedish circumstances (referred to as the Swedish social model). Furthermore, the *Laval* case of the CJEU has led to governmental inquiries as well as proposals for new legislation for posted workers, however not yet adopted.



SLOVENIA

1. Update of the measures adopted for the implementation of Directive 98/49/EC by comparison to the situation described in the Commission's implementation reports

Table 1: Material Scope

Country	Non-exhaustive list of supplementary pension schemes covered by Directive 98/49/EC - Brief description ¹⁰² -	Non-exhaustive list of supplementary pension scheme covered by Regulation 1408/71/EEC (now Regulation (EC) No 883/2004)
Slovenia	<p>Collective or individual supplementary pension insurance schemes where voluntary participation is possible through concluding a contract on voluntary supplementary insurance with the pension scheme provider (mutual pensions funds or pension management companies). The collective supplementary pension insurance schemes are formed by a collective agreement between the social partners.</p> <p>Collective supplementary pension insurance for civil servants is regulated by the Collective Supplementary Pension Insurance for Public Employees Act. Article 2 of the Act stipulates: "Collective supplementary pension insurance for civil servants from the previous article is provided in accordance with the provisions on voluntary supplementary pension insurance covered by the law governing the supplementary pension scheme, unless this Act provides otherwise." Thereby the vast majority of the provisions from the Pension and disability insurance act (PDIA-2) apply also for civil servants. <i>Lex specialis</i> for civil servants stipulates only a few provisions different from the general scheme.</p> <p>The conditions for the enrolment into the pension plan, the amount of the premium, the implementation of the insurance, fund management and other questions are stipulated in the Collective agreement on the establishment of the civil servants' pension scheme.</p>	<p>Compulsory supplementary pension insurance scheme covering insured persons in certain occupations. Renamed into "occupational insurance" whilst serving the same purpose and being subjected to only minor changes in regulation with the amendment of the Pension and disability insurance act (PDIA-2) in 2013. The occupational insurance is stipulated in Articles 198 and the following.</p>

¹⁰² Based on information provided by the concerned Member State and by other stakeholders (in particular members of the Pensions Forum)

Table 2: Equal preservation

Country	Adopted measures to ensure equal preservation	Reference in the national provision
Slovenia	No specific measures were adopted. According to the competent authority, the national legislation is consistent with this requirement.	

Table 3: Cross-border payments

Country	Adopted measures to guarantee cross border payments	Reference in the national provision
Slovenia	Specific legislation was adopted. Article 219/paragraph 3 of the PDIA-2 stipulates: "A member who has acquired the right to a supplementary pension and permanently moves abroad, the pension annuity is paid into the territory of another country." The same applies for the early supplementary pensions. Same applies for civil servants.	Article 362/par. 4 of the PDIA Article 219/par. 3 of the PDIA-2 and Article 220/ paragraph 2 of the PDIA-2.

Table 4: Cross-border membership of posted workers

Country	Adopted measures to permit contributions by and behalf of posted workers, Article 6 (1) Exemption from contributions, Article 6 (2)	Reference in the national provisions
Slovenia	-No specific measures were adopted. As reason for this it is indicated that, in case of a posting, a posted worker would maintain the right to take part in collective insurance pension scheme, formed by his employer, maintain the right to a premium, financed by this employer, under the same conditions as all other persons employed by this employer. Article 233/ paragraph 3 of the PDIA-2 stipulates: "The pension plan designed by the employer in accordance with Article 234 of this Act is open for entry to all workers under the same conditions." The worker has free choice of joining the pension plan. The fund manager has to inform the worker at his or her request on his or her rights in the event of termination of employment and in the event of transferring the funds between different pension funds or sub-funds. The Act contains no provisions directly related to the worker's movement to another country. The same applies for civil servants. -No specific measures were adopted.	Article 362/par. 4, Article 293/par. 3 and Article 302/par. 4 of the PDIA

Table 5: Information provided to scheme members

Country	Adopted measures to ensure adequate information	Reference in the national provision
Slovenia	<p>No specific measures were adopted.</p> <p>As reason for this it is indicated that the range of information is harmonized with the content of the Directive and is identical for all scheme members regardless of whether they remain in their Member State of origin or move to another Member State. Article 224/paragraph 1 of the PDIA-2 stipulates the obligatory content of every pension plan whilst the duty to inform the members and the employers on the account balances and the fund's financial results and the duty to inform the public is stipulated in Articles 251 of the PDIA-2 and the following.</p> <p>Same applies for civil servants.</p>	<p>Article 296/par. 3 and 4 and Article 319/par 5 and 6 of the PDIA</p> <p>Article 224/paragraph 1 of the PDIA-2.</p> <p>Article 251-255 of the PDIA-2.</p>

LIST OF NATIONAL PROVISIONS

Country	National provisions communicated by the Member States concerning Directive 98/49/EC
Slovenia	<ol style="list-style-type: none"> 1. Pension and Disability Insurance Act (PDIA), adopted in 1999, enforced on 1 of January 2000 Pension and Disability Insurance Act (PDIA-2), adopted in 2012, in force since 1 January 2013; last amendment in 2015. 2. Personal Income Tax, enforced on 1 of January 2005 Personal Income Tax Act (PITA-2), adopted in 2006, in force since 1 January 2007; last amendment in 2015. 3. Collective Supplementary Pension Insurance for Public Employees Act adopted in 2003, in force since 19 December 2003; last amendment in 2015. 4. Collective agreement on the establishment of the civil servants' pension scheme, adopted in 2004, in force since 7 February 2004; last amendment in 2016.

2.

i. Does the existing legal administrative and conventional framework cover all the matters and persons covered by Directive 98/49/EC?

Yes. The existing legal, administrative and conventional framework covers all the matters and persons covered by Directive 98/49/EC. All the rules apply equally to employed and self-employed persons. The latter can also join individual or collective supplementary pension insurance schemes.

ii. In the event that the Directive was implemented by means of collective agreements, what are the measures adopted to protect the persons who are not trade union members?

After the enforcement of the Collective Supplementary Pension Insurance for Public Employees Act at the end of 2003, the Collective agreement on the establishment of the civil servants' pension scheme was adopted early 2004. The establishment of a pension plan has to be in accordance with the general scheme of the PDIA-2 and the Act regulating supplementary pension insurance for civil servants. The collective agreement – regarding its application – refers to the Collective agreement for the non-economic sector

of the Republic of Slovenia and is applicable for all employees regardless of their union membership.

3.

- i. List of problems faced by scheme members exercising their right to free movement**
- ii. Administrative practices and case law that occurred since the last implementation report, i.e. 2006/2009**

No problems or noteworthy administrative practices or case law to be reported.

**1. Update of the measures adopted for the implementation of Directive 98/49/EC by comparison to the situation described in the Commission's implementation reports**

Table 1: Material Scope

Country	Non-exhaustive list of supplementary pension schemes covered by Directive 98/49/EC - Brief description¹⁰³ -	Non-exhaustive list of supplementary pension scheme covered by Regulation 1408/71/EEC (now Regulation (EC) No 883/2004)
Slovak Republic	Supplementary pension insurance schemes where voluntary participation is possible for any employer, employees and self-employed persons and which are administered by insurance companies. Participation of any employer and employees in private pension insurance and the amount of contribution paid by any employer can be subject of agreement in collective bargaining agreement. This kind of voluntary scheme could be covered by the material scope of Directive 98/49/EC, Article 3(b) insofar it is concluded by the employer	

Table 2: Equal preservation

Country	Adopted measures to ensure equal preservation	Reference in the national provision
Slovak Republic	No specific measures were adopted. As reason for this it is indicated that the existing legislation on the preservation of vested rights ensure that persons who move from one Member State to another enjoy the same protection of their vested rights as persons who move within the same country.	Article 21 (1) and (2) of the Act No. 123/1996

¹⁰³ Based on information provided by the concerned Member State and by other stakeholders (in particular members of the Pensions Forum)

Table 3: Cross-border payments

Country	Adopted measures to guarantee cross border payments	Reference in the national provision
Slovak Republic	No specific measures were adopted. As reason for this it is indicated that the existing legislation does not make any distinctions, in terms of payment, between members remaining in the country and those moving within the Community.	Article 7 (5) of the Act No. 595/2003

Table 4: Cross-border membership of posted workers

Country	Adopted measures to permit contributions by and behalf of posted workers, Article 6 (1) Exemption from contributions, Article 6 (2)	Reference in the national provisions
Slovak Republic	-No specific measures were adopted. As reason for this it is indicated that posted worker remain subject to the Slovak Republic's employment law. -No specific measures were adopted. As reason for this it is indicated that employers in the Slovak Republic are not required to pay contributions to supplementary pension schemes in other Member States in the event of the posting of workers.	Article 35 (2) and (3) of the Act No. 123/1996 and Article 5 (4) of the Act 311/2003

Table 5: Information provided to scheme members

Country	Adopted measures to ensure adequate information	Reference in the national provision
Slovak Republic	No specific measures were adopted. As reason for this it is indicated that the range of information is harmonized with the content of the Directive and is identical for all scheme members regardless of whether they remain in their Member State of origin or move to another Member State.	Act No 123/1996

LIST OF NATIONAL PROVISIONS

Country	National provisions communicated by the Member States concerning Directive 98/49/EC
Slovak Republic	<ol style="list-style-type: none"> 1. Act No 123/1996 on supplementary (private) pension insurance scheme for employees and on amendments to certain acts, as amended by Act No 409/2000 and Act No 551/2003 ("Act No 123/1996") 2. Act No. 311/2003 on the Labour Code (as amended) 3. Act No. 595/2003 on Income Tax (as amended)

2.

- i. Does the existing legal administrative and conventional framework cover all the matters and persons covered by Directive 98/49/EC?**

Yes, all persons are covered in the same way, including self-employed persons.

- ii. In the event that the Directive was implemented by means of collective agreements, what are the measures adopted to protect the persons who are not trade union members?**

It only can be implemented by collective agreements; in other cases it is according to an employees' decision to participate.

3.

- i. List of problems faced by scheme members exercising their right to free movement**
- ii. Administrative practices and case law that occurred since the last implementation report, i.e. 2006/2009**

No cases.



UNITED KINGDOM

1. Update of the measures adopted for the implementation of Directive 98/49/EC by comparison to the situation described in the Commission's implementation reports

Table 1: Material Scope

Country	Non-exhaustive list of supplementary pension schemes covered by Directive 98/49/EC - Brief description ¹⁰⁴ -	Non-exhaustive list of supplementary pension scheme covered by Regulation 1408/71/EEC (now Regulation (EC) No 883/2004)
United Kingdom	Occupational pension schemes are voluntarily introduced by employers and set up under trust law. The trustees must run the scheme in the interest of the members and in line with specific laws protecting scheme members.	

Table 2: Equal preservation

Country	Adopted measures to ensure equal preservation	Reference in the national provision
United Kingdom	Specific legislation was adopted.	Section 55 of the Child Support, Pensions and Social Security Act 2000

Table 3: Cross-border payments

Country	Adopted measures to guarantee cross border payments	Reference in the national provision
United Kingdom	Specific legislation was adopted.	Section 55 of the Child Support, Pensions and Social Security Act 2000

¹⁰⁴ Based on information provided by the concerned Member State and by other stakeholders (in particular members of the Pensions Forum)

Table 4: Cross-border membership of posted workers

Country	Adopted measures to permit contributions by and behalf of posted workers, Article 6 (1) Exemption from contributions, Article 6 (2)	Reference in the national provisions
United Kingdom	<p>-Specific legislation was adopted.</p> <p>-No specific measures were adopted.</p> <p>As reason for this it is indicated that it membership of occupational pension schemes in the UK is voluntary and employees can opt out of occupational pension schemes offered by employers.</p>	Section 55 of the Child Support, Pensions and Social Security Act 2000

Table 5: Information provided to scheme members

Country	Adopted measures to ensure adequate information	Reference in the national provision
United Kingdom	<p>No specific measures were adopted.</p> <p>As reason for this it is indicated that the range of information is harmonized with the content of the Directive and is identical for all scheme members regardless of whether they remain in their Member State of origin or move to another Member State.</p>	<p>Section 113 of Pension Schemes Act 1993, section 41 of Pension Act 1995, The occupational pension Schemes (Disclosure of Information) Regulations 1996 – schedules 1 and 2 – (superseded by the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013)</p> <p>The Occupational Pension (Preservation of Benefit) Regulations 1991</p>

LIST OF NATIONAL PROVISIONS

Country	National provisions communicated by the Member States concerning Directive 98/49/EC
United Kingdom	<ol style="list-style-type: none"> 1. Child Support, Pensions and Social Security Act 2000 2. Pension Schemes Act 1993 3. Income and Corporation Taxes Act 1988 (superseded by the Finance Act 2004) 4. The Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 5. The Occupational Pension Schemes (Disclosure of Information) Regulations 1996 (superseded by the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013)

2.

- i. Does the existing legal administrative and conventional framework cover all the matters and persons covered by Directive 98/49/EC?**

Yes. The rights are conferred on members and UK law does not distinguish between a self-employed person and an employee.

- ii. In the event that the Directive was implemented by means of collective agreements, what are the measures adopted to protect the persons who are not trade union members?**

Not applicable.

3.

- i. List of problems faced by scheme members exercising their right to free movement**

Transposition of the Directive was through national law for Great Britain and Northern Ireland, rather than through agreement between social partners.

- ii. Administrative practices and case law that occurred since the last implementation report, i.e. 2006/2009**

I know of no systemic problems that would inhibit a member's ability to transfer supplementary pension rights into another analogous institution (whether the latter is in the UK, the EEA or the wider world does not seem to have been an issue).

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