

MoveS seminar Island

Social security coordination and free movement in the EEA: Pension rights, maternity/paternity payments

23 September 2022

Grand Hotel Reykjavík Sigtún 28, 105 Reykjavík

Language: English

MoveS

project presentation

MoveS

EU-wide network
of independent legal experts
in the fields of
free **movement** of workers (FMW)
social security coordination (SSC)
& Posting

- Funded by the European Commission (DG EMPL units E1 'FMW' and E2 'SSC')
- 32 countries covered (EU/EEA/CH/UK)
- Implemented by Eftheia, Deloitte Advisory & Consulting, University of Ljubljana, University of Poitiers
- Four-year project (2022-2025)

Objectives:

(1) To provide legal expertise in the areas of FMW, SSC and Posting

- **Legal Reports**
- Bimonthly **Monitoring Reports**
- **Ad hoc requests** and **comparative assessments**

MoveS Legal Reports

- 2022 *'The legal status and rights of the family members of EU mobile workers'*
- 2020 *'The legal status and rights of the family members of EU mobile workers'*
- 2019 *'The application of the social security coordination rules on modern forms of family'*
- 2019 *'The application of free movement of workers and social security coordination rules by national courts' (2020)*
- 2018 *'Social security coordination and non-standard forms of employment and self-employment: Interrelations, challenges and prospects'*
- 2018 *'Consequences and possible solutions in case of lump sum payment of pensions, reimbursement of contributions and waiver of pensions in cross-border situations'*

Objectives:

(2) Disseminate expertise and increase experts' and practitioners' knowledge by means of:

- **National seminars**
- **Webinars**
- **Information tools & communication**
- **Training for EC staff**

Seminars & webinars

- 8 one-day seminars a year
- 3 webinars
- Audience: Representatives of competent authorities and institutions, social partners, NGOs, judges, lawyers and academics

| | Date | Country (City) |
|----|-------------|-----------------------|
| 1. | 29/03 | Portugal (Lisbon) |
| 2. | 09/05 | Denmark (Copenhagen) |
| 3. | 10/06 | Ljubljana (Slovenia) |
| 4. | 17/06 | Belgium (Brussels) |
| 5. | 23/09 | Iceland (Reykjavík) |
| 6. | 21/10 | Spain (Madrid) |
| 7. | 26/10 | Romania (Bucharest) |
| 8. | 16/11 | Poland (Warsaw) |

Webinars 2022

| | Date | Topic |
|----|-------------|---|
| 1. | 18/03 | Posting of workers: latest developments and prospects in social security and labour law |
| 2. | 24/06 | Free Movement in the gig economy |
| 3. | 14/10 | Remote work and FMW/SSC |

Information tools & Communication

- [A-Z on social security coordination](#)
- [Social Security Coordination Regulations database](#)

A-Z Information tool

Moving & working in Europe

Working in another EU country ▾

EU social security coordination ▾

Network of legal experts (MoveS) ▲

Case law

A-Z on social security coordination (FAQs)

Social Security Coordination Regulations database

Network of experts on statistics

A-Z on social security coordination (FAQs)

 ▾

The '**A-Z of social security coordination (FAQs)**' is a facility setting out the basic principles and frequently raised issues in field of social security coordination.

You are invited to first read the [introduction](#) into the theory of social security coordination and the coordination instruments of the European Union.

You will then find more in-depth information structured in 70 keywords. Each keyword provides answers to specific questions and includes plenty of practical examples and links to further information sources to guide you through this complex topic.

Some keywords provide you with specific definitions (e.g. self-employed person, frontier worker), while others explain the legislative aspects of certain procedures (e.g. cross-border medical care, posting of workers).

You can use this tool to expand your own knowledge or to find the answer to practical questions. All you have to do is click on the relevant keywords below in order to see more detailed information.

A

[Access to social assistance and other benefits not covered by the material scope of Regulation 883/2004](#)

H

[Harmonisation of social security](#)

P

[Paternity benefits](#)

[Pensions](#)

[Personal scope](#)

Social Security Coordination Regulations database

| (EC) Regulation No 883/2004 | (EC) Regulation No 987/2009 | (EC) Regulation No 1408/71 | (EC) Regulation No 574/72 | | | | | | | | |
|--|--|---|--|--|-------------------------------------|-----------------------------|--|--|--|--|--|
| <p>(EC) Regulation 883/2004</p> <p>TITLE 1: GENERAL PROVISIONS</p> <p>Art. 1: Definitions</p> <p>Art. 2: Persons covered</p> <p>Art. 3: Matters covered</p> <p>Art. 4: Equality of treatment</p> <p>Art. 5: Equal treatment of benefits, income, facts or events</p> <p>Art. 6: Aggregation of periods</p> <p>Art. 7: Waiving of residence rules</p> <p>Art. 8: Relations between this Regulation and other coordination instruments</p> <p>Art. 9: Declarations by the Member States on the scope of this Regulation</p> <p>Art. 10: Prevention of overlapping of benefits</p> <p>TITLE 2: DETERMINATION OF THE LEGISLATION APPLICABLE</p> | <p>(EC) Regulation 883/2004: Art. 1</p> <p>For the purposes of this Regulation:</p> <ol style="list-style-type: none"> 'activity as an employed person' means any activity or equivalent situation treated as such for the purposes of the social security legislation of the Member State in which such activity or equivalent situation exists; 'activity as a self-employed person' means any activity or equivalent situation treated as such for the purposes of the social security legislation of the Member State in which such activity or equivalent situation exists; 'insured person', in relation to the social security branches covered by Title III, Chapters 1 and 3, means any person satisfying the conditions required under the legislation of the Member State competent under Title II to have the right to | <table border="1"> <thead> <tr> <th data-bbox="954 1043 993 1115">Implementing Articles of Reg. 987/2009</th> <th data-bbox="993 1043 1234 1115">Corresponding Articles of Reg. 1408/71</th> <th data-bbox="1234 1043 1476 1115">Administrative Commission Decisions</th> <th data-bbox="1476 1043 1715 1115">Corresponding CJEU Case Law</th> </tr> </thead> <tbody> <tr> <td colspan="4" data-bbox="954 1139 1715 1215"> <p>Implementing articles (EC) Regulation 987/2009 Articles</p> <p>Art. 1</p> </td> </tr> </tbody> </table> | Implementing Articles of Reg. 987/2009 | Corresponding Articles of Reg. 1408/71 | Administrative Commission Decisions | Corresponding CJEU Case Law | <p>Implementing articles (EC) Regulation 987/2009 Articles</p> <p>Art. 1</p> | | | | |
| Implementing Articles of Reg. 987/2009 | Corresponding Articles of Reg. 1408/71 | Administrative Commission Decisions | Corresponding CJEU Case Law | | | | | | | | |
| <p>Implementing articles (EC) Regulation 987/2009 Articles</p> <p>Art. 1</p> | | | | | | | | | | | |

Cooperation and networking

- **MoveS webpage (EUROPA)**

<https://ec.europa.eu/social/main.jsp?catId=1098&langId=en>

MoveS LinkedIn group:


MoveS – free movement and social security coordination

<https://www.linkedin.com/groups/4291726>






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Martin Andresen • 2nd

--
6mo • Edited

I have a question regarding the relationship between FMW and SSC for Third Country nationals (TCN), more specific unemployment benefits. As we know, TCN are covered by Regulation 883/2004 in most member states. This includes unemployment benefits. However, the Directive on union citizenship and also Regulation 492/2011 seems to apply only to EU / EEA citizens and their ...see more



1

1 comment



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Filip Van Overmeiren • 1st

Director Global Employer Services / Professor UGent & VUB

5mo ...

Hi [Martin Andresen](#), pertinent question and happy to discuss! Feel free to send me a message.

Like ·  1 | Reply



Filip Van Overmeiren • 1st

Director Global Employer Services / Professor UGent & VUB

2mo

New CJEU case on unemployment benefits

[#socialsecuritycoordination](#) [#socialsecurity](#) [#unemployment](#) [#residence](#)

Thank you for your attention!

Contact us at:

MoveS@eftheia.eu



Latest developments on social security coordination at EU level

**MoveS seminar Iceland on Coordination and free movement in the EEA
Reykjavík, 23 September 2022**

Johannes Kleine-Benne
European Commission – DG Employment



Overview

1. Revision of Regulations 883/2004 and 987/2009
2. EU-UK relations
3. COVID-19 and telework

Revision of the social security coordination Regulations





State of play – formal steps

- Commission proposal adopted in December 2016
- Provisional agreement achieved between the negotiators of the European Parliament, the Presidency of the Council and the European Commission (March 2019 and December 2021)
- No qualified majority in Council
- Negotiations on-going

EU-UK: a new relationship



EU-UK Withdrawal Agreement
EU-UK Trade and Cooperation Agreement



The EU-UK Withdrawal Agreement

- Entered into force on 1 February 2020
- Transition period until 31 December 2020
- Part Two: Citizens' rights contains a chapter on social security coordination



Full Coordination (Art. 30 UK Withdrawal Agreement)

Who benefits?

- Those who have continuously been in a cross-border situation involving the EU and the UK since before the end of the transition period and their family members / survivors
 - E.g. EU nationals residing or working in the UK since 2020 or earlier

Which rules apply?

- The complete social security coordination acquis (Regulations (EC) Nos 883/2004 and 987/2009)



Partial Coordination (Art. 32 Withdrawal Agreement)

Who benefits?

- Persons who are not covered by Art. 30 but have been subject both to UK / EU social security legislation before the end of the transition period

Which rules apply?

- EU rules concerning the aggregation of periods, rights and obligations deriving from such periods
- EU rules regarding the coordination of sickness and family benefits
- General principles of the EU Regulations, such as equality of treatment



Other Aspects

- Problem: EU SSC rules apply also to Norway, Iceland, Liechtenstein and Switzerland, but they are not parties to the Withdrawal Agreement
- Art 33 Withdrawal Agreement on Triangulation, EU and UK have concluded agreements with Switzerland & the EEA EFTA States to protect persons in triangular situations
- UK has observer status in the Administrative Commission for the Coordination of Social Security Systems
- UK participates in the Electronic Exchange of Social Security Information for cases covered by the Withdrawal Agreement and bears the related cost

EU-UK Trade and Cooperation Agreement (TCA)

- Agreed between the EU and the UK on 24 December 2020
- Entered into force on 1 May 2021 (already applied since 1 January 2021)



Main issues covered:

- Free Trade Agreement
- Framework for law enforcement and judicial cooperation
- Horizontal agreement on governance



Protocol on Social Security Coordination

Who is covered?

All persons who

- are or have been covered by the social security legislation of an EU Member State or of the UK
- are residing in an EU Member State or the UK
- are or have been in a cross-border situation between an EU Member State and the UK as from 1 January 2021

Protocol on Social Security Coordination

What is covered?

- Full coordination of all branches of social security coordination that are currently coordinated under Regulation 883/2004 except:
 - Family Benefits
 - Long-term Care Benefits
 - Special non-contributory cash benefits
 - Assisted reproduction services
- Partial coordination: invalidity benefits and unemployment benefits



Protocol on Social Security Coordination

- Principle of non-discrimination between Member States
- Principle of equal treatment of persons covered
- Unicity of legislation
- Aggregation of periods of insurance/work/residence
- Waiving of residence clauses
- Sunset clause (15 years)



Protocol on Social Security Coordination

- The Protocol does not apply to:
 - Situations involving a UK national moving between two or more Member States
→ (Extending) Regulation 1231/2010 applies
 - Cross-border situations involving Switzerland, Norway, Iceland and Liechtenstein, limit of territorial scope
 - Cross-border situations involving Gibraltar
- The Protocol applies without prejudice to the Withdrawal Agreement
- The Protocol does not provide a right to reside and to work in respectively the UK or the EU
 - Only persons fulfilling the national requirements regarding visa/residence/access to the labour market can benefit from the Protocol



Covid-19 and Telework

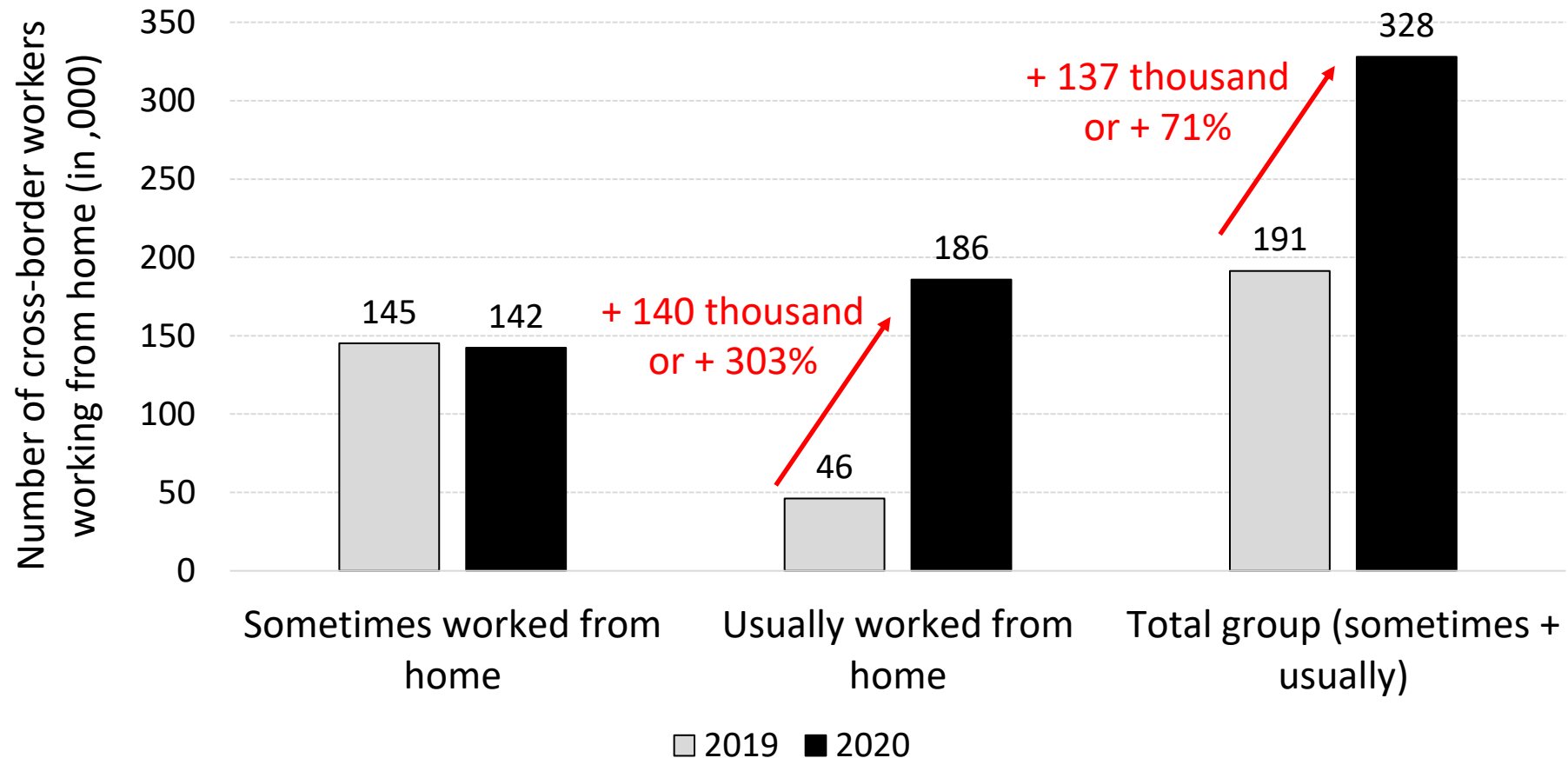
Employed persons in the EU/EFTA working from home as a % of total employment

| | 2019 | | | 2020 | | | 2021 | | |
|----------------|-----------|---------|-------|-----------|---------|-------|-----------|---------|-------|
| | Sometimes | Usually | Never | Sometimes | Usually | Never | Sometimes | Usually | Never |
| EU-27 | 9.0 | 5.4 | 85.6 | 8.6 | 12.0 | 79.4 | 10.6 | 13.4 | 76.0 |
| Belgium | 17.7 | 6.9 | 75.3 | 16.5 | 17.2 | 66.3 | 13.7 | 26.2 | 60.2 |
| Bulgaria | 0.6 | 0.5 | 98.9 | 1.8 | 1.2 | 97.0 | 3.7 | 2.8 | 93.5 |
| Czechia | 5.4 | 4.6 | 90.0 | 5.9 | 7.2 | 86.9 | 7.3 | 7.2 | 85.5 |
| Denmark | 20.7 | 7.8 | 71.5 | 18.3 | 17.0 | 64.7 | 17.9 | 18.1 | 63.9 |
| Germany | 7.4 | 5.2 | 87.4 | 7.3 | 13.6 | 79.2 | 7.7 | 17.0 | 75.3 |
| Estonia | 13.1 | 6.6 | 80.3 | 10.8 | 12.2 | 77.0 | 11.4 | 14.9 | 73.6 |
| Ireland | 12.9 | 7.0 | 80.2 | 10.5 | 21.5 | 68.1 | 7.3 | 32.0 | 60.7 |
| Greece | 3.4 | 1.9 | 94.8 | 3.4 | 7.0 | 89.6 | 8.2 | 6.7 | 85.1 |
| Spain | 3.5 | 4.8 | 91.7 | 4.2 | 10.9 | 84.9 | 5.8 | 9.5 | 84.6 |
| France | 15.8 | 7.0 | 77.2 | 13.7 | 15.7 | 70.6 | 17.2 | 17.0 | 65.8 |
| Croatia | 5.0 | 1.9 | 93.1 | 7.9 | 3.1 | 89.0 | 8.7 | 4.6 | 86.6 |
| Italy | 1.1 | 3.6 | 95.4 | 1.4 | 12.2 | 86.4 | 6.5 | 8.3 | 85.2 |
| Cyprus | 1.2 | 1.3 | 97.5 | 2.9 | 4.5 | 92.6 | 6.0 | 6.7 | 87.3 |
| Latvia | 1.8 | 3.0 | 95.2 | 1.6 | 4.5 | 94.0 | 2.6 | 11.0 | 86.4 |
| Lithuania | 2.1 | 2.4 | 95.5 | 2.9 | 5.4 | 91.7 | 5.2 | 9.1 | 85.7 |
| Luxembourg | 21.5 | 11.6 | 66.9 | 24.4 | 23.1 | 52.4 | 17.0 | 28.1 | 54.9 |
| Hungary | 3.4 | 1.2 | 95.5 | 7.4 | 3.6 | 89.0 | 8.8 | 4.5 | 86.7 |
| Malta | 5.4 | 6.1 | 88.4 | 10.9 | 14.8 | 74.3 | 14.4 | 14.9 | 70.8 |
| Netherlands | 23.0 | 14.1 | 62.9 | 22.3 | 17.8 | 59.8 | 31.3 | 22.5 | 46.1 |
| Austria | 12.1 | 9.9 | 78.0 | 11.1 | 18.1 | 70.8 | 12.5 | 15.9 | 71.6 |
| Poland | 9.8 | 4.6 | 85.7 | 9.2 | 8.9 | 81.9 | 8.4 | 6.9 | 84.7 |
| Portugal | 9.0 | 6.5 | 84.4 | 8.7 | 13.9 | 77.3 | 11.5 | 14.5 | 74.0 |
| Romania | 0.6 | 0.8 | 98.6 | 0.6 | 2.5 | 96.8 | 4.2 | 2.4 | 93.4 |
| Slovenia | 11.0 | 6.8 | 82.2 | 12.6 | 7.4 | 80.0 | 12.3 | 10.6 | 77.1 |
| Slovakia | 5.8 | 3.7 | 90.5 | 5.9 | 5.7 | 88.4 | 8.4 | 6.6 | 85.0 |
| Finland | 17.6 | 14.1 | 68.4 | 14.1 | 25.1 | 60.7 | 16.2 | 24.8 | 58.9 |
| Sweden | 31.3 | 5.9 | 62.8 | | | | 19.2 | 27.0 | 53.8 |
| Iceland | 24.1 | 5.7 | 70.2 | 29.3 | 8.7 | 62.0 | | | |
| Norway | 5.2 | 5.0 | 89.9 | 6.8 | 4.7 | 88.5 | 25.7 | 16.4 | 58.0 |
| Switzerland | 27.7 | 3.9 | 68.4 | 35.0 | 4.9 | 60.1 | 26.4 | 16.0 | 57.6 |
| United Kingdom | 21.7 | 4.7 | 73.6 | | | | | | |

Source: Eurostat [[ifsa_ehomp](https://ec.europa.eu/eurostat/tgm/table.do?tab=table)]

Cross-border workers in the EU/EFTA working from home

Estimated number of cross-border workers working from home, in thousand



Source: Eurostat EU-LFS

COVID-19 and telework

- Telework was an important instrument to “flatten the curve” of COVID-19 infections.
- Questions concerning applicable legislation could therefore neither delay the beginning of telework nor hinder its continuation.
- Telework in a Member State other than the competent (“usual”) Member State of employment due to COVID-19 did not lead to a change of applicable legislation.
- Telework should not have been hampered/delayed/interrupted (only) due to the application for a PD A1 and/or an exemption agreement.

Flexibility

- Key during COVID-19 pandemic, in a *force majeure* context → pragmatic solution
- Member States in the Administrative Commission (AC) adopted a Guidance Note for competent institutions, which was valid until 30 June 2022.
- Objective: to avoid changes of the applicable legislation due to Covid-related telework.

Telework beyond the pandemic

- Advantages for employers and workers: large-scale telework is here to stay
- The Commission and Member States' representatives in the AC are considering the implications and the way forward and set up a dedicated working group.
- In June 2022, the AC has endorsed a new guidance note:
 - flexible interpretation of the applicable legislation rules
 - transitory period of 6 months (1 July 2022 - 31 December 2022)
 - no change of applicable legislation during the transitory period to ensure a smooth and full application of the guidance note on 1 January 2023.



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MoveS seminar Reykjavik

23.9.2022.

Protection of pension rights in the context of free movement of persons

Ivana Vukorepa

Associate Professor, University of Zagreb

Content

- **Basics on pensions**
- **EU competences**
- **Coordination rules (mainly for public schemes):**
 - Invalidity benefits, old-age and survivors' pensions
 - Legal provisions and principles
 - Calculation issues
 - Administration of claims – short overview
- **Supplementary pensions**

Basics on pensions (1)

Function:

Income in the case of specified contingences/risks:

- Invalidity/ disability (long-term work incapacity)
- Old –age, and
- Death → survivor’s benefit

Life-cycle consumption smoothing

Poverty alleviation

Basics on pensions (2)

| Organisational and financing differences | Differences influencing benefit level |
|---|---|
| <p>Legal basis: statutory or contractual</p> <p>Providers:</p> <ul style="list-style-type: none">• public (statutory) schemes,• private schemes (supplementary in the broad sense):<ul style="list-style-type: none">• collective basis (link to employment): occupational (EU acquis: supplementary)• individual basis: personal accounts or individual contracts <p>Management: state, insurance companies, pension funds, banks</p> <p>Participation: mandatory, quasi-mandatory or voluntary</p> <p>Personal scope:</p> <ul style="list-style-type: none">• work-related or non-work-related• insurance based or residence based• general or special <p>Financing:</p> <ul style="list-style-type: none">• sources: contributory or non-contributory (tax-financed)• modalities: PAYGO, funded, book reserves or insurance contracts | <p>Benefit purpose:</p> <ul style="list-style-type: none">• income replacement or• income adjustment <p>Eligibility conditions for benefits, e.g.:</p> <ul style="list-style-type: none">• pensionable age• qualifying period (Insurance/employ. or residence p.) <p>Type of benefits (determining the amount):</p> <ul style="list-style-type: none">• DB: defined benefit (including points system), where benefit depends on periods of employment/insurance/residence (+ some other elements, e.g. wage, years of age)• DC: defined contribution (usually funded), where benefit depends on the accrued value of saved capital (+ life expectancy etc.)• Hybrid: benefits depend on a rate of return credited to contributions (either independently of the actual return on any supporting assets, or is calculated with reference to the actual return and a minimum return guarantee specified in the plan rules) |

EU competences (1)

- **No true EU pension policy**
 - Charter of Fundamental Rights - Art. 34/1
 - “The Union recognises and respects the entitlement to social security benefits ...and social services providing protection in cases such as old age, andin accordance with the rules laid down by Union law and national laws and practices.”
 - European Pillar of Social Rights - Principle 12 EPSR
 - Right to adequate social protection regardless of the type and duration of employment relationship → Council Recomm. (2019/C 387/01)
 - No specific competences in TEU nor TFEU
 - MS have freedom to organize their pension systems
 - Principle of subsidiarity (only few elements can be regulated at EU level)
- **Legislative competences in relation to pensions:**
 - social policy (subsidiary to economic objectives)
 - internal market (4 freedoms) + economic and financial affairs
- **Soft law and OMC directed towards:**
 - benefit adequacy
 - pension systems sustainability
 - (Europe 2020 strategy + European semester + Country specific recommendations)

EU competences/ 2

| Field of Competence | L. basis (TFEU) | Secondary legislation |
|--|-------------------------------------|---|
| Freedom of movement or workers | 45-48 Art 45 – direct effect | BR 883/2004 (CSSS) / IR 987/2009 R 1231/2010 (CSSS - extension to TCN) D 98/49 (safeguarding supplementary p. rights) D 2014/50 (on minimum requirements for enhancing worker mobility by improving acquisition and preservation of supplementary p. rights) |
| Freedom of establishment and services | 49-56 | D 2016/2341, recast (IORP II, <u>supervision of institutions for occupational retirement provision</u>) |
| Free movement of capital | 63 | D 2009/13 (Solvency II, (re)insurance) D 2009/65 (UITs, undertakings for collective investment in transferable securities) |
| Approximation of laws (general p.) | 114 | R (EU) 2019/1238 on a pan-European Personal Pension Product (PEPP) |
| Social policy (High standards for employer.) | 153 | D 2008/94 (insolvency) D 2001/23 (transfer of undertakings) |
| Equality between men and women | 157 – direct effect | D 79/7 (statutory SS/ pensions) D 2004/113 (private pension products) D2006/54 (occupational pension schemes) |

Protection of pension rights & free movement
Three sets of rules that guarantee moving has no/(limited)
detrimental effect on pension entitlements:

1) Article 45 TFEU (on FMW) – direct applicability

- C-515/14, Commission v Cyprus (21 January 2016) - public scheme, civil servants
- C-187/15, Pöpperl, (13 July 2016) - special scheme, civil servants
- C-379/09, Casteels, (10 March 2011) - occupational scheme, worker employed successively by the same employer in several MSs

2) Coordination rules - direct applicability ...

3) Directives for supplementary pension rights...

Rules on coordination of social security systems

Legislative provisions specific for pensions (since 2012 applicable also to EEA and CH)

▶ **Reg. 883/2004 - Basic regulation (BR)**

- Horizontal provisions (e.g. Art. 1, 4, 6 etc.)
- Arts. 44 – 49 (Invalidity benefits) - chapter 4
- Art. 50-60 (Old-age and survivor's benefits) – chapter 5
- *Art. 66 (Pre-retirement benefits) – chapter 7, they are neither early old-age pension nor unemployment benefits*

▶ **Reg. 987/2009 - Implementing Regulation (IR)**

- Art. 12. – aggregation of periods
- Art. 13. – rules on conversion of periods
- Arts. 43-53 (for both groups of pension benefits)

▶ **AC Decision P1**

- Interpretation of Arts. 50(4), 58 and 87(5) of BR
- OJ C 106, 24.4.2010, p. 21–22

Coordination rules

Definitions, coverage of pensions



BR Article 1(l) – defines “legislation”

- “Legislation” – ..includes laws, regulations and other statutory provisions.....excludes contractual provisions other than those which serve to implement an obligation arising from laws....provided that the MS makes a declaration to that effect...(based on Art. 9 BR)
- such declaration only France

BR Article 1(w) – defines “pensions”

- “pensions” covers not only pensions but also lump-sum benefits which can be substituted for them and payments in the form of reimbursement of contributions....

BR Article 1(x)

- ‘**pre-retirement benefit**’ means: all cash benefits, other than an unemployment benefit or an early old-age benefit, provided from a specified age to workers who have reduced, ceased or suspended their remunerative activities until the old-age or early old-age retirement ...;
- ‘**early old-age benefit**’ means a benefit provided before the normal pension entitlement age is reached and which either continues to be provided once the said age is reached or is replaced by another old-age benefit;
- **Applies to:**
 - contributory or noncontributory statutory schemes (general and special)
- **Excludes:**
 - Non-statutory/ supplementary (contractual) schemes, unless declared otherwise (e.g. France)

Coordination rules

Principles applicable to pensions



| | |
|--|---|
| Partial pension principle | For determination of entitlement to pension by every MS s/he was insured |
| Aggregation of periods | For eligibility/ acquiring entitlement to benefit, e.g. due to waiting periods |
| Partial pension method and principle of favorability | For calculation and payment of the benefit (independent benefit and pro-rata temporis benefit) Total amount of pension may consist of several pensions |
| Prevention of overlapping of benefits | |
| Exportability | |
| <p>Other general/horizontal principles:</p> <ul style="list-style-type: none"> • Equality of treatment • Assimilation of facts (equal treatment of benefits, income, facts or events) • Good administrative cooperation and provision of information (improvement through EESSI) | |

Coordination rules

Determination of entitlement to pension

- Art. 50 BR, Arts 45-48 IR, AC Decision P1
- Determines competent institution under all legislations of the MSs to which person was subject
- **Exceptions:**
 - if person requests deferment of the benefit award (only allowed for old-age pensions)
 - if person does not satisfy eligibility conditions in a MS
- **Calculation of benefits in these cases:**
 - MS which conditions are satisfied, when calculating benefit, shall not take into account periods completed under legislations of a MS whose conditions are not satisfied (or pension was deferred)...where this gives rise to a lower amount of benefit

- **Art. 6 BR and Art. 12 IR – general rule**
 - Purpose: helps migrants fulfil conditions for the benefit entitlement
 - Rule: competent institution of a MS must take into account other equivalent periods completed in any other MS (such as: periods of insurance, employment, self-employment or residence)
- **Art. 45 and 51 BR - special provisions for special schemes:**
 - **If entitlement conditional upon periods completed only in a specific activity:**
 - periods completed in another MS under corresponding scheme have to be taken into account, otherwise, these periods should be relevant for the general scheme
 - **If entitlement conditional upon person being insured at the time of the materialisation of the risk,**
 - condition shall be regarded as having been satisfied if that person has been previously insured under the legislation or specific scheme of that MS and is, at the time of the materialisation of the risk, insured under the legislation of another MS for the same risk or (benefit is due under the legislation of another MS for the same risk)
- **Art. 60 BR – for special schemes for civil servants**

Coordination rules: Calculation of pension benefit

- **Art. 52 BR, Arts. 43-52 IR**
- **Two step procedure:**
 - **Independent benefit**
 - Based on national legislation alone, if entitlement conditions exclusively satisfied under that legislation
 - **Pro-rata temporis benefit**
 - **Theoretical benefit** (fictitious benefit as if all insurance or residence periods would be completed under the legislation of that MS)
 - **Actual amount of pro-rata benefit = TB / proportion to the time insured in that MS**
- **Amount actually paid → higher of the two**
 - Mirrors the principle of favourability

Coordination rules: Exceptions from pro-rata calculation

- **Pro-rata waiver:**
 - If “independent benefit” invariably results in being equal to or higher than the pro-rata benefit
 - Annex VIII, Part 1 (DK, IR, CY, LT, LI, NL, AT, PL, PT, SK, SE, UK)
- **If benefit calculation is not based on periods of time:**
 - Mainly concerns DC funded schemes operated by pension funds
 - Annex VIII, Part 2 (BG, CZ, DK, EE, FR, HR, LT, HU, AT, PL, PT, SI, SL, SE, and UK)

Coordination rules:

Additional rules for theoretical and pro-rata benefits

Art. 56 BR

- Where the **total period is greater than the maximum required** for a full pension of a MS
 - → the maximum amount is used instead of the total period.
- Where **benefits are calculated on the basis of earnings, contributions etc.**
 - → the competent institution shall determine the basis for benefit calculation in accordance only with periods completed under the legislation it applies,
 - → in order to determine the amount to be calculated in accordance with periods in another state, the MS shall use the same elementsas it applies in its own legislation or in accordance with procedures laid down in Annex XI.

Coordination rules: **Less than one year rule**

- Art. 57 BR
- **MS not required to provide benefits for very short periods, under 2 conditions:**
 - duration of these periods is less than one year, and
 - when taking only these periods into account no right to benefit is acquired under that legislation
- **What happens with them? Are they lost?**
 - → proportionally taken over by other MSs, since they have to take them into account when calculating a theoretical benefit (relevant for pro-rata benefit)
- **Purpose:**
 - simplification of administrative procedure and
 - reduction of costs related to the payment of very low pensions
- **Potential problems (in rising atypical short-term assignments):**
 - MS that waived the pro-rata calculation excluded from sharing financial burden (Annex VIII: DK, IR, CY, LT, LI, NL, AT, PL, PT, SK, SE, UK)
 - Last MS has to pay the benefit for all the other MSs in which the person worked but has accumulated less than one year of insurance (Art. 57(3) BR)

Coordination rules: Taking into account of child raising-periods

- Art. 44 IR
- 'child-raising period' = any period which is credited under the pension legislation of a MS or which provides a supplement to a pension explicitly for the reason that a person has raised a child, irrespective of the method used to calculate those periods and whether they accrue during the time of child-raising or are acknowledged retroactively
- If under the legislation of the competent MS no child-raising period is taken into account, the institution of the MS whose legislation was applicable to the person concerned on the grounds that s/he was pursuing an activity at the date when the child-raising period started, that MS shall remain responsible for taking into account that period as a child-raising period under its own legislation, as if such child-raising took place in its own territory (not applicable if person becomes, subject to the legislation of another MS due to the pursuit of an employed or self-employed activity)
- C-576/20 (Pensionsversicherungsanstalt) – Art. 44 BR + Art. 21 TFEU
 - MS responsible for payment of the pension, in which the recipient worked and paid contributions exclusively, both before and after the transfer of that person's place of residence to another MS where they raised their children, is required to take into account those child-raising periods

Coordination rules: Prevention of overlapping

- **Arts. 53-55 BR**
- **Purpose:**
 - to restrict national rules on overlapping of benefits which could reduce the amount of the independent or pro-rata benefit (Art. 52(2) BR)
- **Benefits of the same kind**
 - benefits calculated or provided on the basis of periods of insurance and/or residence completed by the same person
- **Benefits of a different kind**
 - benefits which cannot be considered of the same kind

Example:

- Mrs X acquires right to invalidity and old-age benefit on the basis of her own insurance period. These are benefits of the same kind.
- If she acquires survivor's benefit (based on her husband's insurance periods and upon his death) this is benefit of a different kind.

Coordination rules: Prevention of overlapping

- **Common provisions:**

- Benefits or other income acquired abroad must be taken into account
- Gross amount paid by another MS is to be taken into account, unless national legislation provides otherwise
- Benefits from voluntary insurance are not taken into account

- **Special rules for:**

- Benefits of the same kind – Art. 54 BR
- Benefits of different kind – Art. 55 BR

Coordination rules:

Award of supplement in the MS of residence



- **Art. 58 BR**
- **Right to minimum benefit:**
 - benefit at least equal to minimum benefit paid by the MS of residence under its legislation for persons's total periods of insurance /residence
- **Supplement amount**
 - Difference between the amount of the minimum benefit and the total pension benefits actually paid (from all MS)
- **Payable by the MS of residence**

Coordination rules: Invalidation (disability) benefits

- Arts. 44 – 49 BR
- Specific rules due to:
 - Incapacity to work, and
 - Disparities in national legislation (e.g. differences in waiting periods)
- **Type A legislation**
 - MS in which the amount of invalidity benefit is independent of the period of insurance, and expressly included in Annex VI (CZ, IE, HR, LV, HU, SK, FI, SE, UK)
 - Follows the sickness benefit logic
 - Benefit paid only by the last competent MS (when invalidity arose)
- **Type B legislation**
 - “any other legislation”
 - Amount of the benefit depends on the period of insurance
 - Follows the pension logic (pro-rata rules apply)

Coordination rules: **Invalidity benefits**

Persons subject only to type A legislation (or only shortly to B)

- Competent MS → MS whose legislation was applicable at the time of the risk occurrence

Persons subject only to type B legislation

- Rules on old-age pensions apply

Persons subject to type A and B legislation (successively or alternatively)

- Rules on old-age pensions apply

Coordination rules: Determining incapacity to work

- **Art. 46(3) BR**

- Validity of a decision taken by an institution of a MS concerning the degree of invalidity?
- Binding only on MS's institutions provided that concordance acknowledged in Annex VII (only Belgium, France and Italy)



Assimilation rule very limited

Coordination rules: Invalidation benefits

- **Practical problems (1):**

- Differences in waiting periods
- Different benefit schemes in the MSs: shifts from sickness benefits (short-term) to invalidity benefits (long-term)

- **CJEU cases:**

- **Leyman case (C-3/08)- shift from sickness to invalidity**

- CJEU: It is inconsistent with the Treaty (Article 39 EC (now 45 TFEU) if migrant workers are worse off as a result of cross border movement and they receive no benefit (despite contributions paid)

- **Vester case (C-134/18) – different waiting periods**

- CJEU: Articles 45 and 48 TFEU preclude a situation in which a worker who has been granted invalidity status by the competent institution of the MS of residence (without right to receive benefits), is required by the competent institution of the MS in which he completed all his insurance periods to complete an additional period of incapacity to work in order to be granted invalidity status and receive pro-rata invalidity benefits, without receiving any benefits for incapacity to work during that period (unlike other non-migrant workers)

Coordination rules: **Invalidity benefits**

- **Practical problems (2):**
 - Calculation of benefits
- **CJEU case law:**
 - **C-406/93 Reichling** - If invalidity benefit depends on the remuneration received by the worker at the time when invalidity occurred, and the worker was not at that time subject to the SSS of that MS, because s/he worked in another MS, the competent institution must calculate the theoretical amount of benefit on the basis of the remuneration last received by the worker in the other MS
 - **C-251/94 Nieto** - In systems where calculation of invalidity benefits is based on an average basis for contributions, the theoretical amount of the benefit thus obtained is to be duly revalorized and increased as if the person concerned has continued to work under the same conditions in the MS of question
 - **C-2015/05 Nemec** – obligation to take into account wage developments the person could reasonably have earned, given his/her subsequent employment record had he/she continued to work in the MS of the competent institution
 - **C-866/19 Zaklad etc.** – theoretical amount of benefits is to be calculated based on all periods of insurance, including those completed under legislation of other MS, while actual amount of the benefit (pro-rata benefit) is made having regard to the periods of insurance completed under the legislation of the MS concerned

Are they covered by EU coordination rules?

- Yes, if statutory pre-retirement schemes
 - Definition in Article 1(x) BR,
 - "all cash benefits, other than an unemployment benefit or an early old-age benefit, provided from a specified age to workers who have reduced, ceased or suspended their remunerative activities until the age at which they qualify for an old-age pension or an early retirement pension, the receipt of which is not conditional upon the person concerned being available to the employment services of the competent State;"
 - Rules only in Art. 66 (Chapter 7)
 - these benefits will be granted to migrants under the same condition as nationals and may also be "exported" when retiring abroad
 - no application of the principle of aggregation of insurance periods (Art. 6)
- so, periods of insurance, employment or residence completed in other MSs do not have to be taken into account when granting entitlement to these benefits

Coordination rules:

Submission of pension claims (principle of approachability)



For Type A invalidity benefits, claim should be submitted to:

- Institution of MS in which risk occurred, or
- Institution in MS of residence, which shall forward the MS of last insurance

For Type B invalidity benefits and other pension claims, claim should be submitted to:

- Institution in MS of residence, or
- Institution of the last applicable MS

Note: If the person was not at any time subject to the legislation of the MS of residence, that institution shall forward the claim to the institution of the last applicable MS

Coordination rules: Submission of pension claims

Date of claim – Art. 45(5) and 45 (6) IR

- The date of submission of the claim shall apply in all the institutions concerned
- Derogation – if person does not mention insurance or residence in a State, despite being asked
→ the date of claim in that MS is when it does eventually receive notification

Certificates and information to be submitted with the claim by the claimant – Art. 46 IR

- Submission in accordance with the legislation of the submission MS (“contact institution”)
- Available supporting documents including those relating to:
 - Periods of insurance
 - Employment or self-employment and residences (length)

Coordination rules: Submission of pension claims

“Contact institution”- Art. 47 IR

• Definition

- Institution to which the claim has been submitted
- (but not the institution in the MS of residence, if the person has never been insured there)

• Scope of tasks

- Investigation of the claim under its own legislation
- In addition it performs:
 - the exchange of data (forwards the claim to other MS of insurance)
 - the communication of decisions
 - the operations necessary for the investigations of the claim
 - supplies the claimant upon request with any information relevant to the Community aspects of the investigation
 - keeps the claimant informed

Coordination rules: Notification to the claimant

Art. 48 IR

- **Each institution notifies the claimant of its decision** (includes also specification on remedies and appeal rights)
- **Contact institution is a collecting point for all decisions**
 - when it received notification of all decisions, →
 - it provides a summary of all the decisions to the claimant (on the way the institutions have dealt with the different periods of insurance and allows the person to see, for instance, whether there are gaps, or overlapping of certain insurance periods)
 - Summary note - Portable document P1
- **Review of the decision**
 - If it appears to the claimant that his rights have been adversely affected by the interaction of two or more decisions
 - Time limit for asking the review runs from the date you receive the summary note (P1)
 - The actual time limit depends on each MS's national law

Supplementary pensions & free movement

Occupational pensions

- **Directive 98/49** – with EEA relevance
 - on safeguarding supplementary pension rights
- **Directive 2014/50** – with EEA relevance
 - on minimum requirements for enhancing worker mobility by improving acquisition and preservation of supplem. p. r.
- **Directive 2016/2341, recast (IORP II)** – with EEA relevance
 - on supervision of institutions for occupational retirement provision

Personal Pensions - new

- **Regulation (EU) 2019/1238** - with EEA relevance
 - on pan-European Personal Pension Product (PEPP)

Directive 98/49 (safeguarding supplementary p. r.)

- **Personal scope:** employed and self-employed
- **Material scope:** “supplementary” pensions
 - occupational public or private,
 - voluntary and compulsory
- **Main principles and rights:**
 - **Equality of treatment**
 - preservation of vested pension rights
 - no "portability"
 - **Cross border payments**
 - net of any taxes and transaction charges
 - **Continuation of payment of contributions (for posted w.)**
 - **Adequate information when moving**
 - on scheme members pension rights
 - choices which are available to them

Directive 2014/50 (improving acquisition & preservation)

- Transposition: 21 May 2018
- Minimum harmonization directive (Art. 7)
- Personal scope:
 - Only employed (but can be extended to self-employed)
- Material scope:
 - “supplementary” p. (occupational public or private)
 - only to periods of employment after transposition
 - only when workers move cross border
 - does not apply to workers moving within a single MS (but can be extended to such situations, recital 6)
- Main improvements in 3 ways:
 - Acquisition
 - Preservation
 - Information

Directive 2014/50: Acquisition (Art. 4)

- Waiting + vesting periods = max. 3. years
- Minimum age for vesting = 21 years
- D. sets no age limit for becoming a scheme member;
- **If pension right not acquired by the outgoing worker:**
 - Right to reimbursement of contributions paid by or on behalf of the worker
 - Amount depends on scheme type:
 - If scheme or employer bears the investment risk (DB schemes):
 - → reimbursement of contributions
 - If outgoing worker bears the investment risk (DC schemes):
 - → reimb. of the sum of the contributions or
 - → reimb. of the investment value arising from these contribution

Directive 2014/50:
Preservation of dormant pension right (Art. 5)



- **General rule: preservation**

- Right to retain dormant pension rights in the former employer's pension scheme
- Dormant members should be treated on par with active members;
- Preservation may vary depending on the nature of the pension schemes:
 - e.g. regarding pension accrual modalities and indexation rules;
 - some rules are more fit for DB, while other for funded DB schemes;

- **Exception: withdrawal of capital sum (option for MS)**

- Purpose: reduction of managing costs of low-value dormant pension right
- Withdrawal of capital sum subject to two conditions:
 - Value of vested p.r. below established national ceilings, and
 - Worker's informed consent

Directive 2014/50: Information (Art.6)

- **Scope:**

- Right of „active scheme members” (workers) to know how termination of employment would affect their pension rights,
- Right of „deferred beneficiaries” (former active scheme members who has vested pension rights but not yet in receipt of a pension) to be informed about the value of their rights

- **Provision of information:**

- Upon request
- Clearly, in writing and within reasonable period on time
- MS may provide limit (max. once a year)

Directive 2016/2341 – recast (activities & supervision of IORPs)

Directive 2003/41- old

Directive 2016/2341 – recast (transposition by 13 Jan 2019)

- Purpose:
 - soundness of occupational pension schemes
 - better protection of pension scheme members and beneficiaries
- Minimum harmonization directive
- Enables IORP-s to benefit from the Internal Market (cross border activities)
- Main improvements by IORP II
 - (i) new governance requirements,
 - (ii) new rules on IORPs' own risk assessment,
 - (iii) new requirements to use a depositary, and
 - (iv) enhanced powers for supervisors

Regulation (EU) 2019/1238 on PEPP (pan-European Personal Pension Product)



- **Adoption procedure:**

- COM/2017/0343 final - 2017/0143 (COD),
- adopted on 20/07/2019, in force since: 14/08/2019

- **Purpose:**

- provide savers with more choice and more competitive personal pension products market
- complementing existing public and occupational pension systems, as well as national private pension schemes

- **Main features:**

- legal foundation for voluntary personal pension scheme products
- can be offered to consumers on pan-European level
- broad range of financial providers
 - (such as insurance companies, asset managers, banks, certain investment firms and certain occupational pension funds)
- standardisation of the core product features
 - (e.g. transparency requirements, investment rules, switching right and type of investment options → Consumer protection)

Further reading:

- E.g.
 - Pennings, Frans: European Social Security Law, 6th edition, Intersentia, 2015 (7th edition forthcoming in October 2022)
 - Fuchs/ Janda (Hrsg.): Europäisches Sozialrecht, 8. Auflage, Nomos, 2022
 - Hennion, Sylvie; Muriel Le Barbier-Le Bris, Marion Del Sol, Jean-Philippe Lhernould: Droit social européen et international, 3e édition, PUF, 2017
 - Vukorepa, Ivana; Jorens, Yves; Strban, Grega. (2019). Pensions in the Fluid EU Society: Challenges for (Migrant) Workers, in: da Costa Cabral N., Cunha Rodrigues N. (eds). The Future of Pension Plans in the EU Internal Market, Financial and Monetary Policy Studies, vol 48., Springer, Cham, pp. 325-349 Chapter DOI: 10.1007/978-3-030-29497-7_18, https://link.springer.com/chapter/10.1007/978-3-030-29497-7_18

Helpful websites:



- **DG Employment, Social Affairs & Inclusion**

- EU social security coordination, <http://ec.europa.eu/social/main.jsp?langId=en&catId=849>
- Specialized information: <http://ec.europa.eu/social/main.jsp?catId=866&langId=en>

- **Your Europe (Retiring abroad)**

- https://europa.eu/youreurope/citizens/work/retire-abroad/index_en.htm

- **MoveS - Network of Legal Experts on Free Movement of Workers and Social Security Coordination**

- General website: <https://ec.europa.eu/social/main.jsp?catId=1098&langId=en>
- MoveS database on coordination regulations and case law: <https://ec.europa.eu/social/main.jsp?catId=1502&langId=en>

- **Information on national social protection systems**

- Mutual Information System on Social Protection (MISSOC): <https://www.missoc.org/>
- Pension Maps (Max Planck):
 - <https://www.mpisoc.mpg.de/sozialrecht/forschung/forschungsprojekte/pension-maps/>
 - https://www.mpisoc.mpg.de/fileadmin/user_upload/data/Sozialrecht/Projekte/Report_PensionMaps_Secondedition.pdf
- DG EMPL website, „Your rights country by country”, <http://ec.europa.eu/social/main.jsp?catId=858&langId=en>

Thank you for your attention in the hope that this
“navigation” presentation
was useful!

If more questions:

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The Icelandic Pension System

September 2022

THE ICELANDIC
PENSION FUNDS
ASSOCIATION





Facts and figures



- Population of Iceland: **376.000** (year-end 2021)
- Pension assets (year-end 2021):
 - **7.000 billion ISK** ($\approx 47,5$ billion EUR)
 - **215% of GDP**
 - **18,6 million ISK** (≈ 126.000 EUR) per inhabitant
- Contributions
 - Mandatory **15,5%**
 - Supplementary pension savings **4%-6%**



Three pillar pension system

First pillar

- Tax-financed public pension
- Minimum pension
- Income adjusted

Second pillar

- Occupational pension funds
- Mandatory savings based on wages.
- Fully funded system

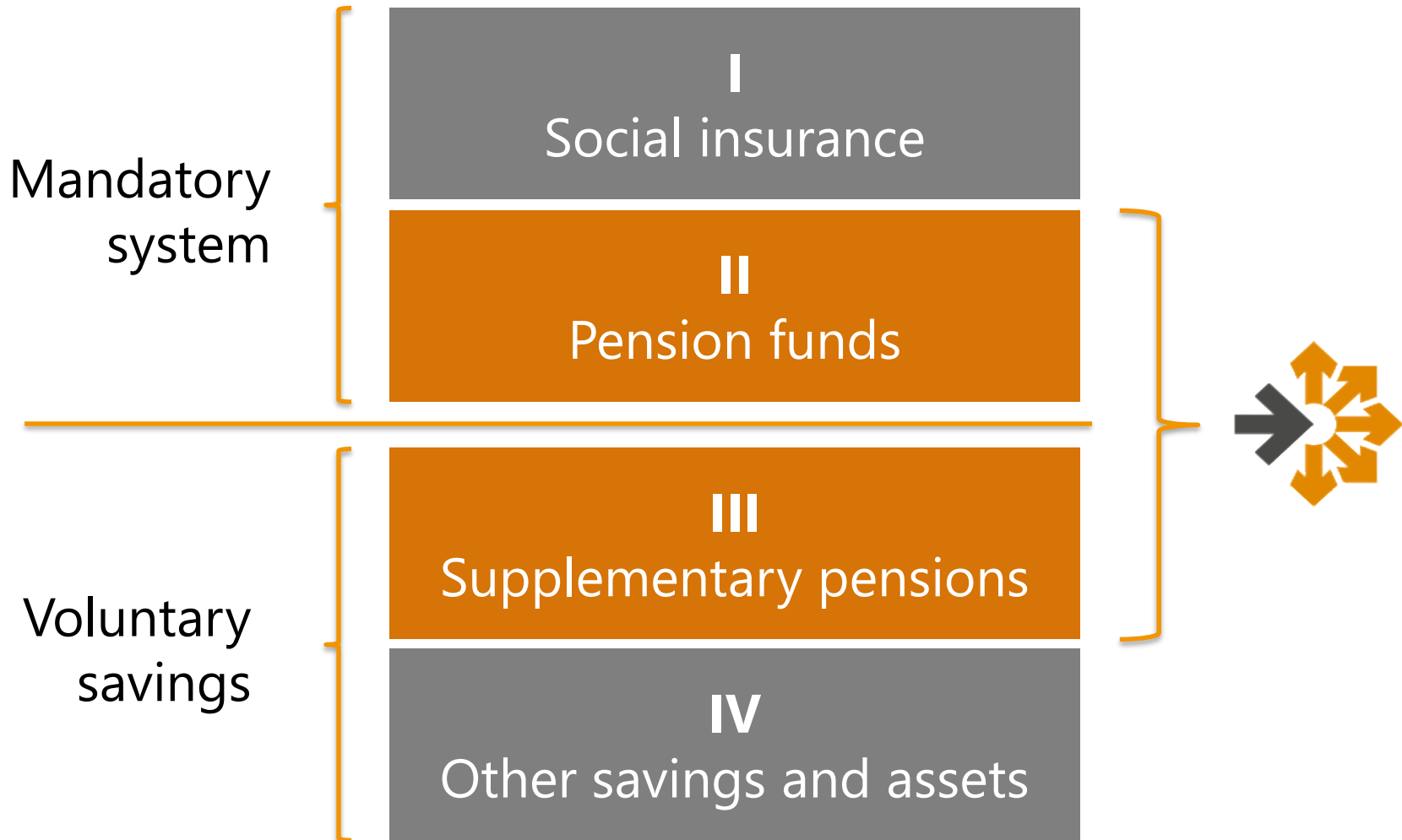
Third pillar

- Voluntary individual pension savings with tax incentives

The main characteristic of the Icelandic pension system is the operation of mandatory occupational pension funds



Retirement income





The first pension pillar

Basic structure:

- Each year of residence 1/40th of entitlement, minimum 3 years residence
- Inflation protected (CPI or better)
- After 40 year residence: Full basic amount (income- tested)

Basic amounts in 2022

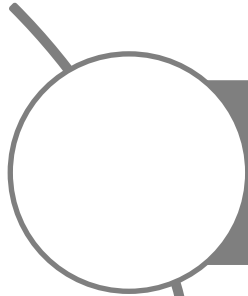
- Person, living alone: 359,046 ISK (€ 2,500)
- Person, sharing: 286,619 ISK (€ 2,050)

All amounts income-tested

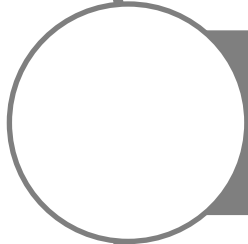
- First 25,000 ISK per month exempt (€ 170)
 - Income from work 200,000 ISK (€ 1,400)
- All other income: 1st pillar pension reduced by 45% of income



The second pension pillar

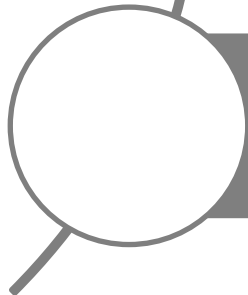


Mandatory contributions at ages 16–70



Mainly industry-wide pension funds

- membership governed by labour contracts

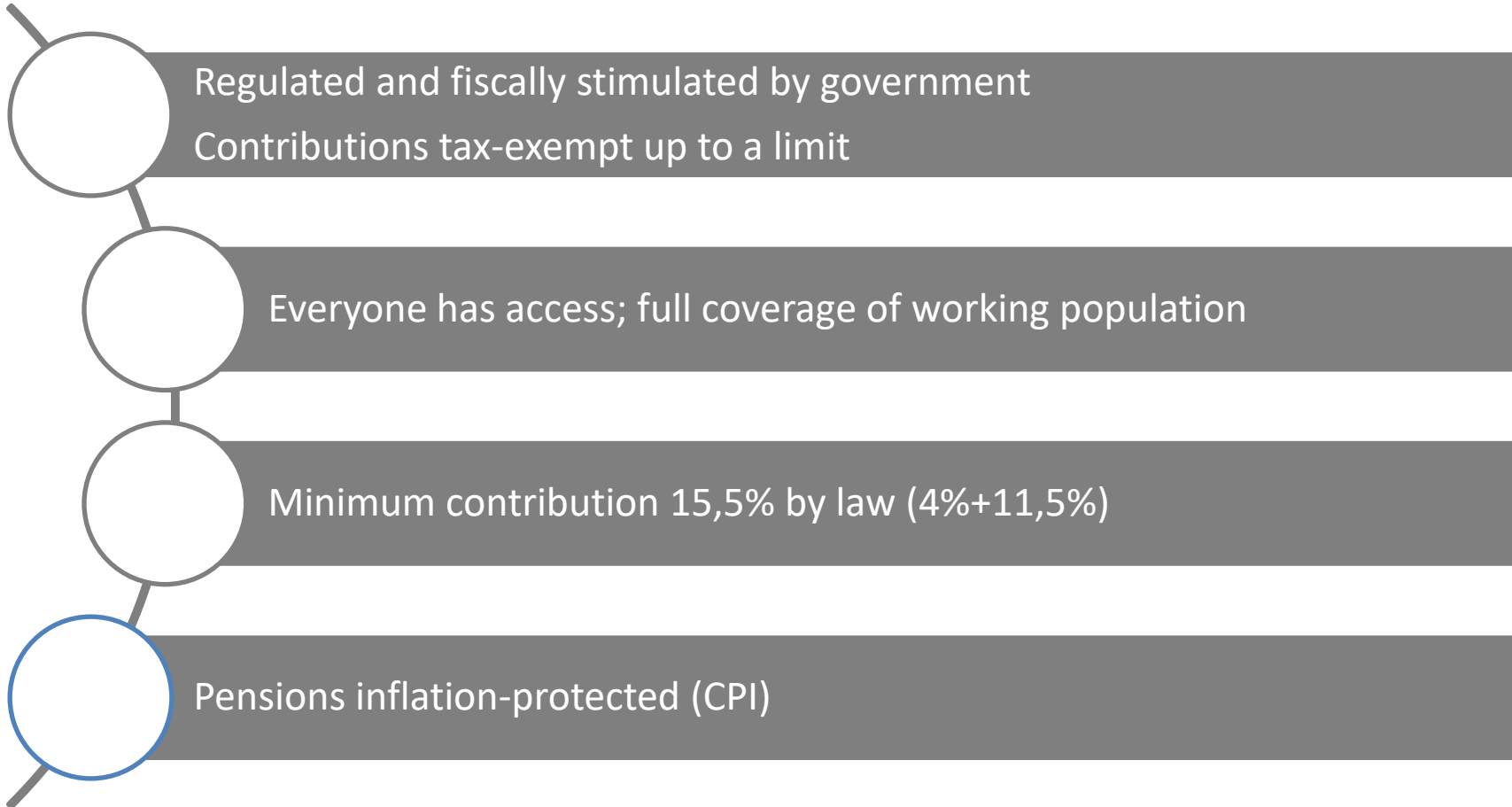


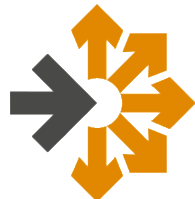
Managers, specialists, self-employed are free to choose pension funds;

- several „free“ pension funds focus on them



The second pension pillar





The third pension pillar

Government-approved savings products

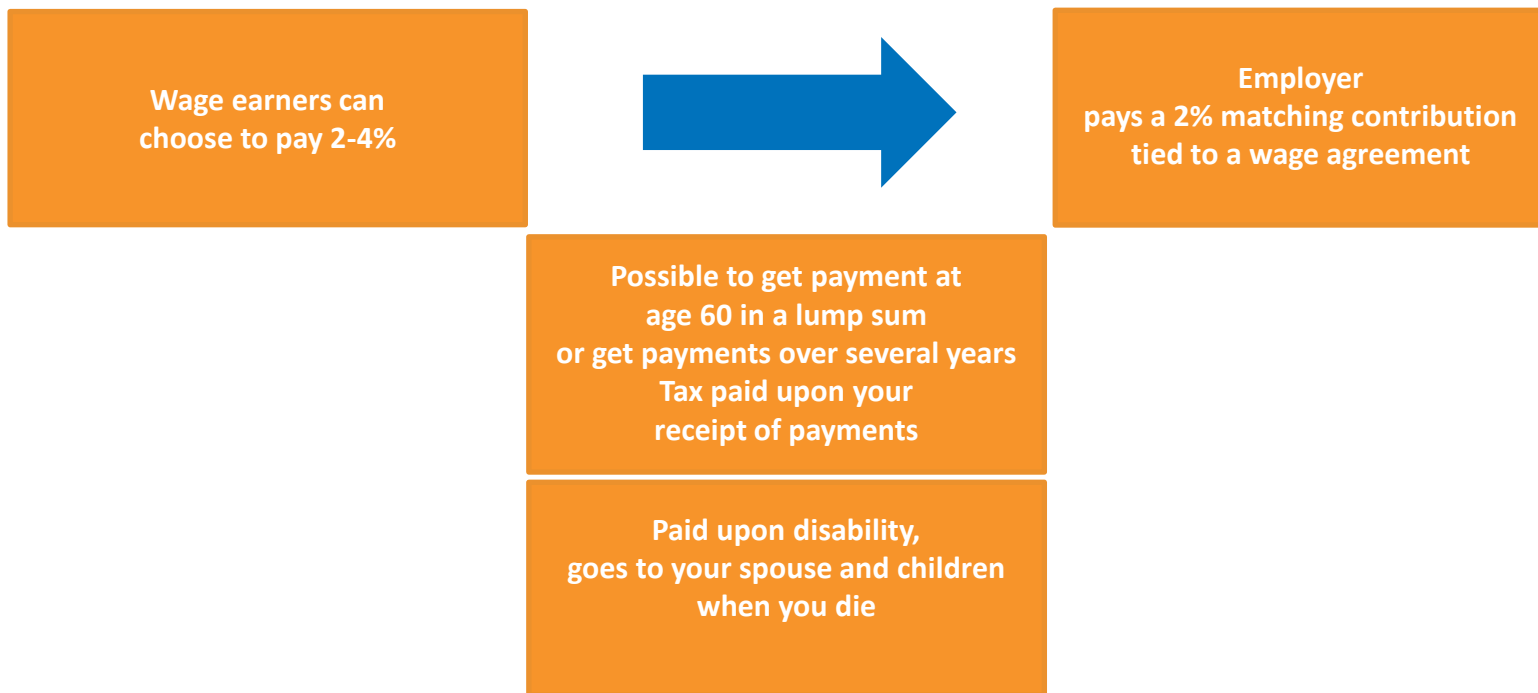
Managed by 2nd pillar pension funds,
banks and insurance companies

Fiscally stimulated by government,
tax-exempt contributions up to a limit

Individual decision to participate,
approx. 60% participation

Supplementary savings

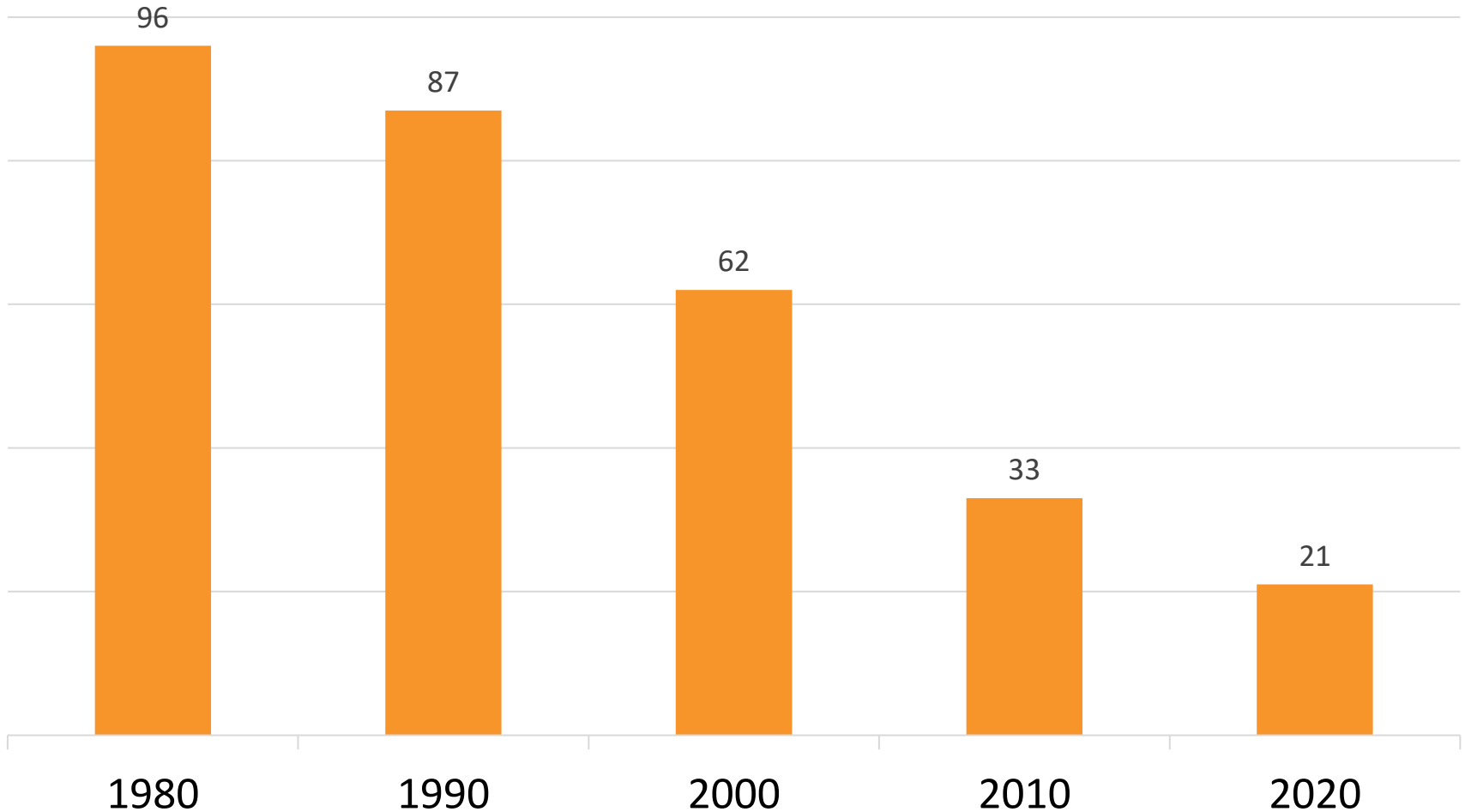
– equivalent to a 2% pay raise





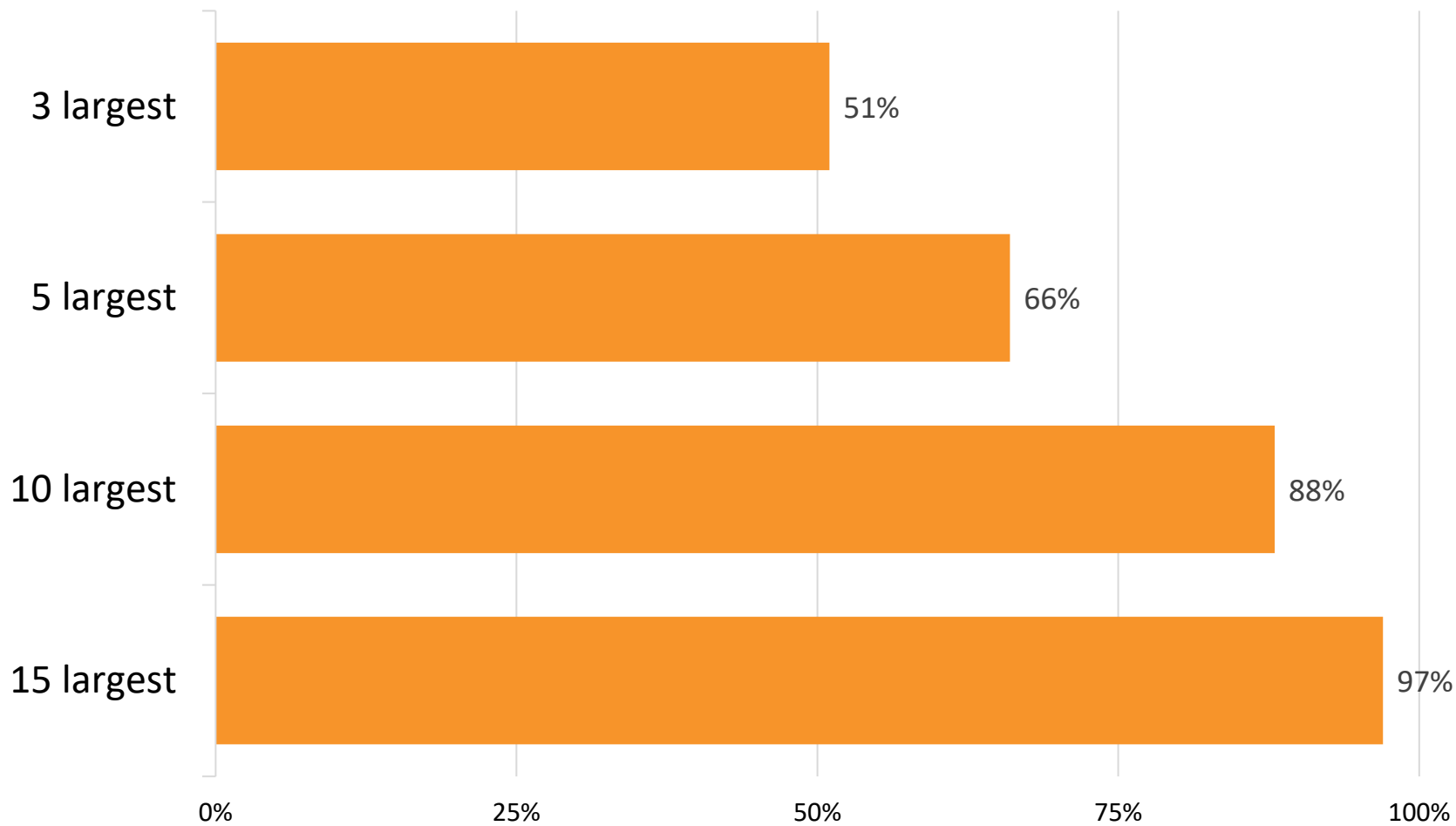
Iceland has 21 pension funds

Number of pension funds has decreased steadily for many years





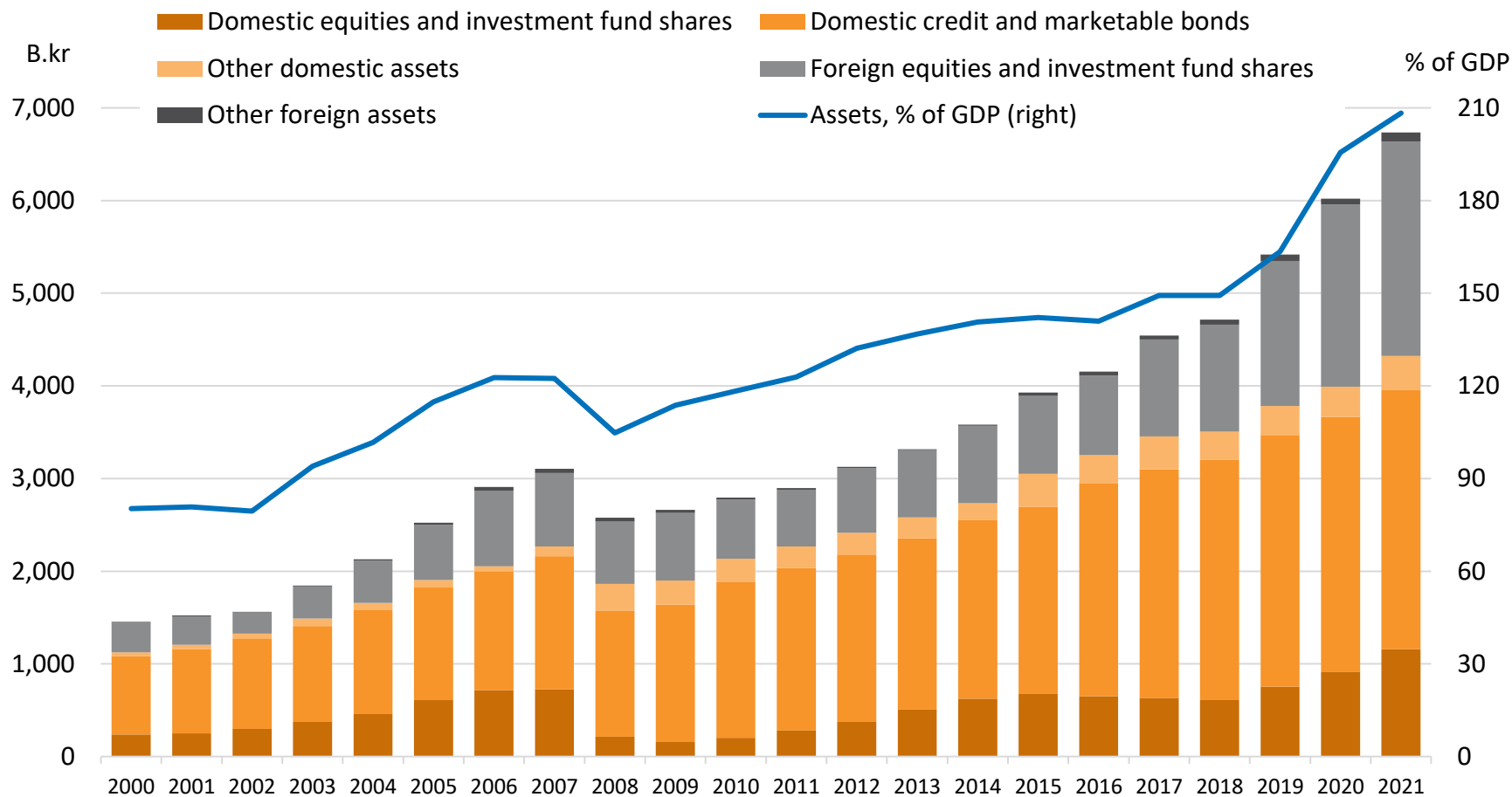
Few large funds



Source: The Central Bank of Iceland - FSA



Pension funds assets

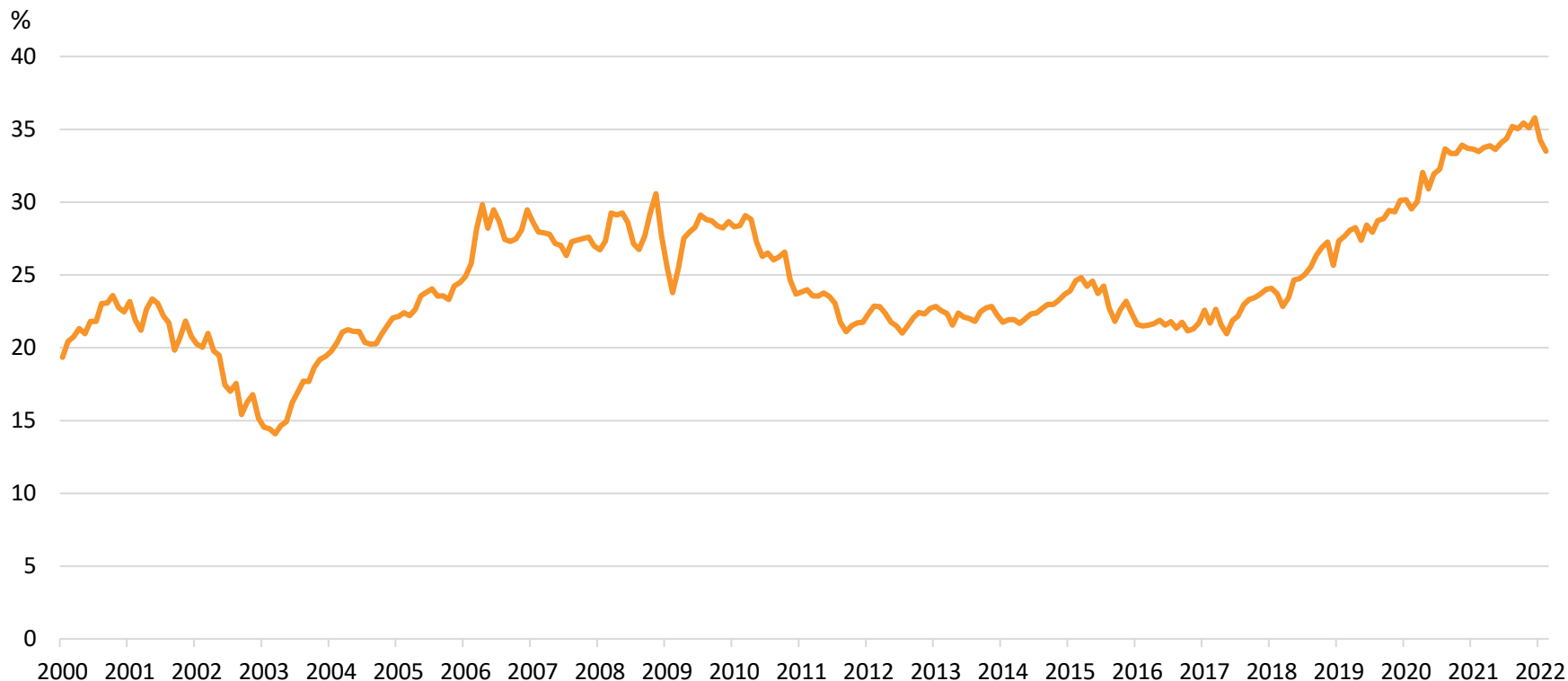


1. Real pension funds assets at fixed december 2021 prices.
Sources: The Central Bank of Iceland, Statistics Iceland



Foreign assets

Percentage of total assets



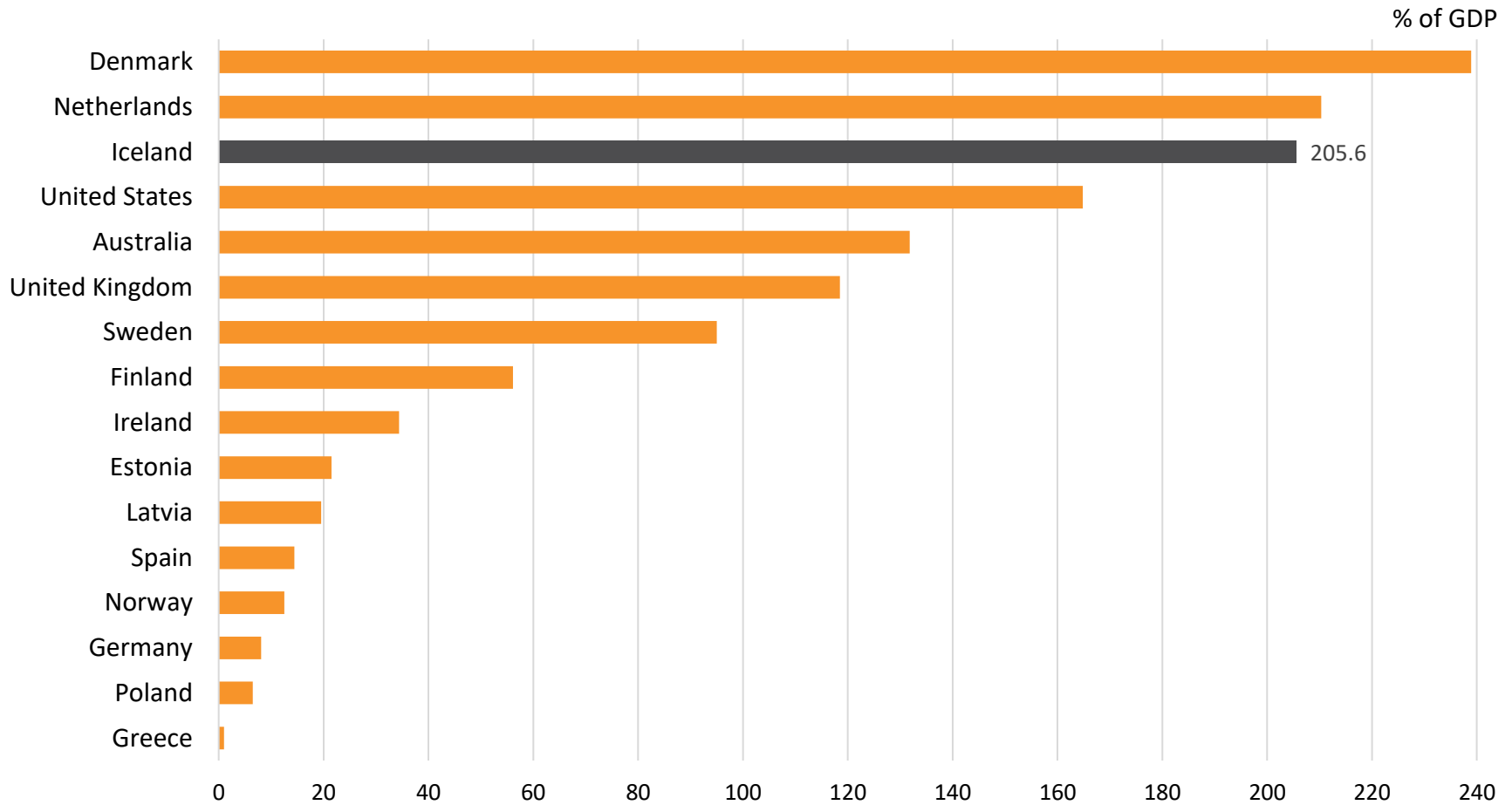
Source: The Central Bank of Iceland

The upper limit of foreign currencies is 50% of total assets, and if pension funds exceed that limit, they must hedge currency risk or sell assets.



Pension assets to GDP

Year-end-2020

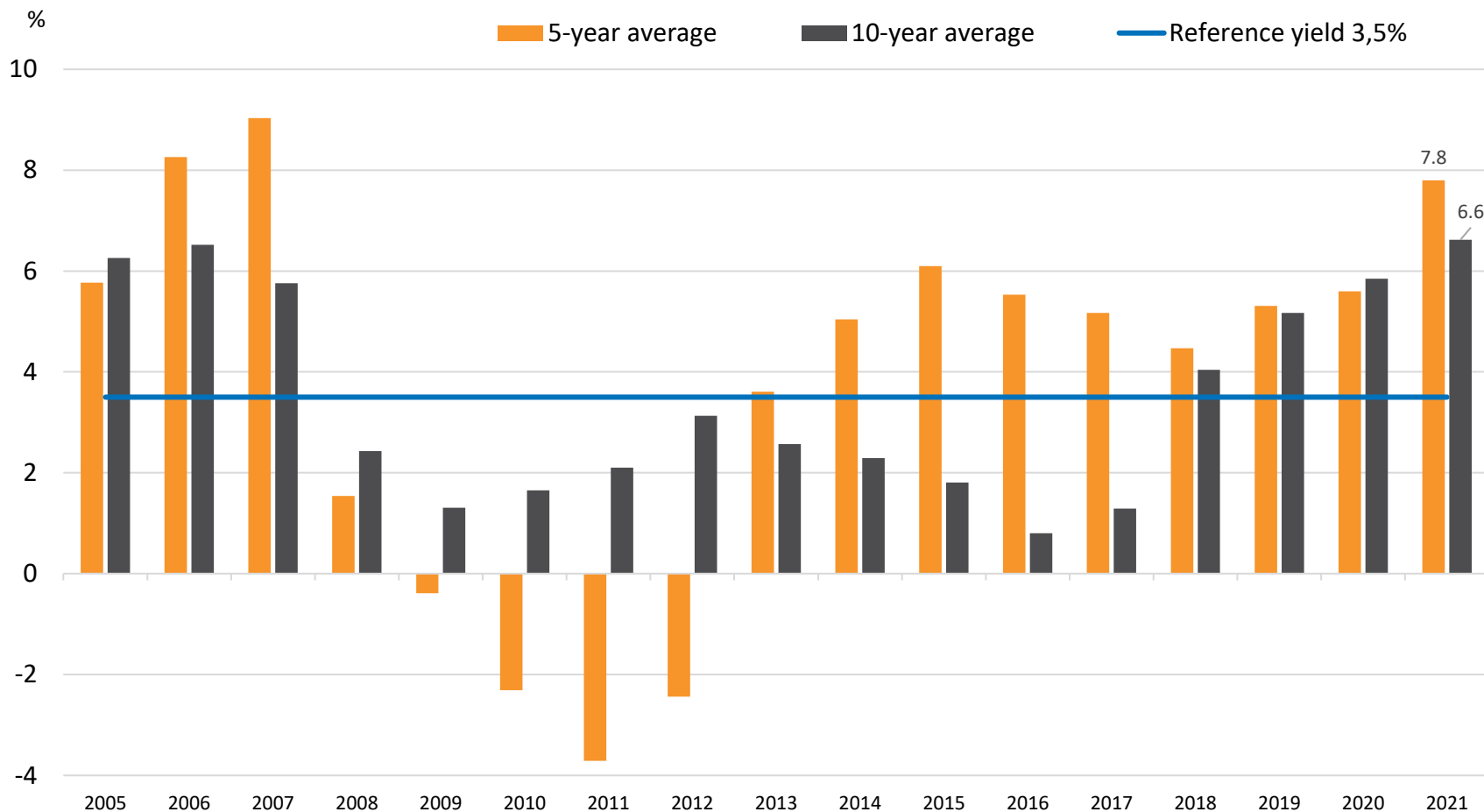


Source: OECD Pensions at a Glance 2021



Annual real return of pension funds

5- and 10-year moving average



Source: The Central Bank of Iceland - FSA



Mercer – CFA Pension index



Top ranking pension systems in the world, each receiving an A-grade in 2021:



Iceland (84.2)



Netherlands (83.5)

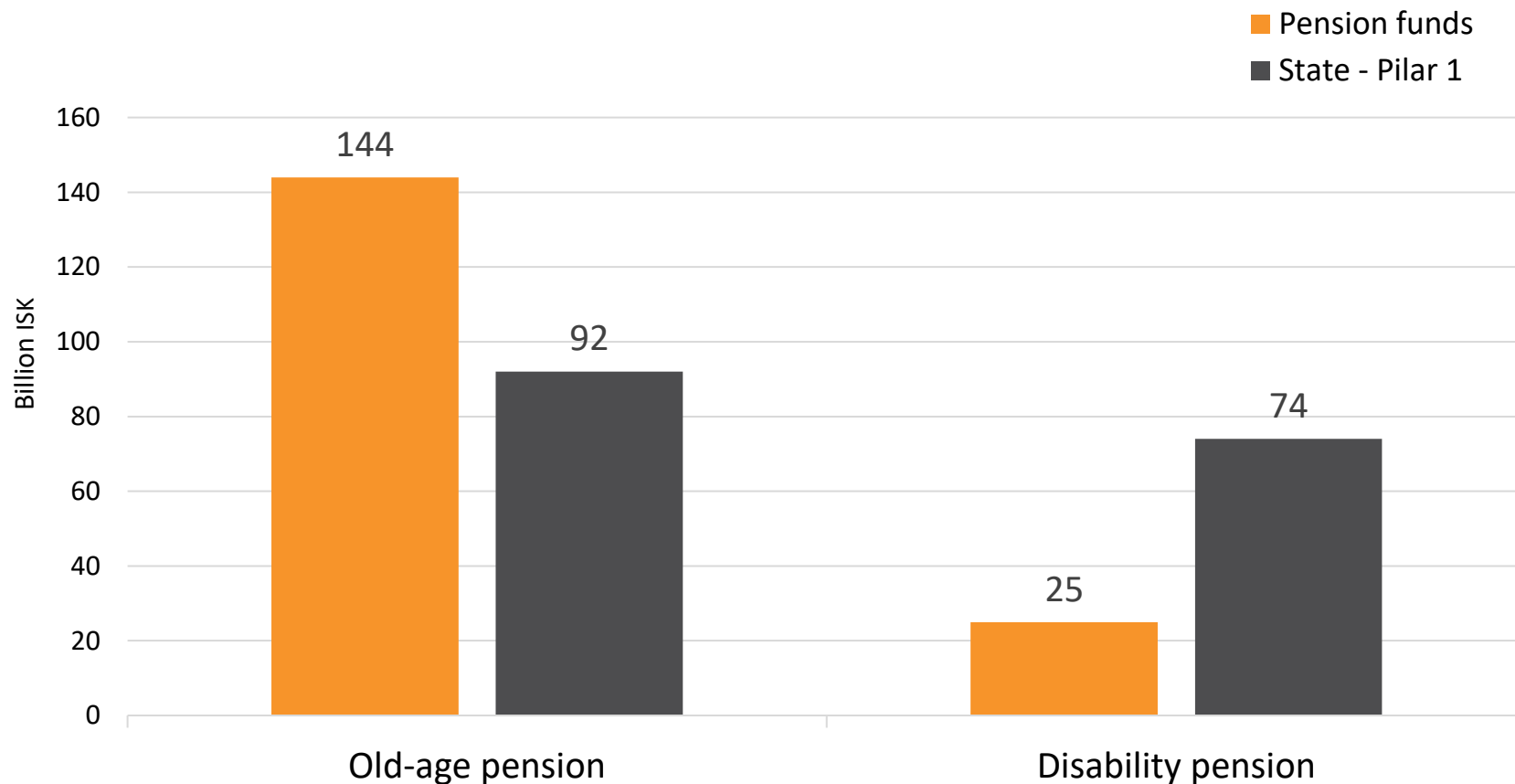


Denmark (82.0)



Old-age and disability pension in 2021

Pension funds paid around 60% of old-age pension in 2021



Sources: The Central Bank of Iceland - FSA, Social Insurance Administration



More than old age pension

- **Disability pension**

- If illness or accident reduces their work capacity by at least 50% and their income is similarly reduced

- **Pension of a surviving spouse**

- Full pension for the living spouse shall be paid for at least two years

- **Pension for surviving children**

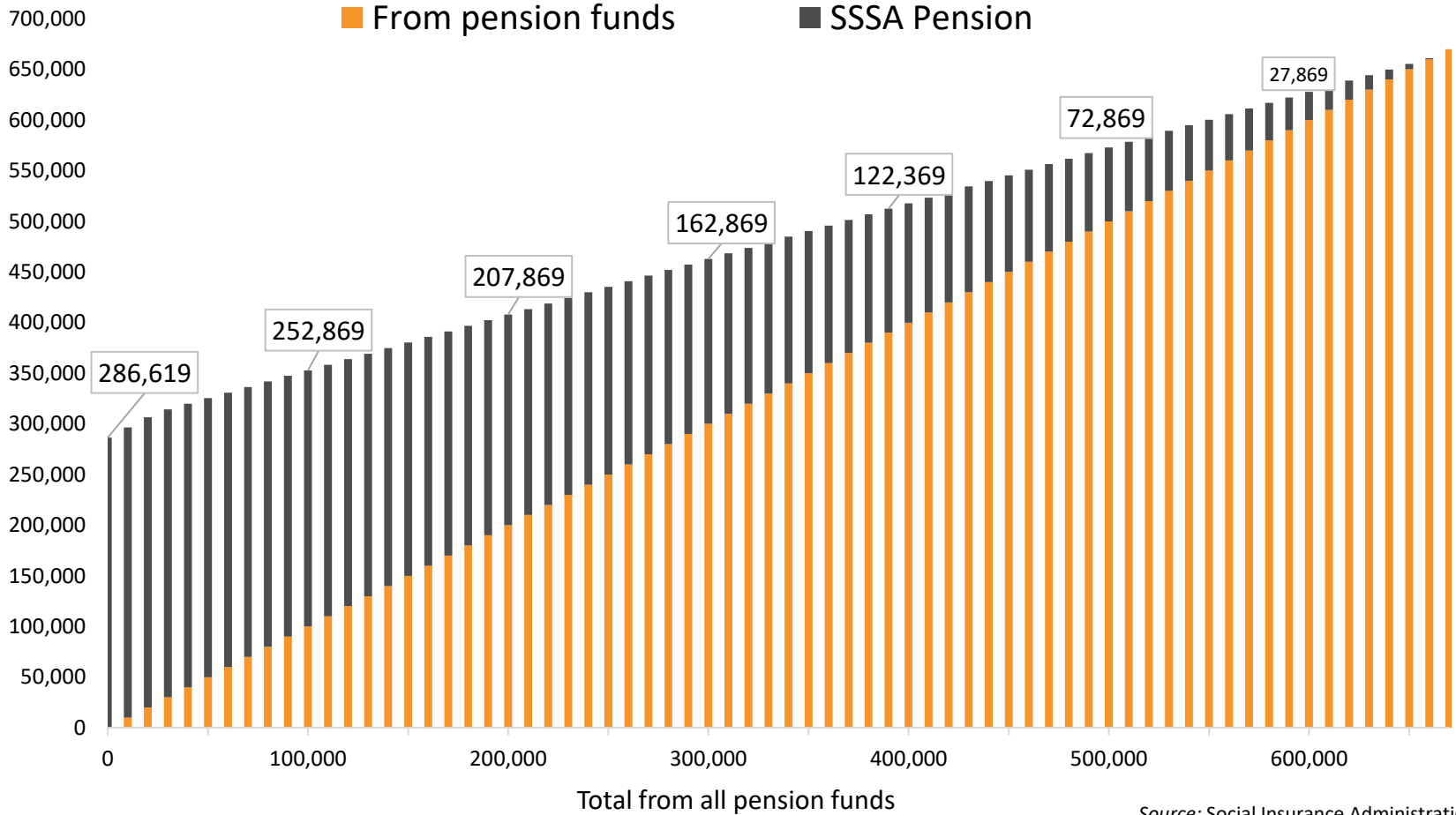
- Is paid until children reach 18 years



Total pension

Interplay between social security pension and pension from pension funds

Total pension ISL. Kr.



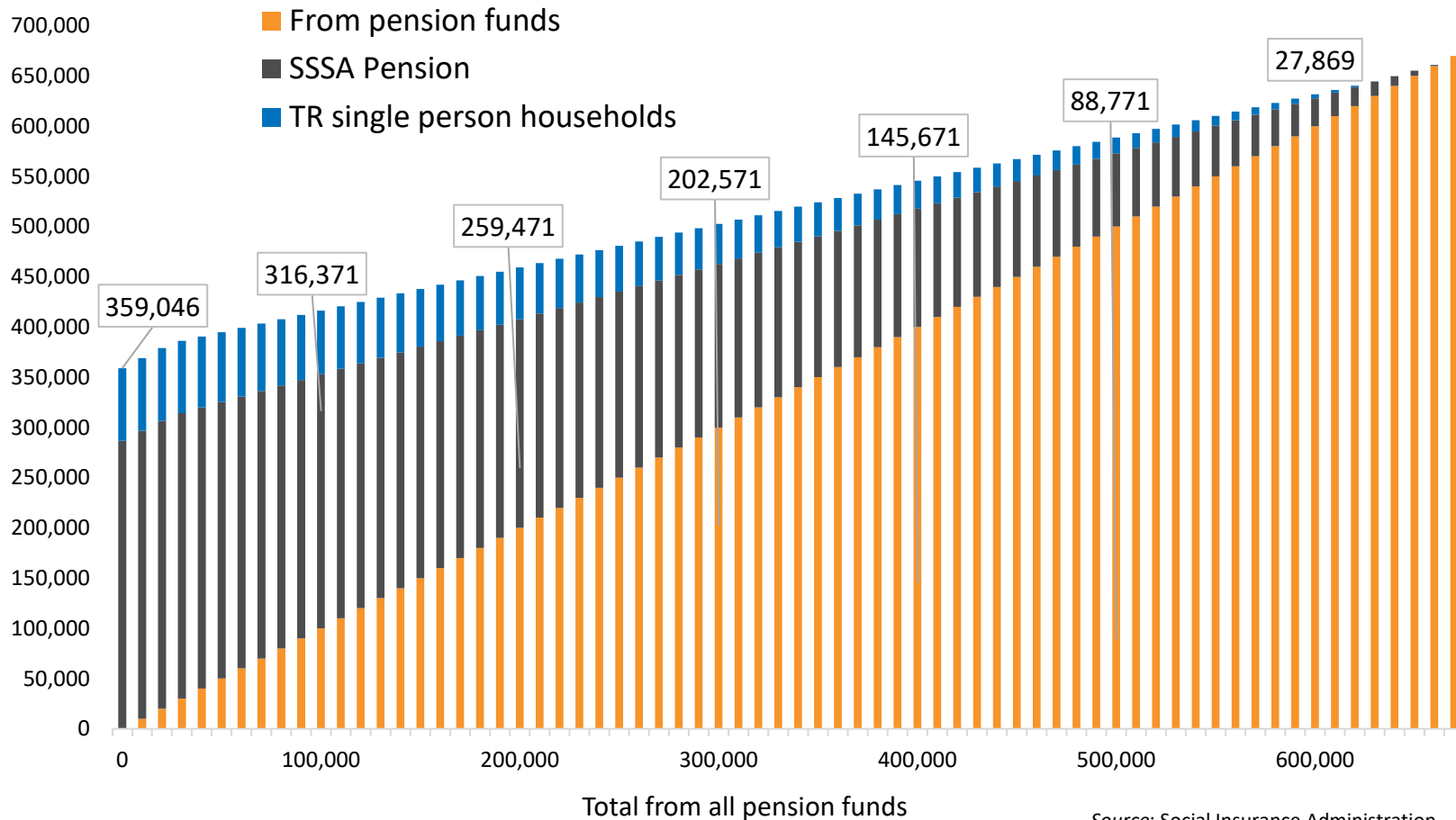
Source: Social Insurance Administration



Total pension

Interplay between social security pension and pension from pension funds

Total pension ISL. Kr.

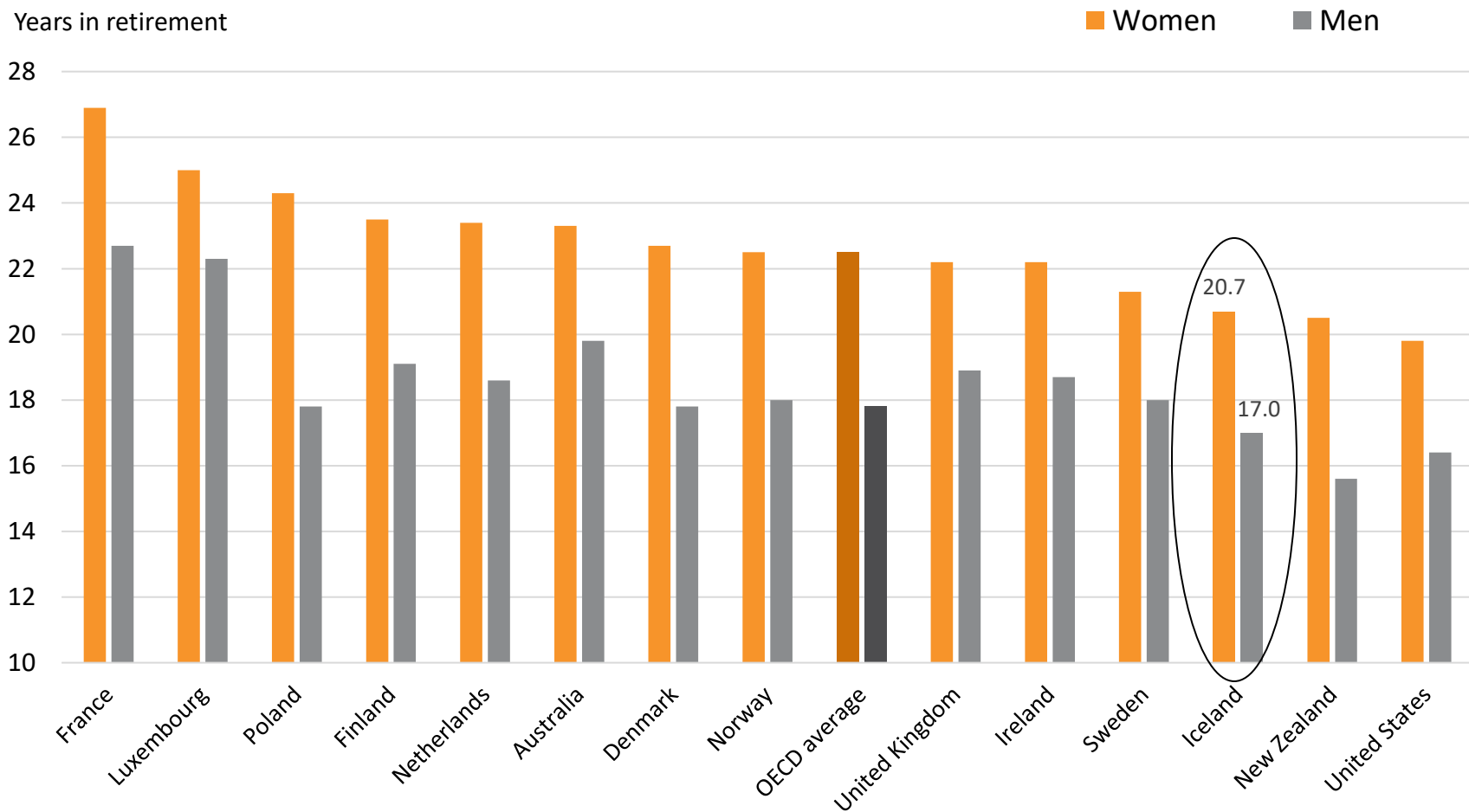


Source: Social Insurance Administration



Expected number of years in retirement

OECD comparison

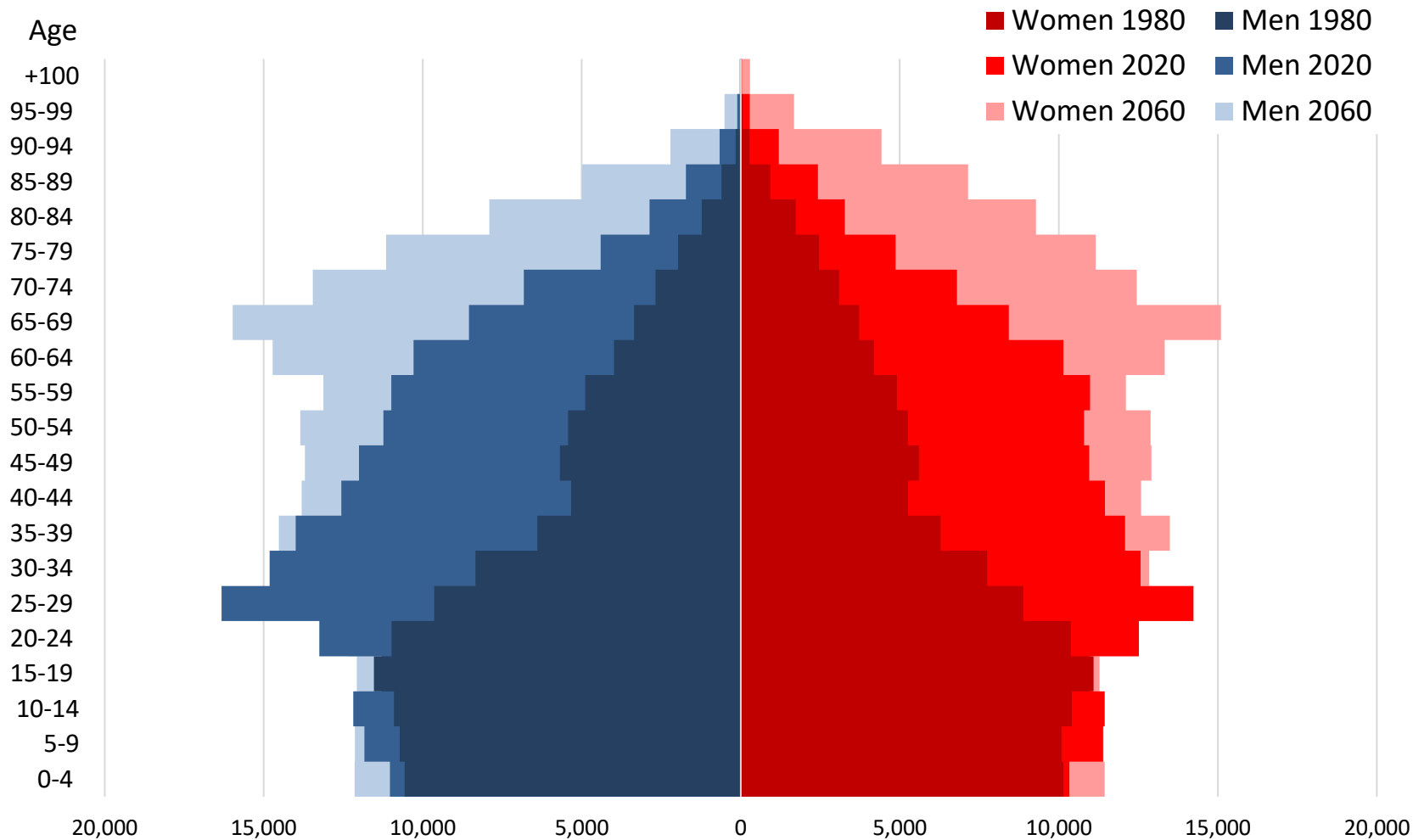


Source: OECD - Pension at a glance 2019



Age pyramid

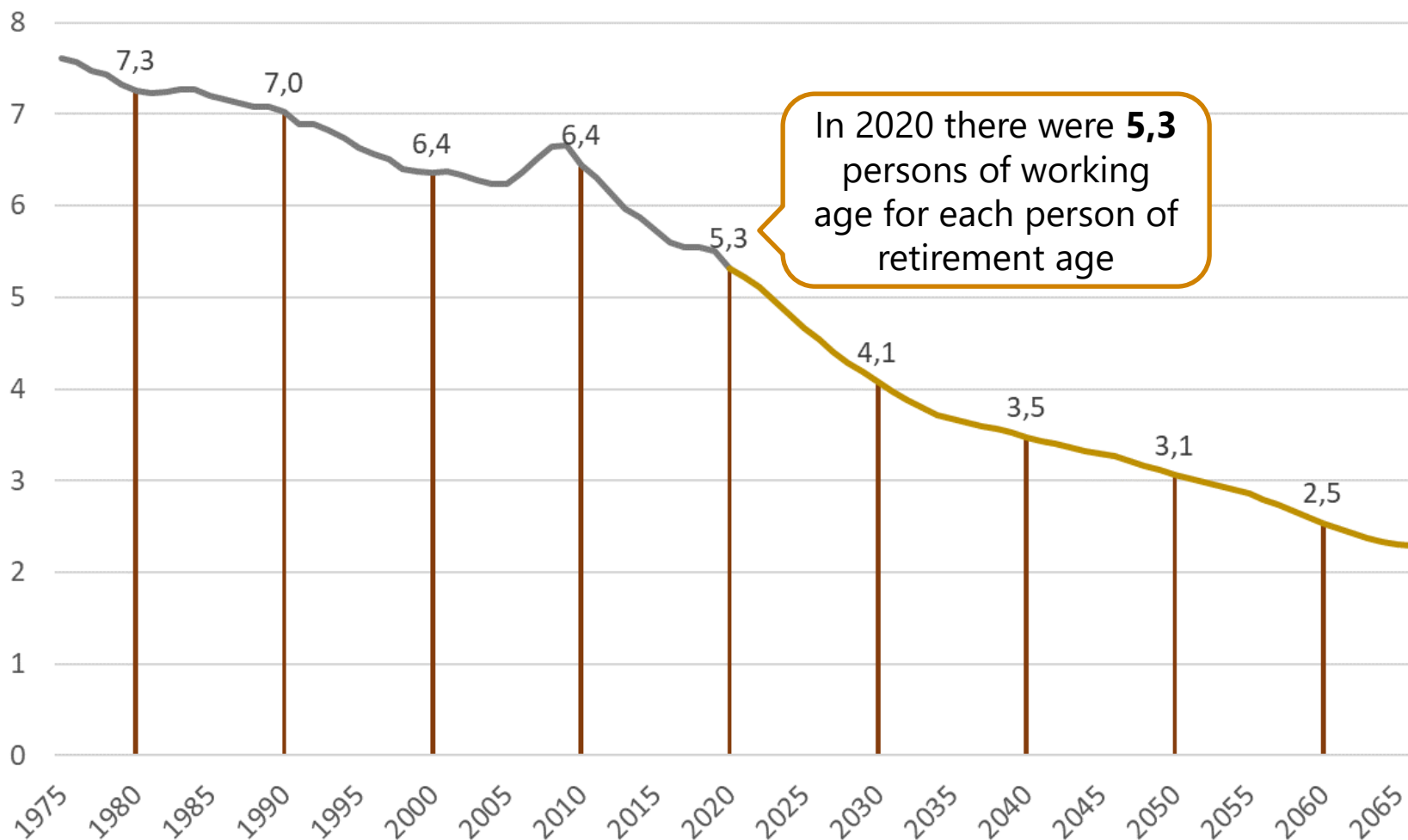
Past - Present - Future



Source: Statistics Iceland



Persons of working age (16-66) vs. retirement age (+67)



Source: Statistics Iceland



Summary

Overall, Iceland has a good and sustainable pension system

Mandatory occupational pension funds with 100% coverage are the core of that system

- Generally fully-funded for the general labour market
- Partially funded for public servants

Good safety net provided by Pillar I social insurance

Iceland is therefore better prepared than most countries for the „old age crisis“

Further information on www.icelandpension.is

THE ICELANDIC
PENSION FUNDS
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Social security cash benefits for mobile persons

Is everything clear?

Bernhard Spiegel

MoveS seminar Reykjavik 23.9.2022

Content

- Introduction: purpose of cash benefits under national social policy aims
- Cross border situations – Regulation (EC) No 883/2004
- Entitlement to cash benefits
- Calculation of cash benefits – of specific interest: Do we have to take into account income gained in another Member State?
 - **[sickness and maternity benefits*]**, pensions, unemployment benefits and family benefits

* will be dealt with separately in more detail in relation to the *Einarsdóttir-case*

Purpose of cash benefits

National social policy aims (1)

Income replacement function

- aim of the benefit is the replacement of income, which - due to the materialization of a risk covered by social security - cannot be gained
- could be last income or (average) income during a reference period
- adjustment of income of past periods because of changes in (living) costs

Needs-related function

- does not depend on gained income
- is calculated depending on the (physical/material) needs of the person concerned
- amount usually determined by law or the authorities not for the individual case but for the group of persons concerned

National social policy aims (2)

Income replacement function

- e.g. pensions for the gainfully active population
- e.g. sickness or maternity allowance for an interruption of the gainful activity
- e.g. unemployment benefits

Needs-related function

- e.g. benefits for all residents
- e.g. long-term care benefits
- e.g. [minimum and social assistance-related benefits]
- e.g. family allowances

Hybrid benefits

e.g. lump-sum or income-replacement child-raising benefits

Cross-border situations

Problems and questions in cross-border situations

Income replacement function

- determination of the competent Member State (MS)
- no/not enough income in this MS but income in another MS
- national reference periods
- overlap of benefits

Needs-related function

- determination of the competent MS
- export of the benefit
- reservation of benefits for persons with a „sufficient link“ to the MS
- overlap of benefits

Answers of Regulation (EC) No 883/2004

- **Material scope** (Art. 3): all benefits related to one of the enumerated risks, if they are based on „legislation“ - also residence based schemes, tax-financed schemes
- **Competence** (Title II): MS where the gainful activity is exercised; default: MS of residence (Art. 11 (3) (e) of Regulation (EC) No 883/2004); different provisions of Title III for the granting of some of the benefits (e.g. pensions from any MS where the person concerned has been insured in the past)
- Detailed provisions on **calculation of benefits** and for overlap of benefits (Title III)

Entitlement to benefits

Aggregation of periods (1)

What is a period (of insurance or residence)?

- Depends on **national definition and system** (Art. 1 (t – v) of Regulation (EC) No 883/2004)
- National law must be interpreted in the light of the **fundamental freedoms** – Art. 44 of Regulation (EC) No 987/2009 concerning child-raising periods is too narrow and there is an obligation to take into account such periods not provided under national law if there is a **sufficiently close link** to the MS concerned (ECJ C-576/20, *Pensionsversicherungsanstalt [child-raising periods abroad]* – Art. 21 TFEU) – is this applicable under the **EEA-Agreement**?

Aggregation of periods (2)

- **All (!) periods** must be aggregated by the competent (!) MS when national legislation makes entitlement to a benefit dependent on the completion of a specific number of periods (Art. 6 of Regulation (EC) No 883/2004)
- If the national legislation makes entitlement dependent on **specific periods** (e.g. periods of a gainful activity) only those periods completed in another MS, which fulfil this condition have to be aggregated (Art. 5 of Regulation (EC) No 883/2004 and Decision H6 of the AC)
- Is aggregation $1 + x$ or $0 + x$? Open question – dependent on the type of benefit? for pensions: $12 + x$ (Art. 57 of Regulation (EC) No 883/2004); for family benefits: $0 + x$ (ECJ C-257/10, *Bergström*)?

“Sufficient link” to the MS concerned

- Is the competent MS of residence entitled to deny **benefits, which are needs-related** for persons who do not have a sufficient link to this MS? – the own nationals would receive these benefits in the same situation (question of equal treatment)
- Under **Art. 4 of Regulation (EC) No 883/2004** no different treatment possible (? – other direction ECJ C-308/14, *Commission against UK* – family benefits can be restricted to persons with a legal residence – turnaround (?) C-411/20, *Familienkasse Niedersachsen-Bremen*, entitlement to family benefits for the first 3 months as the residence is always legal)
- In transposing **Directive 2004/38/EC** restriction of “social assistance” benefits to a person with a legal residence (no recourse to social assistance) is possible (ECJ C-140/12, *Brey*, C-333/13, *Dano* etc.) – unless this leads to a breach with fundamental rights (ECJ C-709/20, *The Department for Communities in Northern Ireland*)

Calculation of the benefits

Sickness and maternity benefits (1)

if the gainful income is decisive, only income gained in the competent MS is relevant (Art. 21 of Regulation (EC) No 883/2004)

- “(4) ... [this] ... shall apply *mutatis mutandis* to cases where the legislation applied by the competent institution lays down a specific reference period which corresponds in the case in question either wholly or partly to the periods which the person concerned has completed under the legislation of one or more other MS.”
- ? : does this prolong the reference period accordingly? Or, are foreign periods taken into account with the national calculation base?

Sickness and maternity benefits (2)

- **Example for Art. 21 (4) of Regulation (EC) No 883/2004: Assumption:** under national legislation of MS A the average income during the last 6 months is taken into account – gaps reduce the benefit (100% thereof is the benefit).



- **Possibility 1:** aggregation [pension philosophy - Art. 56 (1) (c – d)]: 3 months MS A à 1,500 € + 2 months MS B à 0,00 € + 1 month MS B à 1,500 € = 6,000 € : 6 months = 1,000 € monthly benefit – is this the same result as in case C-651/16, *DW* (taking into account of periods with an EU institution under Art. 45 TFEU) or C-29/19, *Bundesagentur für Arbeit* concerning unemployment benefits?
- **Possibility 2:** neutralisation: 3 months MS A à 1,500 € + 3 months MS A à 1,500 € (the periods in MS B do not count) : 6 months = 1,500 € monthly benefit

Sickness and maternity benefits (3)

- What happens in cases, in which **no income** has been gained in the competent MS? [this MS is competent as MS of residence under Art. 11 (3) (e)]
- For family benefits based on the amount of the possible sickness benefit: ECJ C-257/10, *Bergström*: If the MS provides for lump-sum benefits for the non-active population and income-replacement benefits for those who have been gainfully active (240 days before the materialisation of the risk); the latter have to be provided, based on the **income a person with equivalent experience and qualification would have gained in the competent MS** (not the income lastly gained in another Member State). Is this applicable to sickness benefits?
- Is this also applicable when there is national income, but it lies **totally outside the national reference period**? Has it to be adjusted to the development of the costs or the possible fictitious future career in this MS (ECJ C-205/05, *Nemec*)?

Pensions (1)

General principles:

- Only income received, contributions paid etc. under the national system of the MS, which calculates its pension, have to be taken into account – periods in another MS have to be taken into account **with the same elements** (Art. 56 (1) (c – d) of Regulation (EC) No 883/2004)
- There is no obligation to grant benefits for foreign periods under the pro-rata calculation (exception: if in the other country **less than 12 months** have been completed – Art. 57 of Regulation (EC) No 883/2004)
- Every MS (also the one not competent at the moment) has to grant the benefits according to the elements under its legislation

Pensions (2)

Exceptions (?):

- If the national legislation provides that the **invalidity benefit** corresponds to the **last income**, unless before the occurrence of the invalidity no gainful activity has been exercised (then only a minimum benefit is granted) and the last income has been received in another MS, this income is the base for granting the benefit (ECJ C-406/93, *Reichling*)
- When a national benefit is based on the average base of **contributions during a reference period** and when for periods of no gainful activity during this reference period a minimum amount is taken into account, it is not necessary to include contributions paid in another MS during this period (but it is not possible to take into account only the minimum amount); only the contributions paid in the competent MS have to be taken into account (even if they are outside this reference period), **accordingly adjusted** (ECJ C-251/94, *Lafuente Nieto*) – does this include the obligation to take into account the **wage-developments** which would have incurred in the competent MS including any possible promotion (ECJ C-205/05, *Nemec*)?

Pensions (3)

Special aspects of the calculation:

- If the national legislation provides that the periods of insurance due to a gainful activity have to be **completed by contribution-free periods** of - as a maximum - 1/3 of the periods of insurance, foreign periods have to be added to calculate the 1/3 for the theoretical amount but not for the actual amount (ECJ C-866/19, *Zakład Ubezpieczeń Społecznych I Oddział w Warszawie Wydział Realizacji Umów Międzynarodowych*)
 - Does this lead to correct results? E.g. MS A: 6 years of insurance; MS B: 24 years of insurance
 - theoretical amount for $6 + 24 = 30 + 10 (=1/3) = 40$ years of insurance
 - actual amount: $40 \times [6 + 2 (=1/3)] : [6 + 2 + 24] =$ benefit corresponds to 10 years (national only 8 years) [MS B if it had the same system: benefit for 33,68 years (national only 32 years)]

Unemployment benefits (1)

General principles:

- The gainful **income received in the competent MS** has to be taken into account [Art. 62 (1) of Regulation (EC) No 883/2004]
- This applies also if there is a **reference period** for the calculation and foreign periods lie within this period [Art. 62 (2) of Regulation (EC) No 883/2004 - similar to Art. 21 (4) of Regulation (EC) No 883/2004 for sickness and maternity benefits]
- Only for **unemployed frontier workers** who receive unemployment benefits from their MS of residence the income received in the other MS of last employment has to be taken into account [Art. 62 (3) of Regulation (EC) No 883/2004]

Unemployment benefits (2)

General principles:

- Under Regulation (EEC) No 1408/71 for a person with less than 4 weeks in the competent MS the benefit had to be based on the normal wage or salary corresponding, in the place where the unemployed person is residing or staying, to an **equivalent or similar employment to his last employment** [Art. 68 (1)] – not applicable to frontier workers, as the last income received in the last MS of employment has to be taken into account (ECJ 67/79, *Fellinger*); national limits under the legislation of the MS of last employment must not be applied by the MS of residence (ECJ C-201/91, *Grisvard and Kreitz*)
- If there is a reference period, foreign periods have to be included – therefore, it is not possible to take these periods into account with a **fictitious amount** under national law for periods without gainful income but the income actually gained in the competent MS (even if not yet paid out) has to be attributed also to these periods (ECJ C-29/19, *Bundesagentur für Arbeit*)

Family benefits (1)

General principles:

- Every MS, which is competent for one of the parents or the child (?) has to grant the benefits under its legislation; in case of overlap Art. 68 of Regulation (EC) No 883/2004 provides a **hierarchy** of the MS competent by priority (has to pay the full amount) and other MS, which have to pay a differential amount
- Regulation (EC) No 883/2004 **does not contain a provision for the calculation** of the benefit (not necessary for traditional family allowances as they used to be lump-sum)

Family benefits (2)

Child raising benefits (1):

- Could have an **income-replacement function** [in addition to a lump-sum benefit (for all residents)]
- e.g. Austrian *Kinderbetreuungsgeld* (could be shared between the parents, which leads to longer periods of entitlement):
 - Either 33,88 € per day (lump-sum) for 365 days (could be up to 851 days with corresponding reduction)
 - Or 80 % of the income-replacement maternity allowance for 365 days, if before confinement a gainful activity has been exercised for 182 days

Family benefits (3)

Child raising benefits (2):

ECJ C-32/18, *Moser*:

- When the mother works in AT (competent MS for the mother) and the husband in DE (competent MS for the father), where the family resides, AT has to grant the *Kinderbetreuungsgeld* also for the father - if he takes over child raising responsibilities - as a differential amount.
- Is he entitled to the **lump-sum or also to the income-replacement amount?**
- He is entitled to the income replacement amount of the benefit based on his income in DE [difference to case C-257/10, *Bergström*, where the actually gained income was not relevant (?)]
- Is this because for family benefits no specific provision on the calculation of benefits is provided, and, therefore, under Art. 5 of Regulation (EC) No 883/2004, the income in DE has to be assimilated directly? (is not mentioned in *Moser* but could be deducted from *Einarsdóttir*)

Overlap of benefits

- For many risks overlap is not a problem, because **only one MS is competent** (e.g. sickness or maternity cash benefits)
- Nevertheless, some problems could occur in the “outer rim”, in case of benefits based on residence (case C-352/06, *Bosmann*) or during a “protection period”
- For benefits **based on different persons** there is a hierarchy of competences (e.g. Art. 68 of Regulation (EC) No 883/2004 for family benefits)
- Overlap most likely with **pensions**; Art. 53 et seq. of Regulation (EC) No 883/2004 provide for detailed provisions. They apply only if national law contains such anti-overlap provisions and even then they are very restrictive

Concluding remarks

Is everything clear? – NO!

- As a rule **only gainful income in the competent MS** has to be taken into account for the calculation of benefits [if there is a special rule overruling Art. 5 of Regulation (EC) No 883/2004]
- During **reference periods** foreign periods have to be attributed with the amount for the income gained in the competent MS; this applies also when no domestic periods have been completed during this period; special rules for unemployment benefits
- It could be necessary to **adjust the income** to a fictitious career in the competent MS after the end of the activities there; is it necessary to take into account possible career developments?
- Nevertheless, **foreign activities** could be relevant when this is necessary to avoid disadvantages for migrating persons; this could be done either by taking into account the income actually gained there or by the income which could have been gained in the competent MS with a similar activity
- Different rules for **different types of benefits?**

Thank you for your attention!

Case E-5/2021

A.B. Einarsdóttir v the Treasury

Coordination of Social Security
EEA law & national law

Bjarnveig Eiríksdóttir

MoveS seminar in Reykjavík 23.9.2022

Case E-5/2021

A.B. Einarsdóttir v the Treasury

- I. EEA Agreement 1994 and Coordination Regulation
- II. Icelandic Act on Maternity/Paternity Payments & conditions for workers in free movement
- III. Case E-5/2021 AB Einarsdóttir v the Treasury
- IV. Remaining issues: national court and national authority

SSC in EEA and Iceland since 1994

- 1 January 1994 EEA Agreement and Regulation 1408/71 - later Regulation 883/2004 on the coordination of Social Security Systems
- Article 29 EEA - EEA Act No 2/1993.
- Regulation 883/2004 implemented in Iceland as governmental regulation (secondary legislation)
- National legislation on Social Security (pension, maternity, unemployment...) amended to include certain principles of coordination legislation such as aggregation of periods.
- Main purpose of Regulation: guarantee that persons moving in the EEA have social security coverage without gaps in their insurance record. To ensure free movement without national barriers.

Coordination – not harmonisation

- MS are free to organise their social security systems – the conditions of granting social security – If. Who. Nature. Calculation.
- However – must comply with EEA Law and its principles.
- Balance between MS autonomy-free movement.

E-5/2021 AB Einarsdóttir v the Treasury EEA Law and Icelandic maternity/Paternity Leave Act

- Act No 95/2000 – The MPL Act
- Beneficiaries:
 - (a) Persons not economically active – Monthly ISK 80.000
 - (b) Employed – 80% of salary in reference period –
 - Full-time minimum: ISK 184.000
 - Full-time maximum cap: ISK 600.000

E-5/2021 AB Einarsdóttir v the Treasury

Icelandic MPL Act - Facts

- **Rights Acquisition Period/Ávinnslutímabil**: work in Iceland 6 consecutive months prior to birth. Periods of insurance are aggregated:
- Work in another EEA state = work in Iceland – provided the work gives right to maternity payments in the other EEA state
- ABE works in Iceland and Denmark – is entitled to maternity payments – the aggregation rule of Article 6 of SSC Regulation.

E-5/2021 AB Einarsdóttir v the Treasury Icelandic MPL Act - Facts

- Einarsdóttir Icelandic nationality – study + 4 years work in DK
- Iceland 5,5 months prior month of birth - employed in same profession

Reference Period/Viðmiðunartímabil 12 months ending 6 months

prior to month of birth: 12 months in DK.

M/P Fund: Only wages subject to insurance levy in Iceland. No wages in Reference Period = Only minimum payment. (Art. 13(7))

Einarsdóttir: Requests wages in Denmark be used for reference.

AB Einarsdóttir v the M/P Fund – Administrative phase

Maternity/Paternity Fund Decision on 3 March 2020

A right to maternity payment - income in DK not used for calculation



Welfare Appeals Committee Decision in case No 261/2020

ABE refers to Art 29 EEA, Reg 883/2004 and Bergström and Öberg



Reykjavík District Court case E-582/2021

ABE v Treasury seeks annulment of decision in case No 261/2020

E-5/2021 AB Einarsdóttir v the Treasury Questions from Reykjavík District Court

Does Article 6 of Regulation 883/2004(cf. also Article 21(3) of the Regulation), oblige an EEA State, when calculating payments in connection with maternity/paternity leave, to calculate reference income on the basis of a person's aggregate wages on the labour market across the entire European Economic Area?

Does it infringe the aforementioned provision and the principles of the EEA Agreement (see, for example, Article 29 EEA) if only a person's aggregate wages on the domestic labour market are taken into account?

E-5/21 AB Einarsdóttir gegn Ríkssjóði Spurningar frá Héraðsdómi Reykjavíkur

Áskilur 6. gr. reglugerðar EB nr. 883/2004, sbr. einnig 3. tölulið 21. gr. reglugerðarinnar, að EES-ríki reikni, við útreikning á greiðslum vegna fæðingarorlofs, viðmiðunartekjur út frá heildarlaunum á vinnumarkaði á öllu Evrópska efnahagssvæðinu?

Brýtur það í bága við framangreind ákvæði og meginreglur EES-samningsins, sbr. m.a. 29. gr., að einungis sé tekið tillit til heildarlauna á innlendum vinnumarkaði?

E-5/2021 AB Einarsdóttir v the Treasury Question 1. Income in other EEA States

Is Article 6 of Regulation 883/2004 on aggregation of periods applicable to calculation of cash payment – must wages in other EEA States be aggregated and used for reference by the competent state?

Court: Periods completed under legislation of another MS must be taken into account when the national legislation of an EEA states makes right to benefit conditional upon completion of insurance, employment, self-employment, residence...

Court: No – Article 6 applies only to entitlement – the right to a certain benefit – not to calculation of benefits (paragraph 24).

E-5/2021 AB Einarsdóttir v the Treasury Question 1. Income in other EEA States

Is Article 5 (Assimilation) applicable to calculation of cash benefits:

- Unless otherwise provided in the SSC Regulation, legal facts or events that happen under legislation of one MS.....
- must be taken into account by other MS when applying and interpreting own social security legislation as if these facts or event had happened under its own legislation or territory.

Court: Article 21 lex specialis to Article 5 (paragraph 25).

E-5/2021 AB Einarsdóttir v the Treasury

Question 2: Article 21 Cash benefits

- Article 21(2) and (3) If competent MS legislation provides „calculation of cash benefits“ be based on „average income or average contribution basis“ ..“such average income “ shall be determined „exclusively by reference to the incomes confirmed as having been paid“....“during periods completed under the said legislation.“

Court: Articles 21 (2) and (3) – calculation of cash benefits shall not be based on income in other EEA States (paragraph 29).

E-5/2021 AB Einarsdóttir v the Treasury

Question 2: Article 21 Cash benefits

- Persons with income only in other MS during reference period?
- *Court*: Contrary to Art. 21(2) and (3) if no income is attributed to periods of employment completed in other EEA States (paragraph 30)
- Must not be treated less favorably without objective justification.
Reference periods: *C-29/19 ZP v Bundesagentur für Arbeit* & *C-651/16 DW v Social Insurance Agency*
- Art 21 of Regulation interpreted in light of Art 29 EEA. *C-257/10 Bergström*
- Notional income – or confirmed income (outside reference period).

AB Einarsdóttir v the Treasury E-582/2021 continues in Reykjavík District Court



1. Protocol 35 EEA: “Primacy” of implemented EEA Law over national Law. EEA Regulations and Directives must be implemented in Iceland.
2. Articles 34 and 35 of the MPL Act and implementation of Regulation 883/2004 in Icelandic Law by governmental regulation.
3. Article 29 EEA?

The follow-up of case E-5/21

National authorities must apply Article 21 as interpreted by the EFTA Court

- For higher paid work – the 600.000 ISK cap removes problems
- New MPL Act No 144/2020 applies as of 1 January 2021. Provisions are quite similar.
- Remarks to the Ruling in *Einarsdóttir*:
 - Article 21 on cash benefits is open to different interpretations.
 - *Einarsdóttir* not so complicated case – other cases more complex.

[Bernard Spiegel introduces remarks to the ruling]

Case E-5/2021

Social security cash benefits

Is everything clear?

Bernhard Spiegel

MoveS seminar Reykjavik 23.9.2022

Remarks to the ruling in the *Einarsdóttir* case (1)

As Art. 21 of Regulation (EC) No 883/2004 is not clear and there might be different ways to take into account foreign periods during which income has been received, **the EFTA-Court had from my point of view the following possibilities:**

- foreign periods and income can be totally disregarded for the calculation
- foreign periods neutralize the reference period under national law, but are disregarded for the calculation
- foreign periods of gainful activity have to be taken into account with the average of the income gained in the competent MS (even outside the reference period?) – adaptation to possible developments in case of a comparable career only in that MS (C-205/05, *Nemec*)
- foreign periods of gainful activity have to be taken into account with the hypothetical income of a person with comparable qualification in the competent MS (C-257/10, *Bergström*)
- [foreign periods of gainful activity have to be taken into account with the income gained abroad during these periods (applies to family benefits – ECJ C-32/18, *Moser*) – but, this would contradict Art. 21 of Regulation (EC) No 883/2004]

Remarks to the ruling in the *Einarsdóttir* case (2)

Ruling of the EFTA-Court in E-5/21, *Einarsdóttir*: A mix of the possibilities and my short evaluation:

- **Para. 25:** Art. 5 (assimilation of facts = foreign income) of Regulation (EC) No 883/2004 does not apply because of Art. 21 – income gained in another MS is not relevant – **JES, from a systematic point of view**
- **Para. 32:** the benefit must be the same as for a worker who has not moved – benchmark: activity exercised **in the competent MS** (link to C-205/05, *Nemec*) – **? reference to Para. 33 not clear**
- **Para. 33:** the notional income has to be taken into account as of a person in a comparable situation, professional experience and qualification (link to C-257/10, *Bergström*) – benchmark: activity exercised **in the other MS?** – **? reference to Para. 32 not clear**
- **Para. 35:** the income gained in Iceland during the 6 months outside the national reference period (12 months) for the calculation could be taken as base (pro-rata = : 6 x 12) – benchmark: activity exercised **in the competent MS** or only in the specific case? - **?coherent under Para. 32, but not under Para. 33**
- Results are more or less the same if the activity in both countries have been the same. What happened if Ms Einarsdóttir had worked in Denmark as a doctor in the hospital and in Iceland part-time as a shop assistant in a pharmacy?