Social Security in Portugal: Harmonizing for Europe 1992

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One of the most important aspects of the pending free market of the European Community of 1992 is the free movement of labor among the 12 Member States. Without a fairly even level of social security development, such free movement of workers could produce large social and economic dislocations due to the unevenness of economic development within the Community. Portugal, one of the lesser developed member nations of the European Community, has been in the vanguard in revamping social legislation in order to meet the demands of the European free market. Among the more important Portuguese legislative actions are those dealing with unemployment insurance and the role of social security authorities in the supervision of private pensions. These issues and other aspects of the modernization of Portugal's social insurance and welfare programs are reviewed along with brief descriptions of the overall Portuguese social security program and the form and function of the social dimension of the European Community.

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Among the many and complex measures yet to be knit tightly together to form the social, economic, and political fabric of the supranational entity commonly known as Europe 1992 is the "social dimension." The social dimension provides for the free movement of labor throughout the 12 Member States of the European Community (EC)[1] and establishes workers' rights, labor standards, and goals for entitlements under social protection programs. Because of the diverse levels of socioeconomic development among EC Member States, the social dimension constitutes one of the most difficult aspects of European integration.

As with the monetary, fiscal, and numerous other aspects of integration, the social dimension of Europe 1992 will require large doses of "harmonization." The term harmonization refers to the need to adopt measures that make the national policies among Member States as compatible as possible. Given the myriad requirements for a common European social policy, the EC members face a daunting task and little time in which to accomplish it.

In the area of social welfare, Portugal has been in the vanguard in reformulating national social insurance law to harmonize it with some of the mainstream EC legislation. At the same time, Portugal is also moving forward with a general program of administrative modernization. Although this article reviews recent legislative measures taken by Portugal that deal with both public benefit and private pension schemes, it does so within the context of the European buildup to 1992. However, for a better understanding of this context, the focus is first directed to what the EC social dimension represents.

Social Dimension of Europe 1992

Europe 1992 has been called not so much a date as a process. Obviously, not every aspect, every requirement, and every goal will exist by December 31, 1992, as if some giant theoretical switch had been thrown. The process refers to turning the European Economic Community into the EC—a single, seamless market in which the 12 Member States will have unfettered access to each other's internal markets. The EC members will be free to move capital, goods, and services—including labor—from one country to another under the provisions of supranational law. An often-used, though not entirely accurate analogy is that of the "United States of Europe."

Along with the free movement of capital, goods, and services, the creation of a single European internal market by the end of 1992 also foresees total occupational mobility under the social dimension of integration. Of the many dimensions challenging the EC, the social dimension is one of the most heatedly debated in the European Commission (see Appendix A, page 6). The issues to be resolved go beyond the freedom of occupational mobility and the reciprocal recognition of professional and occupational credentials. They touch on every conceivable aspect of labor practices and social protection schemes.

The numerous labor provisions and social insurance "rights" proposed in what amounts to a European social charter are likely to stir the most controversy. Among these proposed rights are workers' access to unions and social security programs; equal pay for equal work; and some voice in, or timely information about, management decisions. The Commission, however, realistically recognizes that the integration of social protection will be an extended process. The Member States' widely differing levels of economic development alone present tremendous difficulties to Community-wide

[1] The 12 Member States are Belgium, Denmark, Federal Republic of Germany, France, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, and United Kingdom.

integration of social security programs. The Commission's report on the social dimension notes that "The differences in resources, living standards, cultures and social security systems from one Member State to another mean that it is unrealistic to speak of harmonization in the short term in this field."[2] The operative phrase here seems to be "short term" because to make labor truly mobile, social insurance—including supplementary pensions—will, in the Commission's view, have to be equally mobile.

One important aspect of the social dimension on which EC Member States have already reached a final agreement is the creation of a US$55-billion fund to be used to offset economic imbalances between the greater and lesser developed regions and to aid in the recovery of declining industries throughout the Community. The fund is designed to avoid triggering economic and social dislocations once all market barriers are down.

The many aspects of the social dimension—only a few of which have been touched upon in this brief overview—appear to boil down to a single paramount question: To what extent will the EC Member States be willing to surrender traditional national policies in favor of those of a centralized EC bureaucracy? Recent legislative reforms in Portugal offer encouraging clues to the answer.

Unemployment Insurance in Portugal

In 1989, Portugal revamped its legislation on unemployment insurance. The preamble to the new law states that the legislation is designed not only to improve unemployment benefits but also to prepare for the coming closer of the social security systems in effect in the countries of the European Community and to modify the law in the sense of harmonizing it with European legislation. [3] That is, the new legislation is designed to bring Portugal's unemployment insurance program closer in line with the programs of the other Community partners.

Effective March 1, 1989, the new unemployment insurance legislation alters both the amount of coverage required and the amount and duration of cash benefits. The principal features of the new law are:

- The amount of coverage needed to qualify for benefits under the new law was reduced to 18 months (540 days) of coverage in the 24 months immediately before the date on which unemployment begins—down from the previous 36-month (1,095-day) requirement.

- The duration of cash benefits now varies with the beneficiary's age—ranging from a duration of 10 months for those under age 55 to 25-30 months for those aged 55 or older, with scaled durations between the two ages. In setting this varying range, the new law observes that older workers often have more difficulty finding new employment and recognizes that they probably have contributed longer to the social security system. This new provision tying the duration of coverage to the duration of cash benefits is similar and thus "harmonizes" with the French and West German models of unemployment insurance. [4]

The new law also raises the earnings replacement rate from 60 percent to 65 percent of average daily earnings in the 6 months immediately before the 2 months preceding the date of unemployment. The maximum monthly benefit payable, however, may not exceed three national monthly minimum wages in industry and commerce (105,000 escudos or US$710.00 in May 1990). The minimum monthly benefit payable is equal to one national monthly minimum wage.

Private Pension Law

In a second move to harmonize Portugal's national legislation with that in other EC countries, the Portuguese Government announced that effective September 1, 1989, the country's social security authorities will have administrative oversight powers over the private, or occupational, pension program. [5] However, in the broader context of this article, more significant than the State social insurance program's

[2] Decree Law No. 79-A/89, March 13, 1989.

[3] **Social Europe: The Social Dimension of the Internal Market**, Commission of the European Communities, Brussels, 1988, pages 69-70.

[4] **Social Security Programs Throughout the World—1987**, Research Report No. 61, Office of Research and Statistics, Social Security Administration, 1988, pages 87-95.

[5] Decree Law No. 225/89, July 6, 1989.

new supervisory role over private pensions is the Government's declared need to harmonize aspects of its "social dimension" with those of its EC partners.

Portugal's law marks the second time in 1989 that an EC Member State legislated a formal role for its social security program in the field of private pensions. Earlier, Italy also took steps toward coordinating its public and private pension programs. In commenting on both countries' measures, the International Benefits Information Service reported in September 1989 that "It is interesting to note that the [Portuguese and Italian] social security authorities have now decided to play a role in the operation of purely private pension schemes...In both countries, the pension industry is comparatively undeveloped, and in both countries there has been a need to cut social security expenditures. With a possible reduced role for social security in the adequate provision of benefits in the future, the social security authorities apparently have seen the need to enter the field of private pension benefits."

New Voluntary Program

Effective February 1, 1989, the Portuguese Government consolidated its two existing voluntary social insurance programs under a new, single voluntary program.[6] The new program is open to anyone not covered, for whatever reason, under the compulsory general social insurance system or any of the country's special social security systems. Persons who were enrolled in one of the two former voluntary social security programs are automatically covered under the new program.

Voluntary social security coverage in Portugal has traditionally, but by no means exclusively, been designed to maintain national social protection for emigrant workers and their families. The new voluntary program adds to this protection by covering Portuguese seamen who serve aboard foreign-flagged ships and includes such persons as voluntary firefighters and social workers. Besides the old-age, survivors, and disability benefits available to voluntary enrollees, seamen are also eligible for cash-sickness benefits (temporary disability), workers' compensation, and family allowances. Other persons who were previously covered under the general social security program also are eligible for family allowances.

All enrollees in the new voluntary program, including those who were automatically switched, must choose the level of earnings to be covered. The amount of covered earnings ranges from a minimum of one national monthly minimum wage in industry and commerce per month to a maximum of four national monthly minimum wages per month (35,000-140,000 escudos or about US$236.00 to US$944.00 in May 1990). The basic contribution rate for the old-age, survivors, and disability benefits is 16 percent of the amount selected as the contribution base. Cash sickness (temporary disability) and maternity insurance costs are 3.5 percent of designated earnings; family allowances are 3 percent; and workers' compensation (occupational diseases only) is 0.5 percent. In contrast, the total employee contribution rate under the general social security system is 11 percent of earnings for all branches of coverage (the employer contributes 24.5 percent for a combined employee-employer contribution of 35.5 percent of payroll). However, unlike the voluntary program, there is no ceiling on payroll taxes under the general system.

To qualify for an old-age benefit, a person must have made at least 144 monthly contributions. Survivors and disability benefits require at least 72 monthly contributions. The lump-sum death grant requires 36 monthly contributions. The cash-sickness benefits require a 30-day waiting period. Credits earned under any compulsory social security program may be used to satisfy the coverage requirements of the new voluntary scheme. Benefits under the new voluntary social insurance program are the same as under the general social security program (see Appendix B, page 6).

Constant Attendance Law

The Portuguese Government, in an effort unrelated to harmonization, has expressed concern that the elderly and persons of any age with disabilities are isolated from mainstream society and it has promulgated a new law[7] governing the activities of constant-care providers. The preamble to the new legislation states that "The Government is concerned with the need to develop and perfect, within the context of the social security system, diverse forms of social assistance to families and individuals who find themselves in situations of the greatest isolation, dependency or social marginalization; in particular, the very old and the handicapped." The new legislation is quite detailed in specifying the minimum qualifications of care givers and the

[6] Decree Law No. 40/89, February 1, 1989.

[7] Decree Law No. 141/89, April 28, 1989.

terms under which their services are to be contracted. Aside from meeting age and education requirements, a constant attendant must have a basic knowledge of gerontology, nutrition, and the special problems of the disabled.

The attendants will be selected by public and private social service organizations, including agencies of the social security system. These organizations will provide training and support to the attendants. The attendants, however, are not considered employees of such organizations and are thus deemed to be self-employed for social security purposes.

Although the legislation details qualifications, training, and duties, it is vague regarding pay standards for attendants and offers little in the way of guidelines. Currently, the constant attendance allowance payable under the social security program is equal to about US$36.00 a month. By way of comparison, the national minimum wage (as of May 1990) for domestic workers is the equivalent of US$189.00 a month.

Program Unification

In recent years, Portugal has begun to universalize and unify social security coverage under the general social security program. In 1988, agricultural workers were integrated into the general social security system. [8] That same year, Portugal approved a program establishing a single, unified benefit structure for persons with coverage under both the general social security program and the retirement system for public employees. [9]

[8] Regulatory Decree No. 9/88, March 3, 1988.

[9] Decree Law No. 143/88, April 22, 1988, and Regulatory Decree No. 13/89, May 3, 1989.

Portugal intends eventually to integrate civil servants, as it did agricultural workers, into the general social security system.

Complete unification still has a way to go. Aside from the military and public employee retirement plans, special systems continue for self-employed persons. These special systems contain three subsystems for domestic workers, clergy, bank workers, and the voluntary plan discussed above. Each special system has its own tax and benefit schedules.

Appendix A: European Community Government

The Commission of the European Communities (or European Commission) is the executive body of the European Community (EC) and is located in Brussels, Belgium. The Commission is composed of a president (currently Jacques Delors of France) and 16 Commissioners—2 each from the Federal Republic of Germany, France, Italy, Spain, and the United Kingdom, and 1 each from the other Member States. The Commissioners are appointed by their Governments for 4-year terms. The term of the current Commission expires at the end of 1992. The staff consists of 12,000 EC civil servants, known as "Eurocrats."

The Commission's principal task is to propose EC policies and laws to the Council of Ministers for its approval. The Commission is responsible for applying Community policies and laws. Its power is derived from the fact that only the Commissioners may make proposals to the Minister. Thus, no proposal, no policy. For the Council of Ministers to modify a Commission proposal, the vote must be unanimous.

The Council of Ministers has 12 members—1 from each Member State. The Council's composition varies according to the issue under consideration; for example, a Minister of Health and Welfare will vote on matters concerning the social dimension but will not be involved in approving agricultural or monetary policies.

The European Parliament is the EC's sole elected body. The Parliament has 518 members who are elected every 5 years by the national electorate in the Member States. Generally, draft legislation cannot be adopted by the Council until the European Parliament expresses an opinion on it. The Parliament must also pass on the Commission's annual budget. Also, although never exercised, the Parliament has the power to dismiss the European Commission. In recent years, the Parliament has been steadily gaining in influence over EC affairs.

The EC's Court of Justice, composed of 13 members appointed for 6-year terms, is the Community's supreme legal arbiter. One of the more powerful branches of the EC Government, the Court of Justice rules on legal questions pertaining to EC conventions raised by Member States, enterprises, or individuals. The Court's rulings are final and binding on the parties.

Appendix B: Social Security in Portugal

Portugal's social security system includes five program branches: old-age, survivors, and disability pensions; cash sickness (temporary disability) and maternity benefits;

workers' compensation; unemployment benefits; and family allowances. The coverage is mandatory under either the general program or a number of special sector provisions (such as those for artists and entertainers) or occupation-specific systems (such as banking). Some workers, such as miners and longshoremen, are covered under the general program, but with more liberal retirement eligibility requirements. Portugal also has a voluntary social security program for persons who work abroad or who, for whatever reason, are not covered under any compulsory program. Portugal is party to the multilateral European Community convention on social security and has entered into bilateral social security agreements with Argentina, Brazil, Canada, Switzerland, and the United States. (For an explanation of United States agreements, see the **Social Security Bulletin**, September 1988.)

Administration

The Ministry of Employment and Social Security supervises the social security program through its State Secretariat of Social Security. The Secretariat operates the National Pension Center, which keeps central records, and a number of Regional Social Security Centers, which operate as district offices. The autonomous districts of the Azores and the Madeira Islands operate separate systems (with the same rules and regulations as on the mainland).

Finance

The general social security scheme is financed by employer and employee contributions of 24.5 percent and 11.0 percent of total payroll, respectively, with no taxable maximum. The contribution is considered "unified"—that is, no set amount is earmarked for a given contingency. One small exception exists to this rule: 0.5 percent is reserved for financing benefits payable because of occupational diseases. In addition, employers must insure with private carriers against work accidents. Self-employed persons contribute 15 percent of earnings or may select a set amount on which to pay contributions. That amount may not be less than the amount of one national monthly minimum wage (currently 35,000 escudos or US$236.00 a month as of May 1990). Persons enrolled in the voluntary insurance program contribute 16 percent of an amount fixed from 1 to 4 national monthly minimum wages per month.

Benefits

"Normal" retirement is at age 65 for men and age 62 for women with at least 120 months of contributions. The benefit amount equals 2.2 percent of average earnings in the 5 best years of the last 10, multiplied by the number of years of coverage. The minimum benefit is 30 percent of average earnings and the maximum is 80 percent. Permanent disability benefits are calculated in the same manner, but only 60 months of coverage are required. Survivors qualify for benefits if the insured person met the eligibility requirements or was a pensioner.