Pensions in France: Schemes applicable to salaried employees in the private sector

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Abstract This paper gives a brief overview of the occupational pension schemes applicable to salaried employees in the private sector in France. It explores the legal framework of each of these schemes, their structure and running, their tax and social security regime and the potential impact of EU regulations on them.

Keywords: *Basic State pension scheme; complementary compulsory pension schemes; additional pension schemes; Social Security; tax and social security contributions; EU regulations*

Introduction

There are several Social Security systems which are currently applicable in France. They are primarily concerned with salaried employees, independent workers (traders, artisans, self-employed persons, etc) those based in agriculture and civil servants.

The present analysis deals only with the scheme applicable to salaried employees in the private sector, called 'régime général de Sécurité Sociale' (general social security scheme), which is the main regime which applies in France.

The current structure applicable to Social Security in France comes from an 'Ordonnance' ('Order' signed by the French President, with a value of law in that case) dated 4th October, 1945. This arose from a desire to cover the whole population in respect of all social risks.

Subsequently, a Decree dated 8th June, 1946 made it possible to create schemes which complement those Social Security schemes already up and running. This was made possible by way of collective negotiation. Originally, these mechanisms were to be reintegrated into the general Social Security regime, but history has shown that the State cannot finance a second tier of social security cover, and this has led to the development of a complementary but private tier of Social Security cover.

The development of Social Security protection in the private sector was most noticeable in relation to pensions. The pensions division of the Sécurité Sociale, created in 1945 (the basic State pension scheme), was quickly facing significant problems. The 'Ordonnance' issued in 1945 organised pensions on an equal

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basis, by limiting the amount of income which could be taken into account in order to calculate them. Hence, the pension payments made to professionals (managerial employees) who were paid higher incomes were disproportionately low in comparison with their salary prior to their retirement — a situation which caused a great stir at the time.

In the face of these problems, the unions got together to devise a scheme applying specifically to retired executive employees (the complementary compulsory pension scheme for executive employees). This scheme was organised by way of a nationwide inter-professional collective bargaining agreement dated 14th March, 1947. It established complementary pension-linked institutions for executives, these institutions being grouped together in AGIRC.¹

The non-executive employees, known as 'les non cadres', also formed a group in order to implement their own complementary scheme to provide pension cover. The Accord National Interprofessionnel dated 8th December, 1961 added the finishing touches by creating a scheme to complement the state pension scheme for all salaried employees in the private sector (the complementary compulsory pension scheme for salaried employees). The body which oversees the scheme is called ARRCO.²

These two schemes (the complementary compulsory pension schemes) are founded on the basis of solidarity and a system based on fair distribution (pay-as-you-go system). They were formally approved by the law of 29th December, 1972 which generalised the complementary pension schemes and made their application compulsory for all salaried employees covered by the basic State pension scheme.

At the same time as the development

of these complementary schemes, additional private collective pension schemes were also developing rapidly. These were generally available to senior people in executive positions with the aim of retaining this type of employee. The final stage of development in the statutory framework relating to social security protection in France came after the Legislature was faced with the reality of the situation. First, the law of 31st December, 1989, known as the 'Loi Evin', completely overhauled the whole legal regime applicable to agreements designed to complement the State welfare and pension schemes. Secondly, the law of 8th August, 1994 finalised and restructured this legal regime and increased the powers of the bodies running these complementary systems.

Book IX of the Code de la Sécurité Sociale (Social Security Code) is therefore made up entirely of topics relating to complementary welfare and pension schemes for salaried employees in the private sector. However, it is clear that this area of law will evolve greatly in the future and changes are likely to affect those clauses relating to pensions.

Indeed, in the same way as everywhere else in Europe, the current demography in France means that the balance of pension schemes based on a pay-as-you-go system is at risk (basic State pension scheme and compulsory complementary pension schemes).

Closer European integration and the harmonisation of European Union rules relating to fair competition mean that a greater number of schemes are coming to the attention of the public. These schemes are often more attractive than those available in France.

These economic and social changes will inevitably lead to the modification of the current legislative framework, which at present does not allow an employee of a company in France to

benefit from foreign pension schemes with the attractive tax and social security relief applicable to French schemes.

At present, systems in place relating to retired salaried employees in France are structured into three different levels.

- The basic State Pension Scheme (régime de base d'assurance vieillesse de la Sécurité Sociale), which operates on a pay-as-you-go system, that is to say funds allocated to retired employees are financed by contributions made by salaried employees who are currently active in the workplace;
- Complementary compulsory pension schemes (régimes obligatoires de retraite complémentaire), which also operate on a pay-as-you-go system and are managed by way of industry-wide collective bargaining agreements;
- Additional pension schemes (régimes de retraite supplémentaire), which are set up at a professional or executive level and are generally linked to insurance contracts which operate on the basis of a capitalisation system.

None of this takes account of individual insurance policies which are associated more with personal life insurance than with pension schemes.

This paper will focus on the legal framework governing pension schemes applicable to French salaried employees in the private sector, the organisation of schemes which compulsorily complement the State pension and additional pension schemes.

Furthermore, it will address tax and social security issues relating to the contributions which serve to finance both the compulsory complementary scheme and the additional pension scheme and the positioning of these schemes in the context of EU legislation.

Legal framework regulating pension in France

Under French Law, the compulsory complementary schemes as well as the additional pension schemes have their origins in specific legislation which arises from a clearly defined political desire to give a complete welfare coverage to employees and encourage the growth of these complementary systems.

Hence, pension schemes fall within Social Security Law. However, in relation to both complementary and additional schemes other branches of law are applicable.

Social Security Law

In relation to pensions, Social Security Law impacts at various levels. This branch of Law governs the basic principles in relation to the State pension, the organisation of compulsory complementary pension schemes and the establishment and management of additional pension schemes. Social Security Law also deals with the social security contributions attached to pension benefits.

Basic State pension

The basic State pensions scheme operated by Social Security is governed by the principles laid down in Part III – Section V of the Code de la Sécurité Sociale. This legislation sets out the conditions relating to the payment of pensions to those employees who have retired.

These rules were the subject of sweeping reforms in 1993, brought in due to financial difficulties facing Social Security in general. These reforms related mainly to the minimum duration of 'insurance', ie, the amount of time which employees had been registered with and contributing to Social Security schemes, which would give rise to a full pension

(this was progressively extended to 160 quarter periods). The reforms also changed the reference period for the minimum level of salary to be taken into account for the purposes of calculating the pensions. The reference period covers the 25 most highly paid working years instead of, as previously, the ten most highly paid working years. The reforms are being introduced gradually and by 1st January, 2008 all of the measures will have been implemented.

The general conditions applicable to the allocation of the Basic State pension are:

- An employee must be at least 60 years old and be able to show evidence of at least 160 quarter periods of social security contributions or, be at least 65 years old (in this case, the State pension is paid at full rate regardless of the length of insurance);
- He or she must have completely stopped all paid employment. There are special provisions relating to continuing to work during retirement, (cumul emploi — retraite), but this is not common.

Once these criteria are met, a pension is allocated according to the following methods:

- The total annual pension which is payable is calculated according to the following formula:

$$P = D/150 \times S \times T$$

With D = Duration of insurance under the State pension scheme

S = Basic salary, limited to the ceiling fixed by social security (14,950 francs per month in 2001)

T = Rate of calculation of the pension

- The salary which serves as the basis for the calculation of the pension is the average annual salary corresponding to the contributions paid over the 25 years during which the person covered had the higher salary;
- The rate of the pension varies according to the duration of the insurance for retired individuals under the age of 65 who can show evidence of contributions over a period of at least 160 quarter periods, it being highlighted that the rate of calculation of the pension (T) will not exceed 50 per cent.
- Pensions are subject to a maximum of 50 per cent of the ceiling fixed by Social Security (14,950 francs a month in 2001);
- An increment can be applied to pensions depending, in particular, upon the number of children raised by the person covered or the number of people for which s/he is financially responsible.

A reversionary pension can be attributed to a partner who survives a retired claimant. This pension is limited to 54 per cent of the main pension.

Complementary compulsory pension schemes (Régimes obligatoires de retraite complémentaire)

Rules relating to the management and operation of these schemes are organised by way of inter-professional collective bargaining agreements negotiated by union representatives. Social Security Law does play a role in the sense that the agreement reached with the unions becomes compulsory and has the same enforceability as a law. It also governs the organisation of the powers of the

associated organisations such as the AGIRC and ARRCO.

Additional pension schemes (Régimes de retraite supplémentaire)

Book IX of the Code de la Sécurité Sociale sets out the conditions relating to the establishment, content and implementation of these schemes. It also fixes the legal framework of the inter-relationship with the management bodies responsible for these schemes (notably bodies such as insurance companies who offer pension plans).

Social Security contributions

Apart from contributions designed to finance the basic State pension scheme, the Code de la Sécurité Sociale establishes a system of exemptions applicable to contributions which serve to finance both the compulsory and additional complementary schemes.

It is appropriate to add to this the provisions of the law of 31st December, 1989, referred to as the 'Loi Evin', which has not been entirely codified but which profoundly reformed the rules applicable to both complementary compulsory and additional pension schemes. Most of the provisions of this law still apply.

Other sources of law

In the scope of both compulsory and additional complementary schemes, Employment Law plays an important part because it regulates the mechanisms which set up these schemes. Many other areas of Law address particular aspects of the application of these schemes.

Employment law

The Code de la Sécurité Sociale refers to the Code du Travail (French Labour

Code) in relation to the regulation of mechanisms for the establishment of both compulsory and additional pension schemes. These schemes are established either by way of a collective bargaining agreement, by referendum, or by way of a unilateral decision of the employer. It is therefore logical that the legal framework in respect of these methods emanates from the Code du Travail which regulates the collective rights of salaried employees.

Furthermore, the Code du Travail sets out the rules in respect of consultation of the employee representative bodies in relation to the implementation of schemes designed to complement the basic State pension.

Other sources of law

The following areas of French Law are also relevant in respect of pensions:

- *Insurance Law*: Rules applicable to Insurance apply when the scheme set up is managed externally via an insurance contract.
- *Company Law*: Rules applicable in Company Law are also likely to apply when the pension scheme established concerns company managers or directors. In effect, some managers and directors are classed together with employees in the eyes of social security and in relation to tax legislation, but are not classed as employees for the purposes of Employment Law. In this case, when a pension advantage is conferred, special authorisation procedures must be set in motion by the representative bodies of the company.
- *Tax Law*: This area of Law is fundamental in respect of pensions and more generally, in respect of additional employee protection. The implementation of such schemes is

widely encouraged from a tax point of view. This is evidenced by a tax exemption in respect of income which is taken as a basis for the financing of pension schemes. A deduction mechanism is also applied to corporation tax.

Compulsory complementary pension schemes

Two additional pension schemes have been established with a view to complementing the service offered by the basic state pension scheme: a complementary pension scheme for all salaried employees (called 'régime ARRCO') and a scheme specific to the holders of executive positions (called 'régime AGIRC'). A distinguishing factor of these schemes is that their organisation results from the negotiation of collective bargaining agreements at national and inter-professional level.

Even if unification of the legal framework of both schemes has not been achieved entirely, most of the rules which regulate them are nevertheless similar. Therefore, an in-depth analysis of these two schemes is not necessary. Moreover, the law of 29th December, 1972 made the application of these schemes compulsory for all salaried employees who already benefited from the basic State pension scheme, thereby conferring a quasi-legal status on those schemes which complement it.

This paper now looks at the organisation of these schemes, the ways by which they are financed and the services conferred.

Organisation and operation of compulsory complementary pension schemes

These schemes are regulated by way of conventions negotiated by union

representatives at inter-professional level and are managed by complementary pension bodies who have wide-ranging powers at their disposal.

Negotiated agreements

Compulsory complementary schemes were created as a result of two national inter-professional agreements, which were subsequently modified several times, and which now make up the founding documents of present day schemes of this type:

- The 'Convention Collective Nationale' (national collective bargaining agreement) dated 14th March, 1947 for the complementary pension scheme applicable to those in executive positions ('régime AGIRC' — AGIRC Scheme);
- The 'Accord National Interprofessionnel' (national inter-professional collective bargaining agreement) dated 8th December, 1961 for the complementary pension scheme applicable to salaried employees ('régime ARRCO' — ARRCO Scheme).

The AGIRC Scheme regulates the benefits due in respect of the pensions of those in executive positions, as defined in the Convention Collective Nationale of 14th March, 1947, and by reference to more conventional definitions. These benefits are funded from contributions paid out of the portion of salary which exceeds the ceiling fixed for social security contributions.

The ARRCO Scheme governs benefits applicable to non-executive employees as well as those in executive positions and is funded by:

- With respect to executive employees: contributions paid by reference to the

part of remuneration which does not exceed the ceiling fixed in respect of social security contributions.

- With respect to non-executive employees: contributions paid by reference to the part of remuneration which does not exceed three times the ceiling fixed in respect of social security contributions.

The founding texts of these schemes were subjected to several major reforms (agreements of 25th April, 1996) which were designed to ensure, over a period of ten years (hence, until 31st December, 2005), the financial stability of pension schemes which supplemented the State pension. The agreements were the subject of heated debate due to the fact that certain provisions cast doubt upon the eligibility to certain benefits (reduction in the points freely attributed).

The Cour de Cassation³ in its judgment of 23rd November, 1999 held that rights previously acquired by participants of the schemes could not be reduced. This was a ground breaking judgment in so much as it widened the applicability of these schemes and restricted the ability of union representatives to take measures aimed at preserving the status quo.

Recently, in the context of the negotiations to review the complementary compulsory pension schemes, unions have been very close to a total failure of the talks, the consequences of which could have been the winding-up of these schemes.

Finally, in February 2001, an agreement was reached relating to both the schemes for managerial employees and for non-managerial employees. This agreement has been entered into for a fixed duration and its application will end on 31st December, 2002. It has been only partly signed by two of the three major employees' unions (CGT

and CFTC). Therefore, the future of the schemes may again be put into question in the very near future.

Pension scheme bodies

The two bodies that play a role in this type of scheme are AGIRC¹ and ARRCO.² These were created in order to unify complementary pension schemes with a view to ensuring the duration of these schemes and to promoting among them a certain level of administrative cooperation and a financial balance between the bodies in charge of the management of the funds of the compulsory complementary pension schemes.

The law of 8th August, 1994 conferred on them a status of 'personne morale de droit privé' (a legal entity governed by private law). Their role was to be non-profit-making and run with only general interests in mind. Their powers were granted in order for them to coordinate their work in respect of pooling resources between the different schemes.

Furthermore, because the payment of benefits and contributions by the working population in respect of complementary pension schemes was undertaken by specially created administrative offices, the regulatory bodies (AGIRC and ARRCO) were put in charge of ensuring the management of the funds gathered and paid by these administrative offices.

As a consequence, the role of these bodies is not only financial, but also regulatory and administrative:

- *Financial role:* The regulatory bodies (AGIRC and ARRCO) ensure financial balance between the different administrative offices responsible for the distribution of benefits and the collection of contributions. This

coordination at inter-professional level allows all the administrative offices to pay retired employees the same level of pension for equivalent contributions paid over a career of equivalent duration.

- *Regulatory role:* The AGIRC and the ARRCO are coordinating the office rules relating to rights and obligations of employers and those of salaried employees, depending upon the job sector. Therefore, a body of common rules is currently under construction and should avoid any divergence in the treatment of beneficiaries under this system.

The AGIRC has, among other things, a duty to play the role of arbitrator should any litigation require it.

- *Administrative role:* The AGIRC and the ARRCO organise and centralise the legal steps applicable to obtain a pension.

The financing of compulsory complementary pension schemes

These schemes are financed by contributions from both the employer and employee calculated by reference to the employee's income: the salary element of contribution is deducted at source by the employer who is additionally responsible for the payment of the whole contribution.

The level of contribution varies depending on the slice of remuneration as defined in relation to the ceiling set by Social Security (FRF14,950 per month in 2001). These slices are divided up as follows:

- *Slice A:* This slice corresponds to the part of the remuneration which does not exceed the ceiling fixed by Social Security
- *Slice B:* This element corresponds to

the part of the remuneration falling between the ceiling fixed by Social Security and a figure of four times this ceiling. In 2001, a salaried employee earning less than FRF14,950 per month would not pay any contribution in respect of slice B

- *Slice C:* This element corresponds to the part of remuneration falling between four times the Social Security ceiling and eight times this ceiling. In 2001, a salaried employee earning less than FRF59,800 (4 X FRF14,950) per month would therefore pay no further contributions in respect of slice C.

The founding texts of this scheme fix a *contractual rate* in respect of contributions, which corresponds to contributions that entitle one to the collection of pension points ('points de retraite'; see below). This level is affected by an increased co-efficient percentage (currently 125 per cent) leading to the definition of what is known as the 'taux d'appel' (effective rate).

The difference in contributions resulting from the application of this 'taux d'appel' in comparison with the contractual rate, defined as the 'subvention d'équilibre' (balancing grant), does not give rise to an entitlement to pension points and only serves to finance the balance between the different complementary pension schemes.

The contributions subsequently paid are converted into 'pension points' at the end of each financial year by dividing the total amount of contributions paid by the employee that year by a reference salary (determined each year by criteria laid down by the AGIRC and the ARRCO).

The pension points can be freely granted for certain periods, such as a period of sickness, maternity leave, incapacity, invalidity, unemployment, etc.

Table 1: Non-executives contribution rates

	Global contractual rate	Effective rate	Employee share	Employer share
Slice A	6%	7.5%	3%	4.5%
Slice B limited to 3 times the ceiling of Social Security	10%/(16%)*	12.5%/(20%)*	5%/(8%)*	7.5%/(12%)*

(x%)*: Rates applicable to companies created after 1st January, 1997.

Table 2: Executives contribution rates

	Global contractual rate	Effective rate	Employee share	Employer share
Slice A (run by the ARRCO)	6%	7.5%	3%	4.5%
Slice B (run by the AGIRC)	16%	20%	7.5%	12.5%
Slice C (run by the AGIRC)	16%	20%	Free allocation	

As of 2001, the contribution rates are as shown in Tables 1 and 2.

In respect of the scheme applicable to executives, additional contributions which do not generate pension points are required so as to ensure a minimum level of benefits in the event of death and so as to contribute, on a temporary basis, to the stability of the AGIRC scheme.

Further additional contributions, which again do not attract pension points, must be paid to AGIRC and ARRCO in order to maintain the balance of the complementary compulsory pension schemes.

Benefits of the compulsory complementary pension schemes

The annual pension paid in respect of complementary schemes is calculated by reference to the number of pension points acquired by the person concerned, multiplied by the value of the point for the current year.

The pension can be affected by a

deflationary co-efficient when the employee retires prematurely (before the age of 65). It can be inflated depending on the domestic situation for which the employee is responsible.

A reversionary pension can be paid to a widow/widower of a deceased participant of the scheme. The level of reversion varies depending on the age of the surviving partner and on the length of their marriage.

Additional pension schemes

These schemes are peculiar to French Law. They are initiated at company level (or within a particular profession), hence within the scope of the relationship between employer and employee. They are generally managed externally by insurance companies who have contracted directly with the employer. As a result, there is a tripartite relationship between the employee, the employer and the insurer, which necessitates special rules.

After having defined the principal types of additional pension scheme that can be set up, this paper will address the rules regulating the implementation of these schemes.

The various types of additional pension schemes

It is necessary to distinguish the schemes with a compulsory nature and the free-joining schemes as well as the type of benefits provided by the various schemes.

Compulsory and free-joining schemes

A free-joining scheme only binds an employee when he decides to join it. On the other hand, a scheme defined as compulsory is imposed on all employees.

This last type requires that the scheme be established in accordance with the standards imposed by the Code de la Sécurité Sociale (collective agreement, unilateral decision or referendum). In this last case, the employee cannot refuse to join the scheme even in the situation where, for example, s/he has expressed the desire not to do so during a vote on the issue.

'Defined contributions' and 'Defined benefits'

These schemes can be distinguished according to the level of involvement undertaken by the employer when he subscribes to the insurance contract.

In a scheme with 'defined contributions', the employer only undertakes to pay a sum to the insurer which has been pre-determined by contract. The employer is not bound with respect to the amount of benefit that may be granted to the employee by virtue of this type of scheme.

In a scheme with 'defined benefits',

the employer may undertake to confer benefits on those signing up to the scheme. Generally, this undertaking is evidenced by the level of resources guaranteed depending on the salary paid at the date of pension. Such schemes are becoming less common given the financial implications that they involve, which is exacerbated by the decline in benefits provided by the basic State pension scheme and the complementary compulsory pension schemes.

Implementation and application of additional pension schemes

Specific provisions organise the establishment of additional pension schemes. They also set the relationship between the insurance contract concluded to ensure proper management and such schemes as well as the time factors attached to these schemes.

Implementation of additional pension schemes

Pursuant to Book IX of the Code de la Sécurité Sociale, the additional non-compulsory pension schemes can be set up either by:

- Collective bargaining agreements, concluded at either industry or company level
- Referendum (ratification by the majority of workers concerned of a proposal submitted by the employer)
- Unilateral decision made by the employer who notifies all employees in writing (the unilateral decision can only be used in cases where the employee does not participate in the financing of the scheme).

Therefore, several possibilities are on offer to the employer who wishes to establish an additional pension scheme.

The choice made by the employer will, naturally, depend upon the policies and practices used by the company. As collective bargaining agreements are concluded with union delegates, this method cannot be used when the company does not have such delegates.

Referendum is a method which is generally viewed highly by employees. Therefore, many employers chose referendum as a means of implementation of a pension scheme even where there are union delegates within the company.

Finally, a unilateral decision will often be disregarded in the selection process, given the cost of additional pension schemes which often require further contributions from the employee.

Particular rules apply depending upon the mechanism chosen by the employer.

Collective bargaining agreement by job sector (industry-wide collective bargaining agreements)

It is relatively rare that a particular sector organises an additional scheme at professional level. Furthermore, the employer does not directly have at its disposal any powers to implement an additional scheme at sector level.

Collective bargaining agreement by company and establishment

In the situation where an additional scheme is set up by way of a collective bargaining agreement at a company or plant level, rules relating to collective negotiation imposed by Employment Law apply in full. The employer will therefore have to negotiate with the unions represented in the company as to the content of the additional pension scheme agreement and the definition of the rights and obligations that arise from it.

Referendum

Referendum is a technique which is peculiar to employment relations, and one which is only rarely used. Aside from the mechanisms set up to ensure additional employee protection, it is only used in relation to the methods of profit-sharing and incentive schemes or perhaps in informal circumstances within the company where the employer wishes to involve its employees in the decision-making process.

The referendum in relation to employee protection is defined by the Code de la Sécurité Sociale as 'ratification by the majority of persons interested of a draft agreement proposed by the employer'.

In this case, the employer himself drafts the proposed agreement relating to the implementation of an additional pension scheme and puts it to the employees by applying a special procedure whereby they either accept or reject the scheme by putting it to the vote.

What is peculiar to this mechanism is that the Cour de Cassation recognised in 1984 that it has the effect of a collective bargaining agreement in relation to its compulsory nature. As a consequence, as soon as an additional pension scheme is submitted to the approval of the employees, and has been ratified by the majority of the employees, none of them will be in a position to refuse to join it, should the scheme be of a compulsory nature.

The referendum is not always regarded as a collective bargaining agreement in particular concerning its methods of implementation, modification and denunciation. Indeed, these methods are not subject to the rules of the French Code du Travail regarding implementation, modification and denunciation of collective bargaining agreements.

Unilateral decision of the employer

This mechanism allows the employer himself to establish an additional pension scheme without negotiating with the employees. It is therefore not possible to impose a contribution on employees by way of a unilateral decision. Because a contribution has the effect of reducing the salary of an employee, the employer does not have at his disposal powers to decide unilaterally as to the imposition of such deductions. Moreover, the Code de la Sécurité Sociale is quite strict as to the methods of taking this decision, and the decision must be notified, in writing, to each individual employee concerned.

Whatever the mechanism chosen for the purpose of implementing the scheme, the employer is under an obligation to ensure that there are clear lines of communication with each and every employee. There are rules which impose communication obligations both on a collective and an individual basis.

Hence, each employee concerned by the application of an additional pension scheme must be provided with formal notice prior to the establishment of such a scheme. This notice must be detailed and stipulate all the rights and obligations that arise from the insurance contract concluded for the purpose of managing the scheme.

This notice must also be provided to all new employees who join the company. A new notice must also be issued to all employees concerned whenever there are any changes to the scheme.

In addition, the Code de Travail requires that the works council be consulted prior to the establishment of any additional pension scheme or prior to any modifications being made to any existing scheme. This obligation is designed to ensure a level of collective protection of the interests of the employees.

Certain clauses must be included within

the document implementing the additional pension scheme. For example, clauses must be inserted to prevent discrimination between employees and to protect the rights accrued by them by virtue of the scheme.

Relationship between additional pension schemes and the insurance contract

In order to manage the guarantees afforded by an additional pension scheme, the employer will generally contract with a reputable insurance company. This contract will allow the company to externalise the financial obligations which are under the scheme, in particular, the payment of pensions. As for additional pension provisions, such contracts can only be arranged with insurance companies which are formally approved by the French authorities.

Once the contract is concluded, it is imperative to monitor the concordance between the contract and the support systems in place which serve to implement the scheme at the heart of the company. It is fundamental that the content of the insurance contract and the provisions relating to its duration are properly reflected in the documents that formalise the additional pension scheme between employer and employee.

Any difference between these two documents, which would lead to a loss of rights for the employee, could mean the employer being held financially liable. This potential liability could represent a substantial expense for the company. The formal establishment of a scheme can avoid such problems by ensuring that the additional pension scheme rules reflect any change made to the insurance contract.

Often, in practice, the insurance contract is the only document signed by the employer in order to set up an additional pension scheme. However, the

rules imposed by the Code de la Sécurité Sociale relating to the implementation of these schemes do not only address the structure of additional pension schemes. Indeed, the insurance contract creates rights and obligations on the employer and his employees, which need to be formalised between them. For example, in relation to the obligation to contribute and to complete declaratory formalities, only a formal scheme will allow these obligations to be enforceable against all parties concerned within the scope of employer/employee relations.

Time factors relative to additional pension schemes

Factors relating to time relating to additional pension schemes are not really addressed by the various texts. This legal void causes problems mainly in respect of the following cases.

Transfers of assets (mergers and acquisitions)

In this case, mainly when a company is sold or merged with another entity, difficulties appear concerning the maintenance of advantages conferred by additional pension schemes on the employees of the 'transferred' company.

Hence, the preservation or suppression of these benefits often depends upon the negotiation between the parties involved in the transfer process.

The French Code de la Sécurité Sociale indicates that such operations may not cause any prejudice to the employees in respect of the rights accrued prior to the transfer.

Termination of the insurance contract

Usually, the implementation of an additional pension scheme occurs when a group insurance contract is arranged by the company, the aim of such contract being to guarantee that the advantages

granted under the scheme will actually be granted. When the insurer terminates the contract unilaterally, the employer must terminate the additional pension scheme he had implemented at company level.

Indeed, the termination of the insurance contract does not automatically lead to the termination of the scheme the employer had implemented (either via a collective agreement, via a referendum, or via a unilateral decision). The employer who fails to terminate the additional pension scheme may be held liable for the payment of any benefit, the entitlement to which was secured after the termination of the insurance contract.

Tax and Social Security issues relating to the contributions which serve to finance pension schemes

In order to enhance the development of complementary and additional pension schemes, the French legislator created a very favourable tax and social security contributions regime. Indeed, under French Law, the pension benefit is the fact that the person is insured, ie, is granted a pension cover, but is not the payment of the pension. For this reason, as the taxation and the social treatment of employees' advantages are based on the value of the benefit, contributions paid to finance such a scheme are in principle liable to taxes and social security contributions. However, significant tax and social security contributions relief exists.

Tax rules applicable to additional pension contributions

With respect to pensions, the tax incentive for the employee takes the form of an exemption from income tax payable on contributions to the pension scheme, and, for the employer, the opportunity to deduct the premiums

from the income taxable under corporate tax.

Income tax

Articles 82 and 83 of the Code Général des Impôts (French Tax Code) provide for an exemption from contributions aimed at financing the pension scheme, provided that the scheme fulfils the following conditions:

- The scheme must be compulsory, which implies that its implementation makes it compulsory for all employees concerned to join the scheme
- The scheme must be implemented in the context of the professional activity
- The scheme must apply to all employees of the company, or to an objective category of employees, ie, a category of employees defined by reference to objective, automatically applicable and non-discriminatory criteria.

The exemption for a given year is limited to 19 per cent of eight times the annual Social Security ceiling. The share of pension contributions over and above this ceiling is added to the taxable income, and is taxable like a salary.

Corporate tax

Pursuant to article 39 of the Code Général des Impôts, premiums paid to the insurance company to finance the payment of pensions are deductible from the result taxable under corporate tax.

Additional pension contributions and Social Security contributions

Article L.242-1 of the Code de la Sécurité Sociale lays down a general principle of submission to social security contributions, paid both by employer and

employees, regarding any sums paid to employees in consideration or in the context of their work.

However, in addition to the exemption from income tax, this article provides that the employer's contributions to finance an additional pension scheme are exempted from employer's and employee's social security contributions (employees' contributions to pension schemes are never subject to social security contributions).

At present, this relief is not subject to conditions required for the tax exemption described above, save with respect to the professional nature of the regime. However, as the tax and social regimes are becoming increasingly similar, conditions applicable to the tax exemption may well be extended to the exemption from social security contributions.

The exemption from social security contributions for a given year is limited to 85 per cent of the annual Social Security ceiling. Any contributions exceeding that limit are subject to social security contributions like a salary.

However, it should be noted that another exemption system — a more limited one — applies to CSG⁴ and CRDS⁵, specific contributions which are deducted from the salary but have nevertheless a quasi-tax nature. Indeed, the only contributions that are exempted from CSG and CRDS are those contributions that are aimed at financing the complementary compulsory pension benefits. Contributions to an additional pension scheme have to be re-incorporated in the sum used as a basis for the calculation of the CSG and the CRDS.

French pension schemes and EU law

In the context of the co-ordination of

social security systems existing within Europe, resulting from the EC Regulation 1408/71, three social security pillars should be distinguished in EU Law. The third pillar will be disregarded here, which concerns individual insurance schemes.

The first Social Security pillar

This pillar groups together all the basic social security regimes, ie, the minimum cover which any person necessarily has. The regimes concerned must have their origin in a law and be financially managed by the State. Because of this, these regimes are not subject to EU competition rules, as the entities managing these regimes are not considered to be private companies in the definition given to this phrase under EU Law.

The basic pension insurance scheme of the French *Sécurité Sociale* is included in the scope of the first pillar.

The second Social Security pillar

This pillar groups together all the complementary schemes that are implemented via an agreement between the so-called 'social partners' (employers' and employees' union representatives) and that are managed within a profession, a sector, or an industry. All these schemes find their origin in a contract, and are managed by private entities. The bodies managing these schemes are considered to be enterprises in the meaning ascribed to this word under EU Law, and are therefore subject to EU competition rules.

Additional pension schemes are included within the scope of the second pillar, and this does not raise any difficulties. This is very interesting, as the application of EU competition rules should make it possible for employees to

subscribe to these schemes outside France under attractive conditions.

However, the fact that complementary compulsory pension schemes are included in the scope of this pillar raises some difficulties. Indeed, even if these schemes fulfil the criteria set out for belonging to the second pillar, they work on the basis of an inter-professional and inter-generation solidarity, according to a pay-as-you-go system, and the aim of these schemes is similar to that of the Social Security schemes. Furthermore, the law has conferred a quasi-legal status on these schemes.

Considering financial difficulties these schemes are facing, if these schemes were subject to competition within the European Union and if the beneficiaries from these schemes were allowed to choose another guarantee system, the complementary pension schemes would certainly go bankrupt. For this reason, and in our opinion, these schemes should be included in the scope of the first social security pillar even if they are managed by private entities.

The rules mentioned above regarding the free competition within EU have a peculiar significance for foreign schemes. Indeed, in our view, provisions relating to free competition within the EU are not complied with in France, as the tax and social security contributions relief is only granted if the scheme is managed by a body which capability to run pension schemes has been approved by French authorities.

So as French law currently stands, applying an English pension fund will lead to the contributions paid to that fund being subject to tax and to social security contributions. Therefore, even if the scheme is on the face of it more profitable than the French schemes, it will not be financially interesting for the French employee to join it.

Unfortunately, neither the European

nor the French courts have made a decision about this issue. The EU Commission is currently commissioning studies and projects on occupational pension schemes within Europe. In particular, the research will cover tax obstacles to cross border occupational pension scheme.

Hopefully then, EU regulations will make it possible to apply the French tax and social security relief to foreign schemes, thus giving the opportunity to French employees to benefit from more profitable additional pension schemes than those currently existing in France.

Conclusion

Recent forecasts regarding those French pension schemes based on a pay-as-you-go system are very pessimistic. It is indeed more than likely that such a system will not be sufficient to ensure payment of pensions to the forthcoming generations, knowing that additional pension schemes are not sufficiently profitable and usual to substitute to these schemes.

Recent French Governments have implemented only piecemeal and

short-term reforms. However, substantive reform is needed to avoid the ultimate failure of French pension schemes. The main obstacle to such a reform is that most of French people are very attached to the solidarity system. Furthermore, any proposed change to the current system leads to strong dissents and political opposition. This is why successive governments have found it very difficult to implement changes and provide a solution.

The situation of pensions in France is therefore rather worrying and will surely have to evolve in the very near future.

References

- 1 Association de Gestion des Institutions de Retraites des Cadres — Organisation which regroups and oversees the various complementary pension schemes for managers.
- 2 Association des Régimes de Retraites Complémentaires — Organisation which regroups and oversees the various complementary pension schemes for salaried employees.
- 3 French Supreme Court.
- 4 Contribution Sociale Généralisée — a special tax deducted from the employee's pay which finances health, welfare and retirement.
- 5 Contribution au Remboursement de la Dette Sociale — a special tax deducted from the employee's pay which finances the reimbursement of the Social Security deficit.