Supplementary pensions between social policy and social regulation

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Abstract
The European Commission has developed an analysis of supplementary pensions which constrains the policy area as regulatory by separating ‘allocative’ issues, such as smoothing lifetime income and promoting saving, from traditional ‘redistributive’ or ‘budgetary’ welfare concerns, such as ensuring an adequate minimum income. In the allocative sphere, it promotes market-oriented values, notably ‘actuarial fairness’. However, the progress of European measures on supplementary pensions is impeded by alternative approaches. The social partners play a large role in regulating supplementary pensions, and they provide an approach to regulation which is antagonistic to the adoption of common EU rules. Member states might be expected to view EU-level regulatory activity more favourably as providing a lever for pension reforms, but several states which had already embarked on substantial changes to their pension systems did not welcome EU-led reforms.

Introduction
The boundary between regulating markets to maximise social welfare and taxing and spending to achieve distributional goals is an elusive construct. Nowhere is it harder to grasp than in pensions, where efficiency goals of providing security and insurance intertwine with inter- and intra-generational issues of distributional equity, and where provisions governed by market mechanisms are spliced onto public systems. Furthermore, many of the member states of the EU are engaged in pension reforms which will tend to change the balance of provision between their public schemes and supplementary pensions, so the boundary between social policy and social regulation is not only hazy, but shifting.

What might be the role of the EU in these reform processes? On one hand, pension reforms are contentious and salient in domestic politics. Key decisions, surely, cannot be made in Brussels. On the other hand, supplementary pensions are market instruments, governed by market values. The EU offers a policy domain in which the logic of market-oriented regulatory reform dominates. Majone (1993) argued that the European Commission is not only able to formulate proposals to promote efficiency and growth that are acceptable to the member states; it is also particularly well-suited to this endeavour. It stands at one remove from the imperatives of majoritarian democracy, and is therefore able to formulate proposals under relative immunity from distributional pressures.

This paper examines how the Commission has proceeded in the area of supplementary pensions regulation. The Commission has a clear remit to bring forward measures to facilitate the development of the internal market. The cross-border activities of
pension funds call for freedom to provide services, and their investment rules affect the integration of capital markets, while portability of pension rights affects labour mobility. Within this remit, the EU may settle on minimal measures which coordinate existing national provisions, but there is also scope for market integration to go deeper, in ways which require member states to change domestic practices. Two directives relating to supplementary pensions have been agreed that fall towards the ‘minimum coordination’ end of the spectrum: the Safeguard Directive, discussed below, and the Pension Funds or ‘IORP’ Directive, discussed in Haverland (2007). A third proposal for a directive, which extends portability provisions in ways which have a clear impact on domestic rules, is, as of mid-2008, stalled in the Council. The discussion in this paper focuses on this last directive.

Haverland shows how the outcome of extended negotiations on the Pension Funds Directive reflected member states’ concern to retain control of their welfare states. He points to two main arguments to explain this concern. First, the welfare state is a source of political resources, both in legitimating the national polity generally and in party-political contests specifically. Second, the deep institutionalisation of welfare states is a practical obstacle to EU-level harmonisation, even if the political will was there (Haverland 2007: 886-7).

Haverland’s account is convincing, but it leaves open one reason why governments might accept more ambitious European measures. If the politics of social policy are conceived as fundamentally distributive, providing governments with resources with which to satisfy specific domestic constituencies, then we would indeed expect the states to have little inclination to promote the European social policy venue. However, Pierson (1994, 2001) has suggested that the politics of social policy-making have changed markedly with the maturation of welfare states. The politics of retrenchment call for downplaying distributional conflicts, for consensus-formation and blame avoidance. In this environment, we can expect that governments will be receptive to reforms which promise ‘positive-sum’, growth-promoting outcomes. EU-level regulation may serve as a ‘reform lever’. States may seek measures at the EU level when their own capacity to generate effective social reforms is restricted by vested interests and institutional blockages at home, and thereby play a two level game to facilitate domestic reform.

This idea invokes the operation of the EU as a ‘regulatory state’, immunised from distributional pressures and able to pursue efficiency-enhancing measures. This paper shows that the Commission has pursued a construction of the regulatory problem in supplementary pensions which dwells precisely on the potential to enhance efficiency, and segments the allocative aspects of the policy from wider distributional issues about pensions. This construction draws on the ‘pillar’ analysis of pension systems which has been advanced by economists and widely disseminated in the international policy community. This analysis is outlined in s.2.

However, the institutional channels used by the Commission to initiate the Portability Directive were not regulatory venues dominated by experts and closed to actors with competing interests and alternative policy frames. Recognising that supplementary pensions are often subject to bargaining between trade unions and employers, the Commission invited the representatives of the social partners at EU level to formulate a proposal, although it set down clear guidelines for what the proposal should contain.
When the social partners failed to produce an agreed text, the Commission brought forward its own proposal under internal market rather than social policy Treaty articles. This shift in procedures and venues did not succeed in shutting out opposition to the proposal. Governments in Council responded to domestic political opposition, although they did not necessarily respond to the same conflicts of interest that had stymied progress in the Social Dialogue.

This sequence of events suggests two hypotheses about the potential for the EU to develop a regulatory state in social policy. One hypothesis is that the social partners are the key obstacle to social regulation in Europe. Social policies are institutionalised at national level, notably through the organised involvement of trade unions and employers. These organisations are accustomed to wielding influence in the domestic policy process. Regardless of the impact on their members’ interests, a policy made in Europe may be against their institutional interests as policy actors. The EU-level Social Dialogue might be seen as an attempt to counter this, transforming preferences through re-aggregation and leading to a different approach to reform. But the transformative power of the Social Dialogue is questionable (Rhodes 1995; Falkner 1998, 2000; Teague 2001). As Streeck predicted, the parties have shown an inclination to build national alliances between classes, with ‘economic nationalism’ being reinforced by ‘institutional nationalism’. Employers could invoke the diversity of national industrial relations practices to defeat harmonising initiatives; unions might seem to have more reasons to favour harmonisation but ‘they also want to protect the political resources they have accumulated in national polities’ (Streeck 1995: 419).

The counterpart to this hypothesis is that national governments might use the EU as a forum to push through reforms which are blocked by the social partners at home. This implies that there are advantages, for the member states, in maintaining the EU as a regulatory state. This points to the second hypothesis, which is that member states’ support for EU-level measures will depend on whether, and to what extent, welfare state reforms are blocked domestically. It implies, somewhat paradoxically, that states which are ‘leaders’ in modernising their social policies may be more opposed to EU-level regulation than the laggards, as they do not need the EU reform lever. This opposition could in principle be surmounted if the leaders can ‘upload’ their policies and transmit good practice to the laggards, but this is made difficult by the idiosyncracy of national reform processes.

This paper is organised as follows. The next section shows how economists have developed pension reform schemes that reduce the sphere of distributional contestation to a minimum while maximising the policy focus on the allocative functions of pensions. Economic experts in this policy field have constructed the supplementary pensions policy area to render it appropriate for rational de-politicised regulatory policy-making. Section 3 examines how this construction fared in the Social Dialogue, and outlines how opposition to the Portability Directive emerged in some member states. Section 4 addresses the hypothesis that the European Commission will obtain tacit support for social regulation from member states seeking ‘reform levers’. It shows that not all states want or need supranational policy resources. Specifically, some states have implemented pension reforms that do not fit the regulatory prescription outlined in section 2, and they have turned out to be the most vociferous critics of the Commission’s proposals.
2. Constructing a regulatory policy problem

Technical schemes for rationalising pension provision have circulated among the international community of pension reform experts for more than two decades. In 1994 the World Bank published an often-cited proposal that pension provision should be divided into three pillars, each making a separately-designed contribution to meeting the three functions of pension policy: redistribution, saving and insurance. The primary role of the proposed ‘public’ tax-financed pillar was redistribution, while the second pillar of compulsory funded provision would fulfill the savings and insurance functions, supplemented by a third voluntary pillar which catered for those with a personal preference for higher savings. Pension schemes should have separate pillars, rather than a single pillar serving several functions at once, because ‘a different government role is appropriate for each [pillar]’ (1994: 234). The Bank generally argued that the distribution of budgetary resources via the first pillar should become more pro-poor. In the second and third pillars, governments would have a regulatory role and market values would dominate: provision would be ‘actuarially fair’ rather than redistributive. Actuarial fairness is invoked as a market value because, in an efficient market with full information, buyers of insurance products such as annuities would receive an actuarially-fair return. In practice, actuarial fairness is pursued through regulation, which addresses issues such as uncertainty about future interest rates and life expectancy, and may also determine the size of the risk pools created for insurance purposes, e.g. whether men and women are pooled or separated in the calculation of actuarial factors.

The European Commission took up the ‘pillar’ language in the Green Paper on Supplementary Pensions (1997), using ‘second pillar’ to describe schemes linked to employment and ‘third pillar’ for those taken out by individuals. The Green Paper emphasised the potential contribution to growth of expanding these pillars, particularly if the accumulating funds were invested efficiently in an integrated European capital market. However, it noted that ‘it is for member states to decide on the role they wish each of these three sources of pension provision to play’ (EC 1997: I). It also presented a rather neutral account of the ‘advantages’ and ‘disadvantages’ of each pillar. In the discussion of the second pillar, it distinguished between defined contribution (DC) and defined benefit (DB) schemes. DC schemes have the ‘advantage’ that benefits are based on the value of the accumulated fund. In other words (not the Commission’s), they are more transparently actuarial. DB schemes protect pensions from asset value fluctuations through the employer’s guarantee, but, given usual practices for determining benefits for early leavers, they can discourage mobility and discriminate against those taking a career break (EC 1997: 3). The Green Paper also noted that DB schemes have the advantage of retaining ‘some elements of solidarity’, but in the later discussion on facilitating free movement it argued that ‘scheme leavers [tend] not to get their fair share out of a [DB] pension fund’ (EC 1997: 15) and that ‘actuarial standards’ should be applied to transfers. Thus the Commission began to endorse actuarial fairness, but refrained from advocating DC over DB schemes.

The tone had shifted by 2003, when the Joint Report on Adequate and Sustainable Pensions was published. Now the Commission and Council agreed that ‘[f]urther pension reforms are needed’ (EC&C 2003: 8) and these would involve the
accumulation of funds in public schemes or the expansion of supplementary pension provision. Furthermore, the mobility issue had been raised up the agenda and encoded in ‘modernisation’, which meant providing for atypical and mobile workers, responding to the changing roles of men and women, and enhancing transparency. The modernisation agenda pointed clearly towards DC schemes, which apply actuarial standards in a relatively straightforward way. There was an implicit critique of DB schemes in the report’s remarks cautioning states about schemes ‘based on outdated assumptions about family and employment patterns’ (EC&C 2003: 80). While criticisms focused on long ‘vesting periods’, rather than on DB provision as such, the two are integrally connected. The vesting period is the period of employment that must elapse before the worker becomes ‘owner’ of the pension rights accrued (including rights based on the contributions made by the employer); long vesting periods tie the worker to the firm.

The Joint Report was also clearer than the Green Paper had been in assigning different distributive values to the three pillars. It explained that ‘member states have built strong redistributive elements into their first-pillar [public] pension schemes’ (EC&C 2003: 6), and these were central to Objective 1 of ‘preventing social exclusion’. Occupational pensions, by contrast, were assigned to Objective 2: ‘enabling people to maintain living standards’. Under Objective 3, Solidarity, the report noted that ‘solidarity features can be found in funded pension schemes’ but then went on to observe that ‘unfair redistribution’ had led to the adoption of new systems based on ‘actuarial neutrality’ in Sweden and Italy. In its characteristic language of approving description, the report claimed that there was a tendency for solidarity elements to be financed out of the general budget rather than contributions; that is, to be appropriately assigned to the first pillar (EC&C 2003: 35).

As the discussion below makes clear, the weight that should be given to portability in setting the rules for supplementary pensions is subject to conflicting objectives, of promoting mobility but also of encouraging employer sponsorship by allowing schemes to favour workers who stay over those who leave. However, neither the Green Paper nor the Joint Report acknowledge this conflict, as neither mentions the employer case for favouring ‘stayers’. The Joint Report is clearer in opposing this view, stating that ‘pension schemes need to be adapted to more flexible forms of employment and greater mobility’ (EC&C 2003: 80). Furthermore, it argues that ‘[a]ll member states where second-pillar pension provision is well developed…ensure that obstacles to mobility are minimised’ and that portability is a ‘necessary corollary’ of promoting the second pillar (EC&C 2003: 82). The implicit argument is that schemes must offer portability if they are to appeal to workers; employers’ incentives are set aside.

In taking this view, the Commission was supported by much expert opinion in the pensions policy community. Holzmann (2005) is a good illustration. He argued for ‘a reform approach …that moves toward a more actuarial system structure that better links contributions and benefits and includes more individualization to handle professional and family mobility’ (2005: 239). To argue for DC schemes because ‘[f]ull integration of the European labor market requires full portability of pension rights between countries’ (Holzmann 2005: 241) might seem to be allowing the tail to wag the dog, as the number of movers between European countries remains small. To this, Holzmann had two responses. First, more labour mobility is desirable to improve
the response of the European economy to shocks, so policies should positively aim to promote mobility. Second, there is a positive issue linkage between promoting mobility and facilitating wider reform. While ‘[t]he proposed structure has highly attractive features against a Pan-European objective, [it] is also suggested to be an extremely powerful reform option for the many ailing pension schemes in Europe and beyond’ (2005: 242). Existing public schemes have not proved able to reform enough: by implication a different institutional arrangement is needed.

Holzmann specified mobility as a policy goal by linking it to labour market flexibility. OECD research on the effect of occupational pensions on mobility appeared to confirm that the effects were significant (cited by the Commission in EC 2003: 3). For the Commission, mobility was instrumental in achieving the employment goals, but also an objective in its own right, ‘linked to the fundamental rights of the Treaties’ (Vignon, in EPPF 2004: 3). While the dominant value in the argument was allocative (mobility promotes efficiency), the Commission also invoked issues of fairness. The notion of ‘actuarial fairness’ bridged the allocative and distributive arguments. Economists working in the field hoped, as Marin puts it, that notwithstanding differences in approach across the member states, ‘actuarial fairness may be the minimum common denominator, apart from and compatible with remaining ideological cleavages in matters of social justice’ (Marin 2005: 289). This was central to constructing the cross-border portability of pension rights as an issue of efficiency-enhancing social regulation. The ‘insulation’ of social regulation from distributional concerns is achieved by finding agreed norms, a task here fulfilled by the notion of actuarial fairness.

3. Pursuing EU supplementary pensions regulation through Social Dialogue

Commission initiatives to improve the portability of supplementary pensions date from the early 1990s. In a Communication in 1991, the Commission set out the key issues presented by supplementary pensions for worker mobility. As well as long vesting periods, low transfer values (the amount that can be taken and invested in an alternative scheme on leaving the job) and inadequate protection of preserved rights (preserved rights are accrued when the leaving worker does not claim the transfer value but instead waits until retirement to claim the pension from the original scheme) were identified as the major problems (Observatoire des Retraites 1999). A proposal for a directive was put forward, containing provisions for reduced vesting periods, actuarial calculations of transfer values, and enhanced preservation rights, as well as addressing double taxation problems. This proposal was fatally affected by the question of competence. It was quickly realised that the same issues arose with respect to mobility between employers within borders as with cross-border mobility. It would not be possible to have a different set of rules for cross-border movers and domestic movers, so the exercise of EU competence in facilitating mobility would inevitably have an impact on a matter of domestic social policy competence. In the light of member states’ resistance to this, the Veil Working Group (1997) recommended a minimal set of measures to ensure that cross-border movers retained the rights they would have had if they had moved within the country. This was the basis for the 1998 ‘Safeguard’ Directive. Since many states had rules which gave domestic movers few rights, this Directive did not do much to promote mobility.
Between 2001 and 2004, the Commission attempted to use the mechanism of the Social Dialogue to achieve improved provisions for movers. The European-level employers’ association (UNICE, as it then was) and trade union confederation (ETUC), along with other employer and union associations, were invited to negotiate an agreement that would subsequently be extended to all firms and workers by Council decision (for an explanation of the procedures, see Barnard 2006: 84ff). To prepare the ground, the Commission created a European Pensions Forum to promote dialogue on the issues arising from cross-border mobility for supplementary pension rights. The forum itself was a large body, with 57 members from the member states, the social partners, the pension funds and other interested organisations. This initiative had been opposed by member states in the consultation on the 1997 Green Paper (EC 1999, paragraph 60), and the impression at this stage is that the Commission turned to new venues because progress beyond the Safeguard Directive in intergovernmental channels was blocked. However, the Commission also kept the issue on the intergovernmental agenda, ensuring that it was mentioned in, for example, the Action Plan on Skills and Mobility in 2002.

In its Communication initiating consultation with the social partners, the Commission invoked several conclusions from the Pensions Forum to set the scene for the consultation. First, the linkage between cross-border action and mobility within states was explicitly acknowledged. Indeed, since states were already adopting or envisaging reforms that would increase the role of supplementary pensions in their systems, it was particularly important to ensure that reform to promote mobility was part of the process. The conclusion was that ‘action … should not be limited to cross-border mobility’ (EC 2002: 5). Second, the view that pensions should reward loyalty and promote retention of skilled workers was dismissed: ‘this view has to be considered as outdated: supplementary pensions should be regarded as deferred income and an essential component of social protection’. In any case, anti-mover provisions such as ‘long vesting and waiting periods are discriminatory against women’ (ibid).

According to the Communication launching the second stage of consultation with the social partners (EC 2003: 7), ‘[t]he social partners responded to the first stage consultation with a broad recognition of the need for action at European level.’. The employers’ organisations argued for a voluntary approach, with the EU ‘organising exchanges of experiences and information-sharing’ or adopting ‘flexible instruments’ such as guidelines or codes. The employees’ organisations, by contrast, declared themselves in favour of a ‘European regulatory framework’ which might be based on social partner negotiations rather than a directive. The social partners did not directly express opposition to the substance of the Commission proposals at this stage. In particular, the Commission was able to claim that UNICE supported the adoption of ‘some basic actuarial principles at European level’ (EC 2003: 8).

For the second phase of social partner consultation, the Commission put forward a consultation document that was clear about the direction that the social partners were expected to take. Measures would have to cover within-border mobility as well as cross-border mobility; waiting and vesting periods must not deter mobility (i.e. these periods would have to be short: one year was mentioned); preservation of dormant rights needed to be addressed; the possibility of transferring, as well as preserving,
accrued rights should be created; and ‘actuarial fairness’ should be the guiding norm (EC 2003: 15).

The social partners did not manage to reach agreement. We can get some idea of the barriers to agreement from a meeting convened at the European Parliament in April 2004, where representatives of UNICE, ETUC and other organisations exchanged views with the Commission, which had by then indicated its intention to bring forward a directive (EPPF 2004). The Commission had argued that UNICE should want an agreement to improve portability because employers would benefit from being able to transfer workers more easily, but it had become clear that this was not very important to employers. Multinational companies had already found their own ways of achieving portability, and the Pension Funds Directive helped. UNICE instead pointed out that differences in tax treatment, which were of concern to employers, would not be addressed in the proposed directive.

While the gains from an EU-level measure were limited, the employers’ point of view was that the potential costs were considerable. At the 2004 meeting, UNICE argued that the directive would impose ‘one-size-fits-all’ regulation which would conflict with the diversity of current pension arrangements. However, UNICE did not forthrightly oppose the principles behind the Commission’s initiative; this task was left to the representative of the European Federation of Retirement Providers. He argued robustly that it was more important to extend the coverage of supplementary pensions than to optimise the terms and conditions for accrual and transfer (Galinat, in EPPF 2004: 9). In practice this meant that employers should continue to be able to penalise movers and favour stayers, as this gave them an incentive to sponsor schemes. With this argument, the employer side found a way to defend its interest in favouring stayers over leavers while framing its defence in terms of an agreed policy goal: extending the coverage of supplementary pensions.

After the Commission produced its draft of the Directive in October 2005, UNICE’s position hardened. Early in 2006, UNICE produced a position paper which went through the clauses in the Directive point-by-point. It emphasised the administration costs imposed by short waiting and vesting periods and a low minimum age for affiliation, and argued against provisions which would mean that contributions made by employers would become vested in workers. In terms of the broader picture, UNICE’s position had come to revolve around two key objections. One was a substantive objection: the Directive imposed extra costs on employers offering supplementary pensions and there was a risk that companies could be discouraged from offering provision. The Directive could therefore harm the development of supplementary pensions in Europe. However, the institutional or subsidiarity-based objection was put more forcefully: the Directive ‘interfered[d] with the autonomy of the social partners in the member states’. It overrode matters which had been agreed in collective bargains at the industry or occupational level, where diverse provisions were ‘mutually beneficial for both companies and workers’ (UNICE 2006: 3).

By emphasising the institutional dimension, UNICE created the opportunity to enlist support from those national unions which had a significant role in negotiating and administering supplementary occupational pension provision. In the 1990s, when the first portability proposals were brought forward, German employers had been most vocal in defending arrangements that favoured stayers over leavers and thereby
assisted in retaining skilled workers, particularly those trained at the company’s expense. At that time, German unions had presented a united front with their employers (Observatoire des Retraites 1999: 8). The draft Directive flushed out other supporters of the status quo on the union side. In July 2006, senior officials from the Swedish and Dutch employer and union confederations put their names to a letter to the Financial Times arguing that the proposed Directive was ‘seriously flawed’. Their central argument was based on subsidiarity: ‘In our countries, issues related to accrual, preservation and transferability of pension rights are primarily regulated through voluntary collective agreements between the social partners… Obligations introduced by the legislator would disturb the balance chosen by social partners.’

In this emerging consensus between unions and employers in some countries, ETUC was left out in the cold. ETUC was strongly in favour of a new directive, and it criticised the Commission’s draft for lack of ambition. The obvious explanation for this position is institutional. ETUC’s institutional preference is for proceeding through social dialogue at the supranational level, but, given UNICE’s stance, ETUC preferred a directive to no measure at all. Gerda Falkner (2000: 719) has shown that the willingness of UNICE to negotiate with ETUC depends on the threat of legislation, as the employers’ preference tends to be to have no EU-level social regulation at all. This implies that ETUC would want UNICE to be ‘punished’ for failing to negotiate by having to live with an ambitious Commission-initiated measure. UNICE would then learn the lesson that it was better to negotiate, especially as Falkner (2000: 715) found that, where agreements have been concluded, ETUC accepted low substantive standards in order to reach agreement and preserve the Social Dialogue.

The Dutch and Swedish unions could not, therefore, expect ETUC to take up their case in Europe. Nor was the European Parliament a reliable ally. Parliament did propose several changes to the Directive, but, overall, it favoured proceeding with the measure. While criticism of the Directive did find an audience in the Parliament, this has to be weighed against the parliamentarians’ inclination to agree to measures in order to demonstrate and develop their capacity for social regulation.

This meant that hopes for blocking the Directive came to rest on governments in Council. The national social partners had to persuade their governments that national interests were compromised. They could defend their institutional interests by framing this argument in the language of subsidiarity and social partnership. However, if governments so wished, the European measure would provide an ideal opportunity for member states to evade national social partner opposition and press ahead with reform.

4. A reform lever manqué?
In 2005 the Commission brought forward a proposal for a Directive under Arts 42 and 94 of the Treaty. Article 42 pertains to the adoption of measures in the field of social security to facilitate the free movement of workers; Article 94 aims to facilitate the establishment of the single market by ‘approximating’ divergent national rules. Thus the proposal was put forward under internal market competences, rather than as social policy measure. The internal market basis invokes the efficiency-enhancing logic of the regulatory state, whereas social legislation had foundered on the weakness of the Social Dialogue. As argued in the Introduction, member states might be receptive to regulatory measures if they provide useful levers in promoting domestic
reforms. One can only guess, but the Commission’s calculation may have been that, by 2005, states were sufficiently oriented to reform that they might be persuaded to put aside the reservations about competence that had blocked agreement in the late 1990s.

However, by comparing recent occupational pension reforms in several countries, we can see that the position is more complicated. Some countries have managed to go through domestic reform processes without the ‘help’ of an EU measure. Since these reforms involve idiosyncratic national arrangements, they may be disrupted by the Directive. Each state approaches the relationship between its public and supplementary pension pillars in a different way, and governments have reasons to avoid agreeing to a measure that ties their hands in selecting the parameters of the relationship between the pillars. This is a fundamental problem with the regulatory logic of the pillar approach, as it means that it is not possible to mark out a pillar for regulatory governance that is really separate and autonomous in relation to the other pillars. Concerns about this issue focused on the Directive’s prescription that standardised actuarial calculations should be applied to accumulated entitlements. Where supplementary pensions are not ‘free-standing’, but are designed to complement incomes from another pension, entitlements may depend on amounts accrued under other schemes. Thus the apparently incontestable concept of ‘actuarial fairness’ was problematic after all.

The Commission did have an ally in the British government, which took the view that the draft Directive was in line with existing UK legislation, and broadly supported its aims (HC Select Committee 2005). However, the British system did not provide a shining example for others to follow. Reforms in Britain have been accompanied by a steep decline in membership of defined-benefit (DB) pension schemes. Employers have switched to defined contribution (DC) schemes, although primarily because of concerns about funding DB commitments, rather than in response to lower vesting periods and improved portability. DC schemes are not particularly popular with workers, and coverage has failed to expand to take up the decline in DB provision (Pensions Commission 2004, Annex to Ch 3). Despite the central place of supplementary pensions in the UK’s pension policy, coverage is low (active membership of about 43% of the employed population) compared with Sweden and the Netherlands (90%) (EC 2005, Table 2).

The trigger to blocking the progress of the Directive in Council was, however, neither the problem of applying actuarial valuations to one part of an interdependent system nor the prospect that employers would reduce their sponsorship of occupational DB schemes. The Dutch Labour Foundation had produced a highly critical commentary on the draft Directive. While its central argument was against legislative interference in the terms of supplementary pension schemes and in favour of governance by the social partners, it also made detailed substantive objections to the rules on transferability. It noted that pay-as-you-go and book reserve schemes (as found in France and Germany respectively) were, at least temporarily, exempt from the transferability rules, which meant that the rules only applied to a few countries with funded schemes, including the Netherlands. This meant that the Directive could have an asymmetric effect – movers from the Netherlands to France or Germany could take their funds with them, while movers the other way could not.
This argument pointed to a national economic conflict of interest, which was picked up by the Social Affairs minister, Piet-Hein Donner. He claimed that the transferability provisions could lead to an outflow of capital from Dutch pension funds. This claim had enough resonance to mean that the Dutch Parliament voted that the Netherlands should veto the Directive, which meant that no political agreement could be achieved when it came before the Employment and Social Policy Council on 30 May 2007.\footnote{14}

The Dutch government’s response to the Labour Foundation’s arguments should be seen in the light of the recent history of domestic portability reforms. In 1994, the government had called on the social partners to switch from final salary to average salary schemes, arguing that better-off workers fared disproportionately well from final salary schemes and that they hampered mobility. The government threatened changes in tax rules to promote this shift, but in 1997 accepted a compromise agreed by social partners in the Labour Foundation, whereby they committed themselves to introduce mobility-enhancing measures (Anderson 2007: 745-6). Thus the Dutch government had sought reforms to enhance portability, and it had made significant progress through domestic negotiations. The EU proposal was not, in this context, a valuable ‘reform lever’ and so politicians were prepared to sabotage it by invoking the ‘national interest’ in protecting pension funds against an outflow of capital. The issue of capital flight also received attention in Sweden,\footnote{15} although the Swedish government did not threaten a veto. Thus the two states where the social partners had spoken out most clearly against the Directive did adopt critical national governmental positions, but not for the same (stated) reasons.

In response to the blockage in Council and to amendments proposed by the European Parliament, the Commission produced a substantially revised and renamed Directive.\footnote{16} The provisions on transferring pension rights were removed and references to ‘harmonisation’ were replaced with ‘minimum requirements’. Other significant changes included the replacement of reference to ‘actuarial standards’ with ‘national law and practise’. There were compromises and clarifications of the minimum age and term of employment for the vesting of pension rights, which continued even after the revised Directive was published. By the time the proposal reached the December Council meeting, a minimum age of 23 and term of 2 years was put forward.

Despite all these changes, agreement in Council was not achieved at the meeting in December 2007.\footnote{17} German opposition to short vesting periods came to the surface, Germany proposing a minimum age of 25 and term of 5 years. Unlike the Netherlands and Sweden, Germany is not a pioneering state in pension reform. Nonetheless, the Riester reform aimed to promote the expansion of funded supplementary pensions, and the Retirement Income Act (\textit{Alterseinkuenftegesetz}, 2005) made a number of changes to promote portability. Thus one can say that there is support in Germany for a ‘modernised’ supplementary pension system along the lines described in section 2, although the traditional model favouring long-term employment and rewarding loyalty is also defended within the government as well as by the social partners. German resistance to the Directive can, therefore, be understood as reflecting not only adherance to the traditional model but also a preference for domestically-formulated reform compromises.
By dropping provisions on transferring pension rights, the objections of the Netherlands had been addressed, but, given the lack of agreement, the Dutch delegation recorded its view that vesting terms should be shorter (1 year). This position, that further concessions should not be made towards restricted vesting, was supported by Italy, Greece and Spain. Their delegations expressed reservations that the Directive was insufficiently ‘ambitious’, a view supported by the Commission. These countries do not themselves have significant supplementary pension pillars; their position may have been based on defending the interests of their nationals working in other states. The will to agree that is usually characteristic of Council deliberations was not there, and the proposal was left for ‘further discussion’. We can see that the reservations of two countries which led the field in supplementary pension provision had been highly damaging to the progress of the Directive. Agreement between the member states on the ‘direction of travel’ had disintegrated, with Germany taking the opportunity to reassert its traditional opposition while others sought to move the other way.

In summary, the Directive did not function as a desirable ‘reform lever’ for the member states. It threatened to disrupt the delicate balance of negotiated arrangements in two countries (Sweden and the Netherlands) which had reformed their systems. In Germany, where some leverage to reforms in progress might conceivably be sought, the stances adopted by other countries made the Directive a step too far.

5. Conclusion: Where next for the regulatory state in social policy?
The starting point for this article was the idea that the distinction between efficiency-enhancing social regulation and redistributive social policy is constructed by the framing of policies and the restrictions on representation of interests created by the venues in which policies are determined. It was suggested that ‘social dialogue’ did not fit with the regulatory mode, as it constituted a forum in which conflicts of class interest were explicitly and legitimately represented. A superficial view of supplementary pensions regulation would seem to support this argument, as UNICE and ETUC were unable to reach agreement on a proposal, and took opposing positions on the Commission’s initiative. However, this apparent conflict between the social partners at supranational level was not found at the national level. On the contrary, employers’ and union associations found a concordance based, to use Streeck’s (1995: 419) formulation, on ‘institutional nationalism’. Both sides sought to maintain their national-level institutional resources in supplementary pension policy. The wider implication is that it is the deep institutionalisation of national welfare states, rather than the distributional conflicts found in social policy, which defeats EU-level social initiatives.

However, the institutionalist analysis of obstacles to welfare state reform and retrenchment suggests that national governments may want to challenge institutional nationalism. The idea of EU-level regulation as a ‘reform lever’ is that governments can bypass opposition at home by agreeing to measures in a supranational venue, where obstructive interests are not represented. In this case, two preconditions for agreeing to the supplementary pensions Directive as a reform lever were lacking. First, in several of the states with significant supplementary pillars, the social partners have not blocked reform. On the contrary, significant reforms have taken place in Germany, the Netherlands and Sweden with the involvement (albeit often reluctant and conflictual) of the social partners. States supporting the measure might be thought
to be seeking a reform lever; this could explain the Italian position, for example. However, like several others that formally recorded their position in favour of the Directive, Italy has a minimal supplementary pillar at present.

Second, for supranational regulatory schemes to be adopted as reform levers, they should present governments with an attractive direction for reform. Majone’s account of the regulatory state rests on the capacity of technocrats to find regulatory schemes which solve ‘specific problems in the best possible way’ (Majone 2005: 166-167). Section 2 showed that economists believed they had such solutions for pension reform and their ideas have been widely endorsed in the international policy community. Why were member states not more enthusiastic about the idea of segmenting the redistributive and savings goals of pensions policy and assigning them respectively to budgetary and regulatory domains? In technical terms, one reason is that the scheme is incomplete: it does not establish how much insurance against the risk of a low income will be provided by each pillar. In practical terms, the UK, which fits the pillar scheme quite closely, does not provide a good model for others to follow. Conversely, the Dutch and Swedish systems show that, under some conditions, a pillar combining insurance and savings functions regulated by collective agreements can thrive.

It was suggested in the introduction that the use of EU level measures as a reform lever runs into the problem that the states with the greatest domestic capacity for reform are least likely to favour EU-level measures, but optimistically they might take part in transmitting good practice to lagging states. The idea would be that a directive on supplementary pension portability will shape the form that future provision takes in countries which have only just begun to introduce such schemes or reform existing occupational pensions. However, we can see that, to avoid conflicts with their national systems, the leading member states opposed the Directive rather than advancing better formulations.

We can also see that the real problems with the Directive entered the policy process in the EU only in very limited ways. A curious sideshow about the transfer of funds mobilised the Dutch to invoke national economic interests and block agreement in the Council. The social partners in Sweden and the Netherlands argued about subsidiarity rather than engage in a technical discussion, suggesting that EU did not provide appropriate venues for addressing complex and system-specific problems. The Commission utilised its armoury of regulatory state techniques, but it was not able to enlist the support of reform-minded member states.

References


1 Directive 98/49/EC safeguarding the supplementary pension rights of employed and self-employed workers who move within the European Union.

2 Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision (IORP).

3 Numerous commentators have remarked on reform leverage in specific contexts. For example, Héritier notes that, in Germany ‘reform-minded actors .. welcomed European initiatives as a lever to set about change’ in her account of road transport policy (1997: 552). Schmidt (2005) provides an account of the reform leverage of EU measures on Germany across a number of sectors. Reform lever arguments can also be found in accounts of the effect of EMU, including Verdun (2000), Featherstone (2004) and Schelkle (2006).

4 The Bank acknowledged that the redistributive pillar would also provide ‘co-insurance’ (1994: 238). The difficulty – and one reason why insurance tends to drop out of the World Bank account – is that redistribution is insurance against the risk of ending up with a low income, whatever the cause (Varian 1980).


7 The organisations represented were the Union of Industrial and Employers’ Confederations of Europe (UNICE), the European Trade Union Confederation (ETUC), the European Federation of Retirement Provisions (EFRP), the Comité Européen des Assurances (CEA) and Groupe Consultif Actuariel Européen (GCAE).

8 ‘Planned EU directive flawed on pensions’, from Mr Urban Bäckström and others. Financial Times Jul 19, 2006

9 ‘Proposed directive on the portability of supplementary pension rights: ETUC regrets the lack of ambition by the Commission,’ ETUC press release available at http://www.etuc.org/a/1667

10 ETUC response to the European Commission’s Communication “Second consultation phase of the social partners with a view to improving the portability of supplementary pensions”, Resolution available at http://www.etuc.org/a/695

De Stichting van de Arbeid, a national consultative body comprising the three peak trade union federations and three peak employers’ associations in the Netherlands. The commentary is available in English from their website: http://www.stvda.nl/default.asp?desc=en_20051209

In a book reserve scheme, pension liabilities are booked against the assets of the sponsoring company.


See the press release from Social Democratic MEP Jan Andersson, where he argues that the problem of capital flight has been addressed, while wage earners’ interests are protected by concentrating on their preserved rights. ‘Bättre pensionsrättigheter för löntagare i EU’, Pressmeddelande 2007-06-20, http://www.socialdemokraterna.se/Templates/Page____117095.aspx.

Amended proposal for a directive on minimum requirements for enhancing worker mobility by improving the acquisition and preservation of supplementary pension rights, COM2007(603) final, 6.10.2007.