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Minimum income schemes for the elderly: A comparative analysis of benefit conditions that may affect their right to live in dignity

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Abstract

The Union recognises and respects the right to lead a life in dignity (Article 25 Charter of Fundamental rights). This right, it is argued, not only requires an adequate income protection, but also addresses the conditions under which this is provided. In view of the conditions that are often linked to minimum income schemes for the elderly—waiting periods, entitlement to other pensions, calculation rules, means tests, restrictions on the possibilities to move abroad—we studied the minimum income schemes for the elderly of nine EU Member States in order to examine how they work out for persons who have been insured in more than one Member State and those who move to another country after retirement. It appears that minimum income protection sometimes has to be claimed from more than one scheme, that the conditions and calculation rules are extremely complicated, and that frequently the relationship with coordination rules for social security is unclear or even ignored. It is also hard to understand the need for the distinction between the schemes. It is argued, on the basis of these findings, that minimum income schemes for the elderly need particular attention from EU institutions and Member States, because of their present lack of transparency, the problematic coordination of national schemes, the impact on the possibilities of free movement and the (probable) problems with take-up. The article thus wants to contribute to the further development of the concept of living in dignity and provides materials for elaborating the Council recommendations on minimum income and on access to social protection.

Keywords

Right to dignity, minimum income, elderly, coordination of social security, social policy

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Introduction

Several EU instruments have codified the principle that the elderly have the right to lead a life of dignity. Article 25 of the Charter of Fundamental Rights of the European Union reads, for instance: 'The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life'. Principle 15 of the European Pillar of Social Rights adds that 'Everyone in old age has the right to resources that ensure living in dignity.'

These instruments do not define 'dignity'; nor can we find a definition in other EU documents. We may assume, however, that a minimum requirement for living in dignity is that an elderly person does not live in poverty. Dignity also addresses the circumstances in which income protection is given.

Although the requirement of an adequate income has certainly not been generally realised so far,[1] we will not examine that dimension here, but we will address the second dimension of dignity, that is, the conditions under which minimum incomes for the elderly are regulated. This dimension has received much less attention in literature to date.

First, some terminology. The term 'minimum income schemes' is used here as an umbrella term for schemes that have been established for the elderly in order to ensure them a minimum income.

The term 'minimum pension' is regulated in a specific way by the Coordination Regulation (see below) and examining its meaning is part of this research. Therefore, we reserve this term for this type of benefit.

The conditions for minimum income schemes for the elderly are less elaborate and complex than for other risks, such as unemployment, sickness or disability. After all, for pension schemes conditions on availability for the labour market or on the degree of incapacity for work are, given the objective of the pension scheme (giving an income after retirement), inappropriate.

Instead, apart from the obvious condition of having reached pension age, core conditions often are that the person concerned has lived or been insured for a particular period in the country concerned. The question of whether a person is entitled to other pensions, income and capital is also relevant. The schemes may also restrict the possibility of claimants moving to another country.

These conditions are primarily problematic for persons who have made or want to make use of their right to free movement. Therefore, although our objective is to examine minimum income schemes in general, and not only from the point of view of free movement, their treatment of persons who have come from another country or want to go elsewhere sheds a clear light on their conditions. In other words, these reactions are a litmus test for the legal quality of the schemes, that is, to what they contribute to the dignity of the pensioners.

Our main research question can thus be worded as follows: which types of conditions in minimum income schemes for the elderly affect, in particular, persons who have completed their careers in more than one Member State (incoming migrants) and pensioners who leave the country where they have acquired pension rights (outgoing migrants)?

In order to get this information, we asked experts from a number of EU Member States to answer a structured questionnaire on their minimum income schemes for elderly persons. Reports were made on Austria, Belgium, Germany, Greece, Italy, the Netherlands, Poland, Spain and

1. European Commission (2021). See also European Commission and Social Protection Committee (2021: 25) that reads: 'Old-age poverty rates have decreased since 2008, but due to the increasing number of older persons, the number of older people actually at risk of poverty or social exclusion has remained stable. In 2008, there were 16.7 million people aged 65 and above and at risk of poverty or social exclusion'.

Sweden.[2] These countries represent Northern, Western, Southern and Eastern countries, with both Bismarckian, Beveridgean and mixed schemes.

Since we had to examine the conditions affecting incoming and outgoing migrants, the interaction with these conditions and the Coordination Regulation on social security is of utmost importance.[3] This Regulation contains separate rules for some of the minimum income schemes, as we will see in the following sections. Therefore, we structured the schemes according to the typologies of the Regulation. In the countries we examined, all these types (special non-contributory pensions, minimum pensions and social assistance) were represented. The selected countries are thus adequate for our purpose, that is, to explore the conditions of the various types of minimum income schemes in the EU.

Our categorisation differs to some extent from that used by some other reports;[4] these reports focus very much on policies to reduce poverty and less on the legal aspects and questions. However, for the legal position of the elderly, the actual conditions are very relevant. For this reason, in our study we focused in particular on the conditions relevant to incoming and outgoing migrants, such as how waiting periods are dealt with, how pensions are calculated and what happens in the case of movement to another country.

The section called 'General principles for coordination of old-age pensions', describes the main principles of the coordination rules for old-age pensions, in so far as necessary for introducing the more specific rules on minimum income schemes for the elderly. The section called 'General schemes with flat-rate pensions', gives some examples of general pension schemes providing for flat-rate pensions. In the section called 'Minimum pensions', the so-called 'minimum pensions' in the sense of the Coordination Regulation are dealt with, while the section called 'Special non-contributory benefits', discusses special non-contributory benefits. Of some benefit types, it is debatable to which category they belong (the section called 'Minimum income schemes that have not been notified as Article 58 or in Annex X'). The section called 'Social Assistance', addresses social assistance and in the last section, we compare the various approaches and discuss their impact on living in dignity for the elderly.

General principles for coordination of old-age pensions

The objective of the Coordination Regulation is to implement the task set down by Article 48 TFEU to promote the free movement of workers by providing rules for the coordination of national social security systems. The Treaty has not given EU institutions the competence to make harmonisation rules in social security. As a consequence, Member States have retained the power to design their pension systems, and there is great variation among them. The countries cannot be obliged to adopt particular rules, for instance, to combat poverty.

In general, for statutory pension schemes, both contributory and tax-financed, the Regulation contains the following main principles.[5] Periods of insurance, residence or work required for *access* to a pension scheme (in other words, for completing waiting periods) have to be aggregated,

2. These reports were presented and discussed during a conference at the Fulda University of Applied Sciences and elaborated in book chapters in Devetzi (2023).
3. Regulation 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems.
4. E.g. Goedemé (2012).
5. Different rules apply for the special minimum income schemes.

even if they are fulfilled in another Member State. For instance, if country X provides that a right to a pension is acquired only after completion of an insurance period of five years, and a person was insured in that country for two years only, this person can invoke the aggregation rules of the Regulation for fulfilling the condition of access.

The *amount* of this pension is calculated separately, however, in each country where the person has acquired pension rights; in our example, for country X this is on the basis of a period of two years. In other words, the aggregation of periods is not applied for calculating the amount of the pension.

Claimants thus acquire pension rights in each Member State whose legislation has been applicable to them. The sum of these partial pensions constitutes their old-age income.

This is calculated as follows. The level of the pension from each State where a person has been insured is calculated for each country by taking two steps. First, the amount of the pension is calculated on the basis of national law alone in the State concerned ('national pension'). Secondly, the amount of the pension is calculated as if the entire period of insurance is completed in that country (the so-called theoretical amount). Subsequently, the period spent in that country is compared with those in other countries, and the corresponding proportion to the full period is applied to the theoretical amount of that country ('pro rata pension'). This pro rata pension is compared with the national pension, and the highest amount is taken. This method is applied to all countries where the person has been insured.

A second main principle of the Coordination Regulation is that old-age pensions acquired in a Member State are exportable to another Member State. This principle is laid down in Article 7. However, this rule is subject to the proviso, which states 'unless otherwise provided for by this Regulation'. One such exception is found in Article 70 of the Coordination Regulation, dealing with special non-contributory benefits, which is one of the methods for ensuring a subsistence income for pensioners to be discussed in the section on Special non-contributory benefits.

Before describing the specific minimum income schemes, it has to be recalled that the general pension schemes can have various forms, of which the main two are 'Beveridgean' and 'Bismarckian' schemes respectively. In a Bismarckian scheme, the pension is based (directly or indirectly) on the contributions paid during the whole (or a substantial part of the) insurance period. As a result, persons with low incomes during their working life and/or with career interruptions tend to have a low pension.

In Beveridgean schemes, pensions have a flat-rate amount and are paid to all residents who have completed the required full number of years of residence in the country concerned. The system itself thus provides, differently from Bismarckian schemes, for a minimum income for everyone; since it is up to the country concerned to set the level, it remains to be seen whether this is also an adequate income. However, if the pension is above the subsistence level (the income level, i.e. above the poverty line, as defined in that country), there is no need for an additional minimum income scheme except for persons who have not completed all the required years.

General schemes with flat-rate pensions

In the EU, there are several countries with Beveridgean schemes; our study comprises only a small minority. However, in so far as the minimum income protection is built into the scheme itself, it is also 'less interesting' for our purpose, that is, identifying problems for migrants; therefore the underrepresentation is not problematic.

In the countries of our study, the Dutch Old Age Pension Act (AOW) guarantees a full pension at a uniform level, depending on the household, for all persons who have completed an insurance period of 50 years. A year counts as such if the person was a resident or worked in the country. Insured persons have to pay contributions if they have an income above a certain level; those who do not have to pay contributions are insured as well.[6] Persons who have not completed the full period receive a proportionally reduced pension.

The net AOW pension for married persons (a term which includes several assimilated forms of cohabitation) is the same as that fixed for all subsistence benefits for married persons, which is, in turn, the same as the statutory minimum wage. Single households receive 70%.[7] Thus, in this system, for persons who have completed their full insurance period in the Netherlands, there is no need or room for an additional subsistence benefit;[8] the pension system itself ensures minimum income protection.[9] Pensioners who want to live in another Member State can export this benefit.

Incoming migrants acquire a pro rata AOW pension, and their total income may be below the Dutch subsistence income level. The AOW Act does not provide for a minimum income in the sense that such pro rata pensions are topped up; this supplement is provided by the Public Assistance Act (see the section on Public Assistance), which is not exportable; income and pensions are deducted from this supplement.

Greece, another country in our study, also has a system with flat-rate pensions, called national pensions, laid down in Law 4387/2016.[10] In addition, there are contributory pensions. This pension has a waiting period of 15 years of legal residence. For this waiting period, periods completed in another EU Member State are also relevant, in accordance with the Coordination Regulation.

The full pension amount is 426 EUR,[11] which is payable after 40 years of residence in Greece between the age of 15 and pension age. It is reduced by 1/40th for every year of residence less than 40 years prior to the application for the old-age benefit.[12] However, periods of insurance (i.e. periods for which contributions, either for employment or self-employment, are paid) are also relevant: the full pension is reduced by 2% for each year that falls short of 20 years of insurance contributions (above the minimum of 15 years of insurance contributions, so the maximum reduction is 10%).

6. See Pennings (2023).
7. As of 1 January 2024, the net amount is 1,459.53 EUR a month for a single person; and 991.87 EUR for each member of a married couple, i.e. 1,983.74 in total.
8. This is different if one of the persons in a couple has not reached pension age yet and has no income or a very low income of his/her own, since the (individual) married couple rate is paid only. Until 2015, the supplement for the younger partner was based on basis of the AOW Act, which was exportable. This has been replaced by a supplement under the Public Assistance Act, which is no longer exportable.
9. In addition, there are general schemes for low incomes for rent and healthcare costs, that will be applicable also for persons living on AOW benefit alone.
10. Tsetoura (2023).
11. As from the 1 January 2024.
12. Although Law 4387/2016 is still considered an Act providing for minimum pensions in the sense of Article 58 of the Coordination Regulation (for these declarations, see the section called ‘Minimum pension schemes in the examined countries’), it does not provide for such pensions anymore and is discussed here as a flat-rate regular pension.

Minimum pensions

Coordination rules

Article 58 Coordination Regulation has specific rules on minimum pensions.[13] However, this term has a specific meaning and does not refer to all types of minimum old-age benefits. As the Court of Justice ruled, there is a 'minimum benefit' within the meaning of Article 58 'where the legislation of the Member State of residence includes a specific guarantee the object of which is to ensure for recipients of social security benefits a minimum income which is in excess of the amount of benefit which they may claim solely on the basis of their periods of insurance and their contributions'.[14]

Thus, 'minimum pensions' are *supplements* to other pensions. The term is somewhat misleading, since they are not pensions as such, but supplement other pensions. Depending on the national scheme involved, they can provide various amounts. In other words, they do not have to provide a fixed amount and their aim is not to guarantee a subsistence income for all pensioners, but solely to ensure a certain minimum pension is provided to those who have acquired a pension rights on the basis of periods of insurance completed, as defined in a national regulation. As a result, although they guarantee a minimum amount for all those who have completed the full insurance period, the Dutch pensions discussed in the section on 'General schemes with flat-rate pensions', for instance, are not minimum pensions in this sense, since they do not supplement other pensions up to a minimum.

Since the level of the minimum pension can, according to calculation rules, be dependent on the insurance period, it can be lower than the national subsistence benefit; consequently, the pensioner may have to apply for the additional benefits to reach a minimum.

Article 58 provides that a 'recipient of benefits to whom this Chapter applies may not, in the Member State of residence and under whose legislation a benefit is payable to him, be provided with a benefit which is less than the minimum benefit fixed by that legislation for a period of insurance or residence equal to all the periods taken into account for the payment in accordance with this Chapter'. This Article thus applies to benefits to which Chapter 5 of the Coordination Regulation applies, which is the chapter containing the rules discussed in the section called 'General principles for co-ordination of old-age pensions'. It therefore does not apply to special non-contributory benefits, which are regulated in Chapter 9 (Article 70), discussed in the section called 'Special non-contributory benefits'. Minimum pensions and special non-contributory pensions should therefore be distinguished from one another.

As is apparent from Article 58, foreign periods of pension insurance also have to be taken into account for the *calculation* of the level of that minimum, which deviates from the coordination rules for the 'normal pensions'.

The sum of national and foreign pensions may be lower than the minimum in the State of residence that applies when all periods of insurance have been completed there. In that case, the State of residence has to pay a supplement, equal to the difference between the sum of the pensions and the amount of the minimum pension. This supplement has to be paid throughout the period the pensioner resides in that territory, according to Article 58(2).

13. Under Regulation 1408/71, the corresponding provision was Article 50.
14. *Zaniewicz-Dybeck* and *Browning* judgments, see below.

Thus there may be two supplements at stake. One is payable when the pension acquired on the basis of completed periods of insurance is below a certain amount. This can also be due in a wholly national situation. Since the minimum pension depends on the periods of insurance completed, Article 58(1) is relevant in the regulation of its calculation.

In the case that the migrant pensioner has a number of pensions whose total amount is below that minimum, another type of supplement is involved to top these up to the calculated minimum of the State of residence, but only when the pensioner resides there. This is regulated under Article 58(2).

Minimum pension schemes in the examined countries

According to Article 9 of the Regulation, Member States have to notify the European Commission of, *inter alia*, the benefits that fall under Article 58. These are published by the Commission on its website;[15] however, the publication is with a proviso: 'The Commission does not take any responsibility for their content and publication does not mean that the Commission has approved and agreed to the content'.

Belgium is a country with a minimum pension. There are three calculation methods in place, for employees, self-employed persons and civil servants.[16] Since 2025, 30 years of insurance contributions are required to obtain a right to a pension.[17] For the calculation of the periods of insurance, periods completed in other EU Member States (and some other assimilated countries) are also taken into account.

In 2024 the minimum pension is 1773.35 EUR per month for a single person. The rate for a couple is 2,215.99 EUR (these are gross amounts). If he or she has completed shorter periods than mentioned supra, a pro rata amount is paid.

Pensions actually received are deducted from these amounts; however, there is no means test on capital. The Belgian minimum pension is exportable.[18]

Poland also ensures a minimum pension.[19] To receive a minimum pension, individuals must have completed contributory and non-contributory periods that amount to a total of at least 25 years for men and 20 years for women. As the author on the Polish system describes, there are no issues with this benefit in Poland; in practice, EU citizens who move to Poland tend to have a higher pension than the minimum Polish pension.[20] The minimum pension is exportable.

In 2019, Poland introduced an additional benefit that is non-contributory, the so-called 13th old-age pension benefit.[21] It was meant to be a one-time benefit for that year, but in 2020 it became permanent. It has the same amount as the statutory minimum old-age pension, but no

15. https://ec.europa.eu/social/main.jsp?catId=868&intPageId=2285&langId=en.
16. The main act is Act of 8 August 1980 on the 1979–1980 budgetary proposals, *Belgian Official Gazette* 15 August 1980, notified to the Commission as minimum pension; Stevens and Schoukens (2023: 21).
17. As from 2025 tightened conditions apply: employees and self-employed persons are required to have worked for at least two-thirds of a full career (45 years), i.e. 30 years. A year counts as such if the claimant was insured for at least 208 days in that year; claimants must also have actually worked at least 5,000 days over their full career. Fewer assimilated periods are accepted than earlier (Act of 25 April 2024 on the pension reform, *Belgian Official Gazette* 16 May 2024).
18. Stevens and Schoukens (2023: 22).
19. Act of 17 December 1998 on retirement and other pensions provided by the Social Insurance Fund (*Journal of Laws* 2023, item 1251, as amended). The Act has been notified to the European Commission.
20. Mitrus (2023: 237).
21. Currently regulated by the Act of 9 January 2020 on additional annual financial benefit for retirees and pensioners, *Journal of Laws* 2024, item 891.

conditions apply in respect of contributory periods. It is paid *ex officio*, there is no means test and it is exportable. Although it can be debated to which category it belongs, it in fact removes the contributory conditions relating to the statutory pension and therefore fits best in this section.

In 2021 in Poland, the 14th old-age pension benefit was introduced;[22] in this and the following year it was a one-time scheme, but in 2023 it became permanent.

It is paid in full to those whose gross monthly old-age pension does not exceed a specific amount. For those who receive a higher pension, the 14th pension is reduced on a 'zloty for zloty' basis. There are no conditions other than that the claimant has reached pension age and has a pension that is below the income threshold.

The Government can change the amount of the 14th old-age pension each year. In 2023, it was 2,650 PLN (around 616 EUR); in 2024 it was much lower, that is, 1,780.96 PLN (around 414 EUR),[23] the same as the statutory pension.

Spanish legislation provides for a minimum pension as well. For the right to a *general* old-age pension, a minimum contribution period of 15 years is required, of which at least two must be in the 15 years immediately preceding commencement of the pension, and the claimant must be 67 or over.[24] For this waiting period, as corresponds to the Coordination Regulation, insurance periods completed in other Member States are also taken into account. The level of the pension depends on the contributions paid; for example, after 15 years, only half the pension is paid.

Within this system there are minimum pensions;[25] these are fully exportable. The full minimum pension is 825.20 EUR a month (there are 14 payments per year) for single pensioners and 1033.30 EUR per month for a pensioner with a dependent spouse (2024).

There are also supplements to the pensions for persons who do not meet the requirement of 15 years' insurance contributions. Article 59 of the General Social Security Act[26] provides that persons receiving a contributory pension with an income below a fixed amount receive a supplement to reach that minimum on condition that they live on Spanish territory. Law 22/2021 (Article 44) regulates these supplements; the ceiling for the income that can be topped up for a supplement is 745.16 EUR a month (2024).

Furthermore, as regards pensioners who have acquired pension rights in various Member States, Article 59(2) of the General Act provides that a supplement is payable for the difference between the minimum pension and the sum of the pro rata pensions of the claimant. This supplement is payable in Spain only.

Law 22/2021, as mentioned in the notification to the European Commission by Spain on the minimum benefits[27] thus regulates minimum pensions, provides supplements to those who do not meet the requirements for the minimum pensions, and supplements in the sense of Article 58(2) Coordination Regulation. The latter two benefits are subject to a residence condition.

22. The Act of 26 May 2023 on the next additional financial benefit for retirees and pensioners, *Journal of Laws* 2023, item 1407.
23. To put this into perspective, Mitrus (2023:231) remarks that in 2024 the average old-age pension in Poland is 3,516.95 PLN. The minimum level of subsistence benefit is 776 PLN.
24. In the case that 38 years and six months of contributions have been paid, the person is also eligible for a pension.
25. Article 44(5) of Act 22/2021) has been notified to the European Commission as Art. 58 benefits; see BOE-A-2021-21653. https://www.boe.es/eli/es/l/2021/12/28/22/con. The 22/2021 Act has been modified by Art. 78 Royal Decree - Law 8/2023 (https://www.boe.es/buscar/act.php?id=BOE-A-2023-26452).
26. Approved by Royal Decree 8/2015.
27. See also Salas Porras (2023: 82).

Sweden has, in addition to general old-age pensions, a so-called guaranteed pension, which is a tax-funded pension.[28] It supplements the other retirement pensions of the person concerned up to a particular level, which depends on the length of the period the person has been insured for old-age pension.

Claimants must have reached pension age and completed at least three years of insurance. In accordance with the Coordination Regulation, for this waiting period the periods completed in other Member States are also taken into account. Thus, one year of insurance in Sweden is sufficient for entitlement to a guaranteed pension. Forty years of residence in Sweden are required for a full pension. The level is reduced proportionally when fewer years are completed.[29]

The full pension is 8,779 SEK (780 EUR) per month for single persons and 7,853 SEK (698 EUR) per month for married persons. The smallest guaranteed pension is thus 1/40th of these amounts; clearly this pension does not by definition guarantee a certain subsistence income.[30]

Initially, Sweden had not notified this pension as a minimum pension in the sense of Article 58 Coordination Regulation. However, in the *Zaniewicz-Dybeck* judgment, to be discussed in the following section, the Court of Justice decided that it was a minimum pension.[31] Subsequently, the Swedish authorities decided that the guaranteed pension was no longer exportable. As a result of the new policy, by 2022, 43,000 pensioners who had previously been entitled to the guaranteed pension and were residing in other EU/EEA States lost their right to this benefit.[32]

When is a pension a 'minimum pension' in the sense of the Coordination Regulation?

Initially there was considerable confusion on the qualification of minimum pensions. The provision on minimum pensions appeared for the first time in Regulation 1408/71. The proposal for this Regulation, dating from 1966, COM(66)8, gave the following explanation on minimum pensions:[33] when the insurance record from the work is very short and the entitlement to invalidity, old-age and death benefits, according to the national legislation of the Member States, can only be acquired by aggregation of all insurance periods, it happens often that the total amount of the pensions does not reach the minimum pension amount specified by one or more of these States, even though the theoretical amount may reach this minimum threshold. Therefore, it was proposed that a supplement be paid to increase the pensions up to the minimum pension in the Member State where the insured person was living, when the conditions for this minimum pension were reached by aggregation of all insurance periods. The supplement would be paid by that State and the expenses for this benefit would be exclusively for that State as long as the pensioner lived in that State. If the pensioner moved to a State from which he or she also received a pension and that had a minimum pension, he or she would receive the supplement from this State. The proposal mentioned that at that time France, Luxembourg and Italy had minimum pensions.

28. In force from 1 January 2001, *Socialförsäkringsbalken* (SFB, Social Insurance Code), Ch. 67.
29. Erhag (2023: 184).
30. The gap between this pension and the social minimum applicable in Sweden may be partially filled with housing supplement and maintenance support for the elderly, mentioned in the section called 'Minimum pension schemes in the examined countries' supra.
31. The benefit has now been notified as such to the European Commission.
32. Erhag (2023: 198).
33. COM(66) 8, p. 52 (German edition). See also [1966] OJ 194, p. 3333 ff.

The first judgment on minimum pensions was *Torri*.[34] Mr. Torri argued that he was entitled to a supplement to reach the theoretical amount calculated for this State of residence. Therefore, the Court of Justice had to decide when a pension qualified as a minimum pension.

It considered that in COM66(8) the Member States with minimum pensions were explicitly mentioned, and that Member States had to notify the minimum benefits in a declaration. From this, it concluded that not all the national systems necessarily included minimum pensions.

In the *Browning* judgment,[35] the claim that the theoretical amount was a minimum pension was dismissed. In 1975, the UK had made a declaration pursuant to the Coordination Regulation that the minimum retirement pension (and some other benefits) provided for by the Social Security Act 1975 were minimum benefits in the sense of the Regulation.[36] However, in 1977 the British declaration was replaced by a declaration stating that the UK did not have minimum benefits in the sense of Article 50.[37] So, we can see that the provision led to considerable confusion.

The Court argued that 'minimum benefit' is primarily not a concept of the Regulation, but has to be defined by reference to the minimum benefits fixed by the laws of the various Member States. Such benefits are designed, in various forms, to guarantee to recipients of retirement pensions a minimum income in excess of the amount to which they would normally be entitled on the basis of the periods of insurance completed by them. Thus, it is a minimum resulting from a specific guarantee laid down under national legislation and not the minimum benefit which may result from the normal operation of the rules.[38] In other words, it is a supplementary benefit and presupposes the existence of another benefit, acquired on basis of completed periods of insurance.

Whereas in the *Torri* and *Browning* cases the Court decided that the pensions concerned were not minimum pensions, in a judgment of 2017 it ruled that a particular pension was a minimum pension for the purpose of the Coordination Regulation, even though it was not notified as such to the European Commission. This was the *Zaniewicz-Dybek* judgment,[39] concerning the Swedish guaranteed pension, discussed in the section called 'Minimum pension schemes in the examined countries'.

There were two issues at stake in this case. The first was that for persons having completed periods of insurance abroad, the Swedish benefit authorities calculated the guaranteed pension by means of the pro rata method; that is, they granted only the amount on the basis of the period completed in Sweden. They argued that the proportional acquisition of the guaranteed pension (i.e. the level was dependent on the period of insurance completed by the pensioner) was meant to prevent the export of full minimum pensions for persons who had resided in Sweden for a short period only.[40]

The second issue was that the Swedish deducted foreign pensions from the guaranteed pension on the basis of their internal instructions. To each insurance period completed in another Member State a *fictitious* pension value was awarded, corresponding to the average pensionable value of the insurance periods completed in Sweden. In other words, they did not deduct the actual Polish

34. ECJ 30 November 1977, 64/77, ECLI:EU:C:1977:197.
35. ECJ 17 December 1981, 22/81, ECLI:EU:C:1981:316.
36. [1975] *OJ C* 245, p. 2, Section II.
37. [1977] *OJ* C 89, p. 2.
38. *Browning* judgment, point 15.
39. ECJ 7 December 2017, C-189/16; ECLI:EU:C:2017:946 See also conclusion of the AG, ECLI:EU:C:2017:329; and Erhag (2023).
40. Erhag (2023: 91).

pension acquired by Ms Zaniewicz-Dybeck, but a fictitious amount, that was higher. As a result, the total income from her fictitious pension plus the Swedish one was too high for her to be awarded a guaranteed pension. The Swedish Pensions Authority argued that they applied this method because if they did not, persons who completed periods of insurance outside Sweden would be overcompensated: they would receive a higher supplement to reach the minimum than those who had completed the same periods in Sweden.

The Court of Justice did not approve of the Swedish approach. First of all, it decided, to the great surprise of the Swedish authorities, that the Swedish guaranteed pension was a 'minimum pension' within the meaning of the Coordination Regulation. For this qualification, it referred to the acknowledgment by the Swedish Government that 'the purpose of the guaranteed pension is to provide those in receipt of such a pension with a reasonable standard of living by guaranteeing them a minimum income in excess of the amount they would receive if they drew only an income-based retirement pension, where that amount is too small or even nil'.[41]

The Court continued by arguing that when a pension falls under Article 58, the pro rata rules of the Coordination Regulation cannot be applied. Instead, only Article 58 applies; the national pro rata rules cannot be applied either.

Article 58 requires that foreign periods are taken into account for calculating the level of the minimum pension; the actual foreign pensions and national pension have to be supplemented.

Thus, for the Court it was not decisive that the guaranteed pension was not notified to the Commission as a minimum pension. Nor was it relevant that the level of the Swedish guaranteed pension depended on the number of years of residence in Sweden instead of being a uniform fixed amount. Thus there can be forty different amounts, depending on the period of insurance. The Court also did not comment on the original justification for the coordination rules, which we quoted from COM1966(8), that is, that pensioners with relatively small periods of insurance may not reach the minimum amount. Ms Zaniewicz-Dybek completed 19 years in Poland and 24 years in Sweden.

The Government of Sweden assigned a special examiner to analyse the effects of this judgment; this examiner, with the support of several experts, produced a report (*Grundpension*)[42] that is useful for better understanding minimum pensions.

The report critically discussed the application of the criteria by the Court of Justice: it argued that the criterion of 'specific guarantee' could not really be applied to the Swedish guaranteed pension, as there may be various minimum amounts. Thus the report expressed doubt as to whether the guaranteed pension really satisfied the criteria, but it had to accept the Court's decision.

In a judgment of 2024, the EFTA Court applied the criteria from *Zaniewicz-Dybek* to a Norwegian invalidity benefit, the level of which was proportionally reduced when the person had not completed the full insurance period. It decided that this was a minimum pension.[43]

The decision of Sweden not to export the guaranteed minimum pensions

Ms Zaniewicz-Dybeck was better off as a result of 'her' judgment, since she resided in Sweden and was awarded the guaranteed pension according to the rules set out by the Court. However, the

41. *Zaniewicz-Dybek* judgment, point 44.
42. Lundahl (2019), further *Grundpension*.
43. EFTA Court 18 April 2024, Case E-3/23.

judgment was interpreted by the Swedish benefit administration in such a way that was disadvantageous to persons who had left the country, since it decided to no longer export the guaranteed pension.

This was a remarkable outcome and led to significant disputes. The interpretation that the pension was not exportable cannot be found in the judgment itself: the Advocate General and Court did not say anything on exportability.[44] After all, it was not an issue in the dispute itself; Ms Zaniewicz-Dybeck was not seeking to have the pension exported.

Article 7 of the Coordination Regulation requires the exporting of pensions. Deviation from this rule is permitted, if explicitly provided for by the Coordination Regulation. The supplement payable according to Article 58(2) is one such example of a permitted explicit deviation.[45] Thus, if a person no longer resides in a particular country, the supplement is no longer due.

Article 58(1), however, does not require the awarding of a supplement, but only sets out provisions on how to calculate the minimum pension, if a country has one. Consequently, in the case of migration out of the country, it is only these calculation rules that no longer apply; the pension as acquired on the basis of national law can still be exported. In some cases, pro rata rules then apply, but when a person has spent his or her whole career in Sweden, they are not applicable.

According to the *Grundpension* report, the Swedish Pensions Authority did not give any reasons why it was of the view that a minimum pension as such is not exportable.[46]

To date, the EU institutions have not taken action against this interpretation. When a Finnish pensioner asked the European Commission to start an infringement procedure against Sweden, it simply stated that 'as an exception to the general principle of exportability of benefits, Member States are obliged to pay these minimum benefits only to those residing in the Member State granting the benefit'; this response was noted in a report by the European Ombudsman. The Ombudsman merely repeated this response.[47]

Special non-contributory benefits

Coordination rules

Special non-contributory benefit (SNCB) schemes aim to ensure provision of a subsistence benefit; such schemes are made for a specific category (sometimes a combination) of claimants, for example, the unemployed, disabled or elderly. Initially, they were considered to be outside the scope of the Coordination Regulation as social assistance, but the Court of Justice ruled that a benefit is not social assistance if the claimant has a subjective right to it *and* it is linked to one of the risks covered by the Regulation.[48] This judgment implied that they fall within the scope of the Coordination Regulation. However, since Member States did not want these benefits to be exported, in 1992 a specific Article was inserted in the Coordination Regulation that linked these benefits to the State of residence, currently

44. Instead, the AG mentioned in note 20 of his conclusion that special non-contributory benefits are not-exportable and that the guarantee benefit is not a special non-contributory benefit, implying that it is exportable.
45. Fuchs and Cornelissen (2015: 367).
46. *Grundpension,* p. 132, referring to *Pensionsmyndighetens rättsliga ställningstagande* 2018-05-02, PRS 2018:1.
47. *Decision on how the European Commission dealt with an infringement complaint against Sweden concerning the termination of payments of guaranteed pensions abroad CHAP(2022)03008 (case 100/2023/EIS)*, https://www.ombudsman.europa.eu/sv/decision/en/165838.
48. Case 1/72, [1972] *ECR* 471.

Article 70.[49] Special non-contributory benefits within the meaning of Article 70 have to be paid without applying the pro rata rules. Apart from the export rules, the other rules of the Coordination Regulation apply, including those on the aggregation of periods and assimilation of facts in other Member States, and non-discrimination.

Article 70 applies only if a benefit is non-contributory and 'special', that is, payable only to specific categories of claimants in need of a subsistence income. Moreover, it must be listed in Annex X to the Regulation. If a benefit is included in this Annex, it still can be decided by the Court of Justice that it does not satisfy the conditions of Article 70 and has to be removed from the Annex. However, if it is not listed in the Annex, it is to be treated as a regular benefit, which means that it is exportable.

Special non-contributory benefits resemble, to a great extent, social assistance (see the section called 'Social Assistance'), but may differ in some respects, for example, the means test may not include capital, and the rates may differ. Therefore they may be deemed to be more appropriate for particular groups.

The restriction of special non-contributory benefits to the State of residence of the claimant fits, in itself, well with the nature of these benefits. They express a form of solidarity with persons on low incomes in the same community and are paid from public funds; their level is adjusted to the cost of living of the country concerned. Still, the non-exportability may be problematic when the country to which a pensioner wants to move does not have such a scheme, since the pensioner may not have a subsistence income in that case. This may seriously impede free movement.

However, even if a country has such scheme, there may be problems for incoming migrants. This issue arose in a case on the Austrian compensating allowance for the elderly (*Ausgleichszulage*), namely, the *Brey* case.[50] This was the effect of the interpretation of Directive 2004/38,[51] which regulates the position of, *inter alia,* economically inactive persons and their right to free movement and non-discrimination. Article 7(1)(b) of this Directive provides that EU citizens have the right of residence on the territory of another Member State for a period of longer than three months only if they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State. In the *Brey* case, the Court of Justice decided that special non-contributory benefits, although not 'social assistance' in the sense of Regulation 883/2004, can be considered as social assistance under Directive 2004/38. As a result, a Member State can refuse to grant such benefits to nationals of another Member State who are economically inactive, when they have not yet acquired the right to permanent residence yet (i.e. after a period of five years of legal residence). The Court added that the competent national authorities must make an individual assessment of whether the person constitutes an unreasonable burden before they can take a decision to refuse to grant the benefit.

However, in a later judgment, *Dano*,[52] the Court considered that a claim for a special non-contributory benefit for unemployed persons was sufficient in itself to assume that the claimant

49. By Regulation 1247/92, [1992] *OJ* L 136, pp. 1–6.
50. ECJ 19 September 2013, C-140/12, ECLI:EU:C:2013:565, no. 58.
51. [2004] *OJ* L 158/877.
52. ECJ 11 November 2014, C-333/13, ECLI:EU:C:2014:2358.

did not have sufficient resources. Although in academic literature it was disputed whether this judgment (concerning unemployment benefits) also extended to pensions, as it deviated from the individual assessment of *Brey*,[53] the Austrian pension authorities adopted the *Dano* interpretation.[54]

Special non-contributory schemes in the countries examined[55]

The Austrian compensatory supplement, mentioned in the previous section, is payable to pensioners in receipt of an old-age pension which, in addition to the net income from other sources, remains below a certain threshold.[56] In 2024, the threshold for a single person is 1,217.96 EUR.[57] The Austrian social assistance scheme has the same threshold, but this scheme has a means test on income and capital whereas for the compensatory supplement, only income is relevant.

The Belgian special non-contributory benefit for the elderly is the guaranteed minimum income for the elderly.[58] For entitlement to this benefit, a minimum period of residence in Belgium was (re) introduced in 2017: it required that claimants could show a record of at least 10 years' residence prior to applying for this benefit, of which five must have been continuous. This condition was challenged before the Belgian Constitutional Court as being in conflict with the standstill clause of the Belgian Constitution and the prohibition of discrimination, and furthermore, on the ground that infringed the Coordination Regulation for not taking into account periods completed in other EU Member States. The Court ruled that this condition could not be upheld.[59] It also referred to EU law, but did not have to discuss this, since it considered the condition already inconsistent with national law.

In 2024 the maximum basic amount is 1,032.95 a month for a married or cohabitating person, and 1,549.42 EUR for a single person.

Pensioners in Sweden who, despite the guaranteed pension (discussed in the following section), do not reach the social minimum may be eligible for a housing supplement and maintenance support for the elderly. Both schemes are listed in Annex X as special non-contributory benefits. One could question whether there is a need to include these in the Annex, since the need for housing and maintenance supports are not listed as risks within the material scope of the Regulation. In any case, it is clear that these benefits are not exportable.

Germany has a special non-contributory benefit for elderly and disabled persons (*Grundsicherung im Alter und bei Erwerbsminderung*). The amounts are comparable to those of general social assistance, but some of the rules are different (e.g. on means tests). The amount provided is 563 EUR a month for a single person; which is increased by 506 EUR a

53. E.g. Pfeil (2020: 372).
54. Felten (2023: 44).
55. The schemes mentioned in this section are included in Annex X of the Coordination Regulation.
56. *Ausgleichzulagenrichtsatz.* Section 292 of the Austrian General Social Insurance Act.
57. https://www.oesterreich.gv.at/themen/arbeit_beruf_und_pension/pension/Seite.270224.html.
58. *Inkomensgarantie voor ouderen* (IGO). Stevens and Schoukens (2023: 27) note that the IGO is governed by Art. 58 of the Coordination Regulation (see, on this Article, the section called 'Minimum pension schemes in the examined countries'). However, the IGO is a special non-contributory benefit; special non-contributory benefits and minimum pensions are mutually exclusive.
59. Judgment 16/9 of 23 January 2019.

month for couples.[60] From this amount, the income or pension of the pensioner and partner are deducted; of the capital for each person 10,000 EUR is disregarded. Parents and children of the claimant may be required to contribute to his/her maintenance if they have an income of more than 100,000 EUR a year.[61]

Spanish retirement pensions (*Pensiones de invalidez y jubilación*) provide pensioners who are not beneficiaries of a contributory pension with financial assistance. They are special non-contributory benefits, listed in Annex X. The applicant must have resided in Spain or in another Member State for ten years between the age of 16 and the date of application for the pension, of which two years' residence must be consecutive and immediately prior to the date of application.[62] Because of the assimilation rules of the Coordination Regulation, years spent residing in other Member States also apply for this purpose. Thus, these conditions only affect persons who have come from outside the EU to Spain.

Minimum income schemes that have not been notified as Article 58 or in Annex X

In the countries examined, there are also minimum income schemes that have neither been notified as Article 58 benefits nor listed in Annex X as special non-contributory benefits. In one country, a scheme has been notified for both Annex X and as a minimum pension.

This requires further discussion.

The minimum pensions in the sense of Article 58 guarantee a minimum income which is in excess of the amount that benefit claimants may claim solely on the basis of their periods of insurance and their contributions. Thus, they presuppose the right to a pension that is calculated on the basis of completed periods of insurance. From the applicable minimum, foreign pensions can be deducted. Minimum pension schemes also have a means test on income.

A special non-contributory benefit is meant for persons with an income below the subsistence level and therefore involves a means test and is, by definition, paid from public funds. Although minimum pensions are defined as supplementing pensions acquired based on completed insurance periods, it is not excluded that special non-contributory schemes supplement such benefits as well.

Thus, in the case of a benefit with a means test that is paid from public funds and supplements other pensions, it is doubtful whether it is a minimum pension or a special non-contributory benefit. The issue may be relevant, since the minimum pension as such is exportable and the special non-contributory benefit is not.

The rule to the effect that minimum benefits can be notified to the European Commission and special non-contributory benefits can be listed in Annex X is helpful in making a distinction. However, sometimes benefits are not notified as either benefits, or, incidentally, as both types.

An example of benefits that have been notified as both special non-contributory benefits and as minimum pensions is the Italian *integrazione delle pensioni al trattamento minimo*. In the notification to the European Commission and the Annex, these are translated as 'benefits supplementing the minimum pensions'. However, the intention is that (low) pensions are 'integrated' into the minimum pension as determined by the law, meaning that a supplement is to be paid to reach

60. In 2024 the German monthly minimum wage is 2,151 EUR.
61. https://www.deutsche-rentenversicherung.de/DRV/DE/Rente/In-der-Rente/Grundsicherung/grundsicherung_node.html.
62. Salas Porras (2023: 92).

that minimum. The translation that implies that minimum pensions are supplemented is thus misleading. In the *Stinco and Panfilo* judgment, it was more aptly translated as 'inclusion of the amount necessary to attain the statutory minimum pension'.[63]

In its circular of 2 July 2010[64] in which the Italian National Social Security Institute described the new Coordination Regulation that came into force at the time, it was noted that the *integrazione* benefits are supplements that have to be paid in addition to the minimum pension on the basis of Article 58(2). Thus, it only focused on the supplement payable on the basis of Article 58(2), and apparently, as this supplement is not exportable, it may be treated as a special non-contributory benefit.[65] It would seem that the two types of supplements involved in minimum pensions (see the subsection called 'Coordination rules' in the section 'Minimum pensions') caused some confusion here.

The *integrazione* benefit was introduced in 1952, thus before the first Coordination Regulation, and its regulation has been revised considerably since then. Currently, it is payable to persons who have acquired a pension right on the basis of an Act granting pensions on the basis of the wages received in the last years of work, which was in force until 1996.[66] Persons whose pension entitlement is based entirely on the succeeding Pension Act are not eligible for the *integrazione* supplement. As the youngest members of the generation who acquired rights under the Act that existed until 1996 will now be in their mid-forties, the *integrazione* will remain relevant for another few decades.

In 2024, single pensioners with an annual income of less than 7,781.93 EUR receive 598.61 EUR per month; for those with a higher income (up to a threshold), a partial supplement applies. If the pensioner is married, the ceiling is 23,345 EUR (the conditions also depend on whether the pension was granted before or after 1994).

What is the nature of these benefits? They have in common that they are (now) paid from public funds and involve a means test. They are paid to persons who have obtained a (low) pension. Since the amount of the minimum pension is not calculated on the basis of periods of insurance or residence, it can be held that they are special non-contributory benefits and not a minimum pension.[67]

Apart from the qualification issue, the question of how the *integrazione* benefits also fit with the non-discrimination and assimilation rules of the Coordination Regulation is raised. As discussed, they are paid to those whose pension is not fully acquired on the basis of the contributory Pension Act that has been in force since 1996. We could not find information on how the assimilation rules are applied to persons with a foreign pension, but such application seems to be complicated. This has likely been overlooked.

63. ECJ 24 September 1998, Case C-132/96, ECLI:EU:C:1998:427. See also https://www.pensionioggi.it/dizionario/integrazione-al-trattamento-minimo (accessed 11 July 2024).
64. Circular, no 10, https://www.inps.it/it/it/inps-comunica/atti/circolari-messaggi-e-normativa/dettaglio.circolari-e-messaggi.2010.07.circolare-numero-88-del-02-07-2010_7947.html.
65. It is remarkable that already in the *Stinco and Panflico* judgment, see note 62, it was remarked that the supplement was included in the Annex. In this judgment the question was only how the theoretical amount had to be calculated. The Court was not asked and did not discuss whether the benefit was correctly listed in the Annex. According to the Opinion of the Advocate General (ECLI:EU:C:1997:436), no 9, the applicants argued that the supplement was financed by contributions (at that time). This did not ask the Court to address the qualification. Until 2001 (Case C-43/99, *Leclere* [2001] ECR I-4265, the Court did not critically examine whether a benefit was correctly listed on Annex X.
66. Law No 218 of 4 April 1952; Law No 638 of 11 November 1983; Law No 407 of 29 December 1990, as amended).
67. The Italian benefit administration mentioned the *Integrazione* benefits as not exportable; https://www.inps.it/it/it/dettaglio-approfondimento.schede-informative.49854.prestazioni-inesportabili-.html (last accessed on 11 July 2024).

The German *Grundrentenzuschlag* is a benefit that is neither notified as an Article 58 benefit nor listed in Annex X. It is intended to increase the pension for those who have completed a long career with relatively low earnings,[68] and tops up statutory pensions. In order to understand its functioning, it has to be pointed out that German statutory pensions are calculated by awarding a so-called earnings point (EP) for each year of contributory employment. This is relative to the average wage earned in Germany: for example, if a person earns half the average wage, the EP is 0.5; those who earn twice the average wage earn 2 EPs. At pension age, the pension is calculated by multiplying these EPs by the amount of the pension that is fixed for that particular year. Consequently, persons with a low wage during their career, have low EPs, and thus a low pension. Therefore, it was deemd to be desirable to top-up their pensions.

In order to qualify, an insurance period of at least 33 years is required. Periods count when a person pays contributions as employee, and some assimilated periods also count (e.g. child-raising periods). Only those months where the average wage was at least 30% of the average wage of all workers (in 2023, this amounted to 1,078 EUR) are taken into account.

Periods completed abroad are also taken into account. Since the benefit administration does not know whether the 30% threshold has been met for each year, all periods abroad are taken into account. However, the level of the supplement is calculated on the basis of the German periods.[69]

It is only when these conditions are fully met that the supplement is due; there is no pension right if the wage has been below the threshold, not even a proportional one.[70]

The supplement is calculated by doubling the EPs for each qualifying month (subject to a maximum of 0.8 EP); however, it should be noted that 12.5% is deducted from the double value.

The pension supplement is subject to a test on income, and the income of a partner is also relevant; if the pensioner's income exceeds a certain threshold, the supplement is reduced. Capital is not taken into account.

For up to a monthly income of 1,375 EUR for a single person and 2,145 EUR for married persons, a full supplement is payable; if these thresholds are exceeded, 60% of the excess is deducted. In the case of income over 1,759 EUR (single person) or 2,530 EUR (couples), the full amount is deducted (2024). The average supplement is 92 EUR.

No residence requirement applies in respect of the right to the German pension supplement.

What is the character of this benefit? It is true that it does not guarantee a specific minimum, but that was not the case in *Zaniewicz-Dybek* either, as we saw; for the Swedish guaranteed pension many different minimum amounts can be calculated.[71] In any case, its purpose is to increase the pension in order to provide for a higher standard of living and supplement pensions based on periods of insurance.

Although the German pension administration states clearly that the *Grundrentenzuschlag* is not a minimum pension,[72] in reality it treats it as a minimum pension in the sense of Article 58. Not only does it count the periods spent abroad for satisfying the waiting period, which would also be required for regular pensions, but, in deviation from the rules on general pensions, and in accordance with Article 58 of the Coordination Regulation, it does not apply the pro rata rules on the

68. § 76g Zuschlag an Entgeltpunkten für langjährige Versicherung, SGB VI, Gesetzliche Rentenversicherung.
69. Reinhard (2023: 63)
70. Thus, low-income workers who are most in need are often excluded, as Reinhard (2023: 56) remarks.
71. However, even though the calculations may be complicated, in most cases the means-test ceilings will be decisive in determining the level of the supplement. This may reduce the variation of supplement amounts.
72. https://rvrecht.deutsche-rentenversicherung.de/SharedDocs/rvRecht/02_GRA_EU_SVA/03_Europarecht/01_VO_EG_Nr_883_2004/art_0051_75/gra_euvo_883_2004_a_0058.html (last accessed on 14 July 2024).

Grundrentenzuschlag. As a result, the same outcome as with application of Article 58 is reached. The supplement is also payable when the pensioner resides outside Germany, in another Member State, in line with our interpretation of Article 58. So, it can be qualified as a minimum pension in the sense of Article 58.

However, the German administration is more generous than required by the Coordination Regulation, since it does not apply the pro rata rules on the benefit when it is exported. An explanation for this may be that its amount is often very low, and the rules on the means test are hard to apply abroad anyway.[73] As Reinhard (2023) remarks, there is no coordination with guaranteed minimum pensions, if any, in the Member State where the pensioner resides.

Social assistance

A third way to ensure a subsistence pension is by means of social assistance. Social assistance benefits are excluded from the material scope of the Coordination Regulation (Article 3(5)). The decisive element for a benefit to be qualified as social assistance benefit for the Coordination Regulation is that it is paid regardless of the reason why a person is poor.

Social assistance benefits can be refused to economically inactive persons who are not yet permanently residing in the State of residence in the sense of Directive 2004/38, as we saw in the subsection called 'Coordination rules' in the section 'Special non-contributory benefits', when discussing the *Dano* judgment.

The Italian system includes a social assistance benefit for persons with an income below the minimum threshold determined by law. It is required that one has lived continuously in Italy for 10 years.[74] The 10-year requirement is not linked to the time of application, but could have been fulfilled much earlier in the claimant's life.[75]

On 1 January 2024, a so-called inclusion allowance scheme (*Assegno di inclusione*—ADI) was introduced, that replaced other previous measures for income support.[76] This allowance consists of two parts: a supplement to family income up to a threshold and a support for households living in rented housing with a registered tenancy. It is aimed at households who suffer from economic and social disadvantages, whose income is below a certain threshold. Among the requirements for access to the allowance is that a person of at least 60 belongs to the household. The applicant may be Italian or foreign, but at the time of submission of the application, s/he must have been resident in Italy for at least five years, of which the last two must be continuous. The residence requirement is extended to members of the household benefiting from the measure.

Greece has abandoned special measures for pensioners and now only has a universal social assistance measure that targets the entire population.[77] However, a social solidarity allowance targeted especially at *uninsured elderly* persons was introduced in 2016; it is provided to poor elderly persons aged 67 and over who are uninsured or who do not meet the necessary requirements for a pension.[78] In order to be eligible, persons must have legally resided in Greece for 15 consecutive

73. Reinhard (2023: 59 and 63).
74. Sena (2023: 110).
75. Sena (2023: 114).
76. Law Decree 4 May 2023 no. 48, converted into Act 3 July 2023, no..85.
77. Tsetoura (2023: 158).
78. The amount of the social solidarity allowance for uninsured elderly persons is set at 360 EUR per month: Angelopoulou (2023: 165).

years immediately prior to the application or for at least 15 years between the ages of 17 and 67, and the applicant must have resided in Greece for ten consecutive years at the time of application.

The Dutch system has a specific section in the Public Assistance Act on a subsistence income for pensioners, called *Aanvullende Inkomensvoorziening ouderen* (income supplement for elderly, the IAO). The IAO ensures that the same amount is paid to these pensioners as the full AOW pension applicable to their household status. It thus supplements the AOW rights, but is means-tested, and occupational pensions, the income of the partner and income from capital (house and other property) are taken into account. Therefore, AOW pension plus the IAO are not the same as a full AOW pension, since the latter does not take additional income into account. The AIO—being social assistance—is paid only if the person concerned lives in the Netherlands.

It should be noted that there is a huge difference in take-up rate between AOW pensions and the AIO. Some 99.06% of all eligible persons for an AOW pension do in fact receive it. Take-up of the AIO is low. Around 50% of persons who are eligible for AIO do not claim it.[79]

Observations, conclusions and recommendations

'Minimum income protection for the elderly is a largely uncharted territory in the international literature', as Goedemé wrote in 2012.[80] Even though the amount of literature on this topic has grown since then, this statement is still true. Moreover, the studies focus, in particular, on the level of income protection. The benefit conditions relevant to the legal position of the elderly have received much less attention.

From the analysis of the schemes in this study, a couple of issues may be highlighted that are relevant for the latter part of the uncharted territory.

First, of all, within the countries, (minimum) pensions protection appears to be distributed over several schemes. This means that those with low pensions need to make more than one application, each with its own conditions. Such fragmented protection can seriously impact on the actual take-up. Single, comprehensive schemes could significantly improve the legal position of the elderly with low pensions and promote actual take-up.[81]

Secondly, the sustainability of the schemes is an issue. Usually, the issue of sustainability is addressed from the point of view of finances of countries. However, it also has another dimension. Since the elderly (most often) remain dependent on the relevant minimum income scheme for the rest of their lives, as they can (hardly) access other income sources, they need certainty that the scheme will continue to exist and that benefit levels will not be lowered, but adequately indexed instead. If the elderly have to fear that they will lose their protection and will become dependent on others, this can pose a significant threat to their dignity, even when their fear has not yet been realised.

Thirdly, when an extensive means test applies for entitlement to a minimum income, one can expect that take-up will be very low, since this creates important thresholds, also for those who

79. Algemene Rekenkamer (2019:29).
80. Goedemé (2012: 127).
81. As elaboration of 'A disproportionate administrative burden, the lack of awareness or fear of stigmatisation or discrimination may lead to the fact that those eligible for minimum income do not request access to it. Avoiding fragmented schemes, ensuring overall accessibility and simplicity of the application procedures and offering administrative support to the potential claimants can increase the take-up of minimum income'(Preamble, no 25, of the Recommendation).

satisfy the tests. The feeling of not being entitled to the minimum, being treated as undeserving poor, the need to provide extensive information and the close supervision by the administration threaten the legal position of the claimants. In particular, when income and capital of relatives outside the household of claimants are also taken into account, even if such rules are not or not systematically enforced, living in dignity becomes difficult. If means tests are still necessary, it is important to examine their conditions very strictly.

Fourthly, the rules on the minimum income schemes are extremely complicated, as all our experts have remarked. This is also true for the applicable coordination rules. This may make it difficult for the benefit administration to apply the rules correctly and for pensioners to realise their rights.

The European Commission does not appear to have given full attention to the legal aspects of the minimum schemes for the elderly and their effects on free movement. It has not clarified the meaning of the minimum pensions in the sense of Article 58, it has not avoided double notification as Article 58 and SNCB and it has not interfered when pensions were not notified at all, even though this meant that the treatment of foreign pensions remained unclear. The principle that elderly must be able to live a life in dignity, which is also addressed to the Commission (see the Charter of Fundamental Rights), requires a more active role. This means that the coordination rules need close examination in view of the problems observed.[82]

However, many of the issues raised cannot be solved by coordination rules, but require national schemes to be redesigned.[83] Exactly because of the interaction with EU law, the Commission could play an active role. This may also mean that Member States are asked to reconsider the need for so many different types of schemes. Although we have argued that minimum pensions and special non-contributory benefits are to be treated differently, is it really beneficially to have these different types? Or could the minimum income schemes be redesigned as more simply, with comparable levels and conditions across countries? If that was the case, non-export would no longer be so problematic. In responding to this issue, good empirical analysis of each of the current schemes is also required.

Recently, the Council Recommendation on adequate minimum income ensuring active inclusion[84] was adopted. This recommendation addresses the topic of minimum incomes in general, and not specifically for the elderly.[85] Council Recommendation on access to social protection for workers and the self-employed[86] recommends, *inter alia*, effective coverage, adequacy and transparency. These recommendations could be taken as a starting point and could be supplemented in order to address the specific issues for the elderly. Our analysis provides food for thought for that undertaking.

82. Also other countries may follow the Swedish change in export rules of minimum pensions, e.g. Finland (www.kela.fi/news).
83. See also Vonk (2020), who criticised the treatment of the various subsistence benefits by the coordination rules and proposed a revised approach. The issue of minimum pensions, that fell outside the scope of his article, even reinforces his argument.
84. [2023] *OJ C* 41.
85. See on this also Aranguiz (2023).
86. [2019] *OJ C* 387, p. 1-8.

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