

Effective cross-border pension information in the face of multi-level legal systems

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“Ist Wissenschaft, was Wissen schafft?”

1 SOCIETAL RELEVANCE OF THE RESEARCH FINDINGS

During this research, the intricacy of the topic of effective cross-border pension information has manifested itself quite clearly. Yet, an ever-growing group of mobile individuals – who avail(ed) themselves of their European freedoms of movement – continues to see themselves confronted with a lack of (effective) pension information. This potentially hinders them in making well-informed decisions when it comes to retirement planning, while the central role of saving for an adequate pension has remained unabated.

Much is to be gained by mapping out the regulatory frameworks on a national, European and international level – governing the taxation of (cross-border) statutory, occupational, and personal pensions – and probe how they operate through the lens of effective pension information provision. In this research’s comparative study, two national legal systems (Netherlands, and Germany), as well as the legal norms on European and international level, and all three pension pillars (statutory, occupational, personal pensions) were subject of analysis. In a realm filled with legal norms, these different regulatory systems have often been accused of being overly complex and pluralistic, and lacking transparency. Hence, chapters 4, 5, 6, 7, 8 and 9 revolved around a legal comparative study in which the legal frameworks in the Netherlands and Germany, as well as on a European and international level, were mapped out. The comparative study allowed for revealing differences and similarities in the tax treatment of pensions in cross-border situations (by laying the tax systems of the two Member states on top of each other) that form a potential hurdle for the provision of effective pension information. Moreover, as this research has shown, inter-level coherence between different levels of legal norms (national; European; international) could be enhanced, as this has been found to be weak. Hence, this research has shown that more could be achieved – along the lines of this research’s evaluation framework – by approaching this research’s topic more holistically.

In terms of societal relevance, this research enlightens stakeholders comprehensively on this legal phenomena shrouded by a multitude of regulatory instruments, for instance, formal laws, policy decisions (*beleidsbesluiten*), ministerial decrees and memoranda aimed at clarifying the interpretation of given parts of legislation (e.g. *BMF-schreiben*), the CJEU’s extensive settled case-law, EC’s communications, and bilaterally concluded

(international) tax treaties. In doing so, this research created a comprehensive overview of these regulatory frameworks, and supports these stakeholders in seeing ‘the wood for the trees’.

Practice also fed into this research by the author’s research stay at *Der Gesamtverband der Deutschen Versicherungswirtschaft (GDV)* in 2017. This allowed the author to get a more profound understanding of the ongoing developments in the domain of (cross-border) pension information (in Germany, as well as on a European level), as well as further specifying the challenges that policymakers and pension providers see themselves confronted with when it comes to (effective) pension information. In turn, this practical perspective enabled to focus this research’s scope more in terms of societal relevance, i.e. incorporating these practical perspectives ensured that this research reflects societal needs more.

2 TARGET AUDIENCE

As follows from the above, though this research’s findings predominantly bear relevance for academia, the findings can also be of interest and relevance for a broad range of target groups, including (national) governments, (EU) law- and policymakers, policy advisors, pension funds, (tax) lawyers, (pension) advisors, consultants etc. Moreover, this research’s findings may be beneficial to platforms like the European Tracking Service (ETS), the Dutch pension register (mijnpensioenoverzicht.nl), the German *Digitale Rentenübersicht* to be developed, and pension industry associations such as EIOPA (Europe Insurance and Occupational Pensions Authority), the Dutch *Pensioenfederatie*, and the German pension industry associations such as GDV (*Gesamtverband der Deutschen Versicherungswirtschaft*).

The audience for whom this research may be particularly of interest is national, and European, policy-makers involved in developing and amending laws and policy in the field of the taxation of cross-border pensions or working on projects affiliated with cross-border pensions. The interdisciplinary nature of this research provides a basis for dialogue between the realm of law- and policymaking on the one side, and practice on the other, by obtaining a more profound understanding of how the given regulatory frameworks operate in practice (‘law in action’). Building upon this dialogue, hopefully a connection and mutual understanding between these two realms will emerge on the basis of which further genuine action can be taken.

Moreover, this research addresses professionals working within the domain of cross-border pensions, such as lawyers/consulting supporting clients and first line support

providers providing information on this matter directly to (mobile) citizens. Another group of stakeholders is pension funds, pension providers, and the entire pension industry, which may benefit from the observations put forward in this research, in particular when it comes to effective pension information as mapped out in chapter 2 and 3 of this research. Different parts of this research may be of benefit to different target groups. For instance, policymakers may be most interested in the findings and recommendations on how inter-level coherence, or inter-system consistency, is to be enhanced, and the solutions proposed to enhance the comparability of legal systems. Moreover, this research seeks to create room for dialogue with law- and policymakers when it comes to adopting a more empirically-informed approach to law- and policy-making, on both national, as well as European level. From that perspective, this research constitutes ‘action research’, as it seeks to incite action among law- and policymakers.

As mobile citizens do not always understand the consequences of their mobility on their pension situation, they may seek help from advisers. This research can also be of interest to these advisers. In addition to citizens and their advisers, this research is also of interest to professionals working at the Ministry of Social Affairs and Employment or Ministry of Finance, in implementation, and the judiciary. The Tax Authorities in Germany and the Netherlands will be particularly interested in the legal comparison of the three pension pillars in both countries and their tax treatment, in particular when it comes to provision reflecting (the lack of) inter-system consistency. This holds in particular with regard to abandoning the ‘isolated approach’ in cross-border situations, i.e. to what extent any previous or subsequent tax treatment in another (member) state shall be taken into account in the eventual taxation of foreign pension benefits.

What is more, this research envisages to incite interest and curiosity in the topic of effective (cross-border) pension information and its relation to taxation of (cross-border) pensions. The interdisciplinary nature of this research provides a basis for discussion among academics from the various academic fields pertaining to effective cross-border pension information.

3 INNOVATIVE ASPECTS OF THE RESEARCH

This research is considered innovative for a number of reasons. First, this research brought together academic research that has, traditionally, been separated into different fields of legal and economical-psychological scholarship. Although literature has addressed these two fields separately, little research has created a (evaluation) framework that merges both fields of research. The literature available is still marked by a lack of recurrent research into

the interrelatedness of these two fields. As much as the distinction holds for literature, similar is true for practice, i.e. pension (information) and taxes are still perceived and portrayed as distinct realms, while research has demonstrated the interrelatedness.

This research picks up the little research that has been done so far and expands upon this research. By doing so, this research aims to fill the present gap between these two ‘camps’ of academia by integrating insights from both fields. It seeks to discuss those findings that are both scientifically cutting-edge, and practically applicable. This rather unorthodox approach may assist a broad range of researchers – as well as potentially policy-makers – as it addresses a gap in the literature in terms of research, which reflects on the operation of legislation in the domain of information provision, rather than inherently favouring the legal perspective. This approach may, moreover, lead to a more profound understanding of the operation of these legal systems in a cross-border context, and help to develop effective pension information provision in the interest of mobile citizens’ retirement planning.

This research has done so by establishing an evaluation framework, building on theory and concepts originating from the domains of behavioural economics, economic psychology and cognitive psychology focusing on effective (pension) information. Moreover, in order to render these empirically-gained findings more suitable for evaluating the regulatory frameworks, a ‘distanced approach’ has been taken under which these findings were translated into the legal realm, generating added value to legal doctrine. Under this approach, these empirical insights were translated into a paradigm, which sees the law as a complex multi-level legal system, (un)fit for the provision of effective pension information. This revealed not only how the realms of empirically-gained insights from behavioural economics, economic psychology and cognitive psychology, and the realm of multi-level legal systems are interrelated, but also uncovered a need for more inter-/multidisciplinary studies to allow for a more profound understanding of how the given regulatory frameworks operate in practice (‘law in action’).

Moreover, another innovative aspect of this research is that it combined different research designs by adopting an empirical research design as well. This research’s empirical study has been conducted through an experimental design, while building on certain behavioural mechanisms explored in the field of ‘behavioural economics’ and pension information provision. The method employed in this research was a randomized controlled trial. In doing so, this experiment helped to further develop the notion of ‘effective cross-border pension information’, in particular with regard to the – among mobile citizens – ubiquitous question ‘what will I get?’. This multi-method research design allowed for a more profound understanding of the complexities underlying the provision of effective cross-border

pension information. Moreover, it also aimed to create progression in the policy field by focusing on the psychological decision-making process. The outcomes of this research can also be considered a stepping stone for further research into effective cross-border pension information.

4 OUTREACH AND DISSEMINATION OF RESEARCH FINDINGS

Several steps will be undertaken to promote the research findings. Research results will be disseminated among academics, politicians, policy-makers, practitioners, businesses, NGOs and the broader public. In terms of outreach already achieved, EIOPA implemented a small part of this research in its technical advice on the development of pension tracking systems, in particular with regard to the provision of net amounts of expected retirement income.³⁰⁰⁷

During my PhD research, I already undertook several activities – as the one proposed – to share my knowledge with experts, academics and professionals. Throughout the research, parts of this study have been presented in different (non-)scientific forums (e.g. pitch for a political representative from the Dutch province of Limburg in 2016; working session at *Der Gesamtverband der Deutschen Versicherungswirtschaft* (GDV) in 2017; Presentations for ITEM scientific board 2016-2022; Pension Seminar at UM 2021; PhD Meeting on Pensions 2022; Ius Commune Masterclass Leuven 2019 (expert review by Prof. Yves Stevens); SVB-relatedag 2022; several expert meetings in the course of 2022). These conferences, workshops, meetings allowed to further shape this research's societal relevance.

Central to disseminating the results of the research is the publication of this dissertation. By seeking to publish this thesis free of charge, i.e. open access, it will be openly accessible for the academic community. Moreover, the research will be published as a book by a publisher for other target groups (outside the academic community). Furthermore, in order to devote more attention to the topic of this research, structural research is to be stimulated. Hence, this research's subject matter will be taken further in the form of (peer-reviewed) journal articles – in an attempt to close the revealed gap in academic literature – as well as through more popular channels (blog's, popular magazine articles etc.) so that a broader non-academic public can also learn about this research's findings. Moreover, this research's findings incite to develop training and education activities to be offered to

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practitioners advising clients on the taxation of cross-border pensions, and retirement planning.

Lastly, given the growing degree of labour mobility and, hence, dispersed pension accrual, the central role of (effective) cross-border pension information will persist to grow. In view of this, it is expected that more opportunities are likely to occur in future to valorise this research's findings.