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The Integration of Occupational Pension Regulations: Lessons for Canada

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SEDAP Research Paper No. 188

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The Integration of Occupational Pension Regulations: Lessons for Canada

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Abstract: Is the integration of occupational pension regulations across the Canadian provinces feasible? In this paper, we assess the proposal for harmonization made by the Canadian Association of Pension Supervisory Authorities (CAPSA) by comparing it to the EU's successful integration of member states' pension regulations. We argue that CAPSA's initiative failed both because regulatory diversity was defined as a fundamental problem and because the regulations that serve social policy goals were not protected from integration. We suggest that occupational pension integration in Canada would be feasible if provincial governments largely excluded rules on benefits and relied primarily on the mutual recognition of regulations.

Keywords: Occupational pensions, regulation, agenda-setting, problem definition, Canada, European Union

JEL Classifications: D02, D70, G23, G28, H10, J26, J38, J58, L38

Résumé: Est-il possible d'harmoniser les règlementations régissant les régimes de pension complémentaires entre les provinces canadiennes ? Dans cet article, nous évaluons la proposition d'harmonisation faite par l'Association canadienne des organismes de contrôle des régimes de retraite (ACOR) en la comparant à l'harmonisation réussie des réglementations régissant les régimes de pension complémentaire des États membres de l'Union Européenne. Nous soutenons que l'initiative de l'ACOR a principalement échoué pour deux raisons. La diversité des règlementations a été considérée comme un problème fondamental et les règlementations qui adressent les objectifs de la politique sociale n'ont pas été protégés par le processus d'intégration. Nous pensons qu'il soit possible d'harmoniser les régimes de pension complémentaire au Canada si les gouvernements provinciaux excluent les règles régissant les avantages sociaux et se basent principalement sur la reconnaissance mutuelle des règlementations.

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Introduction

Since the 1990s, the integration of occupational pension regulations across jurisdictions has been on the agenda of governments, regulators, and supervisors in many advanced industrialized countries, mostly at the international level. In Canada, it was on the agenda also at the domestic level, because, in a unique arrangement, employer pension plans are regulated by the provinces. At the international level, the OECD member countries recently agreed on principles for regulating and supervising pensions that cover issues such as funding and investment (OECD 2004a, 2004b); the European Union member states delegated the responsibility for regulating and supervising cross-border pension funds to the authority in their respective home state and established CEIOPS, a new intergovernmental committee for coordinating the activities of regulatory and supervisory authorities, which is charged with increasing convergence in pension supervision (CEIOPS 2005).[1] At the domestic level, the Canadian Association of Pension Supervisory Authorities (CAPSA) recently proposed more than 40 principles of pension regulation and supervision, which would lead to more integration across the Canadian federation if they were adopted by the provincial governments (CAPSA 2004, 2005). In addition, the government of Ontario, which

[1] The acronym CEIOPS stands for Committee of European Insurance and Occupational Pension Supervisors. Its counterpart at the global level is IOPS, the International Organization of Pension Supervisors, which was created by 40 countries in 2004. IOPS seeks to promote cross-national cooperation and to serve as the international standard-setter in occupational pension supervision.

regulates the large majority of Canadian pension plans, considered the issue of harmonizing regulations in its review of occupational pension legislation (Expert Commission on Pensions 2007).

Even though governments have paid increasing attention to the issue of occupational pension integration, their decision-making has been slow and so far progress has been limited. It took the European Union more than 10 years to adopt its new occupational pensions framework, and it is still not clear whether or not it will be able to remove all barriers to the cross-border provision and membership in occupational pension schemes. Most member states missed the 2005 deadline for transposing the EU's legislation on the *Activities and Supervision of Institutions for Occupational Retirement Provision*, commonly known as the pension fund directive, into national laws (Council of the European Union 2003). The European Parliament was concerned that even the governments that implemented this directive would try to limit its force (European Parliament 2005). The Canadian provinces agreed on a *Memorandum of Reciprocal Understanding* in 1968, and have surprisingly neither changed nor updated this agreement in the almost 40 years since, even though, as many recent court cases have shown, many issues of regulating and administering occupational pension plans across jurisdictions remain unsettled (Kaplan 2006 115-124). The efforts of provincial regulators to develop a *Pension Model Law*, which has received a lot of attention from plan sponsors, trade unions, and the financial services industry, has not convinced provincial governments to launch an initiative for deeper integration. Both in the EU and Canada, the progress that has been made in coordinating occupational pension regulations is small compared to that which has been achieved in integrating other areas of financial services. The European Commission deepened integration in both banking and securities regulation by implementing the *Financial Services Action Plan* (FSAP) (Grahl and Teague 2005). The federal government assumed most of the responsibilities in Canadian banking regulation (Coleman 2002), and all provinces except Ontario recently created a passport system for securities regulation (Provincial-Territorial Ministers Responsible for Securities Regulation 2004).

In this paper, we analyze why it is so difficult to integrate occupational pensions, and how existing obstacles might be overcome. We evaluate whether or not occupational pension integration in Canada is feasible by analyzing the form and strategies of integration in the European Union. In both jurisdictions, governments made similar attempts to coordinate or harmonize pension regulations, but had different degrees of success. Even though European policy-makers faced a much greater diversity and a much lower level of coordination among occupational pension systems than Canadian ones, they successfully enacted new legislation. The outcome in Canada was different: provincial policy-makers did not respond to the regulators' proposal for more integration, and neither initiated new legislation nor revised the existing *Reciprocal Agreement*. By comparing the strategies of integration across two multi-level political systems that are similar in the area of pension regulation, we are able to draw lessons from the European experience for the Canadian case (Rose 1993, 2005). Specifically, we will analyze the content of the successful proposal made by the European Commission and compare it to CAPSA's unsuccessful proposal of *Principles for a Model Pension Law*.

We develop two arguments in this paper. The first one is that occupational pension regulations are more difficult to integrate than other financial services regulations because they are only weakly affected by pressures from the global economy and, most importantly, are significant instruments for achieving social policy goals. The second argument is that EU policy-makers used two strategies that made the integration of occupational pension regulations feasible: they respected the diversity of the existing occupational pension systems, and they protected existing regulations that embody social policy goals, focusing their efforts exclusively on financial regulations. By defining the problems of fragmentation and setting the scope of integration in these ways, they were able to overcome the obstacles to integration. Our arguments imply that Canadian policy-makers would also be able to overcome existing difficulties if they framed the problems differently and exempted social regulations from integration.

This paper is divided into three parts. In the first part, we discuss two obstacles to integration: the lack of pressures to place occupational pensions on the political agenda and the problem of integrating social policies across jurisdictions. In the second part, we compare the strategies of the European Commission and CAPSA for overcoming the difficulties in getting policy-makers' attention. In the third part, we compare the strategies of EU and Canadian agenda-setters for circumventing the problem of diverse policy legacies in occupational pensions. In the conclusion of this paper, we discuss the lessons that Canadian policy-makers may learn from the European Union's experience with integrating pension regulations.

Obstacles to Integrating Occupational Pension Regulations

Why is it so difficult to integrate occupational pension regulations? The issue of occupational pensions has two features that create difficulties in first getting it on the political agenda and then in adopting legislation: the low salience of this issue on policy-makers' agenda and the commitments of governments and interest groups to the values embodied in a number of occupational pension regulations. These commitments are known in the literature as policy legacies.[2] The first feature of the occupational pensions is that, since it is rarely a salient issue for voters, it does not play an important role in elections and party competition. It shares this feature with other areas of highly technical financial services policy (Coleman 1996). Policy-makers thus pay attention to financial services policy if they are facing either an internal crisis or external pressures. Recent occupational pension reforms are an example of policy-makers' reaction to a crisis. Federal and provincial governments considered or adopted reforms of their pension benefits standards legislation in response to growing funding shortfalls in employer pension plans in Canada, which threatened the security of benefits and created instability for the financial system (Kaplan 2006, 84-86; Bank of Canada 2004). The funding crisis motivated policy-makers to reform occupational pensions, but did not lead them to become interested in more regulatory integration within Canada. This response could have been expected since provincial policy-makers are able to respond more quickly and flexibly to a crisis if they can adapt pension regulations

[2] On issue salience and agenda-setting, see (Kingdon 1995; Baumgartner and Jones 1993, 2002); on policy legacies, see (Heclo 1974; Weir et al. 1988; Pierson 1993).

independently. They are unlikely to pursue integration when they are faced with pension funding shortfalls. Thus, the current round of reforms repeats the experiences of that of the 1980s, which led to greater, not smaller, differences across the provinces (CLC 2004, 5). Thus, even though occupational pensions have extraordinarily been on governments' agendas in recent years, regulatory integration did not become an issue.

The recent coordination of securities policies in Canada is an example of policy-makers' reaction to external pressures. Because of the globalization of financial markets, Canada's fragmented regulatory system has become increasingly inefficient (Coleman 1992, 2002). The Wise Persons' Committee, which had been created by the federal government, concluded from its study that the regulation of securities in Canada had to become more integrated across the provinces if the competitiveness of Canadian capital markets in the global economy was to be maintained (Committee to Review the Structure of Securities Regulation in Canada 2003). In response to these external pressures, provincial policy-makers launched the *Provincial-Territorial Securities Initiative*, which led to a new system of securities regulation based on the principle of mutual recognition: the so-called passport system (Provincial-Territorial Council of Ministers of Securities Regulation 2007).[3] The integration of occupational pension regulations does not play a significant role in the competitiveness of the Canadian economy on the global stage. Thus, provincial policy-makers are not under pressure to

[3] EU policy-makers also reacted to the changes in the international economic environment, proposing the *Financial Services Action Plan*. Since the member states saw the issue of integration as urgent, they even agreed on a new and fast process of decision-making, named the Lamfalussy process, which delegated powers from the Council of Ministers to the European Commission, high-level ministerial representatives from each country, and national securities regulators.

act in this area. For example, while they were willing to create a new Council of Ministers in the area of securities regulation, provincial policy-makers have not even considered the formation of an intergovernmental forum for pension regulation.

The second feature of occupational pension regulations is that they embody social policy goals that are highly valued by some governments and interest groups. Even though the area of occupational pensions is often seen as similar to other areas of financial services policy, it differs significantly from, for example, that of securities and banking. Most aspects of pension regulations are just as technical as those of other financial services regulations: they deal with issues of pension plan supervision, such as registration and information requirements, and with funding and investment rules, including the definition and calculation of assets and liabilities, the required level of funding, and rules on diversification. But other aspects, especially issues of social protection, make occupational pension regulations distinct. They reflect choices about the character of occupational pensions, the responsibilities of the state, and the role of regulation. For example, in some EU member states, occupational pension plans are modeled after public pension programs that guarantee a defined level of income and other benefits until or even after a person's death and are regulated as a form of insurance. This type of occupational pensions contrasts with another type which imposes few restrictions, for example on lump-sum withdrawals, lacks requirements, such as the annuitisation of benefits and the provision of survivors' pensions, and regulates occupational pension plans as a special category of financial products, not as a form of insurance, which often leads to a low degree of regulation and supervision (Queisser 1998; De Ryck 1996). The differences between occupational pension systems in Canada are much smaller than that between those in the EU, but the Canadian provinces nonetheless have distinctive rules about benefits which embody values and social policy goals, such as broad coverage and adequate and secure benefits. For example, Manitoba makes plan membership compulsory, Quebec requires benefit indexation, and Ontario provides enhanced protection for early retirement benefits, so-called grow-in rights.

These variations in social policy goals and pension regulations create barriers against the coordination, convergence and harmonization of occupational pension systems that do not exist in other areas of financial services. Since financial issues are regarded as highly technical, they are often discussed and resolved by small policy networks, and thus dealt with outside of high-level politics (Coleman 1996). A good example of successful policy-making by experts is the EU's Lamfalussy process which delegated power to a circle of specialists from ministries, regulators, and interest groups. In the Council of Ministers, decisions about the *Financial Services Action Plan* faced multiple long delays; in two newly created expert bodies, the European Securities Committee and the Committee of European Securities Regulators, they were made within only a few years (Grahl and Teague 2005). Issues that concern social policy goals are different: most of them cannot be resolved by small groups of policy experts because of disagreements about values and goals; and they lead to conflicts among governments, political parties and interest groups if they become part of the broader political discourse. Examples that illustrate these difficulties are both the great reluctance of EU policy-makers to build a European welfare state (Scharpf 2002) and the only partial success of Canadian policy-makers to develop uniform social programs

(Banting 2005). Thus, because governments, parties, and interest groups are committed to occupational pension regulations that serve social policy goals and are willing to defend them against efforts of change, political agreement on harmonization or a higher level of regulatory integration is difficult to reach. Even CAPSA, an optimistic proponent of harmonization, recognizes the existence of this obstacle and acknowledges that "certain pension standards unique and important to certain jurisdictions would likely be maintained because the governments would be highly reluctant to abandon them" (CIA 2004, 5).

Defining the Problem of Regulatory Fragmentation

Since strong economic pressures for occupational pension integration are absent, how could administrators and regulators overcome the difficulties in placing occupational pension integration on policy-makers' agenda? Policy-makers are more likely to pay attention to an issue if policy problems are well-defined, and a compelling problem definition exists (Kingdon 1995; Rochefort and Cobb 1994). Perhaps most importantly, in order to convince policy-makers of the necessity and desirability of policy reform, the definition of problems needs to build upon long-standing values (Schmidt 2000). Thus, in order to get the integration of occupational pension regulations on the governmental agenda, it is important to frame this issue convincingly. In this section, we compare how the European Commission and CAPSA, which were the key agenda-setters in the EU and Canada, defined the problem of regulatory fragmentation, and analyze whether or not their problem definitions were successful.

The European Commission's framing of the problems of occupational pension regulation was primarily based on the shared values of European policy-makers, which are embodied in the EU Treaty: the freedom of provision of services and the free movement of workers. In the *Green Paper on Supplementary Pensions in the Single Market*, a consultation paper released in 1997, the Commission argued that some of the rules that applied to occupational pensions restricted these two freedoms (European Commission 1997a). Most importantly, rules on investment of pension funds constrained the freedom of fund managers to offer their services across the EU, and rules on eligibility for pension benefits restricted employees from taking up jobs in a different member state. The Commission thus focused on only two aspects of occupational pension regulation: first, quantitative restrictions on pension investments, and second, conditions for the acquisition and transfer of pension rights. Regarding the former, it argued that the rules that define upper limits for particular assets, especially for equities, could "have the effect of frustrating the Single Market" and often "go beyond what is objectively necessary to maintain adequate prudential supervision" (European Commission 1997a, 10). Regarding the latter, the Commission argued that long vesting periods and the inability to transfer vested pension rights to a pension scheme in another member state were "severe obstacles to labour mobility" (European Commission 1997a, 16). It also argued that EU regulations had been enacted only for public pensions, but not for occupational ones, even though neither one should prevent the free movement of workers across borders (European Commission 1997a).

In addition to appealing to policy-makers' shared values of free service provision and free labour mobility, the Commission made an argument about costs and benefits, pointing out that regulatory integration would make the provision of occupational pensions “more efficient” and thus contribute to the latter’s ability to compensate for the likely reduction of public pensions in a period of major demographic change (European Commission 1997a, 12). Specifically, integration could result in higher rates of return for pension funds if governments agreed on both the removal of “disproportionate restrictions” on investments and the introduction of the prudent-person principle. However, potential cost savings played only a minor role in the Commission’s problem definition. The Commission could have pursued efficiency gains through regulatory harmonization, but did not adopt this strategy. Instead, it regarded most aspects of occupational pension regulation in member states as compatible with the single market and applied the EU’s principle of subsidiarity to the rules about occupational pension benefits, emphasizing that “it is for member states to decide on the role they wish each of [the] three sources of pension provision to play in providing retirement” (European Commission 1997a, I). In addition, the Commission did not regard all differences in prudential rules as a problem. It accepted the status quo as long as the rules were broadly compatible with the freedom to provide services in the EU.

CAPSA’s framing of the problem of regulatory fragmentation was very different from the European Commission’s. The provincial regulators justified their initiative for more integration with two objectives: efficiency in administering occupational pension schemes and harmonization of pension benefits across jurisdictions. Unlike the European Commission’s reasons for integration, CAPSA’s were not based on shared, long-standing values: the first goal reflected only instrumental considerations about costs and benefits, and the second was guided by the value of regulatory uniformity, which was neither rooted in a constitutional provision nor accepted by provincial policy-makers. In *Proposed Regulatory Principles for a Model Pension Law*, a consultation paper published in 2004, CAPSA argued that there were a significant number of pension plans in Canada that had members in multiple jurisdictions and thus "must comply with different legislative requirements in each jurisdiction, resulting in administrative complexity …" (CAPSA 2004, 1). According to CAPSA, the costs created by regulatory differences across the provinces were one of the reasons for employees' stagnant or declining coverage by occupational pensions. In addition, CAPSA stressed that there were too many, and often very large, differences among provincial pension benefit provisions. For example, the level of survivor benefits and the level of death benefits varied across jurisdictions. The regulators defined the "inconsistent treatment of plan members in different jurisdictions" (CAPSA 2004, 2) as the key problem, not only because it made plan administration complex if employees moved to another province, but also because it created uncertainties for these employee. Unlike the European Commission, which focused on a very limited set of regulations, disregarding most differences across member states, the Canadian regulators had a comprehensive perspective on cross-provincial differences in pension regulation, discussing, for example, variations in pension plan governance, plan types, prudential rules, eligibility conditions, and design features such as phased retirement and pension splitting. CAPSA saw all of these differences as a problem.

Policy-makers' responses to the problem definitions given by the European Commission and CAPSA differed significantly: the member state governments supported the Commission's initiative, and the provincial governments ignored CAPSA's attempt. We argue that the Commission's framing of the problem of regulatory fragmentation, which was based on institutionalized values, contributed to its success in placing the issue of occupational pension integration on the European Union's agenda, and that CAPSA's reliance on instrumental goals and contested values led to a cold response from provincial governments.

In the European Union, the initial reactions from member states and interest groups were mostly favorable. They broadly agreed on the principles formulated by the Commission and on the definition of the problems. Summarizing the member states' responses, the Commission stressed that "all contributors endorse the right of fund managers to offer their services freely throughout the Union" and that there was a "broad consensus on the approach taken by the Commission in order to remove barriers to free movement" (European Commission 1997b, 7). All member states supported even the idea of an EU Directive on safeguarding the occupational pension benefits of workers who move across borders. The Commission was largely successful in creating a shared problem definition, but could not resolve every difference. Member states disagreed about the relative importance of some characteristics of occupational pension regulations. For example, many governments saw the transferability of pension rights as "a real problem which has a greater impact on the rights of workers moving to a different member state than on the rights of those changing jobs within the same member state" (European Commission 1997b, 26), but they did not see long vesting periods as a real barrier to the free movement of workers. Like the member state governments, the key interest groups in the occupational pensions sector, employer organizations and trade unions, reacted favorably to the Commission's framing of the policy problems. The Economic and Social Committee (ESC), which represents both employers and employees in the EU's policy-making process, supported the Commission's argument that "it is necessary if the single market is to be realized that freedom of fund management is established" and that long vesting periods and restrictions on transferability of pension rights "represent important obstacles to the free movement of workers and are inconsistent with the concept of a single market" (Economic and Social Committee 1998, 117). The focus on two of the key values of the European Union, the freedom to provide services across borders and the freedom to work in different countries, thus enabled the Commission to shape the agenda of the Council of Ministers in which the member state governments are represented.

In Canada, the initial reactions of provincial governments to CAPSA's *Pension Model Law* were neither positive nor openly negative; they were absent. Governments did not make official statements regarding the problem definition proposed by their own regulatory agencies. The lack of responses indicates either weak or no support, and possibly opposition to more integration of occupational pension systems. Most provincial governments thought that more integration would not be feasible and that even an update of the *Reciprocal Agreement* would be very difficult to achieve (CIA 2004, 5). Unlike the key interest groups in the European Union, which welcomed initiatives for more regulatory integration, those in Canada either found CAPSA's problem definition too limited or entirely inadequate. The responses of the employers and the trade unions to the consultation paper show that these groups saw the problems of occupational pension regulation very differently and did not agree with CAPSA. The

Association of Canadian Pension Management (ACPM), which represents the interest of both employers and the pension industry, regarded regulatory diversity and extensive regulation as major problems. It saw the existing “patchwork of pension legislation” as an obstacle to occupational pension provision and found that a large number of regulations, such as partial wind-ups, restrictions on surplus withdrawals, grow-in rights, and benefit indexation, are “onerous” (ACPM 2004, 3). Even though the ACPM agreed with the broad direction of the regulators’ initiative, it went well beyond CAPSA’s view, defining both the diversity of provincial pension regulations and the provinces’ jurisdiction in this field as a problem. Unlike CAPSA, which focused on the inconsistency of provincial regulations, the ACPM emphasized the need for reducing existing restrictions on plan sponsors. Because of these differences, the ACPM argued that an initiative to integrate occupational pension regulations “should be more ambitious” (ACPM 2004, 4).

The Canadian Labour Congress’ (CLC) definition of the problem of regulatory fragmentation differed sharply both from the ACPM and CAPSA’s. The trade union federation found the regulators’ initiative “unrealistically ambitious” (CLC 2004, 1). The CLC agreed with CAPSA that too much regulatory diversity created uncertainty among employees, but disagreed strongly with the regulators’ perspective on administrative costs. It argued that the gains from regulatory integration would likely be very small, stating that “[i]t is striking that while claims in this area are often made quite strongly, no one has bothered to estimate the marginal costs to multi-jurisdictional plans that result from differences in pension legislation” (CLC 2004, 4). In addition, the CLC challenged CAPSA on the issue of regulatory diversity across the provinces. The trade unions doubted that “it is intrinsically desirable to streamline and reduce regulation” and saw the diversity of pension regulations not as a problem, but rather as an advantage, arguing that it allowed some provinces to provide a high level of protection for employees and pensioners (CLC 2004, 2). The CLC specifically mentioned Ontario’s grow-in provisions and the Pension Benefits Guarantee Fund (PBGF), which insures pension benefits against employer insolvency and funding shortfalls. To conclude, CAPSA’s focus on the issues of costly administration and diverse benefit rules did not facilitate the formation of a shared problem definition among provincial governments and key interest groups. Unlike the European Commission, the provincial regulators were not successful in shaping the agenda at the intergovernmental level.

Setting the Scope of Regulatory Integration

Given that policy-makers and interest groups are strongly committed to certain aspects of occupational pension regulations, especially those that serve social policy objectives, how could proponents of regulatory integration overcome the obstacles to creating an agreement among governments? In federal or quasi-federal political systems, an intergovernmental consensus on integration is more likely if new, common rules give the provinces or member states a sufficient degree of flexibility in applying them, and if highly controversial issues remain at, or are delegated to, lower-level jurisdictions, which in the European political discourse is known as the subsidiarity principle (Streeck 1995; Scharpf 2002). In order to facilitate an intergovernmental agreement, it is thus important that the scope of integration not conflict with the fundamental preferences and policy commitments of governments. In this section, we compare how the European Commission and CAPSA set the scope of regulatory integration, and examine whether or not they were able to create a consensus among governments. To analyze the differences between the European and Canadian approaches to integration, we divide pension regulations into four categories (see Table 1): (I) supervision and administration, which includes issues such as registration and reporting; (II) funding and investment, which includes the definition and calculation of assets and liabilities, the required level of funding, and rules on diversification; (III) taxation, which includes the tax treatment of contributions and benefits; and (IV) benefit security and adequacy, which includes regulations that serve social policy goals.[4] We exclude from our comparative analysis the tax treatment of occupational pensions because, while it is an issue in the European Union, it is not one in Canada. The federal *Income Tax Act* has since 1919 provided equal tax advantages for pension plans registered in different Canadian provinces (Kaplan 2006, 39-40).

[4] On categories of occupational pension regulations, see (Rocha et al. 1999; Queisser 1998; OECD 2005)

Pension Regulation in the European Union

The European Commission's strategy for integrating occupational pension regulations has relied on the principles of subsidiarity and adaptability, which makes intergovernmental negotiations more likely to succeed. Its initiative consisted of three related proposals: the proposal for a pension fund directive, which dealt exclusively with issues of supervision, administration, funding and investment (European Commission 2000), the proposal for a portability directive, which specifically addressed the issues surrounding the transfer of pension benefits (European Commission 2005), and the proposal for a better coordination of pension taxation (European Commission 2001). The pension fund directive was adopted by the European Parliament and the Council of Ministers in 2003 and is being implemented by member states (Haverland forthcoming). Negotiations around the portability directive are ongoing. The Commission's attempt to coordinate the systems of pension taxation largely failed in the first round (Council of the European Union 2002).

Table 1. ***Proposals for Regulatory Integration in the European Union and Canada***

	Type of Rule	*Examples*	*Proposed Measures in the EU*	*Proposed Measures in Canada*
I	Supervision & Administration	Registration requirements, Information requirements, Rules on plan administration	Powers of authorities (PFD* Art. 14) Registration or authorization requirements (PFD Art. 9) Information requirements (PFD Art. 10, 11, 12, 13) Governance requirements (PFD Art. 9, 14) Asset separation between company and pension plan (PFD Art. 8)	Powers of authorities (RP Principle 34, 35, 36) Registration requirement (RP Principle 6) Information requirements (RP Principles 4, 9, 12) Governance requirements (RP Principles 5, 6, 7) Asset separation between company and pension plan (RP Principle 11) Surplus decision rules (RP Principle 33)
II	Funding & Investment	Funding requirements, Investment rules	Funding requirements (PFD Art. 15, 16, 17) Investment rules (PFD Art. 18)	Funding requirements (RP Principle 8, FP Principles 1-15) Investment rules (RP Principle 9)
III	Taxation	Tax systems, Tax agreements	Tax restrictions and requirements (PTC*) Coordination of tax systems (PTC)	Complete integration because of federal *Income Tax Act*
IV	Benefit Security & Adequacy	Eligibility conditions, Benefit types, Portability	Compliance with national social and labor law (PFD Art. 20) Rules on vesting and transferability (PPD* Art. 4, 5, 6)	Eligibility rules (RP Principle 13) Entitlement conditions (RP Principles 16, 17) Benefit types (RP Principles 14, 19, 20, 22) Rules on vesting and transferability (RP Principles 15, 21, 23)

Notes: PFD=pension fund directive (European Commission 2000), PTC=pension taxation communication (European Commission 2001), PPD=pension portability directive (European Commission 2005), RP=regulatory principles for a pension model law (CAPSA 2004), FP=funding principles for a pension model law (CAPSA 2005)

In the pension fund directive, the Commission proposed a set of prudential rules that were supposed to remove key barriers to the single market in occupational pension provision, give beneficiaries an adequate level of protection, and make pension fund investment more secure and efficient (European Commission 2000, 6-7). Following the principle of subsidiarity, the Commission deliberately excluded from its proposal any changes of rules on pension benefits. It wanted to avoid "any interference in the organization of pension systems in member states" and argued that "it is desirable that the precise arrangements for the payment of benefits be decided inside the member states" (European Commission 2000, 8-9). Article 20 of the proposal thus required a pension fund to apply "the relevant social and labour law" of each country in which it offers its services. The Commission did not provide a precise definition of social and labour law, but stated that the latter relates to "what retirement benefits need to be provided" (European Commission 2000, 14). In order to make the mutual recognition of member states' regulatory requirements acceptable to national governments, the proposed directive defined a number of minimal standards for the supervision and administration of pension funds. However, the Commission recognized that the diversity of pension systems "necessarily restricts the degree of prudential harmonization that can be attained" (European Commission 2000, 9). The directive defined basic powers of regulatory and supervisory authorities and required member states either to register or to authorize pension schemes before they started to operate. For schemes that operated across borders, registration was not seen as sufficient; prior authorization was required. The directive also listed the types of information that pension funds needed to submit, or make available on request, to supervisory authorities, members, and beneficiaries, such as changes to the pension plan, statements of investment policy, and annual reports. Like the proposed pension fund directive, the Commission's proposal for a directive on portability, which dealt with issues of benefit security and adequacy, was developed with the principle of subsidiarity in mind. Thus, the proposed directive aimed at coordinating only the small number of regulations about membership eligibility and entitlement to benefits that prohibited the free movement of workers across borders. Specifically, Article 4 set a limit for minimum age rules, requiring that workers acquire pension rights if they are 21 years or older, a one-year limit for the waiting period for new employees, and a maximum vesting period of two years. In addition, Articles 5 and 6 required pension schemes to give workers who leave their current employers the choice between either preserving their acquired pension rights or transferring them to the pension scheme of their new employer.

Following the principle of flexibility in implementing common rules, the Commission set out only broad requirements for plan governance and thus did not prescribe a particular governance structure. Specifically, Article 9 of the pension fund directive required that a pension fund be "effectively run by persons of good repute who must themselves have appropriate professional qualifications and experience". It was up to the member states to determine the meaning of effective management in the context of their respective occupational pension systems. The Commission's approach to funding and investment was as flexible as its approach to supervision and administration. Article 15 required that pension schemes calculate their liabilities prudently but did not prescribe a method of calculation. The directive merely defined a number of principles that needed to be followed, such as the choice of a prudent interest rate. In addition, Article 15 explicitly allowed member states to make the calculation of liabilities “subject to additional and more detailed requirements, with a view to ensuring that the interests of members and beneficiaries are adequately protected.” Article 16 established the principle of full funding, but member states could allow temporary underfunding. No exception was made for cross-border pension plans; they needed to be fully funded at all times. In Article 18, the proposed directive defined the prudent-person principle as the main guideline for investments. Nonetheless, the Commission took into account the diversity of investment regulations across member states. The directive explicitly allowed the regulatory authorities in each member state to “lay down more detailed rules,” including quantitative ones. The Commission argued that due to differences in supervisory methods, member states “should be given some discretion on the precise investment rules that they wish to require from institutions established in their territories” (European Commission 2000, 14).

Pension Regulation in Canada

The scope of CAPSA’s proposal was much wider than that of the European Commission’s (see Table 1). The proposed rules encompassed not only supervision, administration, funding, and investment issues (categories I and II), but also most aspects of benefit security and adequacy (category IV). Unlike the European Commission, which emphasized the principle of subsidiarity and thus aimed for minimal harmonization of occupational pension regulations, CAPSA sought to develop “the basis for a harmonized and simplified model pension statute” (CAPSA 2004, 4). In addition to its much wider scope, covering more categories of regulations, CAPSA’s proposal had more depth and detail than the European Commission’s. In the area of supervision and administration, for example, CAPSA proposed not only measures such as registration and information requirements, but also those that deal directly with the governance and organization of pension plans. Most importantly, it favored a specific governance structure that was modeled after that of the pension committees in the province of Quebec (CAPSA 2004, 7-8). In addition, unlike the European Commission’s plan, CAPSA’s proposed decision-making rules regarding the withdrawal and distribution of funding surpluses. In contrast to the European Commission, with its flexible approach, CAPSA suggested very specific rules also for the issues of funding and investment. For example, in *Proposed Funding Principles for a Model Pension Law*, CAPSA defined requirements for the calculation of liabilities; the European Commission clarified that member states were free to define their own actuarial methods. Another example of CAPSA’s restrictive approach is the issue of whether employers were allowed to take a contribution holiday. CAPSA included an explicit permission in its proposal (Principle 8); the European Commission left this question entirely open (Article 9). The Commission did not define the meaning of regular financing or specify how to achieve; it required only that pension plans be committed to “regular financing” (Arnot 2004, 21). The most important differences between CAPSA’s proposal and the Commission’s were in the area of benefit security and adequacy (category IV). CAPSA’s proposal went well beyond the regulations that are relevant for the mobility of workers, such as vesting and portability rules. It sought to harmonize the types of ancillary benefits that may be provided (Principle 14), the time period for early retirement (Principle 16), and the benefit level of survivor pensions (Principle 19). In addition, it required the introduction of phased retirement (Principle 17) and the provision of death benefits (Principle 20). In contrast to CAPSA, the European Commission deliberately avoided any of these measures because it thought that they would interfere with member states' prerogative to organize their occupational pension systems.

Consensus Formation in the European Union and Canada

EU and Canadian policy-makers and interest groups had different reactions to the proposed measures. Even though the member state governments made significant changes to the Commission's proposal, they endorsed its key provisions and reinforced the application of the principles of subsidiarity and flexibility. On the other hand, the provincial governments, which had not added the issue of pension integration to their agendas, ignored CAPSA's proposal for regulatory integration. Their lack of interest in the issue was not the only reason for their ignorance; disagreement about many of the proposed measures was likely another. The discrepancy between the employers' and the trade unions' reactions mirrored some of the divisions that existed among provincial governments. We argue that the Commission's focused and flexible approach to regulatory integration, which allowed member states to remain responsible for rules to which they were committed and to adapt common rules to their domestic contexts, facilitated the formation in the EU of an intergovernmental consensus on occupational pensions in the European Union. We also argue that CAPSA's encompassing and relatively rigid set of proposals, which disregarded the desire of provincial governments to control regulations on benefits and prescribed in great detail many important features of occupational pension systems, prohibited the emergence of a basic agreement on the form and content of regulatory integration in Canada.

In the European Union, the pension fund directive was passed almost unanimously in the Council of Ministers. Since issues that concern the single market require only a qualified majority in the Council, the only country that voted against it, Belgium, could not stop the pension directive's passage. The pension fund directive passed even though the European Parliament, which had proposed more than 100 amendments, had to approve it (Haverland forthcoming). In order to broaden the support from member state governments, the Council of Ministers changed the Commission's proposal and rejected some of the Parliament's amendments, strengthening the protection of member states' diverse occupational pension systems. Stressing the principle of subsidiarity, the Council stated, "it has been of paramount importance to the Council that member states should retain full responsibility for the organization of their pension systems" (Council of the European Communities 2002, 29). Most importantly, the Council made the limits of the pension fund directive more explicit than the Commission did. For example, it limited the freedom of pension funds to provide services across borders by strengthening the obligation to comply with "national social and labour legislation" (Stevens 2004, 11). Respecting the member states' exclusive jurisdiction over social protection, the Council refrained from defining the meaning of national social and labour legislation. Thus, member states were expected to decide individually about the rules that they wished to include under this provision (Stevens 2004). At the request of the Dutch government, the Council even included a specific reference in the directive to national rules regarding compulsory membership, which allowed the Netherlands to favor Dutch pension funds (Arnot 2004, 50).

Reinforcing the Commission's flexible approach to regulatory integration, the Council made the definition of retirement benefits more restrictive than it had been in the original proposal. It criticized the Commission for giving "undue prominence" to death and disability benefits and redefined them as ancillary ones (Council of the European Communities 2002, 31). Motivated by the goal to allow the adaptation of European rules to national contexts, the Council rejected amendments of the European Parliament that would have required every occupational pension plan to offer additional benefits such as disability payments and survivors' pensions. Instead, the Council stated that members may add such requirements "on a national basis if they desire" (Council of the European Communities 2002, 32). In order to prevent interference with national pension systems, it also rejected a parliamentary amendment that would have favored annuitization over lump-sum payments (Council of the European Communities 2002, 31). The Council thus made it possible for Belgium, the Netherlands, the UK, and other countries to pay some or all of their occupational pensions as a lump sum, allowing them to continue their long-standing practices (Arnot 2004, 17). Regarding the prudential requirements, the Council strengthened the Commission's proposal to allow member states the introduction of additional investment rules, including quantitative limits (Council of the European Communities 2002). The Commission sought to apply this exception only to pension funds located in a member state's territory, but the Council extended it even to funds that were based in other EU member states and operated across borders. The Council also introduced exceptions to the principle of mutual recognition in regards to information rules (Arnot 2004, 34). Because the Commission's proposal had been built upon the principles of subsidiarity and flexibility, which were reinforced in the decision-making process, a consensus could be reached both within the Council of Ministers and between the Council and the European Parliament.

In Canada, the intergovernmental decision-making process cannot be examined because CAPSA's proposal failed to reach the agenda of provincial policy-makers. In order to estimate the potential for agreement or disagreement about the measures proposed by the provincial regulators, the responses of interest groups serve us as a rough indicator: if the key stakeholders in the field of occupational pensions strongly disagreed, it is unlikely that provincial governments can build a consensus. The employers and trade unions were at odds on several issues, for example on the issue of pension plan governance. The ACPM, which represents employer interests, was very critical of the pension committee model proposed by CAPSA, warning that "the requirement for a pension committee with mandatory member representation could by itself capsize efforts for uniformity" (ACPM 2004, 8). Even though the ACPM was one of the strongest proponents of harmonization, it preferred to preserve the diversity of existing governance models. The trade unions took the opposite view. The CLC supported CAPSA's pension committee requirement, but argued that it did not go far enough because it did not prescribe joint administration (CLC 2004, 7). A similar disagreement existed about the issue of contribution holidays which was supported by the ACPM, but opposed by the CLC (ACPM 2004, 11; CLC 2004, 8). There was also no consensus of opinion among the key interest groups about the proposed principles related to benefit security and adequacy. Even though the CLC decided not to provide detailed comments on CAPSA's proposal, it criticized the omission of many provisions that serve social policy objectives, such as grow-in rights and benefit insurance. In addition, the CLC warned that the trade unions "would fight against harmonization around some legislative norms" (CLC 2004, 5), referring to those that would lead to a reduced protection of members' pension benefits. Unlike the CLC, the ACPM proposed the abolishment of the requirement of grow-in provisions by means of a harmonized pension law and criticized the inclusion of phased retirement provisions (ACPM 2004).

The responses from interest groups suggest that it would be very difficult for provincial governments to reach an agreement about many regulations, especially those on benefit security and adequacy. Some governments would probably react like the Canadian Institute of Actuaries, which found CAPSA's proposal too far-reaching because it incorporated the strictest governance standards and "the most restrictive pension standards in Canada" (CIA 2004, 5). Other governments would likely share the view of the trade unions, which saw CAPSA's proposal as too limited because it did not seek to be "a leveling-up exercise, notwithstanding the claims that the Model Law represents best practices" (CLC 2004, 4). Because CAPSA's proposal focused on the harmonization of most occupational pension regulations, including those that served social policy goals, and proposed very detailed rules for a common pension law, a consensus, which could not emerge among interest groups, is unlikely to be achieved among provincial governments, if they used CAPSA’s proposal as the basis for future negotiations about occupational pension integration.

Lessons for Integrating Pension Regulations in Canada

We can draw a number of lessons for Canadian policy-makers from the EU’s experience with integrating occupational pension regulations, regarding not only the definition of the problems and the scope of regulation, but also the methods of integration. The first lesson is that putting the integration of pension regulations on the agenda of governments is not as easy as many Canadian actors thought. For example, CAPSA found that “many aspects of legislation are fundamentally similar in principle, but that they “often differ slightly in their wording and application” (CAPSA 2004). While it is true that the Canadian provinces were always much less diverse in occupational pension regulations than the EU member states, CAPSA, as we showed in our analysis, significantly underestimated the commitment of governments and interest groups to existing provincial pension regulations, especially to those that primarily concern issues of benefit security and adequacy. In order to develop a problem definition on which most provincial governments and key stakeholders could agree, Canadian agenda-setters and policy-makers would need to recognize the diverse organization of provincial pension systems and seek to protect much of that diversity.

The second lesson is that building a consensus on an encompassing framework for occupational pensions is much more difficult than most Canadian actors, including CAPSA, the ACPM and the Canadian Institute of Actuaries, have assumed. The

European experience suggests that finding common ground on financial regulations is perhaps the least difficult problem. But even in that area, EU member states accepted only minimal common standards and insisted on numerous exceptions which allowed them to maintain some of their national standards under some conditions. The most difficult attempt to build a consensus involved regulations that served social policy goals. Consequently, the EU's initiative deliberately excluded from the pension fund directive any design features of occupational pension benefits and included in the portability directive only those features that were direct obstacles to labour mobility. In order to reach a consensus among provincial governments, Canadian policy-makers would need to follow a similar strategy; they would need to restrict integration to the issues of regulation of pension funding and supervision of pension plans and discuss regulations on benefits only if there are compelling reasons for integrating them.

The final lesson from the EU's experience is that the debate over the methods of integration is too limited. Much of the discussion in Canada revolves around the question of whether a single-regulator or multiple-regulator approach is the best one and whether there should be more or less harmonization. Since the integration of occupational pension regulations involves different policy areas with different actor constellations and different possibilities for agreement, the EU has employed multiple methods of integration, including minimal harmonization, mutual recognition, and voluntary coordination. For example, to integrate prudential rules, the EU relied on minimal harmonization and mutual recognition; to encourage the gradual coordination of regulations about benefits, it has recently begun to use the *Open Method of Coordination* (Council of the European Union 2001). In order to deal with the mixed character of occupational pension regulations, Canadian policy-makers would need to employ an approach that combines several methods. For example, to achieve minimal harmonization and mutual recognition of financial regulations, they could create a *Council of Ministers for Pension Regulation*; to begin a coordination of regulations on benefit security and adequacy, they could use a voluntary, non-binding peer-review process that is similar to the EU's *Open Method of Coordination* (Obinger et al. 2005; Saint-Martin 2004). To conclude, while integrating occupational pension regulations in Canada is difficult, it is certainly feasible.

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