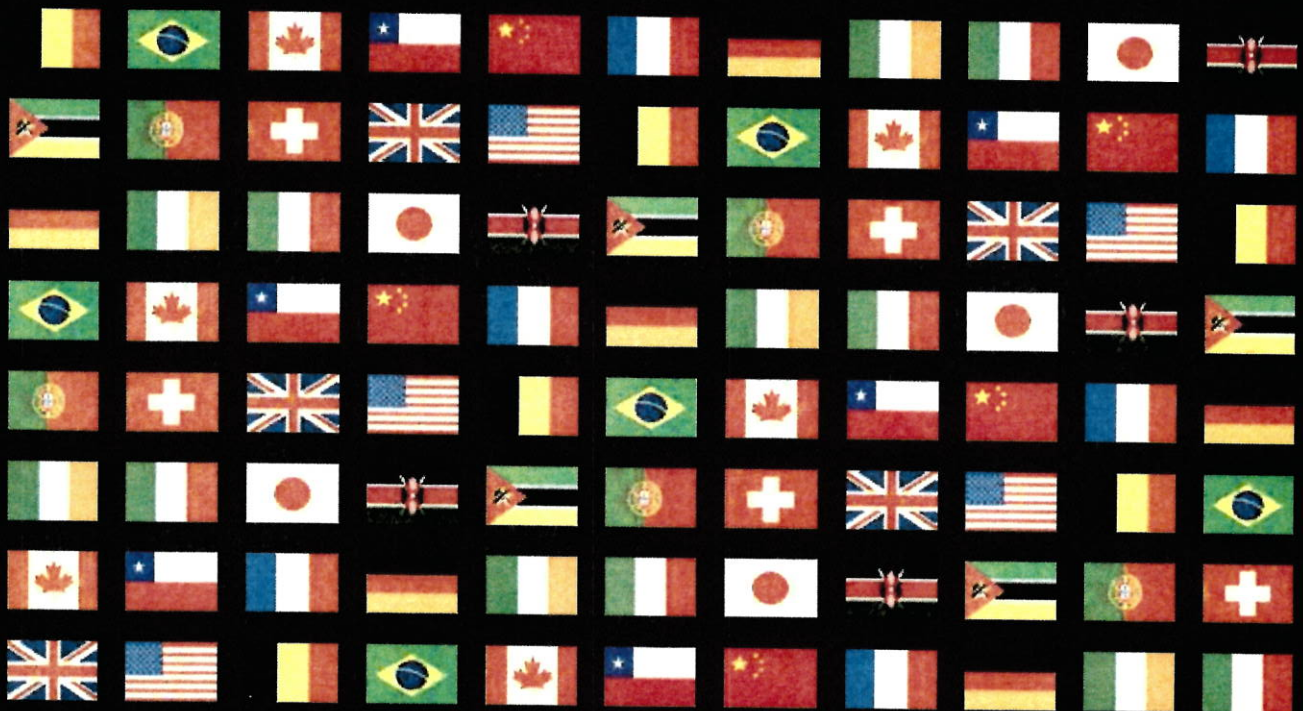


Pensions & Retirement Plans

Contributing editor
Jan Van Gysegem



2017

**GETTING THE
DEAL THROUGH** 

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Pensions & Retirement Plans 2017

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Italy

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Statutory and regulatory framework

1 What are the main statutes and regulations relating to pensions and retirement plans?

In general, pensions and retirement plans in Italy are mainly governed by the following sources of law (in order of priority):

- the Constitution;
- legislation; and
- administrative regulations.

The Italian state pension scheme for employees in the private sector has undergone substantial reform, which can be found mainly in the following statutes:

- Law No. 88 of 9 March 1989 on the restructuring of the National Social Security Body (INPS);
- Law No. 503 of 30 December 1992, on the gradual restriction of requirements in order to benefit from the scheme (raising the minimum retirement age and the minimum length of the contribution period);
- Law No. 335 of 8 August 1995, on introducing the contributions-related calculation for the benefit (instead of the previous earning-related calculation) for the new younger class of employees;
- Law No. 449 of 27 December 1997, on the additional gradual restriction of the requirements in order to benefit from the scheme (raising the age of qualification for the early retirement pension scheme);
- Law No. 243 of 23 August 2004 and Law No. 247 of 24 December 2007, on a further gradual restriction of the requirements and the period for payment of the benefit;
- Law No. 122 of 30 July 2010, on a further gradual restriction of the age requirements in connection with life expectancy rate;
- Law No. 214 of 22 December 2011, as amended by Law No. 14 of 24 February 2012, on an extension of the contributions-related calculation for the benefit (pro rata) and to equalise the age of retirement for men and women;
- Presidential Decree No. 157 of 28 October 2013, on the general rules governing the age of retirement for men and women in particular sectors on the basis of the new limits set forth by Law No. 214 of 22 December 2011;
- Law No. 190 of 23 December 2014 and Presidential Decree No. 29 of 20 February 2015 on the option to receive monthly employment termination payment (TFR) accrued as part of the salary; and
- Law No. 232 of 11 December 2016 on some temporary and experimental measures aimed to apply for a loan at the age of 63 to anticipate the retirement general and supplementary pension scheme.

As regards private pension schemes under pillars 2 and 3, these are regulated by Law No. 252 of 5 December 2005. Collective bargaining agreements (which are not statutory sources of law) can also regulate private pensions.

Law No. 28 of 6 February 2007, as amended by Law No. 130 of 30 July 2012, implements European Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provisions. The Law could be amended on the basis of the provision of the New Directive IORP II (Institutions for Occupational Retirement Provision)

which purpose is to facilitate further the mobility of workers between member states, to ensure good governance, information, transparency and safety of occupational retirement.

2 What are the primary regulatory authorities and how do they enforce the governing laws?

The primary regulatory and supervisory authority for both state and private pensions is the Ministry of Employment and Social Security (the Department).

The Department monitors the INPS, and both bodies are empowered to enforce the laws concerning state pensions, by means of their powers of inspection and to impose administrative or civil sanctions on employers who are in breach of the law.

The Pension Funds Supervisory Board (COVIP) is the regulatory body that oversees, monitors and inspects the private pensions sector. Its functions include:

- authorising pension funds;
- approving the statutes and regulations relating to the types of occupational and private pension funds;
- registering authorised pension funds;
- supervising the correct technical, financial, accounting and patrimonial management of the pension funds and to ensure that they have an adequate organisational structure of their assets in place;
- ensuring transparency between the fund and their members
- inspecting the mandatory documents of pension funds and pension schemes;
- making proposals for legislative reform in the field of occupational pensions;
- preparing an annual report on the business and the supplementary pensions market; and
- imposing administrative sanctions on pension schemes.

3 What is the framework for taxation of pensions?

Contributions to the state pension scheme are compulsory and amount to roughly 33 per cent of the employee's gross salary (see question 7). The state pension is treated as employment income and is therefore subject to the same type of progressive taxation.

Contributions by employers to private pension schemes are considered to be employment income in the hands of the employees and therefore subject to tax and social security contributions. Employees can deduct, for tax purposes, the contributions paid by themselves and their employers, up to a limit of €5,164.57. It is possible to go over the limit of €5,164.57 only in case the contribution to the private pension scheme it becomes part of a wider Company Welfare Plan.

The returns on pension funds are generally subject to a reduced tax rate of 15 per cent.

State pension provisions

4 What is the state pension system?

The Italian state pension scheme is a compulsory pay-as-you-go (PAYG) first pillar system. While the earlier reforms in the 1990s retained the PAYG system, the current reformed system mimics a funded system, in the sense that the pension level of each retired employee is based on the amount of contributions he or she paid in to the public pension scheme during their working life.

5 How is the state pension calculated and what factors may cause the pension to be enhanced or reduced?

The individual pension level is determined by the sum of the individual amount of contributions and its capitalisation at the rate of change of the nominal gross national product (GNP). As a consequence, in the current public pension scheme the mean rate of substitution between pensions and salaries will decrease in respect of the past owing to the fact that in recent years Italian GNP has been steadily shrinking.

In general, the minimum retirement age is 63 and nine months for women and 66 for men. The law provides additional limits, including reaching the minimum length of the contribution period (which is currently 20 years) and an increase in the retirement age, which is linked to an automatic life expectancy rate (for 2016–2018, the retirement ages are 65 years and seven months for women and 66 years and seven months for men).

The pension amount decreases for employees who retire before being entitled to an old-age pension as mentioned above (early retirement pension scheme for those who have been paying social security contributions since 31 December 1995). In any case, for these individuals no early retirement pension is due until an individual reaches the minimum length of the contribution period (which is currently 41 years and 10 months for women and 42 years and 10 months for men).

On the other hand, the law rewards employees who continue to work (up to the age of 70) and postpone their retirement, regardless of whether they fulfil the minimum requirements. As a result, they will be due a higher amount of benefit. In addition, the law limits the power of the employer (who employs more than a certain number of employees) to dismiss the employees who have not yet reached the retirement ages and the employees who decided to continue to work (up to the age of 70).

6 Is the state pension designed to provide a certain level of replacement income to workers who have worked continuously until retirement age?

The pension level of all retired employees is based on the amount of the contributions they paid into the public pension scheme during their working life. As a result, under the current state pension scheme, the level of benefit for employees who have worked continuously until retirement age is generally higher than for those employees who have had an interrupted career.

7 Is the state pension system under pressure to reduce benefits or otherwise change its current structure in any way on account of current fiscal realities?

Yes, it is. In general, both the current level of the mandatory social security contributions, which is 33 per cent of gross salary (23.81 per cent borne by the employer and 9.19 per cent by the employee), and other taxes on businesses are considered excessive and put the pension system under extreme pressure.

Plan features and operation

8 What are the main types of private pensions and retirement plans that are provided to a broad base of employees?

The main types of private pensions and retirement plans that are provided to a broad base of employees are:

- closed pension funds (second pillar system), which are set up through collective bargaining agreements (CBAs) – including CBAs signed at company level – and are sponsored by trade unions as associations for the benefit of a particular group of employees. By way of example, there are:
 - the Cometa pension fund, which is set up under the national CBA for employees in the metalworking and plant installation industry and related sectors;
 - the Fonchim pension fund, which is set up under the national CBA for employees in the chemical and pharmaceutical industries;
 - the Previdai pension fund, which is set up under the national CBA for executives in the manufacturing industry;
 - the Laborfonds pension fund, which is set up under a regional CBA for employees who work in the Trentino Alto Adige region of Italy. Companies in the financial services sector – including

insurance companies, banks and asset management companies – manage the assets of these pension funds; In December 2015, membership of these pension funds was about 2.4 million; and

- open pension funds, which are set up by companies in the above-mentioned financial services sector, as a specific, separate and autonomous asset within the same companies. The beneficiaries of these funds are not closed or limited to a particular group of person or employees. Membership can be on an individual or collective basis.

In December 2015, membership of these pension funds was about 1,100,000.

Both open and closed pension funds come under the second pillar system.

In addition there is a third pillar system, which provides individual pension schemes (PIP), implemented through individual membership to the above-mentioned open pension funds or life insurance contracts. The assets of PIP are separate and autonomous within the same companies. The beneficiaries of these funds are not closed or limited to a particular group of person or employees. In December 2015, the membership of these pension funds was about 2.5 million.

In any case, membership of pension plans in the second and third pillar (all based on the funded system) is voluntary. The only types of the above-mentioned private pension and retirement plans provided to employees are based on defined contributions.

In addition, there are some ‘old’ pension funds that were set up before the first law regarding private pensions came into force and are still in operation. These are both broad and non-broad based pension funds. In December 2015 membership of these particular pre-existing pension funds was approximately 640,000. Law No. 252 of 5 December 2005 makes specific regulations as regards these funds, which shall not be examined in detail here.

9 What restrictions or prohibitions limit an employer’s ability to exclude certain employees from participation in broad-based retirement plans?

There are no specific restrictions or prohibitions that limit an employer’s ability to exclude certain employees from participation in broad-based retirement plans. Please note that an employee’s right to participate in a private pension scheme is determined by the same collective bargaining agreement that sets up the fund itself. Having said that, an employer is always required to comply with the employment law anti-discrimination rules.

10 Can plans require employees to work for a specified period to participate in the plan or become vested in benefits they have accrued?

Yes, they can. For example, a number of pension plans exclude employees during their probationary period.

The right to pension benefits accrues at the time of vesting, with the same requirements as for access to the state pension (see above) and in general with at least five years’ contributions.

11 What are the considerations regarding employees working permanently and temporarily overseas? Are they eligible to join or remain in a plan regulated in your jurisdiction?

Employees who work abroad are eligible to join or remain in a private pension scheme governed by our jurisdiction, provided that they meet the other requirements for membership under the by-laws and regulations of the scheme. In such cases, the level of contributions required by the employees is generally the same as those required of employees who work in Italy. Certain private pension schemes allow for the suspension of contributions during the period overseas.

12 Do employer and employees share in the financing of the benefits and are the benefits funded in a trust or other secure vehicle?

The employer and the employees usually share in the financing of the benefits. If the private plan is set up under a collective bargaining agreement on a collective enrolment base, the amount of contributions of both the employer and the employee is fixed by the collective

bargaining agreement itself. Contribution to pension funds should not be considered as part of employee's remuneration and they are not included in the annual calculation of TFR (Italian Supreme Court decision of 12 March 2015, No. 4949).

The COVIP supervises the investments.

The contributions, which are collected by pension funds, are invested in secure vehicles provided by law and usually managed through:

- agreements with insurance companies;
- agreements with asset management companies;
- subscription or acquisition of shares of real estate companies;
- units of closed-end mutual funds real estate; and
- subscription and acquisition of shares in closed-end mutual funds.

13 What rules apply to the level at which benefits are funded and what is the process for an employer to determine how much to fund a defined benefit pension plan annually?

Not applicable (see question 8).

14 What are customary levels of benefits provided to employees participating in private plans?

Not applicable. The data are not available.

15 Are there statutory provisions for the increase of pensions in payment and the revaluation of deferred pensions?

Generally speaking, there are no statutory provisions for the increase of pensions in payment and the re-valuation or deferred private pensions. However, in the case of the 'tacit consent' contribution of the TFR (see question 43) the by-laws and regulations of the private pension schemes must provide for the investment of these funds prudently, in such a way as to guarantee the repayment of capital and returns that are within the parameters provided by state and EU legislation, at least at the rate of appreciation of the TFR.

In addition, private pension benefits (under the defined contribution regime) may be paid in capital, according to the present value, up to a maximum of 50 per cent of annuity and the accrued contributions and returns.

16 What pre-retirement death benefits are customarily provided to employees' beneficiaries and are there any mandatory rules with respect to death benefits?

The law provides that, in the case of death of a member of a supplementary pension scheme prior to vesting the right to pension benefits, the whole sums accrued are redeemed by the heirs or beneficiaries designated by the same, whether they are natural or legal persons. In the absence of such persons, in the case of private plans set up under collective bargaining agreements, the accrued amounts shall be forfeited to the pension fund, whereas in the case of private plans (PIP) they are donated to charities.

17 When can employees retire and receive their full plan benefits? How does early retirement affect benefit calculations?

Employees can retire based on the above-mentioned criteria and receive the full plan benefit, which may be provided in capital, according to the present value, up to a maximum of 50 per cent of the final principal and interest accumulated, and in annuity.

The plans provide that, in the event of termination of employment and the employee remaining unemployed for more than 48 months, the pension benefits are, at the request of the member, allowed an advance of up to five years compared with the requirements for access to benefits under the state pension scheme to which he or she belongs.

Early retirement affects benefit calculations and can decrease the amount of the employee's benefit as regards the old-age pension.

18 Are plans permitted to allow distributions or loans of all or some of the plan benefits to members that are still employed?

Loans are not allowed by law. However, there is a provision to distribute a part of the accrued funds while the contributor is still working (eg, for healthcare costs incurred as a result of serious illness or for the purchase of a first home, but this is only permitted after eight years of contributing to the scheme).

19 Is the sufficiency of retirement benefits affected greatly if employees change employer while they are accruing benefits?

No, the retirement benefits are not greatly affected as the law makes provision for such an occurrence. In particular, if employees move from job to job during the period that they are accruing benefits and they lose the right to participate in the scheme, the by-laws and regulations of such a pension scheme must provide for the transfer of the accrued benefits to another scheme of the employees' choosing. Generally speaking, the transfer of pension funds is exempt from any tax or social security liability.

20 In what circumstances may members transfer their benefits to another pension scheme?

Members may transfer their benefits to another private pension scheme when they move job and there is a private pension scheme in the new company that they are entitled to join.

In addition, after two years in a private pension scheme, members are entitled to transfer their entire benefits to another pension scheme. In exercising such a right, employees shall be entitled to join the pension scheme of their choice and to transfer the TFR accrued and any contributions from the employer, to the extent and in the manner prescribed by their employment contract or CBAs.

21 Who is responsible for the investment of plan funds and the sufficiency of investment returns?

The manager of the pension scheme must ensure that the funds are managed in the interests of the members, as well as in accordance with the law and regulations in force and the rules of the pension fund itself, on the basis of the directives issued by the COVIP. The fund manager sends all data and information as regards the fund, in accordance with the requirements of the COVIP. The same information is also sent simultaneously to the supervisory body of the pension scheme. The fund manager's duties include monitoring:

- compliance with the investment limits in the aggregate and for each investment line that makes up the fund;
- transactions involving conflicts of interest; and
- good practices in order to ensure greater protection of its members.

The supervisory body of the pension scheme represents the interests of members and ensures that the administration and the overall management of the scheme is made in the interests of the same, also on the basis of the information received by the manager of the pension scheme. The supervisory body must report any irregularities to the board of directors of the fund and the COVIP.

The occupational pension funds manage their assets through agreements with institutions provided by law (see question 10), which are selected in accordance with the guidelines adopted by COVIP and in any case in order to ensure the transparency of the process and consistency between objectives and management methods, determined in advance by the directors of the funds. The agreements must in any case contain a number of elements provided by law (eg, the guidelines for the business of the said institutions concerning the criteria for the identification and allocation of risk; the terms and the ways in which pension funds can exercise the right of withdrawal; and the pension fund's ownership of the specific voting rights).

The criteria for the identification and allocation of risk in the choice of investments must be specified in the by-laws of the pension fund. After consultation with the COVIP, the Minister of Economy and Finance issued a decree identifying and regulating a number of elements, including the types of assets in which pension schemes can invest their funds and maximum limits on investment, and the criteria for investment in various types of securities.

22 Can plan benefits be enhanced for certain groups of employees in connection with a voluntary or involuntary reduction in workforce programme?

Yes, they can, if the by-laws and regulations of such pension fund so allow and are in accordance with the collective bargaining agreement.

Update and trends

The Italian government has increased the tax rate to 20 per cent on the annual assets revenue of the pension funds (ie, capital gains tax) starting from 2014. The Pension Funds Supervisory Board (COVIP) approved new subscription models for private pension scheme in order to ensure more information and transparency in the light of the implementation of the new EU Directive.

23 Are non-broad based (eg, executive-only) plans permitted and what types of benefits do they typically provide?

Non-broad based plans are permitted for certain categories of employees (eg, executives) and provide variable benefits. As for all employees, the new private pensions and retirement plans must be based on defined contributions (see question 8). Please note that the COVIP is currently applying pressure by way of 'moral persuasion' to have the old non-broad based pension plans combined with broad-based pension plans.

24 How do the legal requirements for non-broad based plans differ from the requirements that apply to broad-based plans?

In the case of collective membership involving the enrolment of at least 500 workers in a single company or a single group, the supervisory body is complemented by a representative designated by the same company or group and a representative of the workers.

25 How do retirement benefits provided to employees in a trade union differ from those provided to non-unionised employees?

The question is not relevant as there is no distinction made between union and non-union employees.

26 How do the legal requirements for trade-union-sponsored arrangements differ from the requirements that apply to other broad-based arrangements?

Unlike private pension schemes sponsored by insurance companies for individual employees (which could be set up as a specific, separate and autonomous asset within the same companies), the pension funds sponsored by trade unions can only be set up externally as a separate legal entity. In addition, the composition of the board of directors and supervision are different (eg, the pension funds sponsored by trade unions must fulfil the criterion of equal participation of representatives of employees and employers) as well as the model to manage their assets (eg, pension funds sponsored by trade unions must manage their assets through conventions with the external institutions as provided by law; see question 12) and the source of financing (eg, in the case of pension funds sponsored by trade unions, the level of contributions of both the employer and the employee can be fixed by the collective bargaining agreement).

Enforcement**27 What is the process for plan regulators to examine a plan for periodic legal compliance?**

For the purposes of supervision and compliance, the COVIP decides what information needs to be submitted, when and in what way, as regards periodic reports, as well as all other data and documents required, and the minutes of meetings and investigations of internal monitoring of the plan.

The COVIP may also convene the administrative and supervisory bodies of the pension schemes; request the convening of the governing body of the pension schemes and set the agenda.

COVIP submits an annual report to the minister of labour and social security on the business, important issues arising and the guidelines it intends to implement. The department reports in turn to parliament with its own recommendations.

28 What sanctions will employers face if plans are not legally compliant?

Not applicable.

29 How can employers correct errors in plan documentation or administration in advance of a review by governing agencies? Not applicable.**30 What disclosures must be provided to the authorities in connection with plan administration?**

See questions 21 and 27.

31 What disclosures must be provided to plan participants?

Participants are provided with an annual written update on the state of their personal position accrued to date. Pension plans are required to exhibit in their annual report and in periodic communications to participants whether, and to what extent in the management of the portfolio, social, ethical and environmental values have been taken into account. The participants are also entitled to access additional information online and can monitor regularly updated information regarding their contributions, their personal situation accrued to date and the benchmark, which must be in line with the investment policy of the scheme.

32 What means are available to plan participants to enforce their rights under pension and retirement plans?

Plan participants can enforce their rights under pension or retirement plans in different ways. In particular, participants are able to transfer their benefits to another pension fund. The participants who complain of irregularities, problems or anomalies relating to a pension fund can:

- make a formal complaint to the pension fund to obtain the necessary clarifications about the situation encountered or the satisfaction of their requests and, after that, write directly to the COVIP (in particularly serious or urgent cases, the participant can immediately write directly to the COVIP);
- bring a lawsuit for possible damages against the members of the board of directors or the supervisory body or manager of the pension fund in the cases provided by law (eg, when directors do not comply with the duties imposed upon them by law and by statute with the diligence required by the nature of their specific role and skills or when they breach the obligations related to the preservation of the integrity of the assets of the pension funds); and
- bring a lawsuit for the payment of their individual contributions against the parties who should have paid it (usually the employer).

Plan changes and termination**33 What restrictions and requirements exist with respect to an employer's changing the terms of a plan?**

Not applicable.

34 What restrictions and requirements exist with respect to an employer terminating a plan?

Not applicable.

35 What protections are in place for plan benefits in the event of employer insolvency?

European Directive 80/987/EEC of 20 October 1980, as amended by European Directive 94/08 EC, protects employees in the event of insolvency of the employer, when it fails to pay contributions to private pension schemes or pays in a lesser amount.

In particular, the Guarantee Fund set up by the INPS protects workers when the insolvent employer fails to pay contributions to private pension schemes or pays only a part of it.

36 How are retirement benefits affected if the employer is acquired?

In this case retirement benefits do not change, provided that the membership requirements laid down in the by-laws and regulations of the private pension schemes are met.

37 Upon plan termination, how can any surplus amounts be utilised?

In the event of dissolution of the pension fund for matters concerning the parties required to pay the contributions, it provides that the

insurance cover is transferred into the name of the beneficiaries of the pension.

Fiduciary responsibilities

38 Which persons and entities are 'fiduciaries'?

Not applicable.

39 What duties apply to fiduciaries?

Not applicable.

40 What are the consequences of fiduciaries' failing to discharge their duties?

Not applicable.

Legal developments and trends

41 Have there been legal challenges when certain types of plans are converted to different types of plan?

Not applicable.

42 Have there been legal challenges to other aspects of plan design and administration?

Not applicable.

43 How will funding shortfalls, changing worker demographics and future legislation likely affect private pensions in the future?

For the above-mentioned reasons, including changes to employees' demographics, in the current public pension scheme the mean rate of substitution between pensions and salaries is set to decrease when compared with the historical rate, when the rate of substitution was approximately 80 per cent.

During the past 20-year period, the Italian government has attempted to fill the gap by introducing a broad-based private pension scheme.

By virtue of the pension reforms in 2005, the number and size of second pillar pension schemes has significantly increased. In particular, this has been achieved thanks to private pension schemes being financed by transferring the employees' TFR – an amount that accrues in the company balance sheet annually and is due to the employee on termination – into such schemes, according to the principle of tacit consent. The option mentioned in question 1, to receive the accruing TFR monthly as part of the remuneration, will have no impact on the part already transferred to the pension fund which remains accrued in it.

The TFR is a proportion of an employee's salary that – until the 2005 reform – was set aside by the employer and generally paid to the worker in a lump sum upon termination of employment owing to retirement, change of job or dismissal. Each year the employer withholds around 7.4 per cent of the total salary of every employee and on termination of the employment relationship, 'returns' the accumulated sum, which is annually revalued according to a guaranteed yield rate calculated on the basis of criteria established by law. The TFR accrued in the course of the year increases annually by 1.5 per cent, to which must be added a supplement equal to 75 per cent of the average inflation rate during the year in question.

Thanks to the relatively new option for employees to transfer TFR to private pension schemes, the number of members has increased from 3.3 million at the end of 2006 to 7.2 million, at the end of 2015, the majority of which are employees (as opposed to self employed).

At the end of 2015 the total assets of pensions funds are about €140.1 billion.

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