



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

4 April 2019

**Case Document No. 4**

**Panhellenic Association of Pensioners of OTE (PAP-OTE) v. Greece**  
Complaint No. 165/2018

**GOVERNMENT'S SUBMISSIONS ON THE MERITS**

**Registered at the Secretariat on 15 March 2019**





**HELLENIC REPUBLIC**

**MINISTRY OF LABOUR, SOCIAL  
SECURITY &  
SOCIAL SOLIDARITY**

**DIRECTORATE OF  
INTERNATIONAL RELATIONS  
DEPARTMENT OF RELATIONS WITH  
INTERNATIONAL ORGANIZATIONS**

Athens, 15/03/2019  
Ref. No: 12278/231

**To the Council of Europe**

**Directorate General of Human Rights  
& Rule of Law  
Department of the European Social  
Charter**

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**Subject: Collective Complaint 165/2018, *Panhellenic Association of Pensioners of the OTE Group Telecommunications v. Greece*, in the framework of the Additional Protocol to the European Social Charter providing for Collective Complaints - Observations of the Greek Government on the merits**

According to the European Committee on Social Rights' Decision, dated 6 December 2018, on the admissibility of collective complaint No.165/2018, filed against Greece by the pensioners' association «*Panhellenic Association of Pensioners of the OTE Group Telecommunications v. Greece*», and following the letter dated 12/02/2019 of Mr. Henrik Kristensen, Deputy Executive Secretary of the European Committee of Social Rights,

We hereby submit our observations on the merits of the allegations made by the complainant organisation.

The Greek Government wishes to refute the allegations in the collective complaint No. 165/2018, filed against Greece by the pensioners' association «*Panhellenic Association of Pensioners of the OTE Group Telecommunications v. Greece*», in their entirety as unfounded, and

this is the reason why it points out the following as regards the recent laws adopted concerning the country's pension system:

## **I. GENERAL**

### **1. Constitutional guarantee of the right to social security**

The following are concluded from the provisions of articles 2 para1, 4 para1 and 5, 22 para5 and 25 para1 and 4 of the Constitution of Greece: Ensuring the social security of workers is recognized by the Constitution as an institutional guarantee. In this context, the common legislator, having wide powers of discretion in this regard and taking into account the prevailing social and economic conditions, sets the rules for the insurance coverage and protection of the population against specific contingencies (old age, death, disability and sickness) taking account, on the one hand, the protection of the accrued benefit and the serving of the actuarial equilibrium, on which the social security institutions' finances are based, i.e., protecting the sustainability of social security institutions for the future generations, too, and, on the other, ensuring pensioners a satisfactory standard of living as close as possible to the one they had achieved during their working life.

By virtue of article 22 para. 5 of the Constitution<sup>1</sup>, the constitutional legislator has given constitutional validity to the principle of social security, by including it in the purposes of the State, in view of covering the entire working population of the country and the protection of the accrued benefit and assigned the common legislator with the task of specifying it depending on the prevailing economic conditions. The protection of insured persons by paying contributions against risks (old age, sickness, disability, etc.) that affect their ability to work (contingencies) and subsequently, tend to downgrade their living conditions constitutes the main content of social security. If a contingency occurs, the insured person stops paying contributions and has the right to claim against the insurance body to provide him with a benefit that, although it is not necessary to directly correspond to his paid contributions nor fully compensate for the loss of his income, should be adequate to ensure a satisfactory standard of living as close as possible to the one he had achieved during his working life. In addition to the above public purpose, through the institution of social security –as well as through social welfare- social solidarity is manifested and social policy is exercised and in particular, redistribution of income with a view to reducing social contrasts and inequalities. In the pursuit of this objective, the legislator has wide powers of discretion to regulate the relevant issues and specify the social security system, subject only to restrictions imposed by other constitutional provisions.

### **2. The social security reform introduced by Law 4387/2016 (A' 85)**

By virtue of Law 4387/2016 the social security system was fully reformed in the context of a Unified Social Security System and based on the general principles of ensuring decent living and social protection in terms of equality, social justice, redistribution and intergenerational solidarity.

The main characteristic of the social security system prior to the entry into force of Law 4387/2016 was the striking disparities in the requirements for pension entitlement (years of paid contributions, age limits), replacement rates, minimum pensions, workers and employers' social security contributions, social resources and state funding both between various funds and

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<sup>1</sup> Article 22 para.5 of the Constitution: *The State shall care for the social security of the working people, as specified by Law.*

well as between insured persons by the same fund, resulting in strong inequalities, since similar cases of insured persons were addressed differently.

By virtue of the measures introduced by this law (Unified Social Security Fund – EFKA, uniform rules of benefits and contributions-replacement rates, national-contributory part of pension, protection of pensions already paid by means of personal difference amount, respect for human beings through the obligation to provide adequate benefits that shall ensure a minimum standard of living), the social security legislator sought **structural rationalization** of the provisions' system and, in this context, the said measures were primarily of **institutional, substantial and structural nature**.

However, in light of the fact that this social security reform took place in parallel and in compliance with the obligation under the third memorandum of cooperation (see the text of the memorandum ratified by the Parliament by virtue of Law 4336/2015 (O.G. A'/14-8-2015), included in the section entitled "restoring fiscal sustainability", its main objective was primarily to ensure the sustainability of the social security system itself for the benefit of future generations by undertaking specific commitments, including, inter alia, a) the unification of all social security funds in a single body, b) establishing a closer link between contributions and provisions, c) eliminating all unnecessary charges in financing pensions and offsetting them by reducing benefits or increasing contributions, etc.

The objective described above was achieved **firstly** through measures of **institutional, substantial and structural nature** introduced by Law 4387/2016, and secondly through the "*contribution of the pension system to the fiscal consolidation of the country*" (see para. IB' of the Explanatory Report of Law 4387/2016), i.e., by reducing state funding, ensuring **budget surpluses for the future** and, in particular, by achieving a medium-term budget surplus of 3,5% of GNP.

To this end, and based on its Explanatory Report, Law 4387/2016: a) achieves the administrative efficiency of the system and simplifies procedures, **by unifying social security bodies in one body** (the EFKA, where all the existing main social security bodies are integrated) and **fully distinguishing welfare and social security benefits**, b) establishes **full equity**, by substantially unifying the existing social security system through the establishment of **uniform rules** for old and new insured persons and re-fixing of pension amounts for those who are already pensioners, c) provides for **exemptions for farmers**, since the average rural income is much lower than the average urban and thus it would be objectively impossible for a significant proportion of the rural population to pay contributions, d) provides for **single contribution rates calculated on the basis of the real income**, e) establishes **a uniform method of calculating main and supplementary pensions**, for old and new insured persons, based on the average labour income and the same replacement rates for all, defining thus (respecting the principle of equality of charges, under article 4, para.5 of the Constitution) the contribution of the pension system to the country's **fiscal consolidation**, f) establishes the **national pension**, in order to ensure adequate income replacement also for the long-term unemployed, for those who work in atypical forms of employment or are low-wage earners and g) **guarantees that pensioners will lead a life of dignity** and keeps the standard of living as close as possible to the one they had achieved during their working life.

More specifically:

**A.** The reform of the social security system introduced by virtue of Law 4387/2016 was based on two fundamental principles : a) the **principle of equity** by establishing same rules for all, insured persons before and after 1/1/1993, workers of the private and the public sector, salaried and self-employed, and b) the **principle of social justice** by establishing a National

Pension that contributes to the redistribution of income and consequently to mitigation of social inequalities and ensuring adequate pensions also for vulnerable social groups.

Law 4387/2016 establishes full equity, through the substantial unification of the existing social security regime by establishing single rules for old and new insured persons and re-fixing of pension amounts for those who are already pensioners. Unified rules are necessary because all insured persons should be able to enjoy the same degree of national/social solidarity against the main risks in life. Exemptions are provided only for the protection of most vulnerable social groups (for example persons with disabilities). Exemptions are also provided for farmers, because the average agricultural income is much lower than the average urban income and thus there would be an objective inability of a significant part of the rural population to afford payment of contributions.

Moreover, Law 4387/2016 ensures sustainability, intergenerational equality as well as equal distribution of sacrifices. The need for a reform of the pension system based on the principle of intergenerational solidarity to make it financially sustainable and to prevent old age poverty had already been formulated in the UN report of the Independent Expert on foreign debt, who also pointed out that the current official poverty threshold of 384 euros per month for a single person is at the margins of what can be considered as a minimal threshold for ensuring a life in dignity<sup>2</sup>. Ensuring protection of sustainability for future generations is among the constitutional obligations of the State<sup>3</sup>. According to the White Paper (European Commission) on Pensions in 2012, the fiscal strategy should take into account the cost of the pension reform and not the other way round, i.e., starting from the fiscal consolidation we should narrow the range (social character) and the effectiveness of social security reforms.

Indeed, according to the provisions of Law 4387/2016, as of 13/5/2016 old age, disability or survivor's pensions for all insured persons (insured for the first time before and after 1/1/1993), are the sum of two parts : a) National Pension (articles 7 and 27 of Law 4387/2016) which is in line with the principle of ensuring a minimum core decent benefit and b) Contributory part of Pension (articles 8 and 28 of Law 4387/2016) which is in line with the contributory principle by replacing the former income as much as possible, based on the actuarial link between contributions and benefits. More specifically:

The National Pension aims at tackling poverty and social exclusion since it guarantees a minimum pension amount that does not depend on the payment of social security contributions nor on the amount of the insured person's earnings or income. Thus it ensures a decent standard of living for vulnerable groups such as low-income pensioners and disabled people, while its financing from the National Budget is an important social redistribution tool in favor of the more vulnerable social categories. The National pension introduces a «Beveridge» type element, a universal uniform pension which aims at guaranteeing a minimum income for pensioners.

On the other hand, the Contributory part of the pension is calculated based on earnings on which contributions have been paid and on the replacement rates referred to in article 8 of Law 4387/2016. It constitutes the link between pension benefit, contributions and income based on

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<sup>2</sup> UN, Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights on his mission to Greece, A/HRC/31/60/Add.2, 29-2-2016, par. 67

<sup>3</sup> See Council of State Plenary Decision 2290/15, article 7:

[http://www.adjustice.gr/webcenter/portal/ste/pageste/epikairota/apofaseis?contentID=APOFAS11&\\_afLoop=75837272827805631#!%40%40%3F\\_afLoop%3D75837272827805631%26centerWidth%3D65%2525%26contentID%3DAPOFAS11%26leftWidth%3D0%2525%26rightWidth%3D35%2525%26showFooter%3Dfalse%26showHeader%3Dtrue%26\\_adf.ctrl-state%3Dwdfvcjixa\\_33](http://www.adjustice.gr/webcenter/portal/ste/pageste/epikairota/apofaseis?contentID=APOFAS11&_afLoop=75837272827805631#!%40%40%3F_afLoop%3D75837272827805631%26centerWidth%3D65%2525%26contentID%3DAPOFAS11%26leftWidth%3D0%2525%26rightWidth%3D35%2525%26showFooter%3Dfalse%26showHeader%3Dtrue%26_adf.ctrl-state%3Dwdfvcjixa_33)

the contributory principle. Moreover, according to the principle of social solidarity, the contributory part of pension is financed by social security contributions.

Therefore, the new structure of the pension system (National and Contributory part of the pension) ensures a decent standard of living for pensioners through the redistributive and guaranteed nature of National Pension and establishes a close link between pension benefits, contributions and income through the Contributory part of the pension and as a result the total pension benefit granted corresponds to the standard of living the insured persons had during their working life.

**B.** Moreover, by virtue of articles 14 para. 1 and 2 and 33 of Law 4387/2016 provision was made for the **readjustment** of pensions paid on 12/5/2016 (date of publication of Law 4387/2016), except pensions granted by OGA, and the respective implementation of regulations referred to in articles 7, 8, 27, 28, 30 and 12 of Law 4387/2016, i.e., in accordance with the rules applicable for those who shall retire from 13/5/2016 onwards for the granting of National and Contributory Part of the Pension.

The above mentioned readjustment of pensions that are calculated on the basis of the previous legislative framework is mandated by the principles of participatory justice and intergenerational solidarity, in the context of developing a sustainable pension system, always ensuring the full protection of main pensions by making provisions for the payment of personal difference amount to pensioners, in case there is a reduction in their pension amount based on the new legislative framework, introducing thus a favourable treatment for those who are already pensioners on the basis of the principle of protection of legitimate expectations of the individual. In the event that a higher pension amount results from the application of new pension calculation rules, provision is made for the gradual increase in paid pension amount.

The implementation of uniform rules for the calculation of main pensions for all pensioners, retired before and after the entry into force of Law 4387/2016, is in line with the **principles of equality, contribution to public burden and social solidarity**. Moreover, in this case too, a decent standard of living is ensured for those who are already pensioners, in line with the rules that apply for those who shall retire after the entry into force of Law 4387/2016.

Until 31/12/2018 pensions continue to be paid in the amounts fixed **till 31/12/2014**. As of 1/1/2019, if the pension amount, National and Contributory part, that will result after the implementation of the new calculation method for pensions already paid at the entry into force of Law 4387/2016 is lower than the paid pension amount, the resulting difference shall continue to be paid to the insured person as personal difference amount and shall be offset by the annual increases in pensions under article 14 para3 of Law 4387/2016. If the pension amount, National and Contributory part that will result after the implementation of the new calculation method for pensions already paid at the entry into force of Law 4387/2016 is higher than the paid pension amount, then provision is made for an increase in the paid pension amount by 1/5 of the difference, that will be paid gradually by equal amounts within a period of five years from the completion of the current fiscal adjustment program, i.e., from 1/1/2019.

Furthermore, in defining replacement rates, the legislator took into account the rules of the contributory principle by strengthening the link between contributions and benefits. **By establishing a more proportional pension, workers are encouraged not to lose even one single day of insurance.** Pension amount depends strongly on pensionable earnings (as they were gradually formed) because earnings during the entire working life are taken into account.

Pursuant to the above mentioned regulation, JMD No.26083/887 (B' 1605/7-6-2016) was issued on «Readjustment of main pensions – Protection of pensions already paid», by virtue of which guidance was given for the calculation of the contributory part of paid pensions and the level of pensionable earnings on 31/5/2016. The carrying out of an actuarial study is not a pre-requirement in order to define the level of insured persons' individual earnings, because individual earnings or the earnings for each insurance category during working life are a real fact and not the outcome of an actuarial study.

Indeed, according to the provisions of the above mentioned Ministerial Decision **there is no readjustment of main pension amounts but a recalculation** in accordance with the provisions of Law 4387/2016 and **calculation of the resulting difference amount** (personal difference amount) for each main pension. The resulting difference amount may be negative (i.e., the recalculated pension amount based on Law 4387/2016 is lower than the pension amount paid before the entry into force of Law 4387/2016), or positive (i.e., the recalculated pension amount based on Law 4387/2016 is higher than the pension amount paid before the entry into force of Law 4387/2016), or nil (i.e., the recalculated pension amount based on Law 4387/2016 is equal to the pension amount paid before the entry into force of Law 4387/2016).

C. Finally, with regard to the **provisions of Law 4472/2017, established after the adoption of the above Law 4387/2016** we would like to inform you of the following:

Indeed, the provisions of Law 4472/2017 on the impairment of the personal difference amount as of 1.1.2019 in the context of the new calculation method for pensions, were dictated by the need to ensure the successful conclusion of the second review of the fiscal adjustment program, achieve direct financing of the Greek economy and subsequently develop the necessary environment of stability, conditions that are absolutely necessary in order to identify effective measures for the adjustment of Greek public debt.

**However, given the fact that after the completion of fiscal adjustment programs, it was proven that the country managed to achieve its fiscal target for a primary surplus, which was a target that now could be achieved without impairing the personal difference amounts in the context of pension recalculation, which is a non-structural measure, the said provisions were abolished by virtue of article 1 of Law 4583/2018 (A'212).**

In particular, provision was made that as of 1.1.2019, if the paid pension amount is higher than the one resulting from the recalculation, the excess amount shall continue to be paid to the beneficiary and shall be compensated annually with any future pension indexation until it is fully eliminated.

Similarly, article 96, para7 of Law 4387/2016 was repealed, which was added by virtue of article 2 of Law 4472/2017, with regard to supplementary pensions.

## **II. ON THE INDIVIDUAL ALLEGATIONS OF THE COMPLAINANT**

### ***1. On the allegation that the introduction of the National Pension and Contributory Pension as elements of the main pension violates articles 12, paras2 and 3, and 23 of the ESC.***

First and main allegation of the complainant is that the vaguely reported “cuts” under Laws 4387/2016 and 4472/2017 violate articles 12, paras2 and 3 and 23 of the ESC and in particular Greece's obligation to maintain a social security system at a satisfactory level in relation with the minimum standards of social security required by International Labour Convention No.102.

The International Labour Convention No. 102 of the International Labour Organisation (1952) that was ratified by virtue of Law 3251/1955, guarantees by virtue of its nine sections



the protection against contingencies such as sickness, unemployment, maternity and family responsibilities, disability, occupational accident and diseases, old age and death of the breadwinner. The contracting countries have undertaken to implement minimum protection limits for at least three of the above mentioned contingencies. However one of these three contingencies must definitely be disability or unemployment or occupational accident or old age or death of the breadwinner. The convention requires that a minimum percentage of the population be covered and this percentage usually corresponds to 50% of workers or 20% of inhabitants. The minimum amount of benefits is defined in relation to the benefit for the standard beneficiary (married with two children), while, according to article 65 of the Convention it is fixed in accordance with one of the following three methods, at the choice of the Member-State: 1) depending on the previous earnings of the standard beneficiary from work, 2) depending on the earnings of the standard skilled worker, 3) means-tested and based on the earnings of a standard unskilled worker. Minimum benefits vary between 40% and 50% of the earnings of the standard beneficiary, depending on the contingency and in particular, for Greece the minimum old age pension amount is calculated at 40% of the earnings of a turner in the manufacture of machinery.

The European Code of Social Security (ECSS), hereinafter the CODE, was established in 1964 and was signed by Greece in 1977, in the context of its membership in the Council of Europe (CoE)}, and it was ratified in 1981 by virtue of Law 1136/1981 (O.G. 61 τ. Α'/13.3.1981), as regards the Parts on Medical Care (Part II), Sickness Cash Benefit (Part III), Old Age Benefit (Part V), Work Accident and Occupational Disease Benefit (Part VI), Maternity Benefit (Part VIII), Invalidity Benefit (Part IX) and Survivor's Benefit (Part X).

The structure of the Code refers to the earlier text of ILC 102, since it includes nine parts that correspond to nine contingencies, also referred to in the Convention. However, the conditions for its ratification are much stricter, given the fact that the Member-States had to commit themselves for at least six of the contingencies, while in ILC 102 they had to commit themselves for three contingencies. However, both the ILO as well as the Council of Europe consider that the Code ensures a better protection level compared to the ILC 102, because it was written in order to meet the needs of the European countries at a later time. In Part XI (articles 65-67) the Code defines the Periodical Payments and the conditions that should be met. More specifically, article 65 of the Code refers to the minimum social security benefits in systems that pay contributory or partly contributory benefits, such as the Greek one, article 66 refers to systems that pay fixed amounts of benefits and article 67 refers to systems that cover all the inhabitants of the State. The rule is that after the occurrence of the contingency, income replacement shall vary from 40% to 50% depending on the contingency. Greece, as regards the contingency of old-age, in line with the Schedule to Part XI of the Code which refers the following: *Part V. "Contingency = Old Age - Standard Beneficiary = Man with wife old pensionable age - Percentage %=40"*, declared that it calculates the minimum replacement rates for old-age pension at the same rate calculated for the ILC 102 ΔΣΕ, i.e., at 40%. Thus, for the Greek social security system, as regards the persons protected by the Code, as defined in article 5 in combination with articles 9.a, 15.a, 27.a, 33, 48.α, 55.a and 61.a, who are **employees manual male workers** who account for at least 50% of all employees, their spouses and children, as **reference salary** was considered the one selected by Greece, that, under article 65.6.a of the said Code, was the salary of a fitter or tuner and in particular the skilled manual male **fitter**.

Recently the ILO proposed to Greece (as well as to other Member States of the Council of Europe) to change the old person deemed typical of skilled labour, and therefore the reference wage used, based not on the above mentioned article (65.6.a) of the Code, but on article 65.6.b in

combination with article 65.7. Thus finally our country defined the new person deemed typical of skilled labour employed in one of the major group of economic activities of the Country, that is craft and related trades (ISCO groups 7 and 8), i.e., **Male manual worker, Specialized Craftsman in Manufacturing Industries**. Consequently, in the next annual report (for the period 1/7/2016 – 30/6/2017, which coincides with the entry into force of Law 4387/2016 and the operation of the EFKA) on the application of the Code in our country, the average wage of the new person deemed typical of skilled labour (in manufacturing industries) was considered as reference wage and not the wage of the old (fitter or turner).

According to the competent department of the Unified Social Security Fund (**hereinafter EFKA**), this reference wage (average monthly salary) of skilled craftsmen (category 7) of economic activity D (Manufacturing), amounted at 1.411,61 euros for the abovementioned time period and for its calculation the regular earnings of each worker were taken into account, grossed up by the amounts of bonuses and holiday benefit (x14/12) and correspond 25 days of insurance.

Subsequently, in order to establish whether the **pension** rate on the reference wage exceeds the replacement rate set by the convention, **for the specific** person deemed typical of skilled labour, (i.e., 40% of the reference wage =  $1411,61 \times 40\% = 564,64\text{€}$ ), the resulting pension (sum of main and supplementary pension) was calculated for this category of workers and insured persons with the EFKA (in accordance with the new Law 4387/2016) for the 5<sup>th</sup> month of 2016, by taking into account all possible scenarios, i.e., in case they are granted a) full pension (for full-time employment) for 40 years of paid insurance contributions, b) full and reduced pension for 30 years of paid insurance contributions, and finally c) full and reduced pension for 15 years of paid insurance contributions. Thus the calculation resulted in the following: A) the **full** pension (main and supplementary) that these persons are entitled to for 40 and 30 years of paid contributions respectively, amounted in the first case (of 40 years) to 1.865,48€ (132,15% of the reference wage of 1.411,61€), and in the second case (of 30 years) to 1.210,08€ (85,72% of the same reference wage of 1.411,61€) and B) the **reduced** pension for 30 and 15 years of paid contributions, amounted to 1.047,26€ (74,19% of the reference wage), and 41,21% (41,21% of the reference wage) respectively.

This means that in all the above mentioned cases of pension scenarios, the sum of main and supplementary pension (to which the personal difference amount that these workers may be entitled to was not added in order to simplify calculations), exceeds the replacement rate (40%) set by the Code on the Reference Wage (of 1.411,61€).

Article 65.5 of the Code, explicitly stipulates the following: *“For the other beneficiaries, the benefit shall bear a reasonable relation to the benefit for the standard beneficiary”*. Therefore, for the **other** persons protected by the National Center for Social Solidarity (EKKA), i.e., salaried workers of **any other** specialty (except that of the standard beneficiary- person deemed typical of skilled labour), the pension provision (main and supplementary pension) **does not** depend on the above Reference Wage (of 1.411,61€), since it applies exclusively to the person deemed typical of skilled labour employed in Manufacturing Industries; it should bear a **reasonable relation** to the benefit of the said beneficiary – person deemed typical of skilled labour (therefore, the total of pensions of the said persons should correspond at least to 40% of their average monthly salary increased by family allowances, Christmas and Easter Bonuses and holiday benefit). In the event, therefore, that a married insured person is employed for example as an office clerk and earns for full-time employment 800 euros on a monthly basis, then his resulting pension (by virtue of Law 4387/2016) (sum of main and supplementary pension), should amount at least to 40% of these earnings (and not to 40% of 1.411,61€, since this salary,

which is specified based on the provisions of the EKKA, refers to Male manual workers, Specialized Craftsmen in Manufacturing Industries and not to the other worker specialties), i.e., (800 X 40%=) 320€, which is an amount surpassed only by granting that worker the national pension amount (384€).

It is evident from the above that the complainant's allegation is unfounded that fixing pension amount in accordance with the provisions of Law 4387/2016 violates articles 12, paras. 2 and 3, and 23 of the ESC and, in particular, Greece's obligation to maintain a social security system at a satisfactory level in relation with the minimum standards of social security required by International Labour Convention No. 102.

## ***2. On the allegation regarding the State's substantial refusal to undertake the obligation to guarantee social security.***

The complainant's allegation that articles 2 and 5 of Law 4387/2016 establish the State's obligation and responsibility to guarantee only the national pension amount which is financed only by the State Budget is manifestly unfounded and untrue. More specifically:

**A.** By virtue of article 2 of Law 4387/2016, the concepts were introduced of the two parts of a pension amount, the sum of which constitutes the old-age, disability and survivor's pension from the entry into force of the above mentioned law. In particular:

Paragraph 2 of the said article defines the concept of national pension, which is not financed by social security contributions but directly from the state budget and is paid as of 1/1/2017 by the EFKA under the terms and conditions laid down in Article 7 of the said law. Paragraph 3 of the same law defines the concept of contributory part of the pension respectively, which is calculated on a) the earnings on which contributions were paid and b) the replacement rate, in accordance with the tables of article 8 of the said law, under the terms and conditions laid down in this article. **Paragraph 5 of the same article finally explicitly and undoubtedly stipulates that the State has full obligation to guarantee all social security benefits and therefore not to cover only the cost of national pension.**

Moreover, in article 1 para. 2 of Law 4387/2016 it is legislatively confirmed that the State has the obligation to ensure the sustainability of the Unified Social Security System and to grant the relevant benefits to all those who meet the requirements.

Moreover, all the above are **confirmed** by the **Explanatory Report** of Law 4387/2016, which makes it clear and undisputed that: *«the State, in addition to the obligation to cover the expenditure for the national pension through taxation, has full obligation to guarantee all social security benefits and to ensure the sustainability of funds, also in accordance of article 22 para 5 of the Constitution. The State's obligation to guarantee is not limited to its obligation to regulate the social security system in such a manner that will ensure its sustainability but also will cover any deficits».*

It is made clear from the above that the State's obligation to guarantee, **is a full obligation for all social security benefits**, as is also legislatively confirmed by the above, and consequently it is not limited only to the national but also to the contributory part of the pension, despite all the unfounded and wrong allegations in the collective complaint.

The separation of pension in national and contributory part such as the accounting separation of the nominal and welfare part of the pension in no way does it mean that the state shall stop guaranteeing the payment of the contributory part, i.e., the part that is based on contributions. It is obvious that the guarantee is **comprehensive** and it is not related to the system's architecture. Besides, a direct consequence of the public nature of social security is the guaranteeing role that the State shall hold.

**B. All the above have also been confirmed by article 14 of Law 4455/2017 (A'22), by virtue of which case (c) was added to article 56, para.1 of Law 4387/2016, with effect from 1/1/2017, which is literally the following: «contribution from the national budget, in accordance with paras.2 and 5 of article 2». It was therefore, explicitly stipulated that contribution from the State budget shall be included in the EFKA resources – and in particular with retroactive effect from its entry into operation, in accordance with paras.2 and 5 of article 2.**

The allegation therefore that the resources of the EFKA, under article 56 of Law 4387/2016, consist only of collected workers and employers' contributions as well as return on capital and reserves either of the EFKA itself or of the funds, sections, branches and accounts integrated in it, is manifestly unfounded and therefore rejected.

**C. The State's full obligation and responsibility to guarantee is also confirmed by ensuring the sustainability of the social security system till 2070, which is fully proven and presented in the reports of the European Union.**

Indeed, all relevant studies show that both in the medium and long term, the recent reforms shall lead to the financial sustainability of social protection systems with adequate benefits, despite the projected ageing which is the main challenge of social security systems in the years to come and that it is expected to increase most of the social security benefits (pensions, health, long-term care). Assessments and projects data included in these studies also show that social security will be little affected, in the medium and long-term, by the key negative external factor that had affected it during the previous period, as described in the previous parts, i.e., recession and high unemployment rates.

The last conclusion is confirmed also by the **recent EU reports on ageing (Ageing Report 2018) and the adequacy of pensions (Pensions Adequacy Report 2018)**. From the forecasts contained in the Report on ageing it is apparent that Greece successfully addresses the impact of population ageing in the field of social security, and in particular, pensions, health, long-term care. It is also shown that the negative effect of unemployment and economic downturn is eliminated in the medium and long term, since Greece is expected to return to growth and will gradually reduce unemployment rates.

More specifically, it is proved that pension expenditure is decreasing and that the social security reform introduced by Law 4387/16 ensures in the long-term both the financial sustainability as well as the social efficiency of the pension system, i.e., the adequacy of pensions (European Commission (2018), The 2018 Pension Adequacy Report: current and future income adequacy in old age in the EU -Country profiles - Volume II, p. 82, Brussels). However, as regards health and long-term care, there is a reasonable increase in expenditure that does not affect the total cost of social protection.

More specifically, till 2030 expenditure both on pensions and on unemployment will also gradually decrease as a percentage of the GDP (-5,3 and (-0,3 percentage points respectively) while expenditure on health shall increase slightly (+0,5 percentage points), and expenditure on long-term care shall remain stable. Respectively, till 2070, the above expenditures in total shall decrease by 6.1 percentage points ensuring that all challenges social protection will face in the next period will be met in a satisfactory manner.

In particular, expenditure on pensions as a whole (old-age, disability and survivor's), which is the key factor in shaping social protection expenditure, shows a downward trend during the whole period till 2070. More specifically, we have to note that as regards financial sustainability, the reduction in pension expenditure is ensured from 17,3% of the GDP in 2016,

to 13,4% in 2020, to 12,03 in 2030 and then with a slight increase to 12,5% of the GDP in 2050 and in 2070 it will fall again to just 10,6% of the GDP, converging with the EU average that in 2070 will be 11% of the GDP. As regards the adequacy, the total income replacement rate for old-age pension paid by the public pension system is expected to remain adequate although it is decreasing from 68,4% in 2016 to 61,6% in 2030 and to 53,7% in 2070, since compared to the EU average, it will be 15 percentage points above the average of the remaining EU countries where it will stand at 43,5% in 2030 and 38,1% in 2070.

D. Finally, as regards the complainant's allegation that the eligibility conditions for national pension entitlement are stricter thus making it more difficult to grant it, we would like to note the following:

According to the explanatory report of Law 4387/2016, national pension has, on the one hand, a distributive function (pay-as-you-go), since its introduction leads to higher pension amounts than those justified by a stricter application of the contributory principle and, on the other, a guaranteeing function, since it ensures minimum protection against poverty and social exclusion for all. **With the system's new architecture, national pension has a twofold purpose. When the contributory part of the pension is low and is not adequate to guarantee a minimum living standard, national pension aims at combating poverty. In other cases, national pension substantially increases the final replacement rate (enhancing the contributory principle). The contributive part of pensions without calculating the national pension amount would lead to even lower replacement rates.**

At the entry into force of the law, national pension is set at 384€ on a monthly basis and is paid in full provided that at least 20 years of contributions have been paid. Prevention of poverty by ensuring a decent standard of living for all elderly persons is one of the cornerstones of social security. However national pension, in order to refute the misleading allegations of the complainant, is paid also to those pensioners who have paid 15 years of contributions.

During the public debt crisis, protection against poverty for the elderly becomes the absolute priority given the fact that, according to Eurostat (SILC 2014), 23, 1% of persons over the age of 65 live at the poverty line. According to the explanatory report of Law 4387/2016, this amount is not below the poverty threshold, i.e., 60% of the median income. Indeed, **fixing National Pension at 384 € for 20 years of paid contributions was based on 60% of the median income, in accordance with the EU rules.**

Finally, provision was made that as of 1/1/2017 national pension shall be adjusted every year, by Joint Ministerial Decision of the Ministers of Finance and of Labour, Social Security and Social Solidarity, based on an index that will be depend 50% on the GDP and 50% on the change of the previous year's CPI and shall not exceed the annual change in the Consumer Price Index, in accordance with article 14 para3 of Law 4387/2016.

From all the above it is made clear that in no way is article 12, paras. 2 and 3 of the Revised ESC violated, despite the complainant's allegations to the contrary that are manifestly unfounded and unproven.

### ***3. On the allegation regarding lack of a specific evidence-based scientific study***

The above allegation too of the complainant is completely unfounded, untrue and unproven on the following legitimate, reasonable and truthful grounds:

In fact, as regards the determination of contribution rates on real income, which was introduced for the first time by virtue of Law 4387/2016, and the determination of the social security system's financial stability and sustainability in general (i.e., the economic parameters

and regulations of the new law), **account was taken of a series of technical reports and studies that were uploaded at the website of the Greek Parliament as accompanying documents of the Explanatory Report of the relevant draft law<sup>4</sup>. We would like to note that, by Council of State Plenary Decisions No. 2287, 2288/2015, the country's Supreme Court ruled that the legislator's interventions on the social security system are in compliance with article 22, para. 5 of the Constitution only when following in-depth studies that may accompany the draft law it is found that these options aim at guaranteeing the sustainability of the system and the adequacy of the accrued benefit and that they protect the core of the insured persons rights. The relevant studies submitted in the tabling of the draft law (that became the Law 4387/2016) at the Parliament are the following:**

a) Regulatory Impact assessment report, prepared by the Ministry of Labour, Social Security and Social Solidarity. This report studies, analyses and establishes the following: the necessity of regulations, intended objectives, impact of regulations on social and financial groups, their adequacy, specification of decrees and of regulatory instruments in general that are required for the achievement of the legislator's objectives, the consequences on economy in general and in particular on national economy, consequences on the society and citizens, consequences on Public Administration and administration of Justice, the legality of regulations, case-law documentation, responsibilities of ministries, observation of legislative rules, transparency and social participation and finally evaluation of the content of each one of the proposed provisions to be adopted.

b) Report on the outcome of public consultation, prepared by the same Ministry. This report includes the number and the content of comments and proposals made for each article by institutions and citizens.

c) Findings of the Committee of the same Ministry (October 2015). It includes thoughts, analysis, proposals on the sustainability of the pension system, search for best practices implemented abroad, the objectives of the reform are clearly specified, the new structures and the new architecture of the pension system are presented, the compatibility of proposed regulations with the Constitution is examined, while various proposals and thoughts concerning the rationalization of pension expenditure etc. are presented in an annex, etc.

Furthermore, **before** the adoption of the abovementioned Law 4387/2016, a **Finding of the Committee of the Ministry of Labour, Social Security and Social Solidarity had been drawn up on the proposal for a new insurance system (Ministerial Decision 37564/Δ9. 10327/21-8-2015)**, on which the relevant insurance reform was founded. According to the said Finding a future pension reform must meet inter alia the following objectives: ***“...ensure sustainability, intergenerational equality as well as equal distribution of sacrifices. Restoring sustainability that is maintaining the system's ability to provide pensions for present and future pensioners is not an end in itself but serves the contract between generations lying at the root of each pay-as-you-go scheme...The concern for the protection of sustainability for the benefit of the next generations constitutes one of the State's main obligations (Council of State 2290/15, No7). Guarantee a sustainable system within sustainable public finances. According to the White Paper (European Commission) on 2012 pensions, the cost deriving from the pension reform should be taken into consideration when formulating the budgetary strategy rather than the opposite, that is to say, solely triggered by fiscal consolidation, narrowing the scope (social***

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<sup>4</sup> [https://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law\\_id=1423bab0-533b-4860-93fc-a5f001430f6c](https://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=1423bab0-533b-4860-93fc-a5f001430f6c)

character) and the effectiveness of insurance reforms. In any case, **Article 22 (5) of the Constitution, following the recent decisions of the Plenary Council of State, guarantees the pensioner's decent living, irrespective of budgetary priorities and feasibilities.** Pension scheme participation in the country's fiscal consolidation is defined by the respect for burden-sharing (Article 4 paragraph 5 of the Constitution). Pensioners should not take over a disproportionate part of the budgetary adjustment cost. **Be in proximity with the acquired - during working life- standard of living.** This objective consists of transferring consumer power from the working years to the period of withdrawal due to old-age. Simplify procedures and achieve the **system's administrative efficiency.** Simplifying insurance will make easier for enterprises to operate, whereas reducing bureaucracy when granting benefits will allow the easier and not time-consuming access of insured persons to benefits..."

**In view of all the above, this Finding has led to critical conclusions, for ensuring the compatibility of the forthcoming reforms with the Constitution, based on the case-law of the country's Supreme Courts, which are as follows:**

*"The establishment of a social security institution with the integration of all insurance bodies (main, supplementary and lump-sum benefits) in it, with uniform rules for old and new insured persons is not contrary to the Constitution provided that it is based on a viability study. The redefinition of pensions of the people already retired by reference to the new, unified method of calculating the main and supplementary pension for old and new insured persons, if it entails a reduction in pensions, is not contrary to the Constitution, provided that it complies with the principles of equality in bearing a burden and social solidarity. A reduction in fact corresponding to a benefit that does not ensure a decent living is not allowed. The relevant conclusions must result from a scientific study.*

*The Constitution does not impose a defined benefits social security scheme. The establishment of a pay-as-you-go pension scheme with defined contributions supplemented by a national pension funded by the state budget is compatible with the Constitution provided that it leads to benefits with a sufficient replacement rate of income from working life. The replacement rate achieved by the defined contribution scheme allows for checking whether the scheme ensures a satisfactory standard of living for pensioners".*

**All the above-mentioned critical data-conclusions, which resulted in the above Conclusion, were actually adopted and included as a whole in Law 4387/2016.**

d) Report of the Expert Council of the Ministry of Finance on "reasonable living expenditure-use of limits for the insurance system (November 2015)". As it derives from the introductory part of the study, the purpose of this report is to provide the Ministry of Labour, Social Security and Social Solidarity with a technical basis for complying with the 2287/2015 decision of the Council of State. The essence of the decision is that legislative interventions for cuts in both main and supplementary pensions of the insurance system should be accompanied by a scientific report which will substantiate that the legislator has taken into consideration the sufficient/ reasonable household standard (of a pensioner) in the drafting of the legislative proposal, allowing the pensioner to live in dignity, ensuring the conditions not only of his/her physical existence (diet, clothing, housing, basic household goods, heating, hygiene and medical care at all levels) but also his/ her participation in social life in a way that it does not abstain essentially from the corresponding conditions of working life.

e) The 20263/121/4-5-2016 study of the General Directorate for Financial Services of the Ministry of Labour, Social Security and Social Solidarity on "Impact assessment of the proposed insurance reform". The specific issues it deals with are: The crisis impact on employment, on employees' remuneration, data on the trend of the Funds' revenue from insurance contributions,

data on Funds' reserves, the evolution of pension expenditure, the deficits of main insurance bodies, the sustainability of social security bodies, the complexity and opacity of the (old) scheme, the new pension scheme, objectives and long-term perspective, medium-term impact of the insurance reform, examples of ensuring a decent standard of living under the new scheme, reform of the social security scheme with measures in accordance with the Constitution and the European Law, state guarantees, presentation of the new scheme. The study is accompanied by nine data tables and eight diagrams.

**f) Report of the International Labour Office to the above Ministry in English loosely entitled "Peer Review of the actuarial survey of the main social insurance pension schemes of IKA-ETAM, Public Sector, OAAE and OGA for the years 2015-2060. The work of the ILO concerned solely the assessment of the actuarial survey prepared by the National Actuarial Authority as regards the suitability of the methodology and the assumptions applied, as well as the reliability and adequacy of the data used.**

**g) Report-study of the National Actuarial Authority entitled "*Financial development of the pension scheme for IKA-ETAM, OAAE, OGA and the State-projections 2015-2060 (April 2016)*". In the said study, authors deal with-analyze the retirement age-limits of the insured persons, present-evaluate the basic parameters of the reform (based on the draft law), present the data, the followed methodology and the assumptions, illustrate the results of the estimates, drawing up 11 data tables, present the study conclusion by analyzing the sensitivity scenarios, accompanying them with a data table and a diagram depicting the annual result of GDP per year by 2060.**

**h) Kanellopoulos-Holeza Study on "Topical issues of the Insurance Scheme" (November 2015). This study contains the chapters: Crisis impact on employment, assets management of Social Security bodies, losses due to public debt haircut, collectability of social insurance charges, demographic ageing, expenditure and revenue of the insurance system, risk of poverty. Ten data tables and 19 diagrams are being presented in this study.**

**It is also noted that the National Actuarial Authority has carried out a study on the Greek Social Retirement Scheme, with base year 2016, which was submitted to the Ageing Working Group of the EU Economic Policy Committee in 2017 and was positively evaluated by it. This study took into account the legislative framework in force until August 2017<sup>5</sup>. The Economic Policy Committee Working Group on Ageing aims to improve the quantitative assessment of the long-term sustainability of public finances and the economic impact of the population ageing of EU Member States in order to assist in policy-making.**

**It should be noted that, according to a more recent document of the National Actuarial Authority, this study had taken into account the legislative framework as in force until 8/2017. As the National Actuarial Authority itself points out, the results for pensioners will be more favorable than those provided for in the study, since, given the above, the provisions of paragraphs 1, 2 and 3 of Article 1 as well as Article 2 of the Law 4472/2017 have not been applied (provisions taken into consideration in the study).**

**From their content, the sequence between them and the processing of the amount of information they provide, it is obvious that for the adoption of the regulatory provisions of Law 4387/2016, all parameters necessary for the lawfulness of the regulations contained in that law were taken under consideration. All reports-studies are notable for the**

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<sup>1</sup>[https://ec.europa.eu/info/publications/economy-finance/2018-ageing-report-economic-and-budgetary-projections-eu-member-states-2016-2070\\_en](https://ec.europa.eu/info/publications/economy-finance/2018-ageing-report-economic-and-budgetary-projections-eu-member-states-2016-2070_en)



**scientific excellence and data accuracy and there is no need to add any other element to them as a ground for legality of the adopted institutional law.**

In particular:

**A. THE ACTUARIAL SURVEY OF THE NATIONAL ACTUARIAL AUTHORITY (NAA)**

In principle, it should be underlined that the institutional framework for the drawing up of actuarial surveys by the National Actuarial Authority (NAA) on trend in pension expenditure is provided for: 1) in Article 9 of Law 3029/2002, where the recommendation, the function and the responsibilities of the NAA are described in detail, 2) in the 4677/45/05-03-2003 interpretative circular of the said Law, which explicitly states that within the NAA's competence lie mainly the **responsibility for the long-term economic and financial planning**, the social return and sustainability of the Social Insurance Scheme, **the actuarial surveys on unifications-mergers of Insurance Funds** as provided for in Articles 5 and 6 of the above Law and the establishment and monitoring of Occupational Insurance Funds (Article 7), 3) in Article 11(2) of Law 3863/2010, which expressly provides that from 1-1-2011 and every two years, the National Actuarial Authority shall conduct actuarial surveys, validated by the European Union's Economic Policy Committee, with regard to the ongoing monitoring trend in national pension expenditure, as well as that the amount of the main, contributory and supplementary pension, projected by 2060, should not exceed the margin of increase of 2.5 percentage points of GDP, with 2009 as the reference year and finally 4) in Article 14 paragraph 4 of Law 4387/16, where it is explicitly stated that from 1-1-2017 and every three years, the NAA shall compulsorily conduct actuarial surveys validated as such (i.e. actuarial surveys) by a specific body of the European Union, the Economic Policy Committee of the E.U., with regard to the continuous monitoring of trend in national contributory expenditure.

In particular, as regards the purpose for which the actuarial survey of NAA was conducted, it should be noted that this was done during the preparation of Law 4387/2016, including actuarial projections, in order to assess the financial development of the pension scheme in the light of its imminent reform. The said study examines the viability of the main insurance pension scheme in accordance with the provisions of Law 4387/2016 and entails the following results:

- Envisaged annual expenditure on the main insurance scheme from 2015 to 2060, expressed as a GDP percentage and
- Envisaged annual net cash flows, namely the difference between contributions and benefits, expressed as a GDP percentage.

The said study presents the results, if the relevant cases come into force in the future. Relevant parameters such as fertility rates, net migration rates, mortality rates, disability rates, labour force participation rates, retirement rates, inflation rates and real wage growth cannot be accurately envisaged throughout the projection period. However, survey estimates provide guidance on financial planning and management of the pension insurance scheme.

Therefore, the above NAA survey is an actuarial survey on pay-as-you-go Social Insurance schemes, as it is also explicitly mentioned in the title of the ILO<sup>6</sup> Assessment Report. The survey was exclusively conducted by NAA members using the ILO computerized model that the Authority holds since 2006. The ILO work solely concerned the assessment of the actuarial

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<sup>6</sup>«Peer Review of the actuarial study of the main social insurance pension schemes»

survey<sup>7</sup> conducted by the NAA in terms of suitability of the methodology and the assumptions applied, as well as of reliability and adequacy of the data used<sup>8</sup>.

It is recalled that the ILO is an international organization of well-known prestige and worldwide recognition and many countries are seeking its view on social security issues.

Furthermore, in its report in paragraph 2 (professional requirements), it is stated that the actuarial survey assessment was made on the basis of:

A) the International Standard of the Actuarial Practice 2 (ISAP2) of the International Actuarial Association (IAA)<sup>9</sup> which refers to the Economic Analysis of Social Security Programs and

B) the ILO internal rules for actuarial analysis on national social pension schemes (ILO SOC/PFACTS)<sup>10</sup>.

The actuarial survey of NAA was carried out in accordance with Article 11 of Law 3863/2010, as it was in force, which provided for the ratification by the European Union Economic Policy Committee.

The study clearly states that the actuarial projections were carried out based on the ILO<sup>11</sup> (pension) model well-adapted to the particularities of the Greek schemes, whereas the methodology applied for the actuarial projections on the Greek pension scheme for the Ageing Working Group (AWG) of the Economic Policy Committee (EPC) was followed. Also, all information on data and assumptions used are being reported<sup>12</sup>.

The population projection of Greece used was carried out by EUROSTAT, on which forecasts for the population's mortality and ageing had been drawn up and then macroeconomic forecasts by EPC AWG. Such data are produced for all EU countries.

Also, in section 4 (Methodology) of the ILO Report, the methodology followed in the NAA study is described in details. In the same paragraph, it is emphasized that this methodology (using the specific model) allows for the proper measurement of the budgetary impact of pension reforms by transitional arrangements and constitutes a standardized actuarial method for projections for social security pension schemes<sup>13</sup>.

Furthermore, in paragraph 5 of the ILO assessment report, it is stated that the demographic and macroeconomic assumptions used in the study are appropriate for long-term projections and that these are conservative and therefore prudent<sup>14</sup>. It is noted that the actuarial surveys aim at highlighting the long-term viability of an insurance system. The purpose of the study was to assess whether in the long term the contributory/ proportional part of the main pension benefits would be covered by the contributions revenue in view of the reform<sup>15</sup>. National Pension is financed and guaranteed by the state.

Furthermore, it is noted that the annual pension expenditure is much higher than the Bodies' total movable and immovable property.

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<sup>7</sup> The assessment of peer review actuarial surveys is an international practice.

<sup>8</sup> Para1 Introduction of the ILO's assessment report.

<sup>9</sup> [http://www.actuaries.org/CTTEES\\_ASC/isaps/pdf/isap2.pdf](http://www.actuaries.org/CTTEES_ASC/isaps/pdf/isap2.pdf)

<sup>10</sup> [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/soc\\_sec/documents/genericdocument/wcms\\_205314.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/soc_sec/documents/genericdocument/wcms_205314.pdf)

<sup>11</sup> Application for pension schemes projections.

<sup>12</sup> Par. 5 DATA-METHODOLOGY-CASES of the actuarial survey

<sup>13</sup> This methodology allows the pension model to measure properly the financial impact of pension reforms with transitional arrangements over periods and is a standard actuarial projection methodology for social insurance pension schemes.

<sup>14</sup> It is concluded that demographic and macroeconomic assumptions are appropriate for long-term projection despite possible short-term deviations. Scheme-specific assumptions of the four pension schemes take into account recent experiences of the four pension schemes and are conservative for uncertainties and concluded as prudent.

<sup>15</sup> Para7 Conclusions of the NAA actuarial report.

As mentioned before, the above study was positively assessed by the ILO peer actuaries and the results of this assessment have been sent to the Court. Furthermore, it is apparent from the relevant ILO document that the ILO's assessment responds to the following key questions:

- If the project was completed in accordance with the professional standards of the actuarial practice.
- If the National Actuarial Authority accessed the information required for the assessment and whether the relevant data audits and analysis were completed as expected.
- If the actuarial methods and assumptions used to complete the study are reasonable.
- If the actuarial survey reflects fairly the results of the work executed by the National Actuarial Authority.

From the same ILO document derives that the data collection and analysis, the methodology used for projections and the macroeconomic and demographic assumptions were taken into consideration for the study assessment.

**Thus, according to a statement of the relevant ILO services, for the actuarial survey accompanying Law 4387/2016 sufficient and consistent data were used, appropriate projection methods and assumptions were applied and the overall actuarial projection results are consistent and reasonable.**

As regards the actuarial projections of the NAA concerning the supplementary insurance scheme, these were made during the preparation of Law 4387/2016, aiming at assessing the financial development of the supplementary insurance system in the light of its imminent reform. The said study has taken into account: historical data, statistics and economic data as well as detailed information: a) for insured persons (sex, date of birth, date of first insurance, insurable earnings, years of insurance, marital status etc.) and b) for pensioners (sex, date of birth, pension category, retirement date, amount of pension, marital status, paid pensions) provided to the National Actuarial Authority by the Fund. Estimates were founded on the baseline data of 2013, which were updated on the basis of Bodies' demographic and financial outturn data for the year 2015. The Ministry's General Directorate for Financial Services assessed the movable and immovable property of these Bodies and the ability to temporarily finance their cash deficits. The above projections and estimates were used during the preparation of Law 4387/2016 in order to: a) determine the cash deficit of the Fund and its evolution the following years, estimate the necessary amount of interventions to cover the deficit, estimate the Fund's own resources needed for the financing of its deficits until its economic equilibrium.

## **B. THE ECONOMIC SURVEY OF THE MINISTRY OF LABOUR**

The economic survey (note) of the Ministry of Labour, Social Security and Social Solidarity on "*Impact assessment of the proposed insurance reform*"-Athens 4-5-2016, no 20263/121, which was filed as an accompanying document of the bill, is a documented scientific study for the medium-term assessment of the pension expenditure and the financial gap (deficit) incurred the same period. The financial gap is calculated as the difference between the revenue from contributions and the corresponding pension expenditure.

The note does not present the assumptions of the survey and the detailed calculations, which are prerequisites at the administrative processing of the scenarios for the medium-term planning of the Social Budget, but only its conclusions are recorded. However it is self-evident that the survey was based on detailed and documented data and assumptions on the basis of which the provisions of law 4387/2016 were evaluated and the interventions' compatibility with the country's fiscal targets was confirmed.

Some of the work assumptions of the survey conducted in May 2016 are illustrative:

✓ The macroeconomic indicators drawn up and updated by the competent services of the Ministry of Finance, as formulated at that time (change in GDP, change in employees' remuneration, change in the CPI-Consumer Price Index) were taken into consideration for the estimation of the budgetary figures over the medium term.

✓ Detailed projections data by main pension Fund (IKA\_ETAM, TAP\_DEI, OGA, OAEE, ETAA, ETAP\_MME, NAT) were taken into consideration for the assessment of the pension expenditure, such as the estimated net increase per year of the number of pensioners (new pensions minus exits from the pension scheme), the average pension and its rate of change in the medium term, the amount of arrears paid annually as it varies, the efficiencies per Fund of all provisions prior to those of Law 4387/2016, the macroeconomic indicators of the economy for the increase due to indexation of the pension expenditure under the baseline scenario, etc.

✓ The number of pension applications pending is apparently taken into consideration in pension expenditure projections and affects its level due to the payment of significant arrears for the months delaying the issue of the final decision on retirement. The number of pending applications is determined by the existing number of pending applications, the number of new applications submitted (a figure determined mainly by the demographic data of the insured persons and the trend in recent years), the number of pensions issued by the Fund (on the basis of its managerial ability) and the percentage of rejections (based on historical data).

✓ The collectability of each sector and its change (depending on the broader economic environment but also on the level of contribution as formulated in accordance with the provisions of Law 4387/2016), the revenue from insurance debts settlement (taking into account the existing active schemes, participation rates and exit from the pension scheme rates), the return of compulsory measures imposed on debtors of insurance contributions etc. are taken into consideration -apart from the macroeconomic indicators- for the assessment of contributions at the medium-term period.

✓ In particular, income for the year 2014 -including the insurance contributions- available during the period of provisions' design- has been used for the 2017 contributions estimates of the self-employed. These estimates were subsequently updated on the basis of the 2015 income.

✓ In assessing the effectiveness of the insurance reform for the sustainability of the insurance scheme, its long-term effects and not the short-medium-term ones should be taken into consideration. The conducted actuarial survey that was submitted along with the law provides an assessment of the long-term effects according to which in the scheme maturity the contributory pension is covered by contributions (and state transfers cover the national pension).

✓ The long-term valuation is necessary because by interventions of law 4387/2016, it is not pursued the prompt and rapid reduction of deficits, but the gradual and long-term rationalization of pension expenditure and the corresponding reduction of deficits so that the system becomes viable at the long-term. For the medium-term period, the level of the insurance scheme deficit should not jeopardize the achievement of the country's budgetary targets.

In summary, the financial data projections of the Main Insurance Institutions (detailed revenue and expenditure) for the medium-term period are made via scientifically accepted techniques and assumptions.

In accordance with the aforementioned detailed data, from the two above surveys (actuarial and special-economic) as well as from other surveys accompanying Law 4387/2016, it is shown that **the arrangements on social security contributions, as well as the new way of pensions' calculation, established under this law, serve the public interest in a sense that**

**the financial viability of the insurance scheme (in particular of EFKA and ETEAEP) is achieved, as well as the sufficiency of its resources for the financing of the granted benefits, whereas the adequacy of the insured persons' income is not yet affected via the payment of the contributions provided for in this new law.**

Therefore, with the specific surveys already carried out, according to the above, before Law 4387/2016, it becomes clear that **the legislator already after 13-5-2016, date of the new law's entry into force, is in full compliance**, in line with those specified therein, to the requirement of the Council of State, Plenary 2287 and Plenary 2288/2015) on *"the obligation to have a specialized, thorough and scientifically substantiated survey, demonstrating, on the one hand, that the specific measures are indeed appropriate and necessary to effectively address the sustainability problem of the Social Security Bodies, in view of the factors that provoked it, so that the adoption of these measures would be in accordance with the above constitutional principles of proportionality and equality as regards public burden-sharing, on the other hand, that the impact of these measures on the living standards of the affected persons, combined with other measures taken (tax measures etc.) and with all the socio-economic conditions within the given context, have not, cumulatively taken, a result leading to an unacceptable breach of the core of the constitutional right to social security"*.

Moreover, the fact that the insurance reform introduced by Law 4387/2016 and the establishment of the EFKA guarantees and ensures the long-term sustainability of the country's social security system is showcased from the early years of the "super fund", as it is characterized by the complainant. While the Budget originally drawn up for the EFKA for the year 2017 presented a deficit of one billion forty eight million nine hundred and four thousand and five hundred euros (1.048.904.500.00€), however, in 2017, the EFKA presented a surplus of 777 million €. This means that it has improved its cash position by €1.8 billion for the year 2017, while in the year 2018 it presented a surplus of €1.02 billion.

From all the above, it is clear that the allegation on the absence of an actuarial study and in any case of scientific evidence of the economic parameters of the EFKA sustainability as well as of the impact on the standard of living of the pensioners is manifestly unfounded and therefore rejected.

#### **4. On the allegation regarding new reductions in main state pensions**

The applicant's allegation regarding new reductions in main state pensions is also plainly unfounded for the following legitimate, valid and true reasons:

##### **A. NEW PENSIONS**

At the outset and in order to remove any controversy or doubt, under Law 4387/2016 no further reduction to the main pensions was made. In contrast, some pensioners received an increased amount of pension in view of the correct calculation of healthcare contribution, which until the adoption of law 4387/2016 was made to the initial gross amount of the regulated pension and not to the (lower) pension amount resulting from the application of Law 3986/2011, 4051/2012 and 4093/2012.

Moreover, as already mentioned, law 4387/2016 introduced new rules, uniform for all insured persons, on pension calculation. More specifically, pension consists of the national pension and the contributory part thereof, calculated on the earnings under which contributions were paid and on the replacement rates provided for in Article 8 of Law 4387/2016. Furthermore, Article 30 of Law 4387/2016 provides for an additional increase in the replacement rate (and at 0.075% for each additional unit per year) for each contribution rate paid up to 31-12-2016 in addition to the envisaged percentages at the former IKA ETAM.

The national pension ensures adequate income replacement also for the long-term unemployed, for those who are engaged in atypical forms of employment or are low-paid. Combating poverty by ensuring a decent standard of living for every elderly is one of the cornerstones of social security. During the public debt crisis, protection against poverty takes absolute priority, given that, according to Eurostat (SILC 2014), 23.1% of people over 65 live in poverty. The determination of the National Pension level at €384 with 20 years of insurance was made on the basis of 60% of median income, according to the rules of the European Union.

Furthermore, according to article 28 of law 4387/2016, the contributory pension is based on the principle of return and is the link between pension benefit, contributions and income. At the same time, according to the principle of social solidarity, the proportional part of the pension is financed by the current contributions of insured persons.

In total, the pension, that is the sum of the national pension and the contributory part, ensures, on the one hand, a decent standard of living for all insured persons and on the other, establishes a close link between benefits, contributions and income, with the result that the benefit corresponds to the standard of living the insured person enjoyed during his/ her working life.

The complainant's claim that the method of pensions' calculation -introduced by Law 4387/2016, with the average monthly earnings of the insured person over his/her entire insurance life and the replacement rates according to the time of insurance-, leads to greater reductions, is elusive and unsubstantiated.

The contributory part of the new pension is calculated on the basis of the pensionable earnings, the insurance period and the annual replacement rates, as referred to in Article 28 of Law 4387/2016.

For the calculation of the contributory part of the pension of the insured person, the average monthly salary-income subject to contributions from 2002 until the submission of the application is taken into consideration as a pensionable earnings. The average monthly salary of an insured person is obtained by dividing the total earnings of the insured person on which contributions have been paid for his/ her total insurance time from 2002 until the submission of the retirement application. Furthermore, according to Article 30 of Law 4387/2016, in cases where the insured persons paid contributions higher than those of the former IKA-ETAM up to 31.12.2016, i.e. higher than 20% as well as in cases of parallel insurance<sup>16</sup>, the contributory part of their pension for each year that an additional contribution has been paid, is calculated by an annual replacement rate of 0.075% for each percentage point (1%) of additional contribution.

On the specific collective complaint it is pointed out that the insured persons of the former TAP OTE paid an increased contribution of 28% and therefore the contributory part of the pension is being increased by the additional amount, resulting in the increase of the result of the contributory part for the period up to 31.12.2016.

According to the new way of calculating under Law 4387/2016, new pensions are granted, higher than those paid to the insured persons of the same insurance fund acceding EFKA and under the same insurance period prior to Law 4387/2016.

In particular, according to the competent EFKA's Directorate for Studies, the average old-age and disability pension of the applicant's specific former fund (i.e. TAP-OTE) has increased since the application of Law 4387/2016. In particular, the average pension before Law 4387/2016 (based on payment records 12/2018) was as follows:

Disability 987.07€

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<sup>16</sup> The person is registered with and pays contributions to more than one Fund.

Old-age 1.558.00€

Survivor's 568.74€

While already applying the provisions of Law 4387/2016 (again on the basis of payment records 12/2018) **the average pension per category is formulated as follows:**

Disability 1.379.08€

Old-age 2.062.00€

Survivor's 537.54€

## **B. PENSIONS PAID – RECALCULATION**

1. With regard to the main pensions which were paid until the entry into force of law 4387/16, -on the basis of those accepted by the aforementioned decisions of the Council of State and reflected in the Committee's conclusion- their recalculation is provided for according to the provisions of Law no 4387/2016. In particular, Chapter B of Article 14 of law 4387/16 "Pensions adjustment-Protection of Paid Pensions" reads as follows: "*1a. In application of the uniform rules of the EFKA and the fundamental principles set out in Article 1, the main pensions, already paid on the entry into force of this regulation, shall be readjusted in accordance with Articles 7, 8, 13 and 14, on the basis of the provisions of the following paragraphs...2a. Until 31.12.2018, the pensions of the previous paragraph continue to be paid at the level set at 31 December 2014, in accordance with the provisions then in force. In particular, the calculation of the deductions for health care shall be made in accordance with the provisions of paragraph 30 of Article 1 of law 4334/2015, as in force*".

Furthermore, the same law, in Article 33 "Readjustment of pensions-protection of paid pensions" provides as follows:

*"1. The main pensions already paid at the time of entry into force of the present law, except for those granted by the OGA, shall be readjusted in accordance with the relevant implementation of Article 14 in conjunction with Articles 7, 8, 27, 28, 30 and 12, on the basis of the more specific provisions of the next paragraph" (Paragraph 1 was replaced as above by Article 25 of Law 4445/2016 - OG A' 236).*

*"2. For the purpose of calculating the contributory part of the pensions paid until the date of entry into force of this law, the pensionable salary, on which the already paid pension was calculated, is taken into account. If the pensionable salary is linked to insurance categories or insurance classes or to imputed amounts, this shall be calculated taking into account their current price at the entry into force of this law. In any other case, the pensionable salary is calculated at current prices using the pensions' readjustment rates of all years intervening from the date of retirement until the entry into force of the present law. By decision of the Minister of Labour, Social Security and Social Solidarity, any necessary issue for the application of this provision shall be determined".*

2. According to the explanatory report of law 4387/2016, by the above mentioned provisions the already paid pensions at the time of its entry into force are being recalculated. Furthermore, the pensions already paid on 12-5-2016, the date of entry into force of this law, are being expressly protected without any time limitation. It is stipulated that these pensions are being protected at the level formulated on 31 December 2014, in accordance with the legislative provisions in force at the time, withholding the healthcare contribution.

Therefore, no reduction to main pensions was made by Law 4387/2016, on the contrary, there are cases of payment of an increased main pension after the recalculation compared to the pensions paid before Law 4387/2016 on the grounds that the healthcare contribution prior to Law 4387/2016, was retained by the original retirement pension and not by the actual paid one.

3. The retirement salary -on the basis of which was issued its pension decision- is taken into account for the recalculation of the already paid pensions. The choice of the pensionable salary against pensionable earnings from 2002 onwards is primarily based on the fact that there are pensions issued before 2002 and for insurance time before 2002. Therefore, the choice of the pensionable salary as a basis for the recalculation of pensions of the already retired until 12-5-2016 was the only option that ensured the equal treatment of this category of pensioners.

4. Moreover, according to the actual pension figures out of a total of 52.490 cases before Law 4387/2016 that were recalculated, 13.817 received a higher pension amount than that paid on the basis of the pre-existing provisions.

5. Under the fundamental principle of the European Law, the principle of legitimate expectation of the individual, the citizen is protected against the unforeseeable change in situations and legal relationships governed by the Community Law in order to implement the uniform pension rules and the fundamental principles of the pension scheme reform under this law, so that from 1.1.2019 all pensioners may receive a national and contributory pension.

**5. *On the allegation that for the main pensions' recalculation the cuts of Law 4051/2012 and Law 4093/2012 are taken into consideration.***

As mentioned above, according to the explanatory report of Law 4387/2016, the above provisions introduced a completely different -in its essence and structure- pension calculation scheme in relation to the entire previous legislation, constituted until then by scattered and heterogeneous or miscellaneous insurance laws. In particular, the recalculation of the already paid pensions was envisaged at the time of entry into force, on the basis of the insured person's entire insurance life (see in particular Articles 8 and 28 of the above Law for the main pensions and Article 96 for the supplementary ones). At the same time, until the completion of the fiscal adjustment program (31-12-2018), **all** pensions already paid by the date into force of this law (13-5-2016) **are explicitly protected**. It was also stated that the pensions in question are protected at the level formulated by 31-12-2014, in accordance with the provisions in force at that time, withholding the healthcare contribution as provided for in Article 1 paragraph 30 of Law 4334/2015.

In particular, the 26083/887/7-6-2016 (OG B' 1605) Joint Ministerial Decision issued pursuant to Articles 14 and 33 of Law 4387/16, provides for the way of adjustment of each paid or payable main pension on 12-5-2016.

**More specifically:**

By virtue of Articles 14 and 33 of Law 4387/16, pensions already paid on 12-5-2016 (i.e. before the entry into force of Law 4387/16 on 13-5-2016 and of the new method of calculating pensions) are protected as regards the level they had reached on 31/12/2014, in accordance with the legal provisions then in force, including those provided for in Article 6 of Law 4051/2012 and in the first article of Law 4093/2012, which had brought about the disputed cuts.

At this point it should be noted that Law 4387/2016 is a completely new piece of legislation (it is not accidental that it has been described as "Social Security Reform"), introducing a completely new way of calculating the pensions granted, in accordance with the principles of equity, through the adoption of similar rules for all, and of social justice, through the introduction of the National Pension that inspire the whole of the legislation. Indicatively, in Article 8 para2 thereof of the said law, it is stated, inter alia, that: «2.a. as retirement benefits for the purpose of calculating the contributory part of main direct pension entitlement, disability pension or survivor's pension), the average monthly earnings of the insured person throughout



*his/her working life are taken into account. This average is calculated as the quotient of dividing the total monthly earnings by its total insurance time. The sum of the monthly earnings received by the insured person is the sum of the monthly earnings subject to contributions throughout his/her working life».*

In this way, the new way of recalculation of the already granted pensions gives the possibility to the insured persons, from the combination of the provisions of art. 7, 8, 14 and 33 of Law 4387/2016 for the main pensions and Art.96 on supplementary pensions, respectively, to receive their pension, calculated on a completely different, and clearly fairest, basis. The main element of the new way of calculating pensions is that it is related, as explained above, to the total of contributions paid throughout the working life instead of being related to a limited period of time, which was the rule under the previous legislation. In consequence, through the way of calculation presented above, the actual amount which is awarded is the one to which each insured person is entitled to, which in practice means that this may be even higher (instead of decreasing!!) than the originally anticipated, even from that which was formed after the reductions of Laws 4051/2012 and 4093/2012, up to 13-6-2016, the date of entry into force of the new law.

Therefore, through the above-mentioned actual accounting result (which in practice may exceed, in some cases of pensioners, even the 34% of the beneficiaries, in total), and for all categories of pensions, the 20% of the population<sup>17!</sup>), not only is any allegation, that by the above law a form of an "indirect pensions' cut" is introduced or even "preserved", not verified, but, on the contrary, it is refuted by the outcome. Therefore, the complainant organization's related allegation is also to be rejected.

In order to remove any doubt as to the option to pay the pensions until the 31<sup>st</sup>/12/2018 at the levels of 31<sup>st</sup>/12/2014, it is specified that this date was not chosen accidentally by the legislator but on purpose, in full compliance with the criteria of good lawmaking. The latter, as specified in both theory and case law, in cases where a new legislative framework has been adopted, in accordance with the principles of legal certainty and the protection of the legitimate expectations of the insured persons, indicate that the existing insurance relations upon the publication of a law are to be governed, in principle, until their expiry, by the previous provisions as regards all their consequences<sup>18</sup>.

In the present case, according to the pre-existing (before law 4387/2016) and constitutionally undisputed, Institutional Law 3863/2010<sup>19</sup>, the concepts of the basic (and already national) and proportional (and already contributory) pension were introduced for the first time to the main insurance institutions and to the State, and the 1<sup>st</sup>/1/2015 was set as the beginning of payment of these two distinct sections of pension. Therefore, for the sake of legal certainty and in order to ensure that there is no regulatory gap in the way the benefits are calculated until the new system is fully implemented, the new law had retroactive effect as regards the determination of the amount of pensions already paid at the time of its entry into force (13/5/2016), as from 31/12/2014.

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<sup>17</sup> See related report (with comparative data) of the General Director of the General Directorate for Financial Services of the Ministry of Labour, Social Security and Social Solidarity dated 24-03-2017 (ref.no 12191/495) which was presented along with an application for annulment before the Council of State of ministerial decisions on the adjustment of main and supplementary pensions and of the definition of technical parameters regarding ETEA's benefits.

<sup>18</sup> See also A. Stergiou, "The principle of equality in social security ", *Social Security Law Review (ΕΔΚΑ)*, ΝΔ', 2012, p. 341).

<sup>19</sup> Articles 1-4 of Law 3863/2010 were abolished by Article 27 par. 4 of Law 4387/2016.

Any other legislative approach would be even dangerous for pensioners and their rights. And this because it would be in stark contrast to the theoretical and moral implications of the attempted insurance reform, according to the principles described above – which are the foundations of any such new legislation, which has to ensure in every way (as Law 4387/2016 already guarantees as already mentioned) the already established insurance relationships. From then on, and in particular from 1/1/2019, the new system for calculating pensions becomes fully applicable through the application of Art.8 and 28, while at the same time the legislator, on top of the already presented legal provisions, guarantees the amount of the pension received by this beneficiary before 13/5/2016 through the institution of the personal difference amount.

That regulatory obligation - and not discretionary power - of the legislator to act in full respect of the principle of legal certainty, has been further interpreted by the case-law, so as to make the relevant regulatory framework directly applicable and clearly defined, especially where this framework includes, inter alia, “the imposition of charges in the form of taxes, levies or fees”. Indicatively, we refer to the Council of State Plenary Decision 1738/2017 which, in order to fully clarify the de facto application of that principle, stated the following (point 5):

*“A specific manifestation of the principle of legal certainty, which stems from the principle of the rule of law, and in particular from the provisions of Articles 2 para 1 and 25 para 1 of the Greek Constitution<sup>20</sup>, is the principle of the protection of the legitimate expectations of the individual<sup>21</sup>. The latter requires, in particular, the clarity and the foreseeable application of the each time enacted regulations (cf. Council of State Decisions 2811/2012, 1976/2015) and should be respected with extreme rigor, when provisions which may have serious economic repercussions on the parties concerned, such as provisions imposing charges in the form of taxes, fees, levies and penalties of any kind for breach of the relevant provisions, are concerned<sup>22</sup>”.*

And the Court concludes: “In particular, the above fundamental principle, which serves public interest purposes, requires that the situation of the person as regards his/her compliance with the rules relating to the above-mentioned charges should not be in question for an indefinite period of time ..”, while at a further point the Court sets out in detail the reasons why the legislator must act in accordance with the foregoing considerations:

“For the purpose of: (a) making it possible to exercise effective control in order to verify that individuals meet their financial obligations, but without encouraging the idleness of the competent administrative authorities, which is already encouraged by the long duration of the limitation period or by the possibility of its ex post extension, particularly near its expiry date, (b) not leaving the individuals exposed: (i) on the one hand, to a long period of legal uncertainty - which, together with the constant changes in the legislation concerning taxes, levies and related sanctions, is a deterrent factor to planning and developing economic activities, with particularly adverse effects on growth and, more generally, on the national economy, particularly in times of economic crisis, to the detriment of the public interest (ii) on the other hand, to the risk they run of not being in a position, a long time after the financial obligation arose, to properly defend themselves against an audit, but also to deal with the financial obligations resulting from that audit, either themselves or, to a greater extent, those who, by law, as a result of an inheritance or a quasi-universal succession (probable in the event that the

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<sup>20</sup> cf. Supreme Special Court 14/2013, Council of State 2034/2011, 4731/2014, 640/2015 et seq.; see also Law 4048/2012 “Regulatory Governance: Principles, Procedures and Instruments of Good Lawmaking”, OG A’ 34, Article 2 para 1 of which provides that the principles of good lawmaking include, inter alia, legal certainty (cf. h)

<sup>21</sup> cf. Supreme Special Court 11/2003, Council of State 2034/2011, 3777/2008, 4731/2014, 640/2015, etc.

<sup>22</sup> see Council of State Decision 144, 1976/2015, 1623/2016, also Court of Justice of the EU, 2/6/16, Case C-81/15, Tobacco Industry Karella SA v Minister for Finance, point 45, 3.9.2015, C-384/14, National Agriculture and Rural Development (FranceAgriMer) v. Sodiaal International SA, point 30.

limitation period is high), undertake their obligations arising from taxes, fees, levies and related penalties, especially where financial charges are imposed at the same time for several years, (c) not to allow the State or other public-law entity to be exposed to the risk of being unable to collect – due to the lapse of a long period of time since the relevant obligations occurred – amounts of taxes, fees, levies and penalties as a result of the deterioration in the financial situation of the persons and the loss of their pecuniary advantages, by failing to comply with their obligations within the time limits (see *Council of State Decision* 1623/2016, 1976/2015),...” According to the foregoing, the legislator of Law 4387/2016 would not be able to abstain from this obligation, by not explicitly providing for a safe and well-defined point in time for the calculation of the entitlements of the insured persons, until the procedures for a complete transition to the new system were completed. This is what the previous institutional law 3863/2010 provided for. Moreover, by means of this provision, the legislator takes exhaustive advantage of the provision of law, since, under a different approach, the legislator could have simply made a provision for the new method of calculation. And even without making any specific provision, for the retired-insured persons governed by the previous regime. Besides, according to the general theory of law, the legislator is not obstructed from changing schemes for the future. Keeping in force a legislative regime for a certain period of time, does not form by itself an obstacle for its changing in the future<sup>23</sup>. Otherwise, we would end up perpetuating the existing system and, inevitably, paralyzing the legislative action<sup>24</sup>.

In particular, in the field of social security, according to the case-law, the common legislator and the public administration, acting in a regulatory manner by delegation of law, are not precluded, either by Article 4 para 1 or by Article 22 para 5 of the Greek Constitution, from changing for the future a pension system for the categories of insured persons<sup>25</sup>. It is worth mentioning that the principle of equality is not opposed to the legislative change in the pension system of categories of insured persons, in particular as regards the amount of insurance benefits and even their further reduction for the years to come. Furthermore, as stated in the case-law, even when the pension scheme is being reformed in a more adverse manner, that is to say, even when the conditions for granting a pension are more stringent than in the previous pension scheme, the principle of equality is not being breached<sup>26</sup>.

According to all the above, it is obvious that the legislator of Law 4387/2016 took the "difficult path". Certainly, they could have followed the well-established and safe, from a judicial point of view, way of adopting a horizontal provision for all – before and after the adoption of the law – pensioners, i.e. a new form of calculation for all, introduced from 01/01/2019. However, the legislator chose, for the benefit of the pensioners, to guarantee full legal certainty for "persons insured under the previous scheme", by securing for them, through the reference to a previous period (and in particular to that of 31/12/2014) for the calculation of their pension, adequate time for adjusting to the new situation and for not breaching the already established economic situation and domestic stability. Moving even further, the legislator also introduced,

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<sup>23</sup> see Council of State 373/2004, «Επιθεώρηση Δικαίου Κοινωνικής Ασφάλισης (ΕΔΚΑ)» (*Social Security Law Review*), ΜΖ' 2005, pp. 379 (381)

<sup>24</sup> see Decision 2010-617 of 9.11.2010 of the French Constitutional Court, «Επιθεώρηση Δικαίου Κοινωνικής Ασφάλισης (ΕΔΚΑ)» (*Social Security Law Review*), ΝΓ' (2011), p. 416

<sup>25</sup> see, amongst many, Council of State 166/2009, ΔιΔικ 22, 2010, pp 355, Council of State 3510/2005, ΔιΔικ 19, 2007, p. 1013, Council of State 3177/2004, ΕΔΚΑ 2005, p. 523, Council of State 1807/2001, ΔΕΝ 2002, p. 177, etc.

<sup>26</sup> see Council of State 317/2009, «Επιθεώρηση Δικαίου Κοινωνικής Ασφάλισης (ΕΔΚΑ)» (*Social Security Law Review*), ΜΚ (2009), pp. 34, 41

under the new system, the institution of the personal difference amount<sup>27</sup>, in view of the non-exclusion of any "insurance acquis" from rights established under the previous regime.

In addition to all the above, the following, very significant point, should be noted: The disputed cuts, imposed under the provisions of article 6 para 1 of Law 4051/2012 and under the provisions of article 1 para IA.5 c.1 and subparaIA.6 c.3 of Law 4093/2012, while theoretically<sup>28</sup> may continue to apply, even after the 13rd/05/2016, they are now legally based, not on those provisions (which were ruled as unconstitutional), but on those of Articles 14 and 33 of Law 4387/2016. Consequently, in the present case, due to the non-similar context of the legal dispute, there is no obligation on the part of the public administration to comply – irrespective of whether it has actually already complied – with the above mentioned Council of State decisions, whose legal judgment is based on a completely different legal basis; even more, as regards violation of the *res judicata* principle due to the above mentioned causes, as the complainant organization claims!

It should also be noted that Article 3 para C, 2.51., point u, final subparagraph of Law 4336/2015, "*Pension provisions - Ratification of the draft Contract on the Financial Assistance by the European Stability Mechanism and arrangements on the implementation of the Financial Agreement*"<sup>29</sup> states that: "(ιβ) the Greek Government will establish and adopt, by October 2015, equivalent measures to fully offset the impact of the implementation of the court decision regarding the measures of 2012 on pensions and will remove the amendments to the pension system introduced by Laws 4325/2015 and 4331/2015, in agreement with the institutions."

The above provisions of Law 4336/2015 are incorporated by Law 4387/2016, as explicitly mentioned in its explanatory report, in Point B under the title "The objectives of the Reform".

It follows that, on the one hand, the provisions of articles 14 and 33 of Law 4387/16 are provisions of equivalent effect to the provisions of Article 6 para 1 of Law 4051/2012 and of Article one para IA.5 and subparagraph IA.6 case 3 of Law 4093/2012 on pension cuts, as required by the previously passed Law 4336/15. On the other hand, the same provisions retain their autonomy as provisions of new legislation, for which no judgment of the Council of State has been adopted and no decision has been issued, that could constitute a precedent for national courts.

## **6. On the allegation regarding the actual abolition of survivor's pensions**

On the complainant's allegation regarding the actual abolition of survivor's pension, we would like to state the following:

The establishment of an age limit as well as any exceptions provided for, where necessary, is in line with the usual practice followed by most of the EU states. A comparative review of social security schemes in relation to survivor's pension shows the following:

In the social security schemes of France, Denmark, Poland, Slovenia, Sweden and others, a survivor's right depends on meeting an explicitly set age limit at the time of death of the insured person. In other European states, acquiring the said right depends on the age limit for old-age pension that is set by national legislation. For example: In Estonia, beneficiary is the widow/widower that has reached retirement due to old age at the time of his/her spouse's death; In

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<sup>27</sup> As analyzed specifically under art.14 of Law 4387/2016.

<sup>28</sup> And as has been shown from the above. See in this respect the report dated 24 March 2017 (ref no 12191/495) of the Director General of the General Directorate for Financial Services of the Ministry of Labour, Social Security and Social Solidarity.

<sup>29</sup> Government Gazette A' 94 / 14-8-2015

Romania, it is required that one has reached retirement age due to old age and 15 years of married life; In Slovakia, the duration of the benefit is one year and may continue if the beneficiary has reached retirement age; in Bulgaria and the Czech Republic, beneficiary is anyone who has reached retirement age or will have reached it in due time. In other social security schemes, such as Lichtenstein's, it is provided for that if the beneficiary has not reached the age limit set by law, he/she does not receive any survivor's pension, but a lump sum amount equal to 3 years of pension instead. Finally, reaching a certain age limit may influence the amount of pension, as in the case of the Irish social security scheme.

Article 12 of Law 4387/2016 introduced uniform rules on survivor's pensions for all insured persons, irrespective of their original insurance body, thus undoing the injustices of the past.

Specifically, as regards the complainant's allegation respecting decrease in the rate of the pension in the case of significant age difference between spouses, it should be noted that this particular provision has been drawn up in accordance with the relevant provision of the Staff Regulations of EU Officials. This provision aims at preventing fake marriages and protecting the family institution, as well as at preventing the long-term payment of survivor's pensions in the case of marriages with exceptional age difference between spouses, which would have a significant burdening effect on the State Budget. A similar provision was also included in Law 4002/2011 (Article 2, para5, c) despite the complainant claiming otherwise.

In summary, it is clear from all the above that the age limit established is manifestly justified and in no way arbitrary; Therefore in no way does it violate the principle of proportionality, since the provision in question is appropriate, necessary and proportionate to the purpose of this law, equality and social justice, and the complainant's claims to the opposite should be rejected not only as vague but, mainly, as unfounded.

It should be noted, in any case, that our country is reexamining the structure of the said article with a view to its optimization.

### ***7. On the allegation regarding new cutbacks in supplementary pensions***

Pursuant to paragraph 1 of article 96 of Law 4387/2016, the supplementary pension of the persons insured with the ETEAEP [*Unified Supplementary Social Security and Lump-sum Benefits Fund*] (former ETEA) is provided as an additional periodic benefit in case of old age - invalidity - death, in addition to that provided by the main insurance body. It concerns all employees in the private and public sectors as well as part of the self-employed and the free-lancers. Law 4387/2016 did not provide for new cutbacks in supplementary pensions, but introduced a new, unified way to calculate pensions for all insured persons on the basis of the principles of equality and the contributory principle. More specifically, the new way of calculating the supplementary pension for persons insured with the ETEAEP (former ETEA) is based on a) demographic data, which are based on approved mortality tables; and b) the notional refund rate applicable to the total contributions paid and resulting from the percentage change in the pensionable earnings of the insured persons (para1 of article 96 of Law 4387/2016).

Furthermore, Article 96 (5) provides that a). For persons insured as of 1.1.2014, the amount of the supplementary pension is calculated in accordance with the provisions of paragraphs 1, 2 and 3 of this article, i.e. (a) demographic data based on approved mortality tables and (b) a notional refund rate applicable to the total contributions paid and resulting from the percentage change in the pensionable earnings of insured persons (para1 of article 96) and b). For persons insured up to 31.12.2013, who apply for retirement from 1.1.2015 onwards, the amount of the supplementary pension consists of the sum of two parts:

ba]. The portion of the pension corresponding to their insurance time up to 31.12.2014 is calculated on the basis of a replacement rate, which corresponds to 0.45% for each year of insurance, calculated on the pensionable earnings of each insured person, as they are also calculated in order to grant the main pension.

bb]. The part of the pension corresponding to their insurance period from 1 January 2015 and thereafter, calculated in accordance with the provisions of paragraphs 1, 2 and 3 of this Article, namely: (a) demographic data based on approved mortality tables; and (b) the notional refund rate applicable to the total contributions paid and resulting from the percentage change in the pensionable earnings of insured persons (para1, article 96).

More specifically, to this end Law 4387/2016: (a) establishes full equity, by virtue of the effective unification of the existing supplementary social security scheme by introducing unified rules for old and new insured persons and by redefining the pensions of the persons already retired, (b) establishes a unified method of calculation of the supplementary pension, both for old and new insured persons, on the basis of the contributions paid, thus defining (with respect to the principle of equality in bearing a burden) the pension system's contribution to the country's fiscal consolidation and (c) guarantees that pensioners live in dignity and maintains, to the extent possible, a proximity to the living standards acquired during one's working life.

The provisions regarding the new method of calculating supplementary pensions, as described above, aim to restoring the principle of proportionality between contributions and benefits as regards pensioners whose pension is paid or will be paid in accordance with the provisions prior to those of Law 4387/2016. The restoration of the principle of proportionality is ensured, firstly, by redefining the annual replacement rate for the part of the pension corresponding to the insurance period up to 31-12-2014 (respecting persons insured before 1-1-2014), taking into account both the years of insurance and the contributions paid for supplementary auxiliary insurance and, secondly, by introducing a pre-determined pay-as-you-go (PAYG) pension scheme with notional defined contribution for the part of the pension corresponding to the insurance period of 1-1-2015 onwards (for those who apply for a pension from 01.01.2015) or from 01/01/2014 (for those insured from 1.1.2014). Therefore, the benefit is directly linked with the insured persons' contributions, on the basis of the contributory principle.

At the same time, given that, on the basis of the previous scheme, a large percentage of supplementary pensions was calculated based on replacement rates that violated basic actuarial equilibrium principles, the readjustment of the pensions paid on the basis of the new calculation method, with a view to protect the middle and lower pensions as well as restore the principle of proportionality between contributions and benefits, is already provided for.

According to the collective complaint, "within the framework of the new supplementary security superfund, i.e. the Public Body Corporate named "*Unified Supplementary Social Security Fund*", a new reduction in supplementary pensions is provided for without any restriction whatsoever" (p.23 of the collective complaint in Greek). This claim is unfounded, as it is not taken into account that, even in cases where –following the adjustment– there is a reduction in the supplementary pension, a mechanism for the protection of supplementary pensions has been provided for by means of the institution of personal difference amount, so that the amount of main and supplementary pension of the beneficiary is not lower than one thousand three hundred (1300) euro. **This difference is maintained and no reduction of up to 18% is provided for, as the provision of article 2, para2 of Law 4772/2017 has been explicitly abolished by virtue of article 1, para2 of Law 4583/2018.**

More specifically, according to article 96, para4 of Law 4387/2016 "supplementary pensions that were already paid when the present Law entered into force shall be readjusted upon/ with the implementation of the provisions of this article, if the sum of the main and supplementary pension of the beneficiary exceeds the amount of 1300Euro. [...] In order to apply this limit, account shall be taken of the amount of pensions paid, including the health care contribution and the Pensioners' Solidarity Contribution provider for by Article 38 of Law 3863/2010 (A '115), as in force, and by paragraphs 11, 12 and 13 of article 44 of Law 3986/2011 (A'152), as in force. Under no circumstances may the sum of main and supplementary pension be reduced, following the readjustment, beyond the above set threshold of €1,300, of the excess amount paid as a personal difference. The calculation of the maximum pension payment for people with disabilities or chronic illnesses and for families with disabled members shall not take into account any kind of disability benefits."

The complaint alleges that "it is totally arbitrary to relate the amount of the main pension to the reduction of supplementary pensions as the former is a totally random and non-substantial criterion". We would like to point out that, as stated above, the supplementary insurance has a complementary role in relation to the main insurance. The complementary role of supplementary insurance in relation to main insurance, combined with the obligation of the State to ensure decent living for pensioners as well as living standards as close as possible to those they had during their working life, fully justifies the correlation between the amount of supplementary pension and the amount of the main pension received by each pensioner. Thus, the legislator did not confine to fragmenting the reform of the social security system, but secured a sum that the pensioner receives in total in order to cover his/her real needs. Therefore, the correlation between the amounts of main and supplementary pensions cannot be considered random and arbitrary but absolutely indispensable for the overall assessment of pensioners' protection.

In order to more accurately assess the impact of Law 4387/2016 in the field of supplementary pensions, it is necessary to examine the changes that this law entails in relation to the previous regime, which would have been applied had Law 4387/2016 not been adopted. On the basis of the legislative status prior to the adoption of Law 4387/2016, the zero deficit clause for supplementary pensions applied, which, in the case of deficits, provided for an automatic corresponding reduction in the benefits paid in the following year. In accordance with the official figures of the Fund, if the zero deficit clause were to be applied, it would bring about a horizontal reduction by 19% in all pensions in 2016 alone, and, from 1.1.2017 onwards, a further 8% reduction would be applied to all supplementary pensions. Moreover, if the ETEAEP's revenue was to be reduced in the future, a new reduction of pensions would automatically occur in the following year.

Hence, Article 96 of Law 4387/2016 did not bring about horizontal reductions, as the new pension calculation scheme it introduced, maintained the same amount of the supplementary pension as the one already paid to the overwhelming majority of the complainants and abolished the zero deficit clause. According to the official data of the ETEAEP, 80.29% of the pensioners faced no reduction in the amount of the former TEAPOTE-OTE Employee Supplementary Insurance Fund, which has been incorporated into the ETEAEP [see attachment 1]. Even in cases where, following the calculation, the amount of the supplementary pension was lower than the amount paid, the average amount cut is less than 10€.

Therefore, Law 4387/2016 prevented the reductions provided for under the previous scheme and limited them to the extent that was strictly necessary for the sustainability of the supplementary pension scheme by means of dividing the amount that had to be saved on the

basis of the contributory principle and the protection of the main and supplementary pensions paid, which do not exceed €1300 in total.

As evident from the explanatory memorandum of Law 4387/2016, the main aim of Article 96 is to address the accumulated structural deficits of the Supplementary Insurance Branch of the ETEAEP and to determine its retirement benefits on a contributory basis depending on the pensionable earnings of the person insured. To this end, a balancing mechanism is introduced in order to address possible deficits that will allow the readjustment of pensions and the use of the assets of the Supplementary Insurance Branch to be adjusted. This mechanism ensures the long-term and medium-term sustainability of the ETEAEP Supplementary Insurance Branch and establishes a correlation between contributions and benefits.

Based on the above, it is clear that the provisions of Law 4387/2016, having been decided upon under the pressure of the very exceptional circumstances under which the country has found itself in recent years and according to the assessment of the social security legislator in order to tackle the crisis, do not violate the provisions of Articles 12 (2) and (3) and 23 of the Charter, even if they bring about some form of reduction in supplementary pensions. In particular, in view of their scale and general characteristics, as well as the circumstances under which they were adopted, they are neither contrary to the principle of proportionality, as they are not, in any event, inappropriate or unnecessary to serve the public purpose for which they were imposed, nor do they affect the core of the right to social security, as there are no serious indications that they affect pensioners' minimum decent living standards described above.

#### ***8. On the allegation regarding the abolition of the Pensioners' Social Solidarity Benefit [EKAS]***

On the complainant's allegation regarding the gradual abolition of the Pensioners' Social Solidarity Benefit (EKAS) and, the consequent loss of a necessary benefit for a large number of financially weak persons as well as decrease in the relevant social protection, we would like to state the following:

The EKAS was established by virtue of Article 20 of Law 2434/1996 (A188), as well as by the Legislative Act on "Measures for the Support of Low Pensioners" (A211), which was ratified by article 1, para2 of Law 2453/1997 (A'4), as amended and in force, for the purpose of assisting the low-pensioners.

The EKAS as an income support benefit for pensioners depended on income criteria rather than the usual criteria for pensions. This resulted in **distortions at the expense of the contributory and proportionality principles**, which constitute basic principles of social security. With an income gap of just one euro, one could be deprived of the benefit by comparison to another who received a pension that was lower by one euro. The non-contributory nature resulted in **many injustices and disproportionate income disparities** following the payment of pensions and the EKAS, both in relation to the pensioners' insurance time and to the contributions paid, thus affecting the contributory principle and the proportionality of contributions and benefits.

With these distortions, the EKAS also acted as **a disincentive for insurance**, since a person with 15 years of insurance could receive the EKAS as well as the same pension as someone with 25 years of insurance. For example, an employee who retired with 15 years of work and 700Euro pensionable earnings was entitled to an institutional pension amounting to 301Euro. This insured person received a total of 717Euro (including EKAS); the same amount was also received by a person with the same years of insurance, but with pensionable earnings of 2,100Euro.



Already, Law 4387/2016 provides for higher replacement rates as regards low pensionable earnings on the grounds of the national pension (up to 120%).

Indeed, with the old pension calculation system, a pensioner with pensionable earnings of 900Euro and 20 years of insurance would receive the minimum pension provided for, whereas with the new calculation system, he/she would receive, for the same pensionable earnings, a national and contributory pension of 527Euro and with the addition of supplementary pension, his/her pension income shall amount to 608Euro in total. Moreover, a pensioner with pensionable earnings of 1,000Euro and 20 years of insurance would also receive the minimum pension, whereas under the new scheme he/she would receive a national and contributory pension of 543Euro and, with the addition of a supplementary pension of 90Euro, his/her pension income shall amount to 633Euro in total. It becomes crystal clear from all the above, that **Law 4387/2016 corrects many of the injustices, as regards the contributory principle, caused by the application of the minimum pension and the implementation of the EKAS.**

As mentioned above, Law 4387/2016 provides for high replacement rates for low incomes and few years of work in order to ensure redistribution among pensioners in the fairest way. Moreover, following 01-01-2019, when the readjustment of the pensions already being paid took effect on the basis of growth rates, a significant gradual improvement in income is anticipated for the majority of the EKAS beneficiaries who will lose it.

With the recalculation of old pensions and the new replacement rates, all pensioners with pensionable earnings higher than 1,000Euro and 30 years of insurance shall receive pensions higher than the EKAS limits. For example, while under the old calculation system a pensioner with 1,000Euro of pensionable earnings and 30 years of insurance would only receive a pension of 620Euro and would lack 44Euro in order to reach the income threshold set by the EKAS, under the new system and recalculation he/she shall receive 664Euro and will not need support from the EKAS.

In conclusion, this analysis makes it clear that the whole structure of the EKAS was not the most suitable, since the income eligibility limits and the amounts granted had several distorted effects and created serious disincentives to insurance. For this reason, the gradual abolition of the EKAS (articles 91, 92 Law4387/2016) was approved and compensatory benefits were granted on the grounds of its loss up until its final abolition. Lastly, the impact of the gradual abolition of the EKAS is expected to be gradually mitigated by the higher replacement rates of the sum of national and contributory pensions as applied by virtue of Law 4387/2016.

Consequently, there is no violation of articles 12 (2) and (3) and 23 of the ESC and article 23 of the Revised Charter and the complainant's allegation to the contrary must be rejected as manifestly unfounded and untrue.

### **In conclusion**

On the basis of everything stated so far, it becomes evident that the provisions of Law 4387/2016 meet all the criteria deriving from the Decision on the Merits regarding Complaint No76/2012 "Federation of employed pensioners of Greece (IKA-ETAM) v. Greece" (07.12.2012), namely: *"a. the nature of the changes (field of application, conditions for granting allowances, amounts of allowance, lengths, etc.); b. the reasons given for the changes and the framework of social and economic policy in which they arise; the extent of the changes introduced (categories and numbers of people concerned, levels of allowances before and after alteration); c. the necessity*

*of the reform, and its adequacy in the situation which gave rise to these changes (the aims pursued); d. the existence of measures of social assistance for those who find themselves in a situation of need as a result of the changes made; and e. the results obtained by such changes”.*

Additionally, when the above provisions were adopted, the State not only maintained the social security regime at a satisfactory level, but also made serious effort to rationalize and improve it, taking into account both the expectations of the beneficiaries of the scheme and every person’s right to truly benefit from their right to social security, thus fully conforming with its obligations under the Revised European Social Charter.

For all the above reasons, we believe that the legislation and practice of the Greek Government on the issues under consideration are in conformity with our country’s obligation to implement the provisions of the Revised European Social Charter and we ask the Committee to find the complainant’s allegations of violation of Articles 12 and 23 of the Revised ESC unfounded.

**THE MINISTER**

**EFFIE ACHTSIOGLOU**