INFORMATION BIDDING SYSTEM FOR OLD-AGE PENSION SAVINGS

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Abstract: *Old-age pension savings is a system functionally linked to the general pension insurance scheme, which focuses on the capitalization of savings accumulated by the saver in their personal pension account.*

From the administrative-procedural point of view, the pre-contractual part of the pay-out phase of this system is built on the Central Information Bidding System (CIBS), which is thus an important and systemic element of old-age pension savings. The present contribution analyses the tasks and objectives of this information system in the pay-out phase of pensions and, at the same time, asks the question whether it fulfils the functions of current modern information systems and if it thus assists in securing the constitutional right of a natural person to adequate material security in old age or, on the contrary, if it is only an information system that duplicates the rules and approaches introduced by the legislation providing for the method of the savings in the Slovak pension model (by the individualisation of saving with a low economic guarantee) and especially in the process of concluding a contract on the pension insurance that does not support the implementation of the constitutional law in a serious way.

Keywords: *material security in old age, old-age pension savings, pension insurance contract, bid for a life-long/temporary old-age pension, bid for a life-long/temporary early retirement, agreement on pension payment by a programmed withdrawal*

INTRODUCTION

Information systems in social security sector are an indispensable basic tool for ensuring the performance of modern social security systems that meet the requirements of availability of wide range of data (the so-called functionalities, especially for assessment and determination of payments), security, effective support in administrative-procedural processes carried out by social system security carriers, adaptability to frequent and fundamental legislative changes (the so-called modularity), and openness in particular to control processes, which are both internal and external.

Information systems in the pension scheme of the Slovak Republic are built and operate according to a specific approach and based on specific requirements. The particularity of these information systems lies in particular in the characteristics of the pension scheme in question.[2] The essence of each pension scheme is primarily the requirement for effective collection of data necessary for the entitlement and payment of pension benefits (and

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2 The pension model of the SR has been built on three pension schemes (labelled as three pillars) since 2005, namely the general pension insurance scheme (regulated by Act No. 461/2003 Coll. on Social Insurance), the old-age pension saving scheme (regulated by the Act No. 43/2004 Coll. on Old-age Pension Savings) and the supplementary pension saving scheme (regulated by Act No. 650/2004 Coll. on Supplementary Retirement Savings).

the related update and control of data) and for the automation of administrative (administrative-procedural) actions that help both the insurer and the applicant of the pension benefit.

In this contribution, we focus on the newly-developed Central Information Bidding System (hereinafter only as CIBS) administered by the State Social Insurance Agency, both for the purpose of generating contractual bids of old-age pension savings and for registration (notification) purposes related to the conditions for the payment of this type of pension. For comparison purposes at the level of the general pension insurance scheme (normatively and organizationally integrated into the social insurance system) there is an information system for collecting, providing (especially among designated bodies and institutions) and protecting the data necessary for the performance of social insurance and retirement savings.[3]

1. TASKS OF THE CENTRAL INFORMATION BIDDING SYSTEM

The legislation providing for the old-age pension saving scheme (Act No. 43/2004 Coll. on old-age pension savings effective from 1 January 2005) effective as of 31 December 2014[4] established the beginning of the pay-out phase of the "first" retirement benefits of old-age pension savings at the earliest after 10 years of saving, i.e. from January 2015. This legislation was very general and austere in relation to the conditions for the payment of this type of pension. In particular, it did not provide for the bidding process (especially for low-backed savers), the selection of the pension bid by the saver themselves, the verification of the data needed to prepare these bids and some aspects of the guarantee of the payment of the "contractually agreed" pension.

By Act no. 183/2014 Coll. effective from January 2015, the legislator elaborated the pay-out phase of pensions of old-age pension savings, while one of the most important system-performance tools of the pay-out phase has become the information bidding system – CIBS administered by the State Social Insurance Agency. The creation and operation of CIBS is funded by the Social Insurance Administration Fund, which also reduces the costs of the Pension Fund Management Company, which thus remains focused on the management and creation of pension funds.

In addition to the Social Insurance Agency, another two subjects have the access to the CIBS, these are: the Pension Fund Management Company (hereinafter as PFMC) as the performer of the old-age pension savings, which creates and manages pension

[3] This information system is by legislation expressed in Section 170 of Act no. 461/2003 Coll., and we would like to state that, in addition to the requirement for the protection of personal data, it also regulates the provision and exchange of information with designated entities, especially with central authorities of state administration and also with authorities in position for electronic data exchange between EU Member States' institutions , EEA and Switzerland pursuant to Regulation 883/2004 of the European Parliament and of the Council on the coordination of social security systems.

[4] For the characteristics of old-age pension savings, see ÁRENDÁŠ, P. et al. *Dôchodkové fondy vo svete a na Slovensku.* Bratislava: Wolters Kluwer s.r.o., 2017, pp. 185–189; MATLÁK, J. et al. *Právo sociálneho zabezpečenia.* 2nd Edition. Plzeň: Vydavatelství a nakladatelství Aleš Čeněk, 2012, p. 293 et seq.

funds[5] and the Insurer, either as a bidder of the offer for payment of the life-long or temporary old-age (or early retirement) pension or as the obligated body with the obligation to pay a life-long or temporary old-age (or early retirement) pension (resulting from a concluded pension insurance contract). For this reason, the Social Insurance Agency, as the system administrator, must conclude with the Insurer and the PFMC a contract containing in particular the rights and obligations to use CIBS and the conditions for creation and termination of access to the CIBS. The Social Insurance Agency provides selected data from CIBS to the Ministry of Labour, Social Affairs and Family of the Slovak Republic and to the National Bank of Slovakia for statistical and analytical purposes. The Central Office for Labour, Social Affairs and Family has access only to sums of paid pensions (and to the amount of investment income paid to the saver) for the purposes of assessing entitlement to assistance in material need.

Under Section 46e of Act no. 43/2004 Coll., the Social Insurance Agency processes in the CIBS the following data:

a) related to the creation, modification and termination of a pension insurance contract,

b) related to the creation, modification and termination of an agreement about the payment of the pension by programmed withdrawal,

c) necessary for the purposes of early retirement payment, where the legislator requires that the sum of the early retirement pension paid out of the pension insurance and life-long early retirement pension be higher than 1,2 times the subsistence amount for an adult natural person (i.e. be greater than € 239.39),

d) related to the compliance of the conditions for the payment of an old-age (or early retirement) pension to a saver from the pension insurance scheme or if a disability pension is paid to the saver as a result of applying the rule on simultaneous entitlement to the payment of old-age or early retirement pension and the disability pension. At the same time, the Social Insurance Agency also processes the data on the amount of the old-age (or early retirement) pension or survivor's pension from the pension insurance scheme paid to the beneficiary from the old-age pension saving. Lastly, it processes also the data provided by the Department of the Social Security and the Military Social Security Office about the amount of retirement pensions from the social security system of policemen and soldiers paid to a natural person who is or was a saver,

e) related to the fact that an insured person and a saver have reached the retirement age,

f) about the amount of the pension benefit from a pension insurance scheme paid to a natural person who is or was a saver,

g) about the death of the beneficiary of the old-age (or early retirement) pension and the survivor's pension and of the persons who have fulfilled the conditions for entitlement to a survivor's pension from the pension insurance scheme after the death of this beneficiary,

[5] For more information on the strategies for creating and managing bonds and equity portfolios in pension funds, which, according to Section 47 par. 3 of Act no. 43/2004 Coll. must be created by each PFMC and others can be created as index funds, see also pages 190-198 of ÁRENDÁŠ, P. et al. *Dôchodkové fondy vo svete a na Slovensku.* Bratislava: Wolters Kluwer s.r.o., 2017.

h) about the lowest monthly amounts of life-long old-age pension without raising the pension and without survivors' pensions, which insurers are willing to pay, and subsequently it is necessary to determine the median of the amounts of that life-long pension, valid for the whole following calendar year,

i) other data agreed in a multilateral contract among the Social Insurance Agency, Insurer and PFMC (including the provision of data known only to the Insurer and PFMC and provided to the Social Insurance Agency);

j) about the annual amount of the return on investment paid to the saver,

k) about the transfer of the saver to another PFMC and about the related registration of the old-age pension saving agreement into the register of old-age pension savings contracts,

l) about the percentage of the guaranteed return on the placement of technical provisions for the purpose of calculating the monthly amount of the pension; and

m) about a reference amount for the purpose of assessing whether the condition for the payment of temporary old-age (or early retirement) pension and pension paid by the programmed withdrawal[6] is fulfilled, while the Social Insurance Agency being obliged to publish it until the end of the "reference" calendar year with the validity for the following year.

2. ROLE OF THE CIBS IN THE PROCESS LEADING TO THE CONCLUSION OF A PENSION INSURANCE CONTRACT

The aforementioned legal tasks of CIBS aim to fulfil the fundamental role of this system, namely to secure the highest possible pension for the saver in view of the amount of funds saved in the personal pension account. At the same time, its supplementary role in this respect is to help to the saver to make certain steps in the process leading to the conclusion of a pension insurance contract.

The first step towards the conclusion of the pension insurance contract (or, as the case may be, the agreement on the payment of a pension by the programmed withdrawal), which results in the insurer's obligation to pay old-age (or early retirement) pension in the life-long or temporary form. The main condition is according to the Act 43/2004 Coll. a **saver's application for the old-age or early retirement pension**. In the application the saver specifies, inter alia, the manner in which insurers should send their bids (by paper or electronically) and the amount of voluntary contributions s/he has paid and which are registered as pension units, and which must be included in the subsequently issued certificate.

The saver can apply for the old-age pension and early retirement pension free of charge either to a PFMC with which s/he has concluded an old-age pension saving agreement or a branch of the Social Insurance Agency competent under his/her per-

6 The reference amount is the average monthly amount of the old-age pension paid out of the pension insurance scheme (granted since 2004 and not reduced for legal reasons) determined by the Social Insurance Agency as of 30 November of the calendar year, valid for the whole following calendar year.

manent residence. If the saver temporarily stays outside his/her permanent residence and for health reasons cannot apply at a branch of the Social Insurance Agency competent according to his/her permanent residence, s/he may apply for a pension at a branch of the Social Insurance Agency competent according to the place of his/her temporary stay. In special cases he/she can apply also in the Social Insurance Central Office (if s/he does not have a permanent residence in the Slovak Republic) or in a branch of the Social Insurance Agency competent under the headquarters of the institution for the execution of custody or imprisonment (if the saver is accused or convicted). The saver must always apply for a pension at the branch of the Social Insurance Agency, if s/he asks for early retirement pension and has not been entitled to it yet from the pension insurance scheme. On receipt of the application, the Social Insurance Agency or the PFMC has a fixed time limit for giving instruction for issuing a certificate through the CIBS. The certificate represents an electronic confirmation of the amount corresponding to the actual value of the personal savings account of the saver expressed in Euros at the date of writing down the pension units from the personal pension account which is the date of the issuance of the PFMC certificate via CIBS (this is the third business day following the day the instruction for certificate issuing was given). For the purposes of concluding an insurance policy for a given pension with the insurer, this sum is referred to as a one-off premium, which the policyholder (until now the saver) undertakes to pay to the insurer for the obligation to pay an old-age (or early retirement) pension.

The Social Insurance Agency or PFMC accepts the application of the saver at the earliest on the date when 60 days are left for the saver to reach the retirement age, and after accepting this application it is obliged to give an instruction to issue a certificate on the date when the saver is missing 30 days until reaching the retirement age (if the saver does not specify the later day of the order in their application). If the saver's application has been accepted by the Social Insurance Agency or the PFMC in a period of less than 30 days before the saver reaches the retirement age, the Social Insurance Agency or PFMC will give the instruction as soon as on the day that it learns of the fact (if the saver does not specify in the application a later date of the order). If the saver submits their application after reaching their retirement age, the Social Insurance Agency or PFMC will give the instruction as soon as on the day on which it learns of the fact (if the saver does not specify other, later date of the order).

If the saver is a beneficiary of an early retirement pension and applies for early retirement pension, the Social Insurance Agency or PFMC will give the instruction on the day that such a request was received. However, if the saver does not receive early retirement pension (from pension insurance scheme), in the light of the foregoing, only the Social Insurance Agency may give the instruction to issue the certificate on the date specified by the saver in the application for early retirement pension, but first on the day when s/he misses 2 years until reaching the retirement age, has earned at least 15 years of pension insurance, and finally the Social Insurance Agency has calculated the amount of the early retirement pension to be paid after obtaining the entitlement to that pension (what is given by expressing early retirement benefit scheme from pension insurance scheme).

The second major step towards the conclusion of a pension insurance contract (or, under certain circumstances, also an agreement for provision of pension through a programmed withdrawal)[7] is a drafting of a bid for an old-age or early retirement pension by the insurer (or even more insurers) through the CIBS in life-long or temporary form,[8] on the day of the issuance of this certificate. We would like to state that the insurer is obliged to make only bids for life-long forms of pensions; bids of temporary forms of pensions can be submitted only at their discretion. At the same time, we highlight the fact that an insurer does not have to respond to the saver's application submitted in the CIBS by making a bid due to the fact that the amount of funds written off from a person's savings account and confirmed in the certificate is not sufficient for the payment of a life-long retirement pension or its minimum monthly amount without its increase and survivors' pension, nor for the payment of early retirement pension in the statutory minimum amount (this amount also includes the amount of the entitled early retirement pension from the pension insurance).[9] Even, in the extreme cases, if the amount of written off and certified funds is only in tens of Euros, according to the Section 45 par. 6 of Act no. 43/2004 Coll., PFMC pays this amount to the saver on a one-off basis. The bid made by the insurer is binding 30 days from its execution and is irrevocable.

The amount of the pension given in the bid is determined by the insurer using actuarial methods to ensure that the liability of the insurer is permanently fulfilled. The insurer uses their credible assumptions to assess risk in determining the amount of the pension, taking into account future demographic trends within the probability of mortality. Thus, the only individual risk factor is the age of the future beneficiary of the pension and it should not be the health condition of the saver. This risk factor is once again highlighted by the legislator in the Section 46f par. 3 of Act no. 43/2004 Coll. when defining the subject matter of the contract on insurance of the life-long retirement pension, the payment of which, besides the death of the insured person, "insures the risk of longevity".

The stated requirements of the legislator determining the pension bid as well as the amount of the pension also apply to the bid of a temporary old-age (or early retirement) pension, with the difference that such a pension bid does not include variants of pension increases nor the payments of survivors' pensions. Again, we emphasize that it is up to the insurer weather they make such a bid or not.

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[7] This precondition is that if the PFMC itself under Section 46b of Act no. 43/2004 Coll. draws up the offer of payment of the pension by the program selection through CIPS, on the basis of the results of the offers for the payment of pensions to the contributor on the day of issue of the certificate.

[8] The insurer prepares an offer of a lifetime retirement (early retirement) pension in six variations (without increase of the retirement and without survivors 'pensions, with an increase in retirement and without survivors' pensions, without an increase in retirement and with survivors 'pensions with a pay period of 1 or 2 years, with an increase in the pension and survivors' pensions with a payment period of 1 or 2 years).

[9] This minimum amount for the payment of early retirement pension is simultaneously also one of the three conditions for its granting. This amount is defined as 1.2 times the subsistence amount per adult person and from 1 July 2018 it is equal to 246.10 € (1.2 x 205.07).

In the case of the bid for a temporary old-age (or early retirement) pension, as well as a retirement (or early retirement) pension paid by the programmed withdrawal,[10] the saver may opt to use only part of the amount (certified in the certificate) for the "purchase" of this pension, with the offered monthly retirement amount being reduced so that the new pension amount be equal to the monthly amount of the pension that would be determined on the basis of this part of the amount at the time of the offer.

Previously we outlined the situation that in the process of creating a pension entitlement under the Pension Insurance Contract needs to be finalized completely. If the insurer (or more insurers) does not prepare a pension bid through CIBS, the legislator, in order to effectively enforce the constitutional right to adequate material security in the old age, allows the saver (pursuant to Section 46d of Act no. 43/2004 Coll.) to apply directly to the PFMC with which the old-age pension benefit contract has been concluded, to pay an old-age (or early retirement) pension by a programmed withdrawal without the prior issue of the certificate.

Such a possibility is not only for a saver who has not been offered an old-age (or early retirement) pension in life-long or temporary form, or who has not received any response from any PFMC with a bid in the CIBS by a programmed withdrawal of the old-age (or early retirement) pension, but such a possibility is available also for a saver who fulfils conditions for the old-age (or early retirement) pension, but no bid has been presented to him/her.

However, we do not consider this process of the legislator, by which they transfer responsibility for future material security in the old age to the "negotiating capabilities" of an individual, as an effective means of implementing the mentioned constitutional social right. The state can not be exempted from its fundamental social tasks (which are based on the essence of the social rights), to which it has been constitutionally committed to actively fulfilling them, and that it will not only remain a passive observer of the implemented pension model and the scheme it has established, even though the state created this scheme on the basis of almost absolute voluntarism and contractility. We believe that the prevailing contractility as a manifestation of the implemented freedom of decision-making of an individual on their future pension security does not strengthen the individual's right to material security in the old-age as there exist variability of life situations adversely affecting the productive life of an individual and, ultimately, the ability to obtain a reasonable income allowing for effective saving and revaluation in old-age retirement savings.

[10] Until the end of January 2018, there applied a requirement linked to the payment of pension by a programmed withdrawal that a sum of life-long received pension paid out of pension insurance (including retirement pensions of policemen and soldiers and similar pensions paid out from abroad) and of old-age pension savings must be higher than the fictitious sum of the old-age or early retirement pension of that saver based on assuming s/he would never be a saver of old-age pension savings. The second option is that the sum of the pensions from these systems must be higher than 4 times the subsistence minimum for an adult natural person (4x199.48), provided that s/he is not entitled to a retirement pension from a reduced-rate pension due to participation in the retirement pension saving scheme, has concluded a contract on pension insurance and a bid for that life-long retirement has been made out of at least half the value stated in the certificate. Finally, the last option is to agree with PFMC to pay a pension by a programmed withdrawal, if the saver does not meet either of the above-mentioned options and no life-long pension bid has been made to this saver. In this case, the monthly amount of the pension is at most the median of the lowest sums of life-long pensions that the insurers still have the interest to pay, with this amount being recorded in the CIBS.

As of February 2018, a saver who is considered to fulfil conditions for an old-age (or early retirement) pension by a programmed withdrawal,[11] but has not been offered any bid, is also entitled for such a possibility. The fourth and, at the same time, the most recently implemented option for a saver to apply to PFMC (with which s/he has an old-age pension saving contract) to pay an old-age (or early retirement) pension by a programmed withdrawal is the fact that s/he fulfils the conditions for payment of old-age (or early retirement) pension by a programmed withdrawal[12] and his/her PFMC did not offer him/her any bid to pay the above mentioned pensions by a programmed withdrawal. However, in the case of this option, the saver must apply to his/her PFMC within the statutory time limits. The pension fund management company is obliged to conclude an agreement on pension payment by a programmed withdrawal with a saver who has applied for a pension by a programmed withdrawal within 30 days from the date of receipt of his/her application.

Bids generated by the CIBS, including other pre-contractual information (the procedure itself, if the saver chooses one of the bids) will be sent by the Social Insurance Agency to the saver no later than the next business day following the issuance of the certificate in the form of the tender sheet. The tender sheet includes:

- bids on the basis of which the payment of an old-age (or early retirement) pension may be agreed in a life-long, temporary form or by a programmed withdrawal,
- a notice that no insurer has made a bid to agree on the payment of an old-age (or early retirement) pension,
- a notice that the saver has fulfilled the conditions for the payment of the old-age (or early retirement) pension in a temporary form or by a programmed withdrawal, but no insurer or PFMC has made such a bid,
- further information on the payment of pensions and income of investing property in the pension fund.[13]

The third final step leading to the payment of the pension from the retirement pension saving is the record of the note in the CIBS that informs that a pension insurance contract[14]

[11] This newly-implemented option for the saver reflects on the change that if once the saver has been receiving a pension generated by a CIBS bid (e.g. a retirement pension), then in the next case the saver does not have to require an offer via CIBS (e.g. when there are some resources left on the personal pension account).

[12] According to Section 33a par. 2 of Act no. 43/2004 Coll. with effect from February 2018, the condition for the payment of a pension by a programmed withdrawal (as well as for temporary retirement) is changed so that the sum of the amounts of the pension benefits paid out of the pension insurance (including the increase of the pension to the amount of the minimum pension), the retirement pensions paid out of the social security system of the policemen and soldiers, similar pensions paid from abroad, and the amount of life-long retirement benefit from the old-age pension saving will be higher than the reference amount (see footnote 4 for its determination and validity).

[13] In accordance with Section 46i 1 of Act no. 43/2004 Coll., return on investment is not a pension of old-age pension savings system. This return on investment is paid to the saver at the earliest when he / she reaches the retirement age, provided that he / she is insured for the purpose of being employed (insured in the so-called 1st pillar) and is not a beneficiary of a pension paid by the programmed withdrawal. However, this does not prevent such a saver from receiving an old-age (or early retirement) pension in life-long or temporary form.

[14] It is not the responsibility of the saver to conclude a pension insurance contract, but if the saver is interested in receiving a pension from the old-age pension saving, s/he is obliged to submit to the form of compulsory contractual insurance governed by the Slovak legislation. This view was confirmed by the Constitutional Court of the Slovak Republic in the PL. ÚS 27/2014 of 8 June 2016 (p.71).

or an agreement on retirement pension by a programmed withdrawal has been concluded. This record is to be performed by the insurer without undue delay, and they must record in the CIBS the data from the Pension Insurance Contract as a next step. In this regard, we note that the legislator does not specify which contractual data are to be recorded (apart from the required data such as the sum of the one-off premium and the monthly instalment of the type of agreed pension including the form of its payment or the method of payment of the pension or the distribution of the surplus from the income between the insurer and the insured). The purpose of recording a pension insurance contract in the form of a note is that it is a factual condition for the effectiveness of this contract (as well as for the effectiveness of the agreement of the pension payment by a programmed withdrawal).[15] The Insurer's obligation to comply with the Pension Insurance Contract arises on the first day of the calendar month following the month in which the CIBS record was made. At the same time, as of the creation of the CIBS record on the conclusion of the pension insurance contract, the PFMC has three business days to transfer the funds (or other assets at a given value) at the value stated in the certificate. Failure to comply with this obligation may result, in addition to changing the content of the contract, also in a withdrawal if the one-off premium is not paid within 3 months of the date of recording of the note in the CIBS. In the case of a saver who has concluded a pension insurance contract under which a life-long early retirement pension is to be paid, the insurer is obliged to pay that pension from the day following the day on which the binding force of the offer for life-long early retirement pension expires.

Obligation to record a concluded pension insurance contract prevents the saver from signing multi-subject pension insurance contracts while the bids are valid, as the amount of his/her one-off payment could exceed the amount certified by the certificate.[16] In the Section 46f par. 14 of Act no. 43/2004 Coll. there is a rule that the saver has the right to conclude only one pension insurance contract under which an old-age (or early retirement) pension is paid and one pension insurance contract under which a temporary old-age (or early retirement) pension is paid.

The CIBS also respects the rule that one saver can simultaneously be a beneficiary of a life-long as well as of a temporary old-age (or early retirement) pension. According to the Section 46g par. 3 of Act no. 43/2004 Coll. one CIBS saver may have only one record of a retirement insurance contract under which an old-age (or early retirement) pension is paid and only one record of the pension insurance contract under which a temporary old-age (or early retirement) pension is paid.

The same applies in the similar way to recording a pension agreement by a programmed withdrawal, which is legally binding for the PFMC. The legal grounds for a change in the agreement are different (additional transfer of contributions by the Social Insurance Agency to the account of the unassigned payments of the PFMC, non-payment of funds within 3

[15] We would like to add that the pension insurance contract, according to Section 46g par. 9 of Act no. 43/2004 Coll. is alternatively governed by the provisions of the Civil Code with the complete exclusion of the previously guaranteed provisions of this Code, that is to say, in accordance with the principle of *lex specialis derogat legi generali*.

[16] KALÍŠKOVÁ, J. Zákon o starobnom dôchodkovom sporení s komentárom. *Poradca*. 2015, Vol. 20, No. 1-2, p. 120.

months of recording the conclusion of the agreement, changing the way the pension is paid, changing the retirement period or the monthly amount of the pension). The partial derogation is the right of the saver to conclude two pension agreements by means of a programmed withdrawal, if his/her resources on the personal pension account also include voluntary contributions, he/she may conclude a pension agreement by a programmed withdrawal using the amount of voluntary contributions (or part thereof) and conclude a pension retirement agreement by a programmed withdrawal, either on the basis of a completed offer (there is required the payment of a life-long retirement pension) or without making a bid, and, at the same time, the saver must apply to the PFMC with which s/he has an old-age retirement savings agreement. In relation to the agreement on pension payment by a programmed withdrawal, a special requirement is that this agreement between the saver and the PFMC is part of the old-age pension savings agreement.

We would like to add that if the insured person dies before the date when there starts the insurer's obligation to pay, based on the pension insurance contract, the insurer is obliged to pay the amount of the one-off premium under this contract as to the date of the death of the insured person to the entitled person designated by the insured person in the old-age pension savings.[17] If there is not such a person or the insured person has not specified such a person in the contract, the sum of the one-off premium becomes subject to the inheritance procedure. If the entitled person or the heir exercises the right to receive this amount of the one-off premium by an application, the insurer is obliged, within 5 business days from the day of the receipt of the application, to pay that amount or transfer it to the account of the unassigned payments of the PFMC of which the entitled person or the heir is the saver. Subsequently, the PFMC will, without undue delay, transfer this amount to the current account of the pension fund of which the entitled person or heir is the saver and will assign to that person's personal pension account a number of pension units corresponding to the share of the transferred amount and the actual value of the pension unit of the relevant pension fund on the day of the transfer. This procedural process is also applied if the beneficiary of the life-long pension dies before s/he has been paid 84 monthly benefits of the life-long pension (i.e. during the 7-year pay-out period calculated from the date when there is created the insurer's obligation to pay based on the contract), while the paid or transferred amount is the amount corresponding to the difference between the amount determined for the payment of these 84 monthly amounts of life-long pension and the sum of the paid out monthly amounts of that pension. However, if the beneficiary of the life-long pension dies sooner after the payment of 84 monthly sums of life-long pension, the remaining part of the one-off premium becomes a part of property of insurer (bank or insurance agency) and they are not subject to the inheritance

[17] The old-age pension savings contract is the contractual and subsequently registered basis for the first natural person's participation in the retirement pension savings and at the same time it is also the contractual determination which PFMC will process and invest the saver's resources. When the saver transfers their savings account to another PFMC, they must conclude a contract for old-age pension savings with a newly-elected PFMC, it is the so-called another contract on retirement pension savings, which does not affect the existence of participation in this scheme, as participation in retirement savings is irrevocable (i.e., the contract cannot be withdrawn, terminated or terminated by the both parties' agreement).

procedure, also entitled person designated by the insured person has no rights to the payment. We would like to add that the right to receiving the sum of one-off premium does not apply to the payment of a temporary pension (for a period of 5, 7 or 10 years), the legal basis of which is also the pension insurance contract.

Non-enshrinement of an inheritance or contractual provision for a designated person entitled to the payment of the unpaid amount of the temporary (retirement) old-age pension in the event of the death of the recipient of that pension before the expiry of the contractually agreed retirement period of either 5, 7 or 10 years, and the exclusion of the guarantee for payment of more than 84 the amounts of life-long retirement pension were subject to a constitutional examination of the provisions concerned of Act No. 43/2004 Coll. in the wording of Act no. 183/2014 Coll. (proposal of a group of deputies on the compliance procedure of the legislation established by Act No. 183/2014 Coll., adopted by the Constitutional Court of the SR on October 3, 2014, file no., PL ÚS 27/2014).

The Constitutional Court of the Slovak Republic did not consider this attitude of the legislator to be inconsistent with Art. 20 of the Constitution of the Slovak Republic (which guarantees everyone's right to protection of the property right), while arguing twice with only one actuarial fact, that in case of death of the pensioner after the payment of the 84th monthly instalment or the death of the beneficiary of the temporary retirement pension even before the first payment of the pension, "the remaining funds will be used to subsidize the old-age pensions of those who live longer than the average age of survival envisaged by the Insurance Agency (*i.e. the insurer*)."[18]

CONCLUSION

Old-age pension savings is a superstructure system for the general pension insurance scheme, the basis of which lies on a retirement insurance contract between the insured person (formerly in the position of the saver) and the insurer or on the basis of a pension retirement agreement by the programmed withdrawal. Under this contract, the insurer is obliged to pay old-age (or early retirement) pension in life-long or temporary form. In the case of the above-mentioned agreement, the PFMC is obliged to pay old-age (or early retirement) pension by programmed withdrawal. The process of concluding a pension insurance contract (or an agreement) on both parts of (future) parties to a contractual relationship is primarily governed by the freedom to decide individually on one's future pension[19] (on old-age material security or, as expressed by the legislator of the legislation concerned, on the risk of longevity or risk of survival for a certain period) that is transformed into contractual freedom immediately upon the conclusion of a pension insurance contract. The limitation of the freedom of contract is limited to insuring only the type of risk, changing the content of the pension insurance contract and the reasons for with-

[18] For this purpose see the page 68 of the finding of the Constitutional Court of the SR PL. ÚS 27/2014 of 8 June 2016.

[19] This freedom is also prioritized by the Constitutional Court of the Slovak Republic in the characterization of old-age pension saving and various forms of pension payments introduced by it. For more information on this see pages 64-66 of the Finding of the Constitutional Court of the Slovak Republic PL. ÚS 27/2014 of 8 June 2016.

drawing from it. The contract cannot be denounced or it cannot be terminated by agreement between the parties. In connection with changing the content of the pension insurance contract, the legislator allows changes in the payment of survivors' pensions, i.e. either extending them to another survivor's pension if only one was agreed or their restriction or replacement of survivors' pensions. Other taxable legal reasons for changing the pension insurance contract include the non-payment of insurance premiums within three months of recording the contract notice, incorrect indication of the age of the saver, changing the manner of payment of the pension and of the share of the surplus from the return on investment, the change of the entitled person to the payment of the unpaid amounts of the life-long pension (the assumption is that there were not paid 84 monthly sums of pension) in case when the insured person dies, and finally, also the increase of the sum of the one-off premium (as the result of the late transfer of contributions by the Social Insurance Agency or as a result of the payment of the surplus stake agreed in the pension insurance contract by means of the increase in the monthly amount paid to the insured person in the form of the pension).

However, a significant strengthening of the individual's liberty on the future material security of the saver brings about a weakening of the guarantee of the right to adequate material security in the old age and after losing their provider enshrined in Art. 39 of the Constitution of the Slovak Republic, same like in Art. 30 of The Charter of Fundamental Rights and Basic Freedoms, especially in cases when the insurer does not make a bid due to low amount of saved funds or the bid of the pension is inadequately low compared to the resources saved, or when there is the possibility of contractual arrangement of the payment of survivors' pensions only for a maximum of 2 years[20] or there is a low guarantee of only 84 monthly payments of life-long retirement pension[21] in the event of an earlier death of the insured person as a beneficiary of the pension, while the stated facts only apply to the payment of life-long and not the temporary retirement pension. For the last reason by which there is reduced the right to adequate material security in the old age or in the case of the loss of the breadwinner, based on the option available to the contributor to designate in the contract on insurance of the life-long retirement (early) pension an entitled person to receive the "remaining" amount of the total 84 monthly repayments due to the death of the insured person, we would like to comment on the discrimination

[20] The legislation establishing the possibility of contractual exclusion of entitlement to survivors' pensions or, as the case may be, exclusion of only one of the survivors, in our opinion, is due to inappropriately "strong" position of the contractuality principle in significant conflict with the substance of constitutional social right to adequate material security in the event of the loss of the breadwinner (for the position of a family member with a maintenance obligation). In this case we see the discrimination based on the status of such a survivor as such person remains in a contractual non-arrangement for the payment of survivors' pensions for the widow / widower and the orphan and, consequently, as a result there is the subsequent reduction in the level of their material security as compared to the survivors whose deceased family member was at the time of death the exclusive recipient of a pension from the pension insurance scheme or was been entitled to such a pension or has fulfilled the conditions for entitlement to an invalidity pension, i.e. s/he was not in the position of a saver in the retirement pension savings scheme.

[21] Lastly, we do not agree with the guaranteed payment period of 84 monthly instalments of the life-long retirement pension, also with respect to the average life expectancy for men (for 2016 it was 73.7 years) and for women (for 2016 it was 80.4 years). Source: http://datacube.statistics.sk

against survivors in a situation where the insured person does not contractually designate them as the entitled persons to the payment of survivors' pensions and in the event of their death designates another eligible person (e.g. a legal entity in the position of the foundation) to receive the "remaining" amount of the monthly instalments of the life-long retirement pension.

The administrative-information framework which is procedurally aimed at concluding a pension insurance contract (or agreement) is predominantly provided by the information system, the so-called central information bidding system. We do not identify a higher level of guarantee of the mentioned constitutional social right in the CIBS' tasks, procedures, and data base that are analysed in the previous sections of this contribution, so we do not find, apart from some exceptions, any requirement that would create, in particular, some obligations for the insurer to reinforce the level of material security in the old age. The legislation on the CIBS only reflects and transparently declares procedural steps leading to the potential conclusion of a pension insurance contract, and these steps are not always subject to registration in the CIBS (in relation to the situation of a saver who can directly turn to his/her PFMC with a claim for retirement pension by a programmed withdrawal). The CIBS is thus only an information system that represents a more comfortable service primarily for the saver and the insurer and secondarily from the statistical point of view for the Social Insurance Agency. This information system, on one hand, only confirms the main principle of the legislation on the old-age pension saving scheme, the freedom of the individual in deciding on (future) material security in old age, and, on the other hand, it is the holder of a specifically set pay-out phase in relation to the effective implementation of the abovementioned constitutional social right.

It is in the detriment of the saver that the legislator did not take the advantage of the whole potential of CIBS, which has every modern information system, in particular the control function linked to a set of sanctions, and partly also a recording (reporting) function expressing the existence of facts conditioning the realization of a certain legal relationship (especially the rights and obligations of the entities of such a legal relationship), in this case the pre-contractual part of the payment stage of pensions from the old-age pension saving scheme.

In the context of the *de lege ferenda* proposals, the importance and tasks of CIBS and the effectiveness of the saver's right to adequate material security in old age would be enhanced, if there was prolonged the period for registration of bids for pension payments by the insurers in the CIBS[22] and if it was redefined to two rounds of bids in order to increase competition for the quality of bids for the payment of old-age pensions from the retirement pension savings.

[22] Currently, it is up to three business days after the certificate issuing instruction is given, while other potential insurers or PFMCs can only respond to each other with bids on the day the certificate is issued. At the same time, however, the law does not establish whether the insurer and PFMC can withdraw their bid and, possibly, register a new bid on that day (i.e. the date of issue of the certificate). This would need to be clearly covered by the legislation.