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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

on the application of Directive 2014/50/EU of the European Parliament and of the Council of 16 April 2014 on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights

1. INTRODUCTION

The free movement of workers is a fundamental freedom of citizens of the European Union and one of the pillars of the internal market. It is enshrined in Article 45 of the Treaty on the Functioning of the European Union (TFEU). This right has been further developed through secondary law, in particular Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union. It has also been developed further by the case-law of the European Court of Justice.

An essential element in facilitating free movement of workers is the preservation of their social security rights, among which pensions. The social protection of workers with regard to pensions is guaranteed by statutory social security schemes together with supplementary pension schemes linked to the employment contract. Primary competence for this lies with the national social security systems.

To protect the rights of persons exercising their right to free movement, the EU adopted at a very early stage on the basis of Article 48 TFEU measures with a view to protecting the social security rights of workers moving within the European Union and of members of their family, the so called Regulations on coordination of social security systems[1]. However, these Regulations concern in principle only statutory pension schemes and do not apply to supplementary pension schemes[2]. Therefore, it was essential to adopt specific rules concerning supplementary pension rights.

As a first step in removing obstacles to free movement relating to supplementary pensions, not covered by the above coordination EU Regulations, Council Directive 98/49/EC[3] on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community sets out certain rights for members of supplementary pension schemes. According to this Directive, the vested pension rights of a person who stops making contributions to a supplementary pension scheme because he/she moves to another Member State must be preserved to the same extent as for a person who remains in the same Member State but, similarly, is no longer making contributions to the pension scheme. Beneficiaries of a supplementary pension scheme are entitled to receive their benefits in any Member State.

The Report[4] on the implementation of Directive 98/49/EC, however, concluded that the Directive was only the first measure which contributes to the removal of obstacles to the free movement of workers as regards supplementary pensions, but obstacles still existed.

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1 These are the Regulations (EC) No 883/2004 of 29 April 2004 and (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 of 29 April 2004 on the coordination of social security systems.

2 Except for schemes which are covered by the term 'legislation' as social security systems as defined by the first subparagraph of Article l(l) of Regulation (EC) No 883/2004 or in respect of which a Member State makes a declaration under that Article.

3 Council Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community

4 COM(2006) 22 final of 26. 1. 2006

The Commission therefore submitted a 'proposal for a directive improving the portability of supplementary pension rights'[5].

Directive 2014/50/EU on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights (the Supplementary Pensions Directive[6], further 'the Directive') was adopted on 16 April 2014[7]. It can be considered as a second step in removing obstacles to free movement relating to supplementary pensions and in further facilitating worker mobility between Member States.

The Directive aims to promote worker mobility by reducing the obstacles created by certain rules concerning supplementary pension schemes linked to an employment relationship. Supplementary pensions are becoming increasingly important in many Member States as a means to secure people's standard of living in old age. It is therefore important that certain minimum requirements for acquiring and preserving pension rights are put in place to reduce obstacles to workers' freedom of movement between Member States.

The Directive's requirements concern in particular:

- Conditions of acquisition of rights under supplementary pension schemes:

  The Directive establishes a maximum waiting period, i.e. period before a worker can become a member of a pension scheme and a maximum vesting period, i.e. a period of active scheme membership after which the entitlement to the accumulated supplementary pension rights is triggered as well as an age limit for vesting of the rights.

- Preservation of dormant pension rights:

  The Directive lays down the right for effective preservation of supplementary pension rights.

- Information standards:

  The Directive ensures a right to obtain adequate information, especially on the impact of mobility on pension rights.

The Directive came into force on 20 May 2014 and Member States had to transpose it by 21 May 2018. This relatively long transposition period was provided in order to give Member States sufficient time, which was considered necessary due to the complexity of the subject and diverse nature of supplementary pension schemes in individual Member States.

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5 COM(2005) 507 final of 20.10. 2005

6 Directive 2014/50/EU of the European Parliament and of the Council of 16 April 2014 on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights, https://eur-lex.europa.eu/eli/dir/2014/50/oj

7 https://eur-lex.europa.eu/eli/dir/2014/50/oj

According to Article 9 (1) of the Directive Member States had to communicate all available information concerning the application of the Directive to the Commission by 21 May 2019.

Article 9 (2) of the Directive requires that the Commission draws up a report on the application of the Directive in the Member States.

The report is mainly based on the measures that Member States have communicated to the Commission under Article 8 of the Directive. References to the national laws transposing the Directive can be found on the Eur-Lex webpage[8]. Information on the application of the Directive as communicated by the Member States under Article 9 of the Directive was used for this report. The Commission has also used information collected by its network of legal experts on the free movement of workers and social security coordination[9]. The Commission has further consulted the members of the Advisory Committee on the Free Movement of Workers[10] by sending them a detailed questionnaire[11] (hereinafter 'the questionnaire') and, afterwards, the draft report. The Commission also requested clarifications on transposition measures from the members of the Technical Committee on the Free Movement of Workers[12].

2. TRANSPOSITION PROCESS

In accordance with Article 8 of the Directive, Member States had to transpose the Directive by 21 May 2018.

To help Member States with the transposition and implementation, the Directive was discussed at several meetings of the committees mentioned above between 2016 and 2018.

However, by the transposition deadline, only 10 Member States had notified transposition measures and declared a complete transposition of the Directive[13].

In July 2018 the Commission started infringement procedures against 10 Member States[14] that, at that moment, had still failed to notify a complete transposition of the Directive. In January 2019 the Commission continued infringement procedures against 4 Member States[15]. Finally, by September 2019 all Member States notified a complete transposition. The infringement proceedings were therefore closed.

The Commission is currently finalising its analysis of the conformity of national measures to ensure that the Directive is correctly transposed. As part of the ongoing conformity check it is in contact with the Member States on the issues identified in this report.

[8] https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32014L0050&qid=1562160328388
[9] http://ec.europa.eu/social/main.jsp?langId=en&catId=1098.
[10] Committee established under Article 21 of Regulation 492/2011.
[11] The questionnaire focused on the clarification of certain transposition issues and on the practical application of the Directive. 23 Member State governments and 8 social partners (trade union organisations and employers' organisations) provided replies (by the end of January 2020).
[12] Committee established under Article 29 of Regulation 492/2011.
[13] DE, EE, FI, HR, HU, LV, LT, SK, SI and SE
[14] Letters of Formal Notice were sent to CZ, CY, EL, ES, FR, IE, LUX, NL, AT and RO
[15] Reasoned Opinions were sent to CY, IE, FR and RO

3. IMPLEMENTATION OF THE DIRECTIVE

As regards the method of transposing the Directive, according to Article 8 (1) of the Directive Member States were free to either directly transpose the provisions of the Directive in national legislation, regulations or administrative provisions, or to ensure that the social partners introduce the required provisions by way of agreement. If transposition was done via collective agreements, the Member State had to ensure by appropriate legislative and administrative provisions that all workers are afforded the full protection provided for by the Directive. The transposition act or the official publication document had to contain a reference to the Directive.

All Member States have transposed the Directive through laws. Three Member States[16] considered that their existing legislation already fully complied with the provisions of the Directive. No Member State mentioned implementing the Directive's provisions through collective agreements.
In most Member States the national transposition measures contain a reference to the Directive. In one Member State[17] the reference to the Directive was provided in the governmental proposal of the legislation. In those Member States where the pre-existing legislation was considered sufficient to accomplish the full implementation no reference to the Directive was made.

3.1 Timeframe of applicability

As regards the timeframe scope, the Directive applies only to the periods of employment falling after its transposition time limit[18], i.e. 21 May 2018. Thus, Member States were obliged to make sure that even if the transposition in their country was completed only after 21 May 2018, the legislation had retroactive effect to apply to all periods of employment after 21 May 2018.

The majority of countries has complied with this rule. However, a few countries have not[19]: in Poland, the transposition law came into force later (on 7 June 2018) but with no retroactive effect. In Sweden, although the rule on the timeframe scope has been generally respected, regarding the calculation of survivor's dormant pensions, only rights after 1 June 2018 are taken into account. In France, the transposition law entered into force on 5 July 2019 but did not have any retroactive effect. It applies to schemes created after 5 July 2019 as of 5 July 2019 while as regards the scheme that already existed before this date, the transposition provisions apply only to rights corresponding to employment periods after 1 January 2020. In Romania, the law transposing the Directive was adopted on 8 July 2019 with no retroactive effect.

3.2 Personal scope

The Directive only concerns workers and not self-employed persons (see Articles 1 and 3(b)), unlike Directive 98/49/EC that applies to both categories of persons.

[16] SI, LV and the UK

[17] FI

[18] Article 2 paragraph 4 of the Directive

[19] FR, SE, PL and RO

Since the Directive only sets minimum requirements[20], Member States are free to extend the protection provided by the Directive to self-employed persons. More than half of Member States[21] decided to extend the protection afforded by the Directive to self-employed persons.

3.3 Territorial scope

Article 2(5) of the Directive clarifies that the provisions of the Directive do not apply to the acquisition and preservation of supplementary pension rights of workers moving within a single Member State. However, according to Recital 6 of the Directive, Member States can consider using their national competences to extend the rules of this Directive to scheme members who change employment within a single Member State.

Half of the Member States opted for such an extension of the application of the rules of the Directive also to purely domestic situations[22]. The approach of these countries varies: some countries specified that the legislation also applies to purely domestic situations, other countries did so only implicitly since their national legislation does not distinguish national and cross-border situations[23], other countries decided to apply similar rules to internal situations[24].

3.4 Material scope

The Pension Adequacy Report[25] of the European Commission and the Social Protection Committee distinguishes the following types of supplementary pension schemes, which may serve as a common reference framework:

Supplementary pension schemes:

- **Occupational pension schemes** are schemes linked to an employment relationship or professional activity. They can be established by one or several employers, industry associations or social partners jointly.
- **Personal pension schemes** are based on an individual retirement savings contract between the saver and a financial service provider. Sometimes the employer may make contributions to their employee's personal pension scheme.

According to the definition of supplementary pension schemes in the Directive, only 'occupational pension schemes' fall under the scope of the Directive.

Article 2 together with Article 3 of the Directive define the material scope of the Directive. Article 2 specifies that the Directive applies to supplementary pension schemes with the exception of schemes exhaustively enumerated or referred to therein[26].

[20] See Article 7(1) and Recital 28 of Directive 2014/50/EU

[21] CZ, DE, EL, FI, HU, IT, LT, LU, MT, PT, SK, UK, HR and SI, partially PL and EE

[22] BE, DE, EE, EL, ES, FR, HU, IT, LT, LU, MT, PT, SE, SI and SK

[23] AT, BE, LV and PL

[24] E.g. EE

[25] https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8084&furtherPubs=yes

[26] These are: (1) supplementary pension schemes covered by Regulation (EC) No 883/2004; (2) supplementary pension schemes that, on the date of entry into force of the Directive, no longer accept new active members and remain closed to them; (3) supplementary pension schemes that are subject to

Article 3(b) defines the notion of supplementary pension scheme. For the purposes of the Directive, supplementary pension scheme is to be understood as 'any occupational retirement pension scheme established in accordance with national law and practice and linked to an employment relationship, intended to provide a supplementary pension for employed persons'. Further clarification may be found in Recital 11, which states that the 'Directive should apply to all supplementary pension schemes established in accordance with national law and practice that offer supplementary pensions for workers, such as group insurance contracts, pay-as-you-go schemes agreed by one or more branches or sectors, funded schemes or pension promises backed by book reserves, or any collective or other comparable arrangement.'

Recital 14 further clarifies that the Directive should apply only to supplementary pension schemes where entitlement exists by virtue of an employment relationship and is linked to reaching retirement age or to fulfilling other requirements as laid down by the scheme or by national legislation. The Directive does not apply to individual pension arrangements, other than those concluded through an employment relationship. Thus, individual pension arrangements that are not linked to an employment do not fall under the scope of the Directive.

Statutory pensions are not linked to an employment relationship and should be covered by Regulation (EC) No 883/2004; thus they, should fall outside the scope of the Directive.

Taking into account the national transposition measures, it can be concluded that the transposition measures of all Member States cover the scope of the Directive. Legislation of most Member States[27] applies to all supplementary (occupational) pension schemes as defined by Article 3 which are not excluded by virtue of Articles 2(1) and 2(2). Some Member States have not specified the scope of application in their legislation. However, it can be concluded from the wording of that legislation that the rules on the material scope of the Directive have been respected[28].

3.5 Conditions governing the acquisition of pension rights

The requirement relating to the conditions of acquisition of rights of mobile workers under supplementary pension schemes is one of the most important aspects of the Directive.

The fact that in some supplementary pension schemes pension rights could be forfeited if a worker's employment relationship ended before he or she had completed a minimum period of scheme membership ('vesting period') or before he or she had reached the minimum age ('vesting age'), could prevent workers who move between Member States from acquiring adequate pension rights. The requirement of a lengthy period before a

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measures involving the intervention of administrative bodies established by national legislation or judicial authorities, which are intended to preserve or restore their financial situation, including winding-up proceedings; (4) insolvency guarantee schemes, compensation schemes and national pension reserve funds; (5) a one-off payment made by an employer to an employee at the end of that employee's employment relationship which is not related to retirement provision; (6) invalidity and/or survivor's benefits attached to supplementary pension schemes, with the exception of the specific provisions of Articles 5 and 6 of Directive 2014/50/EU relating to survivor's benefits.

[27] BE, BG, CY, CZ, DE, DK, EL, ES, FI, FR, IE, HU, IT, LT, LU, LV, MT, NL, PL, RO, SE, SK , UK.

[28] This applies to EE, HR, SI

worker could become a member of a pension scheme ("waiting period") could have a similar effect. The EU co-legislators therefore decided to lay down certain limitations with the aim of removing these obstacles to workers' freedom of movement.

According to Article 4 (1) of the Directive the combination of the waiting period and the vesting period can be maximum of 3 years. Therefore, pension rights are irrevocably acquired ('vested') no later than after three years of employment relationship.

Supplementary pension schemes are not allowed to set a higher minimum age for vesting of pension rights than 21 years. On the other hand, as explained in Recital 17, no minimum age requirement for supplementary pension scheme membership is laid down by the Directive as such age limit was not identified as an obstacle to free movement of workers.

According to the findings, these new minimum requirements have led to changes of the relevant limits established at national level as in some countries the waiting and/or vesting period were longer and the vesting age was higher than the new requirements of the Directive.

There is only a limited number of Member States that do not allow any waiting or vesting periods or vesting age. Following the adoption of the Directive one Member State (Belgium) decided to further strengthen workers' rights going beyond the limits established by the Directive and abolished the possibility to provide a waiting and vesting period as well as a vesting age.

Waiting period

There are 16 Member States that use the three-year limit period set by the Directive (AT, CY, CZ, DK, EE, FR, EL, ES, FI, HU, LU, MT, PL, PT, RO, SE), 6 Member States that allow only much shorter waiting periods: BG (6 months), IE (1 year), LT (one year), SI(one year), SK (one year), UK (three months) and 5 Member States that do not allow any waiting period (HR, BE, DE, IT, NL). One Member State (AT) provides for a four-year waiting period for specific category of workers (temporary agency workers). Another Member State (LV) does not provide any rule regarding the waiting period and, based on the legislation communicated by the LV authorities, it cannot be concluded that such period is not allowed. In fact, it appears from the legislation that the waiting period can be defined by each pension plan, thus it could go beyond the three year time limit. These latter provisions from AT and LV do not seem to be compliant with the provision of the Directive.

Vesting period

16 Member States use the three-year limit period set by the Directive (AT, CY, CZ, DE, DK, EL[29], ES, FI, FR, HU, IT, LU, MT, PT, RO, SE), 3 Member States allow a shorter vesting period: IE (two years), LT (two years), UK (two years) and 8 Member States do not allow any vesting period (HR, BE, BG, EE, NL, PL, SI, SK). Again, one Member State (LV) does not provide any rule regarding the vesting period. As it cannot be concluded that such period is not allowed, the legislation may not be compliant with the provisions of the Directive.

[29] In Greece, no vesting period exists with respect of acquisition of pension rights in Occupational Insurance Funds.

The vesting periods in Germany have already been reduced from ten to five years in 2001 and the vesting age of 30 years has been reduced. Thanks to the transposition of the Directive into national law since the beginning of 2018, workers have to be employed by an employer for only three years and have to reach the age of 21 in order to maintain their occupational pension rights. This is a positive development with respect to the workers' rights to acquire their supplementary pensions.

Combination of waiting and vesting periods

Apart from two Member States[30], all Member States respect the three-year limit applicable to the combination of waiting and vesting periods. Those Member States that allow both the waiting and the vesting period which, if applied together could exceed the maximum three-year limit, expressly lay down in their legislation the maximum three-year limit which is applicable when these two periods are combined (e.g. CY, CZ, DK, EL, ES, FI, FR, HU, LU, MT, PT, SE, SI, RO).

For other Member States the respect of this rule can be concluded indirectly since one of the conditions is allowed and the other is not or when adding these two periods together, these cannot result in more than three years (e.g. BG, EE, IE, LT, SK, UK).

Vesting age

There is a large group of Member States (16) that allow supplementary pension scheme providers to establish a vesting age: 21 years (CY, CZ, DE, DK, EE, EL, ES, FI, FR, LT, LU, MT NL, PT, RO and SE). One Member State (BG) allows for a much lower vesting age of 16 years. There are several countries (9) that do not allow a minimum age for vesting pension rights (IE, IT, PL, SI, SK, UK, HR, HU and BE). 2 others do not stipulate anything regarding vesting age in their legislation (AT, LV), which raises questions whether establishing a vesting age is still allowed and if so, at what age.

In conclusion, it can be stated that a large majority of Member States have correctly transposed the minimum requirements for acquisition of supplementary pension rights established by the Directive.

It appears that in one Member State (LV), national transposition measures do not provide explicitly for maximum waiting and vesting periods and any rule regarding vesting age, implying that these could be defined by each pension plan or employment agreement. This could mean that, in reality, supplementary pension scheme providers could set conditions that are not conform to the Directive. Another Member State (AT) appears to allow a four-year waiting period for one specific category of workers.

Right to reimbursement of contributions

In order to protect the financial rights of an outgoing worker if he or she has not yet acquired pension rights according to the established vesting period, Article 4 paragraph 1(c) of the Directive prescribes the right to reimbursement of contributions paid by the outgoing worker or paid on his or her behalf. Thus, the own contributions of employees

[30] LV, AT with respect to temporary agency workers

as well as contributions paid on their behalf by the employer can never be lost in case outgoing workers leave a pension scheme before their rights are vested.

Most Member States have correctly transposed the reimbursement rule. Some Member States did not consider the transposition of this rule into their national legislation to be necessary as, because of the non-existence of a vesting period, the outgoing workers' contributions are vested immediately. However, one Member State did not transpose the reimbursement rule, even though contributions are not vested immediately (LV).

As regards the possibility provided in Article 4 paragraph 2 to allow the social partners to lay down more favourable rules on waiting or vesting periods or vesting age from those provided for in Article 4 in a collective agreement, half of Member States allowed for that possibility[31].

3.6 Preservation of dormant pension rights (Article 5)

The preservation of dormant pension rights under this Directive is different from the preservation of rights provided in Article 4 of Directive 98/49/EC. On the one hand, Directive 98/49/EC lays down the principle that outgoing members from a scheme who move to another Member State should be treated equally with outgoing members of the scheme who stay in the same Member State. Directive 2014/50/EU, on the other hand, establishes the right for outgoing workers from a scheme who move to another Member State to preserve their vested dormant rights on an equivalent basis with active members of the scheme.

The basic principle is that outgoing workers, scheme leavers in the context of freedom of movement for workers, should not be penalised and, in relation to their vested rights, they should be treated on a fair basis with active scheme members. Outgoing workers have a right to retain their dormant pension rights in the former employer's pension scheme. Preservation may vary depending on the nature of the pension scheme - e.g. through indexation or through capital returns. Some rules are more suitable for schemes with defined benefits, while others are more suitable for defined contribution schemes[32]. Furthermore, the Directive prescribes that the initial value of those rights shall be calculated at the moment in time when an outgoing worker's current employment relationship terminates.

All Member States followed the general preservation rule on dormant pension rights as they all have measures ensuring that the vested pension rights of the outgoing worker can remain in the supplementary pension scheme in which they are vested.

As regards the fair treatment of outgoing workers' and their survivors' dormant pension rights, all countries have rules on treating them in line with the value of the rights of active scheme members or in other fair ways in accordance with Article 5 (2) of the Directive.

Possibility to allow to pay the vested rights in the form of a capital sum

[31] CZ, DE, DK, ES, FI, HR, MT, NL, PL, PT, RO, SE, SK and SI

[32] 'defined benefit schemes', are those schemes where the benefit depends mainly on the years of employment and the salary, and where the employer bears the investment risk; 'defined contribution schemes' are those schemes where the future benefit depends mainly on the accrued value of saved capital and where the investment risk is borne by the scheme member.

To reduce managing costs of low-value dormant pension rights, Article 5(3) provides the possibility for Member States to allow supplementary pension schemes not to retain the vested rights of an outgoing worker but to pay a capital sum equivalent to the value of the vested pension rights to the outgoing worker. This is, however, possible only with the worker's informed consent and only as long as the value of the vested pension rights does not exceed a threshold established by the Member State.

The majority of Member States did not make use of this possibility. The national ceilings in those Member States[33] that have used the possibility to apply this exception to the preservation rules differ significantly from around € 2.000 in Greece, to € 12.600 in Austria[34].

3.7 Information requirements

Article 6 lays down the obligation for Member States to ensure that active scheme members and deferred beneficiaries who exercised or intend to exercise their right to free movement, as well as surviving beneficiaries, receive, upon request, adequate and suitable information about their supplementary pension rights. Some of these information obligations have already been laid down by Article 7 of Directive 98/49/EC. Article 6(5) of the Directive refers to additional information requirements according to Directive 2003/41/EC, which has been repealed by the recast Directive 2016/2341/EU[35]. This reference should thus be construed as a reference to the information requirements laid down in Directive 2016/2341/EU.

The Directive prescribes different minimum information standards for active scheme members and for deferred beneficiaries. Active scheme members have a right to be informed on how a termination of employment would affect their supplementary pension rights[36]. Deferred beneficiaries and surviving beneficiaries in the case of survivor's benefits have a right to be informed about the value or an assessment of the value of their dormant pension rights and the conditions governing the treatment of these rights.

[33] AT, CY, DE, DK, EL, FI, IT, LU, PT, SE while some countries in addition to the general preservation rule allow one-time lump-sum payments (e.g. HR, SI and UK)

[34] In countries with thresholds determined in absolute amounts the situation is as follows: AT (€ 12,600), CY (€ 3,000), DE (monthly pension threshold of € 30.45 or capital sum threshold of € 3,654), DK (approx. € 2,900), EL (as from 2020 the amount of € 2,000, which will be adjusted annually), FI (monthly threshold of € 70). When it comes to countries with thresholds set in relative terms these vary as well: LU (three times the monthly Social Minimum Wage for unskilled workers which for 2019 amounts to a threshold of € 6,213.30), SE (one price base amount which amounts to approx. € 4,347 for 2019).

[35] Directive 2016/2341/EU of the European Parliament and the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs),

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016L2341

[36] This information must include in particular: (a) the conditions governing the acquisition of supplementary pension rights and their effect when the employment relationship is terminated; (b) the value or an assessment of vested pension rights (the assessment should not be carried out more than 12 months preceding the date of the request); and (c) the conditions governing the future treatment of dormant pension rights. Where the scheme allows early access to vested pension rights through the payment of a capital sum (e.g. allowed by Article 5(3) of Directive), the information provided shall also include a written statement that the member should consider taking advice on investing that capital sum for retirement provision.

This information has to be provided on request, clearly, in writing, and within a reasonable period of time. Member States may allow pension schemes to provide this information not more than once a year.

According to the Directive, the requested information is to be provided within 'a reasonable period of time'. While many Member States have not stipulated a deadline for the provision of information, other Member States have opted for a specific period of time, namely seven days (BG), ten days (ES), fifteen days (SI), one month (UK), two months (IE) and sixty days (PT). Other Member States rely on legal concepts such as 'reasonable time' (BE, CY, DE, DK, EE, EL, FI, SE) or the obligation to provide information 'without undue delay' (CZ), 'timely' (NL), or 'immediately' (PL).
Many Member States have used the possibility to limit the provision of information upon a person's request to 'once a year'[37] but a significant number of other Member States has not done so[38].

In many Member States it is possible to provide the information by electronic means[39]. In a few Member States this is neither required nor prohibited[40] while a few other Member States do not provide for such a possibility[41].

In Belgium, a government database 'My Pension, My supplementary Pension' exists. Accordingly, all pension institutions, both insurances and pension funds, have to report all accrued pension rights per affiliated individual to this database on an annual basis. All citizens can therefore find all information about the pension rights accrued in Belgium. Belgium, along with partners from other EU countries, participates in a pilot project to set up a European Tracking Service for pensions that would allow members to track their pension rights accrued in different Member States and pension schemes over the course of their career.

In addition to information requirements which are to be provided under the Directive, more information is to be provided as of January 2019 according to Directive 2016/2341/EU on the activities and supervision of institutions for occupational retirement provision (IORPs) [42]. As a result, for those supplementary pension schemes that are provided by institutions of occupational retirement provision and thus covered by Directive 2016/2341/EU, Member States' requirements for information provision now go beyond the information requirements according to Directive 2014/50/EU. For example, according to Directive 2016/2341/EU even before entering into a participant contract, the supplementary pension provider is

[37] AT, BE only partially as the 'my pension' tracking service can be used anytime, CY, CZ, DK, EL, FI, FR, HR, IE, IT, SE

[38] BG, DE, EE, ES, IT, HU, LU, LV, PT, SI, SK and LT

[39] AT, BE, BG, DE, DK, EE, HU, IE, IT, LV, NL, PL, SE, SI, SK, UK and partially FI. In RO, providing electronic information is possible but only as an additional means of communication not substituting the compulsory printed format.

[40] CY, EL, LU, MT

[41] CZ, ES, FR, LT, PT

[42] Directive 2016/2341/EU of the European Parliament and the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs),

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016L2341

currently obliged to provide the potential participant (prospective member) all the relevant information.

As a result, information on supplementary pension rights to active members, deferred beneficiaries and also to prospective members is overall comprehensive.

3.8 Transfer of pension rights

The Directive does not provide for the transfer of vested pension rights. In order to facilitate worker mobility between Member States, Recital 24 nevertheless encourages Member States to improve the transferability of vested pension rights, in particular when introducing new supplementary pension schemes. More than half of Member States took measures on the transferability of vested pension rights or values[43]. Some of these Member States have set certain conditions and limitations on transferability, which can create serious impediments to the exercise of cross-border transfers in practice[44].

> In Austria transfer of vested pension rights is possible and various options are provided by the Austrian legislation. If the employee is permanently transferred for work abroad he can transfer the vested amount to a foreign pension institution.
>
> In Greece, those persons who change their professional activity may transfer their vested rights to another occupational insurance fund (operating in Greece or in another Member State) or may choose to keep their vested pension rights in the original fund and to receive the pension benefit from each fund upon their retirement. Such transfers occur in practice.

There are, however, also other Member States that do not provide for such a possibility at all[45].

One Member State (LU) indicated that different tax regimes often inhibit workers from carrying out a cross-border transfer as they are liable to be taxed in both Member States. Another Member State (SK) indicated that in absence of minimum rules for transferability it is very difficult in practice to transfer dormant pension rights and that new discussions on possible minimum rules for transferability of pension rights are needed. On the contrary, one social partner (representative of employers) from a Member State (DE) indicated satisfaction about the fact that there are no common rules on transferability at EU level as they fear that this would be a very complex endeavour.

[43] AT, BE, DE, EL, ES, IE, HU, LU, LV, NL, PL, PT, RO, SI, SK UK

[44] EIOPA, Final Report on Good Practices on individual transfers of occupational pension rights, https://www.eiopa.europa.eu/content/final-report-good-practices-individual-transfers-occupational-pension-rights_en

[45] CY, DK, EE, FI, FR, LT, MT, SE

4. APPLICATION OF THE DIRECTIVE

As regards the practical application of the Directive, it is important to note that the role and importance of supplementary pension schemes vary significantly among Member States.

The Pension Adequacy Report[46] of the European Commission and the Social Protection Committee analyses the role and importance of supplementary (occupational) pension schemes in the national pension systems of Member States.

As recalled in Recital 9 of the Directive, it is the right of Member States to organise their own pension systems and Member States retain full responsibility for the organisation of such systems. When transposing the Directive, Member States were not obliged to introduce legislation providing for the setting up of supplementary pension schemes. There is a great diversity of national pensions systems.

Whilst in certain Member States supplementary occupational pension schemes play a prominent role in the national pension system (for instance in NL, DK, UK, IE, SE) and these are less prominent but still important in other Member States (DE, FR BE), in around half of Member States supplementary pension schemes have not been developed into a significant component of the national pension system and tend to have a rather marginal role.

The below findings on the initial practical application of the Directive are based on information on the application of the Directive as communicated by the Member States according to Article 9 (1) and on replies to the Commission questionnaire on the application of the Directive by Member States and social partners. The Commission has received feedback from 23 Member States[47] and 8 social partners[48].

As far as the collected information suggests, no disputes before any national courts regarding the national provisions transposing the Directive have been identified in any Member State.

In a number of Member States, supplementary pension scheme providers had to amend their rules in order to comply with the national legislation implementing the Directive. This is the case for example for supplementary pension schemes in Belgium, Germany, Luxembourg, Italy and Bulgaria. In other countries where the provisions regarding the waiting and vesting periods as well as the vesting age were already compliant with the Directive prior to its adoption, no particular impact on supplementary pension schemes has been observed.

According to Article 4 paragraph 2 of the Directive, Member States had the option to allow the social partners to lay down different, more favourable, provisions on vesting or waiting period or vesting age from those laid down in Article 4. Half of Member States do not allow that collective agreements lay down different provisions than those established in their national legislation. In those Member States where this possibility is allowed under national law[49], no Member State provided information regarding such collective agreements that would indeed lay down different, more favourable, rules. In practice, collective agreements,

[46] Page 79 https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8084&furtherPubs=yes

[47] AT, BE, EE, LT, NL, IE, CZ, MT, DE, LUX, HR, BG, IT, RO, PL, PT, SK, SE, SI, EL, DK, ES and HU

[48] Trade Unions from IT, AT, BE and NL, representatives of employers from AT, BE, EE and NL

[49] CZ, DE, DK, ES, FI, HR, MT, NL, PL, PT, RO, SE, SK and SI

where they exist, replicate the provisions of the national law. One social partner (from DE) indicated that they are aware of one collective agreement in the construction industry that provides more favourable protection of workers than established by the Directive as the supplementary pension rights vest immediately and no vesting age is required.

According to the replies to the questionnaire, in some countries[50], the Directive has had a positive impact on the acquisition and preservation of supplementary pension rights of workers leaving their country to move to another Member State. This has been the case in particular in those Member States in which new stricter rules had to be implemented in order to comply with the provisions of the Directive.

As regards the impact of new information requirements established by the Directive, the impact of the Directive, in combination with the requirements of Directive 2016/2341/EU, has been important. Member States have laid down detailed rules, in line with the provisions of the Directive regarding the information requirements on persons' supplementary pension rights. It is rather difficult to assess at this point to what extent the implementation of the Directive's provisions has helped to raise EU workers' awareness regarding preservation of their supplementary pension rights in case of intra-EU mobility. However, most stakeholders consider that EU workers are now more aware of their rights.

Nearly all stakeholders indicated that they have not identified any particular difficulties faced by EU mobile workers when using their rights stemming from the Directive.

One Member State (HR) pointed to possible future difficulties regarding the application of the Directive. Some pension companies in this country have noted that clarification could be required in determining the facts related to termination of employment in terms of documenting termination of employment (to prove relocation).

Social partners in another Member State (Belgium), both the trade unions as well as employers' representatives, have indicated that difficulties can be expected with respect to considerably increased administrative burden. This, however, appears to be linked to the new rules established in their country, which are stricter than prescribed by the Directive. These rules abolish completely the possibility to lay down waiting and vesting periods as well as a vesting age. At the same time, they do not allow the pension schemes to pay to dormant beneficiaries their low-value dormant pension rights in a form of a capital sum and therefore these rights must be maintained in the scheme until the person is retired. Representatives of employers in one Member State (AT) indicated that it is difficult in practice to receive the deferred beneficiary's consent to pay out his/her low-value dormant rights in a form of capital sum simply for the lack of interest in this matter.

As regards the overall assessment of the impact of the provisions of the Directive, in some countries certain positive impact has been observed due to the obligatory changes of the national legislation, while in other countries no major practical influence has been recorded. This might be due to the fact that the standards on acquisition and preservation of supplementary pension rights as well as information requirements in these countries had already been compliant in substance with the Directive prior to its adoption. In addition to this, in certain countries the coverage of supplementary occupational pension schemes is very low or non-existent[51]. An important number of stakeholders suggested that it is too

[50] For example in DE, IT or LUX

[51] For example in CZ, LT and RO no occupational pension schemes actually exist or in HU, EE and SK these are very rare.

early to assess the impact due to the very short time of application and non-availability of relevant data.

In addition, the findings regarding the application of the Directive must be interpreted cautiously as the transposition in some countries took place only recently. For example, in two countries[52] with an important role of supplementary pension schemes in their national pension system, the complete transposition took place only in summer 2019.

5. CONCLUSIONS

Overall, the transposition of the Directive by Member States can be considered to be satisfactory.

As regards the scope of application of the Directive, a significant number of Member States extended the protection beyond the scope of the Directive and provide protection not only to employees but also to self-employed persons. A large number of Member States also cover purely internal situations of movement of workers. Approximately half of Member States have laid down rules for transferability of vested pension rights, and some Member States also provide extended information obligations going beyond the requirements of the Directive.

As regards the transposition of individual provisions of the Directive, the analysis of the Member States' transposition measures has revealed only a limited number of transposition issues affecting a few Member States. This is in particular the case with respect to minimum requirements for acquisition of supplementary pension rights established by the Directive, i.e. the transposition of the rules regarding the waiting and vesting periods as well as vesting age.

The analysis of the Member States' and stakeholders' responses to the questionnaire on the transposition and application of the Directive reveals that some important changes to previously existing rules in some Member States had to be taken. In other Member States, the rights that have been laid down by the Directive were already sufficiently guaranteed before the transposition of the Directive.

From analysis it appears that the Directive has not been used by Member States to reduce the standards on acquisition and preservation of supplementary pension rights or to reduce information requirements.

The replies to the questionnaire suggest that the Directive has had an overall positive impact for all stakeholders. This conclusion takes into account that at the time of the adoption of the Directive there were still workers in Member States whose supplementary pension rights could be forfeited if the worker's employment relationship ended before he or she had completed a minimum period of scheme membership (vesting period) or before he or she had reached the minimum age (vesting age). The impact of the rules of the Directive in individual Member States, nevertheless, varies greatly as there were also some Member States where the legislation had already complied with the provisions of the Directive and thus the impact was not significant.

[52] FR and IE

As regards the information requirement established by the Directive, the impact of the Directive, in combination with requirements of Directive 2016/2341/EU on the activities and supervision of institutions for occupational retirement provision (IORPs) has been important. At this point, it is difficult to assess the level of awareness of EU workers about their supplementary pension rights.

It is nevertheless clear that the minimum requirements laid down in the Directive, such as those on acquisition and preservation of supplementary pension rights as well as more detailed information requirements, have created more legal certainty and provide workers more awareness of their supplementary pension rights when (considering) moving abroad. As a result, it should contribute to facilitating free movement of workers within the EU.

As regards the application of the Directive, the analysis shows that the provisions transposing the Directive in individual Member States are operational and there have not been any court disputes so far regarding the rules laid down by the Directive. In most countries no particular difficulties have been identified regarding the application of the provisions of the Directive, only a very limited number of issues have been reported in relation to individual Member States.

It must, however, be highlighted that given the late transposition of the Directive in many countries and the relatively short period of its application in practice, it is not possible to draw robust conclusions regarding its impact at this stage.

The Commission will keep monitoring the implementation of the Directive and will continue working with the Member States to ensure that the Directive is correctly transposed and implemented in all of them.

Following the adoption of the Directive, other policy initiatives at EU-level have been taken with a view to enhance the contribution of supplementary pension schemes to adequate old-age incomes in Member States. In particular, the Commission has established the High Level Group on pensions in 2018[53], which aims to provide policy advice to the Commission on matters related to ways of improving the provision, safety through prudential rules, intergenerational balance, adequacy and sustainability of supplementary (occupational and personal) pensions in light of the challenges in the Union and the Member States affecting the adequacy of old age incomes and the development of the Union's pension market. The group adopted its Final Report including policy Recommendations addressed to the EU, Member States and pension providers in December 2019. The Commission will carefully study the Report to ensure appropriate policy follow-up and promote and disseminate the report to Member States and stakeholders.

53 https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=3589&news=1