Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council on improving the portability of supplementary pension rights

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(2006/C 185/08)

On 15 December 2005 the Council decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the abovementioned proposal

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 20 March 2006. The rapporteur was **Ms Engelen-Kefer**.

At its 426th plenary session, held on 20/21 April 2006 (meeting of 20 April 2006), the European Economic and Social Committee adopted the following opinion by 103 votes to 19 with 11 abstentions:

1. **EESC conclusions and recommendations**

1.1 The EESC welcomes and endorses the Commission's proposed objectives, although it has mixed feelings about some of the means used to achieve them.

1.2 In particular, it is questionable whether exemptions contribute to what the Commission is really trying to achieve. This applies both to exemptions from transferability and to the long transition periods for reducing the requirements for definitive acquisition of pension rights.

1.3 But above all, the objectives of facilitating mobility and ensuring effective supplementary retirement income protection can only be achieved if differing taxation systems in Member States are also adjusted.

1.4 Future work on the draft directive should therefore take the following points into account:

— A closely coordinated system for both the acquisition and the retention and transfer of supplementary pension rights must be in place to enable the dismantlement of obstacles to employees' mobility. At the same time, sufficient account must be taken of the implications for the various supplementary pension schemes in the Member States and of the potentially greater expenditure within supplementary pension schemes.

— Financial contributions by employers to the development of supplementary pensions are desirable and indeed necessary. To avoid any negative effects, transitional arrangements enabling employers to gradually bring pension schemes into line are needed.

— In keeping with the fundamental objectives of the Directive, the deadlines for its transposal should be kept as short as possible, taking into account what is actually necessary in each country.

— Similarly, general exceptions without time limits for certain implementation processes should be reconsidered.

— Accompanying measures are needed in the field of taxation of supplementary pension schemes in order to dismantle obstacles to mobility arising from such schemes.

2. **Introduction**

On 20 October 2005, the European Commission submitted its proposal for a Directive of the European Parliament and of the Council on improving the portability of supplementary pension rights. It argues that its proposals are needed to eliminate obstacles to mobility, given the increasing importance of such schemes in covering the risks of old age. Obstacles to job changes are to be removed both within and between Member States.

2.1 The Commission goes on to list the obstacles which need to be overcome in the following areas:

— conditions for the acquisition of pension rights,

— rules for the preservation of dormant rights,

— rules for the transfer of rights.

The Commission also feels that mobility can be enhanced if employees are given (better) information on how a change of employer may affect supplementary pension rights.

2.2 The Commission sees its proposal as the logical next step to the exchange of information and experience at European level that has been going on for a number of years. No negotiations were launched on an agreement between the social partners due to divergent views on the thrust of Community-level action and on the instruments.

2.3 On the basis of Articles 42 and 94 of the EC Treaty, the Commission is seeking in its proposal to flesh out the laws of the Member States in this area. Among other things, this is to ensure that the establishment of enterprises in other Member States is not held back by problems in recruiting qualified staff, due to such staff being tied to other companies by rules on supplementary pension schemes.

2.4 The Commission justifies its choice of a Directive as a legal instrument by pointing out this is the only way to strike a balance between the necessary rights of employees with regard to free movement and the requisite flexibility on the part of national legislative authorities when transposing the Directive, while taking account of the particular circumstances of supplementary pension schemes in that country.

3. **Gist of the Commission proposal**

3.1 The Directive defines the concepts used in this area in accordance with the definitions given in Directive 98/49/EC.

3.2 The proposal establishes the principle that contributions to a supplementary pension scheme paid by an employee or by an employer on behalf of an employee must not be lost after the termination of employment, even if these contributions do not yet confer any rights to subsequent pension payments. Provisions must therefore be in place for contributions to be either reimbursed or transferred.

3.3 To ensure that young workers in particular do not lose pension rights after a change of employer, the Commission suggests that the minimum age at which a worker can start acquiring supplementary pension rights should not exceed 21 in any Member State.

In addition, the waiting period, i.e. the length of time after the beginning of an employment relationship before an employee can become a member of the supplementary pension scheme, should not exceed one year.

Likewise, the period after which contributions definitively confer pensions rights, measured from the beginning of contributions, should be no longer than two years.

3.4 The Commission advocates steps to ensure a fair adjustment of dormant rights; it is left up to Member States to decide on the form that this should take and the means used to achieve it. Besides, if pension rights only represent a small amount, a supplementary pension scheme should also have the option not only of transferring pension rights to a new employer but also of reimbursing them, provided that such rights do not exceed a certain threshold set by Member States.

3.5 To promote mobility and to avoid penalising employees who change jobs, the transfer of acquired rights from the supplementary pension scheme of one employer to that of a new employer should be made easier. For example, transfers must not penalise employees financially as a result of differing calculating methods or excessive administrative charges.

3.6 Employees are to always have a choice between transferring rights and leaving them in the previous scheme.

3.7 The proposal also provides for employees to be given information on request and within a reasonable period as to the implications of a change of job for supplementary pension rights.

3.8 *Transposition*

The Directive is to be transposed in the Member States by 1 July 2008 at the latest.

Member States have the option of an additional 60 months (starting from 1 July 2008) for transposing the provision to reduce the period after which rights are definitively acquired to two years. Specific reasons must be given for the use of this option.

3.9 Possible exemptions from transferability for an unlimited period are granted for support relief funds, companies which constitute book reserves for pension payments and pay-as-you-go supplementary pension schemes. The Commission must be informed of the specific reasons. The Member State concerned must disclose which measures have been taken or are planned in order to ensure transferability. The question of whether additional measures are needed to improve the transferability of these systems as well will be considered by 2018 at the latest.

4. **General assessment**

4.1 The views of the social partners as to the scope and content of any European legislation, are too disparate for an agreement to be reached among them, as provided for in Article 139 of the EC Treaty.

4.2 However, in the preamble to their framework agreement on fixed-term work, the ETUC, UNICE and CEEP acknowledged that 'innovations in occupational social protection systems are necessary in order to adapt them to current conditions, and in particular to provide for the transferability of rights'.

4.3 This clearly reflects the general willingness to take a fundamental look at the need to bring the legal bases for the acquisition and retention of supplementary pension rights into line. Although fixed-term employment is a different issue from that of the free movement of workers, the parties to this agreement acknowledge that employment conditions are changing in ways that also require changes to occupational social protection schemes.

4.4 Besides, this also reflects the important role played by the social partners in shaping supplementary pensions schemes in most Member States. However, as the scope of measures by the social partners is restricted to the national level, the Commission's plan to adopt a Directive still makes sense.

4.4.1 The detailed content of supplementary pension schemes should be decided at Member State level, including through collective agreements by the social partners. On the European level, rules on conditions for acquisition should therefore focus on principles and provide direction for measures at national level, thereby leaving the social partners sufficient room for collective bargaining.

4.4.2 Article 4 of the directive should be replaced by the following: 'where conditions for acquisition are stipulated, such as minimum age, waiting periods and/or vesting periods, such conditions should be fair and justified on objective (and non discriminatory) grounds.'

4.5 A change of employer can have a negative impact on the acquisition and level of supplementary pension rights.

This negative impact may influence employees' decisions whether or not to change employer, although obviously such a decision is contingent on many other factors as well.

4.6 Especially as a result of demographic change, statutory pensions will no longer suffice in future to maintain living standards, even in countries where statutory social security schemes are the main source of retirement income. Supplementary pension schemes are therefore becoming increasingly important, even though such systems are also exposed to the repercussions of demographic change.

4.7 Insofar as it ties in with the fundamental Single Market goal of guaranteeing the free movement of persons, and also in view of the need to improve conditions for supplementary pension schemes, the Commission's approach to removing barriers to mobility created by supplementary pension schemes is welcome.

4.8 Moreover, Article 40 of the EC Treaty obliges the Council to 'issue Directives or make regulations setting out the measures required to bring about freedom of movement for workers'. The basis of the proposal — Article 42 — is thus given additional backing through Article 40.

4.9 The elimination of barriers to mobility is also of particular importance for achieving the fundamental goal of the Lisbon strategy, i.e. strengthening the European economy by creating a knowledge-based society. A knowledge-based society is not only a precondition for social development; it is also the most important factor in productivity. Such a society is based on the capacity of its citizens to generate new ideas and innovation. To build up such a society requires a continuous exchange of knowledge and experience. Employee mobility can make a significant contribution here. Moreover, preserving social cohesion is part of the Lisbon strategy. This is another reason for supporting the objectives of the Commission's draft directive.

4.10 It should also be noted that Council Regulation 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community also tackled the issue (among others) of avoiding penalising pension provision. This was one of the first social policy instruments and its aim was to reduce obstacles to free movement, and negative consequences arising therefrom. The Commission's proposal thus follows on logically from this policy, particularly in view of the legal loophole that exists for supplementary pension schemes and which will have to be closed, given the growing importance of such schemes for maintaining living standards in old age.

4.11 Measures to break down barriers to mobility are timely, given that 2006 has been designated by the Commission as Year of Workers' Mobility.

4.12 Supplementary pension schemes vary from Member State to Member State. Logically, therefore, a European framework is the only way to gradually bring the various systems into line in order to make it easier to transfer from one supplementary pension scheme to another.

4.13 This certainly applies at European level; at the same time, however, bringing arrangements for cross-border transfers into line while neglecting transfers within a Member State would hardly be in the interests of securing equal living and working conditions. The Commission's approach, which involves eliminating both cross-border and internal obstacles to workers' mobility, is therefore the right one.

4.14 However, the draft directive does not cover one important area, i.e. the alignment of taxation on supplementary pension schemes, even though differences in this area between tax treatment in Member States represent a substantial obstacle to mobility since workers can be taxed twice (on contributions and on benefits). This is because inclusion of taxation would require unanimous approval at Council with the risk that this could lead to the directive being blocked. The Commission has sought therefore to deal with taxation through its Communication of 19 April 2001 and is currently taking infringement proceedings against a number of Member States. The Committee believes that without this action by the Commission the aim of improving portability of supplementary pensions will not be achieved.

5. **Comments on individual provisions**

5.1 There is strong evidence that long waiting periods and a long deadline for the definitive acquisition of pension rights, coupled with a high minimum age may indeed deter employees from changing their jobs.

The Commission's approach to cutting waiting periods and deadlines for the acquisition of definitive pension rights and also to reducing the minimum age is therefore a step in the right direction. The chosen measures might thus be seen as the first step towards complete dismantlement of such obstacles.

5.2 However, the potential implications of the proposal for voluntary employer-funded supplementary pension schemes must also be considered; it must be borne in mind that these measures may lead to greater expenditure, potentially undermining willingness on the part of employers to continue funding such schemes.

5.3 Voluntary employer-funded contributions are also an important HR policy tool. Thus, in the drive to attract the best brains, and given changing demographic trends and the increasing demand for skilled labour, it could well be in the interests of employers to grant pension rights at an early stage and after a short period of employment. Besides, supplementary pension provision is only one of many HR tools, and one in which the welfare aspect is always dominant. On the other hand, long waiting and vesting periods reward employees' loyalty to the company and thus increase length of service.

5.4 As part of a general approach, variations between Member States in the relationship between supplementary pension schemes financed (solely) by employers and those financed by an employee's own contributions must also be taken into account. In order to reflect these differences, giving Member States options for differentiating between schemes on the basis of financing could be considered.

5.5 The Commission's approach to removing barriers to competition for companies intending to become established in other Member States must be clearly stressed, as long waiting periods and a high entry age tie down employees and therefore inhibit mobility.

5.6 The Commission has also taken the need for gradual adjustment into account through the option of an extended transition period for transposing the provisions on entitlement periods.

5.7 With regard to the preservation of dormant pension rights, it cannot be denied that adjustment could potentially result in greater expenditure within supplementary pension schemes.

However, this largely depends on the type of contributions involved. In the case of defined-contribution schemes, adjustment of dormant pension rights makes little sense since the value of the accrued capital depends on developments in capital markets and returns. However, this could have potential negative implications for defined benefit schemes because contributions are no longer being made.

5.8 Nevertheless, given the role of supplementary pensions in complementing state pension schemes, it does seem that there is a need for adjustments. Admittedly, the wording of the proposal does not impose a strong obligation on Member States to take measures of this kind, and the examples set out in recital 7 can only be seen as suggestions. It is also unclear whether differentiated adjustment on the basis of employee loyalty and the obligation to adjust payments rather than pension rights are consistent with the Commission's notion of fair adjustment.

5.9 The option of reimbursing entitlements below a certain ceiling — established on the basis of national practice — instead of transferring them seems reasonable.

5.10 However, the choice whether to reimburse entitlements or retain them is to be left entirely to supplementary pension schemes. But, even entitlements which the general rules classify as low-value could very well be of importance to individual employees as regular additional retirement income. Unwanted reimbursement might therefore stand in the way of a change of employer.

5.11 The EESC endorses the objectives of the Commission's proposal on the portability of pension rights. In particular, the EESC appreciates the fact that the Commission, rather than limiting itself to simply submitting proposals to enhance the portability of supplementary pension rights, is pursuing a comprehensive approach aimed at dismantling barriers to mobility in supplementary pension schemes.

5.12 A particularly positive point concerning the rules on transfer is that they will not penalise employees financially, according to the Commission's plans. This is consistent with the aim of the Directive, since, if in doubt, employees will opt to transfer their pension rights and thus change employer only if such a transfer does not penalise them financially.

5.13 Specific proposals concerning tighter requirements for the provision of information may also serve the purposes of the Directive, although it must be borne in mind that these requirements should be proportionate to actual resources, particularly in the case of smaller undertakings.

5.14 However, one criticism is that Article 6(1) could be interpreted in conjunction with the definition in Article 3f to mean that only employees who change jobs by choice are entitled to transfer supplementary pension rights; this would seriously disadvantage individuals leaving employment as a result of dismissal. Partly in view of the necessary objective of providing protection from poverty in old age, it therefore seems appropriate to include all forms of job change within the scope of Article 3(1).

5.15 Besides, the theoretical option of exempting particular supplementary pension schemes from transferability could clash with the fundamental goal of the Directive. Although Member States are supposed to inform the Commission about measures taken by them to extend transferability to such schemes, this may not be enough, given the long-standing debate on and the urgent need for the development of a stable second pension pillar. On the other hand, given the diversity of schemes in Member States, the Commission's proposals are only likely to meet with acceptance if adequate transition periods are provided for. Specific timescales and conditions could therefore be included.

Brussels, 20 April 2006

The President
of the European Economic and Social Committee
Anne-Marie SIGMUND

APPENDIX

to the opinion of the European Economic and Social Committee

The following amendment, which received at least a quarter of the votes cast, was rejected in the course of the debate:

Point 4.10

Add a new point after 4.10.

> '4.10.1 The proposal centres the directive around a transfer of pension capital when changing jobs, which is not always appropriate. It would be better to guarantee the right to consolidate acquired pension rights, in accordance with the way the state pension is dealt with under Regulation 1408/71.'

Reason

It might be practical to use the same principles for combining different supplementary systems as for different public pension systems.

Voting

For: 49
Against: 54
Abstentions: 19