Improving the acquisition and preservation of supplementary pension rights in order to enhance worker mobility

2005/0214(COD) - 20/06/2007 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted the resolution drafted by Ria **OOMEN-RUIJTEN** (EPP-ED, NL), and made some amendments to the proposal on improving the portability of supplementary pension rights. Parliament wanted to make improvements by setting standards for the acquisition and preservation of pension rights, but did not agree with the Commission’s proposals on the portability of pensions. It stated that, since supplementary retirement provision is becoming increasingly important in all the Member States for securing people's standard of living in old age, the conditions for acquiring, maintaining and transferring acquired rights should be improved.

The main amendments were as follows;

Scope: the Directive does not apply to the following: a) supplementary pension schemes, which, on the date of entry into force of the Directive, no longer accept new active members and remain closed to them; (b) supplementary pension schemes that are subject to measures that provide for intervention by a Member State's authority or court, with the aim of safeguarding or restoring their financial situation, including liquidation procedures; c) insolvency protection arrangements, compensation arrangements and national pension reserve funds.

Definitions: Parliament amended some of the definitions in the original text. Inter alia, the definition of "supplementary pension scheme" is simplified to mean a pension scheme established in conformity with national legislation and practice and linked to an employment relationship, intended to provide a supplementary pension for employed persons. A definition was inserted for "vesting period" which means the period of active membership of a scheme, required under national law or the rules of a supplementary pension scheme, in order to trigger entitlement to a supplementary pension. "Value of dormant entitlement" means the capital value of the pension rights, calculated according to recognised actuarial principles in conformity with national practice and custom.

Acquisition conditions: Parliament aimed for common minimum standards for acquiring supplementary pension rights. The text now states that, where the supplementary pension scheme stipulates a vesting period, that period shall not exceed five years. In any event, no vesting condition shall be applied to the member of a supplementary pension scheme once that member has reached the age of 25. Where an outgoing worker has not yet acquired vested pension rights when the employment relationship is terminated, the supplementary pension scheme must reimburse the contributions paid by the outgoing worker, or paid by the employer on the worker's behalf in accordance with legal provisions or collective agreements or contracts, or, if the outgoing worker bears the investment risk, the investment value arising from these contributions. Parliament stipulated that, in objectively justified cases, Member States may allow the social partners to include in collective agreements non-discriminatory arrangements not covered by these two points,, on the basis that these arrangements provide at least equivalent protection.

Fair treatment of dormant pension rights: having regard to the nature of the pension scheme, Member States must ensure fair treatment of the value of the dormant pension rights of outgoing workers and protect these pension rights against insolvency of the undertaking. A definition of fair treatment is inserted in the text. It might mean, for example, that the value of the dormant rights develops generally in line with the value of the rights of active scheme member. Member States may allow supplementary pension

schemes not to preserve vested rights but to pay a capital sum equivalent to the value of the vested pension rights to the outgoing worker, as long as the value of the vested pension rights does not exceed a threshold established by the Member State concerned.

Transferability: Parliament deleted the Commission's text regarding transferability. The Commission had proposed that workers should be able to transfer their vested rights to their new employer. A new recital now states that the Directive does not aim to limit outgoing workers' ability to transfer vested pension rights. To encourage the free movement of workers, Member States should endeavour, as far as possible and in particular when introducing new supplementary pension schemes, gradually to improve the transferability of vested pension rights.

Reports: the Commission's report (which must be produced every five years after July 2008) must contain an assessment of employers' willingness to offer a supplementary pension scheme from the entry into force of the Directive. It must also include a proposal on how and when acquired pension rights can be transferred, which shall also conclude the undertaking's liability for transferred pension rights. Furthermore, no later than five years after the entry into force of the Directive, the Commission must draw up a report, in particular with regard to the conditions of transferring capital representing workers' supplementary pension rights. On the basis of that report, the Commission must present any proposal containing amendments to the Directive or other instruments which prove necessary in order further to reduce the obstacles to the mobility of workers created by certain rules on supplementary pension provision.