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

2005/0214(COD) - 09/10/2007 - Modified legislative proposal

The Commission considers that a majority of the European Parliament's amendments are acceptable in full, in principle, or in part, as they maintain the aims and political viability of the proposal and in many cases enhance the original drafting. The amendments aim to shift the focus of the Directive onto the acquisition and preservation of dormant rights and away from provisions for transfers.

Having taken careful note of the European Parliament's decision and the views expressed by experts within the Council working group, the Commission acknowledges this change of priorities and accepts the removal of article 6 (transfer provisions). Accordingly the Commission proposes to amend the title of the Directive, accepting in part the language used by the European Council in their reference to the draft Directive in June 2007. The amended proposal is now entitled: "Proposal for a directive on the minimum requirements for enhancing worker mobility by improving the acquisition and preservation of supplementary pension rights".

More specifically, the Commission accepts the following amendments:

Scope of application and other general provisions: the Commission accepts the amendment deleting the reference to the word portability in recital 5 and replaces the term 'harmonisation' with 'minimum requirements'. On the other hand, it cannot accept the amendment which replaces the term ‘workers’ with ‘persons’ in article 1 on the grounds that the Directive is concerned with removing obstacles within supplementary pension schemes that impact on workers' freedom of movement or mobility. The Community does not have the power to require Member States to undertake 'the early development of supplementary pension schemes'. The Commission fully accepts the amendment aiming to: propose a new recital highlighting the importance of ensuring the sustainability of supplementary pension provision is not undermined by this Directive and that the protection of the rights of remaining workers and scheme pensioners is considered in full; highlight the important role that social partners play in the design and implementation of supplementary pension schemes.

The amendment introducing a new recital emphasising that the Directive does not require the introduction of legislation to establish supplementary pension schemes where none exist previously has been accepted by the Commission in principle but it clarifies the text so that it now states that Member States, whilst obliged to transpose the provisions of this Directive into national law, retain responsibility for organising their own pension systems.

The Commission accepts the incorporation of a new recital clarifying the Directive's scope. It also accepts the amendment introducing a new recital which clarifies the exemption from the application of the Directive of those schemes that are closed to new members. A technical clarification is made relating to 'sub-sections' of closed schemes to ensure that where applicable, only those parts of supplementary schemes closed to new members will be exempt. Another amendment introduces a new recital clarifying that the Directive will not apply to insolvency protection systems, compensation arrangement schemes or national reserve funds and the Commission accepts this amendment in full.

Lastly, the Commission accepts a new recital that clarifies the definition of 'supplementary pension schemes' further. It simplifies the description of conditions where individual pension arrangements should

be considered as supplementary schemes for the purposes of this Directive. The Commission recognises that the taxonomy of pension systems, in particular with regards to individual pension arrangements, is not always clear-cut. Therefore the recital clarifies that individual pension arrangements concluded through an employment relationship should be considered as within the scope of this Directive. In addition, the Commission has introduced a new recital in order to clarify that special, small payments, made at the end of a career and financed solely by an employer are not considered supplementary pensions for the purposes of this Directive.

Conditions governing acquisition: as regards the acquisition of pension rights, the approach Parliament has taken to introducing minimum acquisition requirements strikes a different balance from that of the Commission whilst maintaining the principle of reducing obstacles to mobility found within some supplementary pension schemes. The central aspect of the amendment proposes the removal of any reference to minimum ages for vesting to be replaced with a new formulation that intrinsically links the concept of a maximum permitted vesting period and the age of the active scheme member. The amendment, therefore, proposes a maximum vesting period of 5 years (where stipulated) for active scheme members under the age of 25 and the exclusion of any vesting conditions for those over the age of 25.

The Commission recognises that the intent of this amendment is to acknowledge that in general, younger workers have greater mobility than those over the age of 25 and that the accrual of pension rights for those under the age of 25 may be less urgent than for those above this age. The Commission therefore accepts the proposal to allow, where applicable, a vesting period that does not exceed five years for those under the age of 25 as a compromise measure. With regards to the prohibition of any vesting conditions for the over 25s, the Commission, whilst supporting the principle of workers' rights vesting at the earliest opportunity, accepts that some supplementary pension schemes may face significant administrative and technical difficulties if a short vesting period is not permitted. This is particularly the case for schemes where national legislation does not allow for a mandatory period of employment before joining a pension scheme. As such, the Commission is unable to accept the proposition to eliminate vesting conditions beyond the age of 25 and instead proposes that where vesting periods are present, these may not exceed one year. This remains a proportionate approach that reduces obstacles to mobility, whilst remaining mindful of placing undue burdens on supplementary pension schemes. The Commission has therefore redrafted Article 4(c) on this basis whilst clarifying that a vesting period of one year always applies once an active scheme member reaches 25 years of age, regardless of the age at which they began accruing rights.

The Commission accepts in principle the amendment outlining the role that social partners - through collective agreements - can play when introducing the provisions of articles 4(a-d). It introduces them as new article 4(e) with drafting changes discussed in Council which offer greater legal clarity. Lastly, it accepts the amendment stating that due to the increased importance of supplementary pension provision to incomes in retirement, the acquisition, preservation and transfer of pension rights should be improved.

Preservation of dormant rights: the Commission accepts the introduction of a new recital emphasising the right of outgoing workers to leave their vested pension rights as dormant rights in the scheme in which they vested. It makes specifications in particular relating to certain situations where highly mobile workers, particularly in the context of defined contribution pension schemes, may have their rights discharged to another supplementary pension scheme that fulfils the provisions laid down in article 5.1.

The Commission accepts, in principle, the amendment on clarifying how dormant rights should be calculated and preserved. The text now refers to 'national law and practise' for the calculation of pension right values, rather than 'actuarial standards' to avoid confusion with the cross-border provisions within Directive 2003/41/EC. The text also contains reference to justified administrative costs that may be taken into account in the event of dormant rights being adjusted. The Commission considers this to be a proportionate and necessary addition.

With regards to the discharging of small amounts of vested pension rights of outgoing workers, the Commission has accepted this amendment in principle and adds clarifications concerning the concept of calculating capital payments. It also accepts, in principle, the amendment Permitting outgoing workers the right to leave their dormant rights within the scheme where they vested. To ensure clarity of intent the Commission also incorporates text to clarify that where applicable, the value of newly formed dormant pension rights should be calculated at the moment a worker leaves a scheme. On the other hand, the Commission cannot accept the introduction of insolvency protection within this Directive as it is already subject to European legislation.

The Commission however, whilst accepting the principle of providing more detail in article 5.1, considers that the structure of the proposed amendment does not fully achieve its aim of defining 'fair treatment' in a more explicit manner. Therefore, the amended proposal recasts and clarifies article 5.1 by placing two common and specific methods of treating dormant rights (development in line with the rights of active scheme members and development in line with pension benefits currently in payment) alongside the concept of fair treatment at the head of the article. For additional clarity to complement these changes the Commission introduces a new recital stating that the Directive does not create any obligation to establish more favourable conditions for dormant rights than for the rights of active scheme members.

Moreover, the Commission also introduces extra clarification to article 5.1(c) permitting Member States to set proportionate limits when dormant rights are adjusted in line with price or wage inflation. It also accepts the amendment which proposes drafting changes to article 5.2 with regards to how pension schemes can discharge liabilities as a capital sum when accrued rights are below a specific threshold set by national legislation.

Transfers: the Commission accepts the amendments which emphasise that the Directive does not aim to discourage the transfer of pension rights. The recitals recommend that Member States should seek to improve conditions of transfer wherever possible. It accepts the amendment, with drafting changes, which states that transfers should be particularly encouraged in new supplementary pension schemes. Lastly, it proposes the deletion of article 6 on the transfer of pension rights.

Information and non-regression: a European Parliament amendment proposes that active scheme members have the right to request information pertaining to their supplementary pension rights in the event of their employment being terminated. The Commission accepts this part of the amendment in full. It adds the possibility to limit the administrative obligations relating to information. Additional text allowing for an administrative safeguard is introduced by the Commission to make clear that there is no obligation to provide information more often than once a year.

The Commission clarifies the **non-regression** article, by replacing the term 'portability' with 'establishment and preservation of pension rights' reflecting the removal of transfer provisions from the Directive. The Commission has in addition clarified the effect of the article to make clear that preservation affects outgoing workers, whereas the acquisition of rights concerns workers more generally.

Implementation and reporting: the Commission accepts the amendment which proposes that Member States, when implementing the Directive, may be granted an extension of 60 months with regards to implementing both articles 4 (Conditions governing acquisition) and 5 (Preservation of dormant pension rights). The Commission accepts this proposal as well as the minor drafting changes as proportionate to balancing the elements of reducing obstacles to freedom of movement and mobility and ensuring the ongoing sustainability of supplementary pension provision. The Commission has also amended the date of implementation to reflect the current situation. It accepts the amendment which specifies that one element of the 5 yearly reports should assess the 'willingness of employers' to offer supplementary pensions following the implementation of this Directive. The Commission introduces a new paragraph requiring the

Commission to review in particular the conditions for the transfer of pension rights within 5 years of the adoption of the Directive. On the basis of this report the Commission should bring forward any necessary proposals to further reduce obstacles to mobility.