Institutions for occupational retirement, pension funds: laws, regulations and administrative provisions

2000/0260(COD) - 05/11/2002 - Council position

In principle, the Council can subscribe to the objectives of the Commission proposal. However, the Council differs from the proposal in its view of their relative importance as well as the means to achieve them, and is of the opinion that some of the objectives are immediate, others for the longer term. It has been of paramount importance to the Council that Member States should retain full responsibility for the organisation of their pension systems as well as for the decision on the role of each of the three "pillars" of the retirement system. These views have led the Council to modify the Commission proposal on a number of points as outlined in the following section, in many cases drawing directly or indirectly on the amendments of the European Parliament. The common position furthermore takes account of nearly all the amendments proposed by Parliament and accepted by the Commission. These have been incorporated, in some cases after being reworded in the interests of internal consistency of the text. Three of Parliament's amendments that were accepted by the Commission have not, however, been taken on board, chiefly on account of reorganisation of the text and for the sake of internal consistency. The common position develops and clarifies the main provisions of the Commission proposal concerning in particular: - the title of the common position : The title has been adjusted in order to bring out more clearly the fact that the Directive not only relates to the activities of IORPs but is also intended to enable their activities to be supervised; - scope : this provision ensures that the Directive applies where IORPs do not have legal personality and are run by management entities, as is the case in some Member States; - optional application to life assurance companies : this provision spells out the conditions in which Member States can decide to apply certain provisions of the Directive to life assurance companies. The Council common position states that, in that case, the assets and liabilities corresponding to the occupational retirement provision business must be ring-fenced. It also stresses that the competent authorities of the home Member State are responsible for verifying the strict separation of the relevant occupational retirement provision business; - conditions for operation : the wording introduced in the common position affirms the home-country principle, whereby Member States are entitled to monitor the conditions of operation of institutions established in their territory; - information to be given to members and beneficiaries of the scheme : the common position stresses that it is for the home Member State to lay down the rules on information to be given to members and beneficiaries while fully respecting the acquis communautaire. It has also been amended to stipulate that the list of information to be provided is a minimum and that Member States are free to lay down more detailed rules on information to be supplied by IORPs located in their territory; - funding of technical provisions : this provision lists the conditions in which a Member State may allow an institution to depart from the rule that it must always have sufficient assets to cover technical provisions. The Council was anxious to make it clear in the common position that transfer procedures relatenot only to assets but also to the corresponding liabilities; - investment rules : the Council common position has clarified the wording of this paragraph by referring to the prudent person rule, a well-known concept, and stipulating that the rules of behaviour listed thereafter are the essential aspects of that concept. The rule on self-investment (i.e. investment in the sponsoring undertaking) has been confirmed and supplemented with a ceiling of 10% in cases where the sponsoring undertaking belongs to a group; - management and custody : the Council common position has broadened the freedom to provide asset management services to include services offered by managers authorised in accordance with the new UCITS Directive (2001/107/EC) and the management entities. A new paragraph introduced by the common position requires Member States to have arrangements in place under their national law enabling them to freeze assets held by a depositary or custodian, at the request of the authority of the IORP's home Member State; - cross-border activities : the text has been clarified. The Council was also anxious to make it clear in the common position that any cross-border activity must be developed in full compliance with the provisions of national social and labour legislation on the organisation of Member States' pension systems, including compulsory membership. This is fully in line with the objectives of the Directive, which is not intended to interfere with national pension schemes. Furthermore, a new article has been by the common position which establishes the principle of effective cooperation between Member States and the Commission as essential to the satisfactory application of the Directive. The Council has agreed to enter into its minutes the statements set out below: - statement made by Belgium : Belgium states that it cannot endorse the text of the proposal for a Directive as contained in the compromise which the Presidency has submitted to the Council. It considers that, owing to the shortcomings in quantitative rules, the security of operations in the context of cross-border membership cannot be guaranteed, and as a consequence Belgium cannot subscribe to the principle of mutual recognition that this involves. It would reiterate that the economic and social cost in the event of such a failing and the related political risk would be borne, directly or indirectly, by the Member State in which the commitment is made, and not by the State where the retirement institution is located. Moreover, Belgium regrets that is has not been possible to extend the scope of the Directive to include institutions for occupational retirement provision which operate pay-as-you-go or book-reserve schemes, as this contributes towards maintaining systems which offer less security. - statement made by the Netherlands : in accordance with the principle of subsidiarity, Member States should retain full responsibility for the organisation of pension systems, as well as for the decision on the role of each of the three pillars in individual Member States. Each Member State may make the conditions of operation of an institution located in its territory subject to additional requirements, in order to realise a level playing field. This Directive is not intended to callthis prerogative into question.