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

2005/0214(COD) - 20/10/2005 - Document attached to the procedure

COMMISSION'S IMPACT ASSESSMENT

For further information concerning the background to this issue, please refer to the summary of the Commission's initialproposal for a Directive of the European Parliament and the Council on the improvement of portability of supplementary pension rights COM(2005)0507.

1- POLICY OPTIONS AND IMPACTS

Having ruled out the option of 'doing nothing, because it would not yield the desired result, the Commission considered three policy options.

1.1- Option 1 - European Collective agreement: The European social partners representing both sides of industry have recognised the need for action at EU level. However, they differ over the instruments to achieve this aim. Some believe that exchanges of experiences and information-sharing or codes of conduct would be the best way to achieve this, while others want legislative action to be taken. Not only is supplementary pension provision an increasingly important element of the social protection system, it is also part of the remuneration package agreed at national, sector or company level by social partners or directly between employer and employee. The Commission consulted the social partners, firstly, as to whether action at Community level aimed at improving portability of supplementary pensions was desirable and, secondly, once it was evident they considered that Community action was needed, whether they would be prepared to start negotiations on a European collective agreement improving the portability of supplementary pension rights. They did not agree, however, on the instruments to be used at European level to improve portability and therefore did not engage in negotiations.

1.2- Option 2 - Code of conduct: A code establishing guidelines addressed to all parties involved in the design of supplementary pension provision and agreed upon by all relevant stakeholders and in particular social partners would have the advantage of allowing a great flexibility for individual schemes in establishing their rules of operation. However, discussions at European level on the improvement of portability have been ongoing for more than 15 years without result and there is no obvious reason why the actors concerned would change their attitudes and behaviour at this stage.

1.3- Option 3 - Legislative action: Another option would be to make use of a legislative instrument, such as e.g. a Regulation or a Directive. A strong point of legally binding action would be that it would allow for addressing all problems identified and hereby ensure to tackle the problem in an effective way. An extension of Regulation 1408/71 to supplementary pension schemes would at first sight be a logical step but applying the same rules to supplementary pension provision as to statutory social security schemes is not possible for 3 main reasons:

- it would require a system of mutual recognition between supplementary pension schemes (difficult to achieve because of the important diversity of supplementary pension schemes);

- this would result in very high costs for the schemes/employers (who would have to take into account the period during which the employee worked and was insured with a former employer).

- An updated and simplified version of Regulation 1408/71 was agreed in 2003 after years of negotiation – and it would prove very difficult to open discussions again.

On the other hand, a Directive establishing minimum requirements, thus respecting the contractual nature and the diversity of supplementary pension provision, would reconcile the need to improve the situation of mobile workers and thus the exercise of their right to free movement and the functioning of the internal market on a firm legal basis and to allow for the necessary flexibility taking into account the specific features of existing schemes and their diversity.

CONCLUSION: **A Directive would thus allow Member States, social partners or other relevant stakeholders to determine the best way to implement the minimum requirements established at EU level adapted to their specific national situation (option 3)**.

IMPACT

The proposed measure should enable the mobile worker to end his/her career with sufficient and adequate pension rights in particular in comparison to comparable employees who remain with the same employer during their entire career.

Enhanced mobility of workers: the proposed measure would mean that workers will not be deterred from changing jobs because they face a significant loss in their pension rights. This will also impact on the functioning of the European labour market and the possibility for employers to attract skilled employees.

The right balance between the benefits and the costs incurred: A distinction is made between *administrative costs* and *funding costs*, the latter being the costs directly related to the additional supplementary pension rights created for workers. The funding costs in the longer run might can be expected to disappear and lead to a more fair distribution of the resources of the pension scheme, in particular between mobile workers and those workers who remain within the scheme. Therefore, the cost impact for providers concerns the short term funding costs and the administrative costs.

Even if, from a point of view of social protection for mobile workers, the total elimination of waiting periods would have been the preferred measure, account has to be taken of the costs this might cause and the current practice in the Member States. Applying a maximum waiting period of one year strikes the right balance in terms of costs (in particular with a view to the administration of small entitlements) and at the same time allows the possibility to restrict scheme membership to those employees who have fulfilled their probation period (a current practice in some Member States).

From the point of view of social protection of mobile workers and enhancing mobility, the most preferred measure would be the total elimination of minimum ages required for the entry into the scheme. However, in particular with regard to the current differing legal situations in the Member States and the costs incurred, fixing a maximum minimum age requirement is the preferred measure for this proposed Directive.

The conditions for the acquisition and transferability of supplementary pension rights are typically stricter for defined-benefit plans. The impact of the proposed measures will therefore be more important for this type of schemes. In these schemes, employees' future benefits are defined in advance and determined by a specific formula linking benefit accrual to employee earnings, length of service or both. The employer or the pension scheme bears the risk of guaranteeing the payment of the pension promise.

In the case of defined-contributions plans, the employer and/or the employee contribute to an account established for each participating employee. Contributions are defined either in absolute terms or as a proportion of earnings. Each scheme member has an individual account with an amount that can be easily

preserved or transferred to another scheme of the same type. The resulting pension annuity reflects total contributions, investment returns net of administration charges and annuity rates at the moment of converting the accumulated capital into an annuity. Since problems of portability are less serious in defined-contribution schemes, this type of schemes will therefore also be less affected by the proposed measures in the directive.

Unfunded schemes (book reserve or pay-as-you-go schemes) currently, in many cases, do not allow for the transfer of acquired rights, since this will have to imply the anticipated freeing of capital. Introducing a right to transfer would therefore have an important impact on these schemes. It has to be noted however, that as a general trend the "pure" book reserve scheme is disappearing progressively.

2- FOLLOW-UP

The proposal foresees the presentation by the Commission of a report on the implementation of the directive five years after its entering into force. In order to monitor and evaluate effectively the implementation of the directive, it is essential that the problem of a lack of reliable and complete statistics on supplementary pension provision in the EU is addressed. Research and literature in this field is scarce and in the consultations that took place for the preparation of the present impact assessment, very few Member States and organisations provided the Commission services with concrete impact estimations of the presented options and limited themselves to merely general descriptions. In order to address this problem, the Pensions Forum has recently set up a working group providing assistance on the contents of a questionnaire allowing the Commission to gather information from the Member States on supplementary pension provision in quantitative and qualitative terms. This working group should present its recommendations by the summer of 2006. The Commission will then decide on how to set up a systematic information gathering in the field of supplementary pensions.