Supplementary pension rights: safeguard for employed and self-employed persons moving within the Union

1997/0265(CNS) - 26/01/2006 - Follow-up document

Pursuant to Article 10 (3) of Directive 98/49/EC ("the Directive"), this report deals with the application of the Directive. The measures to be adopted according to the Directive take into account the special nature and characteristics of supplementary pension schemes. By setting out certain rights for members of such schemes it limits the obstacles to free movement caused by the loss of all or some supplementary pension rights as a result of moving to another Member State to work. The content of the report reflects the situation in the Member States in September 2005.

The directive examines the following issues:

- Equality of treatment as regards preservation of rights under Article 4;

- Guarantee of cross-border payments under Article 5;

- Cross-border membership of posted workers under Article 6;

- Information provided to scheme members under Article 7.

The Commission’s conclusions may be summarised as follows:

- As far as the first two measures for safeguarding of pension rights are concerned – equal preservation and cross-border payments – the analysis of the Member States' responses reveals that these rights were already sufficiently guaranteed in some Member States before the entering into force of the Directive.

Nevertheless, the codification of these rights through the Directive will give more legal certainty, helping workers who are considering whether they will move abroad. Moreover, by enshrining these principles in EU legislation there is a guarantee that the mobile worker will not be confronted with a situation that falls behind the standards set at EU-level.

- The rights laid down in Article 6 not only serve to increase legal certainty, but also provide a simple procedure for allowing a member to continue to build up his supplementary pension entitlements during his period of posting. Therefore Article 6, which allows cross-border membership, serves to provide adequate protection for workers who are temporarily posted to another Member State. It is just as important that this cross-border membership does not become less attractive because the employer or his worker has to pay contributions due to an obligatory pension scheme established in the Member States in which the worker is posted. Accordingly, facilitating cross-border membership of posted workers can be considered as an important step towards facilitating labour mobility in the field of short-term posting within the meaning of Regulation 1408/71/EEC.

- As regards the information provided to scheme members, the impact of the Directive on the Member States' information regulations was important, even if the majority of existing rules already required the provision of information to the minimum level stipulated in Article 7.

- Supplementary pension schemes have not yet developed in all Member States into a significant component of national pension systems. However, many Member States have recently made structural pension reforms which impact on the design of their supplementary pension schemes. These reforms often result in an increasing role for supplementary pension provision in ensuring adequate income protection in old age for citizens of the EU. It is therefore of great importance that the supplementary pension rights of a worker exercising his right to live and work in another Member State become adequately protected.

Following the adoption of the Directive, further legal actions at EU-level have contributed to enhance the exercise of the right of freedom of movement of workers:

Cross-border payments: The first action concerns the guarantee of cross-border payments, net of taxes and transaction charges which may be applicable. Not only the non-receipt of a payment, but also the deduction of high transaction charges before a payment is made to another country, can affect the mobility of workers. Regulation 2560/2001/EC on crossborder payments in euro helps to lower such charges.

Cross-border membership: Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision ("IORP Directive", also known as "Pension Fund Directive") was adopted. Mutual recognition of supervision of institutions for occupational retirement provision (IORPs), introduced by the Directive, was a basic condition which allowed cross-border activity of these institutions, and consequently opened possibilities for cross-border membership. Through such provisions, the IORP Directive significantly facilitates crossborder mobility. Cross-border membership has the advantage that the worker can remain in the same scheme while moving to a job in another Member State, so that no change of a scheme takes place. The Commission has also taken the initiative in the field of pension's taxation to eliminate all tax rules that discriminate non-domestic pension funds. (Please see (COM(2001)0214).

Information requirements: in the framework of the IORP Directive, institutions for occupational retirement provision were obliged to provide their scheme members and beneficiaries with a range of information on matters affecting their benefits. However, as the scope of the IORP Directive is not identical to the present Directive, these provisions do not concern all providers of supplementary pension provision.

Perspectives: None of the governments reported that discrimination still existed in domestic and crossborder cases, or that the exercise of the rights relating to postings of workers within the Member States is hampered in practice. However, some problems do exist. These include difficulties in exercising the right to keep contributing to the scheme of origin during the period of posting, and problems which result from different fiscal systems and different rules on the acquisition of rights. The latter refers to what is often called "portability" of supplementary pension rights, i.e. the possibility of acquiring and keeping pension entitlements in the event of professional mobility. In other cases there might be not the problem of vesting but the problem of claiming rights in practice.

However, the present Directive does not address these obstacles to mobility. Thus, obstacles to free movement of workers in the field of supplementary pensions still exist. The Commission has recognised that insufficient portability of supplementary pension rights can create important obstacles to workers' mobility, and therefore to the free movement of workers which is one of the basic rights enshrined in the Treaty. It has accordingly presented a proposal for a directive improving the portability of supplementary pension rights. (COM(2005)0507.)