Basic information

1997/0265(CNS) CNS - Consultation procedure Directive	Procedure completed
Supplementary pension rights: safeguard for employed and self-employed persons moving within the Union **Subject** 2.30 Free movement of workers 2.50.05 Insurance, pension funds 4.10.11 Retirement, pensions 4.15.04 Workforce, occupational mobility, job conversion, working conditions	

Key players

European Parliament

Committee for opinion	Rapporteur for opinion	Appointed
ECON Economic and Monetary Affairs, Industrial Policy	KESTELIJN-SIERENS Marie-Paule (Mimi) (ELDR)	21/01/1998
JURI Legal Affairs, Citizens' Rights	FERRI Enrico (PPE)	22/01/1998
LIBE Civil Liberties and Internal Affairs	SCHAFFNER Anne-Marie (UPE)	17/12/1997

Council of the European Union

Council configuration	Meetings	Date
General Affairs	2111	1998-06-29
Social Affairs	2102	1998-06-04
Social Affairs	2060	1997-12-15

Key events

Date	Event	Reference	Summary
30/05/1995	Additional information		Summary
08/10/1997	Legislative proposal published	COM(1997)0486	Summary
15/12/1997	Debate in Council		
17/12/1997	Committee referral announced in Parliament		
16/04/1998	Vote in committee		Summary
16/04/1998	Committee report tabled for plenary, 1st reading/single reading	A4-0134/1998	

29/04/1998	Debate in Parliament		
27/05/1998	Modified legislative proposal published	COM(1998)0325	Summary
04/06/1998	Debate in Council		
29/06/1998	Act adopted by Council after consultation of Parliament		
29/06/1998	End of procedure in Parliament		
25/07/1998	Final act published in Official Journal		

Technical information

Procedure reference	1997/0265(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	EC Treaty (before Amsterdam) E 235
Stage reached in procedure	Procedure completed
Committee dossier	EMPL/4/09558

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A4-0134/1998 OJ C 152 18.05.1998, p. 0005	16/04/1998	
Text adopted by Parliament, 1st reading/single reading		T4-0242/1998 OJ C 152 18.05.1998, p. 0019-0069	30/04/1998	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(1997)0486 OJ C 005 09.01.1998, p. 0004	08/10/1997	Summary
Modified legislative proposal	COM(1998)0325 OJ C 205 01.07.1998, p. 0011	27/05/1998	Summary
Follow-up document	COM(2006)0022	26/01/2006	Summary
Follow-up document	COM(2009)0283	26/06/2009	Summary
Follow-up document	SEC(2009)0813	26/06/2009	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES0449/1998 OJ C 157 25.05.1998, p. 0026	25/03/1998	

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act

Directive 1998/0049
OJ L 209 25.07.1998, p. 0046 Summary

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

1997/0265(CNS) - 08/10/1997 - Legislative proposal

OBJECTIVE: to eliminate certain obstacles to the cross-border mobility of workers in the field of supplementary pension schemes. CONTENT: the objective of the proposed Directive is to ensure that there is adequate protection of the individual rights, whether acquired or in the process of being acquired, of persons who are members of both voluntary and compulsory supplementary pension schemes and who are moving from one Member State to another within the European Union, with the exception of schemes already covered by Regulation 1408/71/EEC. As far as the individual is concerned, the Directive includes all members of supplementary pension schemes who have acquired rights, or who are in the process of acquiring rights, in one or more Member States, as well as family members and survivors. The proposal defines what is to be understood by supplementary pension scheme : any occupational pension scheme or other collective system having the same objective, such as a group insurance agreement, a dividend scheme, a capitalisation scheme or a pension commitment guaranteed by reserves held by the company concerned and intended to serve as a supplementary pension for employed or self-employed workers. The main measures put in place by the proposed Directive are as follows: 1) retention of vested pension rights : any worker who ceases to pay the affiliation to a supplementary pension scheme when transferring to an employer who is established in a different Member State shall not lose rights which have already been acquired under this scheme provided that these rights would have been protected if the worker concerned had transferred to an employer who is established in the same Member State; 2) guaranteed cross-border payments : the Member States shall ensure that agencies, enterprises etc. in charge of supplementary pension schemes make full payment to members of such schemes, and other beneficiaries, residing in other Member States, of all benefits due to them under such schemes; 3) posted workers: workers who are posted to another country will be able to continue making contributions to a supplementary pension scheme established in the Member State of origin, under conditions similar to those which apply to the social security and pension schemes for posted workers (Regulation 1408/71/EEC). In addition, the host country shall reserve for these contributions the same financial treatment as that granted to contributions paid to supplementary schemes approved in its own territory; 4) information : managers of supplementary pension schemes shall provide information to scheme members on pension rights and choices available to them when they move abroad.

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

1997/0265(CNS) - 26/06/2009 - Follow-up document

This report from the Commission concerns the application of Council Directive 98/49/EC on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community in Bulgaria and Romania, which acceded to the European Union on 1 January 2007.

On 29 June 1998, the Council adopted the aforementioned Directive. This Directive was to be implemented on 25 July 2001 in the 15 old Member States, 1 May 2004 in the 10 States acceding to the European Union on that date and 1 January 2007 in Bulgaria and Romania.

The Commission recalls that Directive 98/49/EC is part of the acquis communautaire that must be transposed into the legal systems of prospective Member States before they join the EU. The answers given by Bulgaria and Romania to the European Commission show that these two States ensured the application of the aforementioned Directive before their accession. For example, the Act amending the Social Insurance Code adopted by Bulgaria on 11 July 2006 and Act 204 adopted by Romania on 22 May 2006 ensure the elimination of any barriers that might have been encountered by migrant workers attempting to safeguard their supplementary pension rights.

Other factors have also made it easier to exercise the right of free movement of workers. For example, Regulation (EC) No 2560/2001 on cross-border payments in euro helps to lower any transaction charges that may apply. Likewise, in the area of cross-border membership, the adoption of Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision (IORP Directive) constitutes a substantial measure at EU level. The mutual recognition of supervision of institutions for occupational retirement provision (IORPs), which has been established by the Directive, is a basic condition permitting cross-border activity by these institutions and therefore creating opportunities for cross-border membership.

Furthermore, the Proposal for a Directive on the portability of supplementary pension rights is an additional stage intended to improve the situation of mobile workers by guaranteeing their rights under supplementary schemes.

Note that this proposal has not yet received the unanimous approval necessary for its adoption by the Council and European Parliament.

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

1997/0265(CNS) - 30/04/1998 - Text adopted by Parliament, 1st reading/single reading

In adopting the report by Mr Harald ETTL (PSE, A) on safeguarding supplementary pension rights, Parliament approved the proposal for a Directive but placed the proposal in the broader context of promoting free movement of employed and self-employed persons in the Union. Parliament stressed that the proposal should be regarded only as a first step towards a Community Regulation on supplementary pension schemes designed to eliminate obstacles to the mobility of workers. It called on the Council to adopt legislative measures to remedy the existing problems, particularly regarding qualifying periods and the transferability to other countries of acquired pension rights. Measures should also be taken to ensure that fair pension schemes existed for people opting to work part-time and those on short fixed-term contracts. Parliament stressed the mobility aspect and the need to seek Community solutions to the issue of taxation of contributions and of supplementary pension payments, as well as the need to avoid any double taxation. Parliament made some technical changes and changes of wording to the Commission's text, particularly regarding the definitions of 'supplementary pension', 'pension rights', 'worker' and 'posted worker'. It called on the Commission to submit a report on the implementation of the Directive within four years of its entry into force (rather than six, as proposed by the Commission).

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

1997/0265(CNS) - 27/05/1998 - Modified legislative proposal

In its proposal for a Directive on safeguarding supplementary pension rights, the Commission has incorporated most of the amendments adopted by Parliament (11 out of 18). The main amendments include those seeking to: - place the proposal in the context of the free movement of employed and self-employed workers within the Union, - cover the situation of temporary and part-time employment, - stress that the proposal is a first step towards removing obstacles to free movement and that there is a need for further legal acts by the Council to achieve this, - seek Community solutions as regards tax-deductibility of supplementary pension contributions and taxation of the pensions actually paid, - require a report to be drawn up on the application of the Directive within 4 years (rather than 6) of its entry into force. The Commission also incorporates the technical adjustments and changes of wording proposed by Parliament concerning the words 'persons entitled' to supplementary pension schemes, 'pension rights' and 'other entitled persons under such schemes'. The term 'supplementary pension' covers invalidity, retirement and survivors' benefits.

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

1997/0265(CNS) - 29/06/1998 - Final act

OBJECTIVE: to eliminate certain obstacles to the cross-border mobility of workers in the field of supplementary pension schemes. COMMUNITY MEASURE: Council Directive 98/49/EC on safeguarding the supplementary pension rights of employed and self-employed persons moving within the European Union. CONTENTS: the objective of the Directive is to safeguard the rights of members of both voluntary and compulsory supplementary pension schemes moving from one Member State to another within the European Union, with the exception of schemes already covered by Regulation (EEC) no. 1408/71. The personal aspect of the Directive includes all members of supplementary pension schemes who have acquired or are in the course of acquiring rights in one or more Member States. The Directive defines the term supplementary pension scheme as any occupational scheme under national legislation, such as a group insurance contract, pay-as-you-go scheme, funded scheme or pension promise backed by book reserves or any other collective or comparable device intended to provide a supplementary pension for employed or self-employed persons. The main points

introduced by the Directive are as follows: 1) retention of vested pension rights: Member States shall take the necessary measures to ensure that vested pension rights are preserved by members of supplementary pension schemes in respect of whom contributions are no longer being made as a consequence of their moving from one Member State to another; 2) guaranteed cross-border payments: Member States shall ensure that agencies, enterprises etc. in charge of supplementary pension schemes make full payment to members of the schemes and other beneficiaries of all benefits due under such schemes; 3) posted workers: workers posted to another country will be able to continue making contributions to a supplementary pension scheme established in the Member State of origin under similar conditions to those which apply to social security schemes for employed workers (Regulation (EEC) 1408/71). These provisions may only be applied to postings commencing on or after 25 July 2001; 4) information: managers of supplementary pension schemes shall provide information to scheme members on pension rights and the choices available to them when they move abroad. A report on the application of this Directive shall be sent to the Council and to the European Parliament within 6 years of its entry into force, together with any proposed amendments. ENTRY INTO FORCE: the Directive will enter into force on 25 July 1998. DATE OF TRANSPOSITION: 25 July 2001.

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.)