Basic information

2005/0214(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Improving the acquisition and preservation of supplementary pension rights in order to enhance worker mobility **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 responsible	Rapporteur	Appointed
EMPL Employment and Social Affairs	OOMEN-RUIJTEN Ria (PPE-DE)	27/10/2005

Former committee responsible	Former rapporteur	Appointed
EMPL Employment and Social Affairs	OOMEN-RUIJTEN Ria (PPE-DE)	27/10/2005

Former committee for opinion	Former rapporteur for opinion	Appointed
ECON Economic and Monetary Affairs	RYAN Eoin (UEN)	13/12/2005
IMCO Internal Market and Consumer Protection	The committee decided not to give an opinion.	
FEMM Women's Rights and Gender Equality	LULLING Astrid (PPE-DE)	28/11/2005

Council of the European Union

Council configuration	Meetings	Date
Employment, Social Policy, Health and Consumer Affairs	2767	2006-11-30
Employment, Social Policy, Health and Consumer Affairs	2803	2007-05-30
Employment, Social Policy, Health and Consumer Affairs	2699	2005-12-08
Employment, Social Policy, Health and Consumer Affairs	3206	2012-12-06
Employment, Social Policy, Health and Consumer Affairs	2876	2008-06-09

	Employment, Social Policy, Health and Consumer Affairs	3247	2013-06-20
	Employment, Social Policy, Health and Consumer Affairs	2837	2007-12-05
	Employment, Social Policy, Health and Consumer Affairs	2733	2006-06-01
	Agriculture and Fisheries	3285	2013-12-16

European Commission	Commission DG	Commissioner
	Employment, Social Affairs and Inclusion	ANDOR László

Key events

Date	Event	Reference	Summary
20/10/2005	Legislative proposal published	COM(2005)0507	Summary
08/12/2005	Debate in Council		
13/12/2005	Committee referral announced in Parliament, 1st reading		
01/06/2006	Debate in Council		
30/11/2006	Debate in Council		Summary
21/03/2007	Vote in committee, 1st reading		Summary
27/03/2007	Committee report tabled for plenary, 1st reading	A6-0080/2007	
30/05/2007	Debate in Council		Summary
20/06/2007	Decision by Parliament, 1st reading	T6-0269/2007	Summary
20/06/2007	Results of vote in Parliament		
20/06/2007	Debate in Parliament		
09/10/2007	Modified legislative proposal published	COM(2007)0603	Summary
05/12/2007	Debate in Council		Summary
09/06/2008	Debate in Council		
06/12/2012	Debate in Council		
20/06/2013	Debate in Council		
18/02/2014	Council position published	17612/1/2013	Summary
27/02/2014	Committee referral announced in Parliament, 2nd reading		
18/03/2014	Vote in committee, 2nd reading		
20/03/2014	Committee recommendation tabled for plenary, 2nd reading	A7-0188/2014	Summary
15/04/2014	Decision by Parliament, 2nd reading	T7-0379/2014	Summary
15/04/2014	Results of vote in Parliament		
15/04/2014	Debate in Parliament		

16/04/2014	Final act signed		
16/04/2014	End of procedure in Parliament		
30/04/2014	Final act published in Official Journal		

Technical information

Procedure reference	2005/0214(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	Treaty on the Functioning of the European Union TFEU 115 Treaty on the Functioning of the European Union TFEU 048
Stage reached in procedure	Procedure completed
Committee dossier	EMPL/7/14665

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE374.180	31/05/2006	
Committee opinion	FEMM	PE369.854	14/07/2006	
Amendments tabled in committee		PE376.423	02/08/2006	
Committee opinion	ECON	PE372.120	01/02/2007	
Amendments tabled in committee		PE386.321	07/03/2007	
Committee report tabled for plenary, 1st reading/single reading		A6-0080/2007	27/03/2007	
Text adopted by Parliament, 1st reading/single reading		T6-0269/2007	20/06/2007	Summary
Committee draft report		PE529.752	06/03/2014	
Committee recommendation tabled for plenary, 2nd reading		A7-0188/2014	20/03/2014	Summary
Text adopted by Parliament, 2nd reading		T7-0379/2014	15/04/2014	Summary

Council of the EU

Document type	Reference	Date	Summary
Council position	17612/1/2013	18/02/2014	Summary
Draft final act	00087/2014/LEX	16/04/2014	

European Commission

Document type	Reference	Date	Summary

Legislative proposal	COM(2005)0507	20/10/2005	Summary
Document attached to the procedure	SEC(2005)1293	20/10/2005	Summary
Modified legislative proposal	COM(2007)0603	09/10/2007	Summary
Commission communication on Council's position	COM(2014)0098	19/02/2014	Summary
Follow-up document	COM(2020)0291	06/07/2020	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES0589/2006	20/04/2006	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	
European Commission	EUR-Lex	

Final act

Directive 2014/0050
OJ L 128 30.04.2014, p. 0001 Summary

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

2005/0214(COD) - 30/05/2007

Pending the first reading opinion of the European Parliament, the Council endeavoured to reach agreement on a general approach on a draft Directive concerning supplementary pension rights. However, given the impossibility of reaching a compromise that would satisfy all the delegations, the President had to conclude, with regret, that, at this stage, the Council was not yet in a position to agree on a text, as the required unanimity was not achieved.

As soon as the European Parliament has adopted its opinion at first reading, the possibility of resuming work on the basis of an amended proposal from the Commission will be explored.

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

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.

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

2005/0214(COD) - 20/10/2005 - Legislative proposal

PURPOSE : to facilitate the exercise of the right of workers to freedom of movement and of the right to occupational mobility within the same Member State, by reducing the obstacles created by certain rules governing supplementary pension schemes in the Member States.

PROPOSED ACT : Directive of the European Parliament and of the Council.

CONTEXT : worker mobility both at national level and from one Member State to another is an essential factor in a smoothly-functioning European employment market and is an integral part of the ambition set out in the Lisbon strategy to strengthen employment and economic growth. There is therefore a need to improve not only this mobility from one Member State to another but also occupational mobility within any country. Considering the increasing importance of supplementary pension schemes to cover the risks of old age, it is thus particularly important to reduce the obstacles to mobility which stem from these schemes. The Commission states in its Lisbon action plan its intention to submit legislative proposals in this area.

CONTENT : this proposal aims to establishes common principles for improving the exercise of the right to freedom of movement, one of the fundamental freedoms of the European Union, and the operation of the internal market, principles which fit in with the adjustments of the supplementary pension schemes already under way in the Member States.

This proposal is accordingly designed to simultaneously reduce the obstacles to freedom of movement across Member States and to mobility within any Member State stemming from provisions contained in these supplementary pension schemes.

These obstacles relate to:

- the conditions of acquisition of pension rights,
- the conditions of preservation of dormant pension rights,
- the transferability of acquired rights.

The proposal also seeks to improve the information given to workers on how mobility may affect supplementary pension rights.

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

2005/0214(COD) - 30/11/2006

Pending the European Parliament opinion at first reading, the Council took note of a progress report and held a policy debate on a draft Directive on improving the portability of supplementary pension rights.

The debate covered, inter alia, the following issues:

Transferability

- As an important further step in facilitating the mobility of workers in the European Union, should the Directive focus on vesting criteria as well as on the preservation of pension rights through a fair treatment of dormant rights.
- Should these Directives include provisions for transferability.

Supplementary pension schemes to be covered by the Directive

- Taking into account the combination of a long transitional period and the suggested exclusion of certain schemes, how long should the transitional period be to let supplementary pension schemes adjust to the new rules.

In view of the increasing importance of supplementary pension schemes to cover the risk associated with old age in Member States, the Commission proposal aims to facilitate workers' freedom of movement both across Member States and within a Member State by eliminating restrictive provisions linked to supplementary pension schemes which may limit the opportunities for mobile workers to build up sufficient pension rights throughout their working lives.

Furthermore, the proposal seeks to ensure that workers receive appropriate information on their supplementary pension rights in the event of occupational mobility.

At the end of the debate, the Presidency concluded that:

- all delegations can support the draft Directive's overall aim of facilitating mobility of workers;
- the majority of the Council considered that the Directive should focus on vesting criteria as well as on the preservation of pension rights through a fair treatment of dormant rights;
- that a balance should be found between as broad as possible scope of the Directive and a sufficiently long transitional period to allow pension schemes to adjust their rules;
- some delegations, however, regretted the deletion of transferability of pension rights from the text;
- however, instead of including the transfers in the Directive, other means of improving transferability could be considered, including on a voluntary basis.

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

2005/0214(COD) - 20/06/2007 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted the resolution drafted by Ria **OOMEN-RUIJTEN** (EPP-ED, NL), and made some amendments to the proposal on improving the portability of supplementary pension rights. Parliament wanted to make improvements by setting standards for the acquisition and preservation of pension rights, but did not agree with the Commission’s proposals on the portability of pensions. It stated that, since supplementary retirement provision is becoming increasingly important in all the Member States for securing people's standard of living in old age, the conditions for acquiring, maintaining and transferring acquired rights should be improved.

The main amendments were as follows;

Scope: the Directive does not apply to the following: a) supplementary pension schemes, which, on the date of entry into force of the Directive, no longer accept new active members and remain closed to them; (b) supplementary pension schemes that are subject to measures that provide for intervention by a Member State's authority or court, with the aim of safeguarding or restoring their financial situation, including liquidation procedures; c) insolvency protection arrangements, compensation arrangements and national pension reserve funds.

Definitions: Parliament amended some of the definitions in the original text. Inter alia, the definition of "supplementary pension scheme" is simplified to mean a pension scheme established in conformity with national legislation and practice and linked to an employment relationship, intended to provide a supplementary pension for employed persons. A definition was inserted for "vesting period" which means the period of active membership of a scheme, required under national law or the rules of a supplementary pension scheme, in order to trigger entitlement to a supplementary pension. "Value of dormant entitlement" means the capital value of the pension rights, calculated according to recognised actuarial principles in conformity with national practice and custom.

Acquisition conditions: Parliament aimed for common minimum standards for acquiring supplementary pension rights. The text now states that, where the supplementary pension scheme stipulates a vesting period, that period shall not exceed five years. In any event, no vesting condition shall be applied to the member of a supplementary pension scheme once that member has reached the age of 25. Where an outgoing worker has not yet acquired vested pension rights when the employment relationship is terminated, the supplementary pension scheme must reimburse the contributions paid by the outgoing worker, or paid by the employer on the worker's behalf in accordance with legal provisions or collective agreements or contracts, or, if the outgoing worker bears the investment risk, the investment value arising from these contributions. Parliament stipulated that, in objectively justified cases, Member States may allow the social partners to include in collective agreements non-discriminatory arrangements not covered by these two points,, on the basis that these arrangements provide at least equivalent protection.

Fair treatment of dormant pension rights: having regard to the nature of the pension scheme, Member States must ensure fair treatment of the value of the dormant pension rights of outgoing workers and protect these pension rights against insolvency of the undertaking. A definition of fair treatment is inserted in the text. It might mean, for example, that the value of the dormant rights develops generally in line with the value of the rights of active scheme member. Member States may allow supplementary pension schemes not to preserve vested rights but to pay a capital sum equivalent to the value of the vested pension rights to the outgoing worker, as long as the value of the vested pension rights does not exceed a threshold established by the Member State concerned.

Transferability: Parliament deleted the Commission's text regarding transferability. The Commission had proposed that workers should be able to transfer their vested rights to their new employer. A new recital now states that the Directive does not aim to limit outgoing workers' ability to transfer vested pension rights. To encourage the free movement of workers, Member States should endeavour, as far as possible and in particular when introducing new supplementary pension schemes, gradually to improve the transferability of vested pension rights.

Reports: the Commission's report (which must be produced every five years after July 2008) must contain an assessment of employers' willingness to offer a supplementary pension scheme from the entry into force of the Directive. It must also include a proposal on how and when acquired pension rights can be transferred, which shall also conclude the undertaking's liability for transferred pension rights. Furthermore, no later than five years after the entry into force of the Directive, the Commission must draw up a report, in particular with regard to the conditions of transferring capital representing workers' supplementary pension rights. On the basis of that report, the Commission must present any proposal containing amendments to the Directive or other instruments which prove necessary in order further to reduce the obstacles to the mobility of workers created by certain rules on supplementary pension provision.

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.

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

2005/0214(COD) - 05/12/2007

The Council made progress towards reaching political agreement on a common position concerning a draft Directive regarding the minimum requirements for enhancing working mobility by improving the acquisition and preservation of supplementary pension rights (see Council documents *15515/07 ADD1, ADD3*). However, following intensive discussions, it was recognised that the required unanimity could not be attained, certain issues remaining unsolved, in particular, **the duration of the vesting period**. Work on this file should continue under the forthcoming presidencies.

In a context where pension schemes established in the framework of an employment relationship – supplementary pension schemes – are becoming increasingly important for covering the risks of old age in the member states, the draft Directive aims to facilitate the free movement of workers, both between and within member states, by improving opportunities for those who change employers to acquire and preserve supplementary pension rights.

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

2005/0214(COD) - 20/03/2014 - Committee recommendation tabled for plenary, 2nd reading

The Committee on Employment and Social Affairs adopted the recommendation for second reading contained in the report by Ria OOMEN-RUIJTEN (EPP, NL) on the Council position at first reading with a view to the adoption of a directive of the European Parliament and of the Council on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights.

As a result of negotiations with the Council, the committee recommended that Parliament should approve the Council position at first reading without amendments given that the proposal guarantees legal certainty about supplementary pension rights in case of cross-border labour mobility.

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

2005/0214(COD) - 18/02/2014 - Council position

The Council adopted its position at first reading with a view to the adoption of the Directive

of the European Parliament and of the Council on minimum requirements for enhancing worker mobility by improving the acquisition and preservation of supplementary pension rights.

The Council’s position in first reading reflects the compromise reached in negotiations between Parliament and Council, with the help of the Commission.

On the basis of the Commission’s amended proposal, the co-legislators conducted negotiations with a view to concluding an early second-reading agreement. On 16 December 2013, the Council reached a political agreement on its position at first reading. The main points of the compromise text are as follows :

Legal basis: the legal basis chosen is Article 46 TFEU.

Scope and definition of "an outgoing worker»: the compromise text provides that the Directive shall apply to outgoing workers **who move between Member States**. It will not apply to workers moving within a single Member State. However, Member States may, nevertheless, consider using their national competences to extend the rules applicable pursuant to the Directive to scheme members who change employment within a single Member State.

Moreover, the Directive will only apply to periods of employment falling after its implementation. It will not apply to:

- pension schemes covered by Regulation (EC) No 883/2004, nor to schemes which no longer accept new active members or schemes that are subject to measures such as winding-up proceedings ;
- insolvency guarantee schemes, compensation schemes, national reserve funds or one-off payments unrelated to retirement provision ;
- invalidity benefits.

Certain provisions regarding the preservation of vested and dormant pension rights and information apply to survivor's benefits which are otherwise excluded.

Protection of pension rights :

- **Conditions governing the acquisition of pension rights**: these are strengthened to the effect that, where a vesting period and/or a waiting period is applied, the total combined period shall not exceed three years. The minimum age for vesting shall not exceed 21 years.
- **Preservation of vested pension rights**: the compromise text provides for national measures to ensure that the vested pension rights of outgoing workers can remain in the scheme in which they vested. However, schemes also have the option of paying the worker a capital sum up to a certain nationally established threshold and with the worker's informed consent, including as regards applicable charges.
- **Fair treatment of pension rights:** the text provides that outgoing workers' and their survivors' dormant pension rights or their values are treated in line with the value of the rights of active scheme members, or the development of pension benefits currently in payment, or by other means which are considered fair treatment.

Information : the compromise text also improves the information rights of active scheme members as well as deferred beneficiaries and survivors :

- active scheme members may obtain on request information on how a termination of employment would affect their pension rights;
- deferred beneficiaries are also to obtain, on request, information regarding the value of their dormant rights and the conditions regarding their treatment ;
- surviving beneficiaries also have the right to the information as regards the payment of survivor's benefits attached to supplementary pension schemes.

Transposition: four years from the date of adoption.

Reports : Member States shall report to the Commission concerning the application of the Directive within five years of its entry into force. A year later, the Commission is to report back to the European Parliament, the Council and the Economic and Social Committee on the application of the Directive.

In a letter to the Chair of the Permanent Representatives Committee, the Chair of the European Parliament's Committee on Employment and Social Affairs indicates that she will recommend to the members of the EMPL Committee, and subsequently to the plenary, that they accept the Council's position at first reading.

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

2005/0214(COD) - 19/02/2014 - Commission communication on Council's position

The Commission communication concerns the position of the Council at first reading with a view to the adoption of a Directive of the European Parliament and of the Council on minimum requirements for enhancing worker mobility by improving the acquisition and preservation of supplementary pension rights.

The Commission notes that the Council’s position differs from the Commission proposal in two main aspects :

1) the scope of the Directive: the Council wishes to reduce the scope to cross-border mobility, with internal mobility remaining the responsibility of Member States. The Commission had proposed that all workers changing jobs should benefit from the provisions of the directive, whether they change jobs within a country or across borders. The Commission can accept this position, but invites Member States to also apply the standards of the directive to workers changing jobs within a country ;

2) conditions for the acquisition of occupational pension rights: the Council took the position that the combined waiting and vesting periods must not be longer than three years. At the same time, the Council opted for a more favourable rule on maximum allowed minimum age for acquiring a vested pension right. Instead of 25 years, the minimum age should not exceed 21 years.

While the Council’s position falls short of the Commission’s proposal regarding the total length of waiting and vesting periods, it represents an improvement regarding the minimum age.

The Commission therefore considers that it can **endorse the Council position** so that the European Parliament can adopt the final text in second reading before the end of the current legislature.

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

2005/0214(COD) - 15/04/2014 - Text adopted by Parliament, 2nd reading

The European Parliament adopted a legislative resolution on the Council position at first reading with a view to the adoption of a directive of the European Parliament and of the Council on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights.

Following the recommendation for second reading by the Committee on Employment and Social Affairs, Parliament approved, without amendment, the Council position at first reading.

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

2005/0214(COD) - 16/04/2014 - Final act

PURPOSE: to facilitate the exercise of the right of workers to freedom of movement and of the right to occupational mobility within the same Member State, by reducing the obstacles created by certain rules governing supplementary pension schemes in the Member States.
LEGISLATIVE ACT: Directive 2014/50/EU of the European Parliament and of the Council on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights.

CONTENT: this Directive lays down rules aimed at **facilitating the exercise of the right of workers to freedom of movement between Member States** by reducing the obstacles created by certain rules concerning **supplementary pension schemes** linked to an employment relationship.

Scope and definition of "an outgoing worker": the Directive shall apply to outgoing workers who **move between Member States**. It will not apply to workers moving within a single Member State. However, Member States may, nevertheless, consider using their national competences to extend the rules applicable pursuant to the Directive to scheme members who change employment within a single Member State.

Moreover, the Directive will **only apply to periods of employment falling after its implementation**. It will not apply to:

- pension schemes covered by Regulation (EC) No 883/2004 on the coordination of social security systems;
- supplementary pension schemes that, on the date of entry into force of this Directive, no longer accept new active members and remain closed to them;
- supplementary pension schemes that are subject to measures involving the intervention of administrative bodies established by national legislation or judicial authorities, which are intended to preserve or restore their financial situation, including winding-up proceedings;
- insolvency guarantee schemes, compensation schemes, national reserve funds or one-off payments unrelated to retirement provision.

This Directive does **not apply to invalidity and/or survivor's benefits** attached to supplementary pension schemes, with the exception of the specific provisions of Articles 5 (preservation of dormant pension rights) and Article 6 (information) relating to survivor's benefits.

Conditions governing the acquisition of rights under supplementary pension schemes: the Directive stipulates that where a vesting period and/or a waiting period is applied, the total combined period shall not exceed three years. The minimum age for vesting shall not exceed **21 years**.

Preservation of vested pension rights: the Directive provides for national measures to ensure that the vested pension rights of outgoing workers can remain in the scheme in which they vested. However, schemes also have the option of paying the worker a capital sum up to a certain nationally established threshold and with the worker's informed consent, including as regards applicable charges.

The Directive provides that outgoing workers' and their survivors' dormant pension rights or their values are treated in line with the value of the rights of active scheme members, or the development of pension benefits currently in payment, or by other means which are considered fair treatment.

Information: Member States shall ensure that active scheme members can obtain, on request, information on how a termination of employment would affect their supplementary pension rights.

Where the scheme allows early access to vested pension rights through the payment of a capital sum, the information provided shall also include a **written statement** that the member should consider taking advice on investing that capital sum for retirement provision.

Member States shall ensure that **deferred beneficiaries** obtain, on request, information regarding the value of their dormant pension rights and the conditions governing the treatment of dormant pension rights. Under this Directive, **surviving beneficiaries** shall obtain information as regards the payment of survivor's benefits.

Information shall be provided clearly, in writing, and within a reasonable period of time.

Minimum requirements and non-regression: Member States may adopt or maintain provisions on the acquisition of supplementary pension rights for workers, on the preservation of supplementary pension rights of outgoing workers and on active scheme members' and deferred beneficiaries' right to information which are more favourable than those set out in this Directive. The transposition of this Directive shall not under any circumstances be used as a reason for reducing existing rights.

By 21 May 2020, the Commission shall draw up a **report** on the application of this Directive.

ENTRY INTO FORCE: 20.05.2014.

TRANSPOSITION: at the latest 21.05.2018.