



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 22 May 2007

9761/07

**Interinstitutional File:
2005/0214 (COD)**

**SOC 217
ECOFIN 218
CODEC 551**

REPORT

from : Permanent Representatives Committee (Part I)
to : Council (EPSCO)

No. prev. doc. : 9345/07 SOC 189 ECOFIN 193 CODEC 472
No. Cion prop. : 13686/05 SOC 412 ECOFIN 324 CODEC 933 - COM (2005) 507 final + REV 1

Subject : **Proposal for a Directive of the European Parliament and of the Council on minimum requirements for enhancing worker mobility by improving the vesting and preservation of supplementary pension rights**
- **General Approach**
(Public deliberation, pursuant to Article 8(1)(b) CRP)

I. INTRODUCTION

On 20 October 2005, the Commission adopted a proposal for a Directive on improving the portability of supplementary pension rights. The proposal being based on Articles 42 and 94 of the Treaty, it is subject to both unanimity in Council and codecision with the European Parliament. The draft Directive aims to facilitate the mobility of workers both between and within the Member States by improving the possibilities of those who change employers to accrue and preserve supplementary pension rights.

Following its first presentation to the EPSCO Council under the UK Presidency, the proposal has been examined in detail by the Working Party on Social Questions.¹ The Finnish Presidency tabled a series of compromise texts, which allowed progress to be achieved on a number of issues. In particular, following the policy debate that took place in the EPSCO Council on 30 November 2006, there was a large measure of agreement that the degree of diversity of pension schemes in the Community was such that the obligatory transferability of pension rights could not realistically be achieved, at least for the foreseeable future, and that the draft Directive should therefore concentrate on the preservation of previously accrued rights.

Further intensive examination has taken place under the German Presidency, the file being considered by Coreper on both 27 April and 16 May 2007, when a significant measure of agreement was reached on a number of points, including the Presidency's suggestion that the text should contain *a single implementation date* and no transitional period. However, a number of substantial questions remained unresolved, in particular that of the extent of possible exemptions from the scope of the Directive. The text as it now stands can be found in doc. 9763/07.

The NL delegation has maintained a general reservation on the entire proposal (see below).

All delegations have maintained general scrutiny reservations.

¹ The Commission presented its proposal to the EPSCO Council on 8 December 2005. On 1 June 2006, the EPSCO Council took note of the AT Presidency's progress report (doc. 9100/06).

The EP Committee on Employment and Social Affairs having already voted on a set of draft amendments on 27 March 2007, the European Parliament has postponed the adoption of its Opinion in first reading to the Plenary Session of 18-21 June 2007, with a view to allowing the two institutions to continue to explore the possibility of reaching an early agreement. The Economic and Social Committee gave its opinion on 20/21 April 2006.

The Council is invited to examine the points set out in Sections II, III and IV below, with a view to reaching an agreement on a general approach on the proposal.

II. MAIN OUTSTANDING QUESTIONS

1. General reservation of the Netherlands delegation

At the meeting of Coreper on 16 May 2007, the Netherlands delegation maintained a general reservation on the whole text. In particular, this delegation doubted whether the aim of enhanced labour mobility would be achieved by the Directive. The proposal had seen eighteen months' hard work, but the result had been a significantly watered-down text with a long list of exemptions that further narrowed the already limited scope. It was unclear how many pension schemes would be affected and the impact of the Directive between Member States would, in any event, be extremely uneven, some Member States being scarcely affected at all. This delegation also raised the concern that, due to legal uncertainty, the Directive could lead to cases being brought before the European Court of Justice.

For all these reasons, the Netherlands delegation stated that it would be unable to support the proposal at the Council on 30 May 2007.

2. Scope and Exemptions (Article 2(1), Article 2(2), Article 2(3) and Recitals 5c - 5fb)

Considerable efforts have been made to find the right balance between the scope and the implementation date (see also Article 2(4) and Article 9).

Unresolved questions:

- (i) AT, BE and NL have entered reservations on Article 2 and the relevant recitals, citing concern regarding the number of exemptions currently included in paragraphs 2 and 3. NL has expressed the view that the Directive as currently drafted would have an uneven impact across the different Member States and has also questioned the rationale for certain of the exemptions. It has therefore requested more information as regards the number of schemes and workers involved at national and EU level. Certain delegations (BE, EL, FI, IT, UK) have also expressed the view that the scope should not be narrowed unduly, particularly if a long implementation period is foreseen (see also Article 2(4) and Article 9, below).
- (ii) AT and LU have maintained reservations on the scope and on the exemptions currently included in the text subject to an agreement on their own request that pension schemes included in a company's budget ("internal schemes"), should also be excluded from the scope.² The Commission was unable to support this suggestion on the grounds that the transferability provisions had already been removed from the text. BE, DE, NL and UK also questioned the need for this exemption.
- (iii) Public Security Personnel (Article 2(3)(a))

The exemption in Article 2(3)(a) has been introduced at the request of MT on the grounds that relevant pension arrangements are an important element in attracting and retaining personnel in the disciplined forces providing public security (armed forces, police and prison officers).

MT has entered a waiting reservation on Article 2(3)(a) and scrutiny reservations on Articles 4 and 5 pending an agreement on Article 2.

² For the text of the AT and LU suggestion, see doc. 9763/07, footnote to Article 2(3).

RO has entered a scrutiny reservation. This delegation has requested that the exemption contained in Article 2(3)(a) also be extended to cover a range of other schemes in the public sector (e.g. those for judges, prosecutors and diplomatic staff).³

LT has requested that the exemption be broadened to cover unarmed personnel responsible for public security (e.g. customs officers).⁴

The Commission has expressed the concern that the exemption contained in Article 2(3)(a) may not be in compliance with the Treaty. (Also see section II.2.iv.)

- (iv) In Article 2(3)(b) and Recital 5fb, an exemption has been introduced at the request of FR for schemes intended for managing executives with autonomous decision-taking powers.

The Commission has expressed the concern that the exemption contained in Article 2(3)(b) may also not be in compliance with the Treaty. (Also see section II.2.iii.)

- (v) At the initial request of PL and CZ, Recital 5c has been reworded to the effect that the Directive only applies to supplementary retirement pensions existing *due to an employment relationship*. However, PL, supported by CZ, has suggested further rewording the recital so as to distinguish clearly between "second-pillar" supplementary pension schemes, which are covered by the draft Directive, and individual contracts and corresponding arrangements under the "third pillar," which are not covered by the proposed Directive (see doc. 9763/07, footnote to Recital 5c). The Commission, BE, HU and UK have stated that they cannot accept the suggestion by PL on the grounds that it would narrow the scope unduly.

³ For the text of the RO suggestion, see doc. 9763/07, footnote to Article 2(3)(a).

⁴ Also see doc. 9763/07, footnote to Article 2(3)(a).

CZ has entered a reservation. MT and PL have entered scrutiny reservations. In this context, PL has also entered a scrutiny reservation on the definition of a "supplementary pension scheme" (see doc. 9763/07, footnote to Article 3(b).)

- (vi) At the request of ES, Recital 5c0 has been added to the text stating that certain end-of-career bonuses should not be considered to be supplementary pension schemes within the meaning of the Directive.

3. Date of Implementation (Article 9) in Relation to the Scope (Article 2)

At its meeting on 16 May 2007, Coreper agreed in principle to the suggestion by the Presidency that the provisions be simplified by *deleting Article 9(2) (transitional period)* and providing for a *single date of implementation* in Article 9(1) and Article 2(4). The Council is invited to offer guidance regarding an appropriate *single implementation date* for inclusion in Article 9(1), with a view to achieving an overall compromise. As a starting-point, the Presidency has suggested "[60] months after the date of entry into force of this Directive."

Unresolved questions:

- (i) Several delegations and the Commission have emphasised that the scope and the implementation date should be examined together, with a view to ensuring an appropriate balance (also see section II.2.i above).
- (ii) Regarding the implementation date, UK and EL suggested a maximum of 5 years and a minimum of 3 years. IT and IE preferred 5 years, but IE could also accept 3 years. AT, FR, LU and RO preferred a period longer than 5 years.
- (iii) The Commission has entered a scrutiny reservation, expressing the view that the entry into force of the Directive should not be unduly delayed.

- (iv) NL has entered a reservation citing the concern that, in its current form, including a possible delay in its implementation, the proposed Directive would have an uneven impact across the different Member States.

III. OTHER OUTSTANDING QUESTIONS

4. Conditions Governing Vesting Criteria (Article 4)

The Member States are close to reaching a compromise concerning the provisions on "vesting criteria," i.e. conditions which need to be fulfilled for the accrual of pension rights.

Unresolved questions:

- (i) BE has maintained a reservation and called for both a shorter vesting period and a lower age limit in Article 4 (a) and (b). The Commission has expressed regret on similar grounds.
- (ii) BE has also taken the view that the Directive should, in line with the original proposal, limit the *waiting period* (years of service before becoming eligible for membership of a pension scheme) and also address the question of the *minimum age* for membership of a pension scheme (as opposed to the minimum age for obtaining vested rights). This delegation entered a waiting reservation, pending agreement on the scope of the Directive.

5. **Information (Article 7)**

Unresolved questions:

- (i) BE considers that information should be provided *automatically* rather than on demand, as currently provided in the text, and feels that strong provisions on information are appropriate in the light of the decreased level of ambition in regard to other aspects of the Directive, especially following the deletion of the transferability provisions from the text.

 - (ii) The Commission considers that active scheme members should be provided with information concerning *the conditions governing any transfer of acquired rights*, where such transfers are provided for.
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