



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 15 November 2006**

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**ADDENDUM TO THE REPORT**

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from : The Presidency  
to : Permanent Representatives Committee (Part I) / Council (EPSCO)  
No. prev. doc. : 15222/06 SOC 534 ECOFIN 396 CODEC 1286  
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  
improving the portability of supplementary pension rights**  
- **Progress report and policy debate**  
**(Public deliberation)**

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In order to facilitate the discussions on the questions posed in the Presidency Report, delegations will find attached the latest revision of the text of the Directive, prepared by the Presidency.

All delegations have maintained their general scrutiny reservations on the entire Presidency text. A number of delegations have also maintained reservations and scrutiny reservations on specific elements of the text.

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
on minimum requirements for improving the vesting and the preservation of supplementary  
pension rights**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 42 and 94 thereof,

Having regard to the proposal from the Commission<sup>1</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Having regard to the opinion of the Committee of the Regions<sup>3</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>4</sup>,

Whereas:

- (1) The free movement of persons is one of the fundamental freedoms of the European Community; in Article 42, the Treaty stipulates that the Council, acting in accordance with the procedure referred to in Article 251, shall adopt such measures in the field of social security as are necessary to provide freedom of movement for workers.

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<sup>1</sup> OJ C [...], [...], p. [...].

<sup>2</sup> OJ C [...], [...], p. [...].

<sup>3</sup> Will not be submitted.

- (2) The social protection of workers with regard to pensions is guaranteed by statutory social security schemes, together with supplementary pension schemes linked to the employment contract. Such supplementary pension schemes are becoming increasingly common in the Member States.
- (3) The Council and the Parliament have wide powers of discretion regarding the choice of measures which are the most appropriate when it comes to achieving the objective of Article 42 of the Treaty; the system of coordination provided for in Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community<sup>5</sup> and Council Regulation (EEC) No 574/72 of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71<sup>6</sup> and, in particular, the rules applicable to aggregation do not relate to supplementary pension schemes, except for schemes covered by the term “legislation”, as defined in the first paragraph of Article 1(j) of Regulation (EEC) No 1408/71, or which have been the subject of a declaration to this effect by a Member State pursuant to this Article.
- (4) Council Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community<sup>7</sup> represents an initial specific measure designed to improve the exercise of the right of workers to freedom of movement as regards supplementary pension schemes.
- (5) Recourse should also be had to Article 94 of the Treaty, given that the disparities between the national legislations governing supplementary pension schemes are likely to hamper both the exercise of the right of workers to freedom of movement and the operation of the internal market. Thus, in order to improve the rights of workers moving within the Community and within the same Member State, it is necessary to ensure some minimum requirements for the vesting and preservation of an outgoing worker’s vested pension rights in supplementary pension schemes linked to an employment relationship.

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<sup>4</sup> OJ C [...], [...], p. [...].

<sup>5</sup> OJ L 149 of 5.7.1971, p. 1. Regulation as last amended by Regulation (EC) No 631/2004 (OJ L 100 of 6.4.2004, p. 1).

<sup>6</sup> OJ L 74 of 27.3.1972, p. 1. Regulation as last amended by Regulation (EC) No 77/2005 (OJ L 16 of 20.1.2005, p. 3).

<sup>7</sup> OJ L 209 of 25.7.1998, p. 46.

- (5a) It is equally necessary to take account of the nature and specific characteristics of supplementary pension schemes and of their diverse nature within and between the Member States. The establishment of new schemes, the viability of existing schemes and the expectations and rights of present pension scheme members should be sufficiently protected. In particular, the role played by the social partners in the design and implementation of supplementary pension schemes should be respected by this Directive.
- (5b) This Directive does not oblige Member States without supplementary pension schemes to introduce legislation providing for the setting up of such schemes.
- (5c) This Directive applies only to supplementary retirement pensions that are based on reaching retirement age or on fulfilling other requirements, as laid down by the scheme or by national legislation. This Directive does not apply to individual pension arrangements where there is no employer involvement, or to invalidity and survivors' benefits.
- (5c1) The Directive concerns any supplementary pension scheme for employed persons, established in conformity with national legislation and practice and intended to provide a supplementary pension such as a group insurance contract, a pay-as-you-go scheme agreed by one or more branches or sectors, a funded scheme or a pension promise backed by book reserves, or any collective or other comparable arrangement. Self-employed persons are not covered by this Directive.
- (5d) Where a decision has already been made to close a scheme before the entry into force of the Directive, and it is therefore no longer accepting any new scheme members, the introduction of new requirements could represent an unjustified burden on the scheme. The Directive should consequently not apply to such schemes.
- (5e) This Directive does not seek to harmonise, nor is intended to affect, national legislation concerning reorganisation measures and winding-up proceeding, whether or not such proceedings are founded on insolvency and whether they are voluntary or compulsory. It also does not concern national legislation on re-organisation measures, such as those covered by Directive 2001/17/EC. However, measures that fall under Article 16(2) of Directive 2003/41/EC are not to be understood as such reorganisation measures.

- (5f) This Directive should not concern insolvency guarantee schemes or compensation schemes that are not supplementary pension schemes linked to an employment relationship, the aim of which is to protect the pension rights of the employee in the case of employer or scheme insolvency. Similarly, this Directive should not address national reserve funds.
- (5g) The Member States should take all necessary steps to ensure that, where a supplementary pension scheme is established, the vesting requirements do not create obstacles to the exercise of the right of workers to freedom of movement nor to the facilitation of workers' occupational mobility.
- (6) [...]
- (6a) When the scheme or the employer bears the investment risk (in particular in defined benefit schemes), the scheme should always refund the contributions of the outgoing worker regardless of what is the value of the investments derived from those contributions. When the outgoing worker bears the investment risk (in particular in defined contributions schemes), the scheme should refund the value of the investments derived from those contributions. The value may be more or less than the contributions paid by the outgoing worker. If the value is negative there is nothing to refund.
- (6b) The outgoing worker should in all cases be able to leave his/her vested pension rights as dormant rights in the supplementary pension scheme in which the rights have vested.
- (7) In accordance with national law and practice, steps should be taken to ensure a fair treatment of such dormant rights. This objective could be achieved, for example, by treating dormant rights by reference to one of the following measures: inflation, wage levels, or pension benefits which are currently being paid, or the rate of return on assets under the supplementary pension scheme. The use of these measures should not create any obligation to establish more favourable conditions for the outgoing workers than those in place for active scheme members or retired beneficiaries.

- (8) When the value of the vested pension rights of an outgoing worker does not exceed a threshold established by the Member State concerned, and in order to avoid excessive administrative costs resulting from the management of a large number of low-value dormant rights, pension schemes may be given the option not to preserve these vested rights but to use a capital payment representing the vested rights. The value of capital payment should always be established in accordance with recognised actuarial principles and should represent the present value of the vested pension rights at the time of payment.
- (9) [...]
- (9b) This Directive does not aim at limiting transfers of vested pension rights offered to outgoing workers. With the aim of improving the freedom of movement for workers, Member States should endeavour to progressively promote, when possible, transfers of vested pension rights, in particular when new supplementary pension schemes are established.
- (10) [...]
- (11) Without prejudice to Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision, workers who exercise or plan to exercise their right to freedom of movement should be suitably informed, particularly regarding how a termination of their employment would affect their supplementary pension rights.
- (12) In view of the diverse nature of supplementary social security schemes, the Community must confine itself to establishing the objectives to be achieved in general terms, which means that the directive is the appropriate legal instrument.

- (13) Given that the objectives of the measures envisaged, namely to reduce the obstacles to the exercise of the right of workers to freedom of movement and to the operation of the internal market, cannot be achieved satisfactorily by the Member States and may therefore, because of the scope of the measures, be achieved more effectively at Community level, the Community may take action in accordance with the subsidiary principle set out in Article 5 of the Treaty. In accordance with the principle of proportionality referred to in that Article, this Directive, based on an impact assessment conducted with the help of the committee in the area of supplementary pensions (so-called "Pension Forum" of the European Commission), will not go beyond what is necessary to achieve its objectives.
- (14) This Directive establishes minimum requirements, thus enabling the Member States to adopt or maintain more favourable provisions. The implementation of this Directive cannot be used to justify a regression vis-à-vis the existing situation in each Member State.
- (15) In view of the need to take account of the effects of this Directive, in particular on the financial sustainability of supplementary pension schemes, the Member States may be granted more time in which gradually to implement those provisions which are likely to have effects of this kind. The minimum requirements of this Directive can create a situation where the viability and financial stability of schemes with longer vesting periods or, in particular, loyalty schemes could be endangered. To allow the schemes sufficient time to adapt their rules and to meet funding requirements, a transitional period of 120 months can be granted.
- (16) In accordance with the national law and practice governing the organisation of supplementary pension schemes, the Member States should be able to grant the social partners, at their joint request, responsibility for implementing this Directive as regards the arrangements relating to collective agreements, provided that they take all the necessary steps to ensure that they are at all times able to guarantee the outcomes prescribed in this Directive,

HAVE ADOPTED THIS DIRECTIVE:

## *Article 1*

### **Objective**

The aim of this Directive is to facilitate the exercise of the right of workers to freedom of movement and to facilitate workers' occupational mobility within the same Member State, by reducing the obstacles created by certain rules concerning supplementary pension schemes.

## *Article 2*

### **Scope**

1. This Directive shall apply to supplementary pension schemes apart from the schemes covered by Regulation (EEC) No 1408/71 on the coordination of social security schemes.<sup>8</sup>
2. However, this Directive shall not apply to the following schemes:
  - (a) supplementary pension schemes which have ceased accepting any new active scheme members at the moment this Directive enters into force and which remain closed to new members;
  - (b) 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;<sup>9</sup>
  - (c) insolvency guarantee schemes, compensation schemes and national reserve funds.

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<sup>8</sup> The reference to Regulation No. (EEC) 1408/71 is still appropriate, please see Regulation 883/04/EC, Articles 90(1), 90(2) and 91.

<sup>9</sup> This is partly based on the definitions of Directive 2001/17/EC (Reorganisation measures and winding-up proceedings).



*Article 3*  
**Definitions**

For the purposes of this Directive, the following definitions shall apply:

- (a) “supplementary pension” means a retirement pension as provided for by the rules of a supplementary pension scheme established in conformity with national legislation and practice;
- (b) “supplementary pension scheme” means any pension scheme linked to an employment relationship, established in conformity with national legislation and practice and intended to provide a supplementary pension for employed persons;
- (c) “active scheme member” means a worker whose current employment relationship entitles him/her or, after fulfilment of the vesting requirements, will entitle him/her to a supplementary pension in accordance with the provisions of a supplementary pension scheme;<sup>10</sup>
- (d) “vested pension rights” means any entitlement to supplementary pension obtained after the fulfilment of vesting requirements, if any, in accordance with the rules of a supplementary pension scheme and, where applicable, national legislation;
- (da) “vesting period” means a period of active scheme membership required either by national legislation or by the rules of a supplementary pension scheme for entitlement to a supplementary pension;
- (e) [...];
- (f) “outgoing worker” means an active scheme member whose current employment relationship terminates before he or she becomes eligible for a supplementary pension;

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<sup>10</sup> Active scheme member is (1) a scheme member who has not yet fulfilled vesting requirements and (2) a scheme member who has already fulfilled vesting requirements.

- (g) [...]
- (h) “deferred beneficiary” means any person who has vested pension rights in a supplementary pension scheme, but is no longer an active member of that scheme and is not yet in receipt of a supplementary pension from the scheme;
- (i) “dormant pension rights” means vested pension rights retained under the scheme under which they have been accrued by a deferred beneficiary;
- (j) [...]

#### *Article 4*

#### **Conditions governing vesting criteria**

The Member States shall take all necessary steps to ensure that:

- (a) Where the supplementary pension scheme stipulates a vesting period, this shall not exceed five years;
- (b) Where the supplementary pension scheme stipulates a minimum age for the acquisition by an active scheme member of vested rights, this age shall not exceed 25 years;
- (c) Where employment is terminated before an outgoing worker has accrued vested pension rights, a supplementary pension scheme shall refund the contributions paid by the outgoing worker or, where the outgoing worker bears the investment risk, the value of investments derived from those contributions.
- (d) If objectively justified, Member States shall have the option of allowing the social partners to lay down by collective agreement non-discriminatory provisions which differ from those of paragraphs 1 and 2, to the extent that these provisions provide at least equivalent protection to the persons concerned.

*Article 5*

**Preservation of dormant pension rights**

0. Subject to paragraph 2, Member States shall adopt the measures they deem necessary in order to ensure that outgoing workers can retain their vested pension rights in the supplementary pension scheme in which they have vested.
1. Member States shall adopt the measures they deem necessary to ensure a fair treatment of the dormant pension rights of outgoing workers, having regard to the nature of the pension scheme.
2. When the value of the vested pension rights does not exceed a threshold established by the Member State concerned, the Member State may allow supplementary pension schemes not to preserve vested rights but to use a payment of a capital sum, representing the value of the vested pension rights, to the outgoing worker. The Member State shall inform the Commission of the threshold applied.

*Article 6*

**Transferability**

[...]

*Article 7*

**Information**

1. Without prejudice to the obligations of the institutions for occupational retirement provision stemming from Article 11 of Directive 2003/41/EC, concerning the information to be provided to members and beneficiaries, the Member States shall adopt the measures they deem necessary to ensure that active scheme members and prospective active scheme members are provided with information in accordance with paragraph 2 on how a termination of employment would affect their supplementary pension rights.

2. Sufficient information shall be provided within a reasonable period of time to active scheme members and, where applicable, the prospective active scheme members who request it, in particular in respect of the following:
  - (a) the conditions governing the vesting of supplementary pension rights and the effects of applying them when employment is terminated;
  - (b) the pension benefits envisaged when employment is terminated;
  - (c) the conditions governing the preservation of dormant pension rights.
  - (d) [...]
3. A deferred beneficiary who so requests shall be entitled to receive information on dormant pension rights and on all changes to the rules governing the supplementary pension scheme concerning them.
4. The requested information referred to in this Article shall be provided in writing. A Member State may stipulate that there is no obligation to submit such information to each active scheme member and prospective scheme member more often than once a year.

#### *Article 8*

#### **Minimum requirements — non-regression**

1. The Member States may adopt or maintain provisions on the vesting and the preservation of an outgoing worker's supplementary pension rights, which are more favourable than those, set out in this Directive.
2. The implementation of this Directive may not under any circumstances be used as a reason for reducing the degree of vesting and preservation of an outgoing worker's supplementary pension rights, which exists in the Member States.

#### *Article 9*

## Implementation

1. The Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive no later than [...] <sup>11</sup>, or may grant the social partners, at their joint request, responsibility for implementing this Directive as regards the provisions relating to collective agreements. In that case, Member States shall ensure that, no later than [...] <sup>12</sup>,

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<sup>11</sup> "date 24 months after the date of entry into force of the Directive".

<sup>12</sup> "date 24 months after the date of entry into force of the Directive".

the social partners have introduced the requisite measures by agreement; the Member States concerned shall take all the necessary steps to ensure that they are at all times able to guarantee the outcomes prescribed in this Directive. They shall forthwith inform the Commission thereof.

2. The Member States may extend, where necessary, the implementation of this Directive for 120 months starting from [...] <sup>13</sup>. Any Member State using this extension shall inform the Commission accordingly, indicating the provisions and schemes concerned and the specific reasons for the extension.
3. [...]
4. When the Member States adopt these measures, these shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.
5. [...]

#### *Article 10*

#### **Report**

1. Five years after [...] <sup>14</sup>, the Commission shall draw up a report for submission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the basis of the information provided by the Member States.
2. [...]

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<sup>13</sup> "date after the date of entry into force of the Directive".

<sup>14</sup> "date of the entry into force of this Directive".

*Article 11*

**Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 12*

**Addressees**

This Directive is addressed to the Member States.

Done at .....,

*For the European Parliament*

*The President*

*For the Council*

*The President*

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