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REPORT

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

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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)

I. INTRODUCTION

On 20 October 2005, the Commission adopted a proposal for a Directive on improving the portability of supplementary pension rights. By improving workers' possibilities to accrue and preserve their supplementary pension rights when changing employers, the draft Directive aims at facilitating *both* workers' freedom of movement between Member States *and* their occupational mobility within the same Member State.

During the UK Presidency, on 8 December 2005, Commissioner Špidla presented the proposal to the EPSCO Council. Subsequently, on 1 June 2006, the Council EPSCO heard

the Austrian Presidency's progress report (doc. 9100/06) that outlined as major outstanding issues under discussion: the scope of the Directive, the level of harmonisation needed in rules concerning supplementary pension schemes, transfers of supplementary pension rights to other schemes, the role of the social partners in shaping the content and principles of supplementary pension schemes, transition periods and the application of the provisions to pension rights accrued before the entry into force of the Directive. The Report also noted that the definitions included in the Directive, the term "portability" and the inclusion of self-employed persons in the scope of the Directive needed special attention.

During the ensuing Finnish Presidency, the Social Questions Working Party continued its discussions on all these issues. The Working Party also heard a presentation on actuarial matters related to transfers by a representative from the *Groupe consultatif actuariel européen*.

These discussions allowed the Presidency to formulate suggestions on how the proposal could be modified to meet the concerns expressed by delegations. A number of versions of the text of the draft Directive have been examined by the Working Party. The state of play on this dossier is explained in Section II.¹ The most recent Presidency suggestion is contained in the Addendum to this report.

In Section III, the Presidency has formulated questions for the Ministers' debate on the two most crucial issues: (1) the shift of the focus of the draft Directive from transferability to the preservation of dormant pension rights and (2) the scope of the draft Directive, especially in view of the suggested long transitional period. The answers to these questions will provide guidance as to how work on the draft Directive should continue during the next Presidency and will also give clear indications on the Council's views for its future discussions with the European Parliament. The Parliament's opinion on the proposal is expected early in 2007.

The Economic and Social Committee gave its opinion on 20/21 April 2006.

¹ The latest Report of the Working Party's discussions is in doc. 15222/06.

For the time being, the Dutch delegation has maintained its general reservation on the entire proposal and all other delegations have maintained their general scrutiny reservations.

The Danish, Maltese and UK delegations have also entered parliamentary scrutiny reservations.

II. STATE OF PLAY

The Social Questions Working Party continued to tackle the issues identified in the progress report by the Austrian Presidency. The Working Party noted that all the main issues were interlinked. To structure the discussions, the Presidency issued two discussions papers, the first one related to the scope of the Directive and the other related to the main characteristics of supplementary pension schemes.

The discussions lead to the following main findings:

- The question of *transferability* is the major issue which affects all other provisions of the Directive, in particular those on the scope and the preservation of dormant rights. A large number of delegations consider that the preservation of dormant pension rights should be the core of this Directive and transferability should be left as a matter for national legislation. However, a number of delegations favour a transfer requirement still being included in the Directive.

- A number of delegations have stressed that *the scope of the Directive* should be as wide as possible. Several delegations have, however, supported exclusions from the scope, raising concerns in respect of certain types of supplementary pension schemes, related especially to the financial viability and the sustainability of the schemes. In particular, such concerns relate to schemes where outgoing workers who leave the scheme before retirement do not retain any pension rights, to schemes with long vesting periods, and to the schemes' ability to pay out and receive transfers.

- *The vesting criteria* (the length of the vesting period and the minimum age for entitlement to vested pension rights) and *the preservation of dormant pension rights* once vested (treatment of the dormant pension rights) have been shown to be key questions in relation to supplementary pension schemes and the mobility of workers.
- A number of delegations have also stressed the important *role of the social partners*, in their Member States, in designing and managing supplementary pension schemes and, in addition, some delegations have been concerned that the Directive might impinge on the social partners' leeway at the national level.
- Some delegations have raised the issue of how the Directive should apply to supplementary pension rights accrued and/or vested *before* the entry into force of the Directive, in particular the cost effects on schemes. In this context, it was noted that the length of the transitional period and the application of the Directive's provisions to pension rights accrued before its entry into force were interlinked issues.

The Working Party also discussed the following issues:

- the definitions to be used in the Directive, in particular the term "portability";
- the inclusion of the self-employed in the Directive; a majority of the delegations consider that self-employed persons should be excluded from its scope.

Based on the Working Party's discussions, the Presidency has prepared a text that aims at striking a balance between the need to reduce obstacles to the mobility of workers and the need to take into account the wide diversity of supplementary pension schemes in the Member States. At the same time, the aim is not to discourage further development of supplementary pension schemes and the maintenance of those which already exist.

Some delegations have expressed their regret at what they see as a lowered level of ambition of the Presidency text compared to the Commission proposal. The understanding of the Presidency, however, is that the text it has suggested would still mark a clear step forward in improving the situation for mobile workers in relation to supplementary pension schemes by safeguarding the preservation of pension rights through a fair treatment of dormant rights.

III. QUESTIONS FOR THE MINISTERS' DEBATE

In order to receive clear orientations to facilitate the continuation of discussions, the Presidency believes the time is now right to ask Ministers for their answers to the following questions:

1. Transferability

During the discussions, delegations have stressed that supplementary pension systems in the different Member States vary widely and that these systems have evolved over lengthy periods of time. In some countries transfers are already in use, but mainly within Member States only. In addition, transfer systems vary between countries. Therefore, several delegations have expressed doubts concerning the inclusion of the transfer requirement in this Directive.

In order to address the concerns on transferability, the Presidency has put forward several texts that would make transferability optional. None of these suggestions obtained the consensus of all delegations. Therefore, the present Presidency text does not include transfers, but focuses on the vesting and the preservation of supplementary pension rights.

Whilst a large number of delegations find the approach of the Presidency acceptable, i.e. that the Directive should not regulate transfers, a number of delegations have expressed regret that the Directive would not address the question of transfers.

Question 1(a)

Can Ministers agree that, as an important further step in facilitating the mobility of workers in the European Union, the Directive should focus on vesting criteria as well as on the preservation of pension rights through a fair treatment of dormant rights?

Question 1(b)

Can Ministers agree that this Directive should not contain provisions for transferability?

2. Supplementary pension schemes to be covered by the Directive

Several delegations have stated that the scope of the Directive should be as wide as possible. Many of the proposed exclusions from its scope related to transferability. Bearing in mind that the Presidency text is no longer envisaging transferability, the Presidency has endeavoured to clarify which supplementary pension schemes should fall within the scope of the Directive.

The Presidency's starting point is that the scope should be as wide as possible and that all schemes accepting new members and providing for supplementary pensions related to an employment relationship should be included. Only schemes covered by Regulation 1408/71/EEC, schemes not accepting new members, and particular schemes that are not to be understood as supplementary pension schemes would be excluded from the scope. In addition, specific reorganisation and winding-up situations, covered by other Community legislation, would be excluded from the scope.

Taking into account, the financial effects of the suggested provisions both on vesting criteria and on the preservation and fair treatment of dormant pension rights, the Presidency's suggested text envisages a transitional period of 120 months, in order to give schemes sufficient time to adjust their rules and funding.

Question 2

Do Ministers agree, taking into account the combination of a long transitional period and the suggested exclusion of certain schemes, that the Presidency text would give sufficient time to supplementary pension schemes to adjust to the new rules?

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To facilitate the discussions in the Council, the Presidency is submitting, as an Addendum to this note, a Presidency text revised in the light of the latest discussions in the Working Party.
