

## **Beschlussempfehlung und Bericht des Ausschusses für Arbeit und Soziales (11. Ausschuss)**

**zu der Unterrichtung durch die Bundesregierung  
– Drucksache 16/150 Nr. 2.265 –**

**Vorschlag für eine Richtlinie des Europäischen Parlaments und des Rates zur  
Verbesserung der Portabilität von Zusatzrentenansprüchen (inkl. 13686/05 ADD 1)  
KOM (2005) 507 endg.; Ratsdok. 13686/05**

### **A. Problem**

Zusätzliche Altersvorsorge durch Betriebsrenten gewinnt in der Alterssicherungspolitik zunehmend an Bedeutung. Die in diesem Zusammenhang wichtige Frage der Mitnahmemöglichkeiten von Betriebsrentenanwartschaften wurde in Deutschland im Rahmen des Alterseinkünftegesetzes 2005 neu geregelt. Mit ihrem Richtlinienvorschlag will die Kommission den innerstaatlichen Erwerb und die innerstaatliche sowie die europaweite Mitnahme von Betriebsrentenansprüchen erleichtern.

### **B. Lösung**

Der Richtlinienvorschlag sieht eine Absenkung der Unverfallbarkeitsfristen für den Erwerb von Zusatzrentenansprüchen auf zwei Jahre sowie eine Dynamisierung der Anwartschaften ausgeschiedener Arbeitnehmer vor. Ferner sieht der Vorschlag einen sofortigen und unbegrenzten Mitnahmeanspruch der Beschäftigten vor, was die abgebenden Systeme erheblich belasten und im Ergebnis zu inakzeptablen Renditeverlusten für die verbliebenen Arbeitnehmer führen würde. Die deutschen Besonderheiten bei Direktzusagen der Arbeitgeber, bei Unterstützungskassen sowie bei umlagefinanzierten Systemen sind zwar nach dem Vorschlag von der verpflichtenden Übertragung ausgenommen, aber auch für diese Systeme soll auf lange Sicht die Portabilität sichergestellt werden (Überprüfung der Richtlinie 2018).

**Annahme des Entschließungsantrags mit den Stimmen der Fraktionen der CDU/CSU und SPD gegen die Stimmen der Fraktionen FDP, DIE LINKE. und BÜNDNIS 90/DIE GRÜNEN**

**C. Alternativen**

Keine

**D. Finanzielle Auswirkungen**

Abschätzungen über die finanziellen Auswirkungen wurden nicht vorgenommen.

## Beschlussempfehlung

Der Bundestag wolle beschließen,

1. das Ratsdokument 13686/05 zur Kenntnis zu nehmen,
2. den nachstehenden Entschließungsantrag anzunehmen.

„I. Der Deutsche Bundestag stellt fest:

Der Vorschlag der EU-Kommission für eine Richtlinie zur Verbesserung der Portabilität von Zusatzrentenansprüchen hat das Ziel, die Mobilität von Arbeitnehmerinnen und Arbeitnehmern in der Europäischen Union zu erleichtern. Betriebsrentenanwartschaften sollen bei einem Arbeitgeberwechsel besser mitzunehmen sein. Der Deutsche Bundestag begrüßt und unterstützt die entsprechenden Bemühungen der Kommission. In der vorliegenden Fassung ist der Richtlinienentwurf allerdings nicht zustimmungsfähig, weil er auch über die Reichweite der gemeinschaftlichen Regelungskompetenz hinausgeht.

Aus dem Alterssicherungsbericht 2005 der Bundesregierung wird deutlich, dass zur Sicherung des Lebensstandards im Alter eine Ergänzung der Ansprüche aus der gesetzlichen Rentenversicherung durch eine zusätzliche kapitalgedeckte Altersvorsorge unerlässlich ist. In Deutschland ist es in den vergangenen Jahren durch Reformen des Betriebsrentenrechts gelungen, die Betriebsrente zu einem erfolgreicherem Instrument der zusätzlichen Altersvorsorge als in der Vergangenheit zu machen. Nicht zuletzt durch die neu gestaltete staatliche Förderung hat die betriebliche Altersvorsorge ihre jahrzehntelange Stagnation überwunden und ist auf stabilem Wachstumskurs. Mitte 2004 besaßen rund 60 Prozent der sozialversicherungspflichtig Beschäftigten in Deutschland einen Anspruch auf Betriebsrente, das sind 15,7 Millionen Arbeitnehmerinnen und Arbeitnehmer.

Um den Auf- und Ausbau der betrieblichen Altersversorgung zu beschleunigen, wurden in Deutschland unter anderem die Mitnahmemöglichkeiten erworbener Betriebsrentenanwartschaften bei einem Arbeitgeberwechsel (sog. Portabilität) mit Beginn des Jahres 2005 verbessert. Damit wurde sowohl den veränderten wirtschaftlichen Rahmenbedingungen und den daraus resultierenden geänderten Erwerbsbiographien als auch dem notwendigen Ausbau der zusätzlichen kapitalgedeckten Altersvorsorge Rechnung getragen.

Die Zielsetzung des vorliegenden Richtlinienvorschlags, die europaweite Übertragungsmöglichkeit von Betriebsrentenanwartschaften zu verbessern, wird in diesem Kontext grundsätzlich begrüßt. Die Mobilität der Arbeitnehmer zwischen den Mitgliedstaaten der Europäischen Union muss erleichtert, vorhandene Hindernisse für die grenzüberschreitende Mobilität in den Zusatzrentensystemen der Mitgliedstaaten müssen möglichst abgebaut werden. Damit wird Arbeitnehmerinnen und Arbeitnehmern, die während ihres Erwerbslebens in mehreren Staaten der Europäischen Union beschäftigt sind, der Aufbau einer den Lebensstandard sichernden Zusatzrente erleichtert.

Die Regelungen müssen neben der Förderung der Freizügigkeit und des Binnenmarkts aber auch die Besonderheiten der in den Mitgliedstaaten gewachsenen Betriebsrentensysteme berücksichtigen. Sie dürfen nicht dazu führen, dass sich die nationalen Rahmenbedingungen der betrieblichen Altersvorsorge zugunsten EU-weiter Mobilität der Arbeitnehmerinnen und Arbeitnehmer verschlechtern. Insbesondere muss den

Sozialpartnern in den Mitgliedstaaten bei der Gestaltung der betrieblichen Altersvorsorge weiterhin hinreichend Raum gegeben werden. Den nationalen Besonderheiten der Zusatzrentensysteme wird durch tarifliche Regelungen vor Ort am besten Rechnung getragen.

Die betriebliche Altersversorgung in Deutschland ist ihrer Struktur nach ein freiwilliges System. Die Arbeitgeber sehen darin ein personalwirtschaftliches Instrument zur Personalbindung und Belohnung der Betriebstreue. Die betriebliche Altersversorgung in Deutschland wird daher in bedeutendem Umfang auch durch Beteiligung der Arbeitgeber finanziert. Der Nutzen der betrieblichen Altersversorgung für die Unternehmen würde sich durch den Richtlinienentwurf verringern. Damit bestünde die Gefahr, dass sich Arbeitgeber zunehmend aus der betrieblichen Altersversorgung zurückziehen. Der Auf- und Ausbau von Zusatzrentenansprüchen ist angesichts der demographischen Entwicklung aber zumindest gleichrangig mit dem Ziel der Mobilität von Arbeitnehmern zu sehen. Es gilt daher, eine sachgerechte Abwägung in diesem Zielkonflikt zu treffen.

Um weitgehende Verbesserungen der Portabilität von Betriebsrenten in der EU zu erzielen, sollte parallel zum vorgelegten Richtlinienvorschlag auch das Problem der einheitlichen Besteuerung von Altersvorsorgeprodukten aufgegriffen werden. Die Angleichung der steuerlichen Behandlung betrieblicher Altersvorsorge in der EU ist eine Grundvoraussetzung für eine unproblematische Übertragung von Rentenansprüchen und für die Vermeidung eventueller Doppelbesteuerung.

- II. Vor diesem Hintergrund fordert der Deutsche Bundestag die Bundesregierung auf, im weiteren Verlauf des Rechtsetzungsverfahrens in den Organen und Gremien der EU darauf hinzuwirken, dass
1. der Richtlinienvorschlag die sozialpolitische Bedeutung der Zusatzrentensysteme berücksichtigt und den nationalen Besonderheiten der Zusatzrentensysteme insbesondere durch die Möglichkeit tarifvertraglicher Regelungen Rechnung getragen wird;
  2. Direktzusagen der Arbeitgeber, über Unterstützungskassen abgewickelte Betriebsrentenzusagen sowie umlagefinanzierte Zusatzversorgungssysteme vom Anwendungsbereich der Mitnahmeregelung dauerhaft ausgenommen werden. Bei Direktzusagen sind die dafür gebildeten Rückstellungen in der Regel im Unternehmen gebunden; die Arbeitgeber sollten bei vorzeitigem Ausscheiden eines Beschäftigten nicht zu deren Kapitalisierung verpflichtet werden. Bei Unterstützungskassenzusagen ist aufgrund der steuerlichen Rahmenbedingungen eine volle Ausfinanzierung der Verpflichtung nicht möglich. In umlagefinanzierten Systemen, wie sie besonders in großen Teilen des öffentlichen Dienstes existieren, ist auf Dauer kein Kapital vorhanden, das bei einem Wechsel mitgenommen werden könnte;
  3. das vorgeschlagene Dynamisierungsgebot vor dem Hintergrund der damit verbundenen Kostenbelastung der Arbeitgeber überprüft wird. Nach dem Vorschlag sollen die ruhenden unverfallbaren Betriebsrentenansprüche – auch bereits in der Vergangenheit – ausgeschiedener Arbeitnehmer an die allgemeine Preisentwicklung angepasst werden. Die Umstellung könnte aufgrund der massiven zusätzlichen Kostenbelastung aber zu einem Rückzug vieler Arbeitgeber aus der freiwillig finanzierten Altersvorsorge führen;
  4. die im Richtlinienvorschlag vorgesehene Unverfallbarkeit ab einem Alter von 21 Jahren und bei zweijähriger Zugehörigkeit zum Betriebsrentensystem unter dem Aspekt der Kostenbelastung für den Arbeit-

geber und möglicher Steuerausfälle geprüft wird. Zwar würden Arbeitnehmerinnen und Arbeitnehmer durch eine Herabsetzung der Altersgrenze bereits früher als bisher unverfallbare Altersvorsorgeanwartschaften erhalten. Damit würde insbesondere den Interessen junger Mütter besser Rechnung getragen, die wegen der Kindererziehung aus dem Beruf ausscheiden und deshalb derzeit häufig keine unverfallbaren Betriebsrentenanwartschaften erlangen können. Diesen zweifellos positiven Auswirkungen stünden allerdings Kostenbelastungen gegenüber, die kontraproduktiv für das System der betrieblichen Altersvorsorge insgesamt sein können. Aus Vertrauensschutzgründen sollte sich eine Absenkung der Unverfallbarkeitsfristen ohnehin auf Neuzusagen beschränken;

5. die Übertragungsmöglichkeiten nicht zu einer unverhältnismäßigen Belastung der abgebenden Systeme führen, sondern sinnvoll in der Höhe begrenzt werden. Der Kommissionsvorschlag sieht einen sofortigen und unbegrenzten Mitnahmeanspruch der Beschäftigten vor. Dies würde besonders die abgebenden Systeme erheblich belasten und im Ergebnis zu inakzeptablen Renditeverlusten für die im System verbleibenden Arbeitnehmerinnen und Arbeitnehmer führen. Insoweit kann auf die Regelung zur Mitnahme im Betriebsrentengesetz verwiesen werden; sie ist bei externen Durchführungen auf einen Betrag in Höhe der Beitragsbemessungsgrenze der gesetzlichen Rentenversicherung begrenzt;
6. bei den Informations- und Auskunftspflichten ausdrücklich die Möglichkeit für den Arbeitgeber vorgesehen wird, diese Pflichten und die damit verbundenen Haftungsrisiken auf die jeweilige Versorgungseinrichtung zu übertragen. In diesem Zusammenhang ist dafür Sorge zu tragen, dass der Informations- und Auskunftsanspruch der Arbeitnehmerinnen und Arbeitnehmer nicht zu einem wesentlich erhöhten Verwaltungsaufwand der Arbeitgeber führt;
7. parallel zu den weiteren Verhandlungen die einheitliche Besteuerung von betrieblichen Altersvorsorgeprodukten in den Mitgliedstaaten der EU vorangetrieben wird. Erst wenn diese sichergestellt ist, können die im Richtlinienvorschlag vorgesehenen Möglichkeiten der Mitnahme von Betriebsrentenansprüchen ihre volle Wirkung entfalten.“

Berlin, den 5. April 2006

#### **Der Ausschuss für Arbeit und Soziales**

**Gerald Weiß (Groß-Gerau)**  
Vorsitzender

**Peter Weiß (Emmendingen)**  
Berichterstatter

## Bericht des Abgeordneten Peter Weiß (Emmendingen)

### I. Überweisung und Voten der mitberatenden Ausschüsse

#### 1. Überweisung

Das Unionsdokument – Ratsdok. 13686/05 – wurde am 8. Dezember 2005 im vereinfachten Verfahren mit **Drucksache 16/150 Nr. 2.265** dem Ausschuss für Arbeit und Soziales zur federführenden Beratung sowie dem Rechtsausschuss, dem Finanzausschuss und dem Ausschuss für Familie, Senioren, Frauen und Jugend zur Mitberatung überwiesen.

#### 2. Voten der mitberatenden Ausschüsse

Der **Rechtsausschuss** hat die Vorlage in seiner Sitzung am 8. Februar 2006 zur Kenntnis genommen. Der **Finanzausschuss** sowie der **Ausschuss für Familie, Senioren, Frauen und Jugend** haben die Vorlage in ihren Sitzungen am 5. April 2006 zur Kenntnis genommen und den Entschließungsantrag der Fraktionen der CDU/CSU und SPD mit den Stimmen der Fraktionen der CDU/CSU und SPD gegen die Stimmen der Fraktionen DIE LINKE. und BÜNDNIS 90/DIE GRÜNEN bei Stimmenthaltung der Fraktion der FDP angenommen. Der Entschließungsantrag der Fraktion BÜNDNIS 90/ DIE GRÜNEN wurde im Finanzausschuss mehrheitlich abgelehnt.

### II. Wesentlicher Inhalt der Vorlage

Zusätzliche Altersvorsorge durch Betriebsrenten gewinnt in der Alterssicherungspolitik zunehmend an Bedeutung. Die in diesem Zusammenhang wichtige Frage der Mitnahmemöglichkeiten von Betriebsrentenanwartschaften wurde in Deutschland im Rahmen des Alterseinkünftegesetzes 2005 neu geregelt. Mit ihrem Richtlinienvorschlag will die EU-Kommission den innerstaatlichen Erwerb und die innerstaatliche sowie die europaweite Mitnahme von Betriebsrentenansprüchen erleichtern.

Der Richtlinienvorschlag sieht eine Absenkung der Unverfallbarkeitsfristen für den Erwerb von Zusatzrentenansprüchen auf zwei Jahre sowie eine Dynamisierung der Anwartschaften ausgeschiedener Arbeitnehmer vor. Ferner sieht der Vorschlag einen sofortigen und unbegrenzten Mitnahmeanspruch der Beschäftigten vor, was die abgebenden Systeme erheblich belasten und im Ergebnis zu inakzeptablen Renditeverlusten für die verbliebenen Arbeitnehmer führen würde. Die deutschen Besonderheiten bei Direktzusagen der Arbeitgeber, bei Unterstützungskassen sowie bei umlagefinanzierten Systemen sind zwar nach dem Vorschlag von der verpflichtenden Übertragung ausgenommen, aber auch für diese Systeme soll auf lange Sicht die Portabilität sichergestellt werden (Überprüfung der Richtlinie 2018).

### III. Beratung im federführenden Ausschuss

Der **Ausschuss für Arbeit und Soziales** hat in seiner 16. Sitzung am 5. April 2006 das EU-Dokument beraten und mit den Stimmen der Fraktionen der CDU/CSU und SPD gegen die Stimmen der Fraktionen FDP, DIE LINKE. und BÜNDNIS 90/DIE GRÜNEN den vorstehend abgedruckten Entschließungsantrag angenommen.

Keine Mehrheit im Ausschuss fand der nachstehend wiedergegebene Entschließungsantrag der Fraktion BÜNDNIS 90/ DIE GRÜNEN, der mit den Stimmen der Fraktionen der CDU/CSU, SPD und FDP bei Zustimmung der Fraktion DIE LINKE. sowie der antragstellenden Fraktion abgelehnt wurde.

*Der Bundestag wolle beschließen:*

*I. Der Deutsche Bundestag stellt fest:*

*Moderne Arbeitsmärkte brauchen flexible Arbeitnehmer. Deshalb muss auch die betriebliche Altersvorsorge flexibler werden: Deutlich verkürzte Unverfallbarkeitsfristen von Altersvorsorgeansprüchen sind deshalb ein wichtiger und richtiger Vorschlag der EU-Kommission. Denn bei vielen Arbeitnehmern verfallen bisher die bestehenden Ansprüche, wenn sie nicht länger als 5 Jahre bei ihrem Arbeitgeber arbeiten.*

*Die Absenkung der Altersgrenze für die Unverfallbarkeit von Ansprüchen auf 21 Jahre ist sinnvoll. In Deutschland beträgt die Altersgrenze derzeit 30 Jahre. Das ist zu spät, denn die gesetzlichen Rentenansprüche sinken. Heute muss so früh wie möglich zusätzlich vorgesorgt werden, damit im Endeffekt ein Gesamtrentenniveau erreicht werden kann, das den Lebensstandard sichert.*

*Die steuerliche Förderung der betrieblichen Altersvorsorge muss auch tatsächlich den Arbeitnehmern zugute kommen. Allen Beteiligten muss klar sein: Betriebliche Altersvorsorge – vor allem die staatlich geförderten Formen – stehen im Eigentum der Arbeitnehmer und sind keine beliebige Finanzierungsmasse der Arbeitgeber. Die geplanten Ausnahmen bei der Übertragbarkeit für die Direktzusage, die Unterstützungskassen und umlagefinanzierte Systeme sind kontraproduktiv. Denn damit wären zwei Drittel der betrieblichen Altersvorsorge in Deutschland von der Modernisierung ausgenommen – zu Lasten der Arbeitnehmer.*

*Bessere Übertragbarkeit der Betriebsrentenansprüche, wie von der Kommission vorgeschlagen, ist dringend notwendig. Denn Arbeitnehmer mit mehreren Betriebsrenten sind schon heute keine Seltenheit mehr. Darüber hinaus sollten Arbeitnehmer ihre betriebliche Altersvorsorge bei einem neuen Arbeitgeber generell und uneingeschränkt weiterführen können. Hier muss eine vernünftige Lösung gefunden werden.*

*Ebenso notwendig ist die Dynamisierung bestehender Ansprüche für ausscheidende Arbeitnehmer, denn bei einem flexiblen Arbeitsleben drohen sich sonst die Ansprüche aus verschiedenen Betriebsrenten mit der Zeit zu entwerten.*

*II. Der Deutsche Bundestag fordert die Bundesregierung auf, in den weiteren Verhandlungen zu dem Richtlinienvorschlag an den Vorschlägen zu einer verbesserten Übertragbarkeit der Zusatzrentenansprüche im vollen Umfang festzuhalten und darauf hinzuwirken, dass es keine generellen Ausnahmen für Direktzusage, Unterstützungskasse und umlagefinanzierte Systeme gibt.“*



Die Mitglieder der **Fraktion der CDU/CSU** äußerten Zweifel an der Kompetenz der Europäischen Union für eine derartige Richtlinie. Zugleich kritisierten sie, dass der Richtlinienvorschlag nicht ausreichend Rücksicht auf die in den einzelnen Ländern unterschiedlich gewachsenen Zusatzrentensysteme nehme. Sie äußerten die Befürchtung, dass eine Verabschiedung der Richtlinie in der vorliegenden Form kontraproduktiv sei, da sie die beim Aufbau von betrieblichen Versorgungssystemen erfreulicherweise erreichten Fortschritte in Frage stelle. Daher unterstütze man die Verhandlungsposition der Bundesregierung, in jedem Falle zu erreichen, dass eine etwaige Richtlinie auf die Besonderheiten der betrieblichen Rentensysteme, aber auch die der Zusatzrentensysteme im Bereich des öffentlichen Dienstes ausreichend Rücksicht nehmen wird. Den Entschließungsantrag der Fraktion BÜNDNIS 90/DIE GRÜNEN lehnten sie ab, da er die genau gegensätzliche Zielrichtung des eigenen Entschließungsantrages verfolge.

Die Mitglieder der **Fraktion der SPD** begrüßten grundsätzlich das Anliegen der EU-Kommission, Hemmnisse zu beseitigen, die der Portabilität entgegenstehen. Hier gebe es allerdings einen Zielkonflikt, da hohe Standards bei der Portabilität im Gegenzug vermutlich zu einem Rückgang der betrieblichen Rentenzusagen führen würden. Im Übrigen hegten nicht nur die Arbeitgeber, sondern auch die Gewerkschaften erhebliche Bedenken gegenüber den Vorschlägen der EU-Kommission. Die in Deutschland gefundenen Kompromisse bei der Portabilität seien ausgewogen, wenngleich eine Herabsetzung des Mindestalters wünschenswert sei. Zu beachten sei auch, dass eine Verwirklichung der Kommissionsvorschläge für die betrieblichen Rentensysteme zu erheblichen Kosten führe, was eine Absenkung der auszahlenden Betriebsrenten zur Folge habe. Man sehe bei dem Richtlinienentwurf erheblichen Nachbesserungsbedarf. Der eingebrachte Entschließungsantrag unterstütze die Bundesregierung, in den Verhandlungen in Brüssel zu einem ausgewogenen Ergebnis zu gelangen, welches auf die besonderen deutschen Anliegen Rücksicht nehme.

Die Mitglieder der **Fraktion DIE LINKE**. betonten, dass sie gegen den generellen politischen Trend seien, betriebliche und private Alterssicherungssysteme auf Kosten der gesetzlichen Rentenversicherung auszubauen. Dessen ungeachtet trete man jedoch für den Schutz von betrieblichen Altersversorgungsansprüchen ein. Angesichts der abverlangten Mobilität solle die Portabilität von betrieblichen Zusatzrentenansprüchen im größtmöglichen Interesse der Arbeitnehmer und -innen geregelt werden. Aus diesen Gründen lehne man die Positionen der Fraktionen der CDU/CSU und SPD ab und unterstütze den Entschließungsantrag der Fraktion BÜNDNIS 90/DIE GRÜNEN.

Die Mitglieder der **Fraktion BÜNDNIS 90/DIE GRÜNEN** sahen demgegenüber eine Zuständigkeit der Europäischen Union als gegeben an, da der Richtlinienvorschlag auf eine Verbesserung der Mobilität der Arbeitnehmer und -innen abziele. Die heutigen Verfallbarkeitsregelungen entsprächen nicht mehr den Anforderungen eines modernen Arbeitsmarktes. Notwendig sei, so früh wie möglich betriebliche und private Vorsorge zu betreiben, um am Ende ein ausreichendes Gesamtrentenniveau zu erreichen. Da es hierfür einer weiteren Flexibilisierung bedürfe, unterstütze man den Vorschlag der EU-Kommission, die Übertragbarkeit von betrieblichen Rentenanwartschaften zu verbessern und die vorhandenen Ansprüche ausgeschiedener Arbeitnehmer und -innen zu dynamisieren.

Die Mitglieder der **Fraktion der FDP** erklärten, dass sie den Richtlinienvorschlag der Kommission ablehnten, da er über die reine Frage der Portabilität hinausgehe und sich auch mit inhaltlichen Aspekten von Betriebsrentensystemen befasse. Während der Entschließungsantrag der Fraktionen der CDU/CSU und SPD nicht weit genug gehe, indem dieser die Portabilität nicht ausreichend fördern wolle, beinhalte der Entschließungsantrag der Fraktion BÜNDNIS 90/DIE GRÜNEN eine Anerkennung einer Richtlinienkompetenz der EU-Kommission in diesem Bereich, die man so nicht als gegeben ansehe. Aus diesen Gründen lehne man beide Entschließungsanträge ab.

Berlin, den 5. April 2006

**Peter Weiß (Emmendingen)**

Berichterstatter







**RAT DER  
EUROPÄISCHEN UNION**

**Brüssel, den 24. Oktober 2005 (25.10)  
(OR. en)**

**13686/05**

**Interinstitutionelles Dossier:  
2005/0214 (COD)**

**SOC 412  
ECOFIN 324  
CODEC 933**

**VORSCHLAG**

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Absender: die Kommission  
vom: 24. Oktober 2005

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Betr.: **Vorschlag für eine RICHTLINIE DES EUROPÄISCHEN  
PARLAMENTS UND DES RATES zur Verbesserung der  
Portabilität von Zusatzrentenansprüchen**

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Die Delegationen erhalten in der Anlage den mit Schreiben von Herrn Jordi AYET PUIGARNAU, Direktor, an den Generalsekretär/Hohen Vertreter, Herrn Javier SOLANA, übermittelten Vorschlag der Kommission.

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Anl.: KOM(2005) 507 endgültig



KOMMISSION DER EUROPÄISCHEN GEMEINSCHAFTEN

Brüssel, den 20.10.2005  
KOM(2005) 507 endgültig

2005/0214 (COD)

Vorschlag für eine

**RICHTLINIE DES EUROPÄISCHEN PARLAMENTS UND DES RATES**

**zur Verbesserung der Portabilität von Zusatzrentenansprüchen**

**{SEC(2005)1293}**

(von der Kommission vorgelegt)

## BEGRÜNDUNG

### 1) HINTERGRUND DES VORSCHLAGS

- **Gründe und Ziele**

In der überarbeiteten Lissabon-Strategie<sup>1</sup> und in der Sozialagenda<sup>2</sup> wird herausgestrichen, dass Mobilität insofern eine wichtige Rolle spielt als sie die Anpassungsfähigkeit der Arbeitskräfte und der Unternehmen sowie die Flexibilität der Arbeitsmärkte steigert. Die zunehmende Bedeutung der Zusatzrentensysteme für die Alterssicherung macht es erforderlich, durch diese Systeme bedingte Mobilitätshindernisse zu beseitigen. Im Lissabon-Aktionsplan hat die Kommission dementsprechend angekündigt, dass sie in diesem Bereich Legislativvorschläge vorlegen wird.

Der vorliegende Vorschlag zielt darauf ab, durch einzelne Bestimmungen der Zusatzrentensysteme bedingte Freizügigkeitshindernisse zwischen Mitgliedstaaten sowie innerstaatliche Mobilitätshindernisse abzubauen. Konkret bestehen derartige Hindernisse bei den Bedingungen für den Erwerb von Rentenansprüchen, bei der Wahrung ruhender Rentenansprüche und bei der Übertragbarkeit von Ansprüchen. Weiterhin will der Vorschlag bewirken, dass die Arbeitnehmer besser über die Folgen der Mobilität für die Zusatzrentenansprüche aufgeklärt werden.

- **Allgemeiner Kontext**

Die sozialen Sicherungssysteme der Mitgliedstaaten müssen dem Problem der demografischen Alterung Rechnung tragen. Die in der Mehrzahl der Mitgliedstaaten bereits vorgenommenen oder vorgesehenen Reformen setzen auf einen Ausbau der Zusatzrentensysteme, deren Entwicklung in einigen Mitgliedstaaten im Übrigen aktiv gefördert wird.

Es gilt sicherzustellen, dass Zusatzversorgungsregelungen nicht die Mobilität der Arbeitskräfte behindern – sie dürfen es mobilen Arbeitskräften nicht erschweren, bis zum Ende ihres Erwerbslebens ausreichende Rentenanwartschaften anzusammeln – und damit die Arbeitsmarktflexibilität und –performance beeinträchtigen. Auch wenn die Entscheidung eines Arbeitnehmers, den Arbeitsplatz zu wechseln, von zahlreichen Faktoren abhängt, so ist doch unstrittig, dass die Gefahr einer erheblichen Beschneidung der Zusatzrentenansprüche die Bereitschaft zu einem Arbeitsplatzwechsel verringert.

Der Vorschlag stützt sich auf die Ergebnisse eines mehrere Jahre währenden Informations- und Erfahrungsaustausches auf europäischer Ebene, bei dem man nach geeigneten Möglichkeiten suchte, die Zusatzrentensysteme mobilitätsfreundlicher auszulegen.

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<sup>1</sup> Zusammenarbeit für Wachstum und Arbeitsplätze – Ein Neubeginn für die Strategie von Lissabon, KOM(2005) 24 endgültig, Brüssel, 2. Februar 2005.

<sup>2</sup> Mitteilung der Kommission: Sozialpolitische Agenda, KOM(2005) 33 endgültig, Brüssel, 9. Februar 2005.

- **Bestehende einschlägige Rechtsvorschriften**

Das Fehlen eines gemeinsamen Regelungsrahmens für die Portabilität von Zusatzrentenansprüchen behindert nach wie vor die Freizügigkeit der Arbeitskräfte und die berufliche Mobilität im Allgemeinen, auch innerhalb der Mitgliedstaaten.

Ein erster Schritt zum Abbau dieser Hindernisse war die Richtlinie 1998/49/EG<sup>3</sup>. Sie sollte insbesondere die Gleichbehandlung von Personen sicherstellen, die grenzüberschreitende Mobilität praktizieren.

- **Kohärenz mit anderen Politiken und Zielen der Union**

Die jüngste Mitteilung der Kommission für die Frühjahrstagung 2005 des Europäischen Rates<sup>4</sup> sowie die integrierten Leitlinien<sup>5</sup> unterstreichen, wie wichtig es ist, die Reagibilität des Arbeitsmarktes insbesondere durch Förderung der beruflichen und geografischen Mobilität zu verbessern. Die politische Initiative zur legalen Einwanderung, die die Kommission bis zum Ende des Jahres 2005 verabschieden wird, wird sich auch hiermit befassen.

## 2) KONSULTATION DER STAKEHOLDER UND FOLGENABSCHÄTZUNG

- **Konsultation der Stakeholder**

*Konsultationsmethoden, Hauptadressaten und allgemeines Profil der Antwortenden*

Die Kommission hat die Sozialpartner zweimal konsultiert. Gegenstand der ersten Konsultation waren die Zweckmäßigkeit und die mögliche Ausrichtung einer Gemeinschaftsaktion zur Gewährleistung der Portabilität von Betriebsrentenansprüchen<sup>6</sup>. Die Sozialpartner befürworteten zum Großteil eine Gemeinschaftsaktion in diesem Bereich. In einer daraufhin von der Kommission eingeleiteten zweiten Konsultation der europäischen Sozialpartner<sup>7</sup> ging es um die inhaltliche Ausgestaltung einer solchen Gemeinschaftsaktion. Diese Konsultation ergab, dass die Sozialpartner unterschiedliche Vorstellungen haben über den Zweck einer solchen Aktion und die einzusetzenden Mittel. Sie traten deshalb nicht in Verhandlungen über eine autonome Vereinbarung ein.

Seit seiner Einsetzung im Jahr 2001 war der Ausschuss für zusätzliche Altersversorgung<sup>8</sup> (im Folgenden „Rentenforum“ genannt) unmittelbar in die Untersuchung derjenigen Mobilitätshindernisse einbezogen, die durch Bestimmungen

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<sup>3</sup> Richtlinie 98/49/EG zur Wahrung ergänzender Rentenansprüche von Arbeitnehmern und Selbständigen, die innerhalb der Europäischen Gemeinschaft zu- und abwandern, ABl. L 209 vom 25. Juli 1998.

<sup>4</sup> Zusammenarbeit für Wachstum und Arbeitsplätze – Ein Neubeginn für die Strategie von Lissabon, Mitteilung für die Frühjahrstagung des Europäischen Rates, KOM(2005) 24 endgültig, Brüssel, 2. Februar 2005.

<sup>5</sup> Vor allem Leitlinie 21

<sup>6</sup> SEK(2002) 597, veröffentlicht am 27. Mai 2002.

<sup>7</sup> SEK(2003) 916 vom 12. September 2003.

<sup>8</sup> Der Ausschuss wurde eingesetzt durch den Beschluss K(2001) 1775 der Kommission vom 9. Juli 2001, ABl. L 196 vom 20. Juli 2001, S. 26-27.

von Zusatzrentensystemen bedingt sind. Dem Rentenforum gehören Vertreter der Mitgliedstaaten, der Sozialpartner, der Rentenfonds und anderer in diesem Bereich tätiger Organisationen an.

#### Zusammenfassung und Berücksichtigung der Antworten

Die Antworten der Mitglieder des Rentenforums, einschließlich der Vertreter der Mitgliedstaaten und der Sozialpartner, sind in die Folgenabschätzung eingegangen, die dem vorliegenden Vorschlag beigelegt ist.

- **Heranziehen von Fachwissen**

Externe Fachleute mussten nicht herangezogen werden.

- **Folgenabschätzung**

Dieser Vorschlag ist im Arbeitsprogramm der Kommission nicht ausdrücklich vorgesehen und muss daher nicht Gegenstand einer Folgenabschätzung sein. Im Interesse einer besseren Rechtsetzung und einer größeren Transparenz haben die Dienststellen der Kommission es dennoch für sinnvoll erachtet, die verschiedenen Maßnahmenoptionen in diesem Bereich zu prüfen und dabei Kosten-Nutzen-Analysen vorzunehmen.

### 3) RECHTLICHE ELEMENTE DES VORSCHLAGS

- **Zusammenfassung der vorgeschlagenen Maßnahmen**

Der vorliegende Vorschlag legt gemeinsame Grundsätze fest, die das Recht auf Freizügigkeit – eine der von der Gemeinschaft garantierten Grundfreiheiten – fördern und das Funktionieren des Binnenmarkts verbessern. Diese Prinzipien werden in der in den Mitgliedstaaten bereits laufenden Anpassung der Zusatzrentensysteme zu Grunde gelegt.

Die Mobilität der Arbeitskräfte innerhalb der Mitgliedstaaten und zwischen den Mitgliedstaaten ist wichtig für das reibungslose Funktionieren des europäischen Arbeitsmarkts und integraler Bestandteil der Lissabon-Strategie, die das Ziel verfolgt, Beschäftigung und Wirtschaftswachstum zu stärken. Demzufolge gilt es nicht nur die Mobilität zwischen den Mitgliedstaaten, sondern auch die innerstaatliche berufliche Mobilität zu fördern. Bestimmte Regelungen der Zusatzrentensysteme und insbesondere Bestimmungen zum Erwerb von Rentenansprüchen hemmen die innerstaatliche Mobilität. Behindert wird dadurch insbesondere die Entwicklung von Unternehmen, die sich in einem anderen Mitgliedstaat niederlassen: sie stoßen auf Schwierigkeiten, qualifiziertes Personal anzuwerben (in Frage kommende qualifizierte Arbeitskräfte werden durch Zusatzrentenregelungen an andere Unternehmen gebunden). Um hier Abhilfe zu schaffen, soll die vorgeschlagene Richtlinie eine Annäherung der einschlägigen Rechtsvorschriften der Mitgliedstaaten bewirken und so die Wettbewerbsbedingungen auf dem europäischen Arbeitsmarkt verbessern.

- **Rechtsgrundlage**

Rechtsgrundlage des vorliegenden Vorschlags sind die Artikel 42 und 94 EG-Vertrag.

Artikel 42 diene bereits als Rechtsgrundlage für die Richtlinie 1998/49/EG. Artikel 94 EG-Vertrag ist insofern relevant als eine echte Verbesserung der Portabilität von Zusatzrentenansprüchen Hand in Hand gehen muss mit einer Verbesserung der Bedingungen für die berufliche Mobilität – auch der innerstaatlichen. Darüber hinaus ist die Steigerung der beruflichen Mobilität generell unerlässlich für das reibungslose Funktionieren des Binnenmarkts, was wiederum flexible Arbeitskräfte voraussetzt, deren Mobilität nicht durch bestimmte Zusatzrentenregelungen gehemmt wird, z. B. durch Bestimmungen, die bewirken, dass Arbeitnehmer bis zum Erwerb von Rentenanwartschaften lange Zeit im selben Unternehmen verbleiben müssen.

- **Subsidiaritätsprinzip**

Das Subsidiaritätsprinzip gelangt zur Anwendung, weil der Vorschlag nicht einen Bereich betrifft, der in die ausschließliche Zuständigkeit der Gemeinschaft fällt.

Die Ziele des Vorschlags können aus folgenden Gründen nicht in ausreichendem Maße auf Ebene der Mitgliedstaaten erreicht werden:

Der Arbeitsmarkt macht nicht an den Grenzen der Mitgliedstaaten Halt. Es ist daher sinnvoll, auf Gemeinschaftsebene den Arbeitsmarkt dadurch flexibler und wirksamer zu gestalten, dass man durch Betriebsrentenregelungen bedingte Mobilitätshindernisse beseitigt.

Eine Gemeinschaftsmaßnahme wird den Zielvorgaben des Vorschlags aus folgenden Gründen besser gerecht:

Die von den europäischen Institutionen in den letzten zehn Jahren formulierten Orientierungen und Empfehlungen haben keine signifikante Annäherung der nationalen Rechtsvorschriften bewirkt. In der auf 25 Mitgliedstaaten erweiterten Union ist mit noch ausgeprägteren Unterschieden zu rechnen.

Die gegenwärtige und absehbare Entwicklung der Rentensysteme auf europäischer Ebene macht die Anwendung eines Gemeinschaftsinstruments unerlässlich: zum einen verfügt die Union seit 2003 über einen Rechtsrahmen, der die grenzüberschreitende Verwaltung der Zusatzrentensysteme fördert und zum anderen ist mit einer dynamischen Entwicklung dieser Systeme zu rechnen – wie auch aus einer jüngeren gemeinsamen Untersuchung des Ausschusses für Sozialschutz und der Kommission über die Zukunft der betrieblichen Zusatzrentensysteme hervorgeht. Der Zeitpunkt ist also gekommen, gemeinsame Orientierungen festzulegen.

Der Vorschlag steht demnach mit dem Subsidiaritätsprinzip im Einklang.

- **Verhältnismäßigkeitsprinzip**

Der Vorschlag entspricht aus folgenden Gründen dem Grundsatz der Verhältnismäßigkeit:

Die Wahl des Rechtsinstruments und der Anwendungsmodalitäten entspricht dem Grundsatz der Verhältnismäßigkeit: man hat sich für eine Richtlinie und nicht für eine

Verordnung entschieden, um der Heterogenität der Zusatzrentensysteme der Mitgliedstaaten Rechnung zu tragen. Dabei wird dennoch ein Rahmen festgelegt, der von den Mitgliedstaaten zu erreichende Ziele vorgibt, es diesen aber überlässt, auf welchem Weg sie diese Ziele erreichen.

Die vorgeschlagenen Bestimmungen beschränken sich dabei auf das unerlässliche Mindestmaß, wobei – gestützt auf die Folgenabschätzung – die möglichen Auswirkungen auf die bestehenden nationalen Systeme berücksichtigt werden. Außerdem werden für die Umsetzung bestimmter Vorschriften der Richtlinie großzügige Übergangsfristen eingeräumt.

- **Wahl des Rechtsinstruments**

Vorgeschlagenes Rechtsinstrument: Richtlinie.

Andere Rechtsinstrumente wären aus folgenden Gründen unangemessen:

Ein weniger verbindliches Instrument, wie z. B. ein Verhaltenskodex, könnte wohl kaum das gewünschte Ergebnis bringen: die auf europäischer Ebene seit mehr als fünfzehn Jahren laufenden Diskussionen haben nicht zur Einleitung einer entsprechenden Initiative auf Basis der Freiwilligkeit geführt. Darüber hinaus sind zahlreiche Grundelemente der Zusatzrentensysteme in nationalen Rechtsvorschriften festgeschrieben.

Ein zwingenderes Rechtsinstrument, wie z. B. eine Verordnung, würde nicht den Spielraum lassen, der erforderlich ist, um der großen Vielfalt der Zusatzrentensysteme und den vielfach auf dem Grundsatz der Freiwilligkeit beruhenden Regelungen gerecht zu werden.

#### 4) AUSWIRKUNGEN AUF DEN HAUSHALT

Die Richtlinie hätte keine Auswirkungen auf den Gemeinschaftshaushalt.

#### 5) ZUSÄTZLICHE ANGABEN

- **Entsprechungstabelle**

Die Mitgliedstaaten werden gebeten, der Kommission den Wortlaut der nationalen Rechtsvorschriften, mit denen die Richtlinie umgesetzt wird, sowie eine Entsprechungstabelle zu übermitteln, in der diese Vorschriften den Bestimmungen der Richtlinie gegenübergestellt sind.

- **Europäischer Wirtschaftsraum**

Der vorgeschlagene Rechtsakt ist von Bedeutung für den Europäischen Wirtschaftsraum und sollte deshalb auf den EWR ausgedehnt werden.

- **Erläuterung des Vorschlags nach Kapiteln bzw. nach Artikeln**

Gegenstand (Artikel 1)



Artikel 1 übernimmt die in 1.2 genannten Ziele und fasst sie zusammen.

#### Anwendungsbereich (Artikel 2)

Zur Wahrung der Kohärenz mit der Richtlinie 98/49/EG ist der Anwendungsbereich identisch. Abgedeckt sind demnach alle Zusatzrentensysteme (wie in Artikel 3 definiert), mit Ausnahme der unter die Verordnung (EWG) Nr. 1408/71 des Rates vom 14. Juni 1971 (geänderte Fassung) fallenden Systeme.

#### Definitionen (Artikel 3)

In Anbetracht der großen Heterogenität der Zusatzrentensysteme der Mitgliedstaaten erscheint es unerlässlich, bestimmte in diesem Vorschlag verwendete Begriffe zu definieren.

Die Definitionen unter den Buchstaben a) („Zusatzrente“), b) („Zusatzrentensystem“) und d) („Rentenansprüche“) entsprechen den in der Richtlinie 98/49/EG zu Grunde gelegten Definitionen, um die Übereinstimmung mit dem Anwendungsbereich dieser Richtlinie zu gewährleisten.

Anzumerken ist, dass der in diesem Vorschlag verwendete Begriff „Portabilität“ die Möglichkeit bezeichnet, bei Ausscheiden aus einem Zusatzrentensystem Zusatzrentenansprüche zu erwerben oder zu bewahren.

#### Bedingungen für den Anspruchserwerb (Artikel 4)

Um die negativen Auswirkungen der Bedingungen für den Erwerb von Zusatzrentenansprüchen auf die Ausübung des Rechts auf Freizügigkeit abzuschwächen, sieht der Richtlinienvorschlag folgende Flexibilisierungen vor:

- Ein Arbeitnehmer, der noch keine Zusatzrentenansprüche erworben, aber bereits Beiträge geleistet hat, darf diese Beitragswerte nicht verlieren. Um dies sicherzustellen, ist die Gesamtheit der Beiträge zurückzuerstatten oder zu übertragen.
- Die Festlegung eines hohen Mindestalters bestraft die Mobilität junger Arbeitnehmer, wenn ein Arbeitsplatzwechsel vor Erreichen des Mindestalters den Verlust der Rentenansprüche für den Zeitraum vor Erreichen des Mindestalters zur Folge hat. Ein Arbeitnehmer muss Zusatzrentenansprüche spätestens ab dem Alter von 21 Jahren erwerben können.
- Die Wartezeit, während der der Arbeitnehmer keine Rentenansprüche erwirbt, muss verkürzt werden. Sie darf ein Jahr nicht übersteigen (außer wenn das Mindestalter noch nicht erreicht ist). Auf diese Weise kann in den Systemen weiterhin insbesondere die Koppelung der Wartezeit mit der Probezeit (die normalerweise ein Jahr nicht übersteigt) praktiziert werden.
- Um zu gewährleisten, dass aus einem System ausscheidende Arbeitnehmer im Laufe ihres Berufslebens ausreichende Zusatzrentenansprüche erwerben – insbesondere wenn sie den Arbeitsplatz mehrfach wechseln –, muss die Möglichkeit der Einführung von Unverfallbarkeitsfristen beschränkt werden, d. h. der Versicherungszeiten, nach deren Ablauf der Arbeitnehmer erst Ansprüche erwirbt. Die Frist darf zwei Jahre nicht

übersteigen.

#### Wahrung ruhender Rentenansprüche (Artikel 5)

Bei einem Arbeitsplatzwechsel ist zu vermeiden, dass der Arbeitnehmer eine Minderung der im Zusatzrentensystem seines ehemaligen Arbeitgebers verbleibenden Rentenansprüche hinnehmen muss. Die Mitgliedstaaten verfügen über unterschiedliche Anpassungsinstrumente in Abhängigkeit von der Entwicklung der Rentenansprüche der erwerbstätigen Versorgungsanwärter.

Um überbordende Kosten als Folge der Verwaltung einer Fülle ruhender Ansprüche geringfügigen Wertes zu vermeiden, sieht der Vorschlag die Möglichkeit vor, Rentenansprüche nicht stehen zu lassen, sondern zu übertragen oder eine Kapitalauszahlung in Höhe des Anspruchswerts vorzunehmen, vorausgesetzt, der Wert überschreitet nicht einen vom jeweiligen Mitgliedstaat festgesetzten Schwellenbetrag.

#### Übertragbarkeit (Artikel 6)

Der Richtlinienvorschlag sieht vor, dass der ausscheidende Arbeitnehmer bei einem Arbeitsplatzwechsel die Wahl haben muss zwischen dem Erhalt seiner Ansprüche im Rahmen des Zusatzrentensystems, dem er bisher angehörte, und der Übertragung seiner Ansprüche. Dies gilt nicht, wenn er an seinem neuen Arbeitsplatz demselben Zusatzrentensystem angehört oder wenn aufgrund des geringen Werts der erworbenen Ansprüche der Anspruchswert ausgezahlt wird.

Entscheidet der Arbeitnehmer sich für eine Übertragung der Ansprüche, so darf für ihn kein Nachteil entstehen, weder bei der Berechnung des zwischen dem abgebenden und dem aufnehmenden System übertragenen Anspruchswerts noch durch übermäßige Verwaltungskosten.

#### Auskünfte (Artikel 7)

Artikel 7 ergänzt die auf europäischer Ebene bestehenden Bestimmungen zur Auskunftspflicht, wie sie in der Richtlinie 2003/41/EG vorgesehen sind. Da der Anwendungsbereich der vorgeschlagenen Richtlinie, der auch die nicht kapitalgedeckten Systeme einschließt, umfassender ist als der Anwendungsbereich der Richtlinie 2003/41/EG, müssen zusätzliche Bestimmungen aufgenommen werden. Im Übrigen betrifft die Richtlinie 2003/41/EG nur die Versorgungsanwärtern und Leistungsempfängern zu erteilenden Auskünfte. Hier ist eine Ergänzung vonnöten: jeder (potenziell) ausscheidende Arbeitnehmer – Mitglied oder nicht – muss darüber aufgeklärt werden, wie sich eine Beendigung der Beschäftigung auf die Zusatzrentenansprüche auswirkt.

#### Mindestvorschriften – Rückschrittsklausel (Artikel 8)

Im Geiste der Verwirklichung des Binnenmarkts und der damit verbundenen sozialen Zielsetzungen würde der Richtlinienvorschlag kein Hindernis bilden für die Anwendung vorteilhafterer Bestimmungen der Mitgliedstaaten zur Portabilität. Gleichzeitig schließt er jedoch alle Maßnahmen aus, die einen Rückschritt gegenüber der bestehenden Portabilitätsregelung darstellen würden.

## Umsetzung (Artikel 9)

In Anbetracht der Vielfalt der Zusatzrentensysteme der Mitgliedstaaten wird in dem Richtlinienvorschlag ein flexibler Ansatz in der Anwendung bestimmter Vorschriften zu den Bedingungen des Erwerbs und der Übertragung von Rentenansprüchen zu Grunde gelegt. Den Mitgliedstaaten kann demzufolge eine zusätzliche Frist für die Umsetzung bestimmter Vorschriften eingeräumt werden, die auf kurze Sicht zu übermäßigen Belastungen führen könnten.

In Anbetracht der wichtigen Rolle der Sozialpartner in der Organisation und Verwaltung der betrieblichen Zusatzrentensysteme sieht die Richtlinie vor, dass die Mitgliedstaaten die Sozialpartner mit der Durchführung betrauen können.

2005/0214 (COD)

Vorschlag für eine

**RICHTLINIE DES EUROPÄISCHEN PARLAMENTS UND DES RATES****zur Verbesserung der Portabilität von Zusatzrentenansprüchen**

(Text von Bedeutung für den EWR)

DAS EUROPÄISCHE PARLAMENT UND DER RAT DER EUROPÄISCHEN UNION –

gestützt auf den Vertrag zur Gründung der Europäischen Gemeinschaft, insbesondere auf die Artikel 42 und 94,

auf Vorschlag der Kommission<sup>9</sup>,

nach Stellungnahme des Europäischen Wirtschafts- und Sozialausschusses<sup>10</sup>,

nach Stellungnahme des Ausschusses der Regionen<sup>11</sup>,

gemäß dem Verfahren des Artikels 251 EG-Vertrag<sup>12</sup>,

in Erwägung nachstehender Gründe:

- (1) Die Freizügigkeit ist eine der von der Gemeinschaft garantierten Grundfreiheiten. Der Vertrag sieht in Artikel 42 vor, dass der Rat gemäß dem Verfahren des Artikels 251 die auf dem Gebiet der sozialen Sicherheit für die Herstellung der Freizügigkeit der Arbeitnehmer notwendigen Maßnahmen beschließt.
- (2) Die Alterssicherung der Arbeitnehmer wird durch die gesetzliche Rentenversicherung gewährleistet, ergänzt durch die mit einem Beschäftigungsverhältnis gekoppelten Zusatzversicherungssysteme, die in den Mitgliedstaaten immer mehr an Bedeutung gewinnen.
- (3) Der Rat verfügt über einen großen Ermessensspielraum in der Wahl der Maßnahmen zur Realisierung der Zielvorgaben in Artikel 42 des Vertrags. Das Koordinierungssystem, wie es vorgesehen ist in der Verordnung (EWG) Nr. 1408/71 des Rates vom 1. Juni 1971 zur Anwendung der Systeme der sozialen Sicherheit auf Arbeitnehmer und deren Familien, die innerhalb der Gemeinschaft zu- und

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<sup>9</sup> ABl. C [...] vom [...], S. [...].

<sup>10</sup> ABl. C [...] vom [...], S. [...].

<sup>11</sup> ABl. C [...] vom [...], S. [...].

<sup>12</sup> ABl. C [...] vom [...], S. [...].

abwandern<sup>13</sup>, und in der Verordnung (EWG) Nr. 574/72 des Rates vom 21. März 1972 über die Durchführung der Verordnung (EWG) Nr. 1408/71<sup>14</sup>, und insbesondere die Bestimmungen zur Zusammenrechnung der Versicherungszeiten, gelten nicht für die Zusatzrentensysteme, ausgenommen die Systeme, die Gegenstand von „Rechtsvorschriften“ im Sinne von Artikel 1 Buchstabe j) erster Unterabsatz der Verordnung (EWG) Nr. 1408/71 oder auf der Basis dieses Artikels Gegenstand einer entsprechenden Erklärung eines Mitgliedstaats sind. Die Zusatzrentensysteme erfordern demzufolge spezifische Maßnahmen, die ihrem besonderen Charakter und der Unterschiedlichkeit der Systeme innerhalb der einzelnen Mitgliedstaaten und zwischen den Mitgliedstaaten sowie insbesondere auch der Rolle der Sozialpartner in der Anwendung dieser Systeme Rechnung tragen.

- (4) Die Richtlinie 98/49/EG des Rates vom 29. Juni 1998 zur Wahrung ergänzender Rentenansprüche von Arbeitnehmern und Selbstständigen, die innerhalb der Europäischen Gemeinschaft zu- und abwandern<sup>15</sup>, ist eine erste spezifische Maßnahme, die darauf abzielt, die Ausübung des Rechts der Arbeitnehmer auf Freizügigkeit im Bereich der Zusatzrentensysteme zu erleichtern.
- (5) Heranzuziehen in diesem Kontext ist auch Artikel 94 des Vertrags, denn die Unterschiede zwischen den nationalen Rechtsvorschriften für die Zusatzrentensysteme sind so geartet, dass sie die Freizügigkeit der Arbeitnehmer und das Funktionieren des Binnenmarks behindern. Zur Verbesserung der Portabilität von aus Zusatzversorgungssystemen erwachsenden Ansprüchen von Arbeitnehmern, die innerhalb der Gemeinschaft oder innerhalb eines Mitgliedstaats zu- und abwandern, müssen deshalb bestimmte Bedingungen für den Erwerb von Rentenansprüchen vereinheitlicht und Regelungen zur Wahrung ruhender Ansprüche und zur Übertragung von Ansprüchen angeglichen werden.
- (6) Um zu gewährleisten, dass die Bedingungen für den Erwerb von Zusatzrentenansprüchen das Recht der Arbeitnehmer in der Europäischen Union auf Freizügigkeit nicht beeinträchtigen, gilt es die Bedingungen für den Erwerb von Ansprüchen so zu regeln, dass der Arbeitnehmer bei Ausübung seines Rechts auf Freizügigkeit oder bei Zu- und Abwanderung innerhalb eines Mitgliedstaats am Ende seiner beruflichen Laufbahn eine Rente in angemessener Höhe bezieht.
- (7) Außerdem ist darüber zu wachen, eine faire Anpassung der ruhenden Rentenansprüche sicher zu stellen und damit zu gewährleisten, dass ausscheidende Arbeitnehmer nicht benachteiligt werden. Erreicht werden könnte dies durch eine Anpassung ruhender Ansprüche in Abhängigkeit von der Entwicklung verschiedener Referenzgrößen, darunter die Inflationsrate, das Lohnniveau, die aktuellen Rentenleistungen und die vom Zusatzversicherungsträger erzielte Kapitalrendite.
- (8) Um zu vermeiden, dass die Verwaltung einer Vielzahl ruhender Ansprüche mit geringfügigem Wert übermäßig hohe Kosten verursacht, muss den Rentensystemen die Möglichkeit eingeräumt werden, die erworbenen Ansprüche nicht zu erhalten,

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<sup>13</sup> ABl. L 149 vom 5.7.1971, S. 1. Verordnung zuletzt geändert durch Verordnung (EG) Nr. 631/2004 (ABl. L 100 du 6.4.2004, S. 1).

<sup>14</sup> ABl. L 74 vom 27.3.1972, S. 1. Verordnung zuletzt geändert durch Verordnung (EG) Nr. 77/2005 (ABl. L 16 vom 20.1.2005, S. 3).

<sup>15</sup> ABl. L 209 vom 25.7.1998, S. 46.

sondern eine Übertragung oder Kapitalauszahlung in Höhe des Anspruchswerts vorzunehmen, soweit diese nicht einen vom betreffenden Mitgliedstaat festgelegten Schwellenwert übersteigt.

- (9) Bei einem Arbeitsplatzwechsel müssen Arbeitnehmer wählen können zwischen dem Erhalt ihrer Zusatzrentenansprüche im Rahmen des bisherigen Zusatzrentensystems und einer Kapitalübertragung auf ein anderes Zusatzrentensystem, und zwar auch auf ein System in einem anderen Mitgliedstaat.
- (10) Aus Gründen der finanziellen Tragfähigkeit der Zusatzrentensysteme können die Mitgliedstaaten nicht kapitalgedeckte Systeme grundsätzlich von der Verpflichtung freistellen, den Arbeitnehmern die Übertragung der erworbenen Ansprüche zu ermöglichen. Um die Gleichbehandlung der Arbeitnehmer, die in einem Kapitaldeckungssystem versichert sind, mit den Arbeitnehmern, die in den in Artikel 9 Absatz 3 genannten Systemen versichert sind, zu gewährleisten, müssen sich die Mitgliedstaaten jedoch bemühen, die Übertragbarkeit der Ansprüche aus nicht kapitalgedeckten Systemen nach und nach zu verbessern.
- (11) Unbeschadet der Richtlinie 2003/41/EG des Europäischen Parlaments und des Rates vom 3. Juni 2003 über die Tätigkeiten und die Beaufsichtigung von Einrichtungen der betrieblichen Altersversorgung<sup>16</sup> sind Arbeitnehmer, die das Recht auf Freizügigkeit wahrnehmen oder wahrnehmen wollen, von der für die Verwaltung des Zusatzrentensystems verantwortlichen Person angemessen insbesondere darüber aufzuklären, welche Folgen die Beendigung eines Beschäftigungsverhältnisses für ihre Zusatzrentenansprüche hat.
- (12) In Anbetracht der Vielfalt der ergänzenden sozialen Sicherungssysteme muss die Gemeinschaft sich darauf beschränken, innerhalb eines allgemeinen Rahmens Ziele vorzugeben. Eine Richtlinie ist daher das angemessene Rechtsinstrument.
- (13) Das Ziel der vorgesehenen Maßnahme, also der Abbau der Hindernisse für die Ausübung des Rechts auf Freizügigkeit durch die Arbeitnehmer und für das Funktionieren des Binnenmarkts, kann auf der Ebene der Mitgliedstaaten nicht in ausreichendem Maße realisiert werden. Aus diesem Grund und in Anbetracht der Reichweite der Maßnahmen empfiehlt sich eine Aktion auf Gemeinschaftsebene. Im Einklang mit dem Subsidiaritätsprinzip gemäß Artikel 5 des Vertrags kann dementsprechend die Gemeinschaft tätig werden. Dem in diesem Artikel dargelegten Grundsatz der Verhältnismäßigkeit folgend beschränkt sich die vorliegende Richtlinie, gestützt insbesondere auf eine in Zusammenarbeit mit dem Ausschuss für zusätzliche Altersversorgung vorgenommene Folgenabschätzung, auf das zur Realisierung des genannten Ziels erforderliche Mindestmaß.
- (14) Die vorliegende Richtlinie legt Mindestanforderungen fest. Dies lässt den Mitgliedstaaten die Freiheit, vorteilhaftere Bestimmungen zu erlassen oder beizubehalten. Die Umsetzung der vorliegenden Richtlinie kann keinen Rückschritt gegenüber der in einem Mitgliedstaat bestehenden Situation rechtfertigen.

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<sup>16</sup>

ABl. L 235 vom 23.9.2003, S.10.

- (15) Den Auswirkungen der vorliegenden Richtlinie insbesondere auf die finanzielle Tragfähigkeit der Zusatzrentensysteme ist Rechnung zu tragen. Die Mitgliedstaaten können deshalb eine zusätzliche Frist für die progressive Umsetzung der Bestimmungen in Anspruch nehmen, die entsprechende Auswirkungen haben können.
- (16) In Einklang mit den nationalen Bestimmungen zur Verwaltung der Zusatzrentensysteme können die Mitgliedstaaten die Sozialpartner auf deren gemeinsames Verlangen mit der Durchführung der in den Anwendungsbereich von Tarifverträgen fallenden Bestimmungen der Richtlinie betrauen, vorausgesetzt, sie treffen alle erforderlichen Maßnahmen, um zu garantieren, dass die Realisierung der mit der Richtlinie angestrebten Ziele zu jedem Zeitpunkt gewährleistet ist –

HABEN FOLGENDE RICHTLINIE ERLASSEN:

#### *Artikel 1*

##### **Gegenstand**

Die vorliegende Richtlinie soll den Arbeitnehmern die Wahrnehmung des Rechts auf Freizügigkeit und des Rechts auf innerstaatliche berufliche Mobilität dadurch erleichtern, dass durch einzelne Bestimmungen der in den Mitgliedstaaten bestehenden Zusatzrentensysteme bedingte Hindernisse abgebaut werden.

#### *Artikel 2*

##### **Anwendungsbereich**

Diese Richtlinie gilt für Zusatzrentensysteme, ausgenommen die unter die Verordnung (EWG) Nr. 1408/71 fallenden Systeme.

#### *Artikel 3*

##### **Definitionen**

Für die Zwecke dieser Richtlinie gelten folgende Begriffsbestimmungen:

- (a) „Zusatzrente“: die Altersrente und, sofern gemäß den Bestimmungen des nach einzelstaatlichen Rechtsvorschriften und Gepflogenheiten eingerichteten Zusatzrentensystems vorgesehen, die Invaliditäts- und Hinterbliebenenrenten, durch die für dieselben Versicherungsfälle von den gesetzlichen Sozialversicherungssystemen gewährte Leistungen ergänzt oder ersetzt werden.
- (b) „Zusatzrentensystem“: Nach einzelstaatlichen Rechtsvorschriften und Gepflogenheiten eingerichtetes betriebliches Rentensystem, beispielsweise ein Gruppenversicherungsvertrag oder ein branchenweit oder sektoral vereinbartes System nach dem Umlageverfahren, ein Kapitaldeckungssystem oder Rentenversprechen auf der Grundlage von Pensionsrückstellungen der



Unternehmen oder eine tarifliche oder sonstige vergleichbare Regelung, die Zusatzrentenleistungen für Arbeitnehmer oder Selbständige bietet.

- (c) „Versorgungsanwärter“: Personen, die aufgrund ihrer beruflichen Tätigkeit nach den Bestimmungen eines Zusatzrentensystems Anspruch auf Zusatzrentenleistungen haben oder haben werden.
- (d) „Rentenansprüche“: Leistung, auf die Versorgungsanwärter und sonstige Anspruchsberechtigte im Rahmen der Regelungen eines Zusatzrentensystems und gegebenenfalls nach einzelstaatlichem Recht Anspruch haben.
- (e) „Beendigung des Beschäftigungsverhältnisses“: Entscheidung, ein Arbeitsverhältnis zu beenden.
- (f) „Ausscheidender Arbeitnehmer“: Arbeitnehmer, der vor Erwerb einer Rentenanwartschaft ein Beschäftigungsverhältnis beendet, in dessen Rahmen er Rentenansprüche aufgebaut hat, oder bei Verbleiben in dem jeweiligen Beschäftigungsverhältnis Rentenansprüche erworben hätte.
- (g) „Portabilität“: Möglichkeit für den Arbeitnehmer, bei Wahrnehmung seines Rechts auf Freizügigkeit oder auf berufliche Mobilität Rentenansprüche zu erwerben und zu bewahren.
- (h) „Versorgungsanwärter mit aufgeschobenen Ansprüchen“: Ehemaliges Mitglied, dessen Ansprüche auf Rentenleistungen im Rahmen des Zusatzrentensystems so lange ruhen, bis die Voraussetzungen für den Bezug einer Zusatzrente erfüllt sind.
- (i) „Ruhende Rentenansprüche“: Von einem ehemaligen Versorgungsanwärter im Rahmen des Systems erworbene Rentenansprüche, die einen Anspruch auf Zusatzrentenleistungen bedingen, wenn die Leistungsvoraussetzungen erfüllt sind.
- (j) „Anspruchsübertragung“: Im Rahmen eines Zusatzrentensystems Auszahlung von Kapital, das einen Teil oder die Gesamtheit des in diesem System erworbenen Anspruchswerts ausmacht; dabei kann dieses Kapital auf ein neues Rentensystem übertragen oder an ein anderes Altersversorgungsmodell anbietendes Finanzinstitut transferiert werden.

#### *Artikel 4*

#### **Bedingungen für den Anspruchserwerb**

Die Mitgliedstaaten treffen die erforderlichen Maßnahmen, um Folgendes sicherzustellen:

- (a) Ist zum Zeitpunkt der Beendigung eines Beschäftigungsverhältnisses noch keine Rentenanwartschaft begründet, so werden die gesamten vom Arbeitnehmer oder vom Arbeitgeber im Namen des Arbeitnehmerseingezahlten Beiträge erstattet oder übertragen.

- (b) Ein für den Erwerb von Rentenansprüchen festgelegtes Mindestalter darf 21 Jahre nicht übersteigen.
- (c) Arbeitnehmer können nach einer Beschäftigungsdauer von einem Jahr oder gegebenenfalls spätestens bei Erreichen des vorgeschriebenen Mindestalters Mitglied eines Zusatzrentensystems werden.
- (d) Arbeitnehmer erwerben nach einer Mitgliedschaft von maximal zwei Jahren eine Rentenanswartschaft.

#### *Artikel 5*

### **Wahrung ruhender Rentenansprüche**

1. Die Mitgliedstaaten nehmen die Maßnahmen die ihnen notwendig erscheinen um eine faire Anpassung der ruhenden Rentenansprüche sicher zu stellen und damit zu gewährleisten, dass ausscheidende Arbeitnehmer nicht benachteiligt werden.
2. Die Mitgliedstaaten können den Zusatzrentensystemen die Möglichkeit einräumen, erworbene Ansprüche nicht zu erhalten, sondern in Höhe der erworbenen Ansprüche Kapital zu übertragen oder auszuzahlen, soweit der Wert den vom betreffenden Mitgliedstaat festgelegten Schwellenwert nicht überschreitet. Die Mitgliedstaaten teilen der Kommission den jeweiligen Schwellenwert mit.

#### *Artikel 6*

### **Übertragbarkeit**

1. Vorbehaltlich der Möglichkeit einer Kapitalauszahlung gemäß Artikel 5 Absatz 2 stellen die Mitgliedstaaten sicher, dass ein ausscheidender Arbeitnehmer, der in seinem neuen Arbeitsverhältnis nicht demselben Zusatzrentensystem angeschlossen ist, binnen 18 Monaten nach Beendigung des früheren Beschäftigungsverhältnisses seine gesamten erworbenen Rentenansprüche innerhalb des betreffenden Mitgliedstaats oder in einen anderen Mitgliedstaat übertragen lassen kann.
2. Die Mitgliedstaaten, im Einklang mit nationalen Gepflogenheiten, stellen sicher, dass wenn versicherungsmathematische Annahmen und Annahmen zu den Zinssätzen den Wert der zu übertragenden erworbenen Ansprüche bestimmen, diese dem ausscheidenden Arbeitnehmer nicht zum Nachteil gereichen dürfen.
3. Das die Übertragung aufnehmende Zusatzrentensystem unterwirft die übertragenen Ansprüche keinen für den Arbeitnehmer nachteiligen Bedingungen und garantiert die Wahrung dieser Ansprüche mindestens unter denselben Bedingungen, die für ruhende Ansprüche gemäß Artikel 5 Absatz 1 gelten.
4. Fallen bei einer Übertragung Verwaltungskosten an, so treffen die Mitgliedstaaten die erforderlichen Maßnahmen, um auszuschließen, dass diese in einem unangemessenen Verhältnis zur Dauer der Mitgliedschaft des ausscheidenden Arbeitnehmers stehen.

*Artikel 7***Auskünfte**

1. Vorbehaltlich der Verpflichtungen der Einrichtungen der betrieblichen Altersversorgung gemäß Artikel 11 der Richtlinie 2003/41/EG in Bezug auf die Auskunftspflicht gegenüber Versorgungsanwärtern und Leistungsempfängern stellen die Mitgliedstaaten sicher, dass die Arbeitnehmer von der für die Verwaltung des Zusatzrentensystems zuständigen Person über die Folgen einer Beendigung des Beschäftigungsverhältnisses für ihre Zusatzrentenansprüche aufgeklärt werden.
2. Den Arbeitnehmern werden auf ihr Verlangen und binnen einer angemessenen Frist insbesondere folgende ausreichende Auskünfte erteilt:
  - (a) die Bedingungen für den Erwerb von Zusatzrentenansprüchen und die Folgen der Anwendung dieser Bedingungen bei Beendigung des Beschäftigungsverhältnisses;
  - (b) bei Beendigung des Beschäftigungsverhältnisses vorgesehene Rentenleistung;
  - (c) die Bedingungen für den Erhalt ruhender Rentenansprüche;
  - (d) die Bedingungen für die Übertragung erworbener Rentenansprüche.
3. Ein Versorgungsanwärter mit aufgeschobenen Ansprüchen wird auf sein Verlangen von der für die Verwaltung des Zusatzrentensystems verantwortlichen Person über seine ruhenden Rentenansprüche und alle seine Ansprüche betreffenden Veränderungen der Zusatzrentenregelungen informiert.
4. Die in diesem Artikel genannten Informationen werden schriftlich und in leicht verständlicher Form übermittelt.

*Artikel 8***Mindestvorschriften – Rückschrittsklausel**

1. In Bezug auf die Übertragbarkeit von Zusatzrentenansprüchen können die Mitgliedstaaten Bestimmungen erlassen oder beibehalten, die vorteilhafter sind als die in der Richtlinie vorgesehenen.
2. Die Umsetzung der Richtlinie kann in keinem Fall Anlass dafür sein, die in den Mitgliedstaaten bestehende Portabilität von Zusatzrentenansprüchen zu beschneiden.

*Artikel 9***Umsetzung**

1. Die Mitgliedstaaten erlassen bis spätestens zum 1. Juli 2008 die erforderlichen Rechts- und Verwaltungsvorschriften, um dieser Richtlinie nachzukommen; sie haben jedoch auch die Möglichkeit, die Sozialpartner auf deren gemeinsames

Verlangen mit der Durchführung der Richtlinie für die in den Anwendungsbereich von Tarifverträgen fallenden Bestimmungen zu betrauen. In diesem Fall stellen sie sicher, dass die Sozialpartner bis spätestens zum 1. Juli 2008 einvernehmlich die erforderlichen Bestimmungen umgesetzt haben. Dabei müssen die betreffenden Mitgliedstaaten alle erforderlichen Schritte unternehmen, um jederzeit die Realisierung der von der Richtlinie vorgegebenen Ziele zu gewährleisten. Sie unterrichten die Kommission unverzüglich davon.

2. Vorbehaltlich der Bestimmungen in Absatz 1 können die Mitgliedstaaten nötigenfalls eine Zusatzfrist von 60 Monaten, vom 1. Juli 2008 an gerechnet, für die Umsetzung der Zielvorgabe in Artikel 4 Buchstaben d) und e) in Anspruch nehmen. Jeder Mitgliedstaat, der diese Zusatzfrist beanspruchen möchte, setzt die Kommission davon unter Angabe der betreffenden Bestimmungen und Systeme in Kenntnis; die Inanspruchnahme der Zusatzfrist ist konkret zu begründen.
3. Vorbehaltlich der Bestimmungen in Absatz 1 und bei Vorliegen ausreichend begründeter spezieller Bedingungen, die mit der finanziellen Tragfähigkeit und der Abdeckung durch Zusatzrentensysteme in Verbindung stehen, können die Mitgliedstaaten die nach dem Umlageverfahren finanzierten Systeme, die Unterstützungskassen und die Unternehmen, die Pensionsrückstellungen für ihre Beschäftigten vornehmen, von der Anwendung des Artikels 6 Absatz 1 freistellen. Jeder Mitgliedstaat, der diese Möglichkeit in Anspruch nehmen möchte, setzt die Kommission davon unter Angabe der betreffenden Systeme und mit einer spezifischen Begründung für diese Freistellung in Kenntnis, und er teilt mit, welche Maßnahmen getroffen wurden oder geplant sind, um die Übertragbarkeit der Ansprüche aus diesen Systemen zu verbessern.
4. Bei Erlass dieser Vorschriften nehmen die Mitgliedstaaten in den Vorschriften selbst oder durch einen Hinweis bei der amtlichen Veröffentlichung auf diese Richtlinie Bezug. Die Mitgliedstaaten regeln die Einzelheiten der Bezugnahme.
5. Die Mitgliedstaaten informieren die Kommission über die Maßnahmen zur Umsetzung der Bestimmungen in Artikel 5.

#### *Artikel 10*

#### **Berichterstattung**

1. Alle fünf Jahre ab dem 1. Juli 2008 erstellt die Kommission auf der Grundlage der von den Mitgliedstaaten gelieferten Informationen einen Bericht, der dem Rat, dem Europäischen Parlament, dem Europäischen Wirtschafts- und Sozialausschuss und dem Ausschuss der Regionen vorzulegen ist.
2. Spätestens 10 Jahre nach dem 1. Juli 2008 erstellt die Kommission einen gesonderten Bericht zur Anwendung des Artikels 9 Absatz 3. Auf dieser Grundlage wird die Kommission gegebenenfalls einen Vorschlag mit allen Änderungen der vorliegenden Richtlinie vorlegen, die sich als erforderlich erweisen, um hinsichtlich der Übertragbarkeit erworbener Ansprüche die Gleichbehandlung der Arbeitnehmer, die in einem Kapitaldeckungssystem versichert sind, mit den Arbeitnehmern, die in den in Artikel 9 Absatz 3 genannten Systemen versichert sind, zu gewährleisten.

*Artikel 11*

**Inkrafttreten**

Diese Richtlinie tritt am 20sten Tag nach Veröffentlichung im *Amtsblatt der Europäischen Union* in Kraft.

*Artikel 12*

**Adressaten**

Diese Richtlinie ist an die Mitgliedstaaten gerichtet.

Brüssel, den

*Für das Europäische Parlament*  
*Der Präsident*

*Für den Rat*  
*Der Präsident*





**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 24 October 2005**

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

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**13686/05  
ADD 1**

**SOC 412  
ECOFIN 324  
CODEC 933**

**COVER NOTE**

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from: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 24 October 2005

to: Mr Javier SOLANA, Secretary-General/High Representative

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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**

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Delegations will find attached Commission document SEC(2005) 1293.

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Encl.: SEC(2005) 1293





COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.10.2005  
SEC(2005) 1293

COMMISSION STAFF WORKING DOCUMENT

*Annex to the:*

**"Proposal for a Directive of the European Parliament and the Council on the improvement of portability of supplementary pension rights"**

{COM(2005) 507 final}

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## USED TERMINOLOGY

**supplementary pension** means retirement pensions and, where provided for by the rules of a supplementary pension scheme established in conformity with national legislation and practice, invalidity and survivors' benefits, intended to supplement or replace those provided in respect of the same contingencies by statutory social security schemes;

**supplementary pension scheme** means any occupational pension scheme established in conformity with national legislation and practice such as, amongst others, such as a group insurance contract or pay-as-you-go scheme agreed by one or more branches or sectors, funded scheme or pension promise backed by book reserves, or any collective or other comparable arrangement intended to provide a supplementary pension for employed or self-employed persons;

**scheme members** means those persons whose occupation entitles them or is likely to entitle them to a supplementary pension in accordance with the provisions of a supplementary pension scheme;

**pension rights** means any benefits to which a scheme member or others holding entitlement are entitled under the rules of a supplementary pension scheme, and where relevant, under national legislation ;

**termination of employment** means a decision to terminate an employment relationship;

**early leaver** means a worker who, before becoming eligible for a pension, leaves the occupation in which she/he has been acquiring pension rights or would be acquiring pension rights if she/he remained in that occupation;

**portability** means the possibility for a worker to acquire and preserve pension entitlements when exercising his right of free movement;

**deferred beneficiary** means a former scheme member with pension rights that remain dormant in the scheme until becoming eligible for drawing a supplementary pension;

**dormant pension rights** means pension rights that remain in the scheme under which they were acquired by a deferred scheme beneficiary. The deferred scheme beneficiary will obtain a pension benefit when she/he eligible for drawing a pension ;

**transfer** means the transfer from one pension scheme of a capital representing (entirely or part of) the pension rights acquired under that scheme to another scheme or to another financial institution for the purpose of providing pension benefits.

## INTRODUCTION

The recently adopted Lisbon action plan<sup>1</sup> identifies as one of the central policy areas the improvement of the adaptability of workers and enterprises and the flexibility of labour

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<sup>1</sup> Lisbon Action Plan incorporating EU Lisbon Programme and recommendations for actions to Member States for inclusion in their national Lisbon Programmes - SEC(2005)192

markets. One of the policy measures at the Community concerns the promotion of labour mobility by removing obstacles to labour mobility arising from occupational pension schemes. This goal should be reached by means of European legislation on portability of occupational pension to be adopted by 2007. In the light of the impact on growth and jobs, the action plan indicates that this initiative will result in workers being more likely to pursue employment opportunities where the best use of their productive potential can be made. The Commission will report on the progress on this initiative in its integrated report to the Spring European Council<sup>2</sup> for the first time in January 2006.

The integrated guidelines for growth and jobs (2005-2008)<sup>3</sup> underline the need to develop policies that increase the responsiveness of labour markets and enhance occupational and geographical mobility as means to ensure that euro area Member States have the capacity to rapidly adjust to shocks and to help to reduce unwarranted inflation differences between Member States. Guideline 21 calls for the promotion of flexibility combined with employment security and the reduction of labour segmentation, having due regard to the role of the social partners, through support for transitions in occupational status, including training, self-employment, business creation and geographic mobility.

Drawing up an impact assessment is not compulsory in this case. The choice to do so nevertheless has been made in the interest of transparency on the reasons for selecting a directive as the preferred policy option and on the expected impacts of the different options for designing the key parameters of the proposal. This impact assessment presents the outcome of the consultations and research by the Commission services in order to assess the measures to be taken to remove obstacles to mobility arising from occupational pension schemes.

## **1. THE ISSUE: SUPPLEMENTARY PENSION PROVISION AND FREE MOVEMENT OF WORKERS**

### *Background*

Free movement of persons, i.e. citizens' right to live and work in another Member State, is one of the fundamental freedoms of the European Union, enshrined in the Treaty.

Renewed emphasis has been put on the free movement of workers in the recently adopted Commission work programme 2005<sup>4</sup>, announcing the year 2006 as the "*European Year of Mobility for workers*" as a means of promoting geographical mobility within and between Member States as a contribution to improving the efficiency of European labour markets, economic performance, the professional prospects of workers and the quality of living and working conditions.

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<sup>2</sup> As announced by the Commission document "Delivering on growth and jobs: a new and integrated economic and Employment co-ordination cycle in the EU" - SEC(2005)193

<sup>3</sup> Note from Council (Employment, Social Policy, Health and Consumer Affairs) to the European Council 9927/05, Brussels, 8 June 2005.

<sup>4</sup> COM (2005)15 of 26 January 2005

The decision to change job and to work in another country is likely to depend on a variety of factors<sup>5</sup>, but social security must be an important consideration as a large share of people's income is ear-marked for building up pension rights. If people have reason to believe that changing jobs and moving (to another Member State) will entail costs - in terms of their social security rights – this will act as a disincentive to using their right of free movement (indeed, some simple numerical examples in chapter 2 give indications on how workers risk being penalised in terms of their pension rights because of their mobility). This tendency will become more pronounced in the context of an ageing working population; older workers tend to be more attentive to the building up of an adequate pension and will therefore be even more reluctant to change jobs when they face a potential loss in pension rights due to mobility.

True free movement therefore is not possible without protecting the social security rights of migrant workers and their families. This problem has been acknowledged since the creation of the European Community and appropriate provisions have been enshrined in the Treaty. Regulation 1408/71 on the co-ordination of social security systems for people who move within the Union is today with its successive amendments a centrepiece in ensuring free movement in view of *statutory* social security systems<sup>6</sup>.

Whilst this Regulation has been very successful in protecting people's rights under statutory schemes, its effectiveness is diminished by the trend to increasing reliance on supplementary provisions which are not covered by the co-ordination rules. This development has been well documented throughout the 1990s in the different editions of the "*Social Protection in Europe*" reports. More recently, it has been confirmed by the findings of the work carried out jointly by Member States and the Commission in the framework of the "open method of coordination" (OMC): the national strategy reports on pension reform presented by the Member States in September 2002<sup>7</sup> show that reforms already adopted or envisaged in response to the common challenge of an ageing population tend to foresee a greater role for supplementary pension provision, thus adding to the importance of improving the portability of supplementary pension rights so as to improve the social protection of mobile workers and their families. Public policy tends to compensate for the decreasing ability of statutory pension schemes to preserve the living standards achieved before retirement by promoting supplementary pensions which therefore become an increasingly important element of social protection. The discussion in the framework of the OMC shows that this trend also has to be seen in the context of the adequacy of pension systems. Table 2 shows the current levels of coverage of supplementary pension provision in the Member States (based on the report for the Social Protection Committee "Privately managed pension provision"):

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<sup>5</sup> Administrative, legal, linguistic, and cultural factors, as well as those related to the housing market, to the recognition of qualifications and to the transparency of job opportunities

<sup>6</sup> There are some supplementary pension schemes that fall under the Regulation, like AGIRC and ARCCO in France.

<sup>7</sup> The 15 national strategy reports, as well as the Joint Report by the Commission and the Council on adequate and sustainable pensions, are available at: [www.europa.eu.int/comm/employment\\_social/soc-prot/pensions/index\\_en.htm](http://www.europa.eu.int/comm/employment_social/soc-prot/pensions/index_en.htm).



**TABLE 2 ACTIVE MEMBERSHIP IN SUPPLEMENTARY SCHEMES (% OF THE WORKING AGE POPULATION OR OF THE POPULATION IN EMPLOYMENT)**

<b>BE</b>	About 40% of the employees are covered (around 10% by branch provisions, 7.5% by pension funds and 22.5% by group insurance). About 10% of self employed are covered by supplementary schemes.
<b>CZ</b>	In CZ, there are no occupational pension schemes.
<b>DK</b>	About 68% of the 35-55 year population are covered by an employer-managed scheme or civil service pension scheme. From the 32% that do not have such a plan, a large proportion (about 10%) pay contributions to an individual scheme (this is particularly true of self-employed people; about 1.1 million people pay contributions to such schemes, that is around 40% of the population in employment in 2003) and around 6% by another dormant schemes or schemes from which payments are made. Among the remaining 16% not covered by supplementary schemes, 11.1% are covered by ATP or SP schemes. <sup>8</sup>
<b>DE</b>	In March 2003, the coverage by supplementary pension schemes was 57% of employees that participate in the first pillar pay-as-you-go scheme (including both public and private schemes). The pay conversion option covers around 20 millions workers that is around 80% of workers covered by some collective agreement.
<b>EE</b>	In EE, there are no supplementary pension schemes
<b>EL</b>	There are no data available yet, as no supplementary pension funds are yet established.
<b>ES</b>	On 31 <sup>st</sup> December 2003, there were around 720 000 participants of supplementary pension schemes (around 4% of the employed population). An increase of the number of members of supplementary pension schemes is expected during 2004, since it is foreseen that halfway through the year a pension scheme is going to be formalized for civil servants, which will increase the number of members by more than 500,000 persons (raising the proportion to around 7% of the employed population). Along with this, Autonomous Communities are promoting parallel schemes, which will increase the total number of members by 2 million approximately (around 12% of the employed population).
<b>FR</b>	Approximately 10% of the workforce. <sup>9</sup>
<b>IE</b>	The pension coverage rate for all persons in employment aged between 20 and 69 is 50.7%. This coverage rate comprises 35.2% with an supplementary pension only, 12.6% with a personal pension only (RAC) and 2.9% with both types of pension cover.  In relation to the pension cover for employees, the large majority (43.3%) are members of supplementary pension schemes with a further 3.5% having both a supplementary pension and a personal pension. A further 5.4% of employees are covered by personal pensions only. These figures are based on a survey on pensions, undertaken by the Central Statistics Office, in the first quarter of 2002, before the introduction of the new PRSAs.
<b>IT</b>	Supplementary pension funds cover around 4.3% of the working force, while open pension funds cover around 1.5 % and pre-existing pension funds cover around 2.8 % of the working force.

<sup>8</sup> In particular, all employees not covered by occupational schemes are covered by ATP or SP and most of self employed or fully unemployed. The remaining 5% not covered are for an important part claimants of anticipatory pensions.

<sup>9</sup> This figure does not take into account AGIRC and ARCCO which are covered by Regulation 1408/71.

<b>CY</b>	The coverage of provident funds (year 2000) is about 27% of the population in employment (17.5% of the 15-64 population) and that of supplementary pension schemes (year 2002, including self employed persons) is about 13.5 % of the population in employment (8.5% of the 15-64 population).
<b>LV</b>	In LV, there are no supplementary pension schemes
<b>LT</b>	In LT, there are no supplementary pension schemes
<b>LU</b>	Supplementary pension schemes are not evenly spread across the population and mostly granted to white collar workers representing approximately 50% of the total labour force. <sup>10</sup> In 2003, around 870 companies offered a supplementary pension scheme to their employees, covering around 50 000 active members, that is around 17% of the employed population (level of coverage is higher in the banking sector).
<b>HU</b>	In HU, there are no supplementary pension schemes
<b>MT</b>	In MT, there are no supplementary pension schemes
<b>NL</b>	In 1996, 91 % of the employees aged between 25 and 65 years old were covered by a second pillar pension. This 9 % “no-coverage” (in 1985, it was 18 %) includes situations where the employer has no pension scheme at all (2%) and where the employer has a pension scheme but excludes some employees (7 %). In 2002 a study concluded that the part of the employers who had no pension scheme for its employees at all had diminished in the period 1996 – 2001. <sup>11</sup>
<b>AT</b>	In March 2004, there were around 1 million workers covered by the new supplementary pension scheme that emerged from the previous severance pay system (around 25% of the employed population), while around 380 000 were covered by the traditional employer pension schemes (10% of the employed population).
<b>PL</b>	Occupational schemes cover around 0.6% of the working age population.
<b>PT</b>	The active membership included in supplementary schemes that exist as a substitute for the 1 <sup>st</sup> pillar and other contractual schemes represents 3.8% of the working age population and 4% of the population in employment.
<b>SI</b>	About 53 % of the active population is covered (in summer 2004) by supplementary schemes: 28.5% for the private sector, 21% for the public sector and 4% for the compulsory supplementary pension insurance. Coverage levels are expected to increase and exceed 60% of the workforce.
<b>SK</b>	In SK, there are no supplementary pension schemes

<sup>10</sup> Occupational pension schemes are typically applicable to white collar workers, which represent about 50% of the total labour force. One consequence is that the overall coverage cannot be expected to go beyond this level of coverage. Concerning blue collar workers, a strong general pension scheme is still needed to guarantee adequate pensions.

<sup>11</sup> At the national level, social partners recommended in 2001, that companies or branches provisions should abolish the different exclusion reasons in pension schemes. The Secretary of State responsible for Pensions stated that he expects that the “no coverage” as result of exclusions in pension schemes (7 percent in 1996) will be halved to 3½ percent in 2006. If social partners do not succeed in halving it he would introduce a law abolishing the different exclusion reasons in pension provisions.

<b>FI</b>	<p>In 2002, the number of people covered by group pension insurance with a life insurance (also including terminated insurance policies transformed into paid-up policies) was about 5 % of the population in employment and 3.2 % of the working age population (15-64 years of age).</p> <p>In 2002, company pension funds had been arranged for 2.2 % of the population in employment and 1.5 % of the working age population, while industry-wide pension funds covered 0.5 % of the population in employment and 0.3 % of the working age population.</p> <p>There are few pension commitments based on book reserves.</p>
<b>SE</b>	<p>The coverage of supplementary schemes is around 75% of the 20-64 population and around 90% of the Swedish employed population.</p>
<b>UK</b>	<p>The coverage of supplementary schemes is of around 33% of working age population and 43% of the employed population.</p>

N.A.: not available. Source: national sources; replies to the SPC questionnaire on privately managed pension schemes. Note : figures referring to funded tiers of first pillar schemes are not included in this table.

### *The importance of labour mobility*

Labour mobility is a prerequisite for a well-functioning labour market, i.e. one which allows as close-to-optimal as possible an allocation of human resources. Workers' free movement is a key element of the EU internal market.

Removing obstacles to labour market mobility, whether between jobs or geographically, within or between Member States, is therefore essential. It is necessary in order to ensure both that the right to free movement is a real option for European workers, and that the potential gains in productivity, growth and jobs that a better functioning labour market offers can be realised. In addition to increasing the career and development possibilities of individual workers, eliminating barriers to mobility is therefore integral to the Lisbon ambitions to raise employment, improve social cohesion and strengthen competitiveness.

Even if calculations<sup>12</sup> on the cost of lower-than-optimal mobility in terms of reduced GDP and employment rates are not available, the persistent co-existence of unemployment in some regions with skills shortages in others powerfully demonstrates that more mobility would be desirable. For this reason, Member States have strongly committed themselves, both in the context of the European Employment Strategy and the Broad Economic Policy Guidelines, to tackling obstacles to mobility.

Following the 2001 Stockholm European Council, an Action Plan on Skills and Mobility<sup>13</sup> was drawn up with the aim to expand occupational mobility and skills development as well as facilitate geographical mobility both through Member States' and Community efforts. The mid-term review on the implementation of the Skills and Mobility Action Plan from February 2004<sup>14</sup> has concluded that despite improvement in a number of areas, occupational and

<sup>12</sup> Like those provided for by the "Cecchini report". This report published in 1988 investigated the costs of not proceeding with the Single Market and concluded that the successful completion of the Market would have substantial economic benefits for all Member States.

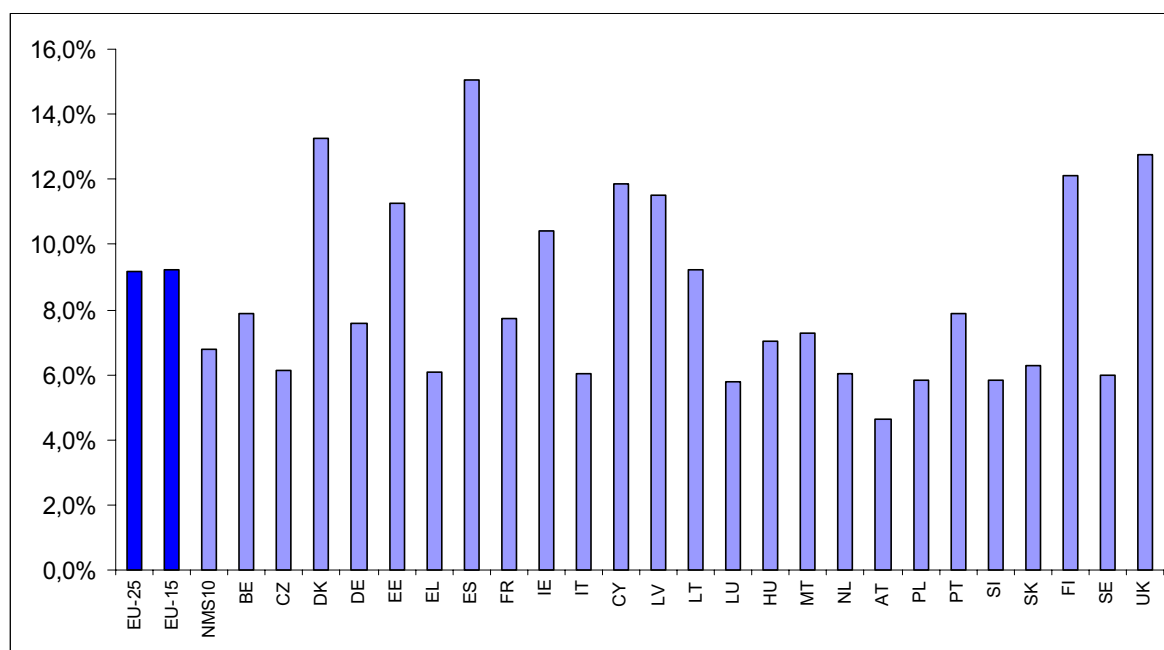
<sup>13</sup> Commission's Action Plan for skills and mobility, COM(2002)72 final, 13 February 2002

<sup>14</sup> Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - Report on the Implementation of the Commission's Action Plan for Skills and Mobility, COM(2004)66 final

geographical mobility still remain low in the EU. The portability of supplementary pension rights has been identified as an area, where further action is needed to promote mobility.

Within the EU25, about 9% of employees change employer each year (see graph 1). There is some diversity among Member States, with a group of Member States with lower rates (around 5 or 6%), while it is higher than 10% in eight Member States. The year to year probability that an employee changes employer is therefore significant (around 10%). This level is coherent with ECHP<sup>15</sup> information indicating for the EU 15 that around 1/3 of employees change job within 5 years.

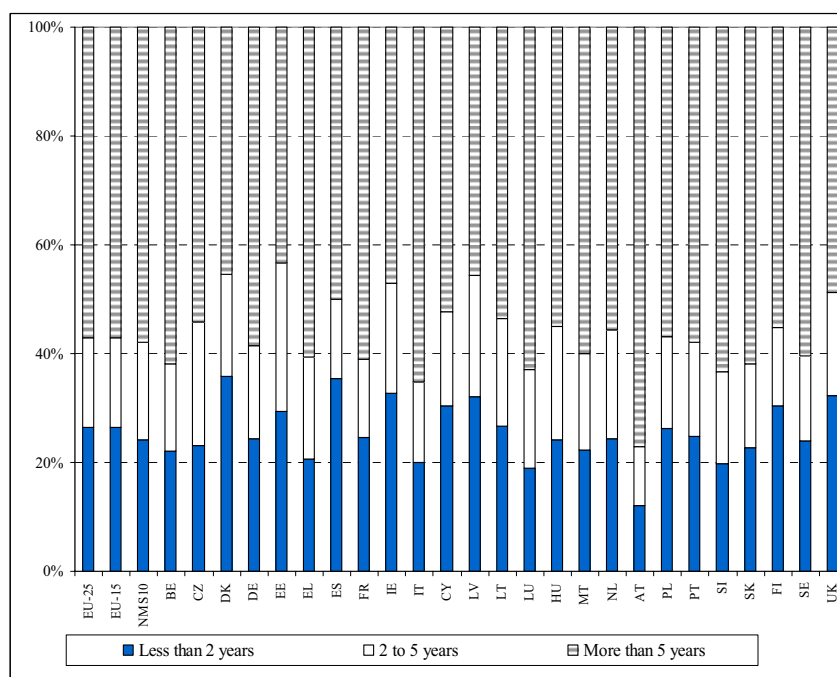
**Graph 1** Percentage of employees changing employer over last year



Source : Labour Force Surveys 1997, 2000 and 2003.

Note : Figures provided here refer to averages for these 3 years, as to smooth business cycles effects. However, it should be noted that figures for the three years are not available for all Member States, but can rely on only one or two years.

Job tenure gives another indication on professional mobility. In the EU-25 about 25% of people in employment have less than 2 years of job tenure (see graph 2). This level varies from about 10% to more than 35% according to the Member State. Moreover, about 20% of employed people have a job tenure ranging between 2 and 5 years. And about 55% of employees have a job tenure of more than 5 years (varying from 45% to 75% among Member States).

**Graph 2 Job tenure of people in employment**

Source : Labour Force Surveys 1997, 2000 and 2003.

Note : Figures provided here refer to averages for these 3 years, as to smooth business cycles effects. However, it should be noted that figures for the three years are not available for all Member States, but can rely on only one or two years.

Finally, another indicator relates to sector mobility (this indicator depends of course on the choice of the number of sectors). With the NACE 1 (taking into account 17 sectors in the economy), estimates from the Labour Force Survey indicate that about 4.5% of employed people change sector every year in EU 25.

The EU tends to display low levels of geographical mobility. Table 1 illustrates the extent to which EU working age residents changed country of residence from one year to the next. Between 2001 and 2002 (only) some 0.2% of the population moved from one Member State to another (other estimates put that figure even lower). It should be recognised, however, that this measure does not cover cross-border commuting since this does not entail a change of residence. Although research remains to be done to establish what should be the benchmark level of mobility, in practice the EU is often compared to the US. Whereas in 1999 in the EU only 1.4% of the employed population has changed residence between regions, 5.9% have moved to another county during the same period in the US. A direct comparison should however take into account that only a limited number of the US moves were job-related and even fewer due to unemployment.<sup>16</sup>

<sup>16</sup> Employment in Europe 2001 – Recent Trends and Prospects, European Commission 2001: [http://europa.eu.int/comm/employment\\_social/employment\\_analysis/employ\\_2001\\_en.htm](http://europa.eu.int/comm/employment_social/employment_analysis/employ_2001_en.htm)

**Table 1: Population aged 15+ by country of residence in the year before the survey – 2002 Q2.**

	Same country	Other Country	
	<i>Thousands</i>	<i>Thousands</i>	<i>% of non EU</i>
<b>BE</b>	8483	22	38
<b>DK *</b>	4338	15	66
<b>EL</b>	8967	10	60
<b>ES</b>	34343	66	85
<b>FR</b>	46764	192	63
<b>IT *</b>	45769	52	51
<b>LU</b>	351	2	28
<b>AT</b>	6619	30	51
<b>PT</b>	8658	41	72
<b>FI *</b>	4242	5	55
<b>TOTAL</b>	168533	435	63

Source: LFS Q2 2002, spring results.

Notes:

- Data for intra-EU mobility in 2002 is of course restricted to the EU15, but excluding IE, NL, SE (data not available) and DE, UK (high non-response rate).
- Non-responses are excluded from the totals. Due to the high number of non-responses (mainly from nationals) in IT, DK and FI, the results should be interpreted with caution

Even if the current level of mobility in the EU is relatively low, empirical findings about the attitude of young people (15-24 years) in Germany, France and the United Kingdom suggest that there is a considerable potential for increased labour mobility in the future.<sup>17</sup> Importantly it has to be noted that the above figures display the mobility over a short time span of one year. Taking into account that a career in average amounts to 30-40 years, the likelihood of an employee changing jobs throughout his/her career is significantly higher than the above mentioned percentages.

### *Conclusion*

With the prospect of increasing numbers of employees covered by supplementary pension provision the current problem of a lack of portability of supplementary pension rights is likely to continue to increase. There is empirical evidence that mobile workers risk ending up their

<sup>17</sup> Eurobarometer 1997, 2<sup>nd</sup> wave; Fertig, Schmidt (2002): Mobility within Europe. The Attitude of European Youngsters. RWI Discussion Paper No.1. More than 60% of respondents considered the right to work in any EU country a major advantage of the EU.

career with lower supplementary pension rights as compared to those employees who stayed during their entire career with the same employer. Studies on supplementary pension schemes and mobility of workers in EU countries and the USA have shown that workers covered by supplementary pension schemes are in general less likely to move to other jobs than those workers that are not covered by an employment related pension schemes<sup>18</sup>. One of the reasons for this phenomenon may be the fact that those who change jobs face a capital loss. A survey carried out by PricewaterhouseCoopers shows that the lack of pension portability is seen as significant negative factor affecting the willingness of an individual to live and work in another country<sup>19</sup>.

*A study<sup>20</sup> on supplementary pensions and job mobility in Germany examines voluntary job changes observed throughout a one year-period. Estimations are based on a probit model, delivering results about the probability of job mobility, given the implied capital loss due to supplementary pension arrangements. The basic equation for an individual is*

$$I = (Y_m - Y_s) - CL$$

*where I is the benefit resulting from mobility; if  $I > 0$ , the individual moves to another job.  $Y_m$  and  $Y_s$  are the present values of estimated lifetime earnings when moving to another job ( $Y_m$ ) or staying in the old one ( $Y_s$ ), respectively. These values depend on personal characteristics (e.g. education, sex). Thus, the difference  $Y_m - Y_s$  quantifies the potential gain from job mobility in terms of earnings. CL stands for the capital loss incurred by leaving the job due to supplementary pension rights. It depends on personal characteristics and on job and firm specific variables (e.g., if the employer offers an supplementary pension) and is defined as*

$$CL = SP - LP$$

*where SP is the present value of pension rights accrued until retirement when staying with the same company and LP is the present value of pension rights accrued in the past when leaving the company ( $LP = 0$  if rights are not vested). The expected capital loss thus depends on the present wage level and years of service, the expected future wage increases and inflation rates as well as on the treatment of dormant pension rights.*

*The study shows that the loss of both vested and non-vested pension rights due to a lack of portability discourage job mobility to the same extent. In both cases, the mobility probability is reduced by 11% per DMI,000 (€511) of expected capital loss in supplementary pension rights.*

Empirical evidence thus supports the hypothesis that workers will be less inclined to move to another job when they know that their pension rights in the end of the career will be reduced.

The current situation as regards supplementary pension rights is not sufficiently allowing the exercise of the right of freedom of movement for workers. Moreover, this situation is in contradiction with the goals set at European level to get a more mobile and flexible workforce and thus improve the functioning of the Internal market. In spite of these clear findings, so far

<sup>18</sup> Andrietti, V (2001) "Occupational pensions and interfirm mobility in the European Union. Evidence from the ECHP Survey", W.P. 05-2001, Center for Research on Pensions and Welfare policies. Andrietti, V and Hildebrand, V.A. (2001) "Pension portability in the United States. New evidence from SIPP data", W.P. 10-2001, Center for Research on Pensions and Welfare policies.

<sup>19</sup> Managing mobility matters – a European perspective, PricewaterhouseCoopers 2002

<sup>20</sup> Birgitta Rabe "Occupational Pensions and Job Mobility in Germany", 28 May 2004, Max Planck Institute Germany.



no Community provision to improve the portability of supplementary pension rights thus securing the rights of mobile workers has been set up<sup>21</sup>.

## **2. THE PROBLEM: ASPECTS OF SUPPLEMENTARY PENSION PROVISION CONSTITUTING OBSTACLES TO PORTABILITY**

This section discusses the identified obstacles to the mobility of workers arising from supplementary pension systems. On the basis of the current situation in the Member States (see Annex), four main areas can be identified which can affect negatively the social protection of mobile workers and thus constitute obstacles to the exercise of the right of free movement<sup>22</sup> (in general):

- tax treatment of cross border contributions and transfers;
- conditions for the acquisition of supplementary pension rights;
- rules on preservation of dormant pension rights and
- the way the transfer of acquired rights is organised.

All these areas are interlinked and determine whether the mobile worker can expect to receive at the end of the career an adequate pension or whether he/she will be penalised because of his/her mobility.

In addition to these areas, it has to be recognised that the information provided to scheme members and in particular to (potential) early leavers plays an essential role in enabling mobility on a well informed basis.

The following section will describe the last three identified main areas<sup>23</sup> where obstacles occur. As tax obstacles are not being dealt with by the proposed directive they are examined in the annex. A description will also be given of the situation in terms of information related to the supplementary pension rights of the (potentially) mobile worker.

### **2.1. Acquisition**

The acquisition of supplementary pension rights can be subject to certain qualifying conditions. Three main criteria have to be distinguished here;

- (1) waiting periods, i.e. the period of employment after which an employee becomes a scheme member. When a waiting period is applied, the early leaver who leaves the employment before having accomplished this period will not have become a scheme member and will therefore not have any vested rights. In the case where the employment period before the completion of the waiting period accounts for the

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<sup>21</sup> Directive 98/49/EC is the only instrument aimed at safeguarding supplementary pension rights of mobile workers and self-employed, but does not provide a sufficient guarantee against the loss of supplementary pension rights

<sup>22</sup> These areas were identified already in the Commission's Green Paper "Supplementary pensions in the Single Market" COM (97) 283.

<sup>23</sup> These have also been examined by working groups of the Pensions Forum, their findings are taken into account in the following section.



vesting of rights, the early leaver will thus lose out in comparison to the employee who remains with the same employer throughout his/her career. Moreover, the worker who changes jobs several times may not be able to build up an adequate pension at the end of the career when the different schemes apply waiting periods.

- (2) minimum ages: two types of minimum age requirements can be distinguished; the minimum age needed for the employee to join the scheme and the age at which the employee, member of the scheme, has acquired rights. In both cases, like for waiting periods, the early leaver who leaves the company before having reached the minimum age applied will not have become scheme member and thus will not have any vested rights. If the employment period fulfilled before having reached the minimum age counts for the vesting of rights, the early leaver will lose out in comparison to the employee who remains with the same employer after having reached the minimum age.
- (3) vesting periods, i.e. the minimum period of scheme membership after which a pension entitlement must be recognised for an early leaver. Where the waiting period and minimum age determine whether an employee can become affiliated to a supplementary pension scheme, in the case of vesting period, the employee is already a scheme member but will have to complete a certain period as a scheme member before having established acquired/vested rights. An early leaver, who is a scheme member, but leaves the employment relationship before having completed the vesting period, will lose out in comparison to the employee who remains with the same employer beyond the vesting period. In general the early leaver will only receive a reimbursement of his own contributions, but no vested rights to a future pension. Vesting periods are in fact equivalent to qualifying periods in statutory schemes where the need for EU legislation is accepted since the 1950s. This EU legislation (Regulation 1408/71/EEC) is based on a system of mutual recognition between supplementary pension schemes. Such a system would however be difficult to achieve because of the important diversity of supplementary pension schemes (see also under section 4.1 instruments considered).

***Impact of certain acquisition rules on pension rights***<sup>24</sup>

*We assume that all employers offer a pension worth 1% of final earnings for each year of employment. The employee earns €10000 per year during a career starting at 25 and ending at 65 (40 years). There is no inflation.*

*Employee A remains with the same employer during the entire career: the pension will amount to €4000 per year.*

*A mobile career can result in significantly lower pension entitlement.*

*Suppose employee B works between 25 and 28 in a scheme where pension rights only vest at 30; for the next 7 years, B works for another employer with a scheme with a 10-year vesting period. At 36 years of age B still has not earned any pension rights. The third job, held between 37 and 49 (13 years) gives rise to pension rights for 11 years because of a waiting period of 2 years before being admitted into the pension scheme. A fourth job held between 50 and 55 gives rise to no pension entitlement because the employee has to be in the company at the*

<sup>24</sup>

Please note that the examples proposed here and further in the text are purely hypothetical. They are not intended to reflect the actual situation which is characterised by a high level of complexity and diversity of occupational pension arrangements. The purpose of this calculation is only to demonstrate how acquisition rules can reduce pension rights after a particularly mobile career

*moment of retirement in order to obtain a pension. The last job, between 56 and 65, is covered by a scheme with a waiting period of one year.*

*The resulting pension at the end of employee B's career would amount to only €1900 per year. B has worked during 40 years, but only less than half of this period counted for the building up of pension rights (19 years).*

## **2.2. Preservation of dormant rights**

An early leaver who has acquired rights can in principle leave these rights in the scheme of origin. In this case it is important to know whether and how these acquired rights are preserved. Such preservation may be limited to a nominal value (e.g. a monthly pension of € 100 as of the age of 65). This implies that the real value of preserved pension entitlements would fall as a result of inflation. Moreover, pay rises are not reflected in pension entitlements, as is the case for workers who remain in the same job if benefits are expressed as a percentage of earnings or adjusted average earnings. Frequent job changers who leave their entitlements in different pension schemes will therefore receive significantly reduced supplementary pensions at the end of their careers compared to people who remain within the same pension scheme.

### ***Impact of preservation rules on pension rights***

*We assume that all employers offer a pension worth 1% of final earnings for each year of employment. The employee earns €10000 per year during a career starting at 25 and ending at 65 (40 years). Inflation is at 2% per annum during the entire period. Real wages are constant and their nominal amounts are €10000 at the beginning and €22522 at the end of the career.*

*Employee A (entire career with the same employer) will receive a pension of €9009 per annum (40% of final earnings).*

*Employee C worked for 20 years for one employer and for another 20 years for another. Employee C will receive a €3031 from the first employer and €4505 from the second employer. The total pension amounts to €7536 per annum (33% of final earnings). The higher the inflation rate, the greater the mobility loss due to insufficient preservation.*

*The mobility loss will be amplified by the fact that individual earnings tend to rise faster than prices or even aggregate earnings.*

## **2.3. Transferability**

Transferability refers to the possibility of transferring a capital value representing the acquired pension entitlements from one pension scheme to another scheme or to a similar financial institution. Besides the tax treatment, an issue discussed in the Annex, specific conditions related to the transfer itself or to the receiving scheme, can limit the transferability of a worker's pension capital. Also the methods for calculating transfer values may lead to reduced pension benefits for the mobile worker.

## **2.4. Information requirements**

At EU level some requirements as concerns the information to be provided to scheme members already exist.

Article 7 of Directive 98/49/EC<sup>25</sup> requires that information provided to scheme members when moving to another Member State should at least correspond to information given to scheme members in respect of whom contributions cease to be made, but who remain within the same Member State.

Nonetheless, the Directive does not contain any provision on the effective level of information provided to scheme members who leave a pension scheme.

The only provisions in this respect are contained in Article 11 of the IORP Directive<sup>26</sup> which provides for detailed and substantive information of scheme members and beneficiaries on the target level of benefits, on the actual financing of accrued pension entitlements and on the level of benefits in case of termination of employment. In particular, the directive provides that pension scheme members will receive every year particulars on the current level of financing of their accrued individual entitlements. Moreover, each member can receive, on request, information on the arrangements relating to the transfer of pension rights to another pension fund in the event of termination of the employment relationship.

In order for employees to be able to make a well considered choice, it is essential that they be made fully aware of his rights, on the options available in the event of a job change or career interruption and on the costs associated with these options.

#### **2.5. General conclusion: a need to undertake action to improve portability**

The above description confirms that a number of significant obstacles to the portability of supplementary pension rights indeed exist:

- The application of sometimes long and strict *acquisition conditions* can result in a deterioration of the social protection of the mobile worker and will create disincentives to move between jobs.
- Where the worker moves to another job and leaves his acquired rights behind in the scheme of the former employment, the *dormant rights will in many cases not be protected sufficiently* to avoid that the early leaver is significantly worse off than a worker with a similar profile who remains within the same employment.
- The worker who moves to another employment often does not have the choice between *transferring* the acquired rights and the preservation of these rights in the former scheme. Where a transfer is possible and the worker decides to make use of it, it depends largely on the conditions of this transfer and the assumptions used in calculations for the determination of the transfer value whether the worker will not lose out too much by transferring the rights.
- Finally, the (potential) mobile worker in the EU does not have the guarantee that she/he will be *informed* on all the consequences on the supplementary pension rights upon leaving the employment or on the options available with regard to the preservation or transfer of the acquired rights.

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25 Directive 98/49/EC, on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community, OJ L 209 of 25 July 1998.

26 Directive of the European Parliament and of the Council on the activities and supervision of institutions for occupational retirement provision, 2003/41/EC of 3 June 2003.

The above underlines the need to improve the portability of supplementary pension rights, in particular for the increasing number of schemes that contribute in an essential way to the social protection of (mobile) workers. It is also clear that in order to tackle this problem effectively, it is necessary to address the identified problems in a comprehensive way.

### **3. OBJECTIVES**

The various actions that have been taken at European level with regard to supplementary pension provision are not yet sufficient to improve substantially the supplementary social protection of mobile workers by preventing significant losses of pension entitlements of early leavers (see also a description of the already taken actions in the Annex). Important legal action by the Commission in the field of taxation is in progress, Directive 98/49/EC has confirmed in particular the principle of equal treatment between those workers who move across borders and those who change jobs within their country and the recently adopted Directive on Institutions of Occupational Retirement Provision (2003/41/EC) could enhance the freedom of movement of those workers who remain within the same group of companies.

However, these initiatives have not, or only partially (in the case of taxation), addressed the main obstacles to portability of supplementary pension rights as identified above; especially the tax treatment of cross border transfers, the conditions for acquisition of rights, the preservation of dormant rights and transferability conditions. In view of the problems identified, the Commission services are obliged to examine whether there is a need for Community action and, if this is the case, to discuss the options for the appropriate form, content and scope of such an action. These issues shall be discussed in the following section.

With a view to the already ongoing activities to address the tax obstacles related to supplementary pension provision, further measures aiming at improving the portability can concentrate on the other elements identified above: acquisition conditions, preservation of dormant rights, transferability and the information provision to (potentially) mobile workers.

### **4. POLICY OPTIONS CONSIDERED AND SELECTION OF PREFERRED OPTION**

#### **4.1. Do nothing**

In the light of the analysis presented above, not to act at all would not lead to the expected result of an improved portability. Even if some individual Member states and pension schemes are in the process of improving portability, the lack of commonly agreed principles and requirements in this area at the European level would not allow making real progress in the elimination of the existing and probably increasing obstacles to free movement created by the design of supplementary pension provision. The EU has to take action not only because of the negative effect of insufficient portability on the working of the internal market but because the Commission has to assume its obligations as a guardian of the Treaty ensuring the respect of the basic freedoms prescribed by this Treaty, in particular the freedom of movement of workers.

The major actors and stakeholders in the field of supplementary pension provision, the social partners (representing both sides of industry) have already recognised since long that there is a necessity to act at EU level<sup>27</sup>.

With regard to the need to take action at the European level, the problem could be addressed either by instruments that are not legally binding (option 2: code of conduct) or by legally binding provisions, either developed in the framework of the social dialogue (option one: collective agreement) or proposed by the Commission (option 3: Regulation or Directive). These different possible instruments will be discussed in this section.

#### **4.2. European Collective agreement**

As indicated, the European social partners representing both sides of industry recognised the need for action at EU level. Their opinions differed, however, concerning the instruments to achieve this aim. Some social partner organisations felt that exchanges of experiences and information-sharing or codes of conduct would be the best way to achieve this, others asked for legislative action to be taken.

The Commission services are well aware of the contractual and voluntary nature of the supplementary pension provision in the EU. Supplementary pension provision not only is 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. Therefore, as a logical step, the Commission consulted social partners first of all on the question to know whether action at Community level aimed at improving portability of supplementary pensions was desirable and secondly, after the social partners recognised that Community action was needed, whether the social partners would be prepared to start negotiations on a European collective agreement improving the portability of supplementary pension rights. The social partners did not agree, however, on the instruments to be used at European level to improve the portability and did therefore not engage in negotiations.

Since no European collective agreement will be negotiated the main options that remained to improve the portability at European level were a code of conduct or legislative action.

#### **4.3. Code of conduct**

Such 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 since more than fifteen years without resulting in an initiative of this kind<sup>28</sup>. There is no obvious reason why the actors concerned would change attitude and behaviour at this stage. This puts into question the probability, and also the credibility of any form of voluntary agreement. Also, with a view to the diverging opinions of social partners in this context, it is very unlikely that such a code of conduct would see the light in a near future. Moreover, account should be taken of the fact

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<sup>27</sup> See also description of the consultation of the social partners in Annex 1.

<sup>28</sup> In fact the issue has been discussed at European level for much longer. Already in 1966 the Commission issued a study on the possibilities to coordinate supplementary systems of social security in the countries of the CEE.

that even if social partners and individual employers have an important role to play in the design of supplementary pension provision, many aspects of supplementary pension provision are regulated by laws of the Member States (social law, but also fiscal regulations for instance). In the light of the experiences made, the Commission services have no reason to believe that a code of conduct would be sufficient to effectively adjust all the specific obstacles to portability created by such legislation.

#### 4.4. 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 (voluntary action, on the other hand, could run the risk that only some of the problems are solved, but not all).

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<sup>29</sup> for three 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 up-dated and simplified version of Regulation 1408/71 was agreed in 2003 after years of negotiation – it would prove very difficult to open discussions again.

Such a coordination system in the form of a Regulation would moreover not allow the flexibility needed to take into account the important diversity of supplementary pension provision in the Member States and its voluntary nature<sup>30</sup>.

On the other hand a Directive would not have these shortcomings. In particular a Directive establishing minimum requirements, thus respecting the contractual nature and the diversity of supplementary pension provision, could 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

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<sup>29</sup> This does not however exclude the application of principles of Regulation 1408/71 to occupational pension schemes. At the request of Member States, the scope of the Regulation can be extended to non-statutory schemes established by social partners. Moreover, Council Directive 98/49/EC explicitly refers to Regulation 1408/71 as concerns posted workers and applies like the Regulation the principle of equal treatment with regard to nationality and the cross-border payment of benefits.

<sup>30</sup> Preamble 4 of Council Directive 98/49/EC recognises this problem: "(...) *whereas the system of coordination provided for in Regulations (EEC) No 1408/71 and (EEC) No 574/72, and in particular the rules of aggregation, are not appropriate to supplementary pension schemes, except for schemes which are covered by the term 'legislation' as defined by the first subparagraph of Article 1(j) of Regulation (EEC) No 1408/71 or in respect of which a Member State makes a declaration under that Article, and should therefore be subject to specific measures, of which this Directive is the first, in order to take account of their special nature and characteristics and the diversity of such schemes within and between Member States*";



account the specific features of existing schemes and their diversity. 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.

#### **4.5. Conclusion: need for a Directive**

As the discussions ongoing over the last decade have shown, leaving the improvement of the portability over to the individual Member States or schemes while doing nothing in this field at the European level would not lead to a real improvement of the portability. EU action is therefore needed, in particular with a view to the role the EU has to play in improving the functioning of the internal market and enabling workers to exercise their right to free movement. The most appropriate instrument for this action to achieve improved portability of supplementary pension rights appears to be a legislative measure in the form of a Directive.

##### *4.5.1. Scope*

The aim of the proposed Directive is to improve the conditions for workers to exercise their freedom of movement by improving the portability of supplementary pension rights. The obstacles to mobility of workers across borders and the obstacles to mobility within the Member States can in many aspects not be dissociated. It will for instance be impossible in practice to apply different acquisition conditions depending on whether the mobile worker moves to another Member State or whether she/he stays within the same country. This will lead to difficulties for the funds, raising the administrative costs. Moreover, even if in principle a European legal instrument can result in a situation where the cross-border mobile worker is better off than the worker moving within the same Member State, in practice this will not be a politically acceptable outcome. The Commission services are therefore convinced that the proposed Directive will have to address also obstacles created by national rules and thus improve both portability of supplementary pension rights within the Member States as across borders.

##### *4.5.2. Legal basis*

In the light of the above the Commission services decided to prepare a proposal for a Directive of the European Parliament and the Council enhancing the free movement of workers by improving the portability of supplementary pension rights within the European Union. The proposal will be based on Article 42 of the EC Treaty, according to which the Council shall, acting in accordance with the procedure referred to in Article 251, adopt such measures in the field of social security as are necessary to provide freedom of movement for workers and on Article 94, according to which the Council shall issue directives for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the common market. This double legal basis is justified since the obstacles to mobility across borders created by rules on supplementary pension provision are inherently linked with obstacles affecting the mobility within Member States. As shown in the above section, rules on supplementary pension provision can create obstacles to the portability of supplementary pension rights and thus create barriers to the free movement of workers between Member States. Moreover the differences in these rules lead to distortion of the conditions of competition by their influence on the functioning of the labour market.

## 5. SUB-OPTIONS FOR IMPROVING PORTABILITY WITHIN THE FRAMEWORK OF THE PREFERRED POLICY OPTION

In this section the different policy options considered are presented in order to address the main issues in the field of portability as identified in section 2.

### 5.1. Acquisition of supplementary pension rights

#### 5.1.1. *Waiting periods*

##### a) Do nothing

This option implies that Member States would be free to decide whether to fix a maximum period after which a worker have to be with the employer before becoming member of the scheme.

##### b) Total elimination of waiting periods

The elimination of waiting periods results in the right for the employee to become member of the supplementary pension scheme as from the first day of the employment (however, minimum age requirements could still apply).

##### c) Reduction of the maximum waiting period to one year

This option would imply that in the schemes where waiting periods apply, these do not exceed the duration of one year.

#### 5.1.2. *Minimum age*

##### a) Do nothing

This option would leave it over to the Member States to decide whether to fix a maximum age after which supplementary pension rights have to be acquired.

##### b) Total elimination of minimum age requirements

This option would prohibit pension schemes to make the acquisition of supplementary conditional to the age of the employee.

##### c) Fixing the highest minimum age at 21 years

Where a minimum age is applied for the acquisition of supplementary pension rights this should not be more than 21 years.

##### d) Fixing the highest minimum age at 25/30 years

This option corresponds to option c) but higher minimum ages (25 or 30 years) can be set by the scheme for the acquisition of supplementary pension rights.



### 5.1.3. *Vesting periods*

#### a) Do nothing

Member States would have the possibility not to fix a maximum number of years of membership after which the employee should have acquired rights and leave it over to the individual schemes. In case Member States fix a maximum vesting period, they can determine the length of the vesting period freely.

#### b) Immediate vesting

This option results in an immediate vesting of the supplementary pension rights of the employee as from the first day of scheme membership (where applicable after having fulfilled other acquisition conditions, like the minimum age).

#### c) Setting maximum vesting periods (1, 2, 5 years)

In case vesting periods are applied, these should not exceed 1, 2 or 5 years.

## 5.2. **Preservation of dormant pension rights**

#### a) Do nothing

This would leave it entirely over to Member States whether they wish to lay down in law a requirement that dormant right should be adjusted and if so, to which extent. The only applicable EU legislation in this field would remain Directive 98/49 establishing an equal treatment between the dormant rights of a worker moving to another employment within a Member States and the dormant rights of a worker moving to another Member State.

#### b) (Limited) inflation adjustment

This option corresponds to the system applied in the UK and Ireland where pensions are, up to a specified ceiling, to be adjusted in line with inflation or consumer's price index.

#### c) Adjustment of dormant rights to the general wage development

Member States would have to fix the requirement that the adjustment of the dormant rights follows the general development in wages.

#### d) Adjustment of dormant rights at the same rate as pensions in payment

This is a system currently applied in the Netherlands where, in case the pensions in payment are adjusted, the dormant right in the supplementary pension scheme have to be adjusted to the same extent.

#### e) Linking dormant rights to the rate of return of the assets of the institution for supplementary retirement provision

This would be a partial option, which could apply only to schemes on a funded basis, where the rate of return of the assets would determine the adjustment of the dormant rights. In practice this is already applied by most schemes with defined contribution.

### 5.3. Transferability of supplementary pension rights

#### a) Do nothing

Here the Member State would have the choice to regulate whether a worker would have the possibility at the moment of leaving the employer to take the acquired rights to a new pension scheme (linked to the new employer).

#### b) Every early leaver should have the choice between transfer and leaving dormant rights in the scheme of origin.

Member States would have to ensure that all workers leaving their employer have the possibility to take their acquired supplementary pension rights with them. Member States would also have to ensure that this transfer takes place under conditions which do not reduce substantially the entitlements (for instance due to unfavourable calculation of the transfer value or high administrative costs).

#### c) The same conditions should apply to transfers across borders as to transfers within the Member States.

This option implies that where transferring rights within the Member State is possible between certain schemes, this should also be possible across borders and under the same conditions. Where nationally no transfer is foreseen, there is no obligation to provide for the possibility to transfer cross-border.

### 5.4. Information requirements

#### a) Do nothing

This would leave it over to the Member State to determine whether information should be provided in relation to portability. At EU level they will in any case have to apply the information requirements contained in the Article 11 Directive 2003/41/EC.

#### b) Specific information related to portability to be provided to workers

This option establishes, beyond the requirements contained in Directive 2003/41/EC, that Member States have to ensure that workers, even if they are not (yet) member of the supplementary pension scheme, receive the necessary information on the consequences mobility could have on their supplementary pension rights. Moreover, information should be provided on the conditions for the transfer of rights and the preservation of dormant rights.

## 6. IMPACTS OF THE SUB-OPTIONS CONSIDERED

In this section the different options for the measures considered for the proposed Directive are evaluated with a view to their impact in terms of benefits and costs described above (protection of rights, mobility, costs and coverage).

In order to evaluate the impact of these different options, a questionnaire was prepared in cooperation with the Pensions Forum. In this questionnaire, Member States and other stakeholders in the field of supplementary pension provision were invited to indicate the impact of fixing certain rules at EU level in terms of

- Number of scheme members affected
- Costs implied (per scheme member)
- Likely impact on the provision of occupational pensions
- Impact on the mobility of workers

#### **6.1. Elements of impact taken into account**

The provisions of the Directive should only go as far as necessary to address in a sufficient way the obstacles identified. In particular the Directive should allow for a certain degree of flexibility to avoid discouraging the (further) development of supplementary pension provision in the EU. It is important that the proposed measures do not put any unnecessary or disproportionate administrative or financial burden on the employers providing for supplementary pension provision or on the supplementary pension schemes themselves. In order to come to a balanced proposal in particular the following factors have been taken into account:

##### **(1) Benefits**

###### **a. Impact on social protection rights of mobile workers**

The main objective of the Directive is to improve the conditions for workers to exercise their right to free movement by protecting the pension rights of mobile workers. This protection will be measured in particular by examining whether the proposed measure enables 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.

###### **b. Impact on mobility**

The considered measures are moreover examined in terms of enhancing mobility of workers. This will in particular be measured by examining whether the proposed measure will avoid that a (potential) early leaver faces a significant loss of his pension rights at the moment of cessation of employment so as to deter the willingness to change employment. This will also impact on the functioning of the European labour market and the possibility for employers to attract skilled employees.

##### **(2) Costs**

###### **a. Costs to providers**

The proposed measures will be examined with a view to striking the right balance between the benefits and the costs incurred. A distinction will be made between the *administrative costs* and the *funding costs*, the latter being the costs directly related to the additional supplementary pension rights created for workers. These funding costs at a 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 acknowledged here concerns the short term funding costs and the administrative costs.

**b. Consequences for the coverage of supplementary pension provision**

The proposal will also duly take into account the effects of measures on the willingness of the providers to continue supplementary pension provision and on the potential opening of new schemes. In general it should be noted that strict rules on supplementary pension provision as such do not necessarily affect negatively the level of coverage of employees by supplementary pension provision. This is shown by the experience in the Netherlands and the UK, where the rules are relatively strict, but coverage is and remains high<sup>31</sup>.

It is however of utmost importance, in particular with a view to the increasing role played by supplementary pension provision in the overall old-age benefit system, that the proposed measures will not reduce the number of employees covered by those schemes. It is therefore important to examine for each proposed measure which are the effects on the overall coverage of supplementary pension provision.

In assessing the impact of the measures, account needs to be taken of **the diversity in supplementary pension provision in the Member States**. As can be seen from the description of the current situation in the Member States, the conditions defining the rights of early leavers are usually fixed by the supplementary pension schemes themselves, subject to general rules set by national legislation or collective agreements, and can very much vary according to the characteristics of the schemes. The specific impact of these conditions on pension portability therefore differs to a large extent. The distinction between defined-benefit and defined-contribution schemes is also important in this context. The conditions for the acquisition and transferability of supplementary pension rights are in fact typically stricter for defined-benefit plans. In this case, employees' future benefits are defined in advance and determined by a specific formula linking benefit accrual to employee earnings, length of service or both.<sup>32</sup> 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<sup>33</sup>. Problems of portability are less serious in defined-contribution schemes. However, in this case beneficiaries have to bear the full investment risk and, in the absence of a conversion into an annuity, longevity risks and thus face far greater uncertainty about their living standard in old age.

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<sup>31</sup> There is however a tendency to modify the design of the pension schemes. In particular a shift from defined benefit schemes towards schemes with a defined contribution nature can be noticed. In the Netherlands the defined benefit schemes use more and more often the average salary, instead of the final salary for the calculation of benefits

<sup>32</sup> In the case of defined-benefit schemes, the level of benefits may be notably defined in fixed monetary terms, perhaps depending on the number of years of service that the employee has served (flat benefit arrangements) or, more frequently, in terms of the salary of the employee in combination with the number of years of service. In this case, the definition may be based upon the salary or earnings immediately (or over a short period) prior to the retirement (final salary arrangements) or on the salary throughout service (career average arrangements).

<sup>33</sup> It should be noted, however, that many occupational schemes pay out retirement benefits in the form of a lump sum which does not have to be converted in an annuity.

Another important factor concerns the distinction between funded and unfunded schemes. The latter, often in the form of book reserve or pay-as-you-go schemes. The unfunded schemes in many cases are not allowing for the transferring of acquired rights, since this will have to imply the anticipated freeing of capital.

The proposed measures will have to take into account the characteristics of these different types of schemes.

## **6.2. Acquisition of supplementary pension rights**

### *6.2.1. Waiting periods*

#### a) Do nothing

In the majority of supplementary pension schemes in the EU, no or low waiting periods are applied. In most countries waiting periods are not specifically restricted by law. Where waiting periods are applied by schemes, in many cases these correspond to the probation period of the employee, but rarely exceed two years.

The current situation in the Member States as concerns the waiting periods and minimum ages of entry to the scheme is such that frequent job changers still could be faced with losses in pension benefits at the end of the career. Even if the applied waiting periods and the minimum ages are often relatively low, the combination of an applied minimum age and the accumulation of waiting periods throughout the career can lead to a significant loss in pension benefits at the end of the career for a mobile employee as compared to the employee who remains with the same employer throughout the entire career. The loss is even more serious where defined benefit schemes take into account for the pension calculation the years accomplished before the reaching of the minimum age of entry to the scheme and/or before the fulfilment of the waiting period. In that case, the early leaver who leaves the job without having completed the waiting period or reached the minimum age will be significantly worse off as compared to the employee who remains with the same employer beyond the waiting period/minimum age. Defined contribution schemes in general do not take into account the years completed before the waiting period or the reaching of the minimum age.

#### a) Total elimination of waiting periods

## **Benefits**

### **a. Impact on social protection rights of mobile workers**

In principle the impact on social protection right could be positive taken although other acquisition requirements (minimum age or vesting periods) can still determine whether the early leaver will have acquired rights at the moment of termination of his employment relationship. The abolition of waiting periods could result in the coverage of employees with fixed term or temporary contracts (often women)<sup>34</sup> and therefore achieve a better pension coverage for those workers.

<sup>34</sup>

It should be noted that the European social partners have recognised that "innovations in occupational social protection systems are necessary in order to adapt them to current conditions, and in particular to provide for the transferability of rights" with regard to fixed-term work (ETUC, UNICE and CEEP in

**b. Impact on mobility**

The total abolition of waiting periods can have a positive effect on the mobility of workers, since employees will become member of the scheme as from day one of the employment relationship and will thus not be retained in the employment in order to fulfil this qualifying period.

**Costs****a. Costs to providers**

The costs will depend on whether the pension scheme currently applies waiting periods or not. In the majority of Member States schemes apply waiting periods, but in general these tend to be of a short duration (see Annex). The additional administrative costs will in particular be related to the administration of smaller entitlements in the case of cessation of the employment. The overall costs furthermore depend on whether the elimination of waiting periods will require all workers, including those with fixed term or temporary contracts to be covered, or whether this would only concern employees with a long term contract. In case all employees regardless of the type of contract would be covered, the overall costs might be significant and this is also why in several countries schemes exclude fixed-term employees from scheme membership or set waiting periods at the length of the probation period.

In some Member States certain schemes exclusively financed by employers and designed to reward staff loyalty apply long waiting periods (sometimes 5-10 years). For these schemes the funding costs related to an elimination of the waiting period might be very significant.

A total elimination of waiting periods could thus in specific cases result in significant costs. Member States highlight this and point out that the administration of small entitlements would lead to higher expenditure; they did not however quantify these possible costs. Only the UK reports that the "extra costs of pensions" for the public service pension schemes would be negligible and for the private sector pension schemes amount to GB £ 180-220 million on a yearly basis if schemes would not adapt to the new situation.

**b. Consequences for the coverage of supplementary pension provision.**

In countries where there is no compulsory membership and where waiting periods are common practice, the total elimination of waiting periods could make employers more reluctant to open new schemes, since they will have to start contributing immediately for new employees. When the elimination of waiting periods would moreover result in the scheme membership of employees with fixed-term contracts, this could have negative consequences on the willingness of employers to open or continue such schemes. For instance employers with many seasonal workers might in that case not be willing to provide for supplementary pension schemes.

**b) Reduction of the maximum waiting period to one year****Benefits****a. Impact on social protection rights of mobile workers**

In general the impact on social protection rights will be positive, but evidently to a lesser extent than in the case of a total elimination of waiting periods. Moreover, in Member States where schemes apply waiting periods, these periods tend already to be rather limited in time (in general not exceeding two years) thus no major impact on the social protection rights is to be expected. However, account should be taken of the fact that even a short waiting period in combination with other acquisition conditions (minimum age, vesting period) can still result in a significantly lower social protection of mobile workers as compared to workers who remain within the same employment throughout their career.

**b. Impact on mobility**

The reduction of the maximum waiting period to one year can have a positive effect on the mobility of workers, in particular for those schemes currently applying higher waiting periods. Workers who tend to move frequently between jobs will not face major losses in the acquisition of pension rights (evidently this still depends also on the applied vesting period).

**Costs****a. Costs to providers**

The impact on the costs will depend on whether the scheme currently applies a waiting period longer than one year. In the literature examining the relationship between portability of supplementary pension rights and mobility of workers, a waiting period of one year is considered as reasonable since a shorter period would result in disproportionate administrative costs as compared to the small entitlements acquired<sup>35</sup>. The UK reports here that the "extra costs of pensions" for the public service pension schemes would be negligible and for the private sector pension schemes amount to GB£ 100-120 million on a yearly basis if schemes would not adapt to the new situation.

**b. Consequences for the coverage of supplementary pension provision.**

The impact of a reduction of waiting periods to one year on the supplementary pension coverage will be much less significant than the impact of the elimination of these waiting periods (see above). In most countries the probation period is less than one year, employers will therefore not be obliged to cover employees that are even still in their probation period.

**6.2.2. *Minimum age*****a) Do nothing**

Few Member States have restricted by law the minimum age requirement set to become a scheme member or to have acquired rights, Germany being one of the main exceptions to this rule where the law establishes that in the case of employer financed schemes, the employee

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<sup>35</sup>

Verreth, p. 437



has acquired rights only at the age of 30 years (if the vesting period of five years has been fulfilled).

Even if in most cases the law does not provide for a minimum age, most defined benefit schemes seem to apply in practice a certain minimum age required for the entry to the scheme. When these minimum ages are set by the schemes they range in general from 18 years to 25 years.

In some countries, like the Netherlands, there is a trend towards the abolition of the application of minimum age requirements.

Doing nothing would therefore result in maintaining a situation where many schemes still apply (sometimes high) minimum ages the employees have to reach before actually acquiring rights. (Thus retaining them in the employment relationship until this age has been reached).

#### b) Total elimination of minimum age requirements

### Benefits

#### **a. Impact on social protection rights of mobile workers**

The impact on the social protection rights of mobile workers will depend on whether pension rights are awarded for the period of employment accomplished before reaching the minimum age when all other conditions for vesting are fulfilled. In case in the current situation the years before reaching the minimum age are taken into account, an elimination of the minimum age will have a positive effect on the social protection rights of mobile workers, in particular workers who tend to be more mobile. Moreover, blue collar workers who in general start their career from a relatively young age will be able to build up pension rights at an earlier age. Only other acquisition conditions might still limit the possibility to build up pension rights as from the start of the employment.

#### **b. Impact on mobility**

The impact on the mobility of workers will be positive since acquisition of pension rights will no longer depend on the age of the employee. Employees (after having fulfilled other acquisition conditions where applicable) can therefore move more freely to a new employer without losing out in terms of acquisition of rights. Moreover, from a perspective of improving the flexibility of the work force it is difficult to justify the application of age requirements.

### Costs

#### **a. Costs to providers**

The costs could be significant for those schemes applying high minimum ages. However this will depend on whether the years of employment before the reaching of the minimum age are taken into account for the acquisition of rights. For instance for the German schemes financed by the employer where a legal minimum age of 30 years applies, the funding costs (thus provided by the employer) will increase due to an elimination of the minimum age requirement. However these costs will not be substantial since workers will mostly stay with the employer until they have a vested right (i.e. fulfilled the vesting period). Since younger workers tend to be more mobile, the administrative costs related to the management of smaller



entitlements in the case of cessation of the employment can be significant, depending on the vesting period applied.

**b. Consequences for the coverage of supplementary pension provision.**

The impact on the coverage of the supplementary pension schemes will mainly depend on the extra costs that are resulting from the elimination of minimum age requirements. In particular the employer financed schemes in Germany might be affected. It might be that fewer employers will be inclined to open schemes where contributions have to be paid irrespective of the age of the employee (even if other acquisition conditions can still apply).

b) Fixing the highest minimum age at 21 years

**Benefits**

**a. Impact on social protection rights of mobile workers**

The impact on the social protection rights of in particular white-collar mobile workers will be positive. The ability for blue collar workers generally starting their career at a relatively young age to start building up rights at an early stage will be reduced in comparison to a total elimination of the minimum age requirements. Other acquisition conditions might also still further limit the possibility to build up pension rights at an early stage in employment.

**b. Impact on mobility**

The impact on the mobility of workers will be positive since acquisition of pension rights will start at an early age. Workers will be able to move relatively quickly to other jobs without the risk of losing out in terms of acquisition of rights.

**Costs**

**a. Costs to providers**

The costs can be significant for those schemes applying high minimum ages. For instance for the German schemes financed by the employer where a legal minimum age of 30 years applies, the funding costs will be substantial. Administrative costs might also still be relatively high, but this will depend on the vesting period applied. The UK has indicated that the "extra costs of pensions" for the public service would be negligible and for private sector pension schemes would amount to GB£ 40-50 million on a yearly basis if schemes would not adapt to the new situation.

**b. Consequences for the coverage of supplementary pension provision.**

Schemes currently applying high minimum ages will have to adapt substantially their organisation. At the same time offering younger employees the possibility to become quickly member of the pension scheme might also provide a supplementary incentive for young and talented employees to choose a specific employer. This might therefore be an asset for the most dynamic companies and is more in line with the requirements of a flexible labour market.

### c) Fixing the highest minimum age at 25/30 years

Fixing the highest minimum age at 30 years would result in maintaining the current situation since there is no evidence of schemes applying minimum ages for the entry to the scheme higher than 30 years. Therefore the impact presented here will only concern the fixing of the highest minimum age at 25 years.

#### **Benefits**

##### **a. Impact on social protection rights of mobile workers**

The impact on social protection rights will be positive but limited, since relatively few schemes apply a minimum age exceeding 25 years. There might however be a risk that setting the statutory minimum in relation to the entry age could influence behaviour and lead to schemes raising their minimum age to the statutory minimum. This would result in a reduction of the period during which employees can build up their rights (for example between 25 and 65) and "flexible" workers risk thus to end their career without diminished pension rights.

##### **b. Impact on mobility**

Fixing the highest minimum age at 25 years will in principle have little impact on the mobility of workers, since in most situations where minimum ages are applied these do not go beyond 25 years. Only in the case of Germany and Sweden (white collar workers schemes) and in some individual schemes in other countries, where the minimum age is fixed at 30 or 28 years, there would be in principle (depending on whether pension rights are awarded for the employment period accomplished before the reaching of the minimum age) a positive impact on the mobility of workers when the highest minimum age would be reduced to 25 years. It would mean that employees would start building up rights earlier and would thus be able to move earlier to a new employer while having built up acquired rights (conditional on the other applied acquisition conditions).

#### **Costs**

##### **a. Costs to providers**

The impact on both the funding costs and the administrative costs would be very small given the small number of Member States where schemes apply a minimum age in excess of 25. As mentioned above, mainly the employer financed schemes in Germany will be confronted with higher costs. For Sweden, only white collar schemes currently applying minimum ages up to 28 years will be affected.

##### **b. Consequences for the coverage of supplementary pension provision.**

In general, the coverage of supplementary pension provision will not be affected negatively, with the exception of those schemes that will be confronted with higher costs. In these specific cases this could have negative consequences for the willingness of providers to continue or open schemes and thus affect the coverage.

### 6.2.3. *Vesting periods*

#### a) Do nothing

In most Member States with supplementary pension provision, vesting periods are applied by the supplementary pension schemes in the case of defined benefit schemes. The vesting periods are fixed by collective agreements or by the schemes themselves and in some cases regulated or restricted by legislation. Vesting periods range from several months, 1 year, 2 years, 5 years, 10 years to vesting only at the moment of retirement (the latter for certain schemes in France and the majority of schemes in Portugal).

Defined contribution schemes in general do not apply vesting periods, the employee builds up the rights as from the first day of contributions and the early leaver will not face a loss in comparison with the employee who stays longer with the same employer.

In case nothing would be done to limit vesting periods the early leaver may face a serious loss in pension rights and will be reluctant to leave the employment relation before having accomplished the vesting period. If he leaves before the end of the vesting period, he will not have built up any pension rights and may only receive a reimbursement of the own contributions. This could result in a significant reduction of the (supplementary) pension rights of the mobile worker.

#### b) Immediate vesting

### **Benefits**

#### **a. Impact on social protection rights of mobile workers**

Employees will start acquiring rights as from the first day of their scheme membership. Immediate vesting seems also be justified since where employer contributions are made to a supplementary pension scheme these have to be considered as deferred remuneration. It can be argued that as a matter of principle, employees should not lose this part of remuneration simply because of mobility.

#### **b. Impact on mobility**

The impact on the mobility of workers will in general be positive, since workers will no longer be obliged to remain with the same employer during a certain period of scheme membership in order to acquire rights. Early leavers will not face a pension deprivation related to the vesting conditions of the rights and in principle not be treated worse than those workers who remain within the same scheme (other losses could however still arise due to unfavourable transfer arrangements or the lack of preservation of dormant rights)

### **Costs**

#### **a. Costs to providers**

The funding costs for providing supplementary pension provision will increase significantly for those schemes that apply currently long vesting periods. Moreover administrative costs will increase, since the schemes will have to keep records of more deferred scheme beneficiaries with sometimes small entitlements.

In the UK, where the Pensions Bill 2004 foresees vesting from the moment the worker joins the scheme (instead of currently a maximum of 2 years), the additional administrative costs have been estimated at £ 5 million per annum<sup>36</sup>. The overall costs (funding and additional administrative costs) will be more significant for schemes where longer vesting periods are applied and where workers tend to be mobile. In particular schemes in Germany and Luxemburg apply longer vesting periods and in Portugal and France certain schemes foresee that the vesting only takes place at the moment of retirement of the worker.

**b. Consequences for the coverage of supplementary pension provision.**

A quick introduction of immediate vesting could have negative consequences on the willingness of providers to continue supplementary pension schemes where they currently apply high vesting periods. The immediate high funding costs and the increase in administrative could also be a deterrent to open up new schemes.

b) Setting maximum vesting periods (1, 2, 5 years)

**Benefits**

**a. Impact on social protection rights of mobile workers**

A maximum vesting period of five years would not result in a significant improvement of the social protection of mobile workers since few schemes apply vesting periods that exceed five years. Only for schemes in Luxemburg where vesting periods range from 0 to 10 years, depending on the length of the waiting period, mobile workers could end up with a better social protection. The same applies for schemes with a direct commitment ('book reserves') in Austria, where vesting takes place after a maximum period of ten years. For schemes applying vesting upon the presence of the worker at the moment of retirement (France, Portugal) the social protection of mobile workers will be improved, they will have acquired in case of cessation of the employment before retirement (and after having accomplished the 5 year vesting period), which is currently not the case.

In case a maximum vesting period would be set at 2 years, the improvement of the social protection of mobile workers would be more significant. For the schemes already affected by a fixing of the vesting period to five years (see above), the protection of mobile workers would even further improve with a reduction of the vesting period to two years. Moreover, in particular in Germany and Austria, the protection of rights of mobile workers would be improved (vesting periods in Germany are five years and in Austria for *Pensionskassen*, vesting periods of up to five years are applied).

Of these three options, setting a maximum vesting period of one year would evidently represent a further improvement of the social protection of workers. For all aforementioned types of schemes applying higher vesting periods the impact will be positive.

**b. Impact on mobility**

The impact of setting maximum vesting periods will differ depending on the currently applied vesting periods. For instance the maximum vesting period in Belgium is already one year. Setting the maximum period at 2 years would also correspond to the current legal maximum

<sup>36</sup>

Source: Regulatory Impact Assessment, Pensions Bill 2004, House of Lords (8 June 2004).

in the UK. In general, the lower the vesting period, the lesser the pension deprivation a mobile worker would face by leaving the occupation, thus the higher the positive impact on the mobility of workers will be.

### **Costs**

#### **a. Costs to providers**

For fixing the maximum vesting period at five years the costs will in general be relatively limited since few schemes apply longer vesting periods than five years. Only those specific schemes identified above under "benefits" applying longer vesting periods or even make the presence of the worker in the employment at the moment of retirement a vesting condition, the costs can be very significant.

These costs would be higher if the maximum vesting period would be set at two years and moreover have important implications for the costs of supplementary pension provision in Germany (where vesting periods are five years). Since staff turnover is highest in the two first years of employment, the administrative costs of entitlements in case of the cessation of employment will be relatively balanced.

Setting the maximum vesting period at one year could bring significant costs since a very large number of supplementary pension schemes in the EU will be affected. Moreover, there will be important costs for the administration of a large number of relatively small entitlements.

#### **b. Consequences for the coverage of supplementary pension provision.**

The consequences for the coverage will be directly related to the costs incurred by the measures. Where costs are high, providers will become more reluctant to continue schemes or to open new ones, in particular defined benefit schemes, since in many cases defined contribution schemes already have immediate vesting.

In this respect the reduction of the vesting period to one year would have too negative consequences overall.

### **6.3. Preservation of dormant pension rights**

Directive 98/49 already establishes an equal treatment between the dormant rights of a worker moving to another employment within a Member States and the dormant rights of a worker moving to another Member State. However, this does not guarantee that the dormant rights are preserved in a sufficient manner, in particular in comparison to those rights acquired over a same period of time by a similar worker who remains with the same employer.

As indicated above, a few Member States have laid down in law the requirement that dormant rights should be adjusted. The measures discussed here are in line with these existing provisions and only concern schemes of a defined benefit nature. In general defined contribution schemes apply the same adjustment for dormant rights as for the rights of active members (in line with the investment results of the funds or with the rate set for the scheme).

#### a) Do nothing

For schemes of a defined benefit nature, only in four Member States (B, IE, NL, UK) preservation of dormant rights is foreseen by law. The way dormant rights are preserved in these countries ranges from inflation adjustment up to a ceiling (Ireland, UK) to the principle that dormant rights should be treated in the same way as pension in payment (NL). In general dormant rights in defined contribution schemes continue to grow according to the return of assets or the rate that has been fixed by the scheme.

In countries where there is no legal obligation to adjust dormant rights, individual schemes can still decide to do so. Nevertheless, it is clear that overall there is an important lack of preservation of dormant rights. Doing nothing would therefore result in many early leavers having a much lower amount of supplementary pension benefits at the end of their career as compared to those employees who remain member of the same pension scheme throughout their career.

#### b) (Limited) inflation adjustment

### Benefits

#### a. **Impact on social protection rights of mobile workers**

The social protection rights of mobile workers in the EU will certainly be improved by this measure. At present only two Member States (IE, UK) require this type of preservation of dormant rights. With this measure, mobile workers that have become deferred scheme beneficiaries will have a guarantee that their dormant rights will be protected against inflation erosion (up to a certain ceiling, in the UK the limited price indexation cap for dormant rights is fixed at 5%, in IE 4%).

#### b. **Impact on mobility**

The impact on the mobility of workers will be positive, since early leavers will have the guarantee that leaving behind the acquired rights in the scheme of the former's employment are less at risk of being eroded by inflation.

### Costs

#### a. **Costs to providers**

Since many schemes do not apply this type of adjustment, or any adjustment at all (see description under "current situation in the Member States, above), the costs for the schemes could increase significantly. These costs will of course depend on the rate of inflation and the possible ceiling up to which the adjustment to inflation should take place.

#### b. **Consequences for the coverage of supplementary pension provision.**

The increased costs might affect the willingness of providers to continue or to open supplementary pension schemes of a defined benefit nature. A shift from defined benefit schemes towards defined contribution schemes might be the result.

b) Adjustment of dormant rights to the general wage development

**Benefits**

**a. Impact on social protection rights of mobile workers**

As for the linking to inflation, the social protection rights of mobile workers in the EU will certainly be improved by this measure.

**b. Impact on mobility**

The impact on the mobility of workers will be positive, since early leavers will have a guarantee that their dormant rights will be preserved to a high degree.

**Costs**

**a. Costs to providers**

Since currently there are only very little schemes that apply an adjustment at this rate (e.g. some public sector schemes in Ireland revalue dormant rights in line with wages), the costs for the schemes will very significantly increase, even if these costs will depend on the wage development. The Dutch reply to the questionnaire of the Pensions Forum states "unconditional adjustment to wages just for the dormant pension rights will cost one billion euro each year during a period of 15 years".

**b. Consequences for the coverage of supplementary pension provision.**

The significant costs this method would cause might deter providers from continuing supplementary pension schemes of a defined benefit nature or to open new ones.

c) Adjustment of dormant rights at the same rate as pensions in payment

**Benefits**

**a. Impact on social protection rights of mobile workers**

The social protection of mobile workers will depend on the treatment of pensioners of the scheme. As is shown by the current situation in the Netherlands, where this requirement applies, many schemes (80%) adjust their pensions in payment and thus the dormant rights. However, the rate of adjustment will be determined by the rules of the individual schemes.

**b. Impact on mobility**

The impact on the mobility of workers will be relatively positive, since early leavers will have a guarantee of an alignment of their dormant rights with the pensions already in payment. However, whether their dormant rights will be adjusted and at what rate will depend on the policy of the scheme.



## Costs

### **a. Costs to providers**

For those schemes not already applying this type of adjustment (or at a rate comparable to it), the costs could increase. Because of the flexibility of this method which leaves it to the scheme whether to apply adjustments and at what rate, the costs could however be well contained.

### **b. Consequences for the coverage of supplementary pension provision.**

The impact on the coverage of supplementary schemes will depend on the freedom for the schemes to decide if and how to adjust. The application of this method in the Netherlands seems not to have had a negative impact on the coverage of supplementary pension provision or to have lead to a shift from defined benefit schemes to defined contribution schemes.

#### d) Linking dormant rights to the rate of return of the assets of the institution for supplementary retirement provision

## Benefits and costs

Whether the social protection rights of mobile workers will evolve positively will depend on the performance of the assets of the pension fund. This method is typical of defined contribution schemes, where the risk is borne by the employee. This system seems however not to be applicable to defined benefit schemes. Firstly because of the nature of these schemes; the employer or pension schemes makes a pension promise to the employee and bears the risks of investment. Secondly because of the very high costs the application of this method to defined benefit schemes would entail. Linking the revaluation of pensions with the return on funds would thus mean a very heavy burden on defined benefit pension schemes, which could have a negative impact on the willingness of providers to continue and establish supplementary pension schemes of a defined benefit nature.

Moreover, pensions in payment and the accrued rights of non-mobile workers could evolve less favourably if only the dormant rights got adjusted in relation to the rate of return of assets.

## **6.4. Transferability of supplementary pension rights**

### a) Do nothing

While transfers are possible within many Member States, they do not appear to be the main instrument for securing portability of vested pension rights in general. However, transfers can be particularly useful to avoid the management of a large number of (smaller) dormant pension entitlements. Cross-border transfers, while usually possible in principle, face additional problems linked to tax rules and recognition of foreign pension providers. Some countries do not allow cross-border transfers in order to prevent tax evasion<sup>37</sup>.

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<sup>37</sup> See also the survey by the European Actuarial Consultative Group on "Taxation of occupational pensions in the EU Countries", April 2004.



A survey carried out by a GCAE survey of June 2001<sup>38</sup> found that a legal right to a transfer existed in 13 of the 21 surveyed countries. In five other countries transfer payments were a common practice, but on a discretionary basis; finally, in three countries the transfer of pension rights was not possible at all. Cross-border transfers to a pension scheme in another European country were possible in only eleven countries, in some cases subject to the approval of the regulator or tax authority. In certain countries, the tax charge could be so high that it prevented, in practice, any cross-border transfer. The survey also raised the problem of differing methods and assumptions used to calculate transfer payments from one Member States to another. As mentioned above, transfers between defined-contribution schemes (where the transfer value can be simply the market value of the assets held on behalf of an individual scheme member) do not pose any major problems, the only obstacles being the administrative costs linked to the transfer and taxation. Transfers between defined-benefit schemes may, by contrast, entail serious pension losses for the early leaver due to different actuarial methods and assumptions used by the pension institutions involved in a transfer. Legal guidance or actuarial standards for calculating transfer values exist in a number of countries, and some also require the costs of a transfer to be borne by the employer.

#### *Non-funded pension schemes*

A particular position is taken up by the schemes of the "bookreserve type". For instance in Germany, the recently adopted "Retirement Income Act" foresees that the employee has a legal right to a capital transfer to the new employer. This right applies however only to benefits under externally funded plans. If the new employer's plan is book reserved (*Direktzusagen*) or financed through *Unterstützungskassen*, a transfer is only possible if the previous and the new employer agree to it. The book reserved schemes are thus excluded from the statutory right to transfer, in particular with a view to the negative consequences transfers could have on the financial sustainability of the undertaking/pension scheme<sup>39</sup>. There is however a process towards capitalisation with a view to the financial sustainability and as a consequence of changed taxation rules and the application of international accountancy standards (US-GAAP, IAS/IFRS). A major part of the current pension promises for *Direktzusagen* (probably around 40%) have already been covered by capital investments<sup>40</sup>. Moreover around 50% of the DAX-30 undertakings and many German sister undertakings of multinationals have set up Contractual Trust Arrangements (CTA)<sup>41</sup>.

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<sup>38</sup> "Actuarial standards for transfers between pension schemes in the countries of the EU and other European countries. A survey by the Groupe Consultatif", Groupe Consultatif Actuariel Européen (GCAE), June 2001; "Actuarial Methods and Assumptions used in the Valuation of Retirement Benefits in the EU and other European countries". The countries studied were: Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Latvia, Luxembourg, Netherlands, Norway, Portugal, Slovenia, Spain, Sweden, Switzerland, United Kingdom.

<sup>39</sup> It has to be noted in the same time that Austria has established a statutory right to transfer, also for book reserve type of schemes.

<sup>40</sup> Article Mercer HR consulting, 19 October 2004 "Bilanzierung von Pensionsverpflichtungen in Deutschland" available on <http://www.mercerhr.de>

<sup>41</sup> Trust arrangements for pension plan assets that are accounted for under IFRS or US GAAP. The CTA provides security of the assets in case of the company's bankruptcy. Further, the CTA provides flexibility in terms of allowable funding levels and asset allocation, compared with other possible pension arrangements in Germany.

b) Every early leaver should have the choice between transfer and leaving dormant rights in the scheme of origin.

### **Benefits**

#### **a. Impact on social protection rights of mobile workers**

Transferring of rights will enable the mobile worker to regroup the acquired rights in one scheme and keep thus a clear picture of the total acquired rights. Whether the social protection rights of mobile workers will be well preserved will depend on the conditions applying to the transfer in terms of calculation of the transfer value and the application of charges or fees to the transfer.

#### **b. Impact on mobility**

The effect on mobility will be positive in case the early leaver does not face a significant capital loss as a result of the transfer or due to the applied charges and fees. The prospect of being able of keeping all acquired rights together in one scheme might also facilitate the mobility of workers.

### **Costs**

#### **a. Costs to providers**

The costs of this measure will depend largely on the calculation of transfer values and to the type of pension schemes. In general, and this applies to all types of schemes, the administration of small entitlements is expensive and regrouping the entitlements by means of a transfer could therefore greatly reduce these administrative costs (see also above under "The measures proposed in the draft Directive on preservation of dormant rights").

Germany indicated that since a right to transfer might however have important consequences for the financial sustainability of schemes in case the (total) amount represented by the transfers is particularly high, it limited the right to transfer up to € 62400 in 2005. Pay-as-you-go or book reserve schemes will have to free the acquired rights in the form of a transfer value before the age of retirement of the employee.

#### **b. Consequences for the coverage of supplementary pension provision.**

The consequences for the coverage of pay-as-you-go and book reserve schemes might be negative in case transfers in and out are unbalanced. As for the funded schemes, there might be negative consequences, but it has to be noted that in some Member States (Netherlands) the transfer obligation in combination with a requirement for defined benefit schemes to be fully funded on the transfer date does exist and did not lead to a tendency to abandon supplementary pension provision or to a shift from defined benefit schemes towards defined contribution schemes.

b) The same conditions should apply to transfers across borders as to transfers within the Member States.

### **Benefits**

#### **a. Impact on social protection rights of mobile workers**

The social protection rights of mobile workers will not significantly improve.

The mobile worker moving to another Member State will just have the guarantee that where transfer is possible internally, it should also be possible across borders. The conditions applying to the transfer in terms of calculation of the transfer value and the application of charges or fees to the transfer will be the same as for mobile workers within the Member State (This might eventually include the tax treatment of transfers). This is however not a safeguard against losses due to transfer conditions.

#### **b. Impact on mobility**

The cross border mobility of workers might be favoured with regard to those Member States where currently only transfer within the Member State is possible. However, where transfers within the Member State are not possible or allowed, it will in most cases not be possible to transfer across borders.

### **Costs**

#### **a. Costs to providers**

The costs for the providers will not increase substantially with a view of the relatively small number of workers moving to another Member State. In terms of administrative costs the effect might be positive where this measure would result in establishing a right to transfer cross-border. Regrouping of entitlements will then also be possible in case of cross-border transfers.

#### **b. Consequences for the coverage of supplementary pension provision.**

There is no evidence on the basis of the Member States' replies that the measure will affect the willingness of providers to continue or to open supplementary pension schemes.

### **6.5. Information requirements**

#### **a) Do nothing**

It results from the replies to the questionnaire issued to the members of the Pensions Forum, that in all Member State there exist information requirements in legislation. However in some cases this information provision will be significantly improved as a result of the implementation of the Directive 2003/41/EC (deadline for implementation is 23 September 2005). For instance in Portugal, the information a scheme member should receive upon request is for the moment limited to information needed for a proper understanding of the functioning of the scheme.

Most other Member States, however, foresee annual information to the scheme members on their acquired rights or prospective entitlements. For instance in Belgium, this information has

to be provided on annually both to scheme members as to deferred scheme beneficiaries. Spain even requires information to be provided quarterly. Certain Member States have foreseen a specific requirement for workers leaving the employment. In France, these workers should be informed within three months of their rights and where relevant of the possibilities to transfer these rights. Ireland, Luxemburg and the Netherlands have similar requirements.

One can conclude from this that in case nothing would be done by an initiative on portability most Member States require or will require some type of information provision partially as a result of the implementation of existing EU requirements (Directive 2003/41). The information provision related to the portability of supplementary pension rights is however not systematic in all Member States and relying only on the information requirements already contained in the Article 11 Directive 2003/41/EC would not lead to the expected result, i.e. enabling the worker to be well informed on the consequences of leaving the occupation for his/her supplementary pension rights, for the following reasons:

- According to this Article the information should be provided only to "*members and beneficiaries and/or, where applicable, their representatives*". Since the proposed Directive should aim at improving the conditions for workers to exercise their right of freedom of movement, it will be important that also those workers who are not (yet) member of the pension scheme know what the consequences will be of leaving the occupation.
- The Article does not lay down requirements on the information to be provided on the preservation of dormant rights.

#### b) Specific information related to portability to be provided to workers

In order for the information requirements to be in line with the measures contained in the proposed Directive a separate Article could be necessary, while duly taken into account the already existing requirements and the consequences in terms of administrative costs for the schemes.

The Commission is fully aware of the fact that information requirements could result in a significant financial burden for the management of schemes. The proposal should therefore restrict itself to those requirements that are directly related to the proposed measures without adding in a substantial way to those requirements that already exist (in particular those laid down in Directive 2003/41/EC). These specific requirements will not add substantially to the costs that may already result from the requirements laid down by Directive 2003/41 since only the scope of people who should receive the information, at their request, will be enlarged while the information to be provided does not differ significantly from the contents of the aforementioned Directive.

## **7. THE SELECTED MEASURES AND THEIR IMPACT**

### **7.1. Acquisition conditions**

#### *7.1.1. Waiting periods*

Even if, as shown above, from a point of view of social protection for mobile workers, the total elimination of waiting periods would be 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 in the same time gives the possibility to restrict scheme membership to those employees who have fulfilled their probation period (a current practice in some Member States).

#### *7.1.2. Minimum ages*

From a 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 legal possibility to the current situation in the Member States and the costs incurred, fixing a maximum minimum age requirement is the preferred measure for this proposed Directive. It is proposed that Member States take the necessary measures in order to ensure that the minimum age applied for becoming member of a scheme does not exceed 21 years. Fixing the maximum age requirement at 21 years takes into account the average age at which people start their working life. Data from the European Community Household Panel<sup>42</sup> show that today's (2000) 35-44 year-olds in the EU15 were at work at the age of 19.8. For low-skilled workers this average is lower (18.6), for high skilled workers higher (22.0). Based on data from the International Labour Organisation it appears that in the EU in 2000 the activity rate at around 21 years is close to 60%.

#### *7.1.3. Vesting periods*

A total elimination of vesting periods (for schemes with a defined benefit nature, vesting periods in general do not exist in DC plans) would be the most beneficial for mobile workers, however as is shown above, both the funding and the administrative costs implied with such a measure would be too important and result in a lower coverage of employees by supplementary pension provision because of the lack of willingness to continue or open such schemes. Nevertheless, the application of vesting periods will have to be limited if the goal of a more mobility friendly design of supplementary pension provision is to be met. The draft Directive therefore fixes a maximum vesting period of two years. This will strike the right balance with a view to the current situation in the Member States. In order to take further into account the adaptation of schemes that would face difficulties in terms of financing if a lower vesting period would be applied too quickly, the draft Directive gives Member States the possibility to extend the implementation period for these specific schemes.

In case the worker has made contributions to the scheme, but leaves the occupation before having acquired rights, it is proposed that this worker gets at least a reimbursement of these contributions, or can transfer these to another scheme.

#### *7.1.4. Impact of the proposed measures on acquisition*

### **Benefits**

#### **a. Impact on social protection rights of mobile workers**

The situation will improve for all workers currently covered by schemes with high acquisition conditions. Workers will be able to acquire rights earlier and build up more rights during their (mobile) career.

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<sup>42</sup> Employment in Europe 2003, p. 170-173

**b. Impact on mobility**

Workers could leave earlier and more frequently due to an earlier acquisition of pension rights. Undertakings will benefit from the increased availability and flexibility of the workforce. This also illustrated by the fact that in certain market segments (services) undertakings already apply lower vesting periods than legally required.

**Costs****a. Costs to providers**

Where shorter acquisition periods will apply as a consequence of the directive, this might in the short term lead to higher costs. However:

- where workers would leave earlier, the undertaking might delay the replacement of this person depending on the economic situation and where the worker is replaced, the new worker would only acquire rights once the acquisition conditions are fulfilled.
- Systems could adapt to the new conditions and change to reflect the longer periods of accruing rights.

In order to accommodate the adaptation to lower acquisition conditions, the proposal foresees a long transition period.

**b. Consequences for the coverage of supplementary pension provision.**

The number of employees with supplementary pension rights will increase. The willingness of the employer to provide a supplementary pension will mostly depend on the overall costs. These costs will be mitigated due to the possibility to apply the lower vesting period only after a long transition period.

**7.2. Preservation of dormant rights**

Each of the above mentioned measures results in a guarantee for the early leaver that his/her acquired are adjusted and thus protected to some extent. However, the proposal should take into account the high heterogeneity of supplementary pension provision in the Member States. Therefore the proposal will restrict itself to laying down a general principle. This principle consists in the guarantee that dormant rights will be adjusted in such a way as not to penalise early leavers. It will be left over to Member States (and individual schemes) to ensure the application of this principle. One of the above mentioned measures could be used in this respect for defined benefit schemes.

It will moreover be necessary to take into account that the preservation of an important number of small entitlements might result in very high administration costs. The proposal gives therefore the Member States the possibility to allow schemes not to preserve these small entitlements but to pay them out to the early leaver or to transfer them.

*7.2.1. Impact as concerns the measures proposed on preservation***Benefits****a. Impact on social protection rights of mobile workers**



The situation of workers with dormant rights which are currently not adjusted will improve.

**b. Impact on mobility**

The disincentive to mobility due to the lack of preservation of dormant rights will be reduced or taken away, depending on the form of adjustment chosen by the Member State or individual scheme/employer.

**Costs**

**a. Costs to providers**

Costs to providers will depend on the system of adjustment. The relative high costs for the administration and preservation of small entitlements is avoided by the possibility for Member States to make a transfer or pay out obligatory for small entitlements.

**b. Consequences for the coverage of supplementary pension provision.**

The impact on the coverage of supplementary schemes will depend on the decision of the Member States how adjustment should take place.

**7.3. Transferability**

To achieve a maximum effect on the improvement of the social protection of mobile workers and the enhancement of mobility, workers should have the choice between preserving the acquired rights in the scheme of origin or transferring these to another scheme or similar financial instrument or institution. The draft proposal will require Member States to ensure that early leavers can obtain upon request and within a reasonable period of time after the cessation of employment a transfer of all acquired rights, including to another Member State. In order to take into account the specific situation of schemes where the pension promise is backed by *book reserves and for schemes operating on a pay-as-you-go basis, these types of schemes can for the moment be excluded from this requirement for reasons of financial sustainability*. The Commission will re-examine the situation after a determined period with a view to proposing measures to ensure the transferability of rights for early leavers covered by book reserve schemes and schemes operating on a pay-as-you-go basis. This (temporary) exemption will allow these schemes to constitute the necessary financial buffer in order to accommodate the transferring out of the pension rights of the mobile workers. This would be additional to the clear trend towards capitalisation of (part of) the pension promises of book reserve schemes as a consequence of changed taxation rules and the application of international accountancy standards (US-GAAP, IAS/IFRS).

The right of transfer and its beneficial effects on the social protection of mobile workers will only become effective if the transfer value represents the "fair value" of the acquired rights. No specific calculation method is proposed in order to take into account the wide diversity of schemes and respecting the freedom of Member States/schemes or social partners to define detailed rules themselves or to decide for instance that guidance can be given by the national professional associations for actuaries. The proposal lays down a general principal according to which it should be ensured that the actuarial and interest assumptions used for the calculation of the transfer value are fair and reasonable and not biased against early leavers. The latter also means that it should be ensured that where administrative charges are applied, these are proportionate and do not result in a significant reduction of the net transfer value.



### 7.3.1. *Impact of the measures proposed on transferability*

#### **Benefits**

##### **a. Impact on social protection rights of mobile workers**

Workers will be able to regroup their entitlements in one scheme. The proposal will moreover ensure that the actuarial and interest assumptions used for the calculation of the transfer value are fair and reasonable and not biased against early leavers.

##### **b. Impact on mobility**

The possibility to choose between maintaining the entitlements in the former scheme or to transfer them gives more flexibility for the worker and can enhance his/her mobility.

#### **Costs**

##### **a. Costs to providers**

The net administrative costs will be limited for the following reasons:

- the low degree of professional and geographical mobility in the EU
- the transferred entitlements will no longer have to be administered by the scheme
- part of the costs can be borne by the mobile worker (in a proportionate way).

No costs would occur at this stage for unfunded schemes (bookreserve and pay-as-you-go schemes) not (yet) designed for providing a transfer since these can be excluded from the application of the requirement to transfer for reasons of financial sustainability. The proposal foresees a re-examination of the exemption of these schemes taken into account:

- in some Member States a transfer from and to unfunded (bookreserve) schemes is already possible (AT)
- unfunded schemes have to anticipate expenditure anyway and use increasingly capitalised reserves
- the low turn over will in general not lead to very significant amounts to be transferred.

##### **b. Consequences for the coverage of supplementary pension provision.**

There is no evidence of an impact on the willingness of providers to continue or start supplementary pension provision.

### **7.4. Information provision**

Since every worker can potentially be a mobile worker, the proposed Directive requires Member States to take the necessary measures to ensure that workers (thus not only scheme members) are made fully aware of the consequences for their pension rights in the case of cessation of the employment. Workers should therefore receive upon their request and within a reasonable period of time information on the conditions for the acquisition of pension rights and the consequences thereof in the case of cessation of the employment. Moreover, information should be given on the prospective benefit entitlement in case of cessation of employment. The workers should also receive information on the possibilities to transfer the acquired rights and where transfer is possible on the conditions for this transfer, the actuarial calculations involved and on the presence of any fees or charges.

Once the worker leaves the employment and the acquired rights are left behind in the scheme of the former employment, she/he has to be informed on the prospective benefit entitlement and changes that may affect the dormant rights.

As it is not the quantity of the information that counts but the extent to which the worker can make an assessment of the consequences for his pension rights of the cessation of employment, the Commission puts emphasis on the need to provide this information in writing and in a way that is understood by the persons to whom the information is addressed.

#### *7.4.1. Impact of the measures proposed on information provision*

The Commission proposal contains requirements that take into account the specific situation in relation to portability, but these will not add substantially to the costs that may already result from the requirements laid down by Directive 2003/41 since only the scope of people who should receive the information, at their request, will be enlarged while the information to be provided does not differ significantly from the contents of the aforementioned Directive.

## **8. FURTHER MONITORING AND EVALUATION**

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.

**ANNEX: OVERVIEW OF THE CONSEQUENCES OF THE PROPOSED MEASURES FOR THE SUPPLEMENTARY PENSION SYSTEMS IN THE MEMBER STATES**

Member States that, on the basis of the information collected, do not have supplementary pension schemes (yet) falling under the scope of the proposed measures: CZ, EE, EL (funds are not yet established), HU, LV, LT, MT, SK. This does however not discharge these Member States of implementing the provisions of the Directive, once adopted

The situation in the other Member States:

	<b>Coverage</b>	<b>Acquisition conditions</b>	<b>Preservation (current situation)</b>	<b>Transferability</b>
<b>BE</b>	About 40% of the employees are covered (around 10% by branch provisions, 7.5% by pension funds and 22.5% by group insurance). About 10% of self employed are covered by supplementary schemes.	Minimum ages will have to be brought down from 25 to 21	Currently there is no adjustment of dormant rights	Transfer is already possible
<b>DK</b>	About 68% of the 35-55 year population are covered by an employer-managed scheme or civil service pension scheme.	Vesting of employer financed benefits has to be brought down from 5 to two years.	Adjustment of dormant rights is uncommon	Transfer is already possible but cross-border might be hindered by taxation rules.
<b>DE</b>	In March 2003, the coverage by supplementary pension schemes was 57% of employees that participate in the first pillar pay-as-you-go scheme (including both public and private schemes).	Vesting periods for employer financed schemes have to be brought down from 5 to 3 years. Minimum ages will have to be brought down from 30 to 21 years.	Adjustment of dormant rights is uncommon	Transfer is already possible, but only between funded schemes. Even if the proposal foresees an exemption possibility, bookreserve and the public sector pay-as-you-go schemes will have to work towards the introduction of the possibility to transfer
<b>ES</b>	Around 12% of the employed population.	Specific (non qualified) plans will have to reduce substantially the vesting periods from 20 to 3 years.	Transformation of acquired rights in capitalisation fund.	Transfer is currently not possible
<b>FR</b>	Approximately 10% of the workforce (excluded AGIRC-ARRCO not covered by the Directive).	Some schemes foresee vesting only at retirement if still present in the company. These schemes will have to change radically the vesting conditions.	No information	Transfer is currently possible, for DB schemes cross-border transfer is only possible on a collective basis.
<b>IE</b>	43% of employees are members of supplementary pension schemes	Reduction of waiting periods (30% of DB schemes currently apply waiting periods of 5 years). Reduction of minimum ages (2%	Adjustment of dormant rights by the lower of 4% or inflation	Transfer internally is possible. Cross border subject to agreement schemes and tax treaties.
<b>IT</b>	Supplementary pension funds cover around 4.3% of the working force, while open pension funds cover around 1.5 % and pre-existing pension funds cover around 2.8 % of the working force.	No foreseeable consequences	Increases are generally linked to investment returns (defined contribution schemes)	Transfer internally is possible. Cross-border transfer is not possible (can only take place as a repurchase of individual rights, this has an important fiscal impact)

	<b>Coverage</b>	<b>Acquisition conditions</b>	<b>Preservation (current situation)</b>	<b>Transferability</b>
<b>CY</b>	The coverage of provident funds (year 2000) is about 27% of the population in employment (17.5% of the 15-64 population) and that of supplementary pension schemes (year 2002, including self employed persons) is about 13.5 % of the population in employment (8.5% of the 15-64 population).	Vesting period for employer contributions has to be brought down from five to two years	No preservation of dormant right (at leaving the company a lump sum is paid out).	In general lump sum payments. Only some collective agreements foresee a transfer possibility.
<b>LU</b>	In 2003, around 870 companies offered a supplementary pension scheme to their employees, covering around 50 000 active members, that is around 17% of the employed population	Waiting and vesting periods have to be brought down (currently legislation foresees that waiting + vesting period should not exceed 10 years). Generally schemes now apply 1-2 year waiting and 5 year vesting period.  Some minimum ages will have to be lowered (schemes currently apply ages between 18 and 25).	No legal requirement for adjustment of dormant rights.	Transfer in principle possible. Cross border has to be approved by the control authority
<b>NL</b>	Around 94 % of the employees aged between 25 and 65 years old are covered by a second pillar pension.	Minimum ages will have to be reduced in some schemes (around 40% of the schemes apply ages between 21 and 24 years).	Adjustment of dormant rights in line with adjustment of pensions in payment (in practice 80% of the schemes apply indexation)	Transfer possible only to schemes provided by the employer.
<b>AT</b>	In March 2004, there were around 1 million workers covered by the new supplementary pension scheme that emerged from the previous severance pay system (around 25% of the employed population), while around 380 000 were covered by the traditional employer pension schemes (10% of the employed population).	In some cases waiting periods (currently 1-5 years) and minimum ages will have to be lowered.  Vesting periods for bookreserve schemes (currently 5-10 years) and pension funds (currently 5 years) have to be brought down.	Adjustment is not foreseen	Right to transfer. Cross border only when permanently leaving the country.
<b>PL</b>	Occupational schemes cover around 0.6% of the working age population.	No foreseeable consequences	Linked to investment return	No information

	<b>Coverage</b>	<b>Acquisition conditions</b>	<b>Preservation (current situation)</b>	<b>Transferability</b>
<b>PT</b>	The active membership included in supplementary schemes that exist as a substitute for the 1 <sup>st</sup> pillar and other contractual schemes represents 3.8% of the working age population and 4% of the population in employment.	In some case minimum ages will have to be lowered (currently 25). The majority of schemes will have to adapt drastically their vesting periods (currently workers only have rights if they are in the company at the moment of retirement).	In general no adjustment	Transfer is possible
<b>SI</b>	About 53 % of the active population is covered (in summer 2004) by supplementary schemes: 28.5% for the private sector, 21% for the public sector and 4% for the compulsory supplementary pension insurance. Coverage levels are expected to increase and exceed 60% of the workforce.	No information	No information	No information
<b>FI</b>	In 2002, the number of people covered by group pension insurance with a life insurance was about 5 % of the population in employment and 3.2 % of the working age population (15-64 years of age). In 2002, company pension funds had been arranged for 2.2 % of the population in employment and 1.5 % of the working age population, while industry-wide pension funds covered 0.5 % of the population in employment and 0.3 % of the working age population.	Vesting periods in company funds will have to be reduced (currently up to 10 years).	Same inflation protection as for 1st pillar pensions	No transfer possible
<b>SE</b>	The coverage of supplementary schemes is around 75% of the 20-64 population and around 90% of the Swedish employed population.	Some schemes will have to lower the minimum age (currently 21 up to 28 years)	Some adjustment either to the asset returns or in line with prices.	Transfer is only possible with collective agreements. No cross-border transfer allowed

	<b>Coverage</b>	<b>Acquisition conditions</b>	<b>Preservation (current situation)</b>	<b>Transferability</b>
<b>UK</b>	The coverage of supplementary schemes is of around 33% of working age population and 43% of the employed population.	Minimum ages will have to be reduced in some rare cases in the private sector (around 93% of schemes apply already minimum age lower than 21 years)	Adjustment in line with inflation up to 5%	Right to transfer. Cross border only when permanently leaving the country.



**ANNEX: THE IMPACT OF THE PROPOSED MEASURES ON THE MAIN TYPES OF SUPPLEMENTARY PENSION PROVISION IN THE EU.***Defined benefit- defined contribution*

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<sup>43</sup>. 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<sup>44</sup>. 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.

*Funded- unfunded schemes*

Unfunded schemes (book reserve or pay-as-you-go schemes) currently in many cases are not allowing for the transferring 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. For instance in Germany, where bookreserve schemes constitute 2/3 of the supplementary pension promise there is a process towards capitalisation with a view to the financial sustainability and as a consequence of changed taxation rules and the application of international accountancy standards (US-GAAP, IAS/IFRS). A major part of the current pension promises for *Directzusagen* (probably around

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<sup>43</sup> In the case of defined-benefit schemes, the level of benefits may be notably defined in fixed monetary terms, perhaps depending on the number of years of service that the employee has served (flat benefit arrangements) or, more frequently, in terms of the salary of the employee in combination with the number of years of service. In this case, the definition may be based upon the salary or earnings immediately (or over a short period) prior to the retirement (final salary arrangements) or on the salary throughout service (career average arrangements)

<sup>44</sup> It should be noted, however, that many occupational schemes pay out retirement benefits in the form of a lump sum which does not have to be converted in an annuity.

40%) have already been covered by capital investments<sup>45</sup>. Moreover around 50% of the DAX-30 undertakings and many German sister undertakings of multinationals have set up Contractual Trust Arrangements (CTA)<sup>46</sup>. By providing the possibility to exempt these schemes from the implementation of the right to transfer and proposing to re-examine the situation after a determined period, the proposed directive accompanies this process and enables book reserve schemes to adapt and enable transfer of entitlements (some Member States like Austria have already established such a right for entitlements under book reserve schemes) at a later stage.

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<sup>45</sup> Article Mercer HR consulting, 19 October 2004 "Bilanzierung von Pensionsverpflichtungen in Deutschland" available on <http://www.mercerhr.de>

<sup>46</sup> Trust arrangements for pension plan assets that are accounted for under IFRS or US GAAP. The CTA provides security of the assets in case of the company's bankruptcy. Further, the CTA provides flexibility in terms of allowable funding levels and asset allocation, compared with other possible pension arrangements in Germany.

**ANNEX: EU INITIATIVES ALREADY TAKEN IN THE FIELD OF SUPPLEMENTARY PENSION PROVISION – MOBILITY OF WORKERS****1. INTRODUCTION**

Already in its Communication of 22 July 1991 on supplementary social security schemes<sup>47</sup>, the Commission highlighted that the Community should recognise the principle that each worker should be able to move to a job in another Member State without having to fear any undue loss of rights to future retirement benefits.

In 1996, since there was no progress on this matter during several years, the Commission referred the problems encountered by workers moving from one Member State to another to a high level panel on free movement of persons, chaired by Mrs. Veil. The report presented by the Panel to the Commission on 18 March 1997 underlined that the prospect of a loss of supplementary pension rights is a clear disincentive to mobility and represents a serious obstacle to the exercise of the right of free movement, as foreseen by the EC Treaty. The Panel proposed to the Commission two initiatives: (i) the adoption of a Directive addressing the questions of preservation of acquired rights, cross-border payments and cross-border membership in the case of short term employment in another Member State; and (ii) the creation of a Pensions Forum involving the Member States, the social partners and relevant European federations, which would act as a forum for debate and research into new initiatives on supplementary pensions.

The Commission Green Paper on supplementary pensions in the Single Market of 10 June 1997<sup>48</sup> covered all the main issues relating to supplementary pensions including the operation of pension funds as financial services providers and the obstacles to the free movement of workers. It announced, as a follow-up to the report of the high level panel on the free movement of workers, the Commission's intention to introduce a proposal for a Directive to deal particularly with the preservation of accrued pension rights and the particular problems that apply to workers seconded to another Member State.

**1.1. Directive 98/49/CE**

On 28 June 1998 the Council adopted Directive 98/49/EC on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community<sup>49</sup>. The directive is the only existing legal instrument at European level on the free movement of persons in relation to supplementary pensions. It is intended to ensure the right to the equality of treatment as regards the preservation of supplementary pension rights when moving within

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<sup>47</sup> Communication from the Commission to the Council of 22 July 1991 "Supplementary social security schemes: the role of occupational pension schemes in the social protection of workers and their implications for freedom of movement" (SEC (91) 1332 final). See also Council Recommendation of 27 July 1992 on the convergence of social protection objectives and policies (OJ L 245 of 26 August 1992, p. 49) which invites the Member States to promote "changes to the conditions governing the acquisition of retirement and, especially, supplementary pension rights with a view to eliminating obstacles to the mobility of employed workers" (par. 5, h).

<sup>48</sup> Supplementary Pensions in the Single Market -A green paper- (COM (97) 283 final).

<sup>49</sup> (OJ L 209 of 25 July 1998, p. 46). Member States had to implement the Directive by 25 July 2001 and were asked to communicate to the Commission the text of the implementation provisions adopted at national level no later than 25 January 2002.

the Community, but it does not concern the conditions of acquisition of supplementary pension rights or their transferability.

The directive obliges Member States to take the necessary measures to ensure the preservation of vested pension rights for members of a supplementary pension scheme in respect of whom contributions are no longer being made to that scheme as a consequence of their moving from one Member State to another, to the same extent as for members in respect of whom contributions are no longer being made but who remain within the same Member State.

Moreover, Member States have to ensure that supplementary pension schemes make payments in other Member States of all benefits due to workers, net of any taxes and transaction charges that may be applicable.

With regard to posted workers, Directive 98/49/EC provides that contributions can continue to be made to a supplementary pension scheme in the worker's Member State of origin and exempts at the same time the employer from the obligation to make contributions to supplementary pension schemes in the host Member State<sup>50</sup>.

Directive 98/49/EC finally requires that workers who move to another Member State receive at least the same information as national job changers on their pension rights and the choices which are available to them under the scheme.

Member States had to implement this directive by July 2001 and to communicate no later than 25 January 2002 the implementation measures that have been taken.

The Commission services are currently preparing a report on the application of this Directive<sup>51</sup>.

## **1.2. The Pensions Forum**

Following the recommendations by the High Level Panel on free movement of persons, a Pensions Forum was set up and first met in 2000. It has been officially established by Commission Decision of 9 July 2001<sup>52</sup>. Its role is to assist the Commission in finding solutions to the problems and obstacles associated with cross-border mobility of workers in the area of supplementary pensions.

In order to identify the most serious obstacles to mobility arising from supplementary pension schemes and to explore solutions that exist within Member States that could be promoted at European level, the Pensions Forum set up three working groups in December 2000, concerning, respectively, the acquisition and preservation of supplementary pension rights, the transferability of supplementary pension rights and cross-border membership in

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<sup>50</sup> This possibility applies only for a limited period of time, in accordance with the provisions on posting of workers in Regulation 1408/71/EEC.

<sup>51</sup> Article 10 par 3 states "*On the basis of the information supplied by Member States, the Commission shall submit a report to the European Parliament, the Council and the Economic and Social Committee, within six years of the entry into force of this Directive. The report shall deal with the application of this Directive and shall, where appropriate, propose any amendments that may prove necessary*".

<sup>52</sup> Commission Decision of 9 July 2001 on the setting-up of a Committee in the area of supplementary pensions (OJ L 196 of 20 July 2001, p. 26).

supplementary pension schemes. Their reports were presented to the Pensions Forum plenary meeting of 23 February 2001.

The findings of the working groups of the Pensions Forum have been used as an important input to the two consultation documents addressed to the European social partners<sup>53</sup>.

### **1.3. Directive 2003/41/EC**

Directive 2003/41/EC of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision (IORP) aims at creating at European level a common legal framework for the activities of institutions for occupational retirement provision, so as to allow them to fully benefit from the advantages of the Internal Market. It regulates the setting up of a full prudential framework which is necessary so as to provide affordability of pensions and a high level of protection for the rights of future pensioners. The proposal seeks to ensure that institutions enjoy sufficient freedom to develop an effective investment policy and can benefit from the greater depth and liquidity of the capital markets resulting from the introduction of the Euro. The directive establishes the right for institutions for retirement provision to manage pension schemes across borders. It will therefore allow pan-European groups of companies to set up pan-European pension funds, which may facilitate labour mobility within these groups. The Member States have to transpose the Directive at the latest by 23 September 2005.

### **1.4. Taxation**

The Commission Communication of 19 April 2001<sup>54</sup>, on the elimination of tax obstacles to the cross-border provision of occupational pensions, proposed a comprehensive strategy to address the tax obstacles that acted as a major disincentive to cross-border membership. It recognised that taxation rules applied to supplementary pension schemes can constitute a major obstacle to the freedom of movement of workers across borders. Two main obstacles were identified:

- the tax treatment of cross border payments of pension contributions
- the tax obstacles to the cross-border transfer of pension capital.

Individuals wishing to contribute to pension schemes outside their home Member State and pension institutions that wish to provide pensions across borders may be hindered to do so because of the design of the tax system. In particular, a Member States may apply tax incentives only to contributions made within that Member State. In such cases there is no tax deductibility for pension contributions paid to a pension fund in another Member State. This not only limits the attractiveness of paying cross-border contributions, but also seals off the national market from competition from other Member States, making it difficult to create pan-European funds. The Commission is undertaking legal action against those Member States that restrict the freedom to provide services and the free movement of workers by refusing tax deductibility for pension contributions paid to pension funds in other Member States<sup>55</sup>.

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<sup>53</sup> For a description of this consultation see Annex 1.

<sup>54</sup> Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee of 19 April 2001 "The elimination of tax obstacles to the cross-border provision of occupational pensions" (COM (2001) 214).

<sup>55</sup> See website: [http://europa.eu.int/comm/taxation\\_customs/taxation/personal\\_tax/pensions/index\\_en.htm](http://europa.eu.int/comm/taxation_customs/taxation/personal_tax/pensions/index_en.htm)

On the basis of these procedures and rulings by the European Court of Justice<sup>56</sup>, it can be concluded that initially at least ten Member States (France, Finland, Sweden, Belgium, Portugal, Spain, Ireland, Italy, Denmark and the UK) had tax legislation that discriminated against foreign pension funds. While the infringement procedures are continuing, Belgium, France, Finland, Ireland, Portugal Spain and the UK have already announced they will change their tax legislation in order to give contributions paid to pension funds located in another Member State the same tax treatment as contributions paid to domestic funds. Germany, Austria and the Netherlands already allowed tax relief for contributions paid to foreign funds.

The second obstacle relates to the cross-border transfer of pension capital. There may be cross-border situations where national tax rules are contrary to the Treaty provisions on the freedom of movement for workers and/or the free movement of capital. An example of such a situation could be an EET or ETT<sup>57</sup> State taxing the value of the pension capital upon cross-border transfer, where it would not tax a transfer within its territory, and where it applies the principle of residence taxation of pension benefits in its double tax treaties<sup>58</sup>.

Regarding tax obstacles to cross border transfers, the Commission has already started an infringement procedure against Belgium. In the Belgian case the Commission pointed out that it is unacceptable that in Belgium the transfer of pension capital to a foreign pension fund gives rise to special taxation<sup>59</sup>, whereas the transfer of pension capital within Belgium is tax free. Belgium has announced that it will abolish the restriction to cross-border transfers. On the basis of the information provided by the members of the Pensions Forum (see Annex) and other sources<sup>60</sup> it seems that the tax legislation in several other Member States also hinders the transfer of acquired pension rights to schemes situated in another Member State<sup>61</sup>. The Commission already in its Pension Taxation Communication of April 2001 announced that it would examine national tax rules impeding the cross-border transferability of pension capital and take the necessary steps to ensure effective compliance with the Treaty rules. Moreover,

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<sup>56</sup> Danner case (C-136/00) and Skandia case (C-422/01)

<sup>57</sup> EET system: Exempt contributions, Exempt investment income and capital gains of the pension institution, Taxed benefits). ETT system: Exempt contributions, Taxed investment income and capital gains of the pension institution, Taxed benefits.

<sup>58</sup> See also the survey by the European Actuarial Consultative Group on "Taxation of occupational pensions in the EU Countries", April 2004 and paragraph 3.6. of the Communication on the elimination of tax obstacles to the cross-border provision of occupational pensions, 19.4.2001, COM(2001) 214 final..

<sup>59</sup> Press release IP/03/1756 of 17 December 2003

<sup>60</sup> For instance the "Survey on the portability of occupational pensions in the countries of the European Union", Watson Wyatt Brans & Co., December 2004

<sup>61</sup> This seems to be in any event the case for DK, DE, IT. In some other Member States the taxation of the cross border transfer depends on the bilateral tax treaties applicable: F, NL, IE.

on 27 April 2005 the European Federation for Retirement Provision announced that it would launch a formal complaint with the Commission against the Member States which in its view had unjustified obstacles to the cross-border transfer of pension capital.



**ANNEX: DESCRIPTION OF STAKEHOLDER CONSULTATION****1. CONSULTATION SOCIAL PARTNERS****1.1. Consultation of social partners: first stage**

In accordance with Article 138, paragraph 2 of the EC Treaty, a first consultation of the European social partners was launched<sup>62</sup> on the portability of supplementary pension rights. In particular, the Commission consulted them on the usefulness of a Community action in this field, the form such action should take (collective agreement, directive, recommendation, code of practice, etc.), what the main features of such a measure might be, whether action in the form of collective agreements at cross-sectoral and/or sectoral level should be considered and the possible material scope of the measure envisaged (type of pension schemes to be covered).

The social partners responded to the first stage consultation with a broad recognition of the need for action at European level to improve the portability of supplementary pensions.

Their views differed, however, on the instruments needed to address the issue and ranged from proposing non-binding exchanges of information to requesting the adoption of a Community legal instrument. Some organisations invoked the possibility of engaging in negotiations on a framework agreement at European level.

A number of employers' organisations (UNICE<sup>63</sup>, UEAPME<sup>64</sup>, HOTREC<sup>65</sup>) considered that a Community initiative on the portability of supplementary pension rights should limit itself to cross-border transfers; they opposed the introduction of EU legislation on the conditions of acquisition, preservation and transferability of supplementary pension rights, insofar as this would go beyond cross-border issues and thus interfere with the organisation of supplementary pension arrangements at national level. In their view, a single solution at EU level could discourage employers from offering an supplementary pension scheme to their employees. The EU should therefore foster the portability of pensions by organising exchanges of experiences and information-sharing on the solutions found in the various European countries.

Other employers' organisations (FBE<sup>66</sup>, CEA<sup>67</sup>, FIEC<sup>68</sup>) supported the setting up of a common European framework to ensure the protection of supplementary pension rights in case of labour mobility, but demanded that flexible instruments, such as recommendations, guidelines or codes of best practice, be adopted, so as to respect the large diversity of supplementary pension schemes in the Union.

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<sup>62</sup> SEC(2002)597.

<sup>63</sup> Union of Industrial and Employers' Confederations of Europe.

<sup>64</sup> European Association of Craft and Small and Medium-sized Enterprises.

<sup>65</sup> European Association of Hotels, Restaurants & Cafés in Europe.

<sup>66</sup> Fédération Bancaire de l'Union européenne.

<sup>67</sup> Comité Européen des Assurances.

<sup>68</sup> European Construction Industry Federation.

UEAPME recommended a detailed study to be conducted, so as to put more information at the disposal of the social partners and the Member States before deciding upon the best possible course of action. It suggested that problems of mobility within a Member State be addressed within the open method of co-ordination in the field of pensions.

The European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP) supported EU action on the portability of supplementary pensions and suggested that the social partners take the lead, in the framework of the European social dialogue. Moreover, it considered that certain aspects of transferability could be resolved through a directive.

All the employees' organisations (ETUC<sup>69</sup>, CEC<sup>70</sup>, EUROCADRES<sup>71</sup>) clearly expressed themselves in favour of a European regulatory framework. In their opinion, the best form of action would be a Community directive, setting common principles to ensure the portability of supplementary pension rights within the Union. Being aware of the difficulties linked to the question of vesting periods, ETUC suggested that negotiations could be engaged on this issue with a view to reaching a framework agreement setting broad principles at European level. EUROCADRES suggested that a directive should intervene only if the European social partners fail to engage in negotiations on a framework agreement on pension portability.

As regards the substantive issues raised in response to the Commission's first stage consultation, all the respondents recognised that unnecessarily long waiting and vesting periods or excessively high minimum ages obstruct the development of supplementary pension schemes and labour mobility, and therefore have to be reconsidered. They also agreed that reductions in vesting periods should be phased in gradually, so as to limit the additional costs associated with their reduction for the employers. The social partners equally agreed that acquired supplementary pension rights should be adequately preserved and that the transferability of pension entitlements should be facilitated. On the last point in particular, UNICE and UEAPME took the view that the calculation of transfer values should not be left to the discretion or interpretation of the actuary and supported the definition, insofar as possible, of some basic common actuarial principles at European level. All the organisations also wanted to stress that improved information, transparency and simplification are needed to ensure an effective portability of supplementary pension rights.

Regarding the choice between collective bargaining at cross-sectoral or sectoral level, the large majority of the social partners favoured a cross-sectoral approach to the question, while leaving open the door for sector-based agreements in those professions and sectors that are the most concerned by geographical mobility.

Finally, most organisations demanded that Community action focus on schemes financed jointly by the employer and the employees, without distinction between pension entitlements based on individual contracts and those based on collective agreements, thus leaving out of the scope of the envisaged measures all voluntary supplementary pension schemes solely financed by the employer. UEAPME proposed that transnational measures apply to compulsory pension schemes.

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<sup>69</sup> European Trade Union Confederation.

<sup>70</sup> Confédération Européenne des Cadres.

<sup>71</sup> Council of European Professional and Managerial Staff.

## 1.2. Consultation of social partners: second stage

Taking into account the broad recognition by social partners of a need to address the improvement of portability of supplementary schemes at EU level, the Commission launched a second stage consultation of the European social partners<sup>72</sup>, on the possible content of Community action to improve the portability of supplementary pension rights, pursuant to Article 138(3) of the EC Treaty.

In this document the Commission called upon the social partners to seek an agreement that would tackle issues such as long qualifying periods and age conditions for the acquisition of supplementary pension rights and inadequate preservation of "dormant" rights, as well as on the definition of a set of common principles for the calculation of transfer values.

The social partners that replied are divided about the principle of holding negotiations. UNICE, UEAPME and CEA<sup>73</sup> do not want to negotiate, while ETUC, CEEP and Eurocadres are in favour of negotiations. There is also divergence on whether a Community initiative should only be related to cross-border portability (UNICE, UEAPME, CEEP) or also address the obstacles to portability created by conditions for acquisition, preservation or transferability of supplementary pension rights at national level (ETUC, Eurocadres, CEA).

## 2. INVOLVEMENT OF THE PENSIONS FORUM<sup>74</sup>

As already indicated, the Pensions Forum discussed in its working groups and plenary sessions the different types of obstacles to mobility created by rules on supplementary pension provision. Members of the Pensions Forum are besides representatives of the Member States and EFTA and of the two sides of industry, representatives of the following organisations:

- EFRP (European Federation for Retirement Provision),
- FEFSI (European Federation of Investment Funds and Companies)
- ACME (Association of European Cooperative and Mutual Insurers)
- AIM (International Association for Mutual Assistance)
- CEA (European Insurance Committee)
- AEIP (European Association of Paritarian Institutions)
- EAPSPI (European Association of Public Sector Pension Institutions)
- GCAACE (Groupe Consultatif des Associations d'actuares des pays de la CE)
- FBE (Banking Federation of the European Union)
- AGE (the European older people's platform).

As part of the preparation of this impact assessment a questionnaire was addressed to the members of the Pensions Forum. This questionnaire aimed at collecting factual information on the design of supplementary pension systems in the Member States and asked for an estimation of the impact on these systems of a number of options for the possible measures to be proposed.

Replies were received from all Member States, except for Slovenia and Slovakia, and from Norway.

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72 SEC(2003)916

73 CEA: European Federation of National Insurance Associations

74 For a description of the Forum see the main document under section 3

The following social partner organisations replied to the questionnaire (in many cases these replies were composed of replies of national members of these organisations):

- ETUC (European Trade Union Confederation)
- UNICE (Union des Industries de la Communauté européenne)
- UEAPME (European Association of Craft, Small and Medium-sized Enterprises)
- Eurocadres (Council of European professional and managerial staff)

Replies were received from the following stakeholder organisations (here also in many cases these replies were composed of replies of one or more national members of these organisations): AEIP, AGE, AIM, EAPSPI, EFRP. Some national organisations replied individually to the questionnaire.

**ANNEX: CURRENT SITUATION IN THE MEMBER STATES**

This Annex contains information on the current situation in the Member States based in particular on the information provided by the members of the Pensions Forum.

The following table indicates whether a (maximum) waiting period is foreseen by law and what is the current practice.

<b>Legal restriction</b>		<b>Practice</b>
BE:	No	No waiting period (only used occasionally by some schemes before the minimum age of 25)
CZ:		
DK:	No	Private sector: 9 months (in a number of areas lowered to 6 months). Usually in case of job mobility within a sector the waiting period will only have to be served once. Public sector: varying between one and four years. In many schemes there exists a special waiting period scheme for employees that due to waiting periods not are entitled to membership of the main scheme. In the waiting period schemes there may also be a waiting period and the contributions have traditionally been smaller than in the main scheme, but the difference is narrowing down and is expected to disappear in a not too distant future. Served waiting periods are transferable inside the public sector and to the private sector. In general the employee starts acquiring pension rights when the payments of contributions start.
DE:	No	In the schemes financed by the employer, waiting periods can be applied (in combination with a minimum age). In the schemes financed by employees, there are no waiting periods applied.
EE:		
EL:	No	Supplementary pension schemes have not been set up yet
ES:	Maximum waiting period of two years	Waiting periods up to two years are applied
FR:	No	No information
IE:	No	A waiting period of 6 to 12 months is common. About 30% of defined benefit schemes do not have any requirements in this regard, while a further 30% have a waiting period of 5 years.  In defined contribution arrangements the waiting periods are shorter with 78% of schemes having a period of zero to 12 months. Only 10% have a waiting period of over 2

Legal restriction		Practice
		years.
IT:	No	Certain restrictions apply to employees with short term contracts
CY:		
LV:	No	No information
LT:	No	No information
LU:	Waiting and vesting period together should not exceed 10 years.	Waiting periods are applied (in many schemes typically 1 or 2 years).
HU:		
MT:		
NL:	No	In 2001, 96,7 % of the schemes did not apply a waiting period.
AT:	No	In practice, for <i>Pensionskassenzusagen</i> the applied waiting periods are varying from one to five years or scheme membership starts at the beginning of a permanent contract.
PL:	Waiting period of at least three months, unless the company pension agreement states otherwise	
PT:	No	The majority of schemes have eligibility conditions that depend on the nature of the contract, usually only permanent employees are eligible. In a minor number of schemes a combination of the minimum duration of the contract (2, 3, 5, rarely 10 years) and age conditions are applied.
SL:		
SK:		
FI:	No	The usually applied waiting period varies between 4 to 6 months. In many company pension funds the waiting periods can be 10 years.
SE:	Waiting periods are regulated by nation wide collective agreements.	In principle employees become immediately member of the pension plan at the time of employment. Special rules may apply for temporarily employed or internships. For the white collar worker plan (ITP), this means coverage by the supplementary pension insurance after a qualification period of three months. After this period, the insurance will apply retroactively from the first month of employment.

<b>Legal restriction</b>		<b>Practice</b>
UK:	No	Most private sector schemes have either no waiting period, or a waiting period of one year or less. 84% of defined benefit and 78% of defined contribution schemes in the private sector had no waiting period. 10% of defined benefit and 20% of defined contribution schemes had a waiting period of one year or less. In the public sector the general practice is for there to be no waiting period.
NO	No waiting periods	-



The following table gives general information on whether an age at which an employee should at the latest become member of a scheme has been laid down by law, if and how minimum age are applied in practice by schemes.

<b>Legal restriction</b>		<b>Practice</b>
BE	Legal minimum age is 25 years (but rights are only acquired as from the age of 26).	Immediate membership for those employees having reached the age of 25 years.
CZ		
DK	No	<p>Private sector: in general 20 years.</p> <p>Public sector/state: 25 years. People serving a waiting period due to not fulfilling the age requirement are covered by the waiting period scheme, which means they can become members from the age of 20 years.</p> <p>Public sector/local government: 25 years but some schemes apply lower age limits. The waiting period schemes for local governments have an age minimum of 21 years.</p>
DE	In the case of employer financed schemes, the employee who has reached the age of 30 years (and has fulfilled the vesting period of five years) has acquired rights (applicable for promises given as from 1-1-2001, with a transitional period up to 1-1-2006). For schemes financed by the employee alone, no minimum age requirements apply.	
EE		
EL	No	Supplementary pension schemes have not been set up yet
ES	No	No minimum age applied
FR	No	Probably no application of minimum ages by the schemes
IE	No	<p>Minimum age requirements are sometimes set for eligibility for membership of a scheme or for inclusion within a scheme for retirement benefits. These age limits would typically be in the range 18 to 25 with only 2% of schemes imposing age requirements in excess of 25. (Note during this waiting period members may be included within the scheme for death in service benefits only). Some employers set no minimum age.</p> <p>For defined contribution schemes, members do not</p>

Legal restriction		Practice
		acquire any benefits in respect of the waiting period. For defined benefit schemes, practice is mixed with some schemes backdating service to the date of joining the company and some not. There is however no legislative requirement in this regard.
IT	No	No minimum age applied
CY		
LV	No information	No information
LT	No information	No information
LU	No	Some schemes apply a minimum age between 18 and 25 years.
HU		
MT		
NL	No	In 2001, 54,6% of pension schemes did not apply minimum age requirements for becoming scheme member (compared to 27,4 in 1996). In most cases where minimum ages are applied these are fixed between 21 and 24 years. Participants normally don't acquire pension rights in respect of employment periods below the minimum age.
AT	No	In many cases trainees are excluded for scheme membership or minimum ages are applied. In general the employment before having reached the minimum age or the traineeship period is taken into account in the calculation of rights (in particular in schemes with a direct commitment of the employer) for the employee who remains with the same employer
PL	No	Not applied
PT	No	If a minimum age is set, this is at 25 years. Years of employment accomplished before that age are taken into account in the calculation of the total years of service.
SI		
SK		
FI	No	In general workers enter the scheme when they start to work.
SE	No	The minimum age differs from pension plan to pension plan: from 21 as the lowest age to 28 as the

<b>Legal restriction</b>		<b>Practice</b>
		highest age.
UK	No	63% of private sector defined benefit and 46% of private sector defined contribution schemes stipulate a minimum age for entry into a scheme. No public sector schemes have a minimum age higher than 21. 94% of private sector defined benefit schemes and 92% of private sector defined contribution schemes have a minimum age lower than 21. Very few schemes have a minimum age in excess of 25 years old. It seems that in general most pension rights start accruing from the day of joining the scheme rather than the date of joining the company.
NO	20 years (public sector), no minimum age in private sector	Corresponds with legal requirements

The following table gives an overview of the legal requirements and the current practice in the Member States concerning the length of scheme membership required before having acquired pension rights.

<b>Legal requirement</b>		<b>Practice</b>
BE	Vesting takes place at the latest one year after start of scheme membership	Vesting periods are in general one year, except for personal contributions from the employee for which the rights are acquired immediately
CZ		
DK	No	Immediate vesting for employees contributions. Vesting of employer financed benefits after five years.
DE	The legal maximum vesting period for employer financed schemes is 5 years (applicable for promises given as from 1-1-2001, with a transitional period up to 1-1-2006). In the case of "Entgeltumwertung" (conversion of earnings into pension contributions) there is immediate vesting.	In practice, very few employers apply vesting periods of less than five years.
EE		
EL	One year vesting period in case an employee leaves a scheme without changing jobs.	Supplementary pension schemes have not been set up yet
ES	Law (1987) foresees immediate vesting for qualified plans.	Most non qualified plans provide for a vesting scale up to 20 years.
FR	No	Vesting periods are not applied in many cases, however in some schemes the employee only has acquired rights if still working for the company at moment of retirement (in case of mobility no vesting rights exist).
IE	Vested rights must be provided after 2 years as a full member of the scheme.	
IT	No	No vesting period (only when the employee wishes to transfer, without changing jobs or employer, a vesting period of three years is applied)
CY		The employer contributions vest generally after five years of membership.
LV	No	No vesting period
LT	No	Defined contribution schemes: any period of membership is recognised.

Legal requirement		Practice
LU	Legal maximum vesting period is 10 years minus the waiting period	The vesting periods applied by the schemes generally are five years (in a phased manner in the case of local companies)
HU		
MT		
NL	There are no legal maxima. The law allows a reimbursement of contributions in a pension scheme when the participation in a pension scheme lasted less than 1 year.	In practice no vesting periods apply.
AT	<i>Direct insurance:</i> immediate vesting. For <i>pension funds</i> the employer contributions are vested after a minimum of five years, employee contributions vest immediately. In the case of <i>book reserve</i> schemes the minimum vesting period is five years, with the possibility to extend to a maximum of ten years. Employee contributions vest immediately. The vesting period for <i>support funds</i> is five years.	In practice for <i>pension funds</i> , small undertakings (1 to 20 employees) apply vesting periods from 0 to 3 years. In the case of a setting up of a new system of <i>Pension funds</i> the vesting period is 3-5 years. Big undertakings with a system of direct commitment by the employer (book reserves) normally apply no vesting periods.
PL	No	DC schemes: any period of membership is recognised
PT	No	The majority of pension schemes don't have vested rights. Workers only have pension rights if they retire when they are still working at the company. Where vesting periods are applied these are in general 10 years.
SI		
SK		
FI	No.	Usually short (max. 4 months) vesting periods.
SE	No	no vesting periods applied
UK	Legal maximum vesting period is two years. New legislation effectively reduces this to 3 months by stipulating that where a person leaves an supplementary scheme after three months but before his/her rights are vested, trustees will have to offer the member the choice of a cash transfer sum (the actuarial value of their rights in the scheme)	75% of all defined benefit supplementary schemes and 50% of all defined contribution schemes apply a 2 year vesting period. 20% of defined benefit and 40% of defined contribution schemes operate immediate vesting. All other schemes apply a vesting period between 0 and 2 years.

	<b>Legal requirement</b>	<b>Practice</b>
	which must be paid into another pensions vehicle, or a refund of the contributions paid by the member (law adopted in November 2004, most provisions enter into force in April 2005)	
NO	<p>Private sector: vesting period of one year in case of job change. No vesting period for DC schemes.</p> <p>Public sector: vesting period 3 years (but not completed vesting period is taken into account when taking a new employment in the public sector.</p>	Practice corresponds with legal requirements.

The following table indicates whether there is a statutory obligation stipulating the way how dormant rights should be preserved. It also provides for information on the current practice as regards the preservation of dormant rights.

Statutory right		Practice
BE	No	In the general no preservation
CZ		
DK	No	Uncommon
DE	No	Uncommon
EE		
EL	No	No information available
ES	No	The most method is the transformation of the Technical Provision established until the date of the cessation or suspension of the employment relationship into a Capitalisation Fund with the rules as applied to DC plans being applicable.
FR	No	No information available
IE	Preserved pensions under defined benefit schemes must be increased each year by the lower of 4% or inflation (CPI). The full legislative requirements are in force for employees who leave service on or after 1 <sup>st</sup> June 2002. The preservation requirements have been phased in gradually for defined benefit schemes for leavers after 1991. There is no legislative requirement to provide preserved benefits in respect of persons leaving prior to 1991.	Most schemes apply the minimum required. Some public sector schemes revalue deferred pensions in line with wage inflation.
IT	No	Increases are generally linked to investment returns (DC schemes)
CY	Not possible to keep dormant rights (on resignation a lump sum is taken out)	
LV	No	Individual schemes decide whether and how they up rate dormant rights.
LT		
LU	No	The law stipulates that in case of departure before having reached the retirement age, the preservation of the acquired rights has to be guaranteed to the early leaver. Undertakings are free to determine whether to

Statutory right		Practice
		adjust dormant rights and how.
HU		
MT		
NL	Dormant pension rights have to be adjusted in the same way as the entitlements of pensioners that are already in payment.	In practice in 80% of supplementary pension schemes indexation is applied, thus dormant rights are indexed in these cases as well. The type of indexation depends on the nature of the supplementary pension provision <sup>75</sup> .
AT	No, but in the case of <i>pension funds</i> dormant rights have to be treated in the same way as rights of active scheme members.	Preservation of dormant rights is in general not foreseen.
PL	No	DC schemes
PT	No	Uncommon (some exceptions particularly in the banking sector)
SI		
SK		
FI	Same inflation protection as for first pillar schemes	Dormant rights are usually adjusted by the index used for first pillar pensions (80% linked to change in wages, 20% linked to change in prices). Some schemes apply other index weighting: 50% wages, 50% prices or 20% wages, 80% prices.
SE	No	In some schemes indexation is be linked to the asset returns of the IORP. In other schemes dormant rights are indexed according to the price base amount (this amount is decided by Parliament).
UK	Dormant rights have to be up-rated in line with the retail price index up to a maximum of 5% per annum.	



The following table gives information on the statutory possibility to transfer acquired rights both within the Member States and across borders. It gives also an indication on whether a capital pay-out is possible and how the transfer value is calculated.

	<b>Statutory right to transfer internal</b>	<b>Possibility cross-border transfer</b>	<b>Capital pay-out to early leaver</b>	<b>Calculation of transfer value</b>
<b>BE</b>	To pension scheme of the new employer or to another pension scheme. New Belgian employer has to accept the transfer without charging costs.	Possibility to transfer to new employer or to another pension scheme upon agreement of all parties. International transfers are liable for taxation.	No, (until the age of 60 years)	DB schemes: law foresees that calculation according to the rules of the scheme should not result in a lower amount than the minimum reserve (i.e. 6% discount rate). DC schemes: transferred value represents the accumulated capital including asset returns (sometimes at a fixed guaranteed rate)
<b>CZ</b>				
<b>DK</b>	There is a statutory obligation to provide for the possibility to transfer in case of job change. A transfer is possible to a pension scheme when the tax treatment is similar.	As foreign schemes will in general have a different tax status in Danish tax law, a cross border transfer will imply payment of tax.		
<b>DE</b>	For promises given as from 1-1-2005 an employee has a statutory right to transfer if the sum does not exceed a certain amount (€62400 in 2005). This only applies to transfer between externally funded schemes ( <i>Pensions funds</i> and <i>direct insurance</i> ). <i>Direct commitments</i> and <i>support funds</i> are therefore excluded. Partial transfers are not allowed. The early leaver has to decide within a year whether she/he wants to transfer.	Yes, on the agreement of all parties concerned. There may be tax obstacles, depending on bilateral tax treaty	No (very strict exceptions on this prohibition)	In the case of <i>direct commitments</i> and <i>support funds</i> the transfer value corresponds with the cash value (calculated according to agreed actuarial standards). For <i>pensions funds</i> and <i>direct insurance</i> the value represents the capital built up.
<b>EE</b>				
<b>EL</b>	Statutory right to transfer	Yes, under same conditions as within EL.	Yes	Based on personal pension account, taking into account the investment returns and administrative costs.
<b>ES</b>	No (general rule: vested rights are not transferable, unless provided for in the plan specifications)	No	No	DC schemes: the share attributable to the member DB schemes: individual technical provision plus the part of the solvency margin of the pensions plan corresponding to the

	<b>Statutory right to transfer internal</b>	<b>Possibility cross-border transfer</b>	<b>Capital pay-out to early leaver</b>	<b>Calculation of transfer value</b>
				member. Some pension plans can exclude the solvency part in the calculation.
<b>FR</b>	Statutory right to transfer from a DC plan. Transfer from a DB scheme is possible	Yes for DC schemes (the receiving scheme must meet certain criteria). For DB schemes only collective transfers can be considered. Taxation depends on tax treaties applicable.		DC schemes: in most cases accumulated reserve less expenses. DB schemes: conditions specified in transfer agreement.
<b>IE</b>	Statutory right to transfer, but no partial transfers are permitted.	Yes, provided the rules of the schemes permit the transfer, trustees of the transferring scheme comply with national Regulations and the format in which benefits may be taken is similar to the Irish scheme. Double taxation treaties apply.	No	DB scheme: accrued benefit calculated following actuarial guidance at national level. DC scheme: the value of the individual member's fund.
<b>IT</b>	Statutory right to transfer	A transfer as such is not possible, this should take place in the form of a surrender (re-purchase of the individual rights), which has an important fiscal impact.		DC schemes
<b>CY</b>	No	Upon agreement between employers and employee international transfer of pension is possible.	Lump sum payment to early leaver is the common practice. Only some collective agreements foresee a possibility to transfer (banking, hotels)	
<b>LV</b>	Yes	Possible if the pension fund board gives agreement.	Only in case of invalidity or bankruptcy of employer.	Only DC schemes, no actuarial calculations applied.
<b>LT</b>	Yes	Same conditions	Yes	Only DC schemes

	<b>Statutory right to transfer internal</b>	<b>Possibility cross-border transfer</b>	<b>Capital pay-out to early leaver</b>	<b>Calculation of transfer value</b>
		as within MS		
<b>LU</b>	Yes, transfer to pension plan of new employer in case of agreement between two parties. Otherwise, (new employer has no pension plan or without mutual agreement) the former employer can transfer to pension fund or group insurance. There should be no penalty for the scheme member.	Same conditions as within MS, but no legal right to transfer. Cross-border transfers have to be approved by the national control authority. No taxable event.	Under strict conditions (e.g. member leaves the country or is older than 50 years)	DB: established by law
<b>HU</b>				
<b>MT</b>				
<b>NL</b>	Statutory right to transfer (only to schemes provided by employer).	Statutory possibility under similar conditions as within MS. Rules of supervisor and tax authorities are applied. Costs are borne by employer/pension fund. Taxation depends on bilateral tax treaty.	No	Regulated by law. DB schemes have to be fully funded on transfer date in case of statutory right to transfer. In case of voluntary transfer schemes can apply their own calculations or commonly agreed actuarial assumptions.
<b>AT</b>	Statutory right to transfer (except for <i>Support funds</i> )	Yes, for employee who moves permanently abroad. Costs have to be borne by the employee. No taxable event.	Up to a ceiling of € 9.300	Regulated by law.
<b>PL</b>	N.A.	No	N.A.	N.A.
<b>PT</b>	No but transfer agreements exist.	Yes, to supervised pension funds or insurance companies within the EU.	No	No legal requirements (are part of the contract setting up the pension fund or collective agreements)
<b>SI</b>				
<b>SK</b>				
<b>FI</b>	No statutory right. Earned pension rights cannot be transferred to another scheme.	Not possible.	Yes, in case of very low amounts	N.A.
<b>SE</b>	Only within collective agreement private blue-collar workers (Avtalpension SAF-LO) (DC schemes)	Cross border transfer not possible	No	No commonly agreed actuarial principles. Fees also differ significantly.
<b>UK</b>	Statutory right to transfer to	Yes, subject to	Not allowed	Regulated by law and in

	<b>Statutory right to transfer internal</b>	<b>Possibility cross-border transfer</b>	<b>Capital pay-out to early leaver</b>	<b>Calculation of transfer value</b>
	supplementary pension scheme new employer or to a personal (including stakeholder) pension. Cross border transfer is allowed, subject to the scheme member permanently emigrating, severing all employment links with the UK and having an employment in the new country of residence.	certain criteria.		accordance with the guidance by the Institute and the Faculty of Actuaries.
<b>NO</b>	Private sector: statutory right to transfer. Public sector: no.	Yes, but only in private sector transfer is possible by foreign citizens having been resident for less than three years.	Not allowed	Defined by scheme