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REPORT

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

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No. Cion prop. 13686/05 SOC 412 ECOFIN 324 CODEC 933 – COM(2005) 507 final + REV 1
No. Amd. prop. : 13857/07 SOC 368 CODEC 1062 - COM(2007) 603 final + REV 1 + COR 1 +
REV 1 COR 1

Subject : Amended proposal for a Directive of the European Parliament and of the Council
on minimum requirements for enhancing worker mobility by improving the
acquisition and preservation of supplementary pension rights
- General approach

I. INTRODUCTION

On 20 October 2005, the Commission adopted a proposal for a Directive on improving the portability of supplementary pension rights.

Following the adoption by the European Parliament of its Opinion¹ in first reading on 20 June 2007, the Commission adopted an amended proposal, which was presented on 15 October 2007.² It focused on the acquisition and preservation of rights, dropping the issue of transferability.

¹ See doc. 10933/07.

² Doc. 13857/1/07 REV 1.

The Economic and Social Committee gave its opinion on 20 April 2006.³

Initial discussions in the Council did not lead to an agreement and work on the file ceased in 2008 (see "Background" in the Annex).

In 2012, the European Council called for measures to ensure the sustainability of pension systems and for the acquisition and preservation of cross-border pension rights of EU workers to be strengthened.⁴ Examination of the amended proposal resumed in the Council's Working Party on Social Questions on 5 November 2012.

The compromise text

The legal basis chosen in the compromise text is Article 46 TFEU. The scope of the draft Directive has been reduced to cover worker mobility *between* Member States only, thus excluding the area of occupational mobility within a single Member State. However, given the importance of equal treatment, and in the light of the practical difficulties that were likely to arise if the two categories of mobile workers were subject to different rules, it was also agreed that the Member States should be encouraged to ensure equal treatment of scheme members who change employment within a single Member State and those who exercise the right to freedom from one Member State to another (see Statement by the Council and the Commission in Addendum 2).

At its meeting on 14 June, the Permanent Representatives Committee reached broad agreement on the draft Directive, subject to the remaining outstanding issues outlined below being resolved.

³ SOC/217.

⁴ Conclusions of the European Council of 28/29 June 2012 (EUCO 76/12). See also statement of the Members of the European Council 30 January 2012: Towards growth-friendly consolidation and job-friendly growth. Brussels, 30 January 2012 (SN 5/12).

Six delegations maintained general scrutiny reservations on the amended proposal.

DK, MT and UK maintained parliamentary scrutiny reservations.

EL, FR, CY, MT and SK maintained linguistic scrutiny reservations.

II. OUTSTANDING ISSUES

1. Scope (Article 2) and definition of "an outgoing worker" (Article 3(g))

A majority of delegations supported the compromise text, as did the Commission representative.

One delegation maintained a scrutiny reservation.

2. Conditions governing acquisition (Article 4)

a) Vesting period and/or waiting period (Article 4(a))

Divergent views having been expressed on the total combined length of the vesting period and/or waiting period, the Presidency suggested three years as a compromise.

Most delegations were able to support this solution. However, one delegation preferred five years.

b) The role of the social partners (Article 4(d) and Article 5(4))

The independent role that the social partners play in pension negotiations in certain Member States has been recognised in Article 4(d) and Article 5(4), which state that the social partners “may lay down different provisions” to the extent that those provisions provide "no less favourable protection and do not create obstacles to the freedom of movement for workers."

One delegation maintained a reservation, stressing the crucial and autonomous role played by the social partners in the context of its supplementary pension systems and called for more flexible wording. Following contacts with delegations and the Commission, as a compromise, the Presidency suggests adding the following new recital to the text:

Recital 7a (new):

"This Directive does not limit the autonomy of the social partners where they are responsible for setting up and managing pension schemes, provided they can ensure the outcomes prescribed by this Directive."

3) Exemptions (Article 2)

One delegation maintained a scrutiny reservation, expressing the view that "book reserve schemes" (i.e. pension schemes included in a company's budget) ought to be excluded from the scope.

IV. CONCLUSION

The Council is invited to examine the outstanding questions, with a view to reaching a general approach.

Background

Origins of the proposal

The original proposal of 2005 aimed to facilitate the mobility of workers both between and within the Member States by improving the possibilities of those who change employers to acquire and preserve supplementary pension rights and to have those rights transferred.

The initial examination of the proposal in the Working Party on Social Questions revealed that an agreement on the obligatory transferability of pension rights could not be achieved, and that the draft Directive should therefore focus on the acquisition of rights and the preservation of previously accrued rights.

After intensive technical and political discussions at different levels, including by the EPSCO Council on 30 May and 5 December 2007, it became apparent that reaching the required unanimity was not possible and work on the file therefore ceased in 2008. In 2010, the Commission undertook a Green Paper⁵ consultation on pensions; the responses showed continued stakeholder support for EU legislation setting minimum standards for the acquisition and preservation of supplementary pension rights.⁶ The Commission adopted a White Paper on pensions in 2012,⁷ undertaking to resume work on a Directive.

⁵ Green Paper towards adequate, sustainable and safe European pension systems 12102/10.

⁶ Summary of consultation responses to the Green Paper "Towards adequate, sustainable and safe European pension systems" See 6918/11.

⁷ White Paper An Agenda for Adequate, Safe and Sustainable Pensions 6715/12.

Legal basis

The amended proposal of 2007 had been based on Articles 42 and 94 TEC, both articles providing for unanimous voting in the Council. However, Article 42 TEC provided for the co-decision procedure, whilst Article 94 TEC only provided for consultation of the European Parliament. The procedure that was followed for the proposal was co-decision and the European Parliament adopted its first-reading opinion on this basis. Following the entry into force of the Lisbon Treaty in 2009, Article 48 TFEU (ex-Article 42 TEC) now provides for the ordinary legislative procedure, with qualified majority in the Council. Article 115 TFEU (ex-Article 94 TEC) continues to provide for unanimity. An Opinion of the Council Legal Service on the legal basis was issued on 26 November 2012.⁸

During the discussions in the Working Party, divergent views were expressed, some delegations favouring Article 46 TFEU (possibly in combination with Article 48 TFEU) as the legal basis, while others supported Article 115 TFEU. In particular, many delegations took the view that those elements of the draft Directive that entailed harmonisation on the internal market (specifically: the provisions governing the pension rights of workers moving within a single Member State) could not be adopted on the basis of Article 46 TFEU.

⁸ 16641/12.