



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 4 February 2014

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

**17612/13
ADD 1**

**SOC 1032
PENS 5
ECOFIN 1139
CODEC 2912**

DRAFT STATEMENT OF THE COUNCIL'S REASONS

Subject: Position of the Council at first reading with a view to the adoption of 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
= Draft statement of the Council's reasons

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 In its amended proposal, the Commission incorporated many parliamentary amendments and also took into account the discussions that had taken place in the Council. The amended proposal focused on the acquisition and preservation of rights, dropping the transferability aspect.

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

The Council reached a general approach on 20 June 2013.⁴

Following informal negotiations, a provisional agreement with a view to an early second-reading agreement was reached between the co-legislators on 26 November 2013.

On 16 December 2013, the Council reached a political agreement on its position at first reading.⁵

II. OBJECTIVE

The objective of the draft Directive is to facilitate worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights of scheme members.

¹ 10933/07.

² 13857/1/07 REV 1.

³ SOC/217.

⁴ 11459/13.

⁵ 17221/13 ADD 1.

III. ANALYSIS OF THE MAIN FEATURES OF THE COUNCIL'S POSITION AT FIRST READING

A. Procedural context

On the basis of the amended proposal of the Commission, the European Parliament and the Council conducted negotiations with a view to concluding an agreement at the stage of the Council's position at first reading ("early second-reading agreement"). The text of the Council position reflects the compromise reached between the two co-legislators.

B. Summary of main issues

1. Legal basis

The legal basis chosen in the compromise text reflected in the Council's position at first reading is Article 46 TFEU.

2. Scope and definition of "an outgoing worker" (Article 2, Article 3(g) and Recital 6)

The compromise text provides that the Directive shall apply to outgoing workers who move between Member States. It will not apply to workers moving within a single Member State. However, Recital 6 notes that Member States may nevertheless consider using their national competences to extend the rules applicable pursuant to the Directive to scheme members who change employment within a single Member State.

Moreover, the compromise text specifies that the Directive shall only apply to periods of employment falling after its implementation. It will not apply to pension schemes covered by Regulation (EC) No 883/2004, nor to schemes which no longer accept new active members or schemes that are subject to measures such as winding-up proceedings. Nor will it apply to insolvency guarantee schemes, compensation schemes, national reserve funds or one-off payments unrelated to retirement provision. Invalidity benefits are also excluded from the scope. Certain provisions regarding the preservation of vested and dormant pension rights (Article 5) and Information (Article 6) apply to survivor's benefits which are otherwise excluded.

3. Protection of pension rights (Articles 4 and 5 and Recital 23)

In the compromise text reflected in the position at first reading, the conditions governing the acquisition of pension rights are strengthened to the effect that, where a vesting period and/or a waiting period is applied, the total combined period shall not exceed three years. The minimum age for vesting shall not exceed 21 years.

As regards the preservation of vested pension rights, the compromise text provides for national measures to ensure that the vested pension rights of outgoing workers can remain in the scheme in which they vested. However, schemes also have the option of paying the worker a capital sum up to a certain nationally established threshold and with the worker's informed consent, including as regards applicable charges. As explained in Recital 23, the aim is to avoid excessive administrative costs resulting from the management of a large number of low-value dormant rights; on the other hand, when setting thresholds for the payment of capital sums, the Member States should take into account the adequacy of workers' future retirement income.

The compromise text provides that outgoing workers' and their survivors' dormant pension rights or their values are treated in line with the value of the rights of active scheme members, or the development of pension benefits currently in payment, or by other means which are considered fair treatment.

4. Information (Article 6)

The compromise text also improves the information rights of active scheme members as well as deferred beneficiaries and survivors. The Member States shall ensure that active scheme members can obtain on request information on how a termination of employment would affect their pension rights. Where the scheme allows for early access to vested pension rights through the payment of a capital sum, the information shall also include a written statement that the scheme member should consider taking advice on investing that capital sum for retirement provision.

Deferred beneficiaries are also to obtain, on request, information regarding the value of their dormant rights and the conditions regarding their treatment. Under the Directive, surviving beneficiaries also have the right to the information as regards the payment of survivor's benefits attached to supplementary pension schemes.

5. Transposition (Article 8)

The compromise text provides for a transposition period of four years from the date of adoption.

6. Report (Article 9)

The following reporting calendar is included in the compromise text: the Member States shall report to the Commission concerning the application of the Directive within five years of its entry into force. A year later, the Commission is to report back to the European Parliament, the Council and the Economic and Social Committee on the application of the Directive.

IV CONCLUSION

The Council's position at first reading reflects the compromise reached in negotiations between the Council and the European Parliament, facilitated by the Commission. This compromise is confirmed by the letter of the Chair of the European Parliament's Committee on Employment and Social Affairs (EMPL) to the Chair of the Permanent Representatives Committee (letter dated 9 December 2013). In this letter, the Chair indicates that she will recommend to the members of the EMPL Committee, and subsequently to the plenary, that they accept the Council's position at first reading without amendments at Parliament's second reading, subject to verification by the lawyer-linguists of both institutions.
