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**COMMISSION'S SECOND-STAGE CONSULTATION OF SOCIAL PARTNERS ON
PORTABILITY OF SUPPLEMENTARY PENSION RIGHTS****UNICE REPLY****Summary**

On 12 September 2003, the European Commission launched the second-stage consultation of the social partners on the possible direction of a Community action on portability of supplementary pensions rights. The Commission argues in favour of minimum EU requirements for the acquisition, preservation and transferability of supplementary pension rights of job changers within and across borders. It invites the social partners to answer two questions:

- what would be their opinion on the possible content and scope of the envisaged initiative;
- whether they wish to open negotiations pursuant to Article 138(4) and Article 139 of the EC Treaty and, if so, whether they wish to adopt a global approach or concentrate on certain aspects of portability.

UNICE supports moves to remove obstacles to cross-border labour mobility linked with supplementary pensions. Any EU initiative should only deal with the cross-border portability of supplementary pensions and should not tackle the conditions for acquisition, preservation and transferability of supplementary pension rights at national level insofar as this would interfere with the organisation of supplementary pension arrangements in Member States.

European employers recall that, unless tax obstacles to cross-border provision of supplementary pensions are removed, genuine cross-border portability of supplementary pensions will not be achieved.

UNICE does not intend to open negotiations on the issues proposed by the Commission. However, it sees the merit of organising a technical seminar in the social dialogue at EU level in view of a joint contribution to the debate on how to alleviate obstacles to cross-border labour mobility linked to supplementary pensions.

**COMMISSION'S SECOND-STAGE CONSULTATION OF SOCIAL PARTNERS ON
PORTABILITY OF SUPPLEMENTARY PENSION RIGHTS****UNICE REPLY****I. Introduction**

1. On 12 September 2003, the European Commission launched the second-stage consultation of the social partners on the possible direction of a Community action on portability of supplementary pensions rights, in accordance with article 138, paragraph 2 of the EC Treaty.
2. In this second-stage consultation, the Commission considers that EU action to improve the portability of supplementary pensions in the case of both cross-border and national mobility is advisable. It argues in favour of establishing a general framework setting minimum EU requirements with respect to the acquisition, preservation and transferability of supplementary pension rights as well as to information of employees on the supplementary pension rights they have acquired.
3. The Commission invites the social partners to answer two questions:
 - whether they wish to open negotiations pursuant to Article 138(4) and Article 139 of the EC Treaty, and, if so, whether they wish to adopt a global approach or concentrate on certain aspects of portability (types of pension funds to be covered).
 - what would be their opinion or recommendation on the possible content and scope of the envisaged initiative in accordance with Article 138(3) of the EC Treaty.

II. Answer to the first question

4. UNICE supports moves to remove obstacles to cross-border labour mobility linked with supplementary pensions. It strongly believes that any EU initiative should deal with the cross-border portability of supplementary pensions and should not tackle the conditions for acquisition, preservation and transferability of supplementary pension rights at national level insofar as this would interfere with the organisation of supplementary pension arrangements in Member States (see detailed arguments in part III).
5. UNICE does not intend to open negotiations on the issues proposed by the Commission. However, it sees the merit of organising a technical seminar in the social dialogue at EU level in view of a joint contribution to the debate on how to alleviate obstacles to cross-border labour mobility linked to supplementary pensions.

III. Answer to the second question

On taxation

6. The Commission acknowledges the importance of taxation as an obstacle to cross-border portability, but explains that the consultation focuses on those portability issues that can be addressed by the social partners. However, the consultation document reveals a tendency of the Commission to underestimate the problem of taxation.
- The Commission emphasises that the recently adopted directive on institutions for occupational retirement provisions will allow the setting-up of pan-European pension funds. UNICE strongly believes that the directive will not have its full intended effect until tax obstacles are removed.
 - The Commission also stresses that “transfers between defined-contribution schemes do not pose any major problems, the only obstacle being the administrative costs linked to the transfer and taxation”. European employers emphasise that the taxation might be the only obstacle to transferability in case of defined-contribution schemes, but it is a major obstacle.
 - Regarding the possibility to transfer in various European countries, the Commission explains that “in certain countries, the tax charge could be so high that it prevented, in practice, any cross-border transfer”. In UNICE’s view, this means that, in some cases, even if further measures were taken to improve cross-border transferability, taxation would remain an obstacle making transfers impossible in practice.
7. UNICE believes that, unless tax obstacles are removed, genuine cross-border portability of supplementary pensions will not be achieved.

On types of supplementary pensions schemes to be covered

8. The Commission makes a distinction between portability and transferability.
9. In UNICE’s view, in an instrument limited to cross-border transfers there would be a need to exclude non-transferable schemes, such as book reserves or second-pillar systems intertwined with first-pillar pensions.
10. In an instrument dealing with portability, the Commission seems to suggest that the following types of schemes would be excluded:
- defined-contributions schemes,
 - third-pillar individual pensions,
 - schemes unilaterally established by the employers.

UNICE fully agrees that such schemes should be excluded.

11. In the light of the content of a possible Commission proposal, European employers could suggest other categories of pension schemes or pension provision that should be excluded from its scope.

On acquisition of occupational pension rights

12. The Commission proposes that waiting and vesting periods could be reduced to a minimum and age conditions could be eliminated. It suggests that a maximum combined length of waiting and vesting periods could be set at European level and that social partners could agree on particularly short waiting and vesting periods for schemes covering a sector or a profession at cross-border level. The recognition of employment periods in the same sector or profession in another Member State could also be considered. The Commission adds that, due to cost implications of a sudden shortening of waiting and vesting periods, such periods could be reduced over a transitional period. A distinction could be made between employer and employee contributions, with the latter being statutorily refundable before the acquisition of a vested pension right.
13. According to UNICE, vesting periods belong to the organisation of supplementary pension schemes in Member States and should therefore not be tackled at EU level. Moreover, the duration of adequate vesting periods largely depends on the nature of the fund concerned. Setting a maximum vesting period at EU level is not feasible. Moreover, any changes in vesting periods should be phased in gradually as also suggested by the Commission, and higher costs entailed by a change for the cost-calculation basis should be borne in mind, as should the possible need to introduce compensatory tax measures, and this can only be done at national level.

On preservation of acquired pension rights

14. The Commission stresses that dormant rights should be preserved, so that they are not frozen in nominal terms. It lists several options that could be considered in that respect, based on various practices in Member States (limited inflation adjustment, as in Ireland and in the United Kingdom, adjustment at the same rate as pensions in payment or linkage to the performance of the fund in the case of defined-contribution schemes).
15. UNICE insists that indexation is not linked to the issue of cross-border labour mobility and cannot be imposed from the EU level. Decisions on indexation or other means to preserve rights can only be chosen in Member States, taking into account various economic variables.

On transferability of acquired pension rights

- *On the possibility for job changers to choose between preserving acquired rights and transferring the corresponding capital value*
16. The Commission considers that it would be desirable to ensure that the largest possible number of job changers have the possibility to choose between preserving their acquired pension rights in the scheme of origin and transferring the corresponding capital value to another pension scheme. It envisages requiring that the capital to be transferred is used for pension purposes only and handed over to an institution that can guarantee safe management of the pension rights.
 17. UNICE strongly believes that cross-border transferability of supplementary pension rights should be facilitated, but stresses that this should be subject to mutual agreement between the parties involved in setting up the supplementary pension schemes in the Member States: employers, workers and institutions for pension provision.

➤ *On fair actuarial conditions for job changers*

18. The Commission explains that, in the case of transfers between defined-benefit schemes, pension losses may occur due to different actuarial methods and assumptions. It therefore aims to ensure that employees enjoy fair actuarial conditions when they opt for a transfer of their pension rights. In the Commission's view, this can be achieved by application of the same actuarial assumptions for scheme leavers and new entrants both at the level of an individual scheme and between two schemes involved in a particular transfer.
19. UNICE supports moves to remove obstacles to cross-border labour mobility linked with supplementary pensions. It therefore sees some merit in defining principles to value the pension rights to be transferred on the basis of actuarial criteria in each Member State at the appropriate level so that a person or a company can make an informed decision on whether or not to proceed with the transfer. In this regard, different schemes should not be required to use the same actuarial conditions, since actuarial conditions must respect the actuarial equilibrium of the schemes.

On information requirements

20. The Commission suggests that sufficient information should be guaranteed for all pension scheme members on the rights they have acquired and on the options available to them in the event of a job change or career interruption, and on the costs associated with these options.
21. UNICE agrees that accurate information on his/her pension rights upon cross-border transfer should be provided to the employee.

IV. Conclusion

22. To sum up, UNICE supports moves to remove obstacles to cross-border mobility linked with supplementary pensions and insists that any EU initiative should tackle the cross-border transferability and should not deal with the conditions of acquisition, indexation and transferability at national level.
23. UNICE does not intend to open negotiations on the issues proposed by the Commission. However, it sees however the merit of organising a technical seminar in the social dialogue at EU level in view of a joint contribution to the debate on how to alleviate obstacles to cross-border labour mobility linked to supplementary pensions.
24. Tax obstacles to cross-border provision of supplementary pensions should not be underestimated. Unless these tax obstacles are removed, genuine cross-border portability of supplementary pensions will not be achieved.
25. Cross-border transferability of supplementary pension rights should be subject to mutual agreement between the parties involved in setting up the supplementary pension schemes in the Member States. Concerning the transfer value, UNICE sees some merit in defining principles to value the pension rights to be transferred on the basis of actuarial criteria in each Member State at the appropriate level so that a person or a company can make an informed decision on whether or not to proceed with the transfer. In this regard, different schemes should not be required to use the same actuarial conditions, since actuarial conditions must respect the actuarial equilibrium of the schemes.
