

**UNICE REPLY TO THE COMMISSION'S FIRST-STAGE CONSULTATION ON
PORTABILITY OF SUPPLEMENTARY PENSIONS RIGHTS**

I. Introduction

1. On 12 April 2002, the European Commission launched the first-stage consultation of the social partners on the portability of supplementary pension rights. The purpose of this document is to consult the social partners, in accordance with article 138, paragraph 2 of the EC Treaty, on the possible direction of a Community action on portability of supplementary pensions rights.
2. The Commission asks the social partners' opinion on:
 - the usefulness of establishing at EU-level provisions concerning the acquisition, preservation and transferability of supplementary pension rights of both workers who move to another Member State and workers who change job, but stay within the same Member State,
 - the form that such an action at EU level should take (collective agreement, directive, recommendation, code of practice, guidelines, etc.),
 - the main features of such an action,
 - whether action should be taken at cross-sectoral and/or sectoral level,
 - the material scope of such a measure (type of schemes to be covered).

II. Comments

On the need for an EU initiative on the portability of supplementary pension rights

3. UNICE strongly supports moves to facilitate labour mobility in the European Union. It therefore welcomes the Commission consultation on portability of supplementary pension rights of workers making use of their right to free movement within the European Union.
4. However, the Commission envisages EU measures that would go beyond cross-border issues and tackle the conditions for acquisition, preservation and transferability of supplementary pension rights at national level. While recognising the need for removing obstacles to occupational mobility within the Member States, UNICE strongly believes that any EU initiative should aim to remove obstacles to free movement without interfering with the organisation of supplementary pension arrangements in Member States.
5. The organisation and the content of supplementary pension schemes vary from country to country. These variations stem from the financing and coverage of the public and private pillars of the pension systems, the nature of the supplementary pension schemes (voluntary/compulsory), the level where they are organised (at industry or company level), the type of scheme (defined contribution/defined benefit or hybrid schemes), the split of employer and employee contributions, etc. Therefore

EU legislation dealing with the conditions for acquisition of supplementary pension rights is neither desirable nor feasible.

6. UNICE wishes to stress that the arrangements for and the content of supplementary pension schemes in the Member States are primarily the responsibility of the social partners according to the established system in each EU country. How to tackle obstacles to portability of supplementary pension rights can only be addressed within each Member State, with the participation of all relevant actors involved (social partners, institutions for pension provision, etc.) at different level (inter-professional, sectoral/industry or company level), depending on the type of scheme concerned.
7. Given the diversity of supplementary pension schemes in the Member States “a one size fits all” solution cannot be found at EU level. A single solution at EU level could bring about more restrictions in certain national situations and therefore employers could be discouraged from offering a supplementary pension scheme to their employees. A decisive reason for not taking EU measures that would go beyond cross-border issues is that they would stop supplementary pensions from developing in a way which would suit the labour market. A single type of instrument at EU level to deal with portability in the various national supplementary pension systems might not be appropriate for all national situations.
8. However, the EU level could foster portability of supplementary pension rights at national level by organising exchanges of experiences and information-sharing on solutions found in various EU countries.

On the reference to the Pensions Forum

9. The Commission refers to a large extent to the recommendations of the three working groups set up in the framework of the Pensions Forum. The work of these working groups suggests various ideas in order to remove obstacles to mobility relating to the provision of supplementary pensions. The Commission makes formal reference to the reports of the groups while these reports were the results of technical expert meetings and have not been formally adopted by the Pensions Forum in its plenary. The working groups bring together technical experts and have no official status. Consequently, the question of the representativeness of the views presented in these reports arises. The ideas put forward by the groups must therefore be treated with caution.

On the conditions for acquisition of supplementary pension rights

10. Vesting periods can be necessary in order to avoid excessive fragmentation of supplementary pension rights and excessively burdensome administration. However, unnecessarily long vesting periods or excessively high minimum age requirements in Member States can be an obstacle to development of supplementary pension schemes and to workforce mobility.
11. Excessively long vesting periods dating back to the days of lifelong careers with the same employer have to be reconsidered. However, the duration of adequate vesting periods largely depends upon the nature of the fund concerned. A harmonised vesting period at EU level is not feasible. Moreover, changes in vesting periods should be phased in gradually and higher costs entailed by a change for the cost-calculation basis should be borne in mind, as should the possible need to introduce compensating tax measures.
12. The Commission points out that high minimum ages and long vesting periods are discriminatory against women because they are more likely to take career breaks for family reasons. While acknowledging the need to find appropriate solutions in the provision of supplementary pensions in case of discontinuous career paths, UNICE

believes that such appropriate solutions could be found only in a national context at the appropriate level depending on how supplementary pension schemes are organised.

On the preservation of supplementary pension rights

13. Directive 98/49 on safeguarding the supplementary pension rights of employees moving within the Community lifted key obstacles to cross-border mobility. It ensures the right to equality of treatment as regards the preservation of supplementary pension rights when moving within the Community.
14. Regarding the indexation of pension rights left in a pension fund, the Commission argues that a worker may find that his entitlement is frozen until retirement or not fully index-linked. UNICE agrees that migrant workers' acquired supplementary pension rights should not suffer from discretionary indexation measures. However, an appropriate indexation mechanism cannot be imposed from the EU level. The indexation rules for pension rights can only be chosen at national level taking into account various economic variables and can only be adjusted when and where appropriate following the evolution of those variables.

On the transferability of supplementary pension schemes and cross-border membership of pension schemes

A. Taxation issues

15. One of the main obstacles to transferability and cross-border membership is taxation, and this cannot be addressed by the social partners.
16. The Commission Communication of 19 April 2001 on the elimination of tax obstacles to the cross-border provision of occupational pensions identified the following obstacles.
 - Member States have different systems of taxation exempting either the contributions to an occupational pension scheme or the subsequent payment of benefits. In the case of an employee moving from one country to another, he/she may be taxed twice (on contribution and on benefits) or not at all. Such situations should be addressed. Double taxation for migrant workers is one of the main obstacles to mobility in the EU and should be eliminated.
 - The legislation of most Member States creates tax obstacles to the cross-border transferability of accrued pension capital, for example the case of Member States taxing the value of the pension capital upon a cross-border transfer where they would not tax a transfer within their territories
 - Many countries of the EU have discriminatory rules, whereby contributions paid to an occupational pension institution in another Member State are not exempt/non-deductible. This creates obstacles for cross-border affiliation to a pension scheme, especially for migrant workers and highly mobile workers.
17. UNICE welcomes the Commission's communication as an important step towards the elimination of tax obstacles to the cross-border provision of occupational pensions. It fully supports the Commission's plan to monitor national tax rules impeding the cross-border provision of occupational pension and cross-border transferability, and to take the necessary steps to ensure effective compliance with the Treaty. The removal of these tax obstacles can be achieved to a large extent by enshrining the EET principle (exempt contributions, exempt investment returns, tax pension benefits) in taxation law throughout the EU.

B. Proposed Directive on Institutions for occupational retirement provision

18. The proposal for a Directive on institutions for occupational retirement provision should allow for cross-border membership and should allow pension funds to manage pension schemes on a cross-border basis. UNICE broadly welcomes the Council's political agreement recently reached and calls for adoption and implementation of the envisaged directive as soon as possible.

C. Setting up a legal framework that offers employees the right to opt for a transfer at national and EU level

19. The Commission refers to the results of the Pensions Forum's "Transferability of supplementary pension rights" working group. It suggests that transferability should be an option for the employee, not an obligation. Furthermore, it points out that there could be a need for setting up the legal framework that offers employees the right to opt for a transfer of acquired rights from one scheme to another at national as well as at EU level. The Commission seems to favour a legal instrument such as a directive to deal with this issue as it talks about setting up a legal framework that would establish a European right to transfer.

20. UNICE strongly believes that transferability of supplementary pension rights should be facilitated and any unnecessary obstacles should be removed. However, in the majority of EU countries, supplementary pension schemes are set up on a voluntary basis and establishing a European legal framework instituting an obligation to transfer upon both old and the new scheme could discourage employers from setting up such schemes. Transferability of pension rights should be subject to a mutual agreement between the parties involved in setting up the supplementary pension schemes in the Member States. These parties are best placed to find balanced solutions. For example, transfer conditions have to be established in respect of the actuarial equilibrium of the schemes. UNICE does not believe that a legal framework that would establish a European right to transfer is the appropriate solution.

D. Common standards and principles for the calculation of transfer values

21. The Commission refers to the conclusion of the Pensions Forum's "Transferability of supplementary pension rights" working group that it might also be necessary to define common standards and principles for the calculation of transfer values.

22. UNICE would like to stress that transferability of pension rights acquired from a defined benefit scheme poses different problems from the case of a defined contribution scheme or book reserves.

23. In the case of a defined benefit scheme, the transfer value depends on the assumptions that are used in the calculation such as earnings progression, time to be spent in the pension fund by an employee, accrual rate, etc.

24. While transferability should be facilitated, this should not be done by imposition of additional costs on the employer or the pension provider. The calculation of transfer values should not be left to the discretion or interpretation of the actuary. Agreement on some basic common actuarial principles at European level, insofar as feasible, would be desirable. In this respect, article 15 of the proposed Directive on institutions for occupational retirement provision providing for prudent calculation of technical provisions (interest rate and other economic and demographic factors) as well as the works of the GCAACE (Groupe consultatif des associations d'actuaire des pays de la CE) should be taken into consideration.

III. Conclusion

25. To sum up, UNICE welcomes the Commission consultation on portability of supplementary pension rights of workers making use of their right to free movement within the European Union.
26. However, the Commission envisages EU measures that would go beyond cross-border issues and tackle the conditions for acquisition, preservation and transferability of supplementary pension rights at national level. UNICE believes that any EU initiative should aim to remove obstacles to free movement without interfering with the organisation of supplementary pension arrangements in Member States. Given the differences between national supplementary pension schemes, harmonisation of supplementary pension schemes should not be the goal of any EU measure.
27. However, the EU level could foster portability of supplementary pension rights at national level by organising exchanges of experiences and information-sharing on solutions found in various EU countries. Because of the high complexity of the different supplementary pension schemes it is necessary to have flexible procedures, which allow differentiation between national practices and traditions.
28. Obstacles to portability of supplementary pensions rights concern all sectors and therefore a horizontal approach should be taken without closing the door to sector-specific solutions.
