



23 November 2007

Amended Commission proposal on supplementary pension rights

SUMMARY

Enhancing worker mobility is key to create more dynamic and efficient labour markets in Europe. BUSINESSEUROPE therefore supports the objective of the amended proposal. At the same time, however, Europe needs to reform pension systems to make them financially sustainable in the face of demographic ageing. In this respect, supplementary pensions play an increasingly important role across the EU. It is therefore essential to avoid taking policy initiatives which would harm the development of supplementary pension schemes in Europe.

By stipulating the conditions governing acquisition and setting out in detail how to preserve (the value of) dormant pension rights, the amended proposal fails to respect the principle of subsidiarity. In BUSINESSEUROPE's view, supplementary pension scheme arrangements have to be negotiated at the appropriate level in the Member States without interference from the EU. This is all the more so taking into account that after deletion of the transferability requirement, the proposal would now fall completely within the context of employment and social affairs (rather than free movement of persons).

Moreover, introducing common rules regarding the content of supplementary pension schemes is unrealistic given that the latter's development and the role they play in providing old-age pensions differs considerably across Member States. As a result, the financial and administrative burden of the proposal for a directive would differ considerably across Member States.

In addition, while the amended Commission proposal usefully deletes the transferability requirement, it contains several provisions which would considerably raise the costs of operating supplementary pension schemes, thereby discouraging employers from offering supplementary pensions to their workers.

BUSINESSEUROPE therefore does not believe that this proposal for a directive is the correct approach to achieve the objective of enhancing worker mobility. In this context, the introduction of a voluntary instrument should be considered as a more appropriate approach to increase worker mobility without disrupting existing systems. Moreover, policy-makers should first and foremost focus on addressing fiscal obstacles that continue to stand in the way of workers who want to exercise their right to free movement rather than trying to establish common minimum requirements on conditions governing supplementary pension schemes.



Introduction

1. On 9 October 2007, the European Commission presented an amended proposal for a directive on supplementary pension rights to take into account the EP report adopted on 20 June 2007. This amended proposal:
 - Substantially alters the conditions governing the acquisition of supplementary pension rights and the preservation of dormant pension rights;
 - Takes on board the EP amendment deleting the provision on transferability.

I. General comments

2. BUSINESSEUROPE supports the objective of the amended proposal, i.e. enhancing worker mobility, but has serious concerns about its content. Various provisions, notably on conditions governing acquisition and preservation of dormant pension rights, fail to respect the principle of subsidiarity. However, it must be left to the appropriate level (interprofessional, sectoral/industry or company level) in the Member States to determine the rules regarding workplace pensions without interference from the EU. This is all the more so following the deletion of the transferability requirement as the content of the amended proposal would now fall completely within the context of employment and social affairs.
3. Moreover, according to European employers, the introduction of common rules regarding the content of supplementary pension schemes is unrealistic given that the latter's development and the role they play in providing old-age pensions differs considerably across Member States. Hence, the financial and administrative burden resulting from the proposal for a directive would differ considerably across Member States.
4. European employers recall that in order to truly enhance cross-border worker mobility, Member States should first and foremost address fiscal obstacles in the field of supplementary pensions, notably double taxation.
5. Against this background BUSINESSEUROPE believes that instead of a directive, the introduction of a voluntary instrument would constitute the appropriate approach in order to enhance worker mobility.
6. Notwithstanding this position in principle, BUSINESSEUROPE will comment on the Commission's revised proposal in the following paragraphs.
7. While welcoming the fact that the amended Commission proposal has deleted the provisions on transferability, European employers regret that it does not correct other fundamental flaws of the initial proposal. Furthermore, some new provisions would create new difficulties and extra costs for supplementary pension schemes across Europe.



European employers are in particular concerned by the fact that:

- The revised Commission proposal implies that the directive would have a retroactive effect, applying also to periods of employment falling before the directive's implementation in national law;
- The provisions on conditions governing acquisition, preservation of dormant rights and information requirements would significantly increase the costs of operating supplementary pension schemes in several Member States.

Against the background of demographic ageing and the urgent need for Europe to reform pension systems to make them financially sustainable, it is essential that the directive does not harm the development of supplementary pension schemes. This is all the more important taking into account that in most cases supplementary pension schemes are set up voluntarily by companies or social partners.

II. Specific comments

Scope of application

8. The Commission accepts the European Parliament's amendment which exempts from the scope of the directive those supplementary pension schemes that are closed to new members (article 2.2 (a)). BUSINESSSEUROPE welcomes this new provision.
9. In addition, BUSINESSSEUROPE believes it is essential that the directive does not apply retroactively. The application of the minimum standards defined in the Commission's revised proposal to pension promises made before the directive came into force will entail considerable – and unforeseen – extra costs which could undermine the viability of supplementary pension schemes. The directive should therefore only apply to benefits accruing after the directive is transposed into national law. Article 2.4 of the German Presidency's compromise text for the June 2007 EPSCO Council should therefore be adopted instead: *This Directive shall apply only to the periods of employment falling after its implementation into national law and, in any event, not later than [...].*

Conditions governing acquisition

10. Under the initial Commission proposal, a worker would have acquired pension rights after a maximum vesting period of two years. In its first reading report, the European Parliament set a maximum vesting period of five years for active scheme members under the age of 25 and introduced a ban on vesting conditions beyond 25 years of age. The amended Commission proposal follows the European Parliament's approach regarding the five-year vesting period but introduces a one-year limit for those over the age of 25. By contrast, the original waiting period (one year) is retained in the revised text while some minor drafting changes are made regarding the minimum age (21 year) for accrual by an active scheme member of vested rights.



11. While BUSINESSEUROPE welcomes the amendment allowing social partners to derogate from the proposed EU rules through collective agreements, it insists that the conditions governing acquisition (vesting period, minimum age and waiting period) should not be defined at EU level. These limits are often determined by collective agreements and depend on the nature of the fund, the specific requirements of the sector or the company, etc.
12. The introduction of a five-year vesting period for workers under the age of 25 constitutes a step in the right direction but the one-year limit on vesting periods for active scheme members older than 25 years is far too low. A vesting period of one year would substantially increase the costs of providing supplementary pensions in countries/sectors/companies that currently have longer vesting periods (such as Germany, Luxembourg, Austria).
13. For the same reasons, BUSINESSEUROPE regrets that the amended proposal retains the low limits on minimum age and waiting period of the original proposal. In this respect, the amended Commission proposal constitutes a step backwards compared with the German Presidency's final compromise text which stipulated a vesting period of five years and minimum age of 25 years.
14. Regarding the reimbursement of employees' contributions, BUSINESSEUROPE agrees that employees should not lose the contributions they have paid themselves. Nevertheless, the provision that contributions paid on behalf of workers should also be reimbursed is unclear and could be interpreted as referring to the contributions paid by employers. It should therefore be made clear that it does not refer to the employers' contributions.

Preservation of dormant rights

15. In the light of the EP amendments and discussions in Council, the Commission substantially changes the provisions regarding the preservation of dormant pension rights. The revised proposal replaces the concept of "fair adjustment" by "fair treatment" and sets out in detail ways to achieve this.
16. BUSINESSEUROPE welcomes the provision allowing social partners to lay down different provisions by collective agreement.
17. European employers acknowledge that the new version of article 5 has improved considerably compared with the original version. By removing terminology such as "fair adjustment" and "not penalising" outgoing workers, the amended proposal is clearer, provides more legal certainty and better balances the interests of different stakeholders (deferred beneficiaries, remaining active scheme members, retired beneficiaries). In addition, it stipulates taking into account the nature of existing schemes for the application of fair treatment of dormant rights.
18. However, BUSINESSEUROPE is concerned that in case of a retroactive application of the directive, the provisions regarding the preservation of dormant rights would increase costs, in particular for those supplementary pension schemes related to final salary.



Transferability

19. In line with the EP amendment and discussions in Council, the Commission has removed article 6 on transferability. BUSINESSEUROPE welcomes the deletion of the transferability requirement as this would have caused considerable technical difficulties and jeopardised the financial sustainability of certain supplementary pension schemes.
20. However, through the new recitals 5 (i) and 9 (a) and the amendment of article 10 of the initial proposal (now article 9), the Commission re-introduces the issue of transferability through the backdoor. The new article 9 stipulates that a report shall be drawn up five years after the directive's entry into force in order to review the conditions for transferability. However, according to European employers, Member States should first address fiscal obstacles (such as discriminatory tax treatment of cross-border transfer of pension capital and double taxation) as these are the biggest problem for cross-border portability of supplementary pensions. In addition, there is a need to sort out technical difficulties such as the applicable rules for calculating the actuarial value of vested pension rights before re-tabling the issue of transferability.

Information

21. The revised Commission proposal accepts several of the European Parliament's amendments on information requirements.
22. BUSINESSEUROPE agrees that information on how a termination of employment would affect supplementary pension rights should be provided to active scheme members who request it. However, in order to reduce the administrative burden related to information requirements, the employer's obligation to provide active scheme members with information should be limited to the existence of a *justified* interest on the part of the latter. Article 6.2 should therefore be reworded to specify that information shall be provided to active scheme members who reasonably request it. Likewise, there should also be a justified interest on the part of deferred beneficiaries requesting information.
23. BUSINESSEUROPE welcomes the fact that there should be no obligation to provide information more often than once a year but would like to see this provision introduced in the directive itself (as is the case in the Council text) instead of within recital 11.

Implementation

24. Compared to the initial proposal, the amended proposal no longer sets 1 July 2008 as the deadline for implementation of the directive at national level. Member States are now required to transpose the directive at the latest two years after its adoption but may still be granted an extension of 60 months.
25. Sufficient time should indeed be allowed for a successful and effective transposition of the directive while companies, sectors, pension funds and social partners should be given the necessary time to adapt the supplementary pension schemes to the newly introduced obligations. Employers therefore welcome a



long transposition period, preferably applying equally to all Member States or by the proposed extension of the implementation deadline by 60 months.

III. Conclusion

26. In BUSINESSEUROPE's view, the amended Commission proposal does not comply with the principle of subsidiarity. In addition, several provisions would considerably increase the costs of operating supplementary pension schemes. A voluntary approach should therefore be seriously taken into consideration as the best way to achieve the objective of worker mobility without unduly increasing the cost of providing supplementary pensions and to avoid discouraging employers from putting such schemes into place.
