UNICE
THE VOICE OF BUSINESS IN EUROPE

POSITION PAPER

14 February 2006

COMMISSION PROPOSAL FOR A DIRECTIVE ON IMPROVING THE PORTABILITY OF SUPPLEMENTARY PENSION RIGHTS

SUMMARY

UNICE supports the objective of the draft directive, but has serious concerns about its content. Facilitating cross-border labour mobility within the EU is a fundamental freedom guaranteed by the Treaty. Improving occupational and geographical mobility in Member States is desirable since it can help to improve the employment situation in Europe through a better match between labour demand and supply. However, at the same time, Europe needs to reform pension systems to make them financially sustainable in the face of demographic ageing. It is therefore extremely important to ensure that the EU directive does not harm the development of supplementary pensions in Europe.

The Commission proposal for a directive could fail on both objectives. The reality of the positive impact on cross-border mobility is uncertain since tax obstacles, which are the biggest problem for cross-border portability of supplementary pensions, remain. The impact on the development of supplementary pensions could be negative since the Commission proposal contains provisions which could significantly increase the costs of operating supplementary pension systems for all workers affiliated to supplementary pensions not only for job-changers. Therefore, given the fact that in most cases such schemes are set up voluntarily by employers, companies could be discouraged from offering a supplementary pension scheme to their employees. These costs stem from imposition at EU level of low limits for vesting periods, waiting periods and minimum age, of an obligation to preserve “dormant” rights, and from not allowing pension funds to calculate the transfer value of the pension rights taking into account the actuarial equilibrium of the scheme. UNICE regrets that the Commission’s impact assessment seriously underestimates the costs of such measures.

Furthermore, the inclusion of EU legal provisions on conditions governing pension schemes in the EU directive will interfere with the responsibilities of national social partners who regularly negotiate and conclude collective agreements at different levels on these issues and will threaten the organisation of national pension systems.

European employers therefore believe that the proposal should be radically modified to ensure a better balance between costs for pension providers and benefits in terms of mobility. In this context, it should also be considered whether other types of voluntary instruments would not be more appropriate to promote transferability of supplementary pensions.

AV. DE CORTENBERGH 168
B-1000 BRUSSELS
VAT BE 863 418 279

TEL +32(0)2 237 65 11
FAX +32(0)2 231 14 45
E-MAIL: MAIN@UNICE.BE
WWW.UNICE.ORG

UNICE
THE VOICE OF BUSINESS IN EUROPE

POSITION PAPER

14 February 2005

COMMISSION PROPOSAL FOR A DIRECTIVE ON IMPROVING THE PORTABILITY OF SUPPLEMENTARY PENSION RIGHTS

I. Introduction

1. On 20 October 2005, the Commission published a proposal for a directive on portability of supplementary pension rights aimed at reducing the obstacles to labour mobility both within and between Member States. The Commission proposal seeks to tackle these obstacles by introducing provisions on:
   - conditions governing acquisition of pension rights;
   - preservation of dormant supplementary pension rights;
   - transferability of acquired supplementary pension rights;
   - information given to workers on how mobility may affect supplementary pension rights.

II. General comments

2. UNICE fully supports the aim of facilitating cross-border labour mobility within the EU. This is a fundamental freedom guaranteed by the Treaty. It also agrees that improving occupational and geographical mobility in Member States is desirable since it can help to improve the employment situation in Europe through a better match between labour demand and supply. However, at the same time, Europe needs to reform pension systems to make them financially sustainable in the face of demographic ageing. It is therefore extremely important to ensure that the EU directive does not harm the development of supplementary pensions in Europe.

3. The Commission proposal for a directive could fail on both objectives. The reality of the positive impact on cross-border mobility is uncertain since tax obstacles, which are the biggest problem for cross-border portability of supplementary pensions, remain. The impact on the development of supplementary pensions could be negative since the Commission proposal contains provisions which could significantly increase the costs of operating supplementary pension systems for the following reasons:

   - the proposal sets strict rules concerning the acquisition, preservation and transferability of supplementary pension rights which would bring about more restrictions and costs in several national situations. Therefore companies could be discouraged from offering a supplementary pension scheme to their employees. Given the fact that in most cases such schemes are set up voluntarily by employers, it is important that framework conditions do not discourage companies from providing their employees with supplementary pensions.

   - it would significantly increase costs for many existing pension schemes because of a change in the parameters on the basis of which calculations

AV. DE CORTENBERGH 168
B-1000 BRUSSELS
VAT BE 863 418 279

TEL +32(0)2 237 65 11
FAX +32(0)2 231 14 45
E-MAIL: MAIN@UNICE.BE
WWW.UNICE.ORG

are made (vesting period, waiting period, age for membership, indexation, calculation of accrued rights, etc.) for all workers affiliated to supplementary pensions, not only job-changers. For this reason, consideration could be given to applying the envisaged directive only to new pension promises given after its entry into force.

4. Furthermore, the proposal interferes with the autonomy of social partners in Member States. The arrangements for and the content of supplementary pension schemes in the Member States are primarily the responsibility of the social partners who regularly negotiate and conclude collective agreements at different levels (inter-professional, sectoral/industry or company level) on issues such as minimum affiliation age, possible indexation, transferability within or between schemes. These provisions are devised to be mutually beneficial for both companies and workers and they become part of the employment and working conditions. The inclusion of EU legal provisions on conditions governing pension schemes including the preservation of dormant rights in the EU directive will interfere with the responsibilities of national social partners and threaten the organisation of national pension systems.

5. UNICE regrets that the Commission impact assessment seriously underestimates the costs to companies and that, with the exception of the UK, no numerical estimates are provided.

6. To sum up, UNICE supports the objective of the directive, but has serious concerns about its content. Increasing the costs of labour for approximately 120 million workers affiliated to supplementary pensions with no evidence that it will reduce obstacles for the 3.6 million workers who make use of their right to cross-border mobility in the EU cannot be regarded as an appropriate cost-benefit ratio. European employers therefore believe that the proposal should be radically modified to address the concerns expressed in this paper and to ensure a balance between costs for pension providers and benefits in terms of mobility. In this context, it should also be considered whether other types of voluntary instruments would not be more appropriate to promote transferability of supplementary pensions.

Specific comments

Scope (article 2)

7. In UNICE's view, supplementary pension schemes which have been closed and do not affiliate new members should not be included in the scope of the directive. In closed schemes, contributions are either no longer being paid or will not be able to grow to absorb additional costs associated with the new rules prescribed by the directive.

Conditions governing acquisition (article 4)

8. The proposal for a directive sets the following conditions for acquisition:

- where pension rights have not yet been acquired when employment is terminated, all the contributions paid by, or on behalf of, the outgoing worker are reimbursed or transferred;
- the minimum age for the acquisition of pension rights should be not more than 21 years;
- a worker acquires pension rights after a maximum membership (vesting period) of two years;
- a worker should join a supplementary pension scheme after a maximum period of employment of one year (waiting period) or, where necessary, no later than once he has reached the required minimum age;

9. UNICE insists that setting the limits for vesting periods, waiting periods and minimum age at EU level is not appropriate. 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. They should be set at the appropriate level in the Member States (inter-professional, sectoral/industry or company level) without interference from the EU.

10. Moreover, the limits suggested are far too low and would increase costs for providing supplementary pensions since it would change the cost-calculation basis, for example when changing the vesting period from five years or more to two years. In this context, UNICE regrets that the Commission's impact assessment seriously underestimates the costs of such measures.

11. Furthermore, such low limits would lead to companies and pension funds having to administer a relatively high number of small pension entitlements implying costs which are disproportionate compared with the benefits for workers. For example:
    - the minimum age for the acquisition of pension rights of 21 is far too low; the minimum age set by many collective agreements is higher than that since sometimes workers are students who work occasionally and for a short period of time or young people testing their career options and who stay only for a short period of time with their initial employer. For example, in Sweden, the inter-professional collective agreement for white-collar workers sets a minimum age of 28. In Germany the minimum age is 30 years old.
    - a waiting period (i.e. the period of employment after which a worker has to be affiliated to the pension scheme) of one year would oblige companies to affiliate workers who have a fixed contract and do not stay with the company, and would therefore only accumulate pension rights over the period of the fixed-term contract exceeding one year;
    - a vesting period (i.e. the period of scheme membership after which a worker acquires rights) of two years could lead to burdensome administration since the amount of rights accumulated after two years is small.

12. The draft directive should therefore not deal with minimum age of affiliation, the waiting period and the vesting period.

13. Finally, the additional period allowed for implementation of the provision on vesting time, although welcome, is not sufficient to address these concerns.

Pension promises have a very long-term perspective (often decades) and a five-year extension would not sweep away the fundamental issue of increased costs due to a lowering in the vesting periods.

14. Regarding the provision on reimbursement or transfer of employees' contributions, UNICE 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 transferred or reimbursed is misleading and could be interpreted as referring to the contributions paid by employers. It should therefore be clarified that it does not refer to the employers' contributions.

Preservation of dormant pension rights (article 5)

15. The Commission proposal requires Member States to adopt measures they deem necessary in order to ensure a fair adjustment of dormant pension rights so as to avoid outgoing workers being penalised (article 5.1.). Some flexibility is allowed for by giving Member States the possibility to allow supplementary pension schemes not to preserve acquired rights but to use a transfer or payment of a capital sum representing the acquired rights when these do not exceed a threshold to be established by the Member State concerned (article 5.2.).

16. In UNICE's view, article 5.1. could be misinterpreted as meaning a compulsory indexation of dormant rights. European employers oppose any obligatory indexation imposed from the EU level. Decisions on indexation or other means to preserve rights can only be chosen by companies or social partners in Member States, taking into account various economic variables. Imposing indexation of rights for a worker for whom contributions are no longer being made would be unacceptable.

17. Furthermore, reasoning in terms of preservation of rights does not make sense in the case of defined contribution schemes where the value of the accrued capital depends on developments in capital markets and returns on investment.

18. UNICE believes that the directive should not deal with the issue of preservation of dormant rights and therefore article 5 should be deleted.

Transferability (article 6 and 9)

19. According to the Commission proposal, workers will be able to obtain on request and within 18 months after termination of their employment the transfer within the same Member State or to another Member State of all his acquired pension rights. Furthermore, article 6.2. requests that where actuarial estimates and those relating to the interest rate determine the value of the acquired rights to be transferred, these should not penalise the outgoing worker. Article 6.3. foresees that under the supplementary pension scheme to which the rights are transferred, the rights should be preserved at least to the same extent as dormant rights.

20. With regard to transferability, European employers have the following concerns regarding the Commission proposal:

- The formulation in article 6.2. could lead to legal uncertainty. It should be reworded to ensure pension funds are able to calculate the transfer value taking into account the actuarial equilibrium of the scheme. Moreover, UNICE believes that the transfer should not be imposed, but should be subject to mutual agreement between all parties concerned.

- The provision in article 6.3. foreseeing that under the supplementary pension scheme to which the rights are transferred, "rights should be preserved at least to the same extent as dormant rights" can be interpreted in two ways. Both are unacceptable. In the first interpretation, this could mean that the receiving scheme must preserve the transferred rights in the same way as the old scheme would have preserved them if they were left dormant in this old scheme. This will be unacceptable and unworkable since it would oblige the new scheme to become responsible for implementing commitments and funding liabilities initiated by the old scheme. In the second interpretation, it can mean that the receiving scheme has to preserve the transferred rights in the same way as it does for its “own” dormant rights. This would not make sense since the intention of transferring accrued rights from one scheme to another is that it guarantees continuity of accrual of these pension rights in the context of the new scheme along the same lines as other active participants in the new scheme. In general these conditions are more favourable than those applied to the preservation of dormant rights. In addition it would force schemes to keep separate administrative streams for newly accrued rights in the present scheme and transferred rights from the old scheme. This part of provision in article 6.3. should therefore be deleted.

21. Article 9.3. allows Member States to exempt pay-as-you-go schemes, book reserves and support schemes from the application of article 6.1. which sets out the right for workers to transfer their acquired rights. Member States which want to use this provision have to notify it to the Commission and explain the reasons for the exemption. Article 10 foresees that ten years after the transposition date foreseen in the draft directive (1 July 2008), the Commission should draw up a report on the application of this provision and propose, if appropriate, a revision of the directive.

22. UNICE welcomes the exemption in article 9.3. Nevertheless, it asks for a permanent exemption of these schemes from the transferability requirement. Reasoning in terms of transferability does not make sense in the case of book reserves or relief funds since pension rights are paid directly from the company’s assets. They are therefore not funded and are not associated with an employee before the moment they are due. Should these schemes, which continue to form the lion's share of occupational pension provision for example in Germany, be required to transfer the rights, companies would be obliged to fund these pension promises in order to be able to pass them to the outgoing

workers. This could lead to significant liquidity problems, even threatening the solvency of companies.

23. Transferability does not make sense in the case where the supplementary pension schemes are inter-twined with the first pillar pension schemes (for example in Finland). In such schemes, the level of supplementary pensions cannot be determined prior to retirement since it depends on the level of the state pension upon retirement. It is therefore necessary to add a provision in article 6 stating that Member States may exempt such supplementary pension schemes from obligations to transfer pension rights.

24. Finally, Member States should have the possibility to exempt from both the preservation and transferability schemes which are not part of the contractual employment relationship whether collectively or individually agreed and which are therefore not set-up, financed and operated because of a contractual employment relationship. Such schemes exist, for instance, in Finland where they only cover a small part of the workforce and provide a small amount of pension and are not an obstacle to labour mobility.

Information (article 7)

25. The proposal also foresees information requirements for employees going beyond those required under the directive 2003/41/EC on institutions for occupational retirement provision. The Commission proposal foresees that Member States should adopt measure to ensure that workers are informed of how a termination of employment will affect their supplementary pension rights. In its explanatory memorandum, the Commission explains that this means that information should be given to every potentially outgoing worker, irrespective of whether or not he is a member of a scheme on how terminating an employment relationship could affect his supplementary pension rights.

26. UNICE agrees that information as to pensions rights accrued should be provided regularly to all scheme members and that upon request workers should be provided with information as to various options in case of job mobility. Nevertheless, going beyond that and obliging pension providers to give detailed information as to what might happen to pension rights in a hypothetical case of leaving the company to all employees at any time is burdensome and will create unjustified costs.

Conclusions

27. UNICE fully supports the aim of facilitating labour mobility within the EU. However, at the same time, Europe needs to reform pension systems to make them financially sustainable in the face of demographic ageing. It is therefore extremely important to ensure that the EU directive does not harm the development of supplementary pensions in Europe. The Commission proposal for a directive could fail on both objectives. Furthermore, the proposal interferes with the responsibilities of national social partners to agree on the arrangements for and the content of supplementary pension schemes.

28. European employers therefore call for a radical modification of the text to address these major shortcomings and to ensure an appropriate balance between costs for pension providers and benefits in terms of mobility. In this context, it should also be considered whether other types of voluntary instruments would not be more appropriate to promote transferability of supplementary pensions.

***