

# EUROPEAN PARLIAMENT

2004



2009

---

*Committee on Employment and Social Affairs*

PROVISIONAL  
**2005/0214(COD)**

31.5.2006

**\*\*\*I**

## **DRAFT REPORT**

on the proposal for a directive of the European Parliament and of the Council  
on improving the portability of supplementary pension rights  
(COM(2005)0507 – C6-0331/2005 – 2005/0214(COD))

Committee on Employment and Social Affairs

Rapporteur: Ria Oomen-Ruijten

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission.)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

## CONTENTS

	<b>Page</b>
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION .....	5
EXPLANATORY STATEMENT .....	15



## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council on improving the portability of supplementary pension rights (COM(2005)0507 – C6-0331/2005 – 2005/0214(COD))

(Codecision procedure: first reading)

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2005)0507)<sup>1</sup>,
  - having regard to Article 251(2) and Articles 42 and 94 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0331/2005),
  - having regard to Rule 51 of its Rules of Procedure,
  - having regard to the report of the Committee on Employment and Social Affairs and the opinions of the Committee on Economic and Monetary Affairs and the Committee on Women's Rights and Gender Equality (A6-0000/2006),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

### Amendment 1 Recital 6

***(6) In order to ensure that the conditions for acquiring supplementary pension rights do not undermine the exercise of the right of workers to freedom of movement within the European Union, limits must be established concerning the conditions governing the acquisition of such rights so that workers, when they exercise their right to freedom of movement or move within a Member State, can receive a satisfactory pension at the end of their career.***

***(6) Provisions must be established governing the acquisition, retention and transfer of pension rights so that labour mobility is not hampered within the EU and mobile workers can receive a satisfactory pension at the end of their career.***

<sup>1</sup> OJ C ... / Not yet published in OJ.

Amendment 2  
Recital 6 a (new)

***(6a) At present, workers who change jobs several times during their career are regularly confronted with long contribution periods as a result of which they are unable or less able to accumulate a satisfactory supplementary pension.***

Amendment 3  
Recital 6 b (new)

***(6b) Long contribution periods are particularly disadvantageous for young workers, temporary workers, agency workers and people who stop working temporarily, for example, in order to look after children or other close relations.***

Amendment 4  
Recital 7

***(7) Steps must also be taken to ensure a fair adjustment of dormant rights so as to avoid that outgoing workers are penalised. This objective could be achieved by adjusting dormant rights in line with a variety of reference measures, including inflation, wage levels, or pension contributions which are in the course of being paid, or the rate of return on assets under the supplementary pension scheme.***

***(7) Steps must also be taken to ensure equal treatment of dormant rights. This objective will be achieved by linking dormant rights to the rights of retired scheme members so that, when the rights of retired scheme members are adjusted, the same happens to the pension rights of dormant scheme members.***

Amendment 5  
Recital 9

***(9) Workers who change jobs must be granted the possibility of choosing either to retain their pension rights acquired under the original supplementary pension scheme***

***(9) Workers who change jobs or take a new job after a period of unemployment or inactivity must be granted the possibility of choosing either to retain their***

or to transfer the corresponding sum to another supplementary pension scheme, including one in another Member State.

pension rights acquired under the original supplementary pension scheme or to transfer the corresponding sum to another supplementary pension scheme, including one in another Member State.

Amendment 6  
Recital 10

*(10) For reasons of financial sustainability of supplementary pension schemes, the Member States have the possibility in principle to exempt unfunded schemes from the obligation to allow workers to transfer acquired rights. However, to ensure equal treatment for workers covered by funded schemes and workers covered by unfunded schemes, Member States should endeavour to progressively improve the transferability of rights from unfunded schemes.*

*deleted*

Amendment 7  
Recital 15

*(15) In view of the need to take account of the effects of this Directive, in particular on the financial sustainability of supplementary pension schemes, the Member States may be granted more time in which gradually to implement those provisions which are likely to have effects of this kind.*

*deleted*

Amendment 8  
Article 1

The aim of this Directive is to facilitate **the exercise of** the right of workers to freedom of movement and **of the right to occupational** mobility within the **same Member State**, by reducing the obstacles created by certain rules governing supplementary pension schemes in the

The aim of this Directive is to facilitate the right of workers to freedom of movement and **labour** mobility within the **EU**, by reducing the obstacles created by certain rules governing supplementary pension schemes in the Member States.

Member States.

Amendment 9  
Article 2

This Directive applies to supplementary pension schemes apart from the schemes covered by Regulation (EEC) No 1408/71.

This Directive applies to **all** supplementary pension schemes apart from the schemes covered by Regulation (EEC) No 1408/71 **but only to the entitlements allocated after the entry into force of this directive.**

Amendment 10  
Article 3(b)

(b) 'supplementary pension scheme' means any occupational scheme established in conformity with national legislation **and practice, such as a group insurance contract, a pay-as-you-go scheme agreed by one or more branches or sectors, a funded scheme or a pension promise backed by book reserves,** or any collective or other comparable arrangement intended to provide a supplementary pension for employed **or self-employed** persons;

(b) 'supplementary pension scheme' means any occupational scheme established in conformity with national legislation **or practice by companies** or any collective or other comparable arrangement intended to provide a supplementary pension for employed persons;

Amendment 11  
Article 3(c)

(c) 'scheme members' means those persons whose occupation entitles them or is likely to entitle them to a supplementary pension in accordance with the provisions of a supplementary pension scheme;

(c) 'scheme members' means those persons whose occupation entitles them or, **after the requirements for scheme membership have been satisfied,** is likely to entitle them to a supplementary pension in accordance with the provisions of a supplementary pension scheme;

Amendment 12  
Article 3(f)

(f) 'outgoing worker' means a worker who, before becoming eligible for a pension, leaves an employment relationship through which he has acquired pension rights **or**

(f) 'outgoing worker' means a worker who, before becoming eligible for a pension, leaves **voluntarily or otherwise** an employment relationship through which he



*could have acquired such rights by remaining in that employment relationship;*

has acquired pension rights;

Amendment 13  
Article 3(j)

(j) 'transfer' means the payment by a supplementary pension scheme of **a capital sum** representing all or part of the pension rights acquired under the scheme, with **the possibility of transferring** this sum to a new supplementary pension scheme **or another financial institution which provides pension rights.**

(j) 'transfer' means the payment by a supplementary pension scheme of **capitalised entitlements** representing all or part of the pension rights acquired under the scheme, with this sum **being transferred** to a new supplementary pension scheme.

Amendment 14  
Article 3(j a) (new)

***(ja) 'Voluntary employer's contributions' means contributions made by an employer but not financed by the employee under a supplementary pension scheme on the basis of company custom, a company agreement or the provisions of a collective agreement.***

Amendment 15  
Article 3(j b) (new)

***(jb) 'Notification of entitlement to a supplementary pension' means initial admission of an employee to a supplementary pension scheme.***

Amendment 16  
Article 4(a)

(a) 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;

(a) where pension rights have not yet been acquired when employment is terminated, all the **entitlements acquired** by, **and** on behalf of, the outgoing worker are reimbursed or transferred **with only voluntary** contributions paid **by the**

*employer being forfeited;*

Amendment 17  
Article 4(a a) (new)

*(aa) Additional voluntary contributions paid only by the employer during the reference period referred to in Article 4(d) shall be retained by the employer.*

Amendment 18  
Article 4(c)

(c) a worker may join a supplementary pension scheme *after a maximum period of employment of one year or, where necessary, no later than* once he has reached the required minimum age;

(c) a worker may join a supplementary pension scheme once he has reached the required minimum age *except where otherwise stipulated in a collective agreement;*

Amendment 19  
Article 5, paragraph 1

1. Member States shall adopt the measures they deem necessary in order to *ensure a fair adjustment of dormant pension rights so as to avoid that outgoing workers are penalised.*

1. Member States shall adopt the measures they deem necessary in order to *guarantee equal treatment between dormant scheme members and retired scheme members.*

Amendment 20  
Article 5, paragraph 2

2. The Member States may *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 established by the Member State concerned.* The Member State shall inform the Commission of the threshold applied.

2. The Member States *or social partners* may *establish* a threshold *where the capitalised entitlement is transferred.* The Member State shall inform the Commission of the threshold applied.

Amendment 21

Article 6, paragraph 1

1. Unless a capital payment is made in accordance with Article 5(2), the Member States shall take the necessary action to ensure that if an outgoing worker is not covered by the same supplementary pension scheme in his new job, he may ***obtain on request and*** within ***18*** months after ***the termination of his*** employment the transfer within the same Member State or to another Member State of all his acquired pension rights.

1. Unless a capital payment is made in accordance with Article 5(2), the Member States shall take the necessary action to ensure that if an outgoing worker is not covered by the same supplementary pension scheme in his new job, he may ***make application*** within ***six*** months after ***taking up this new*** employment ***for*** the transfer within the same Member State or to another Member State of all his acquired pension rights. ***Any transfer of acquired pension rights must be completed within 18 months of taking up the new employment relationship.***

***Transfer of the capital sum shall entail full release from liability for the pension scheme making such payment and for the previous employer.***

Amendment 22  
Article 6, paragraph 2

2. Member States, in accordance with their national practice, shall ensure that where actuarial estimates and those relating to the interest rate determine the value of the acquired rights to be transferred, these shall ***not penalise the outgoing worker.***

2. Member States, in accordance with their national practice, shall ensure that where actuarial estimates and those relating to the interest rate determine the value of the acquired rights to be transferred, these shall ***be evaluated in accordance with recognised principles and the principle of equality shall be upheld.***

Amendment 23  
Article 6, paragraph 3

3. Under the supplementary pension scheme to which the rights are transferred, the rights shall not be subject to conditions governing acquisition and shall be preserved ***at least to the same extent as dormant rights in accordance with Article 5(1).***

3. Under the supplementary pension scheme to which the rights are transferred, the rights shall not be subject to conditions governing acquisition and shall be preserved ***in the same way as the rights of its active scheme members.***

Amendment 24  
Article 6, paragraph 4

4. Where administrative costs need to be paid during a transfer, the Member States shall take the necessary action to prevent them from being disproportionate to the length of time the outgoing worker has been a scheme member.

4. Where administrative costs need to be paid during a transfer, the Member States shall take the necessary action to prevent them from being disproportionate to the length of time the outgoing worker has been a scheme member **and shall ensure that existing tax provisions are not an obstacle to such a transfer.**

Amendment 25  
Article 7, paragraph 1

1. Without prejudice to the obligations of the institutions for occupational retirement provision stemming from Article 11 of Directive 2003/41/EC, concerning the information to be provided to members and beneficiaries, the Member States shall adopt the necessary measures to ensure that **workers** are informed by the person responsible for managing the supplementary pension scheme of how a termination of employment will affect their supplementary pension rights.

1. Without prejudice to the obligations of the institutions for occupational retirement provision stemming from Article 11 of Directive 2003/41/EC, concerning the information to be provided to members and beneficiaries, the Member States shall adopt the necessary measures to ensure that **beneficiaries** are informed by the person responsible for managing the supplementary pension scheme of how a termination of employment will affect their supplementary pension rights.

Amendment 26  
Article 7, paragraph 3

3. A deferred beneficiary **who so requests** shall receive **from the person responsible for managing the supplementary pension scheme** information **on dormant pension rights and on all changes to the rules governing the supplementary pension scheme concerning them.**

3. A deferred beneficiary shall receive information **in the same way as the members of** the pension scheme.

Amendment 27  
Article 9, paragraph 2

2. Notwithstanding the first paragraph, the Member States may be granted, where necessary, an extension of **60** months

2. Notwithstanding the first paragraph, the Member States may be granted, where necessary, an extension of **24** months

starting on 1 July 2008 in order to achieve the objective referred to in Article 4 (d). Any Member State wishing to be granted this extension shall inform the Commission accordingly, indicating the provisions and schemes concerned and the specific reasons for the extension.

starting on 1 July 2008 in order to achieve the objective referred to in Article 4 (d). Any Member State wishing to be granted this extension shall inform the Commission accordingly, indicating the provisions and schemes concerned and the specific reasons for the extension.

Amendment 28  
Article 9, paragraph 3

***3. Notwithstanding the first paragraph, and in order to take account of specific conditions duly substantiated and linked to financial sustainability of supplementary pension schemes, the Member States may exempt pay-as-you-go schemes, support relief funds and companies which constitute book reserves with a view to paying pensions to their workers from the application of Article 6(1). Any Member State wishing to make use of this possibility shall immediately notify the Commission, indicating the schemes concerned and the specific reasons for the exemption, together with the measures adopted or planned with a view to improving the transferability of rights from the schemes concerned.***

***deleted***

Amendment 29  
Article 10, paragraph 1

1. Every five years after 1 July 2008, the Commission shall draw up a report for submission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the basis of the information provided by the Member States.

1. Every five years after 1 July 2008, the Commission shall draw up a report for submission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the basis of the information provided by the Member States. ***This report shall also include an assessment of the readiness of employers to offer a supplementary pension scheme following the entry into force of this directive.***

Amendment 30  
Article 10, paragraph 2

2. No later than 10 years after 1 July 2008, the Commission shall draw up a specific report on the application of *Article 9(3)*. ***On the basis thereof, if appropriate, the Commission shall present a proposal containing any amendments to this Directive which prove necessary in order to ensure equal treatment in terms of transferability of acquired rights for workers covered by funded schemes and workers covered by schemes as referred to in Article 9(3).***

2. No later than 10 years after 1 July 2008, the Commission shall draw up a specific report on the application of *this directive in order, where appropriate, to submit the required amendments to Parliament and the Council.*

## EXPLANATORY STATEMENT

This proposal to improve the portability of supplementary pension rights comes at a crucial time. The European Union is going grey and the economy is going global. The European Union's capacity to cope with these irreversible economic and social changes and exploit them to its own advantage must be radically improved. The Member States have therefore begun in recent years to reform their labour markets and systems of social security, including pension systems. One of the challenges in so doing is to combine greater flexibility and mobility on the labour market with activating and affordable forms of social security. Both employees and employers must be able to exploit fully the advantages of a flexible labour market where the concept of job security makes way for security of employment.

The ageing population means that it is even more important for young people to start saving up early for their pension via their employer. At the same time, there is a trend in some Member States towards (second pillar) occupational pension schemes no longer simply supplementing statutory (first pillar) pension provision but replacing it altogether. This makes it even more important for employees to join a supplementary pension scheme at an early date and to be able to take acquired entitlements with them to their next employer. There is also a noticeable trend towards designing pension systems increasingly according to the 'defined contribution' principle. Compared with 'defined benefit' arrangements, 'defined contribution' arrangements offer much less guarantee of a satisfactory pension. The resulting consequences, i.e. pensioners living in poverty, are to be seen in some Member States.

The present age requires a flexible, mobile approach from employees. Mobility must therefore be rewarded instead of being penalised. Alas, the reality is somewhat different. Under some supplementary pension schemes, for example, a 30-year-old employee, with eight years work experience with three different employers, has still not acquired any entitlement at all to a supplementary pension.

In broad outline your rapporteur strongly supports the Commission proposal. Your rapporteur shares the Commission's view that it is insufficient simply to agree at European level rules for calculating the transfer of pension rights from one employer to another whether or not based in the same Member State. In order to make flexibility and labour mobility worthwhile and to ensure that employees save enough for their pensions, provisions need to be laid down governing the acquisition, retention and transfer of pension rights. **Article 4** of the proposal provides an appropriate framework for this purpose. Social partners retain the freedom to conclude better agreements.

On three main points, however, your rapporteur wishes to modify the Commission proposal.

### 1. Scope of directive and compulsory transferability (Articles 2, 6(1) and 9(3))

Great differences exist between the supplementary pensions schemes of the Member States. As well as widely varying conditions governing the acquisition, retention and transfer of pension entitlements, the modes of financing also differ. In the case of arrangements based on capitalisation where the pension capital is situated outside the company, it is easier to transfer pension rights from one system to another than, for example, in the case of pay-as-you-go

schemes, relief funds and systems based on book reserves. In order to accommodate the problems of financial sustainability of the latter schemes, the Commission proposes that they may be exempted temporarily from the requirement to transfer pension entitlements.

The Commission's exemption option will in practice result in compulsory transfer probably being applied very selectively. Your rapporteur wants to see this directive given the broadest possible scope. At the same time, it is very difficult to intervene in existing arrangements.

Your rapporteur therefore proposes the following solution:

- the directive to be applicable solely to newly allocated pension entitlements
- the exemption option in **Article 9(3)** to be deleted, i.e. there are to be no exceptions from compulsory transferability.

## 2. Treatment of dormant pension rights (Article 5)

Employees who leave their acquired pension rights ('as dormant') with their former employer must not be penalised. However, the Commission proposal is unclear as to how this objective is to be achieved. It is therefore important to clarify the category in respect of which dormant scheme members may not be placed at a disadvantage and how far this requirement for equal treatment goes. It must be crystal clear that there can be no question of compulsory indexation linked to active scheme members. Your rapporteur accordingly proposes that Member States must guarantee equal treatment between dormant scheme members and retired scheme members.

## 3. Position of temporary workers and returners to the labour market (Article 6)

The Commission proposes that employees must make application for the transfer of their pension rights within 18 months of terminating their (old) employment relationship. This may impact adversely on persons leaving their job against their will or stopping work temporarily in order to look after children or other close family. If these categories of employee accept another job at a later date (later than 18 months) they would no longer be able to exercise their right of transfer. Your rapporteur accordingly proposes offering employees the option of submitting an application for transfer of their pension rights for up to six months after acceptance of a new employment relationship.