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REPORT

on the communication from the Commission 'Towards a single market for supplementary pensions – results of the consultations on the Green Paper on supplementary pensions in the single market'
(COM(1999) 134 – C5-0135/1999 – 1999/2131(COS))

Committee on Economic and Monetary Affairs

Rapporteur: Wilfried Kuckelkorn

Draftsmen(*):

Marie-Thérèse Hermange, Committee on Employment and Social Affairs

Enrico Ferri, Committee on Legal Affairs and the Single market

(* HUGHES procedure)

PE 232.246

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(* HUGHES PROCEDURE)

PROCEDURAL PAGE

By letter of 17 May 1999 the Commission forwarded to Parliament its communication 'Towards a single market for supplementary pensions – results of the consultations on the Green Paper on supplementary pensions in the single market' (COM(1999) 134 - 1999/2131(COS)).

At the sitting of 17 September 1999 the President of Parliament announced that he had referred the communication to the Committee on Economic and Monetary Affairs as the committee responsible and to the Committee on Employment and Social Affairs, the Committee on Legal Affairs and the Single market and the Committee on Women's Rights and Equal Opportunities for their opinions (C5-0135/1999).

The Committee on Economic and Monetary Affairs had appointed Wilfried Kuckelkorn rapporteur at its meeting of 27 July 1999.

At the sitting of 17 September 1999 the President announced that the report would be drawn up by the Committee on Economic and Monetary Affairs together with the Committee on Legal Affairs and the Single market in accordance with the Hughes procedure, and at the sitting of 29 October 1999 she announced that the report would be drawn up by the Committee on Economic and Monetary Affairs together with the Committee on Employment and Social Affairs in accordance with the Hughes procedure.

The Committee on Economic and Monetary Affairs considered the communication and draft report at its meetings of 27 January 2000, 21 February 2000 and 29 February 2000.

At the last meeting it adopted the motion for a resolution by 19 votes to 15.

The following were present for the vote: Christa Randzio-Plath, chairman; José Manuel García-Margallo y Marfil, vice-chairman; Hans Udo Bullmann, for the rapporteur; Richard A. Balfe, Maria Berger (for Peter William Skinner pursuant to Rule 153(2)), Hans Blokland (for Nigel Paul Farage), Ieke van den Burg (for Simon Francis Murphy), Jonathan Evans, Carles-Alfred Gasòliba i Böhm, Robert Goebbels, Magdalene Hoff (for Pervenche Berès pursuant to Rule 153(2)), Ian Stewart Hudghton (for Pierre Jonckheer), Christopher Huhne, Juan de Dios Izquierdo Collado (for Fernando Pérez Royo), Giorgos Katiforis, Piia-Noora Kauppi, Gorka Knörr Borràs, Werner Langen (for Christoph Werner Konrad), Astrid Lulling, Jules Maaten (for Karin Riis-Jørgensen), Thomas Mann (for Karl von Wogau), Ioannis Marinos, Naranjo Escobar (for Alejandro Agag Longo), José Javier Pomés Ruiz, John Purvis (for Staffan Burenstam Linder), Alexander Radwan, Bernhard Rapkay, Alexander de Roo (for Alain Lipietz), Olle Schmidt, Charles Tannock, Marianne L.P. Thyssen, Helena Torres Marques, Bruno Trentin, Theresa Villiers. The opinions of the Committee on Employment and Social Affairs, the Committee on Legal Affairs and the Single market and the Committee on Women's Rights and Equal Opportunities are attached.

The report was tabled on 29 February 2000.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

MOTION FOR A RESOLUTION

European Parliament resolution on the communication from the Commission 'Towards a single market for supplementary pensions – results of the consultations on the Green Paper on supplementary pensions in the single market' (COM(1999) 134 – C5-0135/1999 – 1999/2131(COS))

The European Parliament,

- having regard to the communication from the Commission 'Towards a single market for supplementary pensions' (COM(1999) 134 – C5-0135/1999)¹,
- having regard to the Commission's Green Paper of 10 June 1997 on supplementary pensions in the single market (COM(1997) 283 – C4-0392/1997)²,
- having regard to Council Directive 98/49/EC on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community³,
- having regard to its resolution of 30 April 1998 on the proposal for a Council Directive on safeguarding the supplementary pension rights of employed and self-employed persons moving within the European Union⁴,
- having regard to Directives 79/267/EEC⁵, 90/619/EEC⁶ and 92/96/EEC⁷ on life assurance undertakings,
- having regard to Directives 85/611/EEC⁸ and 88/220/EEC⁹ on investment companies,
- having regard to Article 47(1) of its Rules of Procedure,
- having regard to the report of the Committee on Economic and Monetary Affairs and the opinions of the Committee on Employment and Social Affairs, the Committee on Legal Affairs and the Single market and the Committee on Women's Rights and Equal Opportunities (A5-0053/2000),

A. whereas the Commission communication is concerned solely with occupational supplementary, funded pension schemes, such as pension funds, investment funds, wrappers

¹ OJ not yet obtainable

² OJ C398, 21.12.1998, p. 18

³ OJ L 209, 25.7.1998, p. 46

⁴ OJ C 152, 18.5.998, p. 65

⁵ OJ L 63, 13.3.1979, p. 1

⁶ OJ L 330, 29.11.1990, p. 50

⁷ OJ L 360, 9.12.1992, p. 1

⁸ OJ L 375, 31.12.1985, p. 3

⁹ OJ L 220, 19.4.1988, p. 31

etc. and any legislative initiatives derived from it will not directly result in structural changes to first pillar national pension schemes,

- B. whereas the structure of supplementary pensions is depending on the basic state scheme (=1st pillar pensions), which in many Member States is based on inter-generation compacts and, in accordance with the subsidiarity principle, is solely the Member States' responsibility. However, greets with satisfaction the fact that the Member States are looking for ways to ensure the sustainability of state schemes in the light of their increasing cost,
- C. whereas the state safety net has made it possible to ensure an adequate standard of living and limit poverty and whereas this model should remain the cornerstone of the European Union's social insurance system,
- D. whereas retirement provision is one of the greatest political and economic challenges of our times, whereas not only in Europe, but world-wide, nations are facing the situation that state pension schemes cannot be sustained in their present form; whereas in the past the voluntary pension instruments in the field of the second pillar in Europe have not been able to reach out to small and medium-sized companies (SME) which are the largest employers in the Union and that is why SME are often deterred by the administrative and other costs as well as the liability risks associated with traditional pension instruments; whereas especially SME in many member states express increasingly an interest in defined contribution schemes which do not oblige them to cover biometric risks and if we do not address this need, we will involve the risk of not reaching a large part of future pensioners in the Union,
- E. whereas neither funding nor pay-as-you-go can entirely prevent demographic tensions in future pension schemes in the European Union's Member States, but with funded pension schemes it is possible to make positive use of international growth effects for individual pension provision in a globalised capital and investment environment,
- F. whereas small and medium-sized companies (SMEs) which are the largest employers in the Union are often deterred by the administrative and other costs and liabilities associated with defined benefit schemes which may oblige them to cover biometric risks; whereas it is therefore important to include defined contribution schemes within the scope of a directive on supplementary pensions whether or not they cover biometric risks,
- G. whereas, particularly at the beginning of the 21st century, funded pension schemes have considerable development potential and the favourable trend in the capital markets may enhance this potential,
- H. whereas supplementary funded pensions will play an increasingly important role in covering the pension risk in old age in the European single market and so perform a decisive function as a complement to the statutory pension scheme; therefore notes that it is of utmost importance to improve returns on pension scheme investments without compromising their security,
- I. whereas providing safeguards for old age should be based on the fact that it is the goal of funded pensions to provide for an adequate level of retirement income at minimum cost while maintaining high level of security; whereas pension schemes may include optional

safeguards for old age, for surviving dependants and for invalidity (biometric risks); whereas the nature and scope of risk coverage should not be prescribed by the EU but should be determined individually by each employee himself/herself as leaving this kind of decision to the individual is consistent with the principle of subsidiarity,

- J. whereas defined-contributions systems without cover for biometric risks already exist in the European Union and their existence must not be jeopardised,
- K. whereas the stability and profitability of capital markets are increasingly influenced by the accumulation of pension capital, and therefore emphasises the significant impact of the greater investment flexibility on the capital markets in terms of improving liquidity and increasing the availability of capital for investment in order to benefit the job creation and promote European competitiveness,
- L. whereas the introduction of the euro improves the structure and function of the capital markets and thereby abolishes the need to lay down quantitative investment restrictions, which have proved to be contra-productive while generating sub-optimal performances, and call for their substitution by strict qualitative supervisory rules that in reference to investment operations suppose these are executed under the so called "prudent person"-principle to ensure adequate security for the pensioner,
- M. whereas existing supplementary pension products in the Community vary widely and are only partly covered by Community legislation; whereas not only an adjustment to existing Community legislation but also additional rules will therefore be needed if there is to be equal treatment and the differences are to be taken into account,
- N. whereas persons entitled to pensions in a closed supplementary pension scheme fund this scheme and are therefore eligible to participate in the governance of the pension scheme according to the legislation in several Member States, it should be noted that no such similar provisions exist for insurance industry and never have been discussed during the preparatory process for the life insurance directives,
- O. whereas the national disparities in the tax treatment of pension products, their complexity and specific characteristics, are major obstacles to labour mobility and freedom to provide services in the Union, demands the Commission to resume discussions in the Taxation Policy Group in order to adopt the EET-model according to which the pension is taxed only at the time of pension payout; notes that taxation during the pension payout period results in the accumulation of greater assets as a result of the compound interest effect and therefore makes higher economic growth possible, although some Member States must accept some losses of tax in the short term,
- P. whereas there is an urgent need for co-ordination of tax legislation and prudential rules if serious distortions of competition are to be avoided where suppliers of supplementary pension schemes have cross-border membership,
- Q. whereas freedom of movement as regards to maintaining acquired supplementary pension entitlements should first be resolved within the member states in order to secure that those remaining in the same member state while changing employer would not be treated

differently from those who move to an employer that situates in another member state; the vesting periods should be adjusted and rules should be laid down on cross-border membership in respect of all supplementary pension schemes,

- R. whereas the member states should not be entitled to discriminate against people who, for whatever reason whether choice of scheme or migration, pay into pension schemes outside the member state where they work,
1. Welcomes the Commission's intention to submit to the legislature – the Council and Parliament – a proposal for a directive on supplementary pensions, which must essentially establish a Community framework for the development of a genuine single market for pension funds by eliminating the obstacles to free choice of a pension fund, free movement of persons and freedom to provide services and to prevent double taxation, whilst recognising that levels of tax-relief remain matters for individual governments;
 2. Considers that national pension systems will inevitably be obliged to make increased use of funded schemes with a view to covering the cost of pensions; points out that it is up to the Member States to determine the pace of this transition;
 3. Notes that contributions to a pension fund constitute just one of many methods of making provision for old age;
 4. Emphasises that guaranteed pension cover is particularly important in every pension pillar, especially for people on a low income who consequently pay minimal contributions and may therefore expect no more than a low level of entitlements;
 5. Renews its commitment to the European social model, based on the solidarity principle, and to its effective social security systems founded on the conviction that economic and social progress are interlinked; considers, therefore, that social security should be regarded as a productive factor and thus that everyone's access to rights and benefits should be guaranteed while acknowledging that in this context, supplementary pension schemes can help to meet the challenges arising from demographic trends and high levels of unemployment in European countries, since they will complement pay as-you-go pension schemes without replacing them;
 6. Notes that combatting unemployment and the creation of stable and fulfilling jobs plays a decisive role in strengthening the financial efficiency of the first pillar of pension schemes, which is still the most important element in safeguards for old age;
 7. Reaffirms the continued validity of the approach taken in 1992 by the Council in its recommendations concerning, on the one hand, common criteria for sufficient levels of revenue and benefits in the social protection system, and on the other the convergence of objectives and policy in the field of social protection;
 8. Welcomes the new process of dialogue initiated by the Commission with the green Paper and continued with this communication in respect of supplementary pensions, a sensitive issue for European citizens;

9. Welcomes the proposal to establish a European Pensions Forum bringing together representatives of the Member States, pension funds and the social partners to monitor existing and future Community legislation;
10. Considers that prudential rules must ensure that funds are secure without being disproportionate to this objective, that these rules must be differentiated according to whether a scheme is internal or external to the enterprise, that only an internal financing (book reserve) scheme should provide a guarantee against insolvency, with the proviso that external financing schemes (insurance companies or pension fund) already provide a guarantee in case of bankruptcy of the employer;
11. Endorses the principle upheld by the Court of Justice that supplementary pensions, including compulsory schemes, do not come within the scope of Regulation 1408/71;
12. Calls on the Commission to take particular account in the directive of the principles established by the European Court of Justice concerning the social function of supplementary pension systems, which are to be found, for example, in the judgment it handed down in Case C-67/96;
13. Emphasises that the long term goal should be establishing community-wide pan-European pension schemes. These could first be introduced within the multinational companies and afterwards also for the industry-wide and cross-industry-wide, multi-employer and multi-employee schemes that could operate cross border membership; however notes, that a true single market can only be achieved if serious distortions of competition resulting from unequal national fiscal treatment of pensioners are eliminated in the single market;
14. Calls on the Commission to submit at the earliest opportunity a proposal for a directive on prudential rules for pension funds; calls for this proposal to be complemented by a proposal on the removal of obstacles to labour mobility and a proposal on the coordination of tax systems;
15. Stresses that ultimately complete freedom of investment presents the best guarantee of compliance with pension obligations and calls on the Commission, therefore, to lay down as a general rule in the planned proposals for directives on supplementary pensions in the internal market that Member States cannot compel pension funds to invest in particular categories of investment;
16. Considers that, in implementing a directive on pension funds, which has been needed for a long time, account must be taken of security aspects; account must in particular be taken of the investment process (the prudent person principle) and the prudent use of certain financial instruments concerned with long-term pension obligations;
17. Recommends to the Commission that pension funds shall not be restricted in their freedom to choose an investment manager, for parts or the whole of their assets, who is established in another Member State and duly authorized for this activity, according to directives

92/96/EEC, 89/646/EEC, 93/22/EEC and the Directive 85/611/EEC presently in process of amendment;

18. Recommends to the Commission that pension funds be allowed to invest freely and without restrictions in UCITS and other regulated collective investment schemes;
19. Endorses the goals set by the Commission but focuses on different means; Supports the proposal that quantitative prudential rules should be replaced by qualitative rules if it can be ensured that Community conditions relating to internal monitoring, external monitoring and monitoring by the supervisory authority, the priority of pensioners' rights in the event of the pension schemes' bankruptcy are adequately defined in a proposal for legislation; Opposes the propositions concerning insolvency insurance and finds that they restrict competition between pension schemes and life insurance companies;
20. Emphasises the importance of maintaining acquired pension rights, and regards as best solution for the *defined contribution schemes* the arrangement according to which pension schemes would pay the supplementary pensions to the employee when the employee reaches the retirement age; notes however, that there is not such solution regarding defined benefit schemes; Notes also that adjusting vesting periods is an important but problematic part of the free movement of workers in the single market; welcomes the creation of the Pensions Forum;
21. Regrets the fact that there is currently no consensus on Community legislation regarding supplementary pension vesting periods and calls therefore on the European social partners to open negotiations on a framework agreement at sectoral or European level on this subject; urges the Member States, Commission and the Council to stimulate such negotiations;
22. Recommends the adoption of legislative measures to facilitate transfers of acquired rights or cross-border affiliation to funds in order to ensure complete free movement of workers, both men and women, at the same time as the acquisition or preservation of pension entitlements;
23. Reiterates its calls for the establishment of European pension funds open to workers from a given company or group that has offices in several Member States;
24. Stresses that the growing importance of supplementary pension schemes is liable increasingly to hamper the free movement of workers unless European coordination rules are established in this area; calls therefore on the Commission, as a matter of urgency, to submit concrete options for proposals ensuring transferability of pension rights under supplementary pension schemes;
25. Considers that the preservation of acquired rights is essential when a spouse interrupts or abandons his or her work in order to devote himself or herself to his or her family or look after next of kin who are in need of assistance; considers that for the purpose of calculating pensions, certain periods devoted to the upbringing of children or care of family members ought to be taken into account; considers it desirable to provide for the possibility of continued voluntary or optional insurance to preserve and improve pension rights and guarantee a right to payment of the capital under certain conditions;

26. Calls on the Commission to take account in the future directive of the specific earning patterns of women, for example as regards vesting periods, and to build in mechanisms that will combat the current discrimination which is caused by those earning patterns;
27. Notes that account needs to be taken of the growth of atypical and non-continuous employment patterns, particularly among women workers, who still assume the bulk of family duties and are thus disadvantaged by long pension qualification periods geared to continuity of employment;
28. Notes that harmonisation of the vesting periods should, however, apply only to the schemes established after a certain date;
29. Considers that, in the event of departure before retirement age, subscribers to a supplementary pension scheme should be able to request payment, in the form of capital, of the value of their acquired rights on certain conditions, inter alia if moving to another enterprise abroad or reducing their working time from age 55;
30. Finds that the best solution to the taxation problem is the model that relies on the taxation of the pension payout while exempting from tax contributions to the fund and returns within the fund (EET-model), and calls on the Member States to find solutions that, in the medium term, permit taxation of pension payouts in the single market so that fiscal benefits may also accrue from long-term growth effects and, above all, the double taxation of pensions that still exists in some places may be eliminated;
31. Welcomes specifically, therefore, the fact that the working group on tax policy has started work on the tax treatment of cross-border contributions of migrant workers in relation to occupational and sectoral systems and calls on the working group to extend its discussions in due course to other aspects of taxation on supplementary pensions and life assurance contracts with the aim of eliminating the double taxation of pension benefits, which still exists in some cases;
32. Looks to see the promotion of supplementary pensions by direct funding, as referred to in the report on promotion of employee participation in profits and enterprise results (PEPPER report), taking a form which will also enable pensioners on below-average incomes to benefit from it (e.g. in the form not only of tax breaks but also of savings supplements);
33. Welcomes the specific reform proposals formulated in the Commission communication on the basis of the consultations conducted with the parties concerned after presentation of the Green Paper and calls on the Commission to present as soon as possible the planned draft versions of the relevant legislation in the form of a directive;
34. Criticises the fact that insufficient attention has been paid in the Commission communication to the social policy aspects and, in particular, the specific women's issues and conclusions to be drawn therefrom in respect of equality of opportunity; this applies above all with regard to resolving the problems with transfers, qualifying periods, the entitlements of divorced persons, assisting spouses, self-employed persons and survivors;

35. Insists that the Member States implement more consistently the principle of 'equal pay for equal work' enshrined in Article 141 of the EC Treaty in order to guarantee equality for women and men at work and in retirement; any contractual arrangement infringing the principle of equal treatment for women and men should be invalid;
36. Points out that because of wage discrimination women also remain more dependent than men on the retention of state pension schemes since in many cases they lack the resources to build up a supplementary pension provision;
37. Believes it is essential in the interests of a fully functioning internal market to promulgate legislation aimed at removing the existing obstacles to the free choice of pension fund, to freedom of movement and to the free provision of services;
38. Recommends legislative measures to facilitate the transfer of pension entitlements and/or cross-border membership of pension funds in order to guarantee unrestricted freedom of movement of male and female workers when acquiring and/or preserving pension entitlements;
39. Considers the preservation of acquired pension entitlements to be indispensable where a spouse interrupts or terminates gainful employment in order to look after the family or take care of dependants in need; advocates that certain periods spent bringing up children and looking after family members in need of care should be credited for the purposes of calculating pensions; believes the possibility of voluntary additional provision or of optional provision to preserve and top up pension rights as well as for the purposes of creating an entitlement to payment of the capital to be appropriate under certain circumstances;
40. Calls once again on the Commission to present a revised version of the existing directives in the area of equal treatment for women and men in statutory and occupational social security schemes;
41. Insists on appropriate representation of women on the planned Pensions Forum to be set up and on this body being allocated equal opportunities issues as its responsibility;
42. Instructs its President to forward this resolution to the Commission and Council.

EXPLANATORY STATEMENT

PRELIMINARY REMARKS

1. The Commission's Green Paper of July 1997 revived the debate on the need for a common legal framework to govern supplementary pensions in the single market and so set the decision-making process in motion again. In the Green Paper the Commission calls for an improvement in the efficiency of the European capital market through the creation of a common market in pension products following the introduction of the single currency, the euro. The focus here is on the proposal that provision should be made for cross-border offers and means of acquiring supplementary pensions in the single market through the mutual recognition of supervisory systems. Prudential supervision and authorisation in one Member State would then be enough for a pension fund to take commercial advantage of the common market. The Commission also points out that the ability of a common market in pension products to function depends on better coordination in the fiscal sphere and on the removal of obstacles to free movement. The aim of the Green Paper was to align the three problem areas (prudential rules, taxation and freedom of movement) associated with supplementary pensions in the single market with the wide variety of national and European interests. The results of the consultations on these problem areas are documented in the Commission communication, which was published in May 1999 and has since been forwarded to Parliament.
2. The Green Paper on supplementary pensions in the single market follows on from the proposal of 21 October 1991 for a directive relating to the freedom of management and investment of funds held by institutions for retirement provision¹. This proposal, which was intended to govern the cross-border freedom to provide services in the area of fund management and investment, limited the restrictions which the Member States might impose on prudential rules. The directive was, however, also to have applied to institutions operating essentially on a pay-as-you-go basis with compulsory membership and limited reserves. Lack of agreement among the Member States in the Council prompted the Commission to withdraw its proposal on 21 December 1994. The Commission communication of 17 December 1994 on the freedom of management and investment of funds held by institutions for retirement provision was declared void by the European Court of Justice following a complaint by France².
3. On the other hand, it did prove possible to adopt the third life assurance directive in 1993. This directive provides for life assurance undertakings to receive a 'European passport', i.e. there is mutual recognition of supervisory systems, which was achieved not least as a result of a cautious adjustment to the prudential rules in the single market. Supplementary pensions handled by life assurance undertakings are already governed by Community law. The same is true of pensions acquired through the purchase of shares in an investment fund³.

¹ OJ C 312, 31.12.1991, p. 3

² See OJ C 360, 17.12.1994, 94/C 360/08

³ See OJ L 63, 13.3.1979, p. 1; OJ L 330, 29.11.1990, p. 50; OJ L 360, 9.12.1992, p. 1, for life assurance undertakings; see OJ L 375, 31.12.1985, p. 3; OJ L 220, 19.4.1988, p. 31, for investment companies.

STRUCTURE OF PENSION PROVISION AND SUBSIDIARITY

4. A feature of pension provision in Europe is its national diversity. What the national systems in the EU do have in common is that they are based on three pillars. There are, however, major differences in the weighting and the financing of the various pillars (subsistence protection versus protection of living standards). The first pillar of pension provision is financed either from taxes or on a pay-as-you-go basis. The latter means that pension rights are acquired while the person entitled to a pension is still working through payment of the pensions of the current generation of pensioners. The first pillar, the compulsory state pension scheme, has been joined by a second, company pensions, and a third, private provision very largely based on the funding system.
5. Pension schemes have evolved as national systems financed in many Member States to a not inconsiderable extent by the pay-as-you-go method. As the latter is based on national inter-generation compacts, action by the Community is restricted by the subsidiarity principle. Community legislation must not directly change the structure of the national pension scheme; nor must it lay down rules that are bound to have the indirect effect of triggering a structural change of this kind. The Commission is aware of this situation and therefore concentrates in its communication on improving the ability of funded supplementary pension provision to function in the single market. Its development potential is rated very high, a reference being made to the opportunities for an increase in efficiency through the single market. The rapporteur endorses the Commission's opinion in this respect, but also shares its view that, while supplementary schemes are no 'panacea' for demographic fluctuations, they offer greater flexibility since investment is not restricted to the one country, as in the case of the pay-as-you-go method. It is also important to point out, however, that this flexibility may have highly adverse effects on the development of pensions if monitoring of the investment framework fails and neglects risk spreading. The European legislature must always take this into account in the subsequent directives associated with pension products.

PENSIONS AND EQUAL TREATMENT OF PENSION FUNDS

6. The purpose of funded pension schemes is to cover the pension risk in old age. If the second or third pillar of pension provision is to be understood as such, it must exclude options for early withdrawal and include an insurance aspect, i.e. cover biometric risks. It is only through the coverage of biometric risks (such as invalidity and survivors' pensions or the length of the pension period) that the second and third pillars acquire their function of supplementing the first pillar and thus their importance in social policy terms.
For two reasons in particular it is to be recommended that future proposals for legislation on pensions in the single market concern only pension products which cover biometric risks and exclude repurchase rights:
 - (a) Providing for old age is not primarily a capital formation process but a process of providing socially adequate safeguards against certain risks in life. Capital formation is a means to an end and must therefore be subordinated to the actual objective.

- (b) In prudential terms it makes little sense to treat products that do not cover biometric risks as strictly as products that perform this insurance function. The planned directive on the supervision of supplementary pensions would be encumbered with unnecessary clauses if pure investment products were also defined as pensions, especially as in Directive 86/611/EEC there is already a Community legal basis for these products, which are now also to have the possibility, through the proposed amendment of this directive (COM(1998) 449) and COM(1998) 451), of meeting the requirements to take advantage of the whole single market through prudential control and authorisation in one Member State. From the subsidiarity angle too, equating products that cover biometric risks with products that do not cover such risks may cause problems in the Community because national tax legislation may then face conflicts.
7. The national supervisory authorities' prudential monitoring and authorisation of pension funds operating throughout the Community cannot manage without appropriate conditions. Appropriate conditions should comprise internal monitoring (asset/liability management, actuarial calculations, etc.), external monitoring (by actuaries, trustees, fund managers, auditors), opportunities for pensioners to participate in decision-making, insolvency insurance and monitoring by a supervisory authority. Furthermore, tax treatment must permit both fair competition among market operators and flexible operation within a single market that features freedom of movement. As a long-term objective, the adjustment of prudential standards should certainly be regarded as an institutional prudential solution at Community level.

SECURITY, PROFITABILITY AND PARTICIPATION IN DECISION-MAKING

8. Arrangements geared to the harmonisation and improvement of funded pensions in the Community must, on the one hand, have the security of the pensioner and the profitability of invested pension contributions as their goal. On the other hand, the security and profitability of the capital markets as a whole, which is increasingly influenced by the accumulation of pension capital, must be ensured. The Commission has relatively little to say about the latter in its communication. The security, efficiency and structure of the capital markets are also closely associated with the directive on undertakings for collective investment in transferable securities. The concentration of capital, the structure of assets and the dependence of individual undertakings on specific fund assets are influenced by this directive. In connection with a single market in pension products the amendment of Directive 85/611/EEC is of interest not least because the Commission proposal for the new directive (COM(1998) 451) permits pension funds to delegate portfolio management to undertakings for collective investment in transferable securities (UCITS). As regards amendments to Directive 85/611/EEC, therefore, another factor to be borne in mind is the extent to which pension assets are likely to be invested in UCITS.
9. It is gratifying to see that in the case of prudential requirements the Commission not only analyses quantitative and qualitative supervisory measures but also takes account of the fact that there must be a final safeguard against losses of benefit due to illegal acts. The descriptions of existing safeguard mechanisms to be found in Box 8 of the Commission communication can serve as a model in this regard. Any directive concerning prudential rules

on supplementary pensions in the single market must certainly focus on this aspect. It is also important in this context to determine what kind of minimum guarantee is provided.

10. Pensioners should have a major say in decisions on which investments are to be promoted with their money. Profit-chasing on its own is often not in the pensioner's interests. A strict distinction between the management of the undertaking and the management of the pension fund must not result in the link between employees entitled to pensions and pension funds being completely severed. In almost all the Member States pension funds and comparable institutions have codetermination statutes requiring, for example, that pensioners be represented on the board of directors or management board of the pension institution concerned. The say that pensioners have in 'closed' systems in many Member States must be the model for a European directive. However, rights to a say in decision-making in 'open' pension funds (group life assurance, open pension funds, etc.) are impracticable. If these organisations are covered by the directive, there must be transparency requirements that put pensioners in the picture about the structure of the portfolio and so make it easier for them to choose objectively the pension fund that suits their individual preferences.

FACILITATING FREE MOVEMENT

11. Long non-forfeitability periods represent a significant obstacle to free movement. However, shortening these periods is very expensive for the undertakings concerned. Cautious changes should therefore be attempted through the dialogue between employers, employees and national governments. The aim should be to approximate the non-forfeitability periods within an appropriate time span. Particular attention should be paid in this context to indirect discrimination against female employees caused by long qualifying periods, to which the Commission refers in point 62 of its communication. It is unacceptable that female employees, who are still at a disadvantage in working life, usually bring up the children in the family and so are more likely to have to change jobs or interrupt their careers, should be further penalised by longer qualifying periods.
12. While the retention of acquired rights when moving from one employer to another is ensured by national non-forfeitability requirements, the value of acquired rights is not protected in many parts of the EU. It should be possible to transfer rights. A means of safeguarding the value of non-forfeitable rights should be introduced in the single market for both the maintenance and the transfer of rights.
13. The Commission is to be congratulated on taking up the idea of a Pensions Forum in its communication. A forum of this kind (governments, the two sides of industry, pension funds) should consider the various aspects of mobility and seek to reach an agreement clarifying the situation. The problem of the non-forfeitability periods relating to pension rights, which vary in the Community between two years and ten years, can be overcome only by sharing the burden among pension funds, the two sides of industry and government. Solving such problems is asking far too much of European, let alone national, umbrella associations of pension funds.

TAX HARMONISATION OR COORDINATION

14. A possible solution in the case of tax harmonisation might be to exclude taxation during the qualifying period. Taxation should begin only when the benefits become due. This system entails the exemption of the contributions paid by the employer and employee to a pension fund and of the investments effected by the organisation from income and capital gains tax and the taxation of payments as income when benefits are paid out. This model is used in most OECD countries, including the USA and Japan.
15. Preference should clearly be given to taxation of the contributions made to the pension fund during the payout period since larger assets can be accumulated during the savings phase as a result of the compound interest effect. This increases the economy's capital stock. Higher economic growth becomes possible. In addition, the tax burden on the taxpayer falls in most Member States because of the progression effect of income tax caused by the allocation to different accounting periods, since retirement income is usually lower than earned income. The growth effects will, however, lead to an increase in the taxable base, with the result that, in the medium term at least, no significant tax losses are likely. However, as the budgetary planning horizon faces an annual test in the Member States, provision should be made for the burden on national budgets to be eased by up to several billion euros, depending on the Member State. The short-term loss of resources results from lower tax rates applicable to the lower revenue in the subsequent pension period. This will make the harmonisation project far more difficult to realise.

24 February 2000

OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS

(Rule 162)

for the Committee on Economic and Monetary Affairs

on the communication from the Commission on the Green Paper on supplementary pensions in the single market

(COM(1999) 134 – C5-0135/1999 – 1999/2131(COS)) (report by Wilfried Kuckelkorn)

Draftsperson: Marie-Thérèse Hermange

PROCEDURE

At its meeting of 14 October 1999 the Committee on Employment and Social Affairs appointed Mrs Hermange draftsperson.

It considered the draft opinion at its meetings of 30 November 1999, 31 January and 23/24 February 2000.

At the last meeting it adopted the following conclusions by 34 votes to 1, with 2 abstentions.

The following were present for the vote: Michel Rocard, chairman; Winfried Menrad, vice-chairman; Marie-Thérèse Hermange, vice-chairman and draftsperson; Jan Andersson, Jean-Louis Bernié, Hans Udo Bullmann (for Harald Ettl), Philip Rodway Bushill-Matthews, Chantal Cauquil (for Sylviane H. Ainardi), Alejandro Cercas Alonso, Luigi Cocilovo, Elisa Maria Damião, Den Dover (for Carlo Fatuzzo), Fiorella Ghilardotti, Marie-Hélène Gillig, Anne-Karin Glase, Koldo Gorostiaga Atxalandabaso, Ian Stewart Hudghton, Stephen Hughes, Anne Elisabet Jensen (for Luciana Sbarbati), Karin Jöns, Pierre Jonckheer (for Jean Lambert), Piia-Noora Kauppi (for Rodi Kratsa), Ioannis Koukiadis, Elizabeth Lynne, Thomas Mann, Mario Mantovani, Ria G.H.C. Oomen-Ruijten (for Raffaele Lombardo), Manuel Pérez Álvarez, Bartho Pronk, Tokia Saïfi, Herman Schmid, Peter William Skinner, Miet Smet, Ilkka Suominen, Helle Thorning-Schmidt, Ieke van den Burg, Anne E.M. Van Lancker and Barbara Weiler.

INTRODUCTION

1. Basic issue

The Member States' national pension schemes are based on three 'pillars': the first pillar consists of social security schemes, the second occupational schemes and the third personal pension plans.

Notwithstanding the diversity of national social protection systems, retirement schemes financed on a pay-as-you-go basis account for approximately 90% of pension entitlements, according to Commission figures.

However, the ageing of the population in Europe (in 1995 23% of the population was 65 years of age or over; this figure will rise to 40% in 2025) is weighing more and more heavily on pay-as-you-go state pension schemes. While at present there are four workers to every pensioner, the ratio in 2040 will be two to one.

Supplementary pension schemes under pillars 2 and 3, based on funding, are therefore likely to become increasingly important. It is nevertheless widely felt that such schemes will supplement pay-as-you-go pension schemes but will not replace them.

Member States are mainly responsible for pension schemes. Many of them have already initiated essential reforms to secure financial stability for social security systems, more than half of whose expenditure is accounted for by state pension schemes. Any further delay in implementing structural reforms, in particular with regard to extending the period of contributions, will be extremely prejudicial to future pensioners.

However, it is also the European Union's responsibility to take action on pensions, and in particular on supplementary pensions, to facilitate freedom of movement for workers, promote the single market in capital and ensure equality of income for men and women.

The aim must be to reconcile free movement, security of benefits and the advantages of competition between pension funds for European wage earners in order to provide them with genuine Community value-added. Your rapporteur considers that, while there is an urgent need to establish a European passport for supplementary pensions, this must be combined with adequate prudential rules to guarantee a high level of security for employed contributors and pensioners.

2. Background

In 1991 the Commission drew up a proposal for a directive on freedom to manage and invest funds collected by pension institutions. However, this proposal was withdrawn in 1994 in the absence of any agreement between the Member States.

Publication of the Commission's Green Paper in July 1997 on supplementary pensions in the single market enabled discussions to resume on the need to establish a Community legal framework for supplementary pensions and to reactivate the decision-making process on the basis of wide-ranging consultations.

This document, in which the Commission analysed the social, economic and financial context of supplementary pension schemes in the European Union, gave rise to a wide variety of reactions from Member States, the social partners and other bodies.

The communication which has now been submitted to us thus summarises the results of the consultations in which the European Parliament was also involved.

3. The three main elements of the Commission's proposal

The Commission is proposing a Community framework for supplementary pensions in the single market, based on three elements:

- **Prudential rules for pension funds**, through a directive containing basic prudential rules and rules governing the management of assets matching commitments.
- **Removing obstacles to labour mobility in the Union**, in particular in respect of the acquisition of supplementary pension rights and procedures for transferring pension rights.
- **Coordination of national tax systems** in the field of supplementary pensions and life assurance in order to facilitate labour mobility in practice.

4. Comments

Prudential rules

Pension funds are governed by national rules (more stringent in some Member States than in others) which are aimed at keeping the risk of insolvency to a minimum and thereby protecting pension scheme members. The Commission is therefore planning to submit a proposal for a directive introducing minimal harmonisation in this area, taking due account of the fact that market liberalisation, in accordance with the principle of free movement of capital, must go hand in hand with the best possible protection of pensioners and pension providers.

The proposal for a directive would cover basic prudential rules such as those governing the approval of pension funds, criteria regarding responsibility, intervention powers of the supervisory authority and periodic declarations as well as provisions on the investment of contributions and a minimum financing level.

The European Parliament's Committee on Employment and Social Affairs has already welcomed the decision to submit this proposal for a directive in its opinion on the Commission's Green Paper¹ insofar as security aspects are fully covered.

Your rapporteur wishes to stress the need to lay down a clear definition of prudential rules applying to supplementary pension schemes in the proposal for a directive which the Commission will be submitting shortly, especially with regard to calculating prudential commitments and approval by a competent authority.

Impact on free movement of workers

Unlike the provisions on coordination of rights in respect of national social security systems, which are set out in Regulation 1408/71, Community rules governing the coordination of

¹ Boogerd-Quaak Opinion, PE 225.497.

entitlements under supplementary pension schemes¹ have so far been lacking, with the result that migrant workers moving to another Member State lose all or part of the supplementary pension entitlements, under occupational/sectoral plans, acquired in their country of origin. In contrast with workers remaining in the same Member State, migrant workers are disadvantaged as far as gaining entitlements is concerned by long vesting periods and the absence of actuarial standards relating to the transfer of entitlements between Member States. Disparities between national rules on taxation of pension contributions and benefits lead to further inconsistencies. For instance, a migrant worker is doubly taxed if pension contributions are taxed in his country of origin and benefits are taxed in his country of residence, whereas, in the opposite case (taxation of benefits in the country of origin and tax exemption on contributions in the country of residence), he avoids tax altogether.

The fact that there is no European legislation in this area also creates significant problems for European multinational companies and their employees, as there is no possibility of establishing genuinely European pension funds.

These shortcomings were highlighted by the High-Level Group of Experts on freedom of movement, chaired by Mrs Simone Veil in 1997. Given the complex nature of the issue, the Group recommended that the Commission focus its efforts on certain practical aspects, which could receive the backing of the Council. The Commission followed this recommendation by submitting a proposal for a directive on equal treatment for migrant workers who pay contributions to pension funds in their country of origin and other workers in the same country of origin. The 'safeguard' directive, which was adopted in 1998, protects the rights of migrant workers who pay contributions in their country of origin within a non-state system and the right of workers who are temporarily seconded as part of a service contract. **It in no way resolves the problem of the transferability of pension rights between supplementary pension schemes of different Member States and is therefore viewed by the Commission merely as a first step towards the elimination of discrimination which will need to be followed up by further measures².**

Vesting periods

Long vesting periods for supplementary pension schemes tend to hamper the free movement of workers. Apart from the problems resulting from long vesting periods for migrant workers, long waiting periods also represent a source of indirect discrimination against workers who interrupt their careers (in particular, women) and part-time workers.

The Commission notes that the harmonisation of vesting periods is an issue on which there is at present no consensus among the Member States and that a Commission proposal on this subject would have little chance of success. It proposes instead that awareness of the issue be raised among the social partners. This may be the most pragmatic approach given that supplementary pensions are negotiated between the social partners. Your rapporteur believes that the Commission should indeed strongly urge the European social partners to open specific

¹ With the exception of the French ARRCO and AJIRC compulsory supplementary pension schemes, based on the pay as you go principle, which chose to incorporate the social security coordination provisions under Regulation 1408/71.

² See ETTL report, PE 226.106.

negotiations aimed at concluding a framework agreement, which could be transposed into Community law.

Transferability of pension rights

As a rule, within one Member State there are common actuarial standards to calculate the value of capital transfers from one scheme to another, provided that the schemes are of a similar nature. This means that a change inside a Member State between supplementary pension schemes can take place without any problem. However, migrant workers prematurely leaving a pension scheme in their country of origin are penalised in the absence of standardised rules applying to transfers of pension rights, generally owing to the calculation of transfer values which penalise them and inadequate preservation of 'dormant' rights. The Commission is sceptical about the possibility of applying European standards in this area and merely proposes technical measures relating to the transfer of rights. Although the Commission's reluctance is understandable in the light of the failure of previous attempts to make progress in this direction, it is important to realise that, in the long run, this problem cannot be solved unless common minimum rules are laid down in respect of the calculation of capital transfers in the country of origin and the conversion of such transfers into pension entitlements in the country of residence. Should general harmonisation of actuarial standards and transfers be excessively delayed, solutions at branch level should at least be envisaged in the context of sectoral social dialogue.

Tax coordination

The differences between the Member States' rules on taxation of pension funds, employers' and employees contributions and benefits from supplementary pension schemes leads to a variety of inconsistencies in the tax provisions applying to migrant workers (see page 39 of the Commission communication). Admittedly, the Member States have established a network of bilateral agreements against double taxation (generally based on the OECD's standard double taxation convention). However, experience has shown that this does not solve all the problems. In the meantime, the Council has acknowledged, on the basis of a Court of Justice ruling on the Safir case¹, that a solution must be found as a matter of urgency and has asked the Commission to put forward proposals. The working group on taxation policy is currently considering a coordinated approach to taxation on supplementary pensions and life assurance. This work is in no way aimed at harmonising national taxation procedures but at coordinating them, using Regulation 1408/71 as a basis. The present negotiations only relate to the tax treatment of cross-border contributions by migrant workers in second-pillar systems. While the decision to start work in this area is to be encouraged, we wish to stress that this is only one aspect of the problem and that negotiations will eventually need to be extended beyond this area.

CONCLUSIONS

The Committee on Employment and Social Affairs calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following conclusions into its report.

¹ Case C-118/96 (1998), volume I 1897.

1. Renews its commitment to the European social model, based on the solidarity principle, and to its effective social security systems founded on the conviction that economic and social progress are interlinked; considers, therefore, that social security should be regarded as a productive factor and thus that everyone's access to rights and benefits should be guaranteed while acknowledging that in this context, supplementary pension schemes can help to meet the challenges arising from demographic trends and high levels of unemployment in European countries, since they will complement pay as-you-go pension schemes without replacing them;
2. Underlines the solidarity elements that are characteristic for the first and second pillar pension systems as an essential element of this social model; these elements should not be weakened by the proposed measures of the European Commission in this field;
3. Notes that combating unemployment and the creation of stable and fulfilling jobs plays a decisive role in strengthening the financial efficiency of the first pillar of pension schemes, which is still the most important element in safeguards for old age;
4. Considers, therefore, that – if the Member States encourage citizens to make provision for their own supplementary cover for social risks – this provision should be voluntary in nature and should not lead to differing levels of, or a reduction in, social protection, nor to the erosion of the solidarity principle;
5. Reaffirms the continued validity of the approach taken in 1992 by the Council in its recommendations concerning, on the one hand, common criteria for sufficient levels of revenue and benefits in the social protection system, and on the other the convergence of objectives and policy in the field of social protection;
6. Points out the risks of pushing the present relationship between public pension systems and private pension funds in the direction of the US-model, where nearly half of retirement incomes derives from capital based pension funds and where we nevertheless observe increased poverty (especially concerning women) and a dramatic inequality of incomes amongst aged people, which is incompatible with the central goal of the European social model to prevent poverty and to sustain social cohesion;
7. Welcomes the new process of dialogue initiated by the Commission with the green Paper and continued with this communication in respect of supplementary pensions, a sensitive issue for European citizens;
8. Welcomes the proposal to establish a European Pensions Forum bringing together representatives of the Member States, pension funds and the social partners to monitor existing and future Community legislation;
9. Welcomes the Commission's announcement that it will submit a proposal for a directive on Community prudential rules for pension funds; recalls that absolute priority must be given to consumer protection and democratic accountability in this proposal for a directive, focussing especially on internal and external monitoring, the protection of pensioners against the risk of bankruptcy particularly as a result of the increased use of

pension funds in risk capital, insolvency insurance against illegal acts, the priority of pensioners' rights in the event of a pension funds bankruptcy, and the participation of pensioners, their chosen financial experts, representatives of trade unions and women in decision making and in the management boards of pension funds;

10. Urges that only pension funds covering biometric risks – guaranteed payment of pension until the end of the insured's life, assured repayment to surviving dependants, cover for invalidity risks – should be recognised as pension funds within the true meaning of the term;
11. Hopes, in this connection, that consideration will be given to the European Parliament's position in the proposal for a directive currently being drawn up by the Commission and that the priority given to the adoption of this direction by the action planned for financial services will not prevent the necessary parliamentary debate from taking place beforehand;
12. Calls for a specific definition of prudential rules applying to supplementary pension schemes to be inserted in this directive, in particular with regard to the calculation of prudential commitments and approval by a competent authority, proposes that prudential rules should vary according to the biometric risks (death, invalidity and life-expectancy) covered, and authorises the Member States to apply this definition to their taxation systems; hopes that there will be access to pension products for all social groups without selection on the basis of risk; further proposes that these rules should be drafted in such a way that they are applicable to the creation of cross-border membership and provide for participation by the social partners;
13. Considers that the prudential rules should also guarantee opportunities for pensioners to participate in decision-making, such as already exist in many Member States; in this connection the interests of the insured could be brought together in staff representation bodies, associations or clubs, thus permitting high-quality participation in decision-making;
14. Notes that the investment of fund capital in accordance with the investment priorities of the insured can be combined with a social purpose, helping capital markets to stabilise and perform a socially useful function as well as promoting employment;
15. Notes that account needs to be taken of the growth of atypical and non-continuous employment patterns, particularly among women workers, who still assume the bulk of family duties and are thus disadvantaged by long pension qualification periods geared to continuity of employment;
16. Stresses that European pensions can only become fully integrated if vesting periods and non-forfeitability periods are coordinated, and that it is therefore urgently necessary for the prudential rules to be supplemented by legislation in these areas; at the same time points out that provision should at all events be made for the reimbursement of contributions paid by beneficiaries who do not complete the minimum qualification periods;

17. Regrets the fact that there is currently no consensus on Community legislation regarding supplementary pension vesting periods and calls therefore on the European social partners to open negotiations on a framework agreement at sectoral or European level on this subject; urges the Member States, Commission and the Council to stimulate such negotiations;
18. Stresses that the growing importance of supplementary pension schemes is liable increasingly to hamper the free movement of workers unless European coordination rules are established in this area; calls therefore on the Commission, as a matter of urgency, to submit concrete options for proposals ensuring transferability of pension rights under supplementary pension schemes;
19. Stresses that the coordination of pension systems in Europe can under no circumstances be separated from the introduction of an effective and ambitious process of approximation of tax legislation;
20. Welcomes specifically, therefore, the fact that the working group on tax policy has started work on the tax treatment of cross-border contributions of migrant workers in relation to occupational and sectoral systems and calls on the working group to extend its discussions in due course to other aspects of taxation on supplementary pensions and life assurance contracts with the aim of eliminating the double taxation of pension benefits, which still exists in some cases;
21. Calls on the Member States, therefore, to find ways of enforcing in the internal market the general taxation of pension benefits during the payout period, so that pensioners profit from the long-term growth effect; calls on the Commission to ensure that any measures taken in favour of existing funded pension schemes do not conflict with the consolidation of basic pensions and the priority objective of job creation;
22. Looks to see the promotion of supplementary pensions by direct funding, as referred to in the report on promotion of employee participation in profits and enterprise results (PEPPER report), taking a form which will also enable pensioners on below-average incomes to benefit from it (e.g. in the form not only of tax breaks but also of savings supplements);
23. Expresses the wish that the discussions initiated in certain countries on developing save-as-you-earn schemes, as an element of employees' pensions and a means of strengthening the capital of European companies, will be extended to the European level in line with the report on participation by employed persons in profits and enterprise results¹;
24. Calls on the Commission to organise public-awareness campaigns to be conducted by the Commission itself and by the governments of the Member States in order to make workers in the EU aware of, and to inform them about, the importance of supplementary pension schemes, an importance which varies according to social, economic and demographic circumstances and, therefore, at different times and in different countries.

¹ Hermange report, European Parliament resolution of 15 January 1998, A4-0292/97.

22 February 2000

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET

for the Committee on Economic and Monetary Affairs

on the Commission communication: 'Towards a single market for supplementary pensions (COM(1999) 134 – C5-0135/1999 – 1999/2131 (COS)) (report by Mr Kuckelkorn)

Draftsman: Enrico Ferri

PROCEDURE

The Committee on Legal Affairs and the Internal Market appointed Enrico Ferri draftsman at its meeting of 23 September 1999.

It considered the draft opinion at its meetings of 30 November 1999, 01 February 2000 and 22 February 2000.

At the last meeting it adopted the amendments below by 9 votes to 3, with 2 abstentions.

The following were present for the vote: Ana Palacio Vallelersundi, chairman; Eduard Beysen, vice-chairman; Enrico Ferri, draftsman; Maria Berger, Janelly Fourtou, Evelyne Gebhardt, Françoise D. Grossetête, Malcolm Harbour, Kurt Lechner, Donald Neil MacCormick, Toine Manders, Manuel Medina Ortega, Antonio Tajani and Stefano Zappalà.

1. Background

Parliament gave its views on the 1997 Green Paper in its resolution of 3 December 1998, in which it called *inter alia* for:

- a proposal for a directive to enable pension funds to enjoy *freedom of investment*;
- a *passport* for pension funds, with the possibility of controls and *codecision for workers*;
- guarantees of a high degree of *security*;
- a system to ensure that pensions will be paid *in the event of insolvency*;

- application of the '*prudent man*' management principle;
- basic harmonisation of *accounting rules* and *actuarial principles*;
- guarantees of *equal competition* between all operators in the case of *similar products serving comparable purposes* (with particular reference to the relationship between pension funds and life assurance companies) (paragraphs 15 and 16);
- the establishment of *European pension funds*.

2. The approach adopted by the Commission

The Commission suggests that a future Community legal framework could be based on the following three strands:

- prudential rules for pension funds;
- the removal of obstacles to labour mobility;
- coordination of tax systems.

The Commission indicates that a proposal for a directive covering the first strand could be adopted extremely rapidly.

It is less clear about the action to be taken on the other strands, however: with regard to 'the methods for transferring rights', it states that it '*could envisage the possibility of a legislative proposal on the subject*' (p. 5); and, on the subject of the coordination of tax systems, that '*a legislative initiative [...] might be envisaged*' once the matter has been considered by the Taxation Policy Group (p. 6).

3. Court of Justice case law

Given the lack of comprehensive Community legislation in this area, the Court of Justice has been required on several occasions to rule on certain aspects of pension provision.

In its **Wielockx judgment** (11 August 1995, Case C-80/94), the Court found that the refusal by Member State A to allow a self-employed person resident in Member State B *to deduct* from taxable income earned in Member State A *amounts allocated to forming a pension reserve* constituted discrimination contrary to Article 43 ECT (freedom of establishment), if Member State A allowed its own residents to make such a deduction.

In its **Safir judgment** (28 April 1998, Case C-118/96), the Court considered the issue of a tax law governing the *payment of life assurance premiums*. It found that, if it was *more difficult* for a resident of Member State A to make such payments to an insurance company established in Member State B than it would have been if both had been resident in Member State A, the law would have the effect of hampering the free provision of services and would thus be contrary to Article 49 ECT (freedom to provide services).

This means that national tax law must comply strictly with the principle of non-discrimination. However, Court of Justice case law cannot act as a substitute for legislation enabling more fundamental problems to be settled.

The **Brentjens case** (21 September 1999, C-115/97) was brought because the Brentjens company was seeking to avoid paying contributions into a sectoral pension scheme despite the fact that *affiliation to that scheme was compulsory*. Taking the view that the pension arrangements offered by this type of cover were superior, Brentjens stipulated that its employees should take out *pension insurance* with an insurance company. In court, Brentjens contended that compulsory affiliation to a sectoral pension scheme was incompatible with Article 81 ECT (which prohibits agreements between companies that restrict competition) and Article 82 ECT (which prohibits abuse of a dominant market position). The Court rejected the arguments put forward by Brentjens and found, firstly, that decisions taken by employers and workers on the basis of a collective agreement could not be considered to fall within the scope of Article 81 and, secondly, that the dominant position enjoyed by the fund was justified in that the fund was providing a service of general economic interest within the meaning of Article 86(2) ECT. The economic arguments put forward concerned the financial balance of a closed system and the prospect of 'good risks' gradually leaving the Fund, leaving it with an increasingly large proportion of 'bad risks' on its hands.

This case law does not, however, mean that the privileged position in which closed funds find themselves is to be 'set in stone' forever. It in fact applies only to the situation in Holland and situations of a similar kind.

No challenge is being made to the principle repeatedly upheld by the Court of Justice¹ that supplementary pensions, including compulsory schemes based on closed funds, do not come within the scope of Regulation 1408/1, even within the meaning of Article 4 thereof.

Therefore, a European legislative framework with an appropriate legal basis could enable this type of closed fund to be opened up to competition cautiously and progressively and, at the same time, enhance the effectiveness of overall pension provision.

4. A strategy for Parliament

Action to promote the development of Europe-wide pension funds has several obvious advantages.

Pay-as-you-go pension schemes are in a serious state of crisis, which is being aggravated by demographic trends. The cost of pensions needs to be redistributed between the contributions made by companies (which, if they are too high, undermine competitiveness), the public purse (which is no longer able to cope) and the financial markets (which are an inescapable feature of modern society). One extremely promising way out of this situation would be to make greater use of funded pension schemes, which are much less influenced by demographic trends.

¹ Judgments of 16 January 1992, Commission v France, Case C-57/90, and 24 September 1998, Commission v France, Case C-35/97.

It is, of course, not the European Union's job to oblige the Member States to introduce a given type of pension system. However, by establishing a genuine internal market in this sector, the EU can promote the use of Europe-wide pension schemes. This would boost the European capital markets, thereby stimulating economic growth and enhancing the wellbeing of all members of the public.

So everything seems to be pointing towards an enhanced role for pension funds. However, three conditions must first be met:

- a high degree of security for investments must be guaranteed;
- appropriate involvement of workers in the management of funds must be ensured;
- the transition from a pay-as-you-go system to a funded system must be handled in a rational manner (responsibility for this transition would appear to fall on the Member States).

Parliament must therefore call on the Commission to submit at the earliest opportunity all three legislative proposals to which it refers in its communication, covering:

- prudential rules for pension funds and guaranteed freedom of investment for those funds;
- the removal of obstacles to labour mobility;
- coordination of tax systems.

Each proposal will require its own specific legal basis. Articles 47 and 55 could be used for the first proposal, while Articles 42 and 94 would appear appropriate for the second and the third, respectively. At the same time, however, it would be advisable for the three proposals to be submitted in the form of a package, so as to highlight their interdependence and make it easier to reach an overall agreement on the matter.

It should be remembered that most of the pension funds currently operating in the Union are closed funds (para. 39 of the communication). **Competition** between closed funds and between closed funds and other forms of pension provision is, by definition, extremely limited. As the Court found in its Brentjens judgment, such limitations are justified under current Community law. Competition therefore comes into play mainly in relation to *open funds* and the choice by fund managers of *providers of financial management services* (para. 32). The proposal covering prudential rules for pension funds should therefore, as a first step, make competition more equal in all cases where such competition is possible in both legal and practical terms. That proposal should also promote greater *freedom of investment* for all funds. The benefits of the directive on prudential rules, which will not be felt by all funds, and thus by all workers, should subsequently be extended to all pension funds. This could be done gradually, principally through the other two proposals for a directive. It is in particular necessary to foster *labour mobility* by ensuring that acquired entitlements may be retained or transferred, to make *cross-border affiliation* possible for those workers who have not been posted to another country, and to set up *European pension funds* open to workers from a given company or group that has offices in several Member States.

Parliament should therefore insist that action be taken also on the other two proposals referred to by the Commission, which cover labour mobility and the coordination of tax systems.

5. 'Biometric risks'

The draft report (PE 232.246, FdR 384894) makes repeated reference to the issue of 'biometric risks'. This term would appear to cover invalidity benefits, survivors' benefits and the duration of the period of benefits. The draft report basically recommends that the future directive on pension funds should not apply to products that do not cover any biometric risks.

It should be pointed out that compulsory cover for biometric risks could indirectly favour closed funds, given that open funds will without a doubt tend to accept 'good risks' and, as far as possible, reject 'bad risks'.

CONCLUSIONS

The Committee on Legal Affairs and the Internal Market calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following conclusions in its report:

The European Parliament,

1. Considers that national pension systems will inevitably be obliged to make increased use of funded schemes with a view to covering the cost of pensions; points out that it is up to the Member States to determine the pace of this transition;
2. Notes that contributions to a pension fund constitute just one of many methods of making provision for old age;
3. Emphasises that guaranteed pension cover is particularly important in every pension pillar, especially for people on a low income who consequently pay minimal contributions and may therefore expect no more than a low level of entitlements;
4. Endorses the principle upheld by the Court of Justice that supplementary pensions, including compulsory schemes, do not come within the scope of Regulation 1408/71;
5. Calls on the Commission to submit at the earliest opportunity a proposal for a directive on prudential rules for pension funds; calls for this proposal to be complemented by a proposal on the removal of obstacles to labour mobility and a proposal on the coordination of tax systems;
6. Calls on the Commission to take particular account in the directive of the principles established by the European Court of Justice concerning the social function of supplementary pension systems, which are to be found, for example, in the judgment it handed down in Case C-67/96;

7. Takes the view that supplementary pensions which also cover biometric risks are particularly advantageous for the person covered and for society as a whole. Accordingly, in the future legal framework for supplementary pensions, they should be given preference over pensions which involve financial interests alone;
8. Believes that European citizens are capable of acting responsibly in choosing the private supplementary pension cover which best suits them; is therefore in favour of the gradual development of a European legal framework which will enable European citizens to make that choice of pension cover within the single market in a totally secure environment;
9. Notes that obligatory cover for biometric risks could indirectly favour closed funds;
10. Reiterates its calls for the establishment of European pension funds open to workers from a given company or group that has offices in several Member States.
11. Calls on the Commission to take account in the future directive of the specific earning patterns of women, for example as regards vesting periods, and to build in mechanisms that will combat the current discrimination which is caused by those earning patterns;

23 February 2000

OPINION OF THE COMMITTEE ON WOMEN'S RIGHTS AND EQUAL OPPORTUNITIES

for the Committee on Economic and Monetary Affairs

on the Commission communication on a single market for supplementary pensions
(COM(1999) 134 – C5-0135/99 – 1999/2131(COS)) (report by Mr Wilfried Kuckelkorn)

Draftsperson: Mrs Astrid Lulling

PROCEDURE

The Committee on Women's Rights and Equal Opportunities appointed Mrs Astrid Lulling draftsperson at its meeting of 21 September 1999.

It considered the draft opinion at its meetings of 26 January and 23 February 2000.

At the latter meeting it adopted the amendments below by 23 votes to 2, without abstentions.

The following were present for the vote: Theorin, chairperson; Van Lancker, vice-chairperson; Lulling draftsperson; Auroi (for Hautala), Aviles Perea, Dybkjær, Ghilardotti, Gorostiaga Atxalandabaso, Gröner, Izquierdo Rojo (for Rodriguez Ramos), Karamanou, Martens, Prets, Smet, Swibel, Valenciano Martínez-Orozco.

SHORT JUSTIFICATION

Growing EU integration and the goal of achieving a high level of social protection as proclaimed in Article 2 of the Treaty are behind the efforts to introduce greater efficiency into the many different national systems of supplementary pension provision by exploiting the advantages of the single market and of the single currency.

In the light of increased life expectancy and of the danger of state pension systems becoming overstretched the two other pillars of supplementary pension provision (occupational pension schemes and personal pension plans) are gaining in importance in terms of preserving and/or securing the best possible welfare provision in old age.

Basic responsibility for the design of pension systems rests with the Member States but they must respect the Community framework and the principles of the single market such as the freedom to provide services, freedom of movement and the free movement of capital. It follows naturally

from this that the basic features of pension entitlements are regulated according to national legislation and/or contract law.

A properly functioning common single market needs a Community framework for the harmonisation and coordination of the extremely wide range of national pension schemes in order to exploit fully the advantages of the internal market for the benefit of the capital market but, above all, for that of capital investors and pensioners. In addition to the regulation of prudential issues there is a particular need for rules ensuring the free movement of workers. The communication presented by the Commission on 11 May 1999 after extensive consultation of industry, social partners and governments sets out a framework for action for resolving these complex issues that relate to the legislation on pensions, social affairs and taxation. Once the Commission has tabled its proposed legislation this committee will put forward specific amendments taking into account the interests falling within its terms of reference.

With reference to its opinion of 24 June 1998 on the Ferri report on the Commission Green Paper on supplementary pensions in the single market (A4-0400/98), it is the view of this committee that a common framework must be created in the form of a directive that should focus on the following three main issues: prudential rules for pension funds, the removal of obstacles to labour mobility and coordination of tax systems in the Member States. Furthermore, this common framework must address the continuing discrimination against women in the following areas:

1. Lower wages mean lower pensions

Women's pay and hence their pension entitlements as well are still on average less than 80% of male earnings. The unequal treatment of women in terms of remuneration thus lives on in this area. Women can compensate for a gap in pension provision through the second and third pillars (occupational schemes and personal pension plans) as long as they have the funds available to invest.

2. Acquisition of pension rights

Women interrupt their careers more often than men in order to devote themselves to their families or the care of dependants and in many cases do not satisfy the time limits for acquiring vested pension rights. Fair compensation needs to be provided here for the time taken off to look after family or dependants by crediting these periods and thereby acknowledging the social use of such activity. Women working part time and those engaged in casual labour acquire only extremely small pension rights or none at all. Personal supplementary old-age pension arrangements are extremely important for them.

The Commission rightly points out that the conditions for acquiring pension rights are too complicated and the vesting periods are too long. This committee advocates simplification and the general fixing of shorter qualifying periods.

3. Problems with change of place of residence

Women leaving their place of work and their country of origin on marriage are confronted with the problem of transferring pension rights without deductions and/or of not being able to continue paying into a pension fund (cross-border membership).

Unequal treatment of male and female workers can arise in the case of transfers where the woman receives a larger capital sum on account of her longer life expectancy.

There are additional problems with the different tax treatment of premium payments and pension benefits and the fact that taxation is generally more favourable in the country of residence. These cases are similar to those of men moving their place of work from one Member State to another. The basic rule should be that contributions are tax-deductible and pension payments are taxable under the income tax legislation of the country of residence.

4. Gender-related differentiation of contributions

In respect of the second pillar it remains to be established whether, in the case of gender-related differentiation of employers' contributions, women's employment opportunities are diminished on account of the higher charge to employers; in that case such differentiation should be rejected.

In respect of the third pillar it has to be said that, where a guaranteed old-age pension is provided by a pension fund, women on account of their longer life expectancy on average receive 13% less pension than men for an identical rate of contribution. However, where the same contribution rates apply to both sexes pension payments at the lower level for women, which to a certain extent would be justified on grounds of actuarial prudence, would place at a disadvantage men who on average do not live as long. Agreement should be reached here on a mean value that reflects social reality and avoids discrimination.

5. Individualisation of pension entitlements

Not all supplementary pension schemes confer a non-forfeitable pension entitlement on a divorced wife in the event of the former husband's death and vice-versa. Such entitlements should be individualised in order to preserve pension rights once acquired. On divorce, provision should be made for splitting the pension rights acquired during the marriage in order to guarantee an entitlement for the spouse undertaking the family obligations. Reference is made here to the Catasta report of 21 January 1994 in which the committee justified this requirement. Regrettably, the Commission has not yet complied with that report's call for a framework directive.

6. Situation of assisting spouses

In its resolution of 21 February 1997 (Lulling report) Parliament drew attention to the need to introduce compulsory pension contributions for the benefit of assisting spouses. Here too the committee regrets the fact that the Commission has still not tabled any proposals to upgrade Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes.

CONCLUSIONS

The Committee on Women's Rights and Equal Opportunities calls on the committee responsible to incorporate the following paragraphs in its resolution:

1. Welcomes the specific reform proposals formulated in the Commission communication on the basis of the consultations conducted with the parties concerned after presentation of the Green Paper and calls on the Commission to present as soon as possible the planned draft versions of the relevant legislation in the form of a directive;
2. Criticises the fact that insufficient attention has been paid in the Commission communication to the social policy aspects and, in particular, the specific women's issues and conclusions to be drawn therefrom in respect of equality of opportunity; this applies above all with regard to resolving the problems with transfers, qualifying periods, the entitlements of divorced persons, assisting spouses, self-employed persons and survivors;
3. Insists that the Member States implement more consistently the principle of 'equal pay for equal work' enshrined in Article 141 of the EC Treaty in order to guarantee equality for women and men at work and in retirement; any contractual arrangement infringing the principle of equal treatment for women and men should be invalid;
4. Points out that because of wage discrimination women also remain more dependent than men on the retention of state pension schemes since in many cases they lack the resources to build up a supplementary pension provision;
5. Believes it is essential in the interests of a fully functioning internal market to promulgate legislation aimed at removing the existing obstacles to the free choice of pension fund, to freedom of movement and to the free provision of services;
6. Sees in particular the coordination and, where possible, harmonisation of the tax treatment of contribution and benefit payments relating to retirement pension provision in the

Member States as an essential prerequisite for unimpeded freedom of movement for workers and calls on the Commission to put forward an appropriate draft directive based on the principle that pension contributions are tax-deductible and pension payments are taxable under the income tax legislation of the country of residence;

7. Recommends legislative measures to facilitate the transfer of pension entitlements and/or cross-border membership of pension funds in order to guarantee unrestricted freedom of movement of male and female workers when acquiring and/or preserving pension entitlements;
8. Considers the preservation of acquired pension entitlements to be indispensable where a spouse interrupts or terminates gainful employment in order to look after the family or take care of dependants in need; advocates that certain periods spent bringing up children and looking after family members in need of care should be credited for the purposes of calculating pensions; believes the possibility of voluntary additional provision or of optional provision to preserve and top up pension rights as well as for the purposes of creating an entitlement to payment of the capital to be appropriate under certain circumstances;
9. Advocates simplification of the conditions for acquiring pension rights and shorter qualifying periods;
10. Opposes gender-related actuarial differentiation when calculating the pension entitlements of women and men; points in this context to the possible adverse consequences for women's employment opportunities;
11. Calls once again on the Commission to present a revised version of the existing directives in the area of equal treatment for women and men in statutory and occupational social security schemes;
12. Insists on appropriate representation of women on the planned Pensions Forum to be set up and on this body being allocated equal opportunities issues as its responsibility.