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 Member States.

The aim of this Directive is to facilitate the exercise of the right of workers to freedom of movement and occupational mobility, by removing the obstacles created by certain provisions on supplementary pension schemes.
Compromise amendment by Ria Oomen-Ruijten and Harald Ettl

Compromise amendment B
(Compromise amendment replacing Amendments 71, 72, 73, 74, 75 and 76)

Article 2

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

1. This Directive applies to supplementary pension schemes apart from the schemes covered by Regulation (EEC) No 1408/71 on the coordination of social security schemes.

2. This Directive, however, does not apply to the following pension schemes:

(a) supplementary pension schemes which at the time when this directive enters into force have stopped accepting new active members and remain closed to new members;

(b) supplementary pension schemes that are subject to measures comprising intervention by an authority under the law of a Member State or a court, with the aim of safeguarding or restoring their financial situation, including liquidation procedures;

(c) insolvency protection arrangements, compensation arrangements and national pension reserve funds.

3. This Directive does not apply to periods before it enters into force.

Or. de

Compromise amendment by Ria Oomen-Ruijten and Harald Ettl

Compromise amendment C

Article 3

Definitions

For the purposes of this Directive, the following definitions shall apply:

(a) “supplementary pension” means retirement pensions and, where provided for by the rules of a supplementary pension

Definitions

For the purposes of this Directive, the term (a) “supplementary pension” means a retirement pension provided for by the rules of a supplementary pension scheme established in conformity with national

PE 386.321v02-00 2/18 AM\656688EN.doc
scheme established in conformity with national legislation and practice, invalidity and survivors' benefits, intended to supplement or replace those provided in respect of the same contingencies by statutory social security schemes;

(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;

(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;

(d) “pension rights” means any benefits to which scheme members and others holding entitlement are entitled under the rules of a supplementary pension scheme and, where applicable, under national legislation;

(e) “termination of employment” means a decision to terminate an employment relationship;

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

(b) “supplementary pension scheme” means a pension scheme established in conformity with national legislation and practice and linked to an employment relationship, intended to provide a supplementary pension for employed persons;

(c) “active scheme members” means workers whose current employment relationship entitles them or is likely to entitle them, after fulfilling any membership conditions, to a supplementary pension in accordance with the provisions of a supplementary pension scheme;

(d) “vested pension rights” means any entitlement to a supplementary pension which has been acquired, after fulfilling any membership conditions, under the rules of a supplementary pension scheme and, where applicable, under national legislation;

(da) “vesting period” means the period of active membership of a scheme, required under national law or under the rules of a supplementary pension scheme, for entitlement to a supplementary pension;

(f) “outgoing worker” means an active pension scheme member whose current employment relationship ends before he has acquired a supplementary pension;
(g) “portability” means the option open to workers of acquiring and retaining pension rights when exercising their right to freedom of movement or occupational mobility;

(h) “deferred beneficiary” means any former scheme member whose pension rights remain dormant under the supplementary pension scheme until the eligibility requirements for receipt of a supplementary pension have been met;

(i) “dormant pension rights” means pension rights retained under which they have been acquired by a deferred beneficiary who will receive a pension through this supplementary scheme once the eligibility requirements have been met;

(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.

(h) “inactive scheme member” means a former member of a supplementary pension scheme who has acquired pension rights in the scheme but is no longer an active member of the scheme and is not yet receiving any supplementary pension from it;

(i) “dormant pension rights” means vested pension rights retained in the scheme in which an inactive scheme member acquired them;

(j) “value of dormant entitlement” means the capital value of the pension rights, calculated according to recognised actuarial principles in conformity with national practice and custom.

Compromise amendment by Ria Oomen-Ruijten, ECON, FEMM

Compromise amendment D
(Compromise amendment replacing Amendments 131, 135 and 136)
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) workers may join a supplementary pension scheme after a period of employment of five years, or no later than once they have reached the required minimum age, if such a scheme exists and provides for a vesting period;
Compromise amendment by Ria Oomen-Ruijten

Compromise amendment E
(Compromise amendment replacing Amendments 123, 124, 128 and 129)
Article 4 b

(b) where a minimum age is stipulated for the acquisition of pension rights, this is not more than 21 years

(b) where the supplementary pension scheme stipulates a minimum age for the acquisition of vested pension rights, through active membership of the scheme, this is not more than 25 years

Compromise amendment by Ria Oomen-Ruijten

Compromise amendment F
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) where an outgoing worker has not yet acquired vested pension rights when the employment relationship is terminated, the supplementary pension scheme shall reimburse the contributions paid by the outgoing worker or, if the outgoing worker bears the investment risk, the investment value arising from these contributions;

Compromise amendment by Ria Oomen-Ruijten

Compromise amendment G
(Compromise amendment replacing Amendment 134)
Article 4 d

(d) a worker acquires pension rights after a maximum membership period of two years.

(d) in objectively justified cases, the Member States may allow the social partners to include in collective agreements non-discriminatory arrangements not covered by points (a) and (b), as long as these arrangements provide at least equivalent protection;
Compromise amendment by Ria Oomen-Ruijten

Compromise amendment H
(Compromise amendment replacing Amendments 147, 148, 149, 150, 151, 152, 153, 154 and 155)

Article 5

Preservation of dormant pension rights

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.

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.

Preservation of dormant pension rights

1. Member States shall adopt the measures they deem necessary, having regard to the nature of the pension scheme, in order to ensure fair treatment of the value of the dormant pension rights of outgoing workers and to protect these pension rights against insolvency of the undertaking. Fair treatment means, in particular:

   (a) that the value of the dormant rights develops generally in line with the value of the rights of active scheme members, or

   (b) that the pension rights of outgoing workers are nominally fixed, or

   (c) that outgoing workers continue to receive interest as an integral part of the pension scheme, or

   (d) outgoing workers are guaranteed a subsequent adjustment of the pension amount, or

   (e) the value of the dormant pension rights is adjusted in accordance with the inflation rate, salary levels, current pensions or the return on investment intended by the supplementary pension provider.

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.
Compromise amendment by Ria Oomen-Ruijten

Compromise amendment I
(Compromise amendment replacing Amendments 156, 157 and 158)

Article 5

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.

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.

-1. In accordance with paragraph 2, Member States shall adopt the measures they deem necessary to ensure that outgoing workers can retain their vested pension rights in the supplementary pension scheme in which they have acquired them.

2a. The Member States may allow the social partners to include in collective agreements arrangements not covered by paragraphs 2 and 3, as long as these arrangements provide at least equivalent protection for the people concerned.

Transferability deleted
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.

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.

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).

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.

Compromise amendment by Ria Oomen-Ruijten and Harald Ettl

Compromise amendment K
Article 7

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

1. Notwithstanding the obligations of the institutions for occupational retirement provision stemming from Article 11 of Directive 2003/41/EC to provide information to members and beneficiaries, the Member States shall adopt the measures
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.

2. Sufficient information shall be provided within a reasonable period of time to workers who request it. It shall relate, in particular, to the following:

(a) the conditions governing the acquisition of supplementary pension rights and the effects of applying them when employment is terminated;

(b) the pension benefits envisaged when employment is terminated;

(c) the conditions governing the preservation of dormant pension rights;

(d) the conditions governing the transfer of acquired rights.

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.

4. The information referred to in the present article shall be provided in writing and in a comprehensible form.

Compromise amendment by Ria Oomen-Ruijten

Compromise amendment L
(Compromise amendment replacing Amendments 163, 166, 167, 168, 169, 170, 171 and 172)

Article 10

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

   they deem necessary to ensure that active pension scheme members, in accordance with paragraph 2, can request information on how a termination of employment will affect their supplementary pension rights.

2. Sufficient information shall be provided in writing and within a reasonable period of time to active pension scheme members who request it. It shall relate, in particular, to the following:

(a) the pension benefits envisaged when employment is terminated;

(b) the amount and preservation of dormant pension rights.
provided by the Member States.

2a. No later than five years after the implementation of this Directive, the Commission shall draw up a report, in particular with regard to the conditions of transferring capital representing workers' supplementary pension rights. On the basis of that report, the Commission shall present a proposal containing any amendment to this Directive or other instruments which prove necessary in order to reduce further obstacles to the mobility of workers created by certain rules on supplementary pension provision.

Compromise amendment by Harald Ettl and Ria Oomen-Ruijten

Compromise amendment M
Article 10 paragraph 2 a (new)

2a. No later than five years after the implementation of this Directive, 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).

Compromise amendment by Ria Oomen-Ruijten

Compromise amendment N
Article 8

1. The Member States may adopt or maintain provisions on the portability of supplementary pension rights which are more favourable than those set out in this Directive.

1. The Member States may adopt or maintain provisions on the establishment and preservation of supplementary pension rights by outgoing workers which are more favourable than those set out in this Directive.
Directive.

2. The implementation of this Directive may not under any circumstances be used as a reason for reducing the degree of portability of supplementary pension rights which exists in the Member States.

Directive.

2. The implementation of this Directive may not under any circumstances be used as a reason for cutting back the existing provisions in the Member States for the establishment and preservation of supplementary pension rights by outgoing workers.

Compromise amendment by Ria Oomen-Ruijten

Compromise amendment O
(automatically adopted if COMP J is adopted)
Recital 5

(5) Recourse should also be had to Article 94 of the Treaty, given that the disparities between the national legislation governing supplementary pension schemes are likely to hamper both the exercise of the right of workers to freedom of movement and the operation of the internal market. Thus, in order to improve the portability of the supplementary pension rights of workers moving within the Community and within the same Member State, certain conditions governing the acquisition of pension rights must be harmonised and the rules on the preservation of dormant rights and the transfer of acquired rights must be brought closer together.

(5) Recourse should also be had to Article 94 of the Treaty, given that the disparities between the national legislation governing supplementary pension schemes are likely to hamper both the exercise of the right of workers to freedom of movement and the operation of the internal market. Thus, in order to improve the rights of workers moving within the Community and within the same Member State, provision must be made for certain minimum requirements for the establishment and preservation of the vested pension rights of outgoing workers in a supplementary pension scheme linked to an employment relationship.

Compromise amendment by Ria Oomen-Ruijten

Compromise amendment P
(automatically adopted if COMP I is adopted)
Recital 5 a (new)

(5a) Moreover, account must be taken of the characteristics and special nature of
supplementary pension schemes and the way they differ within [...] and between the Member States. The introduction of new schemes, the sustainability of existing schemes and the expectations and rights of current pension scheme members should be adequately protected. This directive should also take particular account of the role of the social partners in designing and implementing supplementary pension schemes.

Compromise amendment by Ria Oomen-Ruijten

Compromise amendment Q
(automatically adopted if COMP B is adopted)
Recital 5 b (new)

(5b) This directive does not oblige Member States that have no supplementary pension schemes to adopt legislation to introduce such schemes.

Compromise amendment by Ria Oomen-Ruijten

Compromise amendment R
(automatically adopted if COMP B is adopted)
Recital 5 c (new)

(5c) This directive applies only to supplementary pensions which, according to the rules of the relevant pension scheme or national law, are based on reaching retirement age or fulfilling other conditions. It does not apply to individual pension arrangements with no employer participation or to invalidity or survivors' pensions.

Compromise amendment by Ria Oomen-Ruijten

Compromise amendment S
(automatically adopted if COMP B is adopted)
Recital 5 d (new)
(5d) This directive applies to all supplementary pension schemes established in conformity with national legislation and practice that offer supplementary pensions for workers, such as group insurance contracts, pay-as-you-go schemes agreed by one or more branches or sectors, funded schemes or pension promises backed by book reserves, or any collective or other comparable arrangement. Self-employed workers are not covered by this Directive.

Compromise amendment by Ria Oomen-Ruijten

Compromise amendment T
(automatically adopted if COMP B is adopted)
Recital 5 e (new)

(5e) If, before this directive comes into force, a decision has been taken to close a supplementary pension scheme, and therefore no new members can be accepted, the introduction of new rules could place an unjustifiable burden on the scheme. Therefore the directive should not be applicable to such schemes.

Compromise amendment by Ria Oomen-Ruijten

Compromise amendment U
(automatically adopted if COMP H is adopted)
Recital 5 f (new)

(5f) This directive does not aim to harmonise or affect national law on reorganisation measures and winding up proceedings; it is therefore irrelevant whether or not the proceedings are opened because of insolvency, or whether or not they are entered into voluntarily or
compulsorily. Similarly, it does not affect national legislation on reorganisation measures under Directive 2001/17/EC. However, measures taken under Article 16(2) of Directive 2003/41/EC do not constitute reorganisation measures.

Compromise amendment by Ria Oomen-Ruijten

Compromise amendment V
(automatically adopted if COMP H is adopted)
Recital 5 g (new)

(5g) This directive should not affect any arrangements for insolvency protection or compensation arrangements which are not part of a supplementary pension scheme linked to an employment relationship and which aim to protect the pension rights of workers in the event of insolvency of the undertaking or the pension scheme. Similarly, this directive should not affect national pension reserve funds.

Compromise amendment by Ria Oomen-Ruijten

Compromise amendment W
(automatically adopted if COMP J is adopted)
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.

deleted
Compromise amendment by Ria Oomen-Ruijten

Compromise amendment X
(automatically adopted if COMP H is adopted)
Recital 6 a (new)

(6a) If the pension scheme or employer bears the investment risk (particularly for defined-benefit schemes), the scheme should refund the contributions of the outgoing worker, regardless of the current investment value of the contributions. If the outgoing worker bears the investment risk (particularly for defined-contribution schemes), the pension scheme should refund the value of the investment produced from these contributions. The investment value may be higher or lower than the sum of the contributions paid by the outgoing worker. If the investment value is negative, the amount should not be repaid.

Or. de

Compromise amendment by Ria Oomen-Ruijten

Compromise amendment Y
(automatically adopted if COMP J is adopted)
Recital 6 b (new)

(6b) Outgoing workers should have the right to leave their vested pension rights as dormant rights in the supplementary pension scheme in which their entitlement was established.

Or. de

Compromise amendment by Ria Oomen-Ruijten

Compromise amendment Z
(automatically adopted if COMP H is adopted)
Recital 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.

In conformity with national legislation and practice, steps must be taken to ensure fair treatment of the value of dormant rights. The value of the rights when the employee leaves the pension scheme can be calculated according to generally recognised actuarial principles. In calculating the value, account should be taken of the particularities of the scheme, the interests of the outgoing worker, and those of the members remaining in the pension scheme.

Compromise amendment by Ria Oomen-Ruijten

Compromise amendment ZA
(automatically adopted if COMP I is adopted)
Recital 8

In order to avoid excessive administrative costs resulting from the management of a large number of low-value dormant rights, pension schemes must be given the option not to preserve acquired rights but to use a transfer or a payment of a capital sum representing the acquired rights when these do not exceed a threshold established by the Member State concerned.

If the value of the vested pension rights of an outgoing worker does not exceed a threshold amount established by the Member State, and to avoid excessive costs arising from the management of a large number of low-value dormant rights, pension schemes must be given the option not to preserve these vested pension rights, but to pay a capital sum in proportion to the vested rights. The amount of the capital payment should always be determined by recognised actuarial principles and reflect the current value of the vested pension rights at the time of the payment.

Compromise amendment by Ria Oomen-Ruijten

Compromise amendment ZB
(automatically adopted if COMP J is adopted)
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 or to transfer the corresponding sum to another supplementary pension scheme, including one in another Member State.

Compromise amendment by Ria Oomen-Ruijten

Compromise amendment ZC
(automatically adopted if COMP L is adopted)
Recital 9 a (new)

(9a) This directive does not aim to limit outgoing workers’ ability to transfer vested pension rights. To encourage the free movement of workers, Member States should endeavour, as far as possible and in particular when introducing new supplementary pension schemes, gradually to improve the transferability of vested pension rights.

Compromise amendment by Ria Oomen-Ruijten

Compromise amendment ZD
(automatically adopted if COMP J is adopted)
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.