



EAPSPI – AEIRSP – EVVÖD

EAPSPI – European Association of
Public Sector Pension Institutions

AEIRSP – Association européenne des
institutions de retraite du secteur public

EVVÖD – Europäischer Verband der
Versorgungseinrichtungen des
Öffentlichen Dienstes

Position Paper

**ON THE PROPOSAL OF A DIRECTIVE
ON MINIMUM REQUIREMENTS FOR ENHANCING WORKER MOBILITY BY IMPROVING
THE ACQUISITION AND PRESERVATION OF SUPPLEMENTARY PENSION RIGHTS
COM(2007) 603 final**

A. Introductory remarks

The European Association of public sector pension institutions (EAPSPI) is in favour of any measures – at European and national levels; undertaken by governments and social partners – which help to enhance workers' mobility and to promote the supplementary pension schemes that become increasingly important because of the general decline in first pillar pension provisions in many European countries.

Against this background, EAPSPI has already given its comments in February 2006¹ on the initial proposal of the European Commission, published on 20 October 2005, thus taking part in the discussion at EU-level about the consequences of this proposed directive. Due to the permanent information exchange with its members, the pension schemes of the public sector in Europe, EAPSPI is especially aware of the technical problems that might arise from standardised rules for supplementary pension schemes and therefore intends to participate again in the discussion about the revised proposal of the European Commission of 9 October 2007.

Before commenting on the new wording of this text in detail (section B. of this statement), EAPSPI makes the following **general remarks**:

- EAPSPI **supports the exclusion of any rules of transferability** that were initially foreseen in Art. 6 of the original proposal. Rules for transfer have to take into account various aspects, such as social and tax law as well as actuarial rules. Further difficulties will be encountered, owing to the existence of different supplementary pension systems in the Members states. However, rules of transferability on voluntary basis should be considered as a more appropriate approach than transferability ruled by law. Therefore, EAPSPI advocates promotion of transferability rules firstly at national levels before tackling any EU regulation.
- Since the new proposal focuses on the **acquisition** and **preservation** of supplementary pension rights, EAPSPI suggests to **examine**, whether these measures still respect the **principle of subsidiarity**, enshrined in Art. 5 of the EU-Treaty and strengthened by the Protocol n° 30 of 2 October 1997², drawn up in the context of the Treaty of Amsterdam.
- Even if the updated proposal will mainly rule the conditions governing acquisition and preservation of supplementary pension rights, EAPSPI underlines the particular situation especially of those pension schemes sponsored exclusively by employers. Therefore, EAPSPI **advocates a further discussion only on the basis of the present text. Therefore, EAPSPI is against any further modification of this version** that might harm the financial basis of supplementary pension schemes or their sponsors.
- EAPSPI **welcomes the reinforced role of the social partners** especially in Art. 4 (e) and Art. 5 (3) of the revised proposal. In view of the practical experience of their members, the pension institutions of the public sector, EAPSPI wants to highlight the effectiveness and advantages of supplementary pension schemes established by social partners. These schemes are particularly common as for instance in Sweden, the Netherlands, Germany and Great Britain (in the latter two countries for the public sector). They can extend a considerable degree of coverage, thus ensuring an adequate level of old age income together with the pensions of the basic pillar for a large part of the population.

¹ downloadable from www.eapspi.eu / current issues

² see annex III of the EU-Treaty

- However, EAPSPI is **concerned** about the **possible retroactive effect** of this directive since a clause, such as for example in the German Presidency text in amendment to Art. 2 (3), according to which “*This directive should not apply to periods prior to its entry into force*” is missing. EAPSPI would like to underline the financial consequences if the new directive is extended to periods in the past. In the worst case, this might even substantially endanger already existing supplementary pension schemes.

B. Detailed comments

1. The recitals

- N° 5:** EAPSPI would like to suggest changing “*establishment of pension rights*” into “*acquisition of pension rights*” in order to be in line with the heading of this directive and Art. 4.
- N° 5a:** EAPSPI endorses this approach of the Commission to strengthen the role of social partners in this directive. Supplementary pensions of the public sector are frequently based on collective agreements and therefore cover almost the whole workforce of a sector. In our experience collective agreements are therefore an adequate way to offer supplementary pensions to a large portion of the population and finally to promote second pillar pension plans.
- N° 5g:** The last sentence “*Nor does this Directive and survivors benefits*”, concern those schemes that foresee deviating rules or supplementary premiums for some risks other than old age risk. These kind of rules exist for instance in Austria or in the Netherlands but they are unknown in other countries. Therefore, an example in the preceding explanatory memorandum might be helpful for a common understanding.
- N° 5j:** The content of this new recital appears to be rather unclear. The formulation “vesting requirement” is not defined in Art. 3 and consequently not used in the following articles. In order to ascertain a better understanding, inserting an example in the preceding explanatory memorandum would be helpful, too.
- N° 6a:** A comparison of the (original) English version with the German translation has revealed an obvious error. The English text presumes an “*outgoing worker [without] ... accrued vested pension rights*” for this entire recital. The German translation, however, mentions “*unverfallbare Rentenanwartschaften*” in the first sentence, which means a worker with accrued vested pension rights. The correct wording should be “*verfallbare Rentenanwartschaften*”.
- N° 11:** The possibility for Member States to reduce the information obligation to only once a year is an appropriate way to limit administrative burden for the pension institution. Yet, this possibility should also be adopted in the text of Art. 6.

2. The text of the proposal

Art. 4: EAPSPI is of the opinion that this rule can lead to some misunderstandings since it is not clear whether the conditions laid down in a) to c) can be **combined independently** from each other or whether they must be **applied in a cumulative way** according to the concrete situation that results from the rules of the pension plan and especially the age of the concerned worker. The **following examples** demonstrate some problems that might arise out of the application of Art. 4 a) to c):

The pension plan foresees the subsequent conditions for active scheme membership:

- a **period of employment of 1 year** (employment waiting period - Art. 4a);
ALTERNATIVE ASSUMPTION (example 3): NO EMPLOYMENT WAITING PERIOD
- a **minimum age of accruing pension rights of 21 years** (Art. 4b);
ALTERNATIVE ASSUMPTION (example 1): NO MINIMUM age.

and

- a **vesting period of 1 year for employees aged over 25 and 5 years for employees aged under 25** (Art. 4c).

Example 1: The employee starts at age 25

Is it true that:

- the employment waiting period is 1 year (Art. 4a) but has not to be taken into account because of Art. 4b,
- the acquisition of pension rights starts with the beginning of employment with 25 because the worker has already fulfilled the minimum age (Art. 4b),
- and the pension rights are vested with 26 (after the max. of one year - Art. 4c)?

OR is it true that:

- the employment waiting period is 1 year (Art. 4a) and has to be taken into account despite of Art. 4b,
- the acquisition of pension rights starts one year after the beginning of employment with 26 because then waiting period is fulfilled,
- and the pension rights are vested with 27 (after the max. of one year - Art. 4c)

ALTERNATIVE (NO MINIMUM AGE):

Is it true that:

- the employment waiting period is 1 year (Art. 4a) AND HAS to be taken into account because of the lack of a minimum age, therefore the acquisition of pension rights starts with 26,
- and the pension rights are vested with 27 (after the max. of one year - Art. 4c)?

Example 2: The employee starts at age 23

Is it true that:

- the employment waiting period is 1 year (Art. 4a) but has not to be taken into account because of Art. 4b.
- the acquisition of pension rights starts with the beginning of employment with 23 because the worker has already fulfilled the minimum age (Art. 4b)
- and

a) the pension rights are vested with 26 (after the max. of one year for workers older than 25 - Art. 4c)

OR

b) the pension rights are vested with 28 (after the max. of five years - Art. 4 c)

OR

c) is it true that minimum age does not overrule the employment waiting period, so the acquisition of pension rights starts with 24 and rights are vested with 29?

Example 3: The employee starts at age 19

Is it true that:

- the employment waiting period is 1 year (Art. 4a) and has to be taken into account, so the acquisition of pension rights starts with 20 (minimum age does not matter)
- and the pension rights are vested with 25 (after the max. of five years - Art. 4c)?

ALTERNATIVE (NO EMPLOYMENT WAITING PERIOD):

Is it true that:

- the acquisition of pension rights starts with 21 because the worker has then fulfilled the minimum age (Art. 4b)
- and the pension rights are vested with 26?

These examples thus can be reduced to the problem, whether minimum employment period and minimum age derogate each other and – if both are foreseen in the pension plan – which condition is prior. Another issue is to know whether the vesting period ends after 26 even if the acquisition of pension rights starts after the age of 21 and before 25. All these examples lead to the basic question whether these rules accumulate or not? Therefore, **EAPSPI asks the Commission for a clarification as to Art. 4 a) to c).**

Art. 4 (d): The formulation that *“the supplementary pension scheme shall reimburse the contributions ... paid on the worker’s behalf ...”* could later cause problems in practice. In our point of view, this rule should restrict the obligation of restitution only to the mere contributions of the worker. Thus, it should be clarified that those pension schemes that are exclusively sponsored by the employer as an additional benefit to the employees’ remuneration are not covered by this clause. A formulation like *“the supplementary pension scheme shall reimburse the outgoing worker’s contributions”* could therefore be helpful, since it clearly designates the legal ownership of these contributions.

Art. 4 (e): As shown in the introduction to this statement, EAPSPI fully endorses this clause – as well as the similar rule in Art. 5 (3) – that takes into consideration the important role of social partners in the field of supplementary pensions.

Art. 6: EAPSPI finally advocates introducing additionally the possibility foreseen in recital 11, that Member States – and the social partners – can reduce the information obligation to once a year.

Munich, 4 April 2008

About EAPSPI

The European Association of public sector pension Institutions (EAPSPI) is a group of 22 public sector pension schemes throughout Europe. The members and observers are institutions from the following countries: Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Germany, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and United Kingdom. These institutions cover the special basic schemes for civil servants or the supplementary schemes for public employees. They are responsible for nearly 26 million active members in the public sector and pensioners.

The main purpose of EAPSPI is to enable their members to improve the reciprocal knowledge of their institutions and that of the social organisation of their respective countries. Furthermore, the association intends to take part in the construction of a social Europe and, in this context, to study the consequences of the opening up of Europe, particularly regarding free movement. In this context, EAPSPI analyses ways and means of improving services offered to their clients (pensioners, active members or employers). To achieve this purpose, the association mainly intends to promote exchanges of expertise and information, involving also the area of products and services linked to retirement and to position itself as a pension expert, in order to develop relations with European institutions and other international organisations.