EUROPEAN PARLIAMENT

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DRAFT OPINION
(Rule 147)

for the Committee on Employment and Social Affairs

on the proposal for a Council Directive on the proposal for a Council Directive on safeguarding the supplementary pension rights of employed and self-employed persons moving within the European Union (COM(97)0486 - C4-0661/97) (ETTL report)

Committee on Civil Liberties and Internal Affairs

Draftsman: Mrs Anne-Marie Schaffner

PROCEDURE

At its meeting of .. the Committee on Civil Liberties and Internal Affairs appointed Mrs Schaffner draftsman.

It considered the draft opinion at its meeting(s) of .

At the latter/last meeting it adopted the following conclusions by votes to .., with . abstentions/unanimously

The following took part in the vote/The following were present for the vote: .., chairman/acting chairman; ... (and ...), vice-chairman/chairmen; ..., draftsman, .., .. (for), ... (for . pursuant to Rule 138(2)), ... and ..

BACKGROUND/GENERAL COMMENTS

Introduction

The existing Regulations Nos 1408/71 and 574/72 that also relate to pensions apply only to statutory pensions. For those who, over and above that basic pension, have also insured themselves under a private or public pension scheme not falling under the scope of those regulations, there is a problem in changing from one occupation to another

The problem arises in both national and Community situations. In general, the accumulation of pension rights contracted jointly with an employer is halted as soon as the relationship with that employer is broken. This can give rise to a number of adverse situations. career advancement will cease to be reflected in the pension with the previous employer; the pension will no longer be upgraded for routine salary increases accruing with seniority; inflation will no longer be offset, etc; whereas all those advantages will continue to apply to employees who have remained with the same employer (interruption of pension rights).

This creates a mobility problem as between Member States. In many cases it can be solved through sectoral pension schemes, the taking over of private insurance schemes by new employers, or recently proposed legislative provisions to guarantee certain minimum rights on the taking over of pensions by new employers, together with the transfer of contributions already invested on reasonable terms. Even so, complete continuity of pension rights is still in many cases impossible.

The European Community should moreover seek to ensure that the same rules apply to nationals of a different Member State as to those of the Member State of nationality. As the Commission rightly points out, the Treaty prohibits rules and regulations based on nationality that discriminate by nationality

The High Level Panel of experts on freedom of movement chaired by Mrs Simone Veil suggested that the Commission should, at least initially, confine its approach to three aspects that raised a problem specifically in the context of mobility within the EU

1 Preservation of acquired rights;
2. Cross-border payments;
3 In the event of short-term employment in another Member State, the possibility of continuing contributions to a supplementary pension scheme in the Member State of origin.

The proposal

The directive proposed by the Commission is based, in our view rightly, on Articles 51 and 235. We also feel, however, that Article 8a(2) could serve as a legal basis for the measure if it were to be confined to citizens of the Union. There is at all events a complication as regards non-Union citizens, whose interests we feel are insufficiently represented in the Commission proposal.

The Commission states.

> Free movement of persons is one of the aims and principles of the Agreement on the European Economic Area which came into force on 1 January 1994. Articles 28, 29 and 30 of Chapter 1 in Part III (Free Movement of Persons, Services and Capital) deal with freedom of movement for workers and self-employed persons. More specifically, Article 29 incorporates the principles set out in Article 51 of the EC Treaty in respect of social security

for persons exercising their right to free movement. Therefore, if adopted, this proposal for a directive should be incorporated into the Agreement on the European Economic Area([1]).

The above is however also open to the interpretation that the directive will not apply to nationals of third countries that do not belong to the EEA. We might well also ask what is to happen to nationals of countries with which the Union has association treaties. The Commission points out in its explanatory memorandum that the measure will, in general, be at no cost or negligible cost to the Member States and the pension funds. The question then arises of whether it would not be appropriate, in application of a general principle of non-discrimination, to allow nationals of third countries that have no treaty connections with the Union also to benefit from the provisions of this directive. Although the draftsman tends to that view, no specific amendment on that point has as yet been tabled, and the best that can be expected is to ask the Commission to run a study on this problem at a later stage. This is all the more important in that third countries might well withhold the transfer of pension payments to the Union. In that event there would be no reciprocity in relation to the direct settlement of the rights of nationals of third countries. In order not to deprive the Member States and the Union of all negotiating options in such cases, that is the solution that has been chosen.

General conclusion

The draftsman considers that the Commission proposal is an accurate reflection of the requirements set out in the report by the panel chaired by Mrs Veil. The non-discriminatory approach has been made the rule. The draftsman therefore considers that the Commission has done a very good job. Even so, care must be taken not to restrict other, new developments for the future. These new developments, now being introduced in Member States seeking to mitigate the impact of breaks in pension contributions as described above, imply certain sacrifices from the pension-fund contributor's counterpart In such cases it is feared that a problem may arise if non-discriminatory treatment is applied. Another development may well be that new arrangements concerning the position of third-country nationals will have to be adopted. For the foregoing reasons, the draftsman asks the Commission to reassess the rules applicable to this aspect within six years and possibly to amend them.

CONCLUSIONS

The Committee on Civil Liberties and Internal Affairs asks the committee responsible to incorporate the following amendments into its proposal

Recital 12a (new)

(12a) whereas it may become necessary, in the light of new developments, to reassess the present directive within six years of its entry into force and if need be to submit a proposal for a more comprehensive measure,

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([1]) COM(97)0486 final, p 15

Article 12 (4) (new)

4. Before drawing up the abovementioned report, the Commission shall also conduct its own investigations with a view to resolving problems arising from (partial) compensation for interruption of pension rights, such as very frequently occurs on change of employer, and to including in the directive specific provisions concerning the position of nationals of third countries. The results of such investigations shall be incorporated into the report.