Position Paper

Insurance Europe Position Paper on the proposal on the acquisition and preservation of pension rights

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Preliminary remarks

Insurance Europe welcomes the European Commission's efforts to address the development of pension systems in Europe. However, a number of issues should be appropriately dealt with to avoid unintended consequences.

The Commission's original proposal points to the existing barriers to free movement of workers in Europe, and suggests that removing such obstacles would ease worker mobility. However, increasing the possibility for worker mobility should be achieved in a way that does not inadvertently undermine the development of pension systems in EU member states. Care should be taken to safeguard the development of occupational and supplementary pension provisions in member states, thus enhancing the social protection of citizens.

General concerns

The draft Directive as proposed by the Commission in 2005 deals mainly with the acquisition of pension rights and the preservation of dormant rights. Insurance Europe strongly believes that conditions relating to the acquisition and the preservation of pension rights are matters of subsidiarity, as these are areas that are effectively dealt with at member state level. The differing approaches to state pension provision and the wide variation in supplementary pension provision between member states further justify the argument for action at member state level only.
Several member states have national legislation governing the movement of employees[1].

[1] For example in Belgium: chapter V of the "wetgeving aanvullende pensioenen" http://www.fsma.be/nl/Supervision/pensions/ap/apwn/Article/wgapwn/~/media/files/wgapwn/NL/ap/wn/law_28-04-2003.pdf

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In addition to matching the needs of both employees and employers, social partners negotiate collective agreements in many member states. Interference in these well-functioning processes could disrupt the organisation of national pension systems. Any EU action should complement actions at national level, and recognise the different approaches to state pensions in the various member states.

Insurance Europe therefore believes that member states are best placed to impose any legislation on minimum conditions for the acquisition of rights and for the preservation of the vested pension rights of departing workers, and that this should not be covered in the draft Directive.

Insurance Europe is concerned that the current proposal for a Directive could bring further negative effects. The provision of supplementary pension schemes by employers can be either voluntary or mandatory and is only possible if the employer is fully integrated in the process. The harmonisation of minimum conditions for occupational pension schemes (eg reducing acquisition requirements, different treatment of dormant rights) could lead to an increase in costs for employers, as a result of which they might choose not to provide pensions at all, as explained below. This in turn could adversely affect the development of pension provision across the EU, and could lead to a substantial decline in the sector over time.

Technical considerations and recommendations

Retroactivity

It should be made clear that the draft proposal is not retroactive. The current proposal could be read to imply that it would apply to all periods of employment, including those before the Directive's entry into force.

➔ *Insurance Europe suggests limiting the scope of the Directive to new pension promises made after its entry into force.*

Article 4

The provisions in Article 4 on the conditions governing the acquisition of occupational pension rights could ultimately lead to the closure of employer-financed pension schemes or to a marked reduction in the value of employer-financed pension promises.

Each of the proposed measures – reduction of the waiting period to one year (Article 4 (a)), fixing the minimum age for vesting at 21 years (Article 4 (b)) and stipulating a one-year vesting period for members over the age of 25 (Article 4 (c)) – would, if implemented, lead to employers no longer meeting personnel policy goals in terms of the pension promises made. For example, shorter vesting periods (eg one year) might not give incentives to the employer to start offering second-pillar occupational pensions in the first place, because a shorter vesting period does not guarantee employee retention, if this is the employer's reason for offering second-pillar pensions. Employer-financed voluntary occupational retirement provision could thus lose much of its attractiveness.

Article 4 (d) would pose problems since it would take money out of the system. Technically this is not possible in every market[2]. Furthermore, further clarification on what is meant by "on the worker's behalf" is needed. In any case, it should be ensured that this excludes any voluntary employer contributions. Furthermore, national tax regimes will in many cases not allow for early withdrawal of funds, especially if earlier contributions have been exempt from tax. Rules allowing for early withdrawal could therefore lead to tax exemptions being abolished, thereby reducing the incentives for an employer to make pension contributions.

[2] For example, for some Swedish DB schemes, pension rights are subject to a roll-over when an employee moves to a new employer within the same scheme. If this roll-over does not take place, the new employer will have to make up for the earlier contributions as well, which could act as a disincentive to hire such employees.

Finally, Article 4 (e) reads "at least equivalent protection". This wording would require clarification.

➔ *Insurance Europe recommends preserving the right of the member states, social partners and employers to decide on the length of the vesting period and the provision of occupational pensions.*

Article 5

First, similar comments on the role of member states, employers and employees to those made under Article 4 also apply to Article 5. Furthermore, rules regarding dormant rights in Article 5 as currently proposed do not sufficiently take into consideration the relationship between the employer and the employee. They would also affect existing occupational pension schemes as it is unclear whether the amended draft Directive additionally provides for retroactivity. The exclusion of those occupational pension schemes that no longer accept new members after the entry into force of the Directive, as provided for in Article 2 (2) (a), is insufficient to rule out any retroactive effect. It should be noted that the dormant rights of employees that leave a company should not be indexed on the basis of the salary evolution of the personnel still active in the sponsoring company, unless decided at national level or agreed by the social partners. Otherwise this could lead to adverse effects, such as a smaller salary increase for active employees to the benefit of those that have left the company.

With regard to Article 5 (2), given the diversity in the European market, comparability between the different systems and providers, and transparency of the financial situation of a provider should be ensured as a matter of priority, as otherwise it is very difficult for departing workers to make an informed decision about their vested pension rights. Insurance Europe believes that the Holistic Balance Sheet (HBS) model suggested by EIOPA in the review of the IORP Directive might be helpful in achieving comparability and transparency, and will enable workers that are leaving to make an informed decision about their vested pension rights.

➔ *Insurance Europe stresses that achieving comparability and transparency of pension systems across Europe should be a matter of priority.*

Article 6

Article 6 of the amended proposal for a Directive provides for stricter obligations on the employer to provide information on the employee's pension scheme. Insurance Europe would like to underline that existing and comprehensive information for workers is already ensured by the IORP Directive and existing rules in member states. Information provisions are further reinforced in the Solvency II Directive and it is likely that the revision of the IORP Directive will look to introduce more reporting obligations as well, which we believe should be similar to those from insurance undertakings. Additional obligations placed on the employer could lead to legal uncertainty, given the level of information requirements already in place in existing EU legislation and the administrative burden. There is therefore no need to extend the obligations either of the employer or the pension-paying institution to provide information in the area of occupational retirement provision.

➔ *Insurance Europe recommends not to introduce further reporting obligations in the Portability Directive in view of the danger of increased uncertainty and administrative burdens.*

Article 9

Insurance Europe believes that EU legislation on the transferability of capital representing workers' supplementary pension rights is only justified if it brings substantial added value for employees and addresses a market failure that cannot be solved otherwise. There is no evidence that transferability of pension rights is a significant obstacle to the movement of employees. Furthermore, it is unclear what is referred to under the "transfer of rights".

➔ *Insurance Europe recommends using the sentence "the transfer value of pension rights", which would technically be clearer than "the transfer of rights".*

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