

**IMPROVING PORTABILITY OF OCCUPATIONAL PENSION
RIGHTS IN THE EU**

QUESTIONNAIRE OF THE EU COMMISSION - CONSULTATION WITH
STAKEHOLDERS, 13 MAY 2004

EFRP RESPONSE, 16 JULY 2004 - SUMMARY

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1. Position on the EU initiative

Improving labour mobility is set forward as a generally accepted objective justifying Commission's proposed action for improving the portability of occupational pension rights.

EFRP supports the labour mobility objective but believes the proposed approach will **have no or very limited impact on domestic labour mobility** whereas it will **have significant impact on costs** and make DB systems still more complex and hence less attractive.

It is EFRP's opinion that harmonising the acquisition, preservation and transferability of accrued occupational pension rights in the way as viewed by the Commission in its Communication¹ bears implicit policy choices that have not been made sufficiently explicit in the consultation documents circulated as to date and which effects have not been explored in full. Especially the impact on costs has not been fully identified.

Due to the **large variety of pension systems**, EFRP is convinced of the importance to have principles that can be adapted and adopted in a wide variety of pension systems. The **enlargement** introduces an additional model of pension systems in the EU which deserves more attention.

EFRP assumes that the transposition of **dir 2003/41/EC**, dealing with the harmonisation of the prudential framework of occupational pension plans, will generate some **natural convergence in the area of benefit design of occupational pensions**.

A new directive, on accrual and portability of benefits, would place a severe pressure on pension institutions and their sponsors to cope with new legislation. To avoid the risk that employers would abandon the provision of occupational pensions because of increasing complexity and costs, EFRP suggests considering **a legislative pause**. This seems justified not only because of the pending implementation of dir. 2003/41/EC but also considering the

¹ Commission Communication, Second Stage consultation of social partners on measures to improve the portability of occupational pension rights, Sept 2003

ongoing assessment survey on dir. 98/49/EC about the safeguarding of supplementary pension benefits.

Also one could wonder whether a **recommendation** would not be more appropriate.

It is unclear to the EFRP whether the Commission has taken into account that **benefit design in most Member States is negotiated by social partners** either at national, industry or company level. Harmonising the occupational pensions benefit design reduces the social partner's negotiation margin for wages and, if relevant, occupational pensions.

EFRP has noted that the request for an EU-level legislative initiative is supported by one social partner only which provides another argument for not pursuing binding measures.

To avoid adverse and unexpected effects, a **large degree of subsidiarity** is needed in order not to disrupt systems that currently operate satisfactorily. EFRP is convinced that a variety of occupational pensions should be kept as much as possible as long as there is no harmonisation of statutory pensions. Too detailed prescription of 2nd pillar occupational pensions may restrict **the flexibility of voluntary 2nd pillar arrangements**. The contractual nature of occupational pensions has to be respected at all times.

Therefore it seems sensible to advocate there be **no legislation on indexing vested pension rights**. Particularly DB systems would have great difficulties with this kind of requirement.

To avoid the risk that Member States might be affected differently by the envisaged directive, the Commission should consider carefully **which schemes come under the scope of the envisaged directive**.

EFRP found that **cross border transfers** still face tax barriers, either administrative or legislative ones. Those have to be eliminated and EFRP welcomes Commission's actions to eliminate the remaining tax barriers.

2. Specific issues

EFRP suggests that **waiting periods**² and **vesting periods**³ be viewed together. In most Member States there is no legal maximum on waiting periods. It does not make sense to eliminate the possibility for a waiting period. In many Member States waiting periods are limited to maximum length of probation period of employment contract. Maximum waiting period of 1 year seems acceptable but always to be viewed in conjunction with vesting period.

There is a significant difference in vesting period between: (i) **employers' contributions** and (ii) **employees' contributions**. To determine a reasonable maximum vesting period it seems recommendable to **differentiate** between (i) **DC and DB systems** and (ii) **jointly or employee only financed schemes and non-contributory schemes**.

² The period of employment after which an employee becomes a scheme member

³ The minimum period of scheme membership after which a person entitlement must be recognised for an early leaver

With regard to the rules on the preservation of acquired rights, i.a. by indexing, a preliminary question that has to be answered is: are occupational pensions a **necessary supplement** to statutory pension or a **loyalty program** for long term employees?

In **DB systems**, harmonisation of the preservation of dormant rights by either limited indexing to CPI, to wages or pensions in payment **is not an option acceptable** to plan sponsors having regard to the long term sustainability of those systems.

In **DC systems**, the equal treatment of active and deferred members seems to be accepted and accruals are based on the performance of the fund.

EFRP endorses the Commission's view that it is necessary to ensure that scheme members are made **fully aware of their rights**, notably in case of job mobility.

Since small transfer values and deferred benefits are viewed as problematic, EFRP supports the view that plan sponsors should be able to decide whether to accept **the transfer-in or not** and on which conditions.

EFRP considers that **dir. 2003/41** already provides a sound legal basis for members to obtain **relevant and detailed information upon leaving an occupational pension scheme**.

When considering the EU-harmonisation of such information rules for other institutions and providers, EFRP urges the Commission to take art.11 of dir 2003/41 as the standard.

EFRP recommends **bringing the definitions in line** with those used in the IORP directive to avoid as much as possible any confusion.
