

Safeguarding the supplementary pension rights of workers moving within the EU- Directives 98/49/EC and 2014/50/EU

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These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union

*Council Directive 98/49/EC of 29 June 1998 on
safeguarding the supplementary pension rights
of employed and self-employed persons moving
within the Community*

Legal Base

*Article 48 TFEU (ex Article 42 EC) and
Article 352 TFEU(ex Article 308 EC)*

1.Objective and scope

1.1 Objective: Safeguarding supplementary pension rights of persons moving within the European Union

1.2 Scope

- a) Personnal scope*
- b) Material scope*
- c) Definitions*

1.1 Objective of the Directive

The aim of Council Directive 98/49/EC is to protect the rights of members of supplementary pension schemes who move from one Member State to another, thereby contributing to the removal of obstacles to the free movement of employed and self-employed persons within the Community. Such protection refers to pension rights under both voluntary and compulsory supplementary pension schemes, with the exception of schemes covered by Regulation (EEC) No 1408/71 (now 883/2004)

1.2. Scope

a) Personal scope

Employed and self-employed persons and members of their families moving within the European Union

1.2. Scope

b) Material scope

In Article 1, the Directive defines the supplementary pension schemes covered by its scope. Are covered both voluntary and compulsory supplementary pension schemes for employed and self-employed persons with the exception of schemes covered by Regulation (EEC) No 1408/71, now 883/2004

1.2. Scope

This implies that no pension or benefit should be subject to both the provisions of this Directive and those of Regulations (EC) No 883/2004 and (EC) No 987/2009, and therefore any supplementary pension scheme which comes within the scope of those Regulations, because a Member State has made a declaration to that effect under Article 1(j) of ex Regulation (EEC) No 1408/71 (now Article 1(l) of Regulation (EC) No 883/2004), cannot be subject to the provisions of this Directive

1.2. Scope

c) Definitions

a) 'supplementary pension` means retirement pensions and, where provided for by the rules of a supplementary pension 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 pension scheme established in conformity with national legislation and practice such as a group insurance contract or pay-as-you-go scheme agreed by one or more branches or sectors, funded scheme or 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) '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;

d) 'vested pension rights` means any entitlement to benefits obtained after fulfilment of the conditions required by the rules of a supplementary pension scheme and, where applicable, under national legislation

e) 'posted worker` means a person who is posted to work in another Member State and who under the terms of Title II of Regulation (EEC) No 1408/71 continues to be subject to the legislation of the Member State of origin, and 'posting` shall be construed accordingly;

f) 'contribution` means any payment made or deemed to have been made to a supplementary pension scheme..

Principal Provisions

Preservation of rights

A person who leaves a scheme because he moves to another Member State must not be treated differently to a person who leaves the scheme but remains in the Member States, as far as his/her vested rights are concerned, (Article 4).

Principal Provisions

Payment of benefits

Member States should take the necessary measures to ensure that benefits under supplementary pension schemes are paid to members and former members thereof as well as others holding entitlement under such schemes in all Member States, given that all restrictions on the free movement of payments and capital are prohibited under Article 63 TFEU (ex-Article 56 of the EC Treaty) (Article 5)

Principal Provisions

Information right

Workers exercising their right to free movement should be adequately informed by employers, trustees or others responsible for the management of supplementary pension schemes, particularly with regard to the choices and alternatives available to them (Article 7)

Implementation

- This Directive came into force in the Member States the 25th July 1998 and Member States had to adopt the necessary measures for its application at the latest 36 months following the date of its entry into force.*
- Members States have already adopted and transmitted to the Commission the measures for the implementation of Directive 98/49/EC.*
- It is important to note that old and new[\[1\]](#) Member States have the obligation to adopt implementing measures even they estimate that supplementary pension schemes within the meaning of Directive 98/49/EC4 (Articles 1 and 3) do not exist in their country.*
 - [\[1\]](#) The new Member States from the 1st May 2004, 1st January 2007(RO, BG) and 1st July 2013 HR*

Implementation

The Court gave a clear ruling on the implementation of provisions on supplementary pension schemes in the context of Directive 80/987/EEC and the obligations arising from this Directive for the Member States (points 34 and 35). In its judgment of 2 February 1989 in Case 22/87, Commission v. Italy (ECR 1989 p. 143). the Court held:

"In response to the Commission's complaint concerning the lack of any Italian legal provision implementing the obligation deriving from Article 8 of the directive, whereby the Member States must protect employees' entitlement to old-age and survivors' benefits under supplementary company or inter-company pension schemes outside the statutory social security schemes, the Italian Government points out that such supplementary schemes are almost non-existent in Italy It need merely be stated in that regard that that fact cannot justify the failure to discharge the obligation imposed by Article 8 of the Directive ".

This Case law was confirmed in the judgment of the Court of 14 December 2000. Case C-457/98, (Commission of the European Communities v Hellenic Republic).

Failure to fulfil obligations under Directive 96/97/EC on the implementation of the principle of equal treatment for men and women in occupational social security schemes. Failure to transpose. ECR. 2000, p. I-11481). pension

The new Member States had in any case (even in the absence of supplementary schemes within the meaning of this Directive) to adopt the necessary measures for the implementation of Directive 98/49/EC.

Evaluation

-Report on the implementation of Directive 98/49EC in the 25 Member States : COM (2006)22 Final of 26.01.2006 and its annex : SEC(2006) 82

-Report on the implementation of Directive 98/49EC in RO and BG: COM/2009/0283 final and its annex : SEC/2009/0813 final

*Directive 2014/50/EU of the European
Parliament and of the Council of 16 April 2014
on minimum requirements for enhancing
worker mobility between Member States by
improving the acquisition and preservation of
supplementary pension rights*

Directive 2014/50/EU

- **Waiting + vesting period** = max **3 years**
- **Employee contributions** vest **immediately**
- **Minimum age** for vesting = max **21 years** (**no limit age for scheme member**)
- **Right to retain dormant pension rights** in former employer's pension scheme
- Preservation may vary depending on the scheme
 - **E.g. indexation, capital returns...**
- Basic principle: **dormant members** treated on par with **active members**
- **Payment as capital sum** possible subject to:
 - **national ceilings**
 - **informed consent of the worker**
- **Information standards**
 - **Impact of mobility on pension rights**

LEGAL BASE

Article 46 TFEU

Why this legal base?

The CJEU judgement in case C-379/09 Casteels

1. Subject matter of the Directive

The Directive aims to lay down rules aimed at promoting mobility (recital 1) and facilitating the exercise of the right of workers to freedom of movement between Member States enshrined in Article 45 TFEU by reducing the obstacles created by certain rules concerning supplementary pension schemes linked to an employment relationship.

Personal scope (Article 1 and Article 2)

The Directive applies to persons exercising their right to free movement within the European Union for work purposes, engaged to an employment relationship to which are linked supplementary pension schemes. It appears from the text of Article 1 that the Directive concerns only workers and not the self-employed persons exercising their right to free movement.

Personal scope (Article 1 and Article 2)

The Directive does not apply to the acquisition and preservation of supplementary pension rights of workers moving within a single Member State (Article 2(5) and recital 6). However, Member States have the possibility by adopting national measures to extend the rules applicable under this Directive to scheme members changing employment within the same Member State (second sentence of recital 6).

Personal scope (Article 1 and Article 2)

Family members of the workers covered by this Directive are covered insofar they are concerned by the specific provisions of Articles 5(2) (preservation) and 6(3) (information) on survivors pension rights.

3. Material scope(Article 2)

The Directive applies to supplementary pension schemes with the exception of supplementary schemes already covered by Regulation (EC) No 883/2004.(These are the schemes which are covered by the term 'legislation' as defined by the first subparagraph of Article I(1) of Regulation (EC) No 883/2004 or in respect of which a Member State makes a declaration under that Article ' e.g. AGIRC and ARCCO in France)

3. Material scope(Article 2)

The Directive does not apply to certain schemes which are enumerated in an exhaustive list in paragraph 2.

a) schemes which have been closed with the effect that no new members can be accepted because the introduction of new rules could place an unjustifiable burden on such schemes. In principle these are defined benefits schemes for a closed number of persons

3. Material scope(Article 2)

b) The supplementary pension schemes that are subject to measures involving the intervention of administrative bodies established by national legislation or judicial authorities, which are intended to preserve or restore their financial situation, including winding-up proceedings (e.g. cases where the employer and/or the company scheme is in state of insolvency). This exclusion shall not be extended beyond the end of that intervention

3. Material scope(Article 2)

c)The insolvency guarantee schemes, compensation schemes and national pension reserve funds. Similarly the Directive should not affect national pension reserve funds (see recital 13). This concern for example the measures adopted at national level for the implementation of Article 8 of Directive 2008/94/EC.

Material scope (Article 2)

d) The one-off payment made by an employer to an employee at the end of that employee's employment relationship which is not related to retirement provision (e.g. prime for seniority or loyalty at the end of the career or any other advantage paid to the worker at the end of the contract with the employer, which are not part of a pension scheme established at the company level)

Définitions (Article 3)

(a) 'supplementary pension' means a retirement pension provided for by the rules of a supplementary pension scheme established in accordance with national law and practice;

(b) 'supplementary pension scheme' means any occupational retirement pension scheme established in accordance with national law and practice and linked to an employment relationship, intended to provide a supplementary pension for employed persons;

Definitions (Article 3)

(e) 'vesting period' means the period of active membership of a scheme, required under national law or the rules of a supplementary pension scheme, in order to trigger entitlement to the accumulated supplementary pension rights;

(f) 'vested pension rights' means any entitlement to the accumulated supplementary pension rights after the fulfilment of any acquisition conditions, under the rules of a supplementary pension scheme and, where applicable, under national law;

Definitions (Article 3)

- (i) 'dormant pension rights' means vested pension rights retained within the scheme in which they have been accrued by a deferred beneficiary;**
- (j) 'value of the dormant pension rights' means the capital value of the pension rights calculated in accordance with national law and practice.**

The acquisition standards (Article 4)

Waiting + vesting period = max 3 years

Employee contributions vest immediately

Minimum age for vesting = max 21 years

but

No limit on minimum age for scheme membership

The preservation standards (Article 5)

Right to retain dormant pension rights in former employer's pension scheme

Preservation may vary depending on the scheme

- ***E.g. indexation, capital returns...***

Basic principle: dormant members treated on par with active members

Payment as capital sum possible subject to:

- ***-national ceilings***
- ***-informed consent of the worker***

Information provision (Article 6)

Members States shall ensure :

-That active scheme members can obtain on request how a termination of employment would affect their supplementary pension rights,

-That deferred beneficiaries, including surviving beneficiaries, obtain on request adequate information on their dormant rights

-Information shall be provided clearly, in writing, and within a reasonable period of time. Member States may provide that such information need not be provided more than once a year.

Other provisions

Non-retroactivity clause

Does not apply to employment periods prior to the implementation

Autonomy of social partners respected

Provided they ensure equivalent protection

Deadline

The Directive came into force on 21 May 2014 (the twentieth day following its publication in the Official Journal i.e. on 30 April 2014).

-According to Article 8(1) of the Directive, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 21 May 2018. They shall forthwith communicate to the Commission the text of those measures.

Transposition by way of agreement between social partners of supplementary pension rights Directives

1. Article 10 of Directive 98/49/EC

2. Article 8 of Directive 2014/50/EU

Transposition by way of agreement between social partners of supplementary pension rights Directives

According to a well-established case law of the CJEU in particular in Case C-143/83 confirmed by Case C-306/07, although Member States may leave the implementation of the Directives to representatives of management and labour, that possibility does not, however, discharge them from the obligation of ensuring, by appropriate legislative and administrative provisions, that all workers in the Union are afforded the full protection provided for in the Directive. That State guarantee must cover all cases where effective protection is not ensured by other means, for whatever reason, and in particular cases where the workers in question are not union members, where the sector in question is not covered by a collective agreement or where such an agreement does not fully guarantee the principles of the Directive.

ECLI:EU:C:1985:34

ECLI:EU:C:2008:355

More information

<https://ec.europa.eu/social/main.jsp?catId=474&langId=en>

Thank you
Questions