

## **ETUC comments on the proposed directive on improving the acquisition and preservation of supplementary pension rights (“portability”), after EPSCO council decision on a general approach in June 2013**

### *Background and general comments*

In 2010 the ETUC in its reply to the Green Paper on Pensions expressed support to removing obstacles to mobility in supplementary pensions, on the sole condition that it has no negative effect on the national systems.

ETUC generally supports initiatives to improve the mobility of workers and the protection of their rights. However, occupational pensions is a sensitive area for regulation, since collective agreements by autonomous social partners are commonly used for establishing occupational pension schemes. There is no general obligation for employers to offer a supplementary pension to their employees. Various kinds of regulations in the area might make employers less willing to offer an occupational pension scheme.

In general the ETUC prefers the provision of rules to preserve dormant pension rights compared with repayment of smaller sums when leaving an occupational pension scheme. For highly mobile workers it is normally the case that the accrued pension right is not yet a large sum, just like the case for young workers. If these smaller sums are to be repaid, initiated by the pension provider, there is an obvious risk that groups of workers, who often change employers, although they have earned supplementary pension rights, at the time when they retire they have no or only low supplementary pension rights left, since previously accrued rights have been paid out bit by bit when they have changed jobs. That is not to be seen as protection of their occupational pension rights.

### *Specific comments*

Title: minimum requirements for enhancing worker mobility by improving the acquisition and preservation of supplementary pension rights. Comment: ETUC is in favour of strengthening the rights of workers like regarding conditions regarding acquisition and preservation of supplementary pension rights. However, more important obstacles to workers’ mobility still would remain with this directive, such as tax issues.

Article 1: the aim is to facilitate the freedom of movement between member states by reducing obstacles through rules concerning supplementary pension schemes. Comment: in practice it will be impossible to keep a difference between workers who are mobile across borders and workers who are mobile within one country.

Article 3: The definition of those who are covered by the directive is crucial to the value of the directive as such. Definition of “outgoing worker” as somebody who within two years becomes engaged in employment in another member state seems inappropriate. Although the aim is to facilitate mobility between member states, in practice it will not be possible to apply different rules to different groups of workers; those who stay in one country and those who move. Such division does not seem justified.

The condition “within two years becomes engaged in employment in another Member State” is too vague. Clarification would be needed regarding what kinds of contract that count, like for instance short term contracts or part time contracts.

The ETUC suggests instead that the trilogue negotiations be based on the definition of outgoing workers as defined in the European Parliament text from 2007, which states: “an active member whose current employment relationship ends before he has acquired a supplementary pension”.

Article 4: acquisition. Comment: in general vesting periods should, if they exist, be kept short. However they can be justified, when based on collective agreements with the aim to retain workers in employment. Respect for the right to collective bargaining is key.

Articles 4 and 5 state that member states may if they so wish, let the social partners agree on different provisions than provided for in the directive, as long as those provide no less favourable protection and do not create obstacles to the freedom of movement. Comment: it may be hard to assess and determine what is more or less favourable when a certain condition is part of a compromise stemming from negotiations.

Article 5: preservation of dormant pension rights. Comment: this should be the basic purpose of this directive. However, the possibility described in 5.3 of paying out smaller sums would need some definitions and not only a referral to national regulation. It should also be defined how such a sum should be paid out, like for instance how tax issues are to be dealt with, in what kind of investment the sum should be re-invested and who is to initiate the payment. If this is triggered only by pension managers, it is not as much a right or a protection for the outgoing worker as an opportunity of the pension managers to get rid of administrative costs and obligations.

Furthermore, tax issues might still impose real problems for payments of pension sums across borders.

Last but not least it should be highlighted that pension providers normally impose charges on transactions like repayment of vested pension rights, and those could be substantial compared with the sum. Preservation of dormant rights might be way more helpful from the workers' perspective than early re-payments of smaller capital sums.