



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 4 April 2007

8262/07

**Interinstitutional File:
2005/0214**

LIMITE

**DOCUMENT PARTIALLY
ACCESSIBLE TO THE PUBLIC**

**SOC 133
ECOFIN 146
CODEC 331**

OUTCOME OF PROCEEDINGS

of : The Social Questions Working Party

on : 7 March 2007

No. prev. doc. : 7449/07 SOC 101 ECOFIN 117 CODEC 234

No. Cion prop. : 13686/05 SOC 412 ECOFIN 324 CODEC 933 – COM (2005) 507 final + REV 1

Subject : **Proposal for a Directive of the European Parliament and of the Council on improving the portability of supplementary pension rights**

I. INTRODUCTION

At its meeting on 29 March 2007, the Working Party on Social Questions continued its examination of the above proposal on the basis of a compromise text prepared by the Presidency.¹

During the discussion, the Chair provided broad information concerning some of the draft amendments recently adopted by the EP Committee on Employment and Social Affairs.² Responding to delegations, the Chair also noted that ongoing contacts with the European

¹ Doc. DS 224/07.

² The draft amendments were not yet available in all the languages.

Parliament were informal in nature, no negotiating mandate having yet been issued. Cion reserved its position at this stage. The Chair informed the Working Party that the next meeting would take place on 19 April 2007.

All delegations maintained general scrutiny reservations. **DELETED**³ and **DELETED** maintained general reservations on the whole proposal. DK, MT and UK have entered parliamentary scrutiny reservations.

More detailed comments and reservations are set out in footnotes in the Annex. Changes in relation to the previous version (doc. 7449/06) are indicated as follows: new text is in **bold** and deletions are marked "[...]".

³ The **DELETED** reservation was placed pending further clarification of the scope of the Directive, particularly in regard to its implementation in Member States that do not have supplementary pension schemes; this delegation referred to the infringement proceedings launched against **DELETED** in regard to Directive 2003/41/EC. (Also see Recital 5b) of the draft Directive.)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on minimum requirements for improving the vesting and the preservation of supplementary
pension rights⁴**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 42 and 94 thereof,

Having regard to the proposal from the Commission⁵,

Having regard to the opinion of the European Economic and Social Committee⁶,

Having regard to the opinion of the Committee of the Regions⁷,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁸,

Whereas:

⁴ Cion: reservation on the deletion of the word "portability" from the title on the grounds that reference should be made to the reduction of obstacles to workers' mobility.

DELETED also considered that the title should refer to improving the mobility of workers.

⁵ OJ C [...], [...], p. [...].

⁶ OJ C [...], [...], p. [...].

⁷ Will not submit an opinion on this file.

⁸ OJ C [...], [...], p. [...].

- (1) The free movement of persons is one of the fundamental freedoms of the European Community; in Article 42, the Treaty stipulates that the Council, acting in accordance with the procedure referred to in Article 251, shall adopt such measures in the field of social security as are necessary to provide freedom of movement for workers.
- (2) The social protection of workers with regard to pensions is guaranteed by statutory social security schemes, together with supplementary pension schemes linked to the employment contract. Such supplementary pension schemes are becoming increasingly common in the Member States.
- (3) The Council and the Parliament have wide powers of discretion regarding the choice of measures which are the most appropriate when it comes to achieving the objective of Article 42 of the Treaty; the system of coordination provided for in Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community⁹ and Council Regulation (EEC) No 574/72 of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71¹⁰ and, in particular, the rules applicable to aggregation do not relate to supplementary pension schemes, except for schemes covered by the term “legislation”, as defined in the first paragraph of Article 1(j) of Regulation (EEC) No 1408/71, or which have been the subject of a declaration to this effect by a Member State pursuant to this Article.
- (4) Council Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community¹¹ represents an initial specific measure designed to improve the exercise of the right of workers to freedom of movement as regards supplementary pension schemes.

⁹ OJ L 149 of 5.7.1971, p. 1. Regulation as last amended by Regulation (EC) No 631/2004 (OJ L 100 of 6.4.2004, p. 1).

¹⁰ OJ L 74 of 27.3.1972, p. 1. Regulation as last amended by Regulation (EC) No 77/2005 (OJ L 16 of 20.1.2005, p. 3).

¹¹ OJ L 209 of 25.7.1998, p. 46.

(5) Recourse should also be had to Article 94 of the Treaty, given that the disparities between the national legislations governing supplementary pension schemes are likely to hamper both the exercise of the right of workers to freedom of movement and the operation of the internal market. Thus, in order to improve the rights of workers moving within the Community and within the same Member State, it is necessary to ensure some minimum requirements for the vesting and preservation of an outgoing worker's vested pension rights in supplementary pension schemes linked to an employment relationship.¹²

(5a) It is equally necessary to take account of the nature and specific characteristics of supplementary pension schemes and of their diverse nature within and between the Member States. The establishment of new schemes, the viability of existing schemes and the expectations and rights of present pension scheme members should be sufficiently protected. In particular, the role played by the social partners in the design and implementation of supplementary pension schemes should be respected by this Directive.¹³

(5b) This Directive does not oblige Member States without supplementary pension schemes to introduce legislation providing for the setting up of such schemes.¹⁴

(5c) This Directive applies only to supplementary retirement pensions that are based on reaching retirement age or on fulfilling other requirements, as laid down by the scheme or by national legislation. This Directive does not apply to individual pension arrangements where there is no employer involvement, nor to invalidity and survivors' benefits.¹⁵

¹² **DELETED**: reservation on Recital 5 (related to the deletion of transferability from the Directive).

¹³ **DELETED** considered that the role of the social partners was important enough to merit a separate recital.

¹⁴ **DELETED**: reservation on Recital 5b; this delegation considered that the text should be redrafted, and that the issue should also be included in an Article, preferably in Article 9.

¹⁵ **DELETED** supported by **DELETED** suggested adding "Schemes in the public sector for members of disciplined forces providing public security." Also see Article 2(2a).

- (5c1) The Directive concerns any supplementary pension scheme for employed persons, established in conformity with national legislation and practice and intended to provide a supplementary pension such as a group insurance contract, a pay-as-you-go scheme agreed by one or more branches or sectors, a funded scheme or a pension promise backed by book reserves, or any collective or other comparable arrangement. Self-employed persons are not covered by this Directive.
- (5d) Where a decision has already been made to close a scheme before the entry into force of the Directive, and it is therefore no longer accepting any new scheme members, the introduction of new requirements could represent an unjustified burden on the scheme. The Directive should consequently not apply to such schemes.
- (5e) This Directive does not seek to harmonise, nor is intended to affect, national legislation concerning reorganisation measures and winding-up proceeding, whether or not such proceedings are founded on insolvency and whether they are voluntary or compulsory. It also does not concern national legislation on re-organisation measures, such as those covered by Directive 2001/17/EC. However, measures that fall under Article 16(2) of Directive 2003/41/EC are not to be understood as such reorganisation measures.
- (5f) This Directive should not concern insolvency guarantee schemes or compensation schemes that are not supplementary pension schemes linked to an employment relationship, the aim of which is to protect the pension rights of the employee in the case of employer or scheme insolvency. Similarly, this Directive should not address national reserve funds.

[...]

- (6) [...]
- (6a) When the scheme or the employer bears the investment risk (in particular in defined benefit schemes), the scheme should always refund the contributions of the outgoing worker regardless of what is the value of the investments derived from those contributions. When the outgoing worker bears the investment risk (in particular in defined contributions schemes), the scheme should refund the value of the investments derived from those contributions. The value may be more or less than the contributions paid by the outgoing worker. If the value is negative there is nothing to refund.¹⁶
- (6b) The outgoing worker should [...] be able to leave his/her vested pension rights as dormant rights in the supplementary pension scheme in which the rights have vested.
- (7) In accordance with national law and practice, steps should be taken to ensure fair treatment¹⁷ **of the value** of such dormant rights. [...] **The value of the rights at the time when the worker leaves the scheme should be established in accordance with recognised actuarial principles. In calculating the value, account should be taken of the particular nature of the scheme, the interests of the outgoing worker and the interests of the remaining pension scheme members.**

¹⁶ **DELETED**: reservation on the last sentence of Recital 6a. **DELETED** saw a need to check the coherence between Recital 6a and Article 4(c).

¹⁷ **DELETED**: reservation on the words "fair treatment".

- (8) When the value of the vested pension rights of an outgoing worker does not exceed a threshold established by the Member State concerned, and in order to avoid excessive administrative costs resulting from the management of a large number of low-value dormant rights, pension schemes may be given the option not to preserve these vested rights but to use a capital payment representing the vested rights. The value of capital payment should always be established in accordance with recognised actuarial principles¹⁸ and should represent the present value of the vested pension rights at the time of payment.¹⁹
- (9) [...]
- (9b) This Directive does not aim at limiting transfers of vested pension rights offered to outgoing workers. With the aim of improving the freedom of movement for workers, Member States should endeavour to progressively promote, when possible, transfers of vested pension rights, in particular when new supplementary pension schemes are established.²⁰
- (10) [...]
- (11) Without prejudice to Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision, workers who exercise or plan to exercise their right to freedom of movement should be suitably informed, particularly regarding how a termination of their employment would affect their supplementary pension rights.

¹⁸ **DELETED** preferred a reference to national standards instead of "recognised actuarial principles".

¹⁹ **DELETED**: reservation on Recital 8, related to its reservation on Article 5(1).

²⁰ **DELETED**: reservation on Recital 9b (related to the deletion of transferability).

DELETED noted that the language of Recital 9b was quite imperative, yet there were no corresponding provisions in the relevant Article.

Note from the Council Secretariat: the second sentence of the recital could be reworded as follows: "With the aim of improving the freedom of movement for workers, steps taken by Member States to progressively promote transfers of vested pension rights would be welcome, in particular when new supplementary pension schemes are established."

- (12) In view of the diverse nature of supplementary social security schemes, the Community must confine itself to establishing the objectives to be achieved in general terms, which means that the directive is the appropriate legal instrument.
- (13) Given that the objectives of the measures envisaged, namely to reduce the obstacles to the exercise of the right of workers to freedom of movement and to the operation of the internal market, cannot be achieved satisfactorily by the Member States and may therefore, because of the scope of the measures, be achieved more effectively at Community level, the Community may take action in accordance with the subsidiary principle set out in Article 5 of the Treaty. In accordance with the principle of proportionality referred to in that Article, this Directive, based on an impact assessment conducted with the help of the committee in the area of supplementary pensions (so-called "Pension Forum" of the European Commission), will not go beyond what is necessary to achieve its objectives.
- (14) This Directive establishes minimum requirements, thus enabling the Member States to adopt or maintain more favourable provisions. The implementation of this Directive cannot be used to justify a regression vis-à-vis the existing situation in each Member State.
- (15) In view of the need to take account of the effects of this Directive, in particular on the financial sustainability of supplementary pension schemes, the Member States may be granted more time in which gradually to implement those provisions which are likely to have effects of this kind. The minimum requirements of this Directive can create a situation where the viability and financial stability of schemes with longer vesting periods or, in particular, loyalty schemes could be endangered.²¹ To allow the schemes sufficient time to adapt their rules and to meet funding requirements, a transitional period of 120 months²² can be granted.

²¹ **DELETED** considered that this sentence on schemes with long vesting periods should be deleted.

Cion also expressed concern about this sentence. (The Finnish Presidency stressed that this sentence justified the long transitional period of 120 months.)

²² Cion: scrutiny reservation. See footnotes to Article 9(2).

(16) In accordance with the national law and practice governing the organisation of supplementary pension schemes, the Member States should be able to grant the social partners, at their joint request, responsibility for implementing this Directive as regards the arrangements relating to collective agreements, provided that they take all the necessary steps to ensure that they are at all times able to guarantee the outcomes prescribed in this Directive,

HAVE ADOPTED THIS DIRECTIVE:

Article 1
Objective

The aim of this Directive is to facilitate the exercise of the right of workers to freedom of movement and to facilitate workers' occupational mobility, by reducing the obstacles created by certain rules concerning supplementary pension schemes²³ **linked to an employment relationship**.²⁴

*Article 2*²⁵
Scope

1. This Directive shall apply to supplementary pension schemes apart from the schemes covered by Regulation (EEC) No 1408/71 on the coordination of social security schemes.

²³ **DELETED** maintained a scrutiny reservation on Article 1 on the grounds that the provisions pose serious difficulties to certain **DELETED** supplementary pension schemes for managerial staff that make the payment of benefits conditional upon an employee's actual presence in the enterprise at the time of retirement, and do not involve the accrual of rights over a career. (Also see Article 2(2b).)

²⁴ **DELETED**: scrutiny reservation. **DELETED** expressed the view that individual insurance schemes paid by the employer should not be included in the scope; this delegation undertook to provide a written suggestion. (Also see Article 3 (b).)

²⁵ **DELETED** considered that the scope should be clarified in a recital. **DELETED** entered reservations on Article 2 citing concern regarding the number of exemptions currently included in the text. **DELETED** also expressed regret regarding the wording of Article 2 (also see Article 2(3)). **DELETED** would prefer the same scope as in Directive 98/49 (i.e. no Article 2(2)) as transferability is no longer included in the text. **DELETED**: Article 2(2) should be reconsidered as transfers have been deleted from the text.

2. However, this Directive shall not apply to the following schemes:²⁶
- (a) supplementary pension schemes which have ceased accepting any new active scheme members at the moment this Directive enters into force and which remain closed to new members;²⁷
 - (b) 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.²⁸ **This exclusion shall not extend beyond the end of the intervention;**
 - (c) insolvency guarantee schemes, compensation schemes and national reserve funds.

2(2a) Member States may exclude from the application of this Directive supplementary pension schemes related²⁹ to employment in the public service as referred to in Article 39 paragraph 4 of the Treaty.³⁰

2(2b) The Member States may exclude from the application of the Directive supplementary pension schemes intended for managing executives or other persons with autonomous decision taking powers.³¹

²⁶ **DELETED** reservations. These delegations considered that pension schemes included in a company's budget (so-called internal schemes) should also be excluded from the scope.

²⁷ **DELETED** reiterated its view that reference should be made to the date of transposition (Articles 9(1) and 9(2)) rather than the date of entry into force of the Directive. Also see Article 2(3).

²⁸ **DELETED** undertook to provide a drafting suggestion concerning Recital 5e.

²⁹ **DELETED** considered this wording to be too open-ended.

³⁰ All delegations have scrutiny reservations. Cion made the observation that Article 39(4) of the Treaty is the subject of extensive case law (e.g. Case C-47/02). **DELETED** suggested consulting the Council Legal Service as regards the most appropriate way of alluding to the Treaty.

³¹ The wording is taken from Article 17 of the Working Time Directive. All delegations have scrutiny reservations. **DELETED** questioned the need for special provisions for managerial staff. Cion called upon the delegations that have requested this exemption to reconsider their positions in the light of the long transitional period foreseen.

3. **This Directive shall apply only to periods of employment commencing³² after its entry into force.³³**

Article 3

Definitions

For the purposes of this Directive, the following definitions shall apply:

- (a) “supplementary pension³⁴” means a retirement pension as provided for by the rules of a supplementary pension scheme established in conformity with national legislation and practice;
- (b)³⁵ “supplementary pension scheme” means any **retirement³⁶** pension scheme linked to an employment relationship, established in conformity with national legislation and practice and intended to provide a supplementary pension for employed persons;

³² **DELETED** expressed concern regarding this term.

³³ A large majority of delegations supported the idea that the Directive should not apply retroactively. A large majority of delegations also supported the suggestion reiterated by **DELETED** that in specifying the period of application, reference should be made to the date of transposition (Articles 9(1) and 9(2)) rather than the date of entry into force of the Directive. Alluding to a note from the Commission Legal Service (DS 12/06), Cion expressed the view that the original proposal did not contain retroactive provisions. **DELETED** also underlined the importance of legal coherence. Cion also made the observation that the application of Article 2(3) and the long transitional period foreseen would mean a delay of many years before workers would benefit from the provisions contained in the Directive. **DELETED** underlined the need to strike an appropriate balance between the scope and the transitional period and expressed regret in regard to the current wording of Article 2(3) and a preference for the wording contained in doc 15222/06. **DELETED** entered a scrutiny reservation and underlined the need to specify a cut-off point when the Directive would apply in all Member States. This delegation suggested consulting the Council Legal Service. **DELETED** also entered a scrutiny reservation. Whilst not opposing the approach taken, **DELETED** expressed the concern that the provisions might be difficult to apply (see fourth and fifth sentences of Recital 5g in doc. DS 224/07). **DELETED** also underlined the need to ensure consistency between the Recitals and the Articles.

³⁴ **DELETED** suggested referring to "supplementary pension rights" here and in Article 3(d) and 3(da).

³⁵ **DELETED**: scrutiny reservations on point (b) with reference to the proposed Directive's link with insurance Directives and individual insurance contracts paid by the employer. Cion confirmed that individual insurance contracts paid by the employer were included in the scope. Cion undertook to discuss this issue bilaterally with **DELETED**.

³⁶ **DELETED** suggested defining "retirement" with a view to clarifying the scope; **DELETED** agreed that the scope required clarification.

- (c) “active scheme member” means a worker whose current employment relationship entitles him/her or, after fulfilment of the vesting requirements, will entitle him/her to a supplementary pension in accordance with the provisions of a supplementary pension scheme;
- (d) “vested pension rights” means any entitlement to a supplementary pension obtained after the fulfilment of vesting requirements, if any, in accordance with the rules of a supplementary pension scheme and, where applicable, national legislation;³⁷
- (da) “vesting period” means a period of active scheme membership required either by national legislation or by the rules of a supplementary pension scheme for entitlement to a supplementary pension;³⁸
- (e) [...]
- (f) “outgoing worker” means an active scheme member whose current employment relationship terminates [...] **for reasons other than** he or she becoming eligible for a supplementary pension;
- (g) [...]
- (h) “deferred beneficiary” means any person who has vested pension rights in a supplementary pension scheme, but is no longer an active member of that scheme and is not yet in receipt of a supplementary pension from the scheme;

³⁷ **DELETED** wished this definition to be explained in more detail in a recital. These delegations distributed an explanatory note (DS 302/07) and undertook to provide a drafting suggestion. Cion explained that the proposed Directive left open the precise form that pension rights should take and allows the Member States to apply qualifying periods such as those currently used in **DELETED**.

³⁸ **DELETED** wished this definition to be explained in more detail in a recital. Also see Article 4, final paragraph.

- (i) “dormant pension rights” means vested pension rights retained under the scheme under which they have been accrued by a deferred beneficiary;
- (j) [...]
- (ja) "value of the dormant rights" means the capital value of the pension rights calculated in accordance with national law and practice [and, where applicable,³⁹ according to **nationally**⁴⁰ recognised actuarial principles].

Article 4

Conditions governing vesting criteria⁴¹

The Member States shall take all necessary steps to ensure that:

- (a) where the supplementary pension scheme stipulates a vesting period, this shall not exceed five years;
- (b) where the supplementary pension scheme stipulates a minimum age for the accrual by an active scheme member of vested rights, this age shall not exceed 25 years;
- (c) where employment is terminated before an outgoing worker has accrued vested pension rights, a supplementary pension scheme shall refund the contributions paid by the outgoing worker or, where the outgoing worker bears the investment risk, the value of investments derived from those contributions;

³⁹ Cion pointed out that "where applicable" would also need to be added in Recital 8.

⁴⁰ Divergent views were expressed in regard to the need to refer to "nationally recognised actuarial principles." **DELETED** suggested, as a solution, deleting the text in square brackets. **DELETED** and Cion provisionally welcomed this suggestion.

⁴¹ Note from the Council Secretariat: indents (a) to (d) have been renumbered. **DELETED**: scrutiny reservation on Article 4, linked to that delegation's comments in the footnote to Article 1.

DELETED: reservations on this article, especially related to the long vesting period in Article 4(a) and the high age limit in Article 4(b).

DELETED: reservation.

Cion regretted the decreased level of ambition in Articles 4(a) and (b).

[...] ⁴² Member States shall have the option of allowing the social partners to lay down [...] **different provisions by collective agreement**, to the extent that those provisions provide at least equivalent protection ⁴³ to the persons concerned. ⁴⁴

Article 5

Preservation of dormant pension rights ⁴⁵

0. Subject to paragraph 2, Member States shall adopt the measures they deem necessary in order to ensure that outgoing workers can retain their vested pension rights in the supplementary pension scheme in which they have vested.

⁴² Cion entered a reservation on the grounds that the words "if objectively justified" had been deleted from the text. (Also see Article 5(3).)

⁴³ **DELETED** and Cion considered that the words "equivalent protection" might be unclear and lead to legal uncertainty. (**DELETED**.)

⁴⁴ **DELETED**: reservation; this delegation considered the wording to be too flexible.

⁴⁵ **DELETED** considered that it would be impossible to mention all possible ways of ensuring fair treatment and that a negative definition was therefore preferable to a positive one.

DELETED considered that the current text may not provide legal certainty. **DELETED** considered that practical examples were needed to elucidate the provisions. **DELETED**: reservation on this Article. This delegation considered that certain types of pension schemes could not fulfil the provisions in Article 5(0), but were presently using transfers (which were no longer included in the text).

DELETED: scrutiny reservation.

1. ⁴⁶ **For the purposes of paragraph 0, the** Member States shall adopt the measures they deem necessary to ensure fair treatment of the value of dormant pension rights, having regard to the nature **and viability**⁴⁷ of the pension scheme. Treatment shall be **considered** to be fair in particular when:⁴⁸
- 1.1 the value⁴⁹ of the dormant rights continues to develop largely in line with the value of the rights of active scheme members; or
- 1.2 the pension rights **in the supplementary pension scheme** are set as a nominal sum;⁵⁰ or
- 1.3 the **deferred beneficiary**⁵¹ continues to benefit from a rate⁵² of interest built into the pension scheme; or
- 1.4 [the **deferred beneficiary** has a guarantee of benefiting from any subsequent adjustments to pension benefits;⁵³ or]

⁴⁶ **DELETED** wished to add the following in this Article: "The outgoing worker shall not receive unjustified advantage from leaving the supplementary pension scheme. Any indexation of dormant rights may be subject to a limit set by the national legislation."

DELETED supported the first sentence of the addition.

⁴⁷ **DELETED** considered that fair treatment, being an essential right, could not be subject to "viability." **DELETED** entered a scrutiny reservation. (Also see Recital 5a.)

⁴⁸ **DELETED** suggested making it clear that the list of cases in this Article was not exhaustive but indicative.

⁴⁹ **DELETED** questioned the need to repeat the term "value," which already appears in the chapeau. **DELETED** supported by **DELETED** suggested deleting the reference to "value" here and in 5(1)(1.5) and 5(2). (Also see DS 262/07.) As an alternative, **DELETED** suggested replacing "the value of the dormant rights" with "the dormant rights or their value."

⁵⁰ **DELETED** entered scrutiny reservations. **DELETED** would have preferred the following wording: "the pension rights of the outgoing worker are determined as nominal values." This delegation also recalled that the term "value of dormant pension rights" was defined in Article 3(ja). **DELETED** expressed doubts as to whether the current formulation provided legal certainty. All delegations have scrutiny reservations.

⁵¹ **DELETED** suggested "outgoing worker or deferred beneficiary."

⁵² **DELETED** suggested that this term be clarified.

⁵³ Cion considered that this indent should be deleted, explaining that the adjustment of pension benefits does not guarantee that dormant rights are fairly treated, as there is no link between the two. **DELETED** also called for clarification of this indent.

- 1.5 the value of dormant rights is adjusted by reference to inflation, wage levels, pension benefits which are currently being paid, or the rate of return on assets under the supplementary pension scheme.⁵⁴
2. When the value of the vested pension rights **of an outgoing worker** does not exceed **any threshold(s)** established by the Member State concerned, the Member State may allow supplementary pension schemes not to preserve vested rights but to use **such measures, as are provided for in national legislation and practice, to transfer or compensate**⁵⁵ **for the value of those vested pension rights**. The Member State shall inform the Commission of the threshold(s) applied.⁵⁶
3. Member States shall have the option of allowing the social partners to lay down different provisions by collective agreement, to the extent that those provisions provide at least equivalent protection to the persons concerned.⁵⁷

Article 6

Transferability⁵⁸

[...]

⁵⁴ **DELETED** supported by **DELETED** suggested adding "or a combination thereof." **DELETED** maintains a scrutiny reservation; this delegation considered that the Member States should be allowed to set a limit to the total adjustment. Also see Articles 3(ja) and 5(1). **DELETED** suggested adding "while justified administrative costs can be taken into account. Agreeing with **DELETED**, **DELETED** suggested that the term "net rate of return" be used.

⁵⁵ **DELETED** asked for this term to be clarified. **DELETED** considered that there was a contradiction between paragraphs 1 and 2.

⁵⁶ **DELETED** entered a scrutiny reservation. **DELETED** suggested deleting the last sentence of this paragraph.

⁵⁷ **DELETED** and Cion expressed concern and called for clarification of this provision, which they consider too open-ended. Also see Article 4 (final paragraph) and Article 9.

⁵⁸ **DELETED**: regretted the deletion of transferability from the Directive.

Article 7
Information

1. Without prejudice to the obligations of the institutions for occupational retirement provision stemming from Article 11 of Directive 2003/41/EC, concerning the information to be provided to **scheme** members and beneficiaries, the Member States shall adopt the measures they deem necessary to ensure that active scheme members⁵⁹ can request⁶⁰ information in accordance with paragraph 2 on how a termination of employment would affect their supplementary pension rights.⁶¹
2. Sufficient information shall be provided **clearly**, in writing **or electronic form**,⁶² **and** within a reasonable period of time to active scheme members⁶³ who request it [...] **concerning:**
 - (a) **whether the conditions for the acquisition of vested pension rights have been satisfied;**⁶⁴

⁵⁹ Cion considered that *prospective* active scheme members should also be provided with information. **DELETED** expressed the view that workers who have dormant rights should also be entitled to receive information. **DELETED** made the observation that, for the sake of consistency, "active scheme members" should also be referred to in Recital 11.

⁶⁰ **DELETED** considered this wording to be too weak. **DELETED** made the observation that provisions on information are already laid down in existing legislation, and that the current draft Directive deals only with portability.

⁶¹ **DELETED** made the observation that it should be possible to charge a fee for information.

⁶² **DELETED** suggested the inclusion of information provided by telephone. **DELETED** suggested: "on paper or another durable medium available and accessible to the consumer." (Cf. Article 7(2) of the Distance Selling Directive.)

⁶³ Cion considered that prospective active scheme members should also be provided with information. **DELETED** shared this view.

⁶⁴ Cion affirmed the wording of the original proposal.

(b) the pension benefits envisaged when employment is terminated;⁶⁵ **and**

(c) the conditions governing the preservation of dormant pension rights.

(d) [...] ⁶⁶

3. [...] ⁶⁷

(3a) Member States may stipulate that such information need not be provided more than once per year.

4. [...]

Article 8

Minimum requirements — non-regression

1. The Member States may adopt or maintain provisions **or practices** on the vesting and the preservation of an outgoing worker's supplementary pension rights, which are more favourable than those, set out in this Directive.

2. The implementation of this Directive may not under any circumstances be used as a reason for reducing the degree of vesting and preservation of an outgoing worker's supplementary pension rights, which exists in the Member States.

⁶⁵ Underlining the importance of reducing the administrative burden, **DELETED** entered a reservation and suggested deleting this point. Agreeing with **DELETED**, **DELETED** entered a reservation. Supporting **DELETED**, **DELETED** suggested limiting this provision to defined benefit schemes only. As an alternative to deletion, **DELETED** suggested: " an assessment of the active scheme member's vested pension rights that has been carried out no more than 12 months prior to the information request being received." **DELETED** agreed with the **DELETED** that rewording was needed, and suggested that information be provided only in regard to the rights at the moment of request.

⁶⁶ **Cion** suggested retaining "the conditions governing the transfer of acquired rights" in the text.

⁶⁷ **DELETED** and **Cion** considered that information should also be provided to deferred beneficiaries.

Article 9

Implementation

1. The Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive no later than [...] ⁶⁸, or may grant the social partners, at their joint request, responsibility for implementing this Directive as regards the provisions relating to collective agreements. In that case, Member States shall ensure that, no later than [...] ⁶⁹, the social partners have introduced the requisite measures by agreement; the Member States concerned shall take all the necessary steps to ensure that they are at all times able to guarantee the outcomes prescribed in this Directive. They shall forthwith inform the Commission thereof. ⁷⁰
2. The Member States may extend, where necessary, the implementation of this Directive for 120 ⁷¹ months starting from [...] ⁷². Any Member State using this extension shall inform the Commission accordingly, indicating the provisions and schemes concerned and the specific reasons for the extension. ⁷³
3. [...]
4. When the Member States adopt these measures, these shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.
5. [...]

⁶⁸ "24 months after the date of entry into force of the Directive".

⁶⁹ "24 months after the date of entry into force of the Directive".

⁷⁰ **DELETED**: reservation on Article 9(1), particularly in regard to 24 months.

⁷¹ A large majority of delegations considered that a shorter transitional period may be preferable, depending on the provisions regarding the scope. Cion reiterated its preference for a shorter transitional period. Also see Article 2(3). **DELETED** maintained a scrutiny reservation.

⁷² "date after the date of entry into force of the Directive".

⁷³ **DELETED**: reservation on Article 9(2). This delegation was especially concerned that loyalty systems might not be able to continue under the Directive.

Article 10

Report

1. **Ten** years after [...] ⁷⁴, the Commission shall draw up a report for submission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the basis of the information provided by the Member States.
2. [...]

Article 11

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 12

Addressees

This Directive is addressed to the Member States.

Done at,

For the European Parliament

The President

For the Council

The President

⁷⁴ "date of entry into force of this Directive".