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

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on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 51 and 235 thereof,

Having regard to the proposal from the Commission[(1)],

Having regard to the opinion of the European Parliament[(2)],

Having regard to the opinion of the Economic and Social Committee[(3)],

(1) Whereas one of the fundamental freedoms of the Community is the free movement of persons; whereas the Treaty provides that the Council shall, acting unanimously, adopt such measures in the field of social security as are necessary to provide freedom of movement of workers;

(2) Whereas the social protection of workers is ensured by statutory social security schemes complemented by supplementary social security schemes;

(3) Whereas the legislation already adopted by the Council with a view to protecting the social security rights of workers moving within the Community and of members of their family, namely Council Regulations (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community[(4)] and (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community[(5)], concern only statutory pension schemes; whereas the system of coordination provided for in those Regulations does not extend to supplementary pension schemes, except for schemes which are covered by the term 'legislation' as defined by the first subparagraph of Article l(j) of Regulation (EEC) No 1408/71 or in respect of which a Member State makes a declaration under that Article;

(4) Whereas the Council has a wide discretion regarding the choice of the most appropriate measures for attaining the objective of Article 51 of the Treaty; and whereas the system of coordination provided for in Regulations (EEC) No 1408/71 and (EEC) No 574/72, and in particular the rules of aggregation, are not appropriate to supplementary pension schemes, except for schemes which are covered by the term 'legislation' as defined by the first subparagraph of Article l(j) of Regulation (EEC) No 1408/71 or in respect of

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which a Member State makes a declaration under that Article, and should therefore be subject to specific measures, of which this Directive is the first, in order to take account of their special nature and characteristics and the diversity of such schemes within and between Member States;

(5) Whereas no pension or benefit should be subject to both the provisions of this Directive and those of Regulations (EEC) No 1408/71 and (EEC) No 574/72, 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 l(j) of Regulation (EEC) No 1408/71, cannot be subject to the provisions of this Directive;

(6) Whereas in its Recommendation 92/442/EEC of 27 July 1992 on the convergence of social protection objectives and policies[6] the Council recommended that Member States should 'promote, where necessary, changes to the conditions governing the acquisition of pension and, especially, supplementary pension rights with a view to eliminating obstacles to the mobility of employed workers';

(7) Whereas a contribution to this objective can be made if workers who move or whose place of employment moves from one Member State to another are guaranteed equal treatment as regards the protection of their supplementary pension rights with workers who remain or whose place of employment changes but remains within the same Member State;

(8) Whereas freedom of movement for persons, which is one of the basic rights enshrined in the Treaty, is not confined to employed persons but also extends to self-employed persons;

(9) Whereas the Treaty does not provide powers other than those of Article 235 to take appropriate measures within the field of social security for self-employed persons;

(10) Whereas, in order to enable the right of free movement to be exercised effectively, workers and others holding entitlement should have certain guarantees for equal treatment regarding the preservation of their vested pension rights deriving from supplementary pension schemes;

(11) Whereas the 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 73b of the Treaty;

(12) Whereas in order to facilitate the exercise of the right to free movement, national regulations should, where necessary, be adjusted in order to enable contributions to continue to be made to a supplementary pension scheme established in one Member State by or on behalf of workers who are posted to another Member State in accordance with Title II of Regulation (EEC) No 1408/71;

(13) Whereas in this regard the Treaty requires not only the abolition of any discrimination based on nationality between workers of the Member States but also the elimination of any national measure likely to impede or render less attractive for those workers the

exercise of the fundamental freedoms guaranteed by the Treaty as interpreted by the Court of Justice of the European Communities in successive judgments;

(14) Whereas 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;

(15) Whereas this Directive is without prejudice to the laws of the Member States concerning collective action to defend the interests of trades and professions;

(16) Whereas, by reason of the diversity of supplementary social security schemes, the Community should lay down only a general framework of objectives and therefore a Directive is the appropriate legal instrument;

(17) Whereas, in accordance with the principles of subsidiarity and proportionality as set out in Article 3b of the Treaty, the objectives of this Directive cannot be sufficiently achieved by the Member States and can therefore be better achieved by the Community; whereas this Directive does not go beyond what is necessary to achieve those objectives,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

OBJECTIVE AND SCOPE

Article 1

The aim of this Directive 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.

Article 2

This Directive shall apply to members of supplementary pension schemes and others holding entitlement under such schemes who have acquired or are in the process of acquiring rights in one or more Member States.

CHAPTER II

DEFINITIONS

Article 3

For the purpose of this Directive:

(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