PENSION SCHEMES

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KEY ISSUES

Objective of the white paper: The Commission presents its ideas on how to secure adequate, safe and sustainable pensions in the member states.

Parties affected: Employers and employees, holders of private and occupational pension schemes, statutory and private pension providers

Pros: (1) Raising both the statutory and effective retirement age and the female employment rate could lessen the financial burden caused by demographic change.

(2) Facilitating the cross-border activities of pension providers and eliminating fiscal discrimination strengthen the internal market.

Cons: A blanket regulation of the insolvency provisions modelled on the Solvency II criteria renders occupational pension schemes unnecessarily expensive and therefore less attractive for employers and employees.

CONTENT

Title

White Paper COM(2012) 55 of 16 February 2012: An Agenda **for Adequate, Safe and Sustainable** Pensions

Brief Summary

► **Background**

– According to the Commission, demographic change in society and the impact of the economic crisis and the debt crisis pose a threat to the "sustainable guarantee" of "adequate" pensions.
– Contrary to their own demands expressed before the European Council in March 2001, to this day most Member States have ignored these problems and failed to carry out the necessary reforms.
– The Commission is calling for voting on reforms to be carried out at European level in future, as due to the "interrelated character of the macroeconomic, social and employment challenges" (p. 8), only a "comprehensive approach" promises success.
– The Commission does not plan any EU "legislative designing" of the pensions systems.
– In fact, it propagates:
  - "supporting legal acts" to improve the functionality of the single market;
  - "'soft law' measures such as codes of good practice" (p. 14);
  - "the mobilisation of funds" and
  - above all, the coordination of national policies.
– The Commission summarises the latest reforms carried out by Member States regarding the public pay-as-you-go pension schemes and the funded pension schemes and gives country-specific recommendations (Annex 3).

► **Problems affecting pay-as-you-go pension schemes**

– The increase in the population's life expectancy, the entry of the baby-boomers into retirement and falling birth rates all lead to a considerable burdening of pay-as-you-go pension schemes – which are generally public – of Member States.
– Women have a higher life expectancy than men but normally retire earlier in most Member States. This longer benefit period leads to a further burdening of the pay-as-you-go pension schemes.

► **Solutions to pay-as-you-go pension schemes**

– A higher retirement age reduces the financial burdening of Member States and boosts the labour market through the experience of older workers (p. 11). Linking the retirement age to gains in life expectancy would have a particularly stabilising effect (p. 10).
– The Commission sees considerable scope for improving the employment rate of women, migrants and older employees in order to improve the ratio of pensioners to contributors (p. 7) in many Member States.
– "Unnecessarily early" retirement sets the wrong signals to the population and should be completely abolished.
– Raising the retirement age and removing early retirement options will only have a positive effect if employees remain employed in the additional years (p. 12).
– The productivity of older employees mainly depends on the state of their health. Therefore, the health of employees should be promoted by:
  - developing cost-effective health systems and
  - promoting "healthy and active ageing" (p. 11).

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– Work should be better organised by
  - "modifying working conditions as regards the age structure of employees", in particular by developing "second careers" and suitable "end-of-career jobs" (p. 12);
  - creating family-friendly and age-appropriate part-time jobs;
  - promoting life-long learning and
  - preventing age discrimination.
– EU initiatives are to support Member States in the long-term ensuring of appropriate retirement schemes. To this end, the Commission is planning amongst other things (Annex 1):
  - a "close monitoring" of the recommendations made with regard to retirement and labour market reforms under the Europe 2020 Strategy (see cepTopicsite);
  - the support of the Employment Committee (EMCO), the European Payment Council (EPC) and the Social Protection Committee (SPC) in monitoring pension reforms in Member States by the Commission;
  - later in 2012 a report on the "appropriateness" of pension levels;
  - the financial support of "mutual learning" (p. 12) through the programme PROGRESS and the planned programme for social change and social innovation (PSCI); and
  - a recommendation from the Commission that Member States promote national programmes to promote healthy and active ageing through the European social funds.
– The Commission wishes to consult the social partners as to "how unwarranted mandatory retirement ages could be revised in collective agreements and national legislation" (p. 17).

► **Problems affecting funded pension schemes**

– The current crisis has shown that funded pension schemes are vulnerable to financial crisis and economic downturns and as a result are now struggling with "falling asset values and reduced returns" (p. 3).
– Therefore, the Commission is calling for a review of the regulatory framework of funded pension schemes and their structures (p. 13).
– As funded pension schemes will only be able to offer lower pensions in future, supplementary retirement savings will play a greater role (p. 12).

► **Solutions for funded pension schemes**

– Later in 2012, the Commission wishes to propose amendments to the Directive on the activities and supervision of institutions for occupational retirement provision ("IORP", DIR 2003/41/EC). To be more specific, it wishes to:
  - facilitate through regulation the cross-border activity of providers of private pension products, though this time, unlike before, taking into account the different types of occupational retirement provision (p. 13);
  - reduce the insolvency risk of providers of occupational retirement provisions by subjecting them to the provisions stipulated under the Solvency II Directive (DIR 2009/138/EC) for insurance companies (p. 17).
– Also in 2012, the Commission wishes to develop a concept for improved protection of occupational pension savings in the case of the insolvency of an employer. The Directive on the protection of employees in the case of employer insolvency (DIR 2008/94/EC) is to serve as a basis.
– The Commission calls for improved framework conditions to support private supplementary pension savings. To be more specific, it wishes to:
  - initiate infringement procedures against Member States whose tax rules constitute obstacles to the activity of private pension product providers;
  - discuss with Member States how to reduce the risk that cross-border pensions are subject to double taxation (or escape taxation altogether);
  - develop a "code of good practice for occupational pension schemes" (p. 18) together with all parties affected in order to ensure safe and sustainable pension schemes;
  - harmonise conditions so that citizens can easily access the various pension options; and
  - improve "consumer information and protection standards" via voluntary codes and "possibly" (p. 17) the introduction of an EU certification scheme for private pension products.
– The Commission is considering extending the Regulation on the coordination of social security systems [(EC) No. 883/2004] to include occupational pension schemes. This is to prevent these systems from jeopardising occupational mobility and flexibility (p. 19).
– The Commission wishes to promote a tracking system for all public and occupational pension rights so that employees can keep track of their acquired pension entitlements.
– Moreover, the Commission wishes to encourage the adoption of a Directive on the acquisition and receipt of supplementary pension rights (Proposal COM(2007) 603; see cepPolicy Brief).

Statement on Subsidiarity by the Commission

The aim of the Commission is to design EU law in such a way that it better supports the reform efforts in Member States. However, the Commission expressly states that the "main responsibility" for achieving these goals "clearly remains with the Member States" (p. 14).

Policy Context

The Commission's White Paper follows on from the consultation findings to the Green Paper towards adequate and safe pension schemes [COM (2010) 365, see cepPolicy Brief]. According to the Commission, the statements submitted all call for substantial improvements but also all lead to the recognition that the bulk of Member States do not wish for any "extending" of the existing European policy framework (p. 20).

Options for Influencing the Political Process

Leading Directorate General:	DG Employment, Social Affairs and Inclusion
Consultation procedure:	No consultation procedure provided.

ASSESSMENT

Economic Impact Assessment

Ordoliberal Assessment

The Commission is right to criticise the situation of pay-as-you-go and funded pension schemes. Fast and effective amendments are necessary.

The financial burdens on pay-as-you-go pension insurances resulting from the demographic development – increasing life expectancy, population decline in many Member States – **can**, as requested by the Commission, **be mitigated by raising the statutory and effective retirement age and increasing the female employment rate**. Equally right is the recommendation to link the statutory retirement age to gains in life expectancy, since a one-time increase alone does not suffice to create sustainable financing.

In order to achieve higher employment rates among older people and women, it is necessary to create age-appropriate jobs with the respective qualification measures and measures for a better work-life balance regarding children, care and profession. These measures should, however, not be prescribed at state level but agreed upon by the social partners and companies.

The Commission's **intention to facilitate the cross-border activity of private pension providers** through amendments to the IORP Directive **– taking into account the national characteristics** – **and to eliminate fiscal discrimination strengthens the internal market**.

By contrast, it is somewhat surprising that the proposed insolvency protection modelled on the Solvency II Directive obviously does not take into account national characteristics. With regard to occupational pension schemes, Member States have very different forms of insolvency insurance, a fact which does not justify a standardised capital deposits. **A blanket regulation in accordance with Solvency II criteria would** therefore **make occupational pensions unnecessarily expensive and in turn less attractive for employers and employees**. For it increases the capital requirement of occupational pensions considerably, which necessarily leads to lower yields or higher contributions. This is contradictory to the set target of strengthening supplementary private pensions.

Impact on Efficiency and Individual Freedom of Choice

A blanket regulation modelled on the Solvency II criteria, which would make the human resources policy instrument of occupational pensions less attractive for employers, is detrimental to the individual freedom of choice when it comes to employee private pensions.

Impact on Growth and Employment

Increasing the retirement age will have a positive impact on growth and employment in view of the decline in the number of working-age persons.

Legal Assessment

Competency

The Commission's competency to adopt White Papers is based on Art. 17 TEC. Pursuant to this article, it may take initiatives deemed necessary in order to promote the common interests of the EU.

With regard to legislative follow-up actions of the EU, the following applies: provisions on the transferability of occupational pensions can be based on Art. 48 TFEU (free movement); the protection of employees' entitlements to occupational or inter-occupational supplementary pensions before the insolvency of employers are based on Art. 153 (1) lit. c TFEU (social security and social protection of employees); the regulation of pension funds are based on Art. 53 TFEU (self-employed occupation); the monitoring of pension funds are based on Art. 114 TFEU (completion of the single market).

Regarding social security systems (Art. 153 (1) lit. k TFEU), the EU is, however, only entitled to promote the cooperation between Member States, namely by initiatives "aimed at improving knowledge, developing exchange of information and best practices, promoting innovative approaches and evaluating experiences" (Art. 153 (2) lit. a). Moreover, each intervention into the basic principles of the Member States' social security systems is prohibited (Art. 153 (4) TFEU). With regard to the approaches to a solution proposed in the White Paper for pay-as-you-go pension schemes, the following applies: EU provisions on the statutory retirement age and on early retirement would constitute an infringement of the competency order. That restraint, however, is subject to a circumvention ban: the respective provisions must not be based on other competency articles (ECJ C-120/95, No. 21). Infringement proceedings against Member States to remove tax rules which are contrary to the fundamental freedoms are possible (Art. 258 TFEU). A harmonisation of the taxation of both the expenditure for private pension savings and of the providers of pension products would not be in line with the competency order of the TFEU, for this affects direct taxation, whereas EU competency is generally limited to indirect taxation (Art. 113 TFEU).

Subsidiarity

A general, EU-wide requirement to protect occupational pension schemes against insolvency is as such appropriate. However, it should be limited to a standard minimum level. How this level of protection can actually be achieved should be left up to the individual Member States, due to the various different protection schemes and insolvency acts that exist.

Proportionality

Unproblematic.

Compatibility with EU Law

Unproblematic.

Compatibility with German Law

The vast majority of the measures named by the Commission for reforming the pay-as-you-go pension scheme have already been implemented in Germany. The occupational retirement provision, however, has until now largely been exempt from the European legislative framework. In this aspect, to a large extent the German regulations do not correspond with the ideas of the Commission.

Conclusion

Raising, as proposed, both the statutory and effective retirement age and the female employment rate could lessen the financial burden caused by demographic change. Facilitating the cross-border activities of pension providers and eliminating fiscal discrimination strengthens the internal market. A blanket regulation based on Solvency II criteria render the occupational pension schemes unnecessarily expensive and therefore less attractive for employers and employees.