

annual objectives 'in all the segments'. Although this might be an important step, it could adversely affect compliant fleets.

2.3.6. Point (6), which amends Article 16(2), should explain more clearly why a Council Decision is to be replaced by 'Community legislation'.

Brussels, 17 October 2001.

*The President  
of the Economic and Social Committee*  
Göke FRERICHs

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**Opinion of the Economic and Social Committee on the 'Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee on the elimination of tax obstacles to the cross-border provision of occupational'**

(2002/C 36/12)

On 19 April 2001 the Commission decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned communication.

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 24 September 2001. The rapporteur was Mr Byrne.

At its 385th plenary session of 17 and 18 October 2001 (meeting of 17 October 2001), the Economic and Social Committee adopted the following opinion by 88 votes to one with two abstentions.

## 1. Introduction

1.1. The Commission published its proposals for a draft directive on the activities of institutions for occupational retirement provision in October 2000 <sup>(1)</sup>. The Committee adopted its opinion on the proposed directive in March 2001 <sup>(2)</sup>.

1.2. This communication deals with the tax aspects of cross-border occupational pension provision which are not covered in the draft directive.

## 2. Background

2.1. Pensions are of universal concern but particularly to individual EU citizens who want adequate provision for their retirement. Pensions in the Community are provided under three pillars:

- Pillar 1: Social security schemes set up on a statutory basis whether managed by the State, the contributors or otherwise (generally pay as you go).
- Pillar 2: Occupational (funded) schemes (generally tied to the employer).
- Pillar 3: Individual schemes (generally with life-assurance companies).

2.2. The proposed pensions directive and this communication are both focused on the matters which need to be dealt with in relation to the cross-border provision of Pillar 2 schemes although the proposals particularly in relation to tax would also be generally relevant to Pillar 3 arrangements as well.

2.3. The reason the directive did not deal with the taxation aspects is that taxation must be decided by unanimity. Including tax in the directive is likely to have delayed or aborted its adoption.

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<sup>(1)</sup> COM(2000) 507 final.

<sup>(2)</sup> OJ C 155, 29.5.2001, p. 26.

2.4. The present communication:

- seeks a co-ordinated approach adapted to the diversity of Member States' rules rather than attempting to achieve harmonisation;
- calls for the elimination of unduly restrictive or discriminatory tax rules;
- presents measures to safeguard Member States' tax revenues.

**3. The taxation of occupational pensions in Member States**

3.1. Occupational pension arrangements may be subject to tax at three stages — on the contributions to the fund, on the investment returns earned by the fund and on the pensions paid out to beneficiaries.

3.1.1. The majority of Member States allow some tax relief on employee's contributions and most do not treat employer's contributions as taxable income of the employee. Thus contributions are most commonly exempt.

3.1.2. Most Member States do not tax the returns earned on the investment of pension funds but some Member States do levy a 'yield tax'. Investment income is therefore most commonly exempt.

3.1.3. Most Member States tax pension benefits although a number of Member States either tax lump sum payments less heavily or do not charge any tax at all (up to a certain limit). Pensions are therefore most commonly taxed.

3.1.4. The table attached as Appendix 1 summarises the basic approach of Member States to the taxation of second pillar pensions. There are important differences between them in the level of deductibility of contributions and the taxation of benefits. It is important to note that this table therefore provides only a rough guide.

3.1.4.1. The table shows that in broad terms 11 Member States have arrangements providing for exemption of pension contributions, exemption of investment income received by the fund and taxation of pension benefits (EET). Three Member States exempt pension contributions, tax investment income and tax pensions (ETT) and two Member States tax contributions, exempt investment income and exempt pensions from tax (TEE).

3.1.5. A consequence of these arrangements is that it is technically possible that an individual moving to another Member State on retirement might in effect suffer double taxation or no taxation at all.

**4. The Commission's approach to the taxation issue**

4.1. As has been noted already any attempt at this stage to harmonise tax rules would cause problems for Member States and would be most unlikely to achieve unanimity.

4.2. The Commission therefore concentrates on dealing with discriminatory treatment of cross-border pension provision. Two particular problems are identified:

- A person who is a member of a pension scheme in a Member State moves to another Member State and wishes to stay in the existing scheme.
- An individual employer or group of employers and the representatives of the employees may wish to make pension arrangements for all employees in different Member States through a pan-European pension institution.

4.3. The Commission considers that the EC Treaty obliges Member States to abolish any discriminatory rules under Article 14 and the Commission quotes a number of decisions of the European Court of Justice in support of this including *Safir* (1998) and *Wielockx* (1995).

4.4. The Commission's overall view is that Member States are entitled to require all newly entered pension arrangements by persons resident in that State to conform to the appropriate domestic law. However for a migrant worker who is already a member of a pension scheme outside the State such a rule would unreasonably restrict the free movement of workers.

4.5. Therefore when an EU citizen already belongs to a tax-approved scheme in his own Member State and then moves, the host State cannot refuse to grant tax deduction of contributions paid to the non-resident scheme, if such tax relief is available to members of resident schemes.

4.6. Where a worker moves to another Member State he may not wish to remain in his home-country scheme — but may prefer to join a scheme in the host country. In this event he may wish to transfer his pension capital from the home-country scheme to the host country scheme. The Commission accepts that such transfers may present difficulties but argues that no tax should be charged if it would not be charged on a similar transfer within the Member State.

4.7. The Commissions conclusions in summary are that Articles 39, 43, 49 and 56 guarantee the:

- free movement of workers;
- freedom of establishment;
- freedom to provide services; and
- free movement of capital.

4.8. It should be noted however that the possibility of a migrant worker remaining in his home-country scheme would in most Member States be subject to the consent of the employer sponsoring the home-country scheme.

## **5. Safeguarding the application of Member States' tax rules**

5.1. The Commission argues that the use of the Mutual Assistance Directive provides a sufficient mechanism to protect Member States' tax revenues. The Commission considers that the automatic exchange of information, similar to that already proposed in the area of savings income, is the best way of achieving this.

## **6. Pan-European pension institutions**

6.1. The Commission puts forward for consideration a proposal made by industry for Pan-European pension institutions. The proposal is designed to make it possible for employees of a multinational company to belong to a single pension institution based in one Member State regardless of the Member State in which they are employed.

6.2. The basic principle of the proposal is that Member States would be able to maintain their own approach to the taxation of pension arrangements for residents in their own state. This would be achieved by having within the pension institution separate sections for employees in each Member State.

6.3. An employee moving from one Member State to another would continue paying contributions to the same institution but to a different section. The institution would operate each section in accordance with the tax and other rules of the relevant Member State.

## **7. Dealing with the diversity of Member States' tax arrangements**

7.1. While promoting the adoption of the EET rule as it already enjoys the widest level of support, (indeed it can be noted that Germany although a TEE country for funded pension schemes has proposed the introduction of a new tax advantaged personal pension plan as part of its proposed reforms of its social security system) the Commission recognises the immediate need for a solution to the cross-border tax issue which in theory could lead to double taxation or to no taxation for a pension recipient (see paragraph 3 above).

7.2. The Commission suggests that appropriate bilateral Double Taxation agreements should be put in place, which they believe would solve this problem. For example the agreement could provide that a pension from State A received by a person resident in State B would only be taxed on the same amount of pension as would have been liable to tax in State A.

## **8. General comments**

8.1. The Committee believes that it is essential to deal with the tax problems involved in the cross-border provision of occupational pensions as a matter of urgency. Basic Treaty freedoms are involved — workers are impeded in exercising their right of free movement to work, service institutions are unable to operate across borders and major companies suffer avoidable additional cost through the fragmentation of their pension arrangements.

8.2. The Committee stresses that any discussion of pensions must ultimately ensure fair fiscal treatment as between all three Pillars. The Committee also points out that although Pillar 2 schemes are the focus of this communication the content applies in large measure to Pillar 3 schemes as well.

8.3. The Committee has defined its preferred solution as the adoption of an appropriate directive<sup>(1)</sup> to regulate this area. The Committee acknowledges however the practical

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<sup>(1)</sup> OJ C 155, 29.5.2001, p. 26.

difficulty facing this solution. The Committee therefore welcomes this Communication from the Commission and praises the Commission for its determination to find a way of ensuring Treaty freedoms are honoured.

8.4. The Committee also notes the important role played by the European Court of Justice in upholding the Treaty and the extent to which case law is already shaping the way forward.

8.5. The Committee believes that the Commission has made a major effort to make progress in this area while still trying to reduce problems believed to exist by Member States administrations. The Committee hopes that this proportionate approach by the Commission will enable rapid progress to be made.

8.6. The Committee has previously expressed its support for the EET system of taxing pensions<sup>(1)</sup>. The Committee believes the EET system is preferable because:

- (a) it is inherently more equitable since it imposes tax on the actual benefit received and not on the contributions which will produce different benefit outcomes for different members depending for example on how long they live;
- (b) by providing tax relief on contributions it encourages the making of retirement provision; and
- (c) it helps to deal with the demographic problem since it reduces tax revenues today in exchange for tax revenues at the time when the demographic dependency ratio will be much more unfavourable.

8.6.1. The Committee recognises however that, due to the diversity of Member States' tax systems, it is difficult to predict when the adoption of EET as an EU-wide system might be achievable. The Committee notes however that a change by ETT countries to the EET system would be relatively straight forward from a technical standpoint although the impact on Member States tax revenue would have to be addressed.

8.6.2. The Committee recommends to the Commission that the Applicant Countries be encouraged to adopt the EET system to reduce further diversity in an enlarged community.

8.7. While expressing its support for the Commission's efforts to find a way of dealing with the diversity of Member States tax systems it notes that the Commission has not dealt in great depth with this complex area. For example the issue of the ETT countries does not seem to be adequately addressed.

8.7.1. If a worker from an EET country moves to an ETT country and elects to stay in his existing scheme how does the host country collect the tax on the investment returns which it would apply to one of its own citizens.

8.7.2. If a worker moves from a TEE country to an EET country but subsequently returns to his original home state and eventually retires there having remained throughout in his original pension scheme will the TEE state tax that portion of the pension attributable to the period in the EET country. If not the worker benefits by getting tax relief on both contributions and pension. Obviously the converse could arise.

8.7.3. The Committee welcomes therefore the intention of the Commission as stated in the Communication to work with Member States to develop rules to resolve conflicts of interpretation and mechanisms to enable tax payers to secure consistent treatment by both authorities concerned. Although much of the debate will take place on a bilateral basis the Committee hopes that the Commission's involvement will lead to the adoption of commonly applied solutions as far as possible.

8.8. The Committee welcomes the fact that the concept of pan-European pension institutions is now being actively considered.

8.8.1. The proposal does not adversely affect Member State interests as each national section in the pan-European institution would be administered in accordance with the tax rules and labour law of that Member State.

8.8.2. While the Committee does not recommend the use of fiscal representatives it suggests that Member States' tax authorities might be reassured if provision was made for the nomination by the multinational sponsor of the pension institution of a designated local company official who was resident in that Member State. This official e.g. the local Pension Administrator would be responsible to the local tax authorities for the collection of tax due in respect of locally based members of the non-resident scheme.

<sup>(1)</sup> OJ C 368, 20.12.1999, p. 57.

8.8.3. The Committee believes however that careful consideration will need to be given to all the consequences of this proposal particularly with regard to the agreements concluded between the social partners in some Member States requiring affiliation to existing occupational schemes. This obligation has been upheld by recent judgements of the European Court of Justice. The Committee suggests that discussion between the social partners could assist in reaching a solution which, whilst meeting the need for worker mobility and for guarantees of pension rights, would also take account of these agreements.

8.8.4. The Committee also observes that it is commonly supposed that only the largest companies will be able to avail of these arrangements. The Committee hopes that this will not be so and expects that Pension-service providers will, when the initial teething problems have been eliminated, be able to offer such arrangements to at least medium-sized companies at a reasonable cost. It should also be possible for groups of companies to amalgamate informally to enable them to avail of these arrangements.

8.8.5. The Committee is pleased to learn that a pilot scheme is planned involving a limited number of Member States, which will provide the opportunity to validate this type of arrangement from everyone's point of view — Member States, Employers and Employees' representatives.

8.8.6. The Committee nonetheless notes that sufficient details are not yet available to enable it to undertake a full evaluation of the proposal and would welcome the opportunity to review the proposal further when these are available.

8.9. In discussing pensions the Committee stresses that it should not be forgotten that in some Member States special provisions apply whereby the tax burden on occupational pensions paid to persons suffering from either physical or mental disability are subject to favourable tax treatment. The

Committee believes the needs of this category of citizens should always be the focus of special consideration.

## 9. Conclusions

9.1. The Committee welcomes the action of the Commission in bringing forward these proposals designed to eliminate tax obstacles to the cross-border provision of occupational pensions.

9.2. The Committee supports the Commission's approach, which is to monitor the relevant national rules and take the necessary steps to ensure effective compliance by Member States with the fundamental freedoms of the EC Treaty.

9.3. The Committee agrees that the Mutual Assistance Directive is the appropriate basis on which to develop the exchange of information necessary to safeguard the proper application of Member States' tax rules.

9.4. The Committee welcomes the outline proposal for the establishment of pan-European pension institutions although the Committee recognises that more detailed work and consultation will be required to ensure effective implementation.

9.5. The Committee agrees that the long-term aim should be to adopt the EET system of taxation of pensions as the standard system for the EU. This should be indicated in advance to the Applicant Countries.

9.6. The Committee supports the objective of removing unjustified obstacles to the free movement of workers. The Committee therefore also supports the principles outlined in the Commission document but believes that it will be necessary for the Commission to work closely with individual Member States to develop solutions to the complex issues involved.

Brussels, 17 October 2001.

*The President*  
*of the Economic and Social Committee*  
Göke FRERICH

## APPENDIX

## to the opinion of the Economic and Social Committee

The table below summarises the basic approach of the different Member States to the taxation of second pillar pensions <sup>(1)</sup>. There are important differences between Member States in the level of deductibility of contributions and the taxation of benefits. This table provides only a rough overview.

**Table: Overview of occupational pension taxation systems**

	EET	ETT	TEE
Belgium	X		
Denmark		X	
Germany	X		X
Greece	X		
Spain	X		
France	X		
Italy		X	
Ireland	X		
Luxembourg			X
Netherlands	X		
Austria	X		
Portugal	X		
Finland	X		
Sweden		X	
United Kingdom	X		

<sup>(1)</sup> Member States may operate more than one system, especially in an international context.