



DIRECTIVE 98/49/EE ON THE SAFEGUARDING OF SUPPLEMENTARY PENSION RIGHTS OF EMPLOYED AND SELF-EMPLOYED PERSONS MOVING WITHIN THE EUROPEAN UNION

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Legal Base

- Articles 42 and 308 of EC Treaty



1. : Objective and scope

1.1 Objective: Safeguarding supplementary pension rights of persons moving within the European Union

1.2 Scope

- a) Personal scope
- b) Material scope
- c) Definitions



1.1 Objective of the Directive

1. The aim of Council Directive 98/49/EC 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



1.2. Scope

a) Personal Scope

- The aim of Council's Directive 98/49/EC 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 and members of their families within the Community.



b) Material scope

- In Article 1, the Directive defines the supplementary pension schemes covered by its scope. Are covered both voluntary and compulsory supplementary pension schemes for employed and self-employed persons with the exception of schemes covered by Regulation (EEC) No 1408/71 .



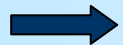
- This implies that no pension or benefit should be subject to both the provisions of this Directive and those of Regulations (EEC) No 1408/71 and (EEC) No 574/72, and therefore any supplementary pension scheme which comes within the scope of those Regulations, because a Member State has made a declaration to that effect under Article 1(j) of Regulation (EEC) No 1408/71, cannot be subject to the provisions of this Directive;



c) Definitions

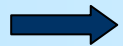
Article 3 of this Directive contains some definitions :

- 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 replace those provided in respect of the same contingencies by statutory social security schemes;





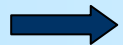
- b) 'supplementary pension scheme` means any occupational pension scheme established in conformity with national legislation and practice such as a group insurance contract or pay-as-you-go scheme agreed by one or more branches or sectors, funded scheme or pension promise backed by book reserves, or any collective or other comparable arrangement intended to provide a supplementary pension for employed or self-employed persons;





- c) 'pension rights' means any benefits to which scheme members and others holding entitlement are entitled under the rules of a supplementary pension scheme and, where applicable, under national legislation;

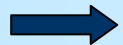
- d) 'vested pension rights' means any entitlement to benefits obtained after fulfilment of the conditions required by the rules of a supplementary pension scheme and, where applicable, under national legislation;





- e) 'posted worker' means a person who is posted to work in another Member State and who under the terms of Title II of Regulation (EEC) No 1408/71 continues to be subject to the legislation of the Member State of origin, and 'posting' shall be construed accordingly;

- f) 'contribution' means any payment made or deemed to have been made to a supplementary pension scheme..





Principal Provisions

Principal provisions of this directive could be summarized as follows:

- A person who leaves a scheme because he moves to another Member State must not be treated differently to a person who leaves the scheme but remains in the Member States, as far as his/her vested rights are concerned, (Article 4).
- According to Article 3 d) of the above Directive "vested pension rights " means any entitlement to benefits obtained after fulfilment of the conditions required by the rules of a supplementary pension scheme and, where applicable by national legislation.



-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 56 EC ex-Article 73b of the Treaty (**Article 5**)



- A person posted to another Member State must be allowed to continue to make contributions to the scheme in his "home" Member State,**(Article 6)**. To this end and 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



- 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 (**Article 7**)



Implementation

- This Directive came into force in the Member States the 25th July 1998 and Member States had to adopt the necessary measures for its application at the latest 36 months following the date of its entry into force.
- Members States have already adopted and transmitted to the Commission the measures for the implementation of Directive 98/49/EC. It is important to notice that old and new [\[1\]](#) Member States have the obligation to adopt implementing measures even they estimate that supplementary pension schemes within the meaning of Directive 98/49/EC (Articles 1 and 3) do not exist in their country.
- [\[1\]](#) The new Member States from the 1st May 2004



- The Court gave a clear ruling on the implementation of provisions on supplementary pension schemes in the context of Directive 80/987/EEC and the obligations arising from this Directive for the Member States (points 34 and 35). In its judgment of 2 February 1989 in Case 22/87, *Commission v. Italy* (ECR 1989 p. 143), the Court held:



"In response to the Commission's complaint concerning the lack of any Italian legal provision implementing the obligation deriving from Article 8 of the directive, whereby the Member States must protect employees' entitlement to old-age and survivors' benefits under supplementary company or inter-company pension schemes outside the statutory social security schemes, the Italian Government points out that such supplementary schemes are almost non-existent in Italy It need merely be stated in that regard that that fact cannot justify the failure to discharge the obligation imposed by Article 8 of the Directive ".



- This Case law was more recently confirmed in the judgment of the Court of 14 December 2000. Case C-457/98.,(Commission of the European Communities v Hellenic Republic.
Failure to fulfil obligations under Directive 96/97/EC on the implementation of the principle of equal treatment for men and women in occupational social security schemes. Failure to transpose. ECR. 2000, p. I-11481). pension
- The new Member States had in any case (even in the absence of supplementary schemes within the meaning of this Directive) to adopt the necessary measures for the implementation of Directive 98/49/EC



Perspectives

- Report on the implementation of Directive 98/49EC in the 15 Member States : COM (2006)22 Final of 26.01.2006 and its annex : SEC(2006) 82
- Proposal for a Directive improving the portability of supplementary pension rights COM(2005)507 final of 20.10.2005. This proposal is under discussion at the EP and Council levels and a final decision has not yet been taken

More information...



Site web Europa : www.ec.europa.eu

Site web of unit E3 'Free movement and coordination of social security schemes':

http://ec.europa.eu/comm/employment_social/free_movement/links_fr.htm

"Free movement of workers - achieving the full benefits and potential" :

http://ec.europa.eu/employment_social/free_movement/docs_en.htm

EURES: <http://ec.europa.eu/eures/>

EUROPASS: <http://europass.cedefop.europa.eu/>

European Year for workers mobility :

http://ec.europa.eu/employment_social/workersmobility_2006/



Questions





Thank you for your attention