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REPORT

on the Commission communication on the elimination of tax obstacles to the cross-border provision of occupational pensions
(COM(2001) 214 – C5-0533/2001– 2001/2212(COS))

Committee on Economic and Monetary Affairs

Rapporteur: Ieke van den Burg

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PROCEDURAL PAGE

By letter of 19 April 2001, the Commission forwarded to Parliament a communication on the elimination of tax obstacles to the cross-border provision of occupational pensions (COM(2001) 214 – 2001/2212(COS)).

At the sitting of 12 November 2001 the President of Parliament will announce that she had referred the communication to the Committee on Economic and Monetary Affairs as the committee responsible and the Committee on Employment and Social Affairs, the Committee on Legal Affairs and the Internal Market, the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the Committee on Petitions for their opinions (C5-0533/2001).

The Committee on Economic and Monetary Affairs had appointed Ieke van den Burg rapporteur at its meeting of 6 November 2000.

The committee considered the Commission communication and the draft report at its meetings of 10 July 2001, 12 September 2001, 9 October 2001 and 6 November 2001.

At the last meeting it adopted the motion for a resolution by 24 votes to 1 .

The following were present for the vote: Philippe A.R. Herzog, acting chairman; Ieke van den Burg, rapporteur; Generoso Andria, Richard A. Balfe, Luis Berenguer Fuster, Hans Udo Bullmann, Ozan Ceyhun (for Bernhard Rapkay pursuant to Rule 153(2)), Harald Ettl (for Robert Goebbels), Jonathan Evans, Lisbeth Grönfeldt Bergman, Christopher Huhne, Othmar Karas, Giorgos Katiforis, Christoph Werner Konrad, Wilfried Kuckelkorn (for Christa Randzio-Plath), Astrid Lulling, Ioannis Marinos, Simon Francis Murphy, Fernando Pérez Royo, Alexander Radwan, Peter William Skinner, Charles Tannock, Bruno Trentin, Theresa Villiers and Karl von Wogau.

The opinions of the Committee on Employment and Social Affairs and Committee on Petitions are attached; the Committee on Legal Affairs and the Internal Market decided on 26 June 2001 not to deliver an opinion and Committee on Citizens' Freedoms and Rights, Justice and Home Affairs decided on 13 September 2001 not to deliver an opinion.

The report was tabled on 7 November 2001.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

MOTION FOR A RESOLUTION

European Parliament resolution on the Commission communication on the elimination of tax obstacles to the cross-border provision of occupational pensions (COM(2001) 214 – C5-0533/2001 – 2001/2212(COS))

The European Parliament,

- having regard to the Commission communication (COM(2001) 214 – C5-0533/2001),
 - having regard to the Commission proposal for a directive on the activities of institutions for occupational retirement provision (COM(2000) 507¹) and the resolution by Parliament² of 4 July 2001,
 - having regard to the Commission Communication on the future evolution of social protection from a long-term point of view: safe and sustainable pensions (COM(2000) 622),
 - having regard to the Green Paper on Supplementary pensions in the single market (COM(1997) 283),
 - having regard to the OECD Ageing Working Papers: 'Maintaining prosperity in an ageing society' and: the OECD study on the policy implications of ageing,
 - having regard to the conclusions of the Stockholm and Göteborg European Councils,
 - having regard to the conclusions of the Nice European Council,
 - having regard to the growing number of petitions to Parliament on the problem of fiscal obstacles to cross-border occupational pension schemes;
 - having regard to Rule 47(1) of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs and the opinions of , the Committee on Employment and Social Affairs and the Committee on Petitions (A5-0388/2001),
- A. whereas proper provision for old-age pensions is essential for the well-being and prosperity of the people of the Member States; whereas occupational pension schemes will play an increasingly important role to that end, whereas the cross-border mobility of workers must not be hindered by fiscal obstacles to the accumulation, management and payment of occupational pensions; whereas, therefore, co-ordination with regard to the fiscal treatment of occupational pensions in the Member States is of the greatest

¹ OJ C 96 E, 17.3.2001, p. 136

² OJ C not yet published

importance,

- B. whereas the debate on the future of pensions in the European Union cannot be confined to a discussion on financeability and transferability of rights acquired; calling, therefore, for a broad debate on the future of pension systems in the European Union, taking as the starting point the duty which pension systems place on society; notwithstanding, taking the view that difficulties in implementing national tax provisions in the single market by no means justify the sealing of national markets in occupational pension schemes; takes the view that compliance with national fiscal rules to which Member States rightly attach great importance should, regarding cross-border pensions, be made consistent with the opening of the market regarding the second pillar;
- C. whereas the co-ordination of the taxation of occupational pensions will also lead to greater comparison of pension systems in general,
- D. whereas the co-ordination of occupational pension schemes will enhance labour mobility and thus enhance employment,
- E. whereas the diversity of tax schemes in the various Member States regarding occupational pensions is leading to cases of dual taxation which European citizens regard as an injustice and an infringement of the fundamental rights and freedoms recognised by the Union,
- F. whereas work on the broad guidelines of economic policy means that pensions systems are playing an ever greater role in terms of their effect on national budgets; whereas the content, quality and form of pension schemes, and policy with regard to taxation, are the responsibility of the Member States and whereas the harmonisation of the fiscal treatment of pensions is very difficult to achieve through European legislation in view of the requirement for unanimity on decisions regarding tax legislation; whereas an effective and transparent coordination process must therefore be developed which can contribute to the elimination of tax obstacles and improve coordination,
- G. whereas the granting of tax incentives by exempting pension contributions from tax will stimulate the accumulation of occupational pensions; whereas the taxation of pension payments will generate more tax income in future when there will be a larger group of retired people and greater demands will be made on public funds than at present; whereas the EET system for the taxation of occupational pensions is already used by the vast majority of Member States,
- H. whereas bilateral or multilateral treaties for the levying and collection of taxes, as proposed by the Commission and encouraged by the OECD, are an important means to that end, but whereas enhanced cooperation by a number of Member States in the context of the opportunities offered by the Treaty amendments of Nice could provide greater clarity and transparency,
- I. whereas tax treatment of pensions also may have wide-ranging effects on other areas of law (social security, labour, contract and financial supervision law, enforceability of administrative and judicial orders), whereas the unrestricted deductibility of payments for

all workers made to foreign pension funds would be tantamount to the unconditional recognition of foreign legal provisions in the above-mentioned fields, such issues should also be involved in the process of open co-ordination,

- J. whereas the automatic and full exchange of the information necessary for the levying of taxes is in the interest of all Member States, and whereas mutual assistance in tax collection is a logical corollary of this; whereas, under Articles 1, 3 and 9 of the Mutual Assistance Directive, automatic exchange of information can be implemented without further legislative measures,
 - K. whereas Member States must allow migrant workers to continue with an existing pension scheme, in accordance with the rules of European law and the Commission's analysis of their interpretation and application,
 - L. whereas the refusal by an EET or ETT state of tax deductibility in respect of a worker's pension contributions paid to a foreign pension scheme is in conflict with EU law and constitutes a serious obstacle to cross-border worker mobility; whereas the European Court of Justice has ruled against such discrimination; and whereas the Commission is rightly considering proceedings for Treaty infringement,
 - M. whereas the transfer of accumulated pension rights with the aim of continuing to accumulate the best possible pension for a migrant worker in his country of establishment may not be hindered by disproportionate tax obstacles in the Member States; whereas at the same time Member States have the right to impose certain requirements regarding the transfer of accumulated pension rights in order to prevent abuse of the rules and evasion of tax;
 - N. whereas the proposal for the establishment of pan-European pension funds is worthy of support, but can only overcome administrative barriers, and does not absolve the Commission and Member States of the duty of tackling the substantive problems too,
 - O. whereas an intensive dialogue with the social partners and other operators in the pensions field is necessary in view of the importance of fiscal problems to the content and structure of occupational pension schemes for which they are responsible and which they manage,
1. Welcomes the Commission communication as a first step on the way to an internal market free of tax obstacles to the accumulation, management and payment of occupational pensions,
 2. Notes that the requirement for unanimity on decisions in the field of taxation makes it hard to achieve effective legislative measures rapidly at European level;
 3. Concurs with the Commission's analysis that Member States sometimes act in contravention of EC law regarding participation in pension schemes in cross-border situations; calls on the Commission to initiate proceedings as soon as possible before the

European Court of Justice on the basis of Article 226 of the EC Treaty in response to every case of tax discrimination regarding cross-border pension entitlements, and in the mean time to prepare other measures, including legislation, if it notes that insufficient progress has been made;

4. Urges the Commission and Member States to develop, in co-operation with the European Parliament, a process of open co-ordination regarding the taxation of occupational pensions, with a view to the elimination of double taxation and double non-taxation, and with a view to the broadest possible application of the EET principle, by devising objectives, benchmarks and reporting and evaluation procedures, in the context of the agreements reached at the Stockholm and Göteborg European Councils on policy with regard to the ageing of the population and the mobility of workers. This co-ordination could relate to:
 - * the tax levying system,
 - * the extent of tax levied and the possibility of agreeing on a band width regarding the level of taxation of pension benefits,
 - * the qualifying conditions for granting tax concessions,
 - * mutual adjustments between Member States in respect of migrant workers,
 - * transitional measures,
 - * a so-called 'European Test' to examine changes in Member States' rules with a cross-border impact,
5. Calls on the non-EET Member States to take steps as quickly as possible to introduce the EET system for occupational pensions, in order to promote convergence, reduce the opportunities for undesirable tax behaviour, avoid double taxation and remove obstacles to freedom of movement;
6. Calls on Member States using the EET or ETT system not to allow the situation to reach the stage of infringement proceedings before the European Court of Justice, but to permit migrant workers the deductability of pension contributions paid to the pension scheme which they were already subscribed to before they emigrated, and to permit non-migrant workers the deductability of pension contributions to pension institutions established in other Member States which are comparable in motive and intention, taking account of the requirements imposed by Member States;
7. Calls on the Commission and the relevant Committee under the Mutual Assistance Directive to make the proposal for automatic exchange of information operational as soon as possible;
8. Calls on Member States to consider, alongside bi- and multilateral agreements for the avoidance of the double taxation and non-taxation of pensions, a process of enhanced cooperation of the type made possible by the Treaty amendments of Nice, and calls on the Commission to carry out preparatory work to investigate the possibilities to that end;
9. Calls on the Council, the Commission and the Member States to make rapid progress with the directive on mutual recognition of occupational pension schemes and to confirm the proposed deadline of 31 December 2003 for its implementation; in this connection, the mutual recognition of occupational pensions schemes is a great contribution for

effective tax co-ordination measures;

10. Calls on the Member States to make progress in assessing the possibilities for co-ordination of their tax policy in respect of occupational pension provision while continuing to respect the Member States' specific conditions for the granting of tax concessions for non-migrant workers;
11. Calls on the Commission, together with the Member States and the Pension Forum, to find an adequate solution to the tax obstacles hindering the transfer of accumulated pension rights to pension funds within and outside the Member States, a solution which combines the maintenance of pension rights with greater worker mobility;
12. Supports the proposal for pan-European pension institutions as reflected in the Commission's Communication; calls on firms wishing to set up pan-European pension funds to launch initiatives to that end; calls on the Member States to facilitate and encourage this in other firms and sectors; asks the Commission to address the specific situation of frontier workers in the framework of this proposal; calls furthermore for a statute for a pension fund to be set up for migrant and frontier workers;
13. Calls on the Commission and the Member States to grant migrant and frontier workers easier access to information on the benefits and the drawbacks of cross-border pension schemes, so as to enable them to become more aware of their rights and also the difficulties which they might encounter concerning the tax treatment of cross-border occupational pension schemes; considers that such information should be provided within the framework of EURES, inter alia; calls for the EURES network to be strengthened to enable those tasks to be carried out more effectively;
14. Urges the Commission to submit to the special European Council in Barcelona next spring an action plan for the coordination of taxation on pensions, as a follow-up to the plans which are to be prepared at the Laeken European Council;
15. Suggests that the Commission set up a scoreboard, adjusted regularly, to assess progress with the automatic exchange of information, assistance with collection and mutual recognition and supervision;
16. Instructs its President to forward this resolution to the Council and Commission and the governments and parliaments of the Member States.

EXPLANATORY STATEMENT

1. Introduction

Pensions are an issue of major concern for the EU. One aspect of the extensive treatment which has been given to the pensions topic relates to their tax treatment. A complicated discussion has arisen from the combination of these two factors; not only because Member States all have their own ideas on how to set up proper old age pension provision, but also because each Member State has established its own taxation system in its own way.

Background

For purposes of clarity, old-age pension schemes are divided into three pillars. The first pillar consists of statutory schemes, in which participation is generally compulsory. The second pillar consists of schemes linked to the worker's employment or occupation, agreed between employer and employee; participation may in some cases be compulsory. The third pillar comprises voluntary, individual investments for old age pension provision.

The increasing ageing of the population, leading to a top-heavy age structure, presents the Member States with a challenge. Although the duration and extent of the problem varies from one Member State to another, a peak in the number of retired people is expected to be reached between 2030 and 2040. The second pillar - although the extent to which it is developed from one Member State to another - will play an increasingly important role in relation to this ageing phenomenon.

An important factor in old age provision is the tax treatment of pension schemes. Here, too, treatment varies from one Member State to another, but most Member States grant tax concessions for the accumulation of pensions. These concessions often form an integral part of the tax system and are closely linked to the social security schemes.

Thanks to increasing worker mobility, the accumulation of pensions in the EU will increasingly take place in more than one country. This is caused not only by a changing work culture but also by the fact that jobs are less and less bound to one place. The difficulty of coordinating pension schemes in the Member States, and the difference in the tax treatment of pension contributions, seems to present an enormous obstacle to changing one's country of work.

If occupational pensions are seen as having an important role to play in cushioning the future problems related to the ageing of the population, this cannot be divorced from their treatment for tax purposes and from the obstacles to this at international level.

For most tax legislation, unanimity is required at EU level. This also applies to tax measures relating to pensions. It will therefore be hard to achieve harmonisation by that route.

Member States allow tax concessions for occupational pension funds because they constitute a future form of collective income provision. The situation is different with the third pillar schemes which are hard to distinguish from regular investment products. Consequently Member States often draw a distinction in their tax treatment, and impose conditions regarding the content and quality of these schemes. However, these conditions, too, often diverge considerably. The factors which may differ from state to state include the treatment of pension redemption, the level of provision, pensionable age, the group of beneficiaries and prudential supervision.

Because the requirements can vary considerably from one Member State to another, problems may arise with mutual recognition. It is thus possible that an occupational pension which meets the requirements in one Member State does not qualify in another.

2. Open coordination and progress

Because the legislative route is a difficult one, as we have seen, Member States must try to find a solution by way of open coordination. Open coordination in this connection means that

mutually agreed objectives are set, and Member States exchange best practices, developing indicators and benchmarks and agreeing on annual progress reports. The objectives which need to be worked out relate to:

- A. introduction in all Member States of an EET system (see below), coordination regarding the form and extent of tax levying, and possibility of mutual adjustments and transitional measures;
- B. mutual recognition of occupational pension schemes and supervision of such schemes, including the coordination of conditions for tax concessions;
- C. automatic exchange of information and assistance with collection;
- D. possibility of, and conditions for, deductability in respect of participation in a pension scheme in cross-border situations;
- E. elimination of tax barriers for the transfer of accumulated pension rights.

The Commission should carry out an analysis of the bilateral and multilateral agreements for the prevention of double taxation and non-taxation, and the state of discussions in the OECD. This could form the preparatory work for a possible process of increased cooperation between a number of Member States, of the type made possible by the Treaty amendments of Nice. The Commission should work out a proposal to this end which can be discussed and decided upon in greater detail in cooperation with the Council and Parliament.

On the basis of the recommendations in this report, the Commission should prepare an action plan for the Barcelona European Council in Spring 2002, as a follow-up to the plans to be set out there and to the current preparations for the Laeken European Council at the initiative of the Belgian Presidency.

The Commission must ensure that sufficient progress is made in the achievement of the objectives with regard, inter alia, to the automatic exchange of information, assistance with collection, and mutual recognition and supervision by devising a scoreboard to be adjusted at six-monthly intervals.

3. EET and TEE

To denote the methods of levying tax on second pillar pensions, the standardised 'EET/TEE'* categories are used. This is a highly simplified method, but is necessary for the sake of clarity. Three types of system are currently in use in the EU: ETT, EET and TEE. Because the ETT system is a variation on the EET system, only the EET and TEE systems will be discussed here. This does not mean that there are no problems specific to the ETT system.

EET

The EET system is the most widespread in the EU. It gives a fiscal incentive to accumulating an old-age pension; by granting tax a concession, it encourages workers to set aside part of their income. One advantage for the employee is that the tax is levied on payment of the pension and can thus be paid from the yield on investment. In an international context the disadvantage of the EET system is that the exemption granted at the accumulation stage has to be counterbalanced for by a tax levied by the same state at the payment stage.

* Translator's note: In the abbreviations EET, ETT and TEE, E=Exempt and T=Taxed. For example, EET stands for Exempt contributions, Exempt investment income of the pension institution, and Taxed benefits. Conversely, the TEE system stands for Taxed contributions, Exempt investment income and Exempt benefits (cf. COM(2001) 214, p. 6).

TEE

The TEE system is used in two countries of the EU. Its characteristic is that everything which is earned is taxed as income, whether or not it is disposable. In an international context the problem of levying tax to counterbalance the exemption does not arise, since the tax is levied at the point when the entitlement arises.

Under the TEE system the government taxes at the point of entitlement and thus enjoys higher tax yields now at the cost of renouncing higher tax yields in the future. The TEE system does not particularly encourage old age provision.

EET v. TEE

There is plenty of evidence that the EET and TEE systems are substantially the same when the final outcome is *either* only EET *or* only TEE. This, however, fails to take account of the difference of the two systems in an international context and in their effects. Although a universal TEE system would resolve problems in an international context with regard to correspondence between tax concessions granted on the one hand and levying of taxation on the other; there are serious objections to the TEE system. One objection - not of principle or theory but on the contrary a practical objection - is that 13 of the 15 Member States already have an EET/ETT system, with only Germany and Luxembourg using a TEE system. It would be easier for 2 countries to switch to an EET system than for 13 countries to go over to a TEE system. In addition the EET system, as we have seen, has the advantage of postponing the point at which the tax income is generated, giving people a financial incentive to save for their old age and enabling the tax to be levied on income which has already begun to flow.

Your rapporteur concurs with the Commission's comment that switching to an EET system will not do away with all the problems. However, if all Member States were to go over to an EET system, tax evasion induced by differing tax systems would be reduced, for it would no longer be possible for taxpayers completely to shake off a tax demand.

Because it would take time to switch from a TEE to an EET system, it is necessary to seek for short-term solutions. One solution which offers itself is the Netherlands-Portugal agreement given as an example by the Commission,. The disadvantage of this solution is that agreements must be re-negotiated and that there must be good will on the part of the negotiating parties. The Commission will have to play a coordinating role in this connection.

4. Exchange of information

In order to show some progress in the short term it is necessary for Member States to provide the information necessary to enable tax demands to be effected. The Commission proposes a way in which the automatic exchange of information could be achieved on the basis of Article 3 in conjunction with Article 1(1) of the Mutual Assistance Directive. This proposal would have to be discussed in a committee set up pursuant to Article 9(1) of the Mutual Assistance Directive. Member States have not indicated that the introduction of an automatic exchange of information in the form proposed would not be possible. No further legislative measures are needed for this, and there would appear to be no obstacle to its rapid introduction. Mutual

assistance in tax collection is a logical corollary to the provision of information needed to effect a tax demand.

5. Proceedings for infringement

The Commission goes to great lengths to show that there is no justification even under existing EC law for refusal of deductibility (for EET states) in respect of participation in a pension fund in another Member State. The Commission sets out a detailed discussion of judgments of the Court of Justice and explains that refusal of deductibility for contributions would be disproportionate for countries with an EET or ETT system. Your rapporteur agrees with this conclusion, but the Commission gives no indication of when it plans to start doing away with these disproportionate measures. The Commission must make this clearer.

Combating disproportionate measures by means of judgments of the Court of Justice will only bring about negative integration. The Court will ban disproportionate measures, but it is not its task to replace these with anything. This underlines once again the fact that the Member States have an interest in finding a solution by means of open coordination.

6. Mutual recognition

In a single Community market there is no place for differences based on place of establishment. Member States should therefore recognise each other's pension provisions under the second pillar – provided these pension provisions are the same in nature and intention in both Member States. It follows from this that Member States should have to abolish fiscal obstacles which render impossible the international (or national) transfer of accumulated pension rights. This is subject to any specific requirements which the Member States impose on second pillar pensions and to the right of Member States to prevent the abuse of rules and tax evasion.

7. Pan-European pension fund

The industry's proposal for a pan-European pension fund would provide a solution for a very restricted group of workers in the EU. This would only lead to the elimination of administrative barriers and would thus not absolve the Commission and Member States from the duty of tackling the substantive problems. Still, it is a sensible first step, since it will make it possible to make a start in the short term, and because more and more firms are now doing business in various countries of Europe.

10 October 2001

OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS

for the Committee on Economic and Monetary Affairs

on the Commission Communication: the elimination of tax obstacles to cross-border provision of occupational pensions
(COM(2001) 214 – C5-0533/2001 – 2001/2212(COS))

Draftsman: Bartho Pronk

PROCEDURE

The Committee on Employment and Social Affairs appointed Bartho Pronk draftsman at its meeting of 17 May 2001.

It considered the draft opinion at its meetings of 20 September and 9 October 2001.

At the last meeting it adopted the following conclusions by 23 votes with 2 abstentions.

The following took part in the vote: Winfried Menrad, acting chairman; Bartho Pronk, draftsman; Jan Andersson, Regina Bastos, Theodorus J.J. Bouwman (for Ian Stewart Hudghton), Alejandro Cercas, Ilda Figueiredo, Marie-Hélène Gillig, Anne-Karin Glase, Koldo Gorostiaga Atxalandabaso, Richard Howitt (for Proinsias De Rossa), Stephen Hughes, Ioannis Koukiadis, Jean Lambert, Elizabeth Lynne, Toine Manders (for Luciano Caveri), Thomas Mann, Manuel Medina Ortega (for Elisa Maria Damião), Claude Moraes, Mauro Nobilia, Manuel Pérez Álvarez, Herman Schmid, Helle Thorning-Schmidt, Ieke van den Burg and Barbara Weiler.

SHORT JUSTIFICATION

Background

Inadequate coordination of the taxation of occupational pension schemes significantly hampers the freedom of movement of workers and also prevents the creation of a genuine single market in occupational pension schemes.

The basic problem is the absence of a uniform approach to the choice of the *basis for assessment of taxes*: in principle, taxation may be levied either on the *contributions* or the *income from investments* or the *benefits paid out*. The fact that some Member States tax contributions while others tax benefits necessarily leads to a double taxation – or non-taxation – of migrant workers or persons who choose to retire in another Member State. Further inequalities in treatment stem from the fact that the *conditions for tax recognition of schemes* and the *amount of allowable deductions* vary widely. Many Member States do not therefore extend the tax relief available domestically to contributions paid to pension institutions established in other Member States.

In 1992 the Commission put forward proposals for tax harmonisation as part of a draft directive on cross-border investments and pension funds; however, given the negative attitude of the Council, these proposals were later withdrawn. The proposal on pension funds (COM(2000) 507) recently submitted by the Commission (and discussed by the committee) thus totally excludes fiscal aspects. The communication under review therefore completes the proposal for a directive and seeks to solve the problem of the taxation of occupational pension schemes without actually creating a specific directive. The Commission has pinned its hopes on the European Court of Justice which prohibits the unequal tax treatment of domestic and foreign providers of pension benefits on the grounds that it is incompatible with the freedom to provide services.

Contents of the Communication

The Communication makes four basic points:

1. As far as the basis for tax assessment is concerned, the Commission recommends the uniform implementation of the EET system (Exempt contributions, Exempt investment income and capital gains of the pension institution, Taxed benefits). Taken in conjunction with bilateral tax agreements with the systematic implementation of the OECD model which is based on the principle of taxation in the country of residence, this would mean that the most egregious cases of double or non-taxation could be avoided.
2. The Commission refers to the jurisprudence of the European Court of Justice¹ according to which the unequal tax treatment of foreign pension schemes compared with domestic pension schemes is in violation of the EU Treaty and concludes that there is no need for a specific ban in a directive to combat this situation. The Commission has announced that it will scrutinise the legality of national rules and, where necessary, initiate proceedings with the European Court of Justice.

¹ See in particular the 'Safir', 'Bachmann' and 'Wielockx' cases.

3. The Commission understands that Member States are concerned that the opening of the market in the second pillar area could hamper implementation of national and fiscal legislation. Member States require domestic pension institutions to inform national tax authorities of any payment of pension benefits and in some cases to deduct tax at source. This is not necessarily the case if residents have the opportunity to join foreign pension schemes. The Commission proposes that the Mutual Assistance Directive of 1977 which already provides for the automatic exchange of information (!) should be *effectively* implemented.
4. The most innovative aspect of the communication is the proposal to create pan-European pension institutions. Such institutions would allow employees of multinational companies to belong to the same pension institutions wherever they were employed. In each case the rules governing the taxation of pension arrangements of residents would apply.

Position of draftsman

The draftsman in principle welcomes the Commission's proposals. He would, however, like to point out that the ideas it contains are not new and that the Commission will therefore need to make special efforts to inject new life into its proposals. He therefore calls on the Commission to submit plans to transpose as soon as possible the measures that have been announced.

CONCLUSIONS

The Committee on Employment and Social Affairs calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following points in its motion for a resolution:

1. Endorses the Commission's view that domestic rules which do not allow the equal treatment of pension schemes operated by an institution based in another Member State violate the basic freedoms enshrined in the EU Treaty; calls on the Commission to screen the relevant national rules and, where necessary, to initiate proceedings before the European Court of Justice on the basis of Article 226 of the EC Treaty;
2. Calls on the Member States to harmonise the structures of their tax systems as regards the basis for tax assessment in order to prevent cases of double and non-taxation of migrant workers; calls on the Commission to support this process by introducing the open method of coordination for laying down the basic principles of taxation of occupational pensions;
3. Calls on the Member States to examine Member States' rules with a cross-border impact, applying a so-called 'European Test', to launch an open method of coordination in this area, and to eliminate, through bilateral taxation agreements, inconsistencies in taxation occurring in this connection;
4. Calls on the Commission and the Member States to grant migrant and frontier workers easier access to information on the tax treatment of cross-border occupational pension schemes; considers that such information should be provided within the framework of

- EURES, inter alia; calls for the EURES network to be strengthened to enable those tasks to be carried out more effectively;
5. Takes the view that the debate on the future of pensions in the European Union cannot be confined to a discussion on financeability and transferability of rights acquired; calls, therefore, for a broad debate on the future of pension systems in the European Union, taking as the starting point the duty which pension systems place on society; notwithstanding, takes the view that difficulties in implementing national tax provisions in the single market by no means justify the sealing of national markets in occupational pension schemes and calls instead for the limited monitoring capabilities of individual Member States to be offset by increased exchanges of information and effective mutual assistance;
 6. Explicitly supports the proposal for pan-European pension institutions as reflected in the Commission's Communication and asks the Commission to address the specific situation of frontier workers in the framework of this proposal; calls furthermore for a statute for a pension fund to be set up for migrant and frontier workers;
 7. Strongly urges the Council and the Member States to make rapid progress with the Proposal for a Directive on the activities of institutions for occupational retirement provision¹ which will ensure mutual recognition of occupational pension funds and will significantly contribute to effective tax coordination action. ¹(COM(2000)507)

15 October 2001

OPINION OF THE COMMITTEE ON PETITIONS

for the Committee on Economic and Monetary Affairs

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 pensions
(COM(2001) 214 – C5-0533/2001 – 2001/2212 (COS))

Draftsman: Astrid Thors

PROCEDURE

The Committee on Petitions appointed Astrid Thors draftsman at its meeting of 13 September 2001.

It considered the draft opinion at its meetings of 10 and 11 October 2001 it considered the draft opinion.

At its meeting of 10 October 2001 it adopted the following conclusions unanimously.

The following were present for the vote: Vitaliano Gemelli (chairman), Astrid Thors, (rapporteur), Felipe Camisón Asensio, Carlos Costa Neves, Laura González Alvarez, Margot Kessler, Jean Lambert, Ioannis Marinos, Miguel Angel Martinez Martinez (for Maria Sornosa Martínez), Jens Dyhr Okking (for Véronique Mathieu), Christian Ulrik von Boetticher.

SHORT JUSTIFICATION

I. The profound transformations, changes and upheavals affecting our societies, which are increasingly interconnected, interdependent and 'internationalised', are creating fresh problems to which fresh solutions must be found.

These changes include:

- (a) the progressive internationalisation of services and capital throughout the world;
- (b) the presence of transnational companies which 'delocalise' and spread productive activities in different countries of the 'industrialised' or 'newly emerging' world;
- (c) the free movement of workers within the European space;
- (d) growing recourse by international companies to freedom to supply services and labour without any change in residence of suppliers;
- (e) the growing number of cross-border workers in the Union;
- (f) the selection by pensioners of residences - with a view to 'a long and happy' retirement - in remote, warm and even exotic countries.

II. However, these 'lucky pensioners' are all too often confronted with problems regarding their occupational pension entitlement concerning transfer outside the Union or dual taxation. A large and growing number of petitions to the European Parliament are concerned with this problem, calling on it to remedy what is all too often perceived by a worker as an 'injustice' resulting in his frequently modest resources being eaten away and diminished.

III. The Commission communication would appear to have come at the right moment and the Committee on Petitions is strongly in favour. However, the Commission's position shifts significantly its conclusions.

IV. The Committee on Petitions has received a large number of petitions of which a number of summaries and titles are annexed¹.

Number of petitions received concerning cross border retirement arrangements:

563 for the last ten years

84 petitions during the current electoral term

14 petitions from Finland and Sweden

Conclusions

In legal terms, the Commission's views may be summarised as follows: Articles 39, 43, 49 and 56 of the EC Treaty guarantee the freedom of movement of workers, freedom of establishment and the free movement of services and capital and ban any restrictions on these

¹ In English only.

freedoms. National rules making the deductibility of pension and life assurance contributions conditional on them being paid to a pension fund established on national territory are an infringement of these articles.

It is necessary to establish a distinction between two different cases: 'stationary' workers (those remaining within a Member State) and migrant workers. Where citizens resident in a Member State subscribe to a foreign scheme, the Member State may, under current Community law, require that scheme fulfil the necessary conditions for tax concessions regarding the nature and amount of benefits, retirement age, the beneficiaries and other relevant conditions. Regarding citizens who are already members of a scheme enjoying tax concessions in their country of origin and who leave, frequently temporarily, to live in another Member State, the host Member State may not refuse to accord a tax deduction in respect of contributions to a foreign scheme on the grounds that the scheme does not fulfil the conditions established for tax concessions.

Accordingly, the Commission considers that national rules refusing equal treatment for retirement schemes administered by bodies established in other Member States infringe the Treaty. Member States must ensure that the same tax deductions are accorded for contributions paid to national retirement schemes and those established in other Member States. Equal treatment should also be accorded regarding all taxes on returns and the taxation of benefits. The Commission will monitor national rules adopted by the Member States and take the necessary measures to ensure that they comply fully with the Treaty, if necessary referring the matter to the Court of Justice under Article 226 of the EC Treaty.

CONCLUSIONS

The Committee on Petitions calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following points in its motion for a resolution:

The Committee on Petitions,

1. Welcomes the fact that the Communication from the Commission to the Council, the Parliament and the Committee on Economic and Social Affairs focuses on the problem of fiscal obstacles to cross-border occupational pension schemes, which are the subject of a growing number of petitions to Parliament;
2. Notes that the diversity of tax schemes in the various Member States regarding vocational pensions is leading to cases of dual taxation which European citizens regard as an injustice and an infringement of the fundamental rights and freedoms recognised by the Union;
3. Strongly supports the Commission's conclusions regarding its willingness to refer to the Court of Justice under Article 226 the treatment of pensioners;

4. Expresses its satisfaction that regarding the consideration of petitions, the Commission has expressed its intention to initiate proceedings before the Court of Justice of the European Communities in response to every case of tax discrimination regarding cross-border pension entitlements;
5. Considers that the problem of membership of foreign pension schemes for workers resident in a Member State of the Community should be considered in further detail since, while they are sometimes advantageous, they do sometimes raise obstacles and difficulties concerning enjoyment of the pension entitlements;
6. Takes the view that compliance with national fiscal rules to which Member States rightly attach great importance should, regarding cross-border pensions, be made consistent with the opening of the market regarding the second pillar;
7. Stresses the importance of workers and pensioners being duly informed about not only the benefits, but also the drawbacks of cross-border pension schemes, so as to enable them to become more aware of not only their rights, but also of the difficulties they might still encounter in upholding them.

Summary of a selection of relevant petitions

- **Petition No 888/2000 by Mr Stig Beija (Finnish) concerning the dual taxation of pensions**

The petitioner, who spent most of his working life in Sweden and is now drawing a Swedish pension in Finland, indicates that it is subject to dual taxation, firstly by Sweden and then by Finland, where he is also required to pay additional social security contributions. As a result, he is left with only a very small remaining income.

The petitioner argues that the dual taxation of his pension is an infringement of Community law.

- **Petition No 855/2000 by Mr Patrick O'Brien (British) concerning the double taxation of retired EU citizens resident in France**

The petitioner states that he holds the appropriate residence permit to reside in France as a pensioner (carte de séjour – pensionné). He maintains that EU citizens in this category are excluded from the French social security system, and should therefore be exempt from French social security deductions on their income ('CSG' (Contribution Social Généralisée) and 'CRDS' (Contribution pour le Remboursement de la Dette Sociale)), since their income has already been taxed – and all social security contributions paid - in their country of origin. The petitioner points out that, before being granted a residence permit, applicants must first satisfy the French authorities that they have sufficient means to cover any health risks. He takes the view that France is in breach of Council Regulation (EEC) 1408/71, and that the 'CSG' and 'CRDS' should be considered as social security contributions rather than taxes.

- **Petition No 724/1999 by Mr Sluis (Dutch) concerning his retirement pension and problem of dual taxation**

The petitioner, a pensioner, who was in the services until 1949 and is now resident in Spain, complains that:

1. Under Dutch law his second wife, who is of Colombian origin but has taken Dutch nationality, whom he married after his divorce in 1978 before he was 65 years of age, will not be entitled to a widow's pension, which will apparently be paid to his first wife, who left him, instead.
2. Following his death, his widow will no longer be entitled to sickness or pension benefits if she returns to Colombia, since in this case, she will lose her Dutch nationality and there are no agreements between the Netherlands and Colombia concerning payment of

benefits.

3. The benefits to which he would be entitled under the Old Age Entitlements Act, are in fact lower because he left the armed forces before the Act entered into force.
4. Since he is not resident in the Netherlands, he is placed in a higher tax bracket than those who are. Some of his income is taxed in Spain and the remainder in the Netherlands which places him in an unfavourable situation.

- **Petition No 719/99 by Mr Ove Dybdal NIELSEN (Danish) concerning his retirement pension**

The petitioner, who receives a retirement pension from a Danish private scheme, and has been resident in the United Kingdom with his British wife since 1986, indicates that in January 1998 Denmark decided to change its dual taxation agreement with the United Kingdom. From that date, Denmark began to tax both interest and capital without according the petitioner any social benefits, for example welfare entitlements or even the right to vote. The petitioner also points out that in the United Kingdom the tax on interest is 70% lower than in Denmark.

- **Petition no 452/99 by Mr René Sougne (Belgian) concerning dual taxation in Belgium**

The petitioner objects to the dual taxation by the Belgian authorities of the pension he receives in Luxembourg.

- **Petition No 36/99 by Mr Ole VIGSO (Danish) concerning tax deductions from his disability pension**

The petitioner who has retired and has been living in Madeira (Portugal) since 1994 receives a disability pension from a private insurance scheme in Denmark. In January 1995 Denmark withdrew from the Dual Taxation Agreement with Portugal and since then tax deductions by the Danish authorities have reduced his pension by 50% without any prior warning. He now maintains that he is paying 40% more than he would pay if he were resident in Denmark and about 100% more than he would pay if he were subject to Portuguese tax. He has already referred the matter to the Danish Courts without success and is seeking to end this injustice.