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**REPORT FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN
ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE
REGIONS**

**concerning the implementation by Bulgaria and Romania of Council Directive 98/49/EC
of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-
employed persons moving within the Community**

(Situation at 1 September 2008)

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(Text with EEA relevance)

1. INTRODUCTION

On 29 June 1998, the Council adopted Directive 98/49/EC on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community. This Directive was to be implemented on 25 July 2001 in the fifteen old Member States, 1 May 2004 in the ten States acceding to the European Union on that date and 1 January 2007 in Bulgaria and Romania. Under Article 10(3) of the aforementioned Directive, its implementation has been the subject of a report by the Commission¹. This report concerns the application of the Directive in Bulgaria and Romania, which acceded to the European Union on 1 January 2007.

To gain an overview of progress in transposing this Directive in Bulgaria and Romania, the Commission sent a questionnaire to the governments of these two Member States. Their answers show that they have adopted specific measures to transpose Directive 98/49/EC in their respective legal systems. Bulgaria has done so by means of the Act of 11 July 2006 amending its Social Insurance Code. Romania has complied with the provisions of the Directive by adopting Act 204 of 22 May 2006 on voluntary pensions.

2. SCOPE

Within the meaning of the Directive, a supplementary pension scheme refers to any occupational pension scheme established in conformity with national legislation and practice or collective or other comparable arrangement intended to provide a supplementary pension for employed or self-employed persons, irrespective of whether such schemes are compulsory or voluntary. The Directive excludes from its scope those schemes that are covered by the term "legislation" as defined by the first subparagraph of Article 1(j) of Regulation (EEC) No 1408/71, or in respect of which a Member State makes a declaration under that Article.

¹ Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the implementation of Council Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community, COM(2006) 22, final version of 26 January 2006.

The answers by Bulgaria and Romania to the questionnaire provide concise descriptions of the supplementary pension schemes covered by the Directive in these two Member States. For example, in both Bulgaria and Romania, a supplementary pension scheme for the purposes of transposing Directive 98/49/EC includes only voluntary supplementary pension schemes.

3. MEASURES FOR SAFEGUARDING PENSION RIGHTS OF WORKERS MOVING WITHIN THE COMMUNITY

3.1. Equality of treatment as regards preservation of rights

Article 4 of the Directive stipulates that where a worker who has acquired vested rights under a supplementary pension scheme in one Member State moves to another Member State, those rights are to be preserved at least to the same extent as for workers ceasing to work but remaining within the Member State in question.

The aim of this Article is to ensure that persons moving from one Member State to another are in no worse a position than those leaving a job but remaining within the same Member State. By laying down this principle, Article 4 ensures as a minimum standard equal treatment of domestic and cross-border cases as far as the preservation of vested rights is concerned.

Paragraphs 1 and 2 of Article 248a of the Bulgarian Social Insurance Code and Article 51 of Act 204/2006 in Romania ensure the preservation of the vested pension rights of a member who moves to another State.

3.2. Guarantee of cross-border payments

According to Article 5 of the Directive, Member States shall ensure that all benefits due under supplementary pension schemes are paid to members and former members, as well as to others holding entitlement under such schemes, in all Member States, net of any taxes and transaction charges that may be applicable. The payment of benefits throughout Europe is an essential prerequisite for compliance with the principles of free movement of workers and free movement of capital.

Article 248b referring to Articles 256 and 257 of the Bulgarian Social Insurance Code and Article 77(5) of Romanian Act 204/2006 guarantee cross-border payments.

3.3. Cross-border membership of posted workers

Article 6 concerns posted workers within the meaning of Regulation (EEC) No 1408/71. Such a posting is a situation where workers are temporarily sent by their employers to a Member State other than the one in which they are normally employed. The maximum period for a posting is 12 months; in exceptional cases it may be extended to 24 months. Throughout the posting period, there is a direct relationship between the posting undertaking and the posted worker.

Article 6 allows cross-border membership by stipulating that employers and posted workers must be allowed to continue to make contributions to the supplementary pension scheme established in the Member State of origin throughout a posting to another Member State. Where contributions continue to be made, the Member States are requested to ensure that posted workers and employers are exempt from any obligation to make contributions in another Member State.

Bulgaria and Romania have correctly transposed the provisions of Article 6 of the Directive in their respective legal systems. The two Member States guarantee the cross-border membership of posted workers by means of paragraphs 8 and 9 of Article 230 of the Bulgarian Social Insurance Code and Article 77(2) of Romanian Act 204/2006.

3.4. Information provided to scheme members

According to Article 7 of the Directive, Member States shall take measures to ensure that employers, trustees or others responsible for the management of supplementary pension schemes provide mobile workers with adequate information on their pension rights and on the options open to them when moving to another Member State. Such information must at least correspond to information given to scheme members in respect of whom contributions cease to be made but who remain within the same Member State.

Bulgaria ensures that the holders of supplementary pensions are provided with adequate information by means of Article 123h(2) of its Social Insurance Code and Romania does so by means of Article 103 of Act 204/2006.

4. CONCLUSION

Directive 98/49/EC is part of the *acquis communautaire* that must be transposed into the legal systems of prospective Member States before they join the EU. The answers given by Bulgaria and Romania to the European Commission show that these two States ensured the application of the aforementioned Directive before their accession. For example, the Act amending the Social Insurance Code adopted by Bulgaria on 11 July 2006 and Act 204 adopted by Romania on 22 May 2006 ensure the elimination of any barriers that might have been encountered by migrant workers attempting to safeguard their supplementary pension rights.

Other factors have also made it easier to exercise the right of free movement of workers. For example, Regulation (EC) No 2560/2001 of 19 December 2001 on cross-border payments in euro helps to lower any transaction charges that may apply. Likewise, in the area of cross-border membership, the adoption of Directive 2003/41/EC of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision ("IORP Directive", also known as the "Pension Fund Directive") constitutes a substantial measure at EU level. The mutual recognition of supervision of institutions for occupational retirement provision (IORPs), which has been established by the Directive, is a basic condition permitting cross-border activity by these institutions and therefore creating opportunities for cross-border membership.

Furthermore, the Proposal for a Directive of 20 October 2005 on the portability of supplementary pension rights² is an additional stage intended to improve the situation of mobile workers by guaranteeing their rights under supplementary schemes.

² Proposal for a Directive of the European Parliament and the Council on improving the portability of supplementary pension rights, COM(2005) 507, final version of 20 October 2005, and the Amended Proposal for a Directive of the European Parliament and the Council on minimum requirements for enhancing worker mobility by improving the vesting and preservation of supplementary pension rights, COM(2007), final version of 9 October 2007.

This proposal has not yet received the unanimous approval necessary for its adoption by the Council and European Parliament.