

L'EUROPE

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FOCUS ON Simplification of the EU legislation

The current EU initiative on “better law-making” has its origins some ten years earlier : the Edinburgh Council of December 1992 made already the task of simplifying and improving the regulatory environment one of the Community’s main priorities. Simplifying EU legislation has been defined as a key aspect of the Barroso Commission’s efforts to **restore economic growth and create more jobs in Europe**.

In its White Paper on European Governance (July 2001), the Commission committed itself to action on improving the quality of EU legislation. The Prodi Commission adopted in June 2002 an Action Plan for Better Regulation and in October 2005 the Commission proposed a communication Implementing the Community Lisbon programme : A strategy for the simplification of the regulatory environment.

The first step in simplification is withdrawing or re-drafting pending legislation : on **September 27**, the President of the European Commission José Manuel Barroso and Günter Verheugen vice-president announced that, after screening around 200 pending EU laws, **68 proposals will be withdrawn**. Listed in a Communication “Outcome of the screening of legislative proposals pending before the Legislator”, these were found not to be consistent with the Lisbon or better regulation criteria. The Commission’s better regulation efforts will now focus on simplifying and updating the existing 80.000 page body of EU legislation.

It is noted that proposals dated on 1991 for Regulation on the **statute for a European association and the statute for a European mutual society** have been withdrawn.

In line with the commitments in the Framework Agreement on Relations between the European

Parliament and the Commission, the Commission is giving **prior notification to Parliament and the Council** before formally withdrawing its proposals.

However, several stakeholders and MEP expressed their concerns about “an ideological approach to better regulation”. John Monks, General Secretary of the European Trade Union Confederation (ETUC) insisted that the normal processes of consultation with the social partners and parliament are not pre-empted. Some members of the **European Parliament** are concerned about this initiative. Although legally the Commission has the right of initiative (and therefore the right to withdraw proposals), the MEPs claim that the Commission should have consulted with them.

(COM 2005 (535) final).

<http://europa.eu.int/eur-lex/lex/staging/LexUriServ/LexUriServ.do?uri=COM:2005:0535:FIN:EN:HTML>

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AEIP

New presidency entitled to Bernard DEVY, vice-Chairman of ARRCO

In accordance with the two-years mandate, the Presidency of AEIP (European association of paritarian institutions of social protection) has been transferred to **Bernard Devy**, vice-chairman of ARRCO (pension scheme for 18 millions wage-earners in France). As an unionist, he succeeds to Sergio Corbello, employer's representative in the Italian member Assoprevidenza.

For **2006**, AEIP schedules several items which all are linked more or less to the scope of social security (some AEIP members like ARRCO and AGIRC are into the scope of the social security coordination) and the concept of general interest.

For each item, the point for AEIP workgroups is to organise a benchmark between the members of AEIP which all are paritarian in order to propose a synthesis and some keys for the European commission:

- **solidarity** on an economic efficiency point of view : a conference will be held in Paris next June,
- **governance** in paritarian social protection institutions,
- **significance of national social laws** in view of the implementation of the IORP directive 2003/41/EC (in collaboration with KUL Katholiek Universiteit Leuven).

DRAFT DIRECTIVE ON "PORTABILITY"

The Commission proposes a directive on portability of pensions within and between Member States.

As announced (see *Bref 2-2005*), the Commission adopted on October 20th, a proposal for a directive *on improving the portability of supplementary pension rights* (COM (2005) 507 final) as a complement to a first directive adopted in 1998 (Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community).

Portability of pensions

The term "portability" refers to the possibility for an outgoing worker to acquire and retain supplementary pension rights. In the EU15, one worker in three changes jobs every five

years, according to the services of the Commission.

Scope

It covers all supplementary pension schemes with the exception of the schemes covered by Council Regulation n° 1408/71. Consequently, **AGIRC and ARRCO schemes, entered into the social security coordination in 2000, are not covered by these provisions, especially on transferability** (see below). Nevertheless, **the scope of this Directive, which also covers schemes which do not function using the capitalisation principle, is wider than that of Directive 2003/41/EC** on occupational pension schemes.

Content

This proposal is designed to reduce the obstacles to mobility within and between Member States caused by present supplementary pension schemes provisions. These obstacles relate to:

- **the conditions of acquisition of pension rights** : a worker must start acquiring supplementary pension rights at the latest as of the age of 21 or after a qualifying period limited to two years ; the waiting period during which a worker cannot yet become a member of the scheme should not exceed one year. Contributions should be reimbursed or transferred in full to a worker who has not yet built up any acquired rights within the supplementary pension scheme.
- **the conditions of preservation of dormant pension rights** : Member States are just invited to adopt measures they deem necessary in order to ensure a fair adjustment of dormant pension rights so as to avoid that outgoing workers are penalised. To avoid excessive administrative costs resulting from the management of a large number of low-value dormant rights, pension schemes must be given the option to use a transfer or a payment of a capital sum in the limit of a threshold established by the Member State concerned.
- **the transferability of acquired rights** : an outgoing worker may obtain on request and within 18 months after the termination of his employment the **transfer within the same Member State or to another Member State of all his acquired pension rights.**

The proposal also seeks to improve the information given to workers on how mobility may affect supplementary pension rights.

The implementation by the Member States, or the social partners at their joint request as regards the provisions relating to collective agreements, is due

no later than **1 July 2008**.

http://europa.eu.int/comm/employment_social/news/2005/oct/dir_191005_en.pdf

As an exception, Member States may exempt **pay-as-you-go schemes**, support relief funds and companies which constitute book reserves with a view to transferring the pension rights to their workers. German schemes which are largely unfunded are particularly concerned by this provision. Then, **the entry into the social security coordination chosen by the French complementary schemes ARRCO and AGIRC take all its significance for these schemes financed on the basis of repartition : otherwise, they would have had to obtain this temporary derogation to the principle of transferability of rights for the outgoing wage-earners.**

DRAFT DIRECTIVE ON « SERVICES »

Plenary session of the European Parliament in February 2006

The EP committee on internal market adopted on November 22 the report by Evelyne Gebhardt (PSE, Germany) on the proposed services directive which proposed strong amendments to the text (see *Bref 2/2005*). The British conservative MEP Malcolm Harbour will report to the plenary session in **February 2006**.

The vote provided for the **exclusion of services of general interest** (SGI) from the scope of application of the directive as well as a clear exemption from the country of origin principle for issues linked to **employment or social rules** : the principle should not question the existing **Directive on the Posting of Workers** (*Directive 96/71/EC*) which specifies that all employees are covered by the laws or collective agreements of the country where they work and not of that of the origin of the company.

http://www.europarl.eu.int/comparl/imco/services_directive/051018_condsam_en.pdf

The Swedish Labour Court asks for a preliminary ruling from the ECJ regarding dispute of pay for Latvian workers

In November 2004 the Swedish Building Workers' Union launched a boycott of a Latvian construction company and its daughter company working in Waxholm near Stockholm, with a staff of Latvian workers. The company refused to pay

Swedish wages to the Latvian workers. In April 2005 the Swedish Labour Court decided that it was necessary to turn to the European Court of Justice (ECJ) for a preliminary ruling, before the case might be concluded in Sweden. The Labour Court finds in its decision that the contents of EU law is not clear as to the questions of whether the conflict actions taken towards the Latvian company are in line with the prohibition against the restrictions in the articles of a free movement for services and of a prohibition against all discrimination of nationality and the Directive 96/71/EC about Posting of Workers. The European Court will have to decide into the context of the proposal for a directive on "services".

SOCIAL SERVICES OF GENERAL INTEREST

Communication postponed to 2006

The publication of the communication by the European Commission on social services of general interest (SSGI) has been **postponed to early 2006**, due to a lack of **consensus within DG Internal Market**.

This communication, which was announced in the White Paper on services of general interest (SGI), (see *Bref 2/2005*) was to clarify the role of SSGI in the implementation of the fundamental social rights and social cohesion in the EU, and identify possible areas of friction between the application of Community law and the completion of missions of general interest and social protection. Furthermore, action plans are to be proposed in order to speed up the modernisation of these services.

SOCIAL SECURITY COORDINATION

A draft regulation foreseen for the end of the year

European Commission is expected to propose a new regulation at the end of the month to achieve the implementation of Regulation **883/2004**.

A new regulation was adopted in April 2004 for reasons of simplification and modernisation of Regulation 1408/71 on social security coordination for migrant workers. However, the new Regulation

883/2004 requires another regulation amending the annexes of Regulation 574/72.

trESS Network delivers its e-newsletter.

trESS Network (Training and Reporting on European Social Security) delivers the first issue of its e-newsletter. This quarterly e-newsletter is intended to provide with **some updated information on developments in the field of social security for migrant workers** : case law from the Court of Justice, developments in the Regulation at both, European and national level and further information on the network.

trESS is coordinated by Professor Yves Jorens, University of Gent (Belgium) member of the scientific council of AEIP.

For this first issue, an interview was taken with Mr **Rob Cornelissen**, head of the unit for social security for migrant workers at the European Commission. He brings an analysis of regulation 883/2004. We can learn that **3000 letters** are received every year from citizens complaining about the application of the Regulations on social security. The Administrative Commission on social security for migrant workers, which is composed of government representatives, the real experts in the field, studies these complaints.

In accordance to **the principle of good administration** new Regulation 883/2004 holds that when there is problem of application of interpretation of a specific provision of the Regulation to an individual, then the institutions concerned have to **cooperate** with a view of finding a reasonable **solution** for the person concerned in a **reasonable period of time**.

www.tress-network.org

AGE DISCRIMINATION

ECJ rules against age discrimination

The European Court of Justice (ECJ) has consolidated the protection for workers as regards the different treatment based on age.

This case was referred to the ECJ by the Labour Court of Munich, Germany, concerning a dispute regarding the German law which authorises the conclusion of fixed-term contracts of employment once the worker has reached the age of 52.

The principle of **non-discrimination** on grounds of age is a general principle of **EU law**, with **directive 2000/78/EC** (27 November 2000) specifically prohibiting the discrimination on grounds of age, as regards employment and occupation.

The directive does allow member states to provide for some differences in treatment, but only when they can be justified, for instance by legitimate employment policy and labour market objectives. In this case the German law goes beyond what is **appropriate and necessary** in reaching its objective according to the Court. The Court's main concern was that the legislation can be applied to all workers of 52 and older, without distinction or reference to unemployment, and these workers may lawfully be offered fixed-term contracts, which may be renewed for an indefinite number of times until their retirement.

In France, a inter-professional agreement dated on Octobre 13 provides for a similar provision but closely linked to unemployment: a fixed-term contract (18 months) may be renewed once for all workers of 57 and older who are unemployed for more than three months.

Case C-144/04, Werner Mangold v Rüdiger Helm 22 November 2005.

<http://curia.eu.int/jurisp/cgi-bin/gettext.pl?where=&lang=en&num=79948877C19040144&doc=T&ouvert=T&seance=ARRET>

EUROPEAN COMMISSION

Brussels reshuffles its Directors General and Deputy Directors General teams

On November 9th, the Commission adopted the decision on the **renewal** of its senior management staff according to the rule which applies to those who reached the five-years seniority and whose nationality coincides with that of the portfolio Commissioner : 17 Directors-General and Deputy Directors-General are consequently being transferred to new posts **up to 1st of January 2006**. 16 others will be filled progressively with 5 noticed to the ten new Member States in order to ensure the geographical balance.

The main measure concerns the appointment of Catherine Day (Irish) as Secretary General "emblematic of the Commission commitment to gender balance", according to the President Barroso.

Odile Quintin is transferred to the function of Director General Education and Culture EAC as of 1/1/2006 shifting with Nikolaus Van der Pas who is transferred to the **Director General Employment and social affairs**.

The French MPE, Jean-Louis Bourlanges and Gilles Savary have strongly regretted the transfer of François Lamoureux from the General Secretary.

TRANSPARENCY

The Commission launched a "european transparency initiative"

Brussels announced the publication of a green paper by the beginning of 2006 to launch a debate with all the stakeholders on how to improve the transparency on the Community Funds, consultation of civil society and the role of lobbies and the NGOs in the european institutions decision-making process. This initiative will complete the 2001 White paper on European governance and the introduction of codes of conduct and rules on access to documents and information on committees and expert groups.

www.europa.eu.int/comm/commission_barroso/kallas/transparency_en.htm

UNITED KINGDOM

Trade Union Congress explodes pension compulsion myths

The British union TUC has stepped up its campaign for compulsory employer and employee contributions to pensions with an attack on the 'top ten myths' about compulsion.

In a briefing published last September, the TUC tackles the ten myths about cost or acceptability of compulsion. The TUC refers to a recent report of the Engineering Employers Federation which explicitly supported mandatory pension contributions from both employer and employee, in part to ensure fair competition.

As the **Turner Commission** has reported (*see Bref 1-2005*), people are not saving enough to ensure a decent income in retirement and a generation of young employees have no idea how much poorer they will be in retirement than their parents. The briefing also deals with myths that have been

peddled about the **Australian** pensions system, which phased in compulsory contributions as the TUC are urging in the UK.

www.tuc.org.uk/pensions

TURNER Pensions Commission Second Report proposes a National Pensions Saving Scheme

Key proposals from the Pensions Commission's report include the establishment of a National Pensions Saving Scheme into which all employees without good existing provision would be automatically enrolled but with the right to **opt out**. Minimum default employee contribution rates would be 5% of gross pay above £5,000, of which 1% is effectively paid by tax relief: employers would be required to make matching contributions of 3%. Both employers and employees would be able to make additional voluntary contributions, and the self-employed would be able to join on a voluntary basis. The design of the scheme should aim for low costs, e.g. 0.3% per year, thus boosting the value of pension saving by up to 30%. The scheme aims to encourage people to save for a pension and to enable them to do so at low cost.

The report asks also for **reforms to the state system** to ensure a sound foundation on which pension saving can build. These involve a gradual move towards a **more generous state pension** with the state pension age also increasing over the long-term. In essence a higher pension at a later age.

<http://www.pensionscommission.org.uk/publications/2005/annrep/main-report.pdf>

STUDY

ISSA, IOPS and OECD to cooperate on complementary and private pensions study

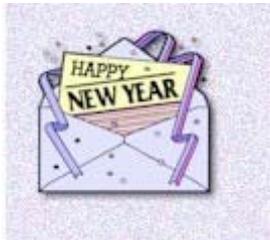
The international social security association AISS, the International organisation of pension supervisors IOPS and the Organisation for economic co-operation and development OECD have signed a partnership agreement to work together in the area of complementary and private pensions.

The primary focus of the partnership will be to develop and **update the ISSA/IOPS/OECD Complementary and private pensions database** which provides profiles in regulation and practices in complementary and private pensions plans in 50 countries throughout the world.

AGIRC and ARRCO, as ISSA members, contribute to the profile for France.

The database is available electronically through the ISSA information service *Social Security Worldwide* (www.issa.int) and via the IOPS website (www.iopsweb.org).

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