

# L'EUROPE en bref

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## Focus on ...

### *Toward the renewed social agenda for 2010–2015*

One year ago, the European Commission launched a public consultation that aims to take detailed stock of “European social realities.” Institutions and individual citizens are invited to share their views on changes in European society in matters ranging from education and working conditions to well-being, integration, health, and family relations.

The consultation is based on a background document prepared by the Bureau of European Policy Advisers of the European Commission (BEPA), which aims to produce research and policy analysis at high professional standards for the Commission and its President. The report addresses a vast array of social issues and identifies six recent changes that affect every society in Europe:

- The transition to a post-industrial knowledge and service economy
- The impact of the Welfare State
- The impact of mass affluence
- The citizen as consumer
- Gender equality and demographic change
- The trend to individualization

The European Commission’s Directorate-General for Employment, Social Affairs and Equal Opportunities contributed to the consultation by adopting a new Communication entitled “Opportunities, access and solidarity: towards a new social vision for 21<sup>st</sup> century Europe.” In it, the Commission identifies seven areas that require investment:

- Youth
- Fulfilling careers
- Longer and healthier lives
- Gender equality
- Active inclusion and non-discrimination
- Mobility and successful integration
- Civic participation, culture, and dialogue

The Commission places special emphasis on certain consequences of aging that call for sustainable reforms: the new health and social risks having far-reaching effects on social protection systems and the way the associated costs are shared between generations.

The Commission also points out that demographic changes have opened up new opportunities for jobs, goods, and services, especially in the field of elderly care.

The next step is to use the results of the consultation to prepare a renewed social agenda for 2010–2015, which the Commission will present in mid-2008. The previous social agenda for 2005–2010, which focused on modernizing the European social model, was launched by the European Commission as part of the Lisbon strategy for growth and jobs.

[http://ec.europa.eu/citizens\\_agenda/social\\_reality\\_stocktaking/index\\_en.htm](http://ec.europa.eu/citizens_agenda/social_reality_stocktaking/index_en.htm)  
[http://eur-lex.europa.eu/LexUriServ/site/en/com/2007/com2007\\_0726fr01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2007/com2007_0726fr01.pdf)

## SOMMAIRE

- **FOCUS ON** : Toward the renewed social agenda for 2010-2015 **P.1**
- **TREATY OF LISBON** : A bit more « social » than the Treaty of Nice **P.2**
- **PORTABILITY** : The European Commission proposes a watered-down version **P.2**
- **SOLVENCY II** : The new regime will not apply to pension funds **P.4**
- **GENERAL INTEREST** : A Communication adopted on November 20, 2007 **P.4**
- **INTERNAL MARKET** : Strengthening Europe’s services sector **P.5**
- **SOCIAL** : Focus on the informal economy **P.5**
- **COURT OF JUSTICE** : Age discrimination **P.5**
- **ITALY** : New retirement-age measures **P.6**

## TREATY OF LISBON II

*A bit more « social » than the Treaty of Nice but less so than the draft Constitution*

The so-called “simplified” treaty was adopted during an informal summit in Lisbon on October 18 and 19, 2007, and was officially signed on December 13, 2007. While the scope of social policy has not changed, there are several changes to highlight.

### The Treaty’s social objectives

The following became the objectives of the European Union: A highly competitive social market economy, aiming at full employment and social progress; combating social exclusion and discrimination; promoting social justice and protection; equality between women and men; solidarity between generations.

### The Charter of Fundamental Rights

Proclaimed on December 7, 2000, the Charter will have the same value as the Treaty itself, which made it legally binding and enforceable (except in the United Kingdom). It will not, however, be included in the Treaty, as provided for in the draft Constitution.

### The horizontal social clause

This clause obliges the European Union to take into account, in its policies and its actions, “requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health” (article 9). Likewise, the fight against discrimination based on sex, racial or ethnic origin, religion or belief, disability, age, or sexual orientation must be taken into account.

### Social security for migrant workers

On this particular question, decisions will now be made by qualified majority voting. However, if a Member State considers that the draft would affect fundamental aspects of its social security system, including its scope, cost, or financial structure, it may appeal to the European Council and have the legislative procedure suspended. After four months, the proposal is considered not to have been adopted if the European Council has not referred the draft to the Council of Ministers.

### The role of the social partners

It is reaffirmed in the new article 136a, in the chapter on social policy. In the draft Constitution, it appeared at the beginning of the treaty, in the

chapter on democratic life in the European Union – a category that goes beyond social policy.

The Tripartite Social Summit for Growth and Employment, which meets right before the spring European Council, is now portrayed in the Treaty as an authority that contributes to social dialogue. The social partners may also, by agreement, transpose social Directives drawn from European collective agreements.

### Services of general economic interest (SGEIs)

The Treaty provides them with a clear legal basis (article 14).

The adoption of common rules governing services of general economic interest will take the form of a regulation. A Protocol, which has the same weight as a treaty, sets out its shared values: the role of national, regional, and local authorities in providing, commissioning, and organizing SGEIs; a high level of quality; equal treatment for access; etc.

The Protocol states that European law does not affect in any way the competence of Member States in terms of non-economic services of general interest (see page 5).

The Treaty must now be ratified by the 27 Member States in order to come into force on January 1, 2009. The French Parliament authorized its ratification on February 14, 2008.

<http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:306:SOM:EN:HTML>

## PORTABILITY

*The European Commission proposes a watered-down version of the initial Directive*

### The AEIP’s position

The European Association of Paritarian Institutions of Social Protection (AEIP), whose members include AGIRC and ARRCO, formulated its joint position on the European Union’s amended proposal for a Directive on the portability of supplementary pension rights in February 2008.

For AEIP, it is unfortunate that a solid framework for second-pillar pension schemes for mobile workers has not yet been created. Moreover, the regulation of rules governing the acquisition and preservation of rights should not create financial inequalities in second-pillar schemes and especially not call into question the solidarity components included in these social-protection regimes.

Nonetheless, AEIP is pleased that the proposed Directive recognizes the crucial role played by the social partners in the implementation of second-pillar retirement schemes.

[www.aeip.net](http://www.aeip.net)

Now entitled "Proposal for a Directive of the European Parliament and of the Council on minimum requirements for enhancing worker mobility by improving the acquisition and preservation of supplementary pension rights," the European Commission's new proposal of October 9, 2007, no longer uses the term "portability," which was central to the October 2005 draft (see issues 1/2006 and 2/2006 of this newsletter).

In another shift, the second pillar to which the Directive applies is defined as supplementary pension schemes rather than supplementary social security schemes. Thus, despite several debates on the matter, mainly led by the Netherlands, the proposal does not cover supplementary retirement schemes like AGIRC and ARRCO, which apply the coordination system provided for in Regulation 1408/71 to achieve the main objective of the Treaty's article 42: the free movement of workers.

After a series of major amendments adopted by the European Parliament in June 2007 (see issue 1/2007 of this newsletter), the Commission revised the Directive significantly. All provisions for transfers of rights had to be scrapped, except in the case of highly mobile workers with defined contribution pension schemes, who may still have their rights transferred.

Member States are nonetheless encouraged to improve conditions of transfer from one scheme to another. It is not unthinkable that a Commission initiative will have some bearing on this crucial matter of individual choice of transfer.

The Slovenian Presidency, active for the first half of 2008, will be responsible for defending the amended proposal to obtain unanimous support from the Council and agreement by the European Parliament at second reading. It has already been reported that implementation is not expected to occur before July 2013, and not retroactively: it will only apply to newly constituted rights.

Amended proposal for a Directive of the European Parliament and of the Council on minimum requirements for enhancing worker mobility by improving the acquisition and preservation of supplementary pension rights – 10/9/2007

[http://ec.europa.eu/employment\\_social/spsi/docs/social\\_protection/2007/com\\_2007\\_0603\\_en.pdf](http://ec.europa.eu/employment_social/spsi/docs/social_protection/2007/com_2007_0603_en.pdf)

The new job-mobility action plan calls for improving the coordination of social security as set out in Regulation 1408/71 with the help of the TRESS network.

On December 10, 2007, the European Commission presented its European Job Mobility Action Plan for 2007–2010. It describes 15 specific actions intended to:

- Remove legal and administrative barriers and promote the cross-border recognition of qualifications
- Reinforce EURES, the information portal and job-vacancy system

In this context, the new Regulation 883/2004 modifying Regulation 1408/71 on the coordination of social security, which is expected to go into effect in 2009, streamlines administrative practices through electronic exchange of information between national institutions.

The European Commission considers even a simplified version of Regulation 1408/71 on the coordination of social security schemes to be unsuitable for new types of employment, such as successive shorter periods of employment and varying statuses. A consultation will be conducted in 2008 on the characteristics of the new mobility patterns; on that basis, the Commission will make a decision regarding possible legislative actions in the second half of 2009.

The TRESS network will be responsible for leading this investigation. The Commission intends to strengthen the status and analytical capacity of this network by proposing to include a specific provision in Regulation 883/2004, which will replace Regulation 1408/71.

Backed by the European Commission, the TRESS (Training Research and Reporting on European Social Security) network connects administrations and organizations involved in European social security coordination within the 25 Member States (see issue 2/2006 of this newsletter).

The network's activities, in which AGIRC and ARRCO are involved as schemes that participate in the coordination of social security, will be focused on three main tasks:

- Enhancing the knowledge of Community regulations among specific groups of social security stakeholders
- Publishing regular reports on the application of social security regulations

- Providing expert advice on the evolution of existing regulations and practices

This new action plan is part of a program that began in 2001 and resulted in the European Year of Workers' Mobility in 2006.

☞ [Mobility, an instrument for more and better jobs: The European Job Mobility Action Plan \(2007–2010\) – 12/10/2007](#)  
[http://ec.europa.eu/employment\\_social/news/2007/dec/com\\_2007\\_0773\\_en.pdf](http://ec.europa.eu/employment_social/news/2007/dec/com_2007_0773_en.pdf)

## SOLVENCY II

*The new regime will not apply to pension funds, according to the European Commission*

Prospects for a Solvency II Directive for pension funds are fading. The Committee of European Insurance and Occupational Pensions Supervisors (a Level 3 committee for the Solvency II project) has created a steering committee that focuses on the question of next-generation solvency requirements for pension funds.

The new CEIOPS chairman, Klaas Knot, previously of the Dutch Supervisory Authority, advocates a harmonized European approach that diverges from the insurers', albeit with shared principles. The steering committee is headed by Csaba Varga of the Hungarian Supervisory Authority.

Charlie McGreevy, the European Commissioner for the Internal Market and Services, endorsed that concept in a presentation to the Insurance Institute of London. He said that the Commission would reach a decision after CEIOPS had determined exactly which solvency requirements are used by professional retirement institutions in compliance with Directive 2003/41.

The new Solvency II provisions will be adopted under the Lamfalussy process, with the Level 1 Framework Directive setting out the key principles of the new system. After adoption of the Solvency II Directive, detailed implementing measures will be introduced at Level 2. CEIOPS, a Level 3 Lamfalussy committee, will give advice to the Commission on the implementing measures.

The Commission adopted the Solvency II proposal in July 2007 (see issue 1/2007 of this newsletter), and the text is currently being discussed in Council and Parliament.

CEIOPS has been asked to start working on the development of further advice on future implementing measures.

In order to help prepare the ground for the development of implementing measures once the Solvency II proposal has been adopted by Council and Parliament, Commission Services asked CEIOPS to run a fourth Quantitative Impact Study from April to July 2008. Commission Services held a public hearing on January 28, 2008.

## Projected timeline

June 2008	Fourth Quantitative Impact Study (QIS4)
November 2008	QIS 4 results
2009	Adoption of the Directive by the European Parliament and the Council
October 2009	CEIOPS advice on implementing measures
2010	Adoption of the implementing measures
2012	Transposition of the Directive

## GENERAL INTEREST

*A Communication adopted on November 20, 2007*

On November 20, 2007, the European Commission presented a Communication expected since autumn 2006 on the political approach it intends to follow for services of general interest (SGIs) and services of general economic interest (SGEIs), in particular in light of the specific protocol annexed to the Treaty of Lisbon (see page 2).

In it, the Commission abandons the idea of a Framework-Directive and commits to pursuing and developing its sectoral approach. Where appropriate, it is proposing sector-specific initiatives that meet specific requirements (energy, transport, and electronic communications as well as health services, social services, etc.).

Services of general interest, including social services of general interest: a new European commitment – 11/20/2007

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0725:FIN:EN:PDF>

## Impact of the Protocol on SIGs

“For the first time, the Protocol introduces the notion of services of general interest in primary EU law whereas the current EC Treaty only refers to services of general *economic* interest,” the Commission writes. It distinguishes between two sets of services of general interest:

- Services of general economic interest such as “telecommunications, electricity, gas, transport and postal services ... waste management, water supply or waste water treatment,” of

which the provision and organization are subject to internal market and competition rules,

- Non-economic services such as “police, justice and statutory social security schemes” having no effect on trade within the European Community, and which are covered only by the general principles of Community law as defined in the Treaty (equal treatment, transparency, etc.).

The Commission intends for the Protocol on services of general interest, annexed to the Treaty of Lisbon and article 16 of the Treaty, to provide a benchmark for the consistency and proportionality of national policies while respecting the freedom of each Member State to define services of general economic interest.

The concept of non-economic services of general interest emerged during negotiations about the Directive on services in the internal market, known as the Bolkestein Directive. Transposition of this Directive in the Member States is underway. It excludes non-economic services of general interest from its scope of application (see issues 1/2006 and 2/2006 of this newsletter).

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0725:FIN:EN:PDF>

## INTERNAL MARKET

### *Strengthening Europe's services sector*

On November 20, 2007, the Internal Market and Services Directorate-General presented its new strategy for the internal market in the twenty-first century, focusing on the benefits of a European services market for citizens and for small and medium-size businesses.

The report was part of a “single market review” that examined how the single market had evolved since 1992.

The Commission notes that the service sector accounts for 70% of Europe's GDP, 68% of employment, and 96% of new jobs in the EU, but only for 20% of intra-EU trade.

It is necessary, then, to unlock the service sector's potential and to reduce the barriers that fragment it.

The transposition of the Services Directive by the end of 2009 and initiatives to liberalize network industries such as postal services, energy, and transport should help bolster the European service sector.

The proposed approach includes a “modernized framework for e-communications” and a plan to improve the interoperability and distribution of electronic systems and software.

A single market for 21st century Europe (COM 2007-724) – 11/20/2007  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0724:FIN:EN:PDF>

## SOCIAL

### *Focus on the informal economy*

On October 24, 2007, the European Commission adopted a Communication on the informal economy.

Bulgaria is by far the EU country with the highest percentage of undeclared workers: 35% of the Bulgarian GDP comes from undeclared work.

In the European Commission's view, this does not call for infringement proceedings against Bulgaria. But it is a serious threat to the stability of social systems.

☞ Stepping up the fight against undeclared work (COM 2007-628) - 10/24/2007  
[http://ec.europa.eu/employment\\_social/news/2007/oct/undeclared\\_work\\_en.pdf](http://ec.europa.eu/employment_social/news/2007/oct/undeclared_work_en.pdf)

## COURT OF JUSTICE

### *Age discrimination*

In its decision of October 16, 2007, the European Court of Justice held that Spanish legislation allowing mandatory retirement ages did not violate the European Community's equal treatment law.

Placed in the context of its goal to reduce unemployment, the Spanish legislation's provisions were deemed neither excessive nor inappropriate. In 2005, Félix Palacios de la Villa had contested the termination of his employment contract by his employer, Cortefiel, because he had reached the mandatory retirement age.

Directive 2000/78/CE (see box) authorizes an exception to the prohibition against age discrimination if the legislation in question serves a legitimate purpose.

The Court ruled that there is a legitimate reason for the legislation because it aims to promote employment for every generation. The Spanish law takes into account not only the age of employees but also their right to a retirement pension.

In a separate case (C-388/07), the Court examined whether a British law violated the

European Directive.

Age Concern, an elderly rights group, is accusing the British government of incorrectly applying the Directive. The country's Employment Equality (Age) Regulations of 2006 allow employers to refuse to rehire or terminate the contracts of employees aged 65 and over.

Unlike the Spanish legislation, the British regulations:

- were not drafted in collaboration with any social partners
- do not take into account employees' contribution histories or their financial prospects when they lose their jobs because of their age

☞ Case number C-411/05 Palacios de la Villa, 10/16/2007  
☞ Directive 2000/78 of November 27, 2000, establishing a general framework for equal treatment in employment and occupation.

The Directive authorizes differences of treatment based on age when they are objectively justified, appropriate, and necessary for legitimate labor-market objectives (protecting young or old workers, fixing minimum conditions of professional experience, etc.).

Moreover, positive actions are permitted through measures aiming to prevent or remedy existing inequalities (measures intended to promote the integration of young people, the transition from professional activity to retirement, etc.).

## ITALY

### *New retirement-age measures*

On July 23, 2007, Romano Prodi's government and Italy's three major trade unions reached an

agreement to slow the increase in the minimum legal retirement age introduced by Silvio Berlusconi's government.

Rather than abruptly changing from 57 to 60 years on January 1, 2008, it will not reach 60 until July 1, 2009, for those who have contributed to social security for 35 years.

According to the agreement, beginning on July 1, 2009, the sum of the employee's age and the number of years of contribution must reach 95; for example, 59 years of age and 36 years of contribution. In 2011, that number will increase to 96, and then to 97 in 2013.

Workers who have contributed for 40 years are not required to meet any age conditions.

The reform does not apply to Italy's 1.4 million manual laborers.

In a referendum on October 8, 2007, the text was approved at 81.62%, and the law was issued in December 2007.



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