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## Information and Notices

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<sup>(1)</sup> Text with EEA relevance

## I

*(Information)*

## COMMISSION

Ecu <sup>(1)</sup>

8 January 1998

(98/C 5/01)

Currency amount for one unit:

Belgian and Luxembourg franc	40,7447	Finnish markka	5,98104
Danish krone	7,52134	Swedish krona	8,70619
German mark	1,97529	Pound sterling	0,666904
Greek drachma	312,150	United States dollar	1,08205
Spanish peseta	167,393	Canadian dollar	1,55047
French franc	6,61263	Japanese yen	144,259
Irish pound	0,794283	Swiss franc	1,59711
Italian lira	1940,66	Norwegian krone	8,12729
Dutch guilder	2,22600	Icelandic krona	79,0114
Austrian schilling	13,8957	Australian dollar	1,69920
Portuguese escudo	201,997	New Zealand dollar	1,90536
		South African rand	5,34479

The Commission has installed a telex with an automatic answering device which gives the conversion rates in a number of currencies. This service is available every day from 3.30 p.m. until 1 p.m. the following day. Users of the service should do as follows:

- call telex number Brussels 23789,
- give their own telex code,
- type the code 'cccc' which puts the automatic system into operation resulting in the transmission of the conversion rates of the ecu,
- the transmission should not be interrupted until the end of the message, which is marked by the code 'ffff'.

*Note:* The Commission also has an automatic fax answering service (No 296 10 97/296 60 11) providing daily data concerning calculation of the conversion rates applicable for the purposes of the common agricultural policy.

<sup>(1)</sup> Council Regulation (EEC) No 3180/78 of 18 December 1978 (OJ L 379, 30. 12. 1978, p. 1), as last amended by Regulation (EEC) No 1971/89 (OJ L 189, 4. 7. 1989, p. 1).

Council Decision 80/1184/EEC of 18 December 1980 (Convention of Lomé) (OJ L 349, 23. 12. 1980, p. 34).

Commission Decision No 3334/80/ECSC of 19 December 1980 (OJ L 349, 23. 12. 1980, p. 27).

Financial Regulation of 16 December 1980 concerning the general budget of the European Communities (OJ L 345, 20. 12. 1980, p. 23).

Council Regulation (EEC) No 3308/80 of 16 December 1980 (OJ L 345, 20. 12. 1980, p. 1).

Decision of the Council of Governors of the European Investment Bank of 13 May 1981 (OJ L 311, 30. 10. 1981, p. 1).



**Prior notification of a concentration****(Case No IV/M.1044 — KPMG/Ernst & Young)**

(98/C 5/03)

(Text with EEA relevance)

1. On 23 December 1997, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89<sup>(1)</sup> by which KPMG enters into a full merger within the meaning of Article 3 (1) (a) of the Regulation with Ernst & Young by way of a series of transactions and contractual arrangements.

2. The business activities of the undertakings concerned are:

- KPMG: the provision of statutory audit, accounting, tax compliance, management consultancy, corporate finance advisory, insolvency services, legal services and outsourcing services,
- Ernst & Young: the provision of statutory audit, accounting, tax compliance, management consultancy, corporate finance advisory, insolvency services, legal services and outsourcing services.

3. On preliminary examination, the Commission finds that the notified concentration could fall within the scope of Regulation (EEC) No 4064/89. However, the final decision on this point is reserved.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent by fax ((32 2) 296 43 01 or 296 72 44) or by post, under reference IV/M.1044 — KPMG/Ernst & Young, to:

European Commission,  
Directorate-General for Competition (DG IV),  
Directorate B — Merger Task Force,  
Avenue de Cortenberg/Kortenberglaan 150,  
B-1040 Brussels.

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<sup>(1)</sup> OJ L 395, 30. 12. 1989; corrigendum: OJ L 257, 21. 9. 1990, p. 13.

## II

*(Preparatory Acts)*

## COMMISSION

**Proposal for a Council Directive on safeguarding the supplementary pension rights of employed and self-employed persons moving within the European Union**

(98/C 5/04)

(Text with EEA relevance)

COM(97) 486 final — 97/0265(CNS)

*(Submitted by the Commission on 19 November 1997)*

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 51 and 235 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas one of the fundamental freedoms of the Community is the free movement of persons; whereas the Treaty provides that the Council shall, acting unanimously, adopt such measures in the field of social security as are necessary to provide freedom of movement of workers;

Whereas the social security of workers is assured by statutory social security schemes and by supplementary social security schemes;

Whereas the legislation already adopted by the Council with a view to protecting the social security rights of workers moving within the Community and of members of their family, and more particularly Regulations (EEC) No 1408/71<sup>(1)</sup> and (EEC) No 574/72<sup>(2)</sup> concern only statutory pension schemes;

Whereas the European Council meeting in Amsterdam on 16 and 17 June 1997 reaffirmed the importance it attaches to a properly functioning single market as an essential element of the overall strategy to promote competitiveness, economic growth and employment throughout the European Union;

Whereas to this end, in its resolution on growth and employment<sup>(3)</sup>, the aforesaid European Council has agreed on concrete action on making maximum progress with the final completion of the single market: making the rules more effective, dealing with the main remaining market distortions, avoiding harmful tax competition, removing the sectoral obstacles to market integration and delivering a single market for the benefit of all citizens;

Whereas in its Recommendation 92/442/EEC of 27 July 1992 on the convergence of social protection objectives and policies<sup>(4)</sup> the Council recommends, in point I.B.5 (h), that Member States should 'promote, where necessary, changes to the conditions governing the acquisition of pension and, especially, supplementary pension rights with a view to eliminating obstacles to the mobility of employed workers';

Whereas this objective can be achieved only if supplementary pension rights are afforded appropriate protection when a worker moves from one Member State to another;

Whereas freedom of movement for persons, which is one of the cornerstones of the Community, is not confined to employed persons but also extends to self-employed persons in the framework of the freedom of establishment and the freedom to provide services;

<sup>(1)</sup> OJ L 149, 5. 7. 1971, p. 2; Regulation updated by Regulation (EC) No 118/97 (OJ L 28, 30. 1. 1997, p. 1) and as last amended by Regulation (EC) No 1290/97 (OJ L 176, 4. 7. 1997, p. 1).

<sup>(2)</sup> OJ L 74, 27. 3. 1972, p. 1; Regulation updated by Regulation (EC) No 118/97.

<sup>(3)</sup> OJ C 236, 2. 8. 1997, p. 3.

<sup>(4)</sup> OJ L 245, 26. 8. 1992, p. 49.

Whereas, in order to enable the right to free movement to be exercised effectively, workers should have certain guarantees regarding the preservation of their vested rights deriving from supplementary pension schemes;

Whereas the Member States should take the necessary measures to ensure that benefits under supplementary pension schemes are paid to members and former members thereof as well as to members of their families or their survivors in all Member States, given that all restrictions on the free movement of payments and capital are now prohibited pursuant to Article 73b of the Treaty;

Whereas in order to facilitate the exercise of the right to free movement, national regulations should be adjusted in order to enable contributions to continue to be made to an approved supplementary pension scheme established in one Member State by, or on behalf of workers who are posted, for a short duration, to another Member State;

Whereas in this regard the Treaty requires not only the abolition of any discrimination based on nationality but also the elimination of any national measure likely to impede or render less attractive the exercise by workers of the fundamental freedoms guaranteed by the Treaty as interpreted by the Court of Justice of the European Communities in successive judgments;

Whereas this Directive in the limited field of application of posted workers is without prejudice to the need to find a suitable solution to the wider problem of the taxation of supplementary pensions within the Community;

Whereas workers exercising their right to free movement should be adequately informed by the managers of supplementary pension schemes, particularly with regard to the choices and alternatives available to them;

Whereas this Directive is without prejudice to the applicability to supplementary pension schemes of the single market rules and the competition rules of the Treaty;

Whereas, by reason of the diversity of supplementary social security schemes, the Community should lay down only a general framework of objectives, leaving the Member States to choose freely what measures to adopt to implement those objectives;

Whereas the Member States, in order to attain these objectives, must adjust their national laws and, this being the case, a directive is the appropriate legal instrument;

Whereas, in accordance with the principles of subsidiarity and proportionality as set out in Article 3b of the Treaty, the objectives of this Directive cannot be sufficiently achieved by the Member States and can therefore be better achieved by the Community; whereas this Directive limits itself to the minimum required for the attainment of those objectives and does not go beyond what is necessary for that purpose,

HAS ADOPTED THIS DIRECTIVE:

## CHAPTER I

### Objective and scope

#### *Article 1*

The aim of this Directive is to ensure that appropriate protection is given to rights, whether vested or in the course of acquisition, of members of supplementary pension schemes who move from one Member State to another. Such protection refers in particular to the preservation of pension rights under both voluntary and compulsory supplementary pension schemes, with the exception of schemes already covered by Regulation (EEC) No 1408/71.

#### *Article 2*

This Directive shall apply to members of supplementary pension schemes who have acquired or are in the process of acquiring rights in one or more Member States, and to members of their families and their survivors.

## CHAPTER II

### Definitions

#### *Article 3*

For the purpose of this Directive:

- (a) 'supplementary pension' means invalidity, retirement and survivors' benefits intended to supplement or replace those provided in respect of the same contingencies by statutory social security schemes;
- (b) 'supplementary pension scheme' means any occupational pension scheme and collective arrangement serving the same aim, such as a group insurance contract, branch or sectoral pay-as-you-go scheme, funded scheme or pension promise backed by book reserves, intended to provide a supplementary pension for employed or self-employed persons;

- (c) 'approved supplementary pension scheme' means a supplementary pension scheme which, in the Member State in which it is established, satisfies the conditions required by that Member State for the granting of particular tax reliefs that are available in relation to supplementary pension provision;
- (d) 'pension rights' means any benefits to which a scheme member is entitled under a supplementary pension scheme;
- (e) 'vested pension rights' means any entitlement to benefits obtained after fulfilment of the minimum conditions, in particular of vesting periods, required by the rules of a supplementary pension scheme. 'Vesting period' means any period taken into consideration for admission to a supplementary pension scheme and for the acquisition of rights thereunder;
- (f) 'worker' means an employed or a self-employed person;
- (g) 'posted worker' means a worker who is posted to work in another Member State and who within the terms of Title II of Regulation (EEC) No 1408/71 continues to be subject to the legislation of the Member State of origin, and 'posting' shall be construed accordingly;
- (h) 'Member State of origin' means the Member State in which a worker has worked immediately prior to the posting and in which the supplementary pension scheme of which he is a member is established;
- (i) 'host Member State' means the Member State to which a worker is posted.

### CHAPTER III

#### Measures for protecting the supplementary pension rights of workers moving within the European Union

##### *Article 4*

Member States shall take the necessary measures to ensure that the vested pension rights of supplementary

pension scheme members are preserved when they move from one Member State to another. To this end, Member States shall ensure that full preservation of vested pension rights shall be guaranteed for members in respect of whom contributions are no longer being made to a supplementary pension scheme as a consequence of their moving from one Member State to another, at least to the same extent as for members in respect of whom contributions are no longer being made but who remain within the Member State in question. This Article shall also apply to members of their families and their survivors.

##### *Article 5*

Member States shall ensure that, in respect of members of supplementary pension schemes, as well as members of their families and their survivors, supplementary pension schemes make full payment in other Member States of all benefits due under such schemes.

##### *Article 6*

1. Member States shall adopt such measures as are necessary to enable contributions to continue to be made to a supplementary pension scheme established in the Member State of origin by, or on behalf of a posted worker who is a member of such scheme during the period of his or her posting to the host Member State.

2. Where, pursuant to paragraph 1, contributions continue to be made to a supplementary pension scheme in the Member State of origin, the host Member State shall recognise these as equivalent to contributions to a supplementary pension scheme in the host Member State.

##### *Article 7*

Where contributions continue to be made in accordance with Article 6 (1) to an approved supplementary pension scheme, a host Member State shall, to the extent that it has taxing rights, treat such contributions in the same way as it would treat contributions paid to a comparable approved supplementary pension scheme established in the host Member State.

##### *Article 8*

Member States shall take measures to ensure that managers of supplementary pension schemes provide adequate information to scheme members as to their pension rights and the choices which are available to them under the scheme when they move to another Member State.

## CHAPTER IV

**Final provisions***Article 9*

Member States may provide that the provisions of Article 6 shall apply only to postings that commence on or after the date of entry into force of this Directive.

*Article 10*

Member States shall introduce into their national legal systems such measures as are necessary to enable all persons who consider themselves wronged by failure to apply the provisions of this Directive to pursue their claims by judicial process after possible recourse to other competent authorities.

*Article 11*

Member States shall lay down the system of penalties for breaching the national provisions adopted pursuant to this Directive, and shall take all the measures necessary to ensure that those penalties are applied. The penalties thus provided for shall be effective, proportionate and dissuasive. Member States shall communicate the relevant provisions to the Commission not later than 18 months following the entry into force of this Directive and shall communicate any subsequent changes as soon as possible.

*Article 12*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 18 months following the date of its entry into force, or shall ensure by that date at the latest, that management and labour introduce the requisite provisions by way of agreement. Member States shall take all necessary steps to enable themselves at all times to guarantee the results imposed by this Directive. They shall immediately inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

They shall inform the Commission of the national authorities to be contacted regarding the application of this Directive.

2. Not later than two years following the entry into force of this Directive, Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive.

Member States shall supply, by the same date, a correlation table showing the pre-existing national provisions or those which have been introduced in order to comply with each provision of this Directive.

3. On the basis of the information supplied by Member States, the Commission shall draw up a report for submission to the European Parliament, the Council and the Economic and Social Committee, within six years of the entry into force of this Directive.

The report shall deal with the application of this Directive and shall, where appropriate, propose any amendments that may prove necessary.

*Article 13*

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Communities*.

*Article 14*

This Directive is addressed to the Member States.

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