

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

CONSULTATION DOCUMENT

CONSULTATION ON PENSION RULES IMPLEMENTING MINIMUM REQUIREMENTS ON THE ACQUISITION AND PRESERVATION OF PENSION RIGHTS

[MFSA REF: 05-2018]

20th April 2018

Closing Date: 11th May 2018

Note: The documents circulated by the MFSA for the purpose of consultation are in draft form and consist of proposals. Accordingly, these proposals are not binding and are subject to changes and revisions following representations received from Licence Holders and other involved parties. It is important that persons involved in the consultation bear these considerations in mind.

Note for Consultation

1. Purpose

- 1.1 On 30th April 2014, Directive 2014/50/EU of the European Parliament and of the Council of 16 April 2014 on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights, ([the “EU Mobility Directive”](#)) was published in the Official Journal of the European Union. The said Directive entered into force on the 21st May 2014. The EU Mobility Directive lays down rules aimed at facilitating the exercise of the right of workers to freedom of movement between Member States by reducing the obstacles created by certain rules concerning supplementary pension schemes linked to an employment relationship. Member States are required bring into force the necessary provisions to comply with the EU Mobility Directive by the **21st May 2018**.
- 1.2 Article 2 of the EU Mobility Directive lists the scenarios to which the provisions of the said Directive are not applicable. Moreover, in terms of paragraph 4 of the said article, the EU Mobility Directive applies only to periods of employment falling after the 21st May 2018.
- 1.3 Occupational Retirement Schemes established on a voluntary basis which are duly licensed under the Retirement Pensions Act (Cap. 514) to provide retirement benefits, as well as Retirement Scheme Administrators administering such Schemes, fall within the scope of the EU Mobility Directive. Therefore, since Occupational Retirement Schemes and Retirement Scheme Administrators will be required to take into account and operate in line with the minimum requirements laid down in the said Directive, the MFSA proposes to include and reflect such minimum requirements in a new Appendix in Part C of the Pension Rules for Occupational Retirement Schemes. The said Appendix is being issued for Consultation together with this Consultation document.
- 1.4 Any comments and feedback in relation to the attached draft Appendix is to be addressed to the Insurance and Pensions Supervision Unit and submitted in writing on ipsu@mfsa.com.mt by not later than **Friday 11th May 2018**.

2. Background and Scope

- 2.1 Recital (4) of the EU Mobility Directive states that 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 represented an initial specific measure designed to improve the exercise of the right of freedom of movement for workers as regards supplementary pension schemes. Thus, the EU Mobility Directive is considered as a second step to removing obstacles to free movement relating to supplementary pensions and to further facilitate worker mobility between Member States. It is also pertinent to point out that the EU Mobility Directive does not provide for the transfer of vested pension rights.¹
- 2.2 Article 2(5) of the EU Mobility Directive provides that the said Directive does not apply to the acquisition and preservation of supplementary pension rights of workers moving within a single Member State. However, pursuant to recital (6) of the EU Mobility Directive, Member States may extend the rules applicable pursuant to this Directive to Scheme members who change employment within a single Member State. In the MFSA's view, the protection given by the said Directive is not to be limited to the mobility from one Member State to another but is to extend also to mobility within any Member State. In addition, it is to be noted that, in practice, an Occupational Retirement Scheme is in no position to determine whether employees will later move to another Member State, either at the point when they commence or terminate their employment.
- 2.3 The EU Mobility Directive concerns only workers and in principle, *self-employed persons* do not fall within the provisions of the said Directive. However, under national law Member States are free to extend the protection under the provisions of the EU Mobility Directive to such persons. In this respect, the MFSA is of the view that the protection provided by the EU Mobility Directive is also to be extended to self-employed persons.

3. The Minimum Requirements laid down in the EU Mobility Directive

- 3.1 The EU Mobility Directive aims to improve the conditions for the acquisition and preservation of supplementary pension rights of members of supplementary pension schemes. The minimum requirements laid down in the said Directive are outlined by means of the following three key elements:

¹ Vide recital (24) of the EU Mobility Directive.

Conditions governing the acquisition of rights under supplementary pension schemes

- 3.2 It is to be noted that pension rights can be forfeited if a worker's employment relationship ends before the completion of a minimum period of Scheme membership (“*vesting period*”²) or before reaching the minimum age for the vesting of pension rights. Therefore, in order to allow *outgoing workers*³ to build up adequate and sufficient pension rights, Article 4(1) (a) and (b) of the EU Mobility Directive establishes certain limits so that any vesting periods and, or *waiting periods*⁴ (combined) are limited to a maximum of three (3) years. In addition, the minimum age for starting the vesting of pension rights, may not exceed 21 years.
- 3.3 Moreover, in terms of Article 4(1)(c) of the EU Mobility Directive, where an outgoing worker has not yet accrued vested pension rights when the employment relationship comes to an end:
- (a) when the Occupational Retirement Scheme or the employer bears the investment risk (in particular in *defined benefit Schemes*), the Scheme should always refund the pension contributions of that outgoing worker;
 - (b) when the outgoing worker bears the investment risk (in particular in *defined contribution Schemes*) the Occupational Retirement Scheme may refund the value of the investments derived from those contributions or may reimburse the sum of the contributions.

The Preservation of Dormant Pension Rights

- 3.4 The EU Mobility Directive aims to guarantee the preservation of pension rights so that outgoing workers would have the choice of preserving their acquired rights in the Occupational Retirement Scheme of their previous employer. In fact, in terms of Article 5 of the EU Mobility Directive, an outgoing worker is entitled to keep vested pension

² Article 3(e) of the EU Mobility Directive provides that *vesting period* “means the period of active membership of a scheme, required under national law or the rules of a supplementary pension scheme, in order to trigger entitlement to the accumulated supplementary pension rights”

³ Article 3(g) of the EU Mobility Directive provides that *outgoing worker* “means an active scheme member whose current employment relationship terminates for reasons other than becoming eligible for a supplementary pension and who moves between Member States”

⁴ Article 3(d) of the EU Mobility Directive provides that *waiting period* “means the period of employment, required under national law or by the rules of a supplementary pension scheme or by the employer, before a worker becomes eligible for membership of a scheme”

rights as *dormant pension rights*⁵ in the Occupational Retirement Scheme in which his or her entitlement was established.

- 3.5 A Member is not to suffer a considerable reduction in the acquired pension rights he or she has left within the Occupational Retirement Scheme under his former employment relationship. In this respect, the EU Mobility Directive promotes equality of treatment as regards the preservation of pension rights so that dormant pension rights of outgoing workers or their survivors, or the values of such pension rights, are to be treated in line with the value of the rights of active scheme members⁶ and are to be preserved fairly compared to the rights of current workers. Article 5(2) of the said Directive also provides examples of other ways of treating dormant pension rights or their values, in a fair manner.
- 3.6 In terms of Article 5(3) Member States may allow supplementary pension schemes not to retain the vested rights of an outgoing worker but to pay, with the worker's informed consent, including as regards applicable charges, a capital sum equivalent to the value of the vested pension rights to the outgoing worker, as long as the value of the vested pension rights does not exceed a threshold established by the Member State concerned. The MFSA is of the view that this option is to be adopted in order to avoid excessive administrative costs by Occupational Retirement Schemes resulting from the management of a large number of low-value dormant pension rights. In so far as the establishment of the threshold referred to above is concerned, this is currently being discussed with the relevant authorities.

Strengthening of Information standards

- 3.7 Without prejudice to the requirements laid down in Article 11 of the Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision, (IORP I Directive), in terms of Article 6(1) of the EU Mobility Directive, active scheme members are entitled to information about how a potential termination of employment would affect their pension rights. The MFSA intends to adopt the option laid down in Article 6(4) so that such information is to be provided on an annual basis.

⁵ Article 3(i) of the EU Mobility Directive provides that *dormant pension rights* “means vested pension rights retained within the scheme in which they have been accrued by a deferred beneficiary”

⁶ Article 3(c) of the EU Mobility Directive provides that *active scheme members* “means workers whose current employment relationship entitles them or is likely to entitle them, after fulfilling any acquisition conditions, to a supplementary pension in accordance with the provisions of a supplementary pension scheme”

3.8 In addition, pursuant to Article 6 of the EU Mobility Directive, deferred beneficiaries⁷ are to be adequately informed, upon request, in relation to the value of their pension rights and the conditions governing the treatment of dormant pension rights, and where survivor's benefits are attached to Schemes, surviving beneficiaries are to also have the same right to information.

4. Conclusion

4.1 Occupational Retirement Schemes and Retirement Scheme Administrators administering such Schemes will need to consider how the new requirements introduced by the EU Mobility Directive will affect their operations and the necessary measures or changes to be adopted for the purposes of implementing the provisions of the said Directive.

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⁷ Article 3(h) of the EU Mobility Directive provides that deferred beneficiary provides that *deferred beneficiary* “means a former active scheme member who has vested pension rights in a supplementary pension scheme and is not yet in receipt of a supplementary pension from that scheme”