

**MEMO# 13702**

July 3, 2001

## **ADOPTION BY PARLIAMENTARY COMMITTEE OF AMENDMENTS TO THE PROPOSED EU DIRECTIVE ON OCCUPATIONAL PENSIONS**

[13702] July 3, 2001 TO: INTERNATIONAL COMMITTEE No. 41-01 RE: ADOPTION BY PARLIAMENTARY COMMITTEE OF AMENDMENTS TO THE PROPOSED EU DIRECTIVE ON OCCUPATIONAL PENSIONS On June 21, 2001, the European Parliament's Economic and Monetary Affairs Committee (EMAC) adopted a report on the European Commission's proposal for a directive on occupational pensions.<sup>1</sup> EMAC's report, which is based on a draft report issued by EMAC's rapporteur,<sup>2</sup> proposes 97 amendments to the original proposal by the Commission. Parliament is expected to vote on the proposed amendments in plenary session this week. Separately, on June 28, 2001, individual Members of Parliament (MEPs) also tabled amendments to the proposal.<sup>3</sup> This memorandum highlights some of the key proposed amendments. Commission's Proposal As you know, the Commission's proposed directive would cover institutions that operate on a funded basis for the sole purpose of providing retirement benefits (IORPs). The directive would impose certain conditions for the operations of IORPs, investment rules for IORPs, and rules permitting the cross-border management of occupational pension schemes. Biometric Risk Unlike the Commission's proposed directive, EMAC's report proposes to require IORPs to offer participants coverage for biometric risks (risks of longevity, disability, and premature 1 The full text of the report can be found at <http://www2.europarl.eu.int/omk/OM-Europarl?PROG=REPORT&L=EN&PUBREF=-//EP//NONSGML+REPORT+A5-2001-0220+0+DOC+PDF+V0//EN&LEVEL=2>. The report also attaches the opinions of the Committee on Employment and Social Affairs and the Committee on Women's Rights and Equal Opportunities. These committees, through their opinions, called on EMAC to incorporate their proposed amendments into the EMAC report. 2 See Memorandum to International Committee No. 22-01 (Mar. 23, 2001). In response to the rapporteur's draft report, members of EMAC tabled 148 amendments for discussion. In the final report, EMAC agreed to a set of compromise amendments. 3 Attached is a copy of the proposed amendments (98-133) tabled by individual MEPs on behalf of their political groups. Amendments 107-118 are not available for distribution at the present time. 2death). Specifically, EMAC proposes to require that member states ensure that IORPs offer participants, as additional benefits (if the sponsors of the pension schemes, i.e., employers, do not provide such benefits), the option of payment of a lifelong pension, disability coverage, and provisions for survivors.<sup>4</sup> Under EMAC's report, coverage of these risks only may be exercised collectively by all members of an institution – that is, the participants must decide to take the option as a group. The costs of these benefits must be identified

separately and clearly and must not be contingent on the sex or health of an individual.<sup>5</sup> To emphasize the importance of providing for longevity in occupational pension schemes, EMAC proposes to define “retirement benefits” as benefits whose purpose is lifelong financial provision and that usually takes the form of payments for a lifetime.<sup>6</sup> EMAC also would include an amendment that would make it clear that member states may apply preferential tax treatment to occupational retirement schemes that cover biometric risks. Investment Rules EMAC would revise the Commission’s proposal to regulate plan investments under a general prudence standard but allow member states to continue to impose some quantitative investment restrictions on IORPs established within their jurisdiction. EMAC proposes to require member states to phase out quantitative investment limits within five years; the rapporteur had proposed a 10-year phase out period.<sup>7</sup> EMAC also proposes that the Commission issue a report reviewing the progress of the member state authorities in supervising the prudence person standard three years after the directive enters into force in order to determine whether the phase-out period could be reduced further. Separately, one MEP tabled an amendment that would prohibit IORPs from investing more than 30% in assets denominated in non-matching currencies.<sup>8</sup> This MEP was concerned about the exchange rate risk for pensioners and participants. 4 Amendment 98 would permit member states to require IORPs to offer optional coverage of biometric risks but would not mandate that member states require IORPs to offer such coverage. Amendment 126 (tabled by the rapporteur) would require member states to ensure that IORPs offer members the option of a guarantee of the contributions made to the pension scheme. 5 It is unclear, however, how the costs associated with providing an annuity upon retirement for all participants would be determined and disclosed before the creation of the occupational pension plan. 6 The Commission had proposed to define “retirement benefits” as “benefits in the form of payments, whether for life time, a temporary period or as a lump sum, paid on death, disability, cessation of employment or when a defined age is reached, or support payments or services in case of sickness, indigence or death when they are supplementary to those benefits.” See Article 6 (d) of the Commission’s original proposal. 7 The Commission’s proposed directive would impose a prudent person standard on IORPs and would prohibit member states from requiring IORPs to invest in certain categories of assets. The Commission’s proposal also would permit member states to impose certain quantitative investment restrictions but would limit the restrictions that could be imposed. 8 See Amendment 104. 3Cross-border Activities EMAC proposes a couple of amendments to provisions that address cross-border activities of IORPs. First, EMAC proposes to permit member states to exclude from the scope of the directive institutions with fewer than 50 participants or beneficiaries, rather than those with fewer than 100 participants or beneficiaries as proposed by the Commission. Moreover, regardless of whether such small institutions are excluded from the scope of the directive, the EMAC amendment would require member states to allow these small institutions to engage asset managers or custodians that are established in another member state. Second, EMAC proposes to amend slightly the rules regarding liability coverage for IORPs that are engaged in cross-border activities. EMAC’s amendments, however, do not go as far as the rapporteur’s draft report in eliminating the stricter rules for IORPs conducting cross-border activities. The rapporteur’s draft amendment that would have deleted the Commission’s requirement that the “technical provisions” of IORPs be fully funded when they engage in cross-border activity was not adopted by EMAC.<sup>9</sup> Under EMAC’s amendments, IORPs that are engaged in cross-border activities must comply with the rules regarding technical provisions that are applicable in their home member states. One of the MEPs also proposed an amendment that would prohibit cross-border activities in circumstances in which statutory provisions or collective bargaining provisions require the sponsoring employer to be affiliated with specific IORPs.<sup>10</sup> Treatment of Service Providers The EMAC report proposes to provide

insurance companies with the choice of setting up a separate legal entity that would be subject to all provisions of the directive or of managing the pension business by establishing a separate “clearing agency” that would be subject to the provisions of the directive governing supervision and investment.<sup>11</sup> A MEP separately proposed an amendment that would permit other nationally regulated and supervised institutions (in addition to insurance companies) that offer funded occupational pension schemes to “ring-fence” their assets and liabilities to deal with the occupational retirement provision business.<sup>12</sup> The EMAC report also proposes to eliminate a provision in the directive that would allow member states to make the conditions of operation of an IORP subject to other requirements for the interests of participants and beneficiaries. <sup>9</sup> Under the directive, technical provisions must be sufficiently funded, i.e., IORPs must establish an adequate amount of liabilities to reflect their pension commitments. It appears that this provision would apply only to defined benefit plans. <sup>10</sup> See Amendment 106. <sup>11</sup> In Amendment 122, the rapporteur proposed to leave to insurance companies and not to the individual member states the decision regarding whether insurance companies could operate within the scope of the occupational pensions directive. <sup>12</sup> See Amendment 120.

#### 4Taxation of Pension Schemes

The EMAC report recognizes that unified principles for taxation to prevent tax evasion or double taxation of contributions and benefits are necessary for the creation of a single European market for occupational pensions. EMAC encourages member states to adopt a deferred taxation (Exempt, Exempt, Tax) system – Exempt contributions, Exempt investment income and capital gains, and Taxed benefits.

#### Other Amendments

In its report, EMAC also proposes several other changes to the Commission’s occupational pensions directive and directs the Commission to submit additional legislative and other proposals for developing and completing occupational retirement provisions in Europe. EMAC’s report emphasizes that the occupational pension directive is based on home country rule and proposes several amendments clarifying that IORPs would be regulated by the member states in which the IORPs are established. For example, EMAC would grant to home member states the right to supervise compliance with labor and social law requirements of host member states. EMAC also would require that member states set up by January 2003 a committee consisting of the supervisory authorities of all member states that would exchange information about the relevant labor and social provisions and the characteristics of retirement pension schemes in member states. EMAC would require each competent authority to produce an annual report, which would include information about its investigations, including the names of IORPs that it has investigated. EMAC also would require supervisory authorities to agree on uniform standards for calculating the costs related to investments. In its report, EMAC focuses on transferability of pensions by proposing several amendments to ensure that pensions can be transferred to different schemes. Moreover, to accommodate member states in which retirement institutions are required to delegate certain activities (such as investment management) to other entities, EMAC proposes an amendment that would authorize expressly member states to entrust the management of IORPs to other financial institutions, such as investment companies. Please review the full text of the report and the attached amendments proposed by the individual members of Parliament. If you have any questions or comments, please contact me at (202) 326-5810 or [jchoi@ici.org](mailto:jchoi@ici.org). Jennifer S. Choi Assistant Counsel Attachment (in .pdf format)