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Til underretning for Folketingets Europaudvalg vedlægges Socialministeriets skrivelse med den danske besvarelse af spørgeskema fra EU's Pensionsforum vedrørende indretningen af arbejdsmarkedspensioner i Danmark.

Anders Fogh Rasmussen

SOCIALMINISTERIET

Folketingets Europaudvalg

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Danmark har via EU's Pensionsforum, som er et rådgivende organ for Kommissionen i pensionspolitiske spørgsmål, modtaget et spørgeskema vedrørende indretningen af arbejdsmarkedspensioner i Danmark. Spørgeskemaet vedrører ikke pensioner, der er omfattet af forordning 1408.

De indsamlede oplysninger fra medlemslandene skal bruges i forbindelse med et kommende udkast til direktiv fra Kommissionens, som skal fastlægge minimumskrav til beskyttelse af optjente arbejdsmarkedspensionsrettigheder for personer, som tager arbejde i andre medlemslande. Der henvises i øvrigt til det vedlagte bilag.

Det er overfor EU's Pensionsforum understreget, at svarene på spørgeskemaet er rent tekniske, og at de på ingen måde udtrykker en dansk politisk stillingtagen til fortrukne tilpasninger af arbejdsmarkedspensionsordningerne i fremtiden.

Til udvalgets orientering vedlægges den danske besvarelse.

Med venlig hilsen

Eva Kjer Hansen

Bilag

EU-Kommissionen forbereder et udkast til direktiv, som skal fastlægge minimumskrav til beskyttelse af optjente arbejdsmarkedspensionsrettigheder for personer, som tager arbejde i andre medlemslande.

Der er allerede gennemført et direktiv på området (98/49/EF af 29. juni 1998 om beskyttelse af supplerende pensionsrettigheder for arbejdstagere og selvstændige erhvervsdrivende, der flytter inden for Fællesskabet), som sikrer, at personer, der flytter til eller arbejder i et andet medlemsland, kan vedblive med at indbetale til en pensionsordning i det oprindelige bopælsland m.v.

Hensigten med det kommende direktiv vurderes at være en yderligere understøttelse af arbejdskraftens frie bevægelighed, således at personer, der flytter til eller arbejder i et andet medlemsland, kan medtage opnåede rettigheder med henblik på at fortsætte indbetalinger i et andet medlemsland.

Der er på nuværende tidspunkt intet kendskab til, hvilke minimumskrav Kommissionen arbejder med. Et udkast til direktiv forventes klart i slutningen af 2004.

Besvarelsen af spørgeskemaet er udarbejdet i samarbejde mellem Økonomi- og Erhvervsministeriet, Skatteministeriet, Beskæftigelsesministeriet, Socialministeriet, DA, LO, AC og Forsikring & Pension.

Det er overfor EU's Pensionsforum understreget, at svarene på spørgeskemaet er rent tekniske, og at de på ingen måde udtrykker en dansk politisk stillingtagen til foretrukne tilpasninger arbejdsmarkedspensionsordningerne i fremtiden.

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30 August 2004

Dear Raymond Maes

Enclosed you will find the Danish reply to the questionnaire on the portability of occupational pension rights. The reply has been made in cooperation between different ministries, the social partners in Denmark and the Danish Insurance Association.

It should be emphasised that the replies given in the enclosed paper are strictly technical and in no way expressing a political judgement on preferable regulation of occupational pension schemes in the future.

In order to put the Danish reply into the proper context a brief summary of the Danish occupational pension system is given.

It is estimated that more than 90 per cent of the Danish work force is covered by an occupational pension. An occupational pension in Denmark is either granted to the individual employee according to law, according to collective agreement or according to company specific agreement.

Occupational pensions set up according to law are the civil servants occupational pension that are covered by 1408/71/EEC and therefore not covered by the reply to this questionnaire.

Large parts of the private sector and most of the public sector, not employing civil servants have a right to occupational pensions according to collective agreement.

And finally the vast majority of the labour market not covered by an occupational pension as part of a collective agreement is covered as the result of company specific agreements in the individual company.

Membership of a given pension scheme provided by a specific provider is usually obligatory for the individual employee. Only by changing job the obligation to be a member of that particular scheme terminates.

Some groups of employees - i.e. professionals employed on individual contracts in the private sector - can voluntarily enter pension schemes in transverse occupational pension funds. These funds exclusively admit members according to their educational background without regard to the branch of their employment.

As the occupational pensions to a large degree is part of either central collective bargaining procedures or decentralized agreements most of the issues that the questionnaire is dealing with is not regulated by Danish laws.

Occupational pensions is to a large extent regarded as the responsibility of the social partners and age minimums, acquisition periods etc in the occupational pension schemes are considered an integrated part of the collective agreements, where higher or more accessible pensions are weighed against higher wages, shorter working hours etc in the bargaining process.

The vast majority of Danish occupational schemes with the civil servants as the main exception are dc-hybrid-schemes which mean that it is dc-insurance like schemes, but traditionally with a minimum guarantee on the size of the pension benefit. Typically the employer pays two-thirds of the contribution and the employee one third. The total contribution varies between different sectors but will normally be between 10.8 per cent (blue collar sector) and 18 per cent of the salary. In combination with the state flat rate old age pension calculations show that most employees will reach a compensation ratio above 60 per cent, and many will have a compensation ratio above 80 per cent.

The typical Danish occupational pension scheme includes beside the old age pension, a disability pension, a spouse pension and an orphanage pension.

The main part of the Danish occupational pension schemes are set up in life insurance companies or industry-wide pension funds. Both types of pension institutions are subject to the life insurance directives. In Denmark company pension funds play a marginal role. These funds will be subject to the IORP-directive.

Yours sincerely

Bent Nielsen

**Reply to the questionnaire on the portability
of occupational pension rights**

❖ **Acquisition**

Waiting periods: (the period of employment after which an employee becomes a scheme member)

- 1) Indicate for your country the legal maxima for waiting periods (in all relevant legislation including tax legislation); if applicable, explain different regulatory regimes.

In Denmark we have no legal maxima for waiting periods.

- 2) Describe the current practice as regards waiting periods commonly applied in various types of occupational pension schemes. Do workers who remain with the same employer beyond the waiting period acquire pension rights in respect of employment before completion of the waiting period?

As occupational pensions to a large extent are governed by collective agreements the practices for waiting periods differ between sectors.

In the private sector where waiting periods exist the typical waiting period has been 9 months. Recent negotiations have however lowered the period to 6 months in a number of areas. A waiting period served is usually transferable inside the sector and hence the waiting period will only have to be served once.

In the public sector the waiting period typically varies between one and four years. In many of these occupational pension schemes there exists a special waiting period scheme for employees that due to waiting periods not are entitled to membership of the main scheme. In the waiting period schemes there may also be a waiting period and the contributions have traditionally been smaller than in the main scheme, but the difference is narrowing down and is expected to disappear in a not too distant future. Served waiting periods are transferable inside the public sector and to the private sector.

In general the employee starts acquiring pension rights when the payments of contributions start. In waiting periods without any contributions being paid, no acquisition of pension rights are taking place.

3) Indicate what would be the impact of the following measures on scheme members, on the costs of providing occupational pensions, on the development of occupational pension coverage and on the mobility of workers; distinguish between various types of schemes, if necessary.

a) Total elimination of waiting periods

It goes without saying that only schemes which currently apply a waiting period will be affected.

The cost of providing occupational pensions will increase. This will affect the economic preconditions for both employers and employees and will consequently influence future collective bargaining rounds.

If waiting periods are eliminated - and it is presumed that this is not offset by other measures aimed at for instance containing costs - scheme members would have higher pension rights, since the saving period is longer.

In theory waiting periods can be an obstacle for workers. However the Danish Financial Supervisory Authority has no experience concerning this.

b) Maximum waiting period of one year

A maximum waiting period of one year will mainly affect the public employers with the same effect as mentioned above.

4) What would be a reasonable maximum waiting period, taking into account the legitimate interests of early leavers and the overall costs of providing occupational pensions? Should there be a differentiation according to the scheme (for example longer waiting periods allowed for schemes solely paid by the employer) or the type of pension agreement (company-wide, sector-wide) concerned?. If so, how could this be done and for what kind of schemes/agreements?

As the occupational pensions in Denmark to a large degree is part of collective agreements waiting periods are typically set at the collective bargaining rounds. This means that the social partners are negotiating this as one of many parts of the remuneration package. The lengths of the periods will depend on the priorities of the social partners and the economic preconditions.

Acquisition

Minimum age: (minimum age after which pension entitlements must be recognised for an early leaver)

- 5) Indicate for your country the legal requirements regarding the highest possible minimum age for acquiring occupational pension rights (in all relevant legislation including tax legislation).

No legal requirements exist.

- 6) Describe the current practice as regards the minimum ages commonly applied in various types of occupational pension schemes. Do workers who remain with the same employer beyond the minimum age acquire pension rights in respect of employment periods below the minimum age?

In the private labour market the collective bargaining process has in general led to minimum ages of 20 years. That means that the employee enters the scheme at age 20 and hence the contributions will start.

In the public sector the state has a general age minimum of 25 years. People serving a waiting period due to not fulfilling the age requirement are covered by the waiting period scheme mentioned above under question 2, which means they can become members from the age of 20 years.

In the public sector, local government: some have the same rules as the state - 25 years - while others have lower age limits. The waiting period schemes for local governments have an age minimum of 21 years.

In general the employee starts acquiring pension rights when the payment of contributions starts. In waiting periods without any contributions being paid, no acquisition of pension rights are taking place.

- 7) Indicate what would be the impact of the following measures on scheme members, on the costs of providing occupational pensions, on the development of occupational pension coverage and on the mobility of workers; distinguish between various types of schemes, if necessary.

- a) complete elimination of minimum age requirements

If minimum age requirements do not exist - and it is presumed that the elimination hereof not will be accompanied by reductions in contributions, reduced wage increases or other measures aimed at containing costs - scheme members would have higher pension rights, since the saving period is longer.

- b) Highest minimum age set at 25 years.

Will not affect Danish occupational pension schemes as no scheme applies a minimum age higher than 25 years.

- c) Highest minimum age set at 30 years

Same as above.

- 8) What would be a reasonable highest minimum age taking into account the legitimate interests of early leavers and the overall costs of providing occupational pensions? Should there be a differentiation according to the scheme (for example higher minimum age allowed for schemes solely paid by the employer) or the type of pension agreement (company wide, sector wide) concerned? If so, how could this be done and for what kind of schemes/agreements?

As the occupational pensions in Denmark to a large degree is part of collective agreements minimum ages are typically set at the collective bargaining rounds. This means that the social partners are negotiating this as one of many parts of the remuneration package. The age limits will depend on the priorities of the social partners and the economic preconditions.

Acquisition

Vesting periods: (the minimum period of scheme membership after which a pension entitlement must be recognised for an early leaver)

- 9) Indicate for your country the legal maxima for vesting periods (in all relevant legislation including tax legislation); if applicable, explain different regulatory regimes.

Danish laws do not operate with vesting periods. The Danish law on Financial Services states in paragraph 21, no. 1.7 that insurance companies and pension funds must notify to the Danish Financial Supervisory Authorities rules on how pension schemes/pension rights can be transferred between life insurance companies and pension funds in case a scheme member changes job or is affected by a company restructuring. According to paragraph 21 in the same law the notified rules must be fair and reasonable to the individual scheme members and other beneficiaries. In practice this implies that no vesting periods are applied, see below under question 10.

- 10) Describe the current practice as regards the vesting periods commonly applied in various types of occupational pension schemes. Where the vesting period has not been completed, are pension rights definitely lost, or is the early leaver entitled to a reimbursement of his/her own contributions?

As mentioned above vesting periods are not applied in the Danish dc-schemes.

- 11) Indicate what would be the impact of the following measures on scheme members, on the costs of providing occupational pensions, on the development of occupational pension coverage and on the mobility of workers; distinguish between various types of schemes, if necessary.

- a) immediate vesting

This is the case in Denmark.

- b) maximum vesting period of one year

No impact on Danish schemes.

- c) maximum vesting period of two years

Same as above.

- d) maximum vesting period of 5 years.

Same as above.

- 12) What would be a reasonable maximum vesting period, taking into account the legitimate interest of early leavers and the overall costs of providing occupational pensions? Should there be a differentiation according to the scheme (for example longer vesting periods allowed for schemes solely paid by the employer) or the type of pension agreement (company wide, sector wide) concerned?. If so, how could this be done and for what kind of schemes/agreements?

The question is not relevant from a Danish perspective since vesting periods are not applied in the Danish dc-schemes.

Preservation of dormant pension rights

- 13) Indicate for your country the legal requirements regarding the preservation of dormant pension rights of a deferred scheme beneficiary (in all relevant legislation including tax legislation).

According to Law on Financial Service paragraph 20 the life insurance companies and industry wide pension funds must notify rules on the how the value of paid up policies is calculated. The rules must be fair and reasonable.

There are no tax rules governing the preservation of dormant pension rights.

- 14) Describe the current practice as regards the preservation of dormant pension rights in various types of occupational pension schemes. What proportion of early leavers maintain their acquired rights in the previous scheme and what proportion transfer them to a new scheme or receive a capital?

If contributions terminates, the acquired pension rights are turned into dormant pension rights/a paid up policy. This means that the pension promise which has been calculated under the assumption that contributions would be paid until retirement is recalculated based on the actual contributions made. This pension promise is regularly increased with the same interest rate as the rest of the pension schemes. The level of the final pension rights depends on the actual yields realised through the entire contract period, including the period as a dormant right.

Furthermore it is possible for scheme members to transfer dormant rights in connection with a job change as long as this is done up till 24 months after leaving the relevant employment.

The DFSA do not have any statistics concerning the above mentioned proportion. But it is the experience of some pension institutions that the number of early leavers that maintain their acquired rights in the previous scheme is increasing.

15) How are dormant rights commonly preserved in various types of pension schemes?

See above.

16) Indicate what would be the impact of the following measures on scheme members, on the costs of providing occupational pensions and on the development of occupational pension coverage; distinguish between various types of schemes, if necessary.

a) limited inflation adjustment (up to a maximum rate of 3%)

This model would be in contradiction to the general perception of fairness in Danish occupational defined contribution pension schemes. The Danish schemes adjust dormant rights in the same way as non-dormant rights, cf. question 14.

b) adjustment of dormant rights to wages

See above

Only a minority of Danish company pension funds are final salary, defined benefit schemes. An increase in wage inflation will consequently increase the nominal amount to be paid out by the company. If the increase in inflation is not fully reflected in nominal interest rates it might influence the matching of assets and liabilities in these funds.

c) adjustment of dormant rights at the same rate as pensions in payment

Dormant rights are treated the same way as other pension rights in the pension institution.

d) linking dormant rights to the rate of return of the assets of the institution for occupational retirement provision

As mentioned above this is on an aggregated level the case in Denmark.

17) What would be a reasonable arrangement for adjusting dormant pension rights taking into account the legitimate interest of deferred scheme beneficiaries and the overall costs of providing occupational pensions? Should there be a differentiation according to the scheme or the type of pension agreement (company wide, sector wide) concerned? If so, how could this be done and for what kind of schemes/agreements?

What is a reasonable arrangement will depend on the type of pension scheme in question. The Danish way of adjusting dormant pension rights functions well for the Danish occupational pension schemes.

Transferability

- 18) Is there in your country a statutory right to transfer acquired pension rights and/or to receive a capital representing (part of) the acquired rights?

Any life assurance company or occupational pension fund must notify to the DFSA the rules according to which pension schemes with annuity payments, effected or agreed as compulsory schemes with an assurance company or a pension fund, may be transferred to or from a company in connection with transition to another employment or in connection with a transfer of ownership or reorganisation of an undertaking - cf. the answer to question 9.

The rules shall be fair and reasonable for the individual scheme member and other beneficiaries.

An employee has a right to transfer pension rights to another pension scheme, if both the former and the present pension scheme are compulsory - as the vast majority of occupational pension schemes are in Denmark.

- 19) What legal requirements apply to the actuarial calculations involved in a transfer? Are these based in social or tax law?

No legal requirements exist but the calculation bases must be notified to the Danish Financial Supervisory Authority and must be fair and reasonable.

When transferring pension rights from the previous scheme to the present scheme the scheme member is according to agreement (cf. question 21) entitled to the technical reserve on the policy. The reserve covers already paid contributions plus interest minus costs. The previous pension institution is entitled to collect a transaction fee. The present pension institution is not allowed to take any fees.

- 20) Is there in your country a statutory right to transfer acquired pension rights to schemes in another Member State (including EEA/EFTA states) or to third countries¹? Do the same conditions apply to cross-border transfers as to national transfers? Who bears the transfer cost?

The abovementioned (question 18) rules is not limited to domestic transfers. Domestic transfers can take place without any tax repercussions as long as the transfer is made between to schemes with the same tax status. As foreign schemes will have a different tax status in Danish tax law, a cross border transfer will imply payment of tax, cf. question 24.

- 21) What is the common practice in the various types of pension schemes regarding the transfer of acquired rights (transfer agreements between pensions institutions, collective agreements). Is there a distinction between the employer's and the

¹ Such a right does not imply an obligation on another occupational pension scheme to accept such a transfer.

employee's part of the acquired rights? Does transferability depend on the financing method (e.g. only fully funded schemes)? What is the calculation method involved in a transfer (e.g. rules of the delivering institution or commonly agreed actuarial assumptions)?

The requirement in the law of notifying transfer rules has by almost all Danish pension institution been implemented through accession to the Job Transfer Agreement which is an agreement between the Danish Insurance Association and the Association of Company Pension Funds in Denmark. The agreement gives further transfer possibilities than the law requires. For instance can also lump sums be transferred according to the agreement.

As mentioned earlier most Danish schemes are dc-schemes and are as such fully funded. The member is entitled to transfer the entire technical reserve on the scheme. The technical reserve is calculated on the scheme specific technical base. This means that in some cases it may be more beneficial for the member to leave the pension rights as dormant rights in the previous scheme. It is for the member to decide whether the scheme should be transferred or not.

The use of special, common calculation bases in connection with transfers would in some cases mean that the pension institution - that is the other members - where to pay an amount to the leaver and in other cases they were to gain on leavers. As long as the transfer only is an option common calculation bases do not seem necessary.

22) What is the common practice in the various types of pension schemes regarding the possibility to receive a capital representing (part of) the acquired rights? Please indicate also the proportion of early leavers who take a transfer into a new scheme or a capital payment and the typical use of this payment.

It is part of the Job Change Agreement that the capital received by the present pension institution is used for purchasing the pension right which is achievable in the present pension scheme. The exact pension right in the previous and the present scheme will never be the same as the technical bases differ and as there may be a different benefit mix in the two schemes.

Therefore the transferred capital can result in either higher pension rights or lower rights. Anyway it is the individual member that decides whether a transfer is going to take place.

The DFSA does not have any statistics indicating the proportion of early leavers who take a transfer into a new scheme. But it is not very common to take out a capital payment for two reasons. In many schemes it is not possible according to statutes to get a payment before retirement, and secondly if a payment is possible it will be taxed at 60 per cent making it quite expensive to withdraw the pension rights.

❖ **Transferability - taxation**

- 23) Indicate for your country which are the tax consequences of the transfer of acquired pension rights between schemes at national level. Please distinguish between the level of the employee, of the employer and of the institution for occupational retirement provision (in particular, is the transfer a taxable event)?

Transfer between schemes with the same tax status takes place with no tax consequences for anyone. In practice primarily transfers without tax consequences is taking place.

- 24) Indicate for your country which are the tax consequences of the transfer of acquired pension rights to schemes in another Member State (including EEA/EFTA states), at the level of the employee, of the employer and/or at the level of the institution for occupational retirement provision. Please give the relevant references of the tax legislation. Do different rules apply to different receiving countries?

As a main rule an employee is always liable to taxation if he withdraws funds from an acquired pension right (sections 20 and 29 in the law on taxation of pension schemes). This also applies when a pension scheme is transferred to another country. This must be seen in connection with the deductibility of the payments to the scheme, as the Danish tax rules are based on symmetry between payments to and from pension schemes: The employee can deduct the contribution paid to the pension scheme from his taxable income (section 19 in the law on taxation of pension schemes), but the employee is liable to pay tax on the benefits received. The pension institution is taxable of the investment income according to the Pension Yield Taxation Act. (ETT-system)

As regards the employer the transfer has no tax consequences, as the earned pension rights are owned solely by the employee. This also applies for the future payments by the employer to the scheme, as these payments are deductible for tax purposes for the employer regardless of in which country the scheme is placed (the normal rules for tax deductability in the law "Statsskatteloven"). As regards the institution from which the scheme is transferred it is responsible for holding back the employee's tax as mentioned above.

- 25) Question only to be answered by the acceding countries: indicate which of the following occupational pension taxation systems apply in your country and the ceilings that may apply to a particular taxation system:

- a) EET (Exempt contributions, Exempt investment income and capital gains of the pension institution, Taxed benefits),
- b) ETT (Exempt contributions, Taxed investment income and capital gains of the pension institution, Taxed benefits) or

- c) TEE (Taxed contributions, Exempt investment income and capital gains of the pension institution, Exempt benefits)

❖ **Transferability - ceilings**

26) Indicate if in your country there exist legal requirements regarding the maximum of entitlements, years of services, points, or any other calculation units that can be accumulated under a supplementary pension scheme up to the moment of retirement. Do such ceilings limit the ability of a pension scheme to receive a transfer payment?

Such ceilings do not exist.

27) Describe the current practice as regards the fixing of ceilings by various types of occupational pension schemes.

Ceilings do not exist. As the contribution payable to the scheme typically is set at collective bargaining as a percentage of the salary, the typical pension right will normally be a reasonable proportion of the salary.

28) Indicate what would be the impact of removing these ceilings on scheme members, on the costs of providing occupational pensions and on the development of occupational pension coverage; distinguish between various types of schemes, if necessary.

As ceilings do not exist in Denmark it would not impact the Danish occupational pension schemes.

29) What would be a reasonable arrangement for fixing ceilings taking into account the legitimate interest of early leavers and the overall costs of providing occupational pensions? Should there be a differentiation according to the scheme or the pension agreement concerned? If so, how could this be done and for what kind of schemes/agreements?

The question is not relevant from a Danish perspective since ceilings are not applied in the Danish dc-schemes.

Information requirements

Directive 98/49/EC requires that information provided to scheme members when moving to another Member State should at least correspond to information given to scheme members in respect of whom contributions cease to be made, but who remain within the same Member State. However, the Directive does not contain any provisions on the information that is to be provided to those who leave a pension scheme. The only provisions in this respect are contained in Article 11 of the IORP Directive (2003/41/EC) which provides for detailed and substantive information of scheme members and beneficiaries on the target level of benefits, on the actual financing of accrued pension entitlements and on the level of benefits in case of termination of employment. The Commission consid-

ers it necessary to ensure that scheme members are made fully aware of their rights, notably in case of job mobility.

30) What are the statutory requirements in your country as concerns the information provided to early leavers and deferred beneficiaries? Does this information also cover the statutory pension rights (first pillar)?

When a member enters the pension scheme the pension institution must inform the policyholder about conditions concerning surrendering the policy. This includes information regarding rules of calculating surrender values and dormant rights.

If the above mentioned rules are changed during the duration of the contract, the pension institution must inform the scheme members about the changes.

This reply do not cover the statutory pensions in the first pillar.

31) What information is commonly provided by different types of schemes, particularly to early leavers and deferred scheme beneficiaries?

The information given is compliant with the life insurance directives.

32) Does information provided to early leavers and deferred scheme beneficiaries typically cover tax issues as well?

According to the Regulation on Best Practice also tax consequences are to be included when the pension institution gives advice and information to the members, including leaving members.