



Newsflash

Supplementary Pensions Act Reform

On 18 December 2015, the Act guaranteeing the sustainability and social character of supplementary pensions and reinforcing the supplementary character vis-à-vis legal pensions has been published (the “Act of 18 December 2015”). This Act amends the Act of 28 April 2003 concerning supplementary pensions (WAP/LPC) (“Supplementary Pensions Act”) and entered into force as of 1 January 2016.

The amendments cover:

- The reform of the guaranteed minimum return on contributions paid in defined contribution (DC) plans;
- The possibility to opt for a death benefit in case of an exit without transfer of reserves or modification of the pension commitment;
- The alignment of the supplementary pension age and the legal pension age;
- The prohibition of beneficial anticipation measures.

This newsflash focuses on the last two measures.

Alignment of the supplementary pension age and the legal pension age

Principles

As from 1 January 2016, the moment of the supplementary pension's liquidation and the statutory pension's effective start date will be aligned.

As a result, supplementary pension benefits will, going forward, be paid automatically at the legal pension's effective start, either at the normal pension age (currently still 65) or younger in case of early retirement. This is an important modification compared to the previous situation, in which supplementary pension capitals and annuities were available from the age of 60 – provided the plan allowed such early liquidation – and was not connected to the legal pension's effective start.

An exception applies for employees having reached the legal pension age (normal or early) but postponing their effective retirement. These employees have the possibility to claim the liquidation of their supplementary pension scheme but will continue being affiliated to the pension scheme for the remainder of their employment.

Once effectively retired, affiliation to a supplementary pension scheme will no longer be possible, meaning that retired individuals combining their legal pension with a professional activity will not be entitled to benefit from their employer's supplementary pension scheme. A transitional measure applies to retired individuals already affiliated to a supplementary pension scheme on 31 December 2015. These retired individuals will continue to benefit from the pension scheme.

Transitional measures

Transitional measures have been included to make sure that the legitimate expectations of employees are not affected:

General	
Age reached in 2016	Supplementary pension available as from the age of (*)
58	60
57	61
56	62
55	63

Restructurings	
Employees being dismissed from the age of 55 in view of unemployment with business supplement (SWT/RCC) in the context of a restructuring with a restructuring plan filed before 1 October 2015	Supplementary pension available as from the age of 60 (*)

() Payments preceding the age of 65 (66 from 2025 and 67 from 2030) will only be lawful provided the plan in force on 31 December 2015 allows such early payment preceding the age of 65.*

Should existing plans be amended?

The new legal measures apply automatically to all existing plans providing for a younger age, without any obligation to redraft the age conditions (i.e. the pension age provided for in the pension plan). The recent reform does however impose the supplementary pension age's alignment with the applicable normal legal pension age (resp. 65/66/67):

- when implementing a new pension plan;
- when amending the pension age in the plan or individual agreement;
- for employees entering service from 1 January 2019.

This means that provisions in existing plans remain applicable until the end of 2018.

How to deal with insurance contracts providing for an age below 65?

Many employers have agreed with insurance companies on specific conditions, including administration costs and contractual returns, that apply until an employee has reached the contractual pension age, which is often below the normal legal pension age. In these cases and going forward, affiliation will be maintained beyond the contractual term until effective retirement (provided no transitory measures apply).

The Act of 18 December 2015 is unclear as to whether insurance companies should continue with the agreed terms and conditions until effective retirement or whether they can unilaterally determine which terms and conditions apply to additional years until effective retirement. Employers are encouraged to discuss this issue with their insurers. The continuation of the different risk benefits (death and invalidity) beyond the contractual pension age is also a point of discussion.

Prohibition of beneficial anticipation measures

Principles

The reform also addresses beneficial anticipation measures included in pension plans, encouraging employees to retire early. Such measures are automatically considered void from 1 January 2016 onwards.

Some examples of targeted beneficial anticipation measures are:

- in defined benefit plans: beneficial actuarial rules allowing employees to already receive at the age of 60 the lump sum/annuity they would have received at the age 65, or any other beneficial actuarial rules allowing a greater lump sum/annuity in case of early retirement;
- in defined contributions plans: any future service clause providing for the payment of a one-off premium into the pension plan covering future years which are not actually performed (often used to ensure further supplementary pension build up in the event of early retirement and unemployment with business supplement

(SWT/RCC) or to compensate the loss of legal pension in case of early retirement);

Transitional measure

A transitional measure is available for employees reaching the age of 55 in 2016. The prohibition does not apply for these employees.

Moreover, the prohibition will not lead to the vested balance's decrease as established on 31 December 2015.

Should existing plans be amended?

The targeted measures will automatically be considered void. As such, there is no need to remove these measures from existing plans; they will simply lose their validity.

Company directors and other self-employed workers

It should be noted that the Act of 18 December 2015 provides for equivalent amendments for company directors and other self-employed workers.

Concrete actions

Although the consequences of the reform are not fully clear at this stage, employers can already:

- discuss the consequences of the pension age increase with their pension institution (insurance company or IORP)
- anticipate the pension age increase for new hires employed from 1 January 2016 (in the event of a plan providing for a pension age below 65)
- check the enforceability of any special anticipation measures included in pension plans
- clearly communicate the impact of the reform to eligible employees (increase of supplementary pension age and prohibition of beneficial anticipation measures)

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