

Reason

The focus on drug trafficking as the leading evil that drives this element of the black economy creates an impression that the Council document over relies on the emotive abhorrence of the destructive outcomes of drug use, and allows 'ordinary decent criminal' money laundering activities to escape lightly. The inclusion of concern for exploitation of differential taxation will increase post enlargement, when in all probably a majority of Members will be outside Euroland.

Result of the vote

For: 36, against: 49, abstentions: 10.

Opinion of the Economic and Social Committee on the 'Proposal for a Council Regulation (EC) on coordination of social security systems' ⁽¹⁾

(2000/C 75/11)

On 9 September 1999 the Council decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 16 December 1999. The rapporteur was Mr Rodríguez García Caro.

At its 369th plenary session (meeting of 27 January 2000), the Economic and Social Committee adopted the following opinion by 78 votes to 5 with 20 abstentions.

1. Introduction

1.1. In June 1971, the European Economic Community adopted Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons, and to members of their families moving within the Community.

1.2. At its 59th plenary session of January 1967, the Economic and Social Committee adopted its opinion ⁽²⁾ on the regulation, making a number of comments on the text submitted to it.

1.3. Since they originally came into force, both the regulation in question and Regulation (EEC) No 574/72 fixing the procedure for implementing it have been amended several times to bring them into line with changes in national legislation, bilateral agreements between Member States, and with successive EU enlargements since 1971.

1.4. In 1992 the Edinburgh European Council ⁽³⁾ recognized the need to carry out a general overhaul of legislation in order to simplify the coordination rules.

Point 3.1.6 of the Communication from the Commission 'An Action Plan for free movement of workers' ⁽⁴⁾, presented in 1997, contains an undertaking to submit a proposal to reform and simplify Regulation (EEC) No 1408/71, as a major and necessary part of the measures required to remove the obstacles to free movement and mobility within the European Union.

1.5. In its opinion of 28 May 1998 on the communication ⁽⁵⁾, the Committee welcomed the reform of Regulation (EEC) No 1408/71, agreeing to simplified and improved coordination of EU social security systems.

⁽¹⁾ OJ C 38, 12.2.1999, p. 11.

⁽²⁾ OJ C 64, 5.4.1967.

⁽³⁾ Edinburgh European Council, 11 and 12.12.1992. Presidency Conclusions (SN 456/92).

⁽⁴⁾ COM(97) 586 final.

⁽⁵⁾ OJ C 235, 27.7.1998, p. 82.

1.6. Similarly, the opinion⁽¹⁾ adopted by the Committee on 9 September 1998, on the social action programme 1998-2000⁽²⁾, also agrees with the need to improve social protection systems and adjust them in line with changing labour market conditions, so as to maintain high quality social security in Europe.

2. Main points of the draft regulation

2.1. The proposal focuses on the twin aims of simplifying and improving the current regulation.

2.1.1. Simplification is reflected in the substantial reduction in the number of articles.

2.1.2. Improvement entails extension of provisions to groups of citizens who were not explicitly included in the original regulation, such as third country nationals affiliated to a social security system in any Member State and people taking early retirement.

2.2. The principle of equality, by virtue of which citizens covered by the regulation enjoy the same rights and are subject to the same obligations as the nationals of the Member State in which they reside and/or work, is a pivotal factor in coordinating social security systems.

This principle is based on three basic elements: assimilation of the facts, aggregation of periods, and retention of rights, regardless of the citizen's place of residence.

As the proposal quite clearly argues in its explanatory memorandum, without such coordination, free movement could remain a dead letter, since people would be unlikely to exercise this right if it meant losing social security entitlements already acquired in another Member State.

2.3. The text contains six titles. The first and third titles are of particular importance, concerning respectively the general and specific provisions affecting the various benefits. The second title determines the legislation to which individuals are subject. The fourth concerns the Administrative Commission. The fifth contains miscellaneous provisions, and the sixth contains the transitional and final provisions of the regulation.

3. General comments

3.1. The Committee broadly approves the text of the proposal, regardless of any general and specific comments which it may propose to introduce into the text of the draft regulation.

Although the proposal's Explanatory Memorandum refers to reform and simplification of Regulation (EEC) No 1408/71, its scope is in fact greater, since it introduces important amendments to the way certain matters are regulated compared to the current rules.

3.2. The Committee welcomes the continuing progress in consolidating the equality of EU citizens' rights.

3.3. The inclusion of new groups who may be eligible for the rights set out in the regulation strengthens and increases the perception that progress is being made towards a citizens' Europe.

It is essential that EU citizens are made to understand that a Europe without borders is of benefit to the free movement not only of capital and goods, but also of people.

3.4. The ongoing aim of improving the coordination of social security systems in the EU has been confirmed by the range of proposals for reform of Regulation (EEC) No 1408/71 submitted by the Commission. In practice, some of these proposals coincide with the comprehensive overhaul of the text.

The Committee voices its satisfaction at the EU institutions' continuing awareness of the social factor.

3.5. While improving the coordination of social security systems is unarguably a major step forward, the individual features of the national laws of each Member State should however be respected.

3.6. Obstacles which may hamper free movement can also affect citizens' right to work. The Committee considers that the proposal will definitely help to remove obstacles to cross-border movement of EU citizens, although much remains to be done.

3.7. In view of the complexity and importance of the draft regulation; the working methods adopted by the Council and Parliament; and the likely changes to the text during the legislative process at the hands of the different Council presidencies, and without prejudice to the following points, the Committee will constantly monitor the progress of the proposal in appropriate ways.

3.8. An improved and simplified regulation must go hand in hand with improved and simplified administrative procedures for those entitled to benefits. Further development of the regulation should include instruments ensuring streamlined, flexible procedures for both workers and businesses.

⁽¹⁾ OJ C 407, 28.12.1998, p. 187.

⁽²⁾ COM(1998) 259 final.

4. Specific comments

4.1. Article 2

The article determines the matters covered by the draft regulation, listing the types of benefits concerned.

The initial sentence uses the expression 'in particular' in referring to these benefits. This suggests either that such benefits are viewed as the main ones in a social security system, or that the draft regulation applies more particularly to these benefits than to others which are also mentioned in the text but not included in the list.

Given this lack of definition, an open list of benefits may give rise to legal uncertainty and undesirable effects.

4.2. Articles 6 and 7

It is stated in Article 6 that 'this Regulation shall replace any social security convention falling under its scope'. In Article 7 'Definitions', the third paragraph of indent (h) then states that the term 'legislation' 'also includes the social security conventions concluded between two or more Member States and one or more States not belonging to the European Union'. This appears in principle to contradict the content of Article 6. Clarification is required here. It would also be better to leave definitions to the final stage in drafting the regulation.

4.3. Article 8

4.3.1. The content of the current Article 14(b) of Regulation (EEC) No 1408/71 should be retained in Article 8(3).

4.3.2. The Committee notes that a difficulty exists for persons exercising representative functions vis-à-vis the EU institutions, including those working for Member State socio-economic organisations. It therefore considers that the European Commission should look closely at how it is decided which legislation applies to them.

4.4. Article 9(1)

This article lays down specific rules determining the legislation to which an employed person posted to another Member State is subject.

The new text is largely based on existing rules governing the application of social security. It confirms the procedure by which two Member States may grant derogations. On the other hand, it removes the derogation option under Article 14(1)(b) of the present regulation, which authorizes the appropriate authority in the Member State to which the employee has been posted to grant an extension of the period of application of the social security system of the country of origin (for not more than 12 months).

The Committee considers that the current possibility of derogation, contained in Article 14(1)(b) of the present Regulation (EEC) No 1408/71 should be maintained: certain highly-qualified functions in the field of research and development, establishment of new technologies or other strategic services, where it is known from the outset that the posting will last for more than 12 months, raise problems which need to be examined in greater detail by the Commission.

4.5. Article 10

This refers to persons pursuing activities as employees in the territory of two or more Member States. Paragraphs 1 and 2 repeat the expression 'substantial', in reference to the activity pursued by the workers.

The legislation applicable to the worker is determined on the basis of this substantial activity.

The term used is ambiguous, and not clearly enough defined to determine the legislation applicable to the worker. The meaning of the term will be clarified when the Court of Justice issues its judgement on the Fitzwilliam case, which is presently at the deliberation stage.

The legal certainty of the persons covered by the conditions described in the article must be adequately ensured. The Commission should therefore be urged to define clearly what is meant by 'substantial' activity, in terms of precise figures, leaving no room for arbitrary or subjective application of the rules and taking the expected judgement of the EC Court of Justice on this matter, when it comes, into account.

4.6. Article 18

At the end of this article, the phrase 'cannot be given such treatment within the necessary time' perpetuates the ambiguity of the present Article 22(1)(c). The following should therefore be added: 'provided that this assessment is made on the basis of medical criteria'.

In its Kohll⁽¹⁾ and Decker⁽²⁾ judgments, the Court of Justice of the European Communities indicates that without prior agreement, reimbursement of medical costs incurred in a Member State is currently ensured in line with the rates of the Member State of origin.

Clarification from the Court of Justice on the exact scope of the Kohll and Decker judgments must be awaited, particularly in the light of two pending cases (Vanbraeckel and Smits-Peerboms), and the results of the study currently being carried out in this area by the European Commission will also have to be taken into account.

4.7. Article 20

Article 20(3) mentions 'other pensioners'. This could give rise to confusion, since it cannot be established whether this refers to recipients of national pensions or persons who are pensioners by virtue of the legislation of their country of residence (all).

In addition to this reading of the article, it could be concluded that a pensioner moving elsewhere would be subject to double taxation. The Committee calls upon the Commission to clarify the article.

4.8. Article 26

Article 26(1) refers to 'full reimbursement'. The paragraph of the Explanatory Memorandum commenting on this article says benefits are 'fully refunded' and goes on to add that 'such reimbursement will be on the basis of actual expenditure'. Actual expenditure should be mentioned where it can be determined: otherwise, reimbursement should be on the basis of average costs.

4.9. Article 33

Article 33(3) should refer to 'benefits of the appropriate scheme' rather than 'benefits of the general scheme or, in default thereof, of the scheme applicable to manual or clerical workers, as the case may be', since the wording as proposed would exclude contributions to other specific schemes, such as those for self-employed workers or civil servants, which may at present be taken into account.

4.10. Article 43

The present wording does not provide sufficient guarantees that the amount of the benefit will be the most favourable if

the calculation is made by applying the legislation of a single Member State. In the event of sickness resulting from the type of work carried out in more than one Member State, benefits should be guaranteed to be the most favourable for the worker concerned.

4.11. Article 50(3)

This paragraph stipulates that the worker must return to the competent Member State if he has not found employment within the six months following the posting, if he wishes to continue receiving unemployment benefit in the competent Member State. The existing text limited this period to three months. The Committee agrees with the extension from three to six months. It believes that a time limit remains justifiable, in the light of the conditions for granting unemployment benefit in many countries and the shortcomings of supervisory mechanisms.

4.12. Article 55

The Committee considers the following comments to be necessary:

— This article covers two types of special benefit, one linked to means-testing and the other to diagnosis of a disability.

Since their characters, origins and circumstances differ, they should have been dealt with in two separate articles under the same heading, allowing for different rules.

— The Committee notes that the Annex referred to in this article is empty of content.

As a result, it is impossible to be sure of the specific benefits referred to in Article 55.

— In the particular case of benefits for disabled persons, the Committee considers that those corresponding to what Court of Justice case-law describes as 'benefits of mixed type' should not be subject to the residence condition.

4.13. Title IV

The Committee endorses the provisions governing the membership and functions of the Administrative Commission for the Coordination of Social Security Systems, as laid down in this title.

⁽¹⁾ Case C-158/96.

⁽²⁾ Case C-120/95.

However, it believes that the title should also cover the membership and powers of the Advisory Committee on freedom of movement and social security for Community workers, in accordance with the Commission's proposal for a decision⁽¹⁾.

The idea of merging the present two committees was endorsed by the ESC in its opinion on the action plan for free movement of workers, in which it stated that support depended on the operating capacity given to the Advisory Committee. For its part, the Commission has submitted a proposal for a European Parliament and Council decision establishing an Advisory Committee merging the existing committees on freedom of movement and social security.

From this point of view, the ESC believes that this new Advisory Committee should be mentioned in the document now under discussion, clearly stating its functions in relation to the coordination of social security systems.

4.14. *Article 59*

This article refers to cooperation between Member States. Article 59(4) highlights EU citizens' right to use their own

⁽¹⁾ OJ C 344, 12.11.1998.

Brussels, 27 January 2000.

languages. It stipulates that applications and other documents shall be accepted, even if written in a language other than that of the State to which they are submitted.

The Committee welcomes this token of tolerance and respect for citizens' cultural identity, which highlights the wealth of Europe's linguistic and cultural diversity.

4.15. *Article 62*

The actions and activities which may be funded by the Community include informing citizens. In the Committee's view, the measures referred to in the second paragraph may be judged to be highly selective and to have little impact on public opinion.

Information campaign funding should concentrate on mass media messages, targeting in the first place those recently benefiting from the coordination rules, such as students and public employees.

4.16. In the same way as for Article 55, the Committee notes that Annex II of the draft regulation, referred to in Article 67, is devoid of content concerning the special provisions.

*The President
of the Economic and Social Committee*
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