

**Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council amending 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 and Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71'**

(COM(2003) 468 final — 2003/0184 (COD))

(2004/C 80/29)

On 3 September 2003 the Council decided to consult the European Economic and Social Committee, under Article 262 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 25 November 2003. The rapporteur was Mr Boldt.

At its 404th plenary session (meeting of 10 December 2003), the European Economic and Social Committee adopted the following opinion by 111 votes to 1 with 5 abstentions.

## 1. Introduction

1.1. Since 1971 Regulation (EEC) No 1408/71 has been updated and amended several times in order to take account of changes to Member State social security systems and of the case law of the Court of Justice of the European Communities, which impacts on the future implementation of the regulation. EU enlargement has also necessitated a certain number of amendments.

1.2. Amendments to Regulation (EEC) No 1408/71 have been accompanied by amendments to Regulation (EEC) No 574/72, for reasons of consistency with the former.

## 2. Gist of the Commission proposal

2.1. The Commission has submitted a proposal for a Regulation amending Council 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, and Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71. The main aim of the proposal is to update Regulations (EEC) No 1408/71 and (EEC) No 574/72, in particular as regards special non-contributory cash benefits. The need for urgent action became apparent in the wake of a number of decisions of the Court of Justice of the European Communities, which have set precedents for implementation of Regulation (EEC) No 1408/71.

2.2. On several occasions the Court has considered that the 'principle of exportability' must be interpreted strictly. This means that it can only exclude benefits which are special, non-contributory and listed in Annex II a.

2.3. The proposal also aims to take account of changes in national legislation. These could be a result of Court of Justice decisions or of the way social security systems have developed in individual Member States.

2.4. The draft regulation also proposes updating Community regulations covering the relationship between the regulation and the provisions contained in bilateral social security agreements.

2.5. Other Commission proposals deal with amendments to the Annexes referring to the Member States and technical adaptations.

## 3. General comments

3.1. The Committee welcomes the Commission proposal and would reiterate the comment made in its Opinion of 27 January 1999 on the Application of social security schemes to employed persons, self-employed persons and members of their families<sup>(1)</sup>, viz. that any amendments must satisfy the need to review and update the regulations designed to facilitate the coordination of social security systems<sup>(2)</sup>. The proposal also comes at a time when the major review to update and simplify Regulation (EEC) No 1408/71 and to improve coordination, is in the final stages.

<sup>(1)</sup> OJ C 101, 12.4.1999.

<sup>(2)</sup> OJ C 75, 15.3.2000.

3.2. Despite the achievement of unanimity on the text of Title III Chapter 8 (special non-contributory cash benefits) and on the main principles of the Annexes to Regulation (EEC) No 1408/71, the types of benefit the various countries must include in the Annexes remain to be agreed. There is thus a possibility that the content of the current proposal could be amended.

3.3. The Committee fully endorses the plan to overhaul Regulations (EEC) No 1408/71 and (EEC) No 574/72, to make legislation clearer and easier to interpret and understand for EU citizens who make use of the right to move within the Community. It is therefore important that current legal practice should be enshrined in the legislation.

#### 4. Comments on individual articles

4.1. Article 1(1): proposed replacement for Article 4(2a). This defines 'special non-contributory cash benefits'. The proposal clarifies the expression and complies with case law. The proposed amendment to Article 4(2a) is consistent with the wording agreed for the review of Regulation (EEC) No 1408/71. The proposal is structured logically and is easier to understand than the current wording.

4.2. Article 1(3): proposal to replace Article 10(1a) to make it easier to understand which rights are not exportable. This

proposal clarifies the text without making any substantive changes.

4.3. Article 1(4): proposal to add a new paragraph 2a) to Article 23, specifying how the reference period from several Member States is to be taken into account. The proposal clarifies the text and reduces interpretation difficulties. Citizens are thus better able to understand and interpret their rights.

4.4. Article 1(5): proposal to reword Article 33(1) in order to clarify the extra demands made upon the relevant institutions when calculating pensions. This amendment is also necessary. It improves legal certainty for the individual.

4.5. The amendments contained in the Annexes are a response to EU Court of Justice decisions and/or amendments to national legislation. The Committee believes that an update of the regulation is vitally important to safeguarding, in practice, citizens' social rights. The Committee assumes that Council negotiations on Annex IIa can be concluded as soon as possible, so that the proposal can enter into force.

#### 5. Conclusions

The European Economic and Social Committee endorses the proposed amendment of both regulations. The amendments are warranted by the need for clarity and transparency, and will help to improve both legal and social protection for citizens.

Brussels, 10 December 2003.

*The President*

*of the European Economic and Social Committee*

Roger BRIESCH

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