the example of similar initiatives by the European Parliament on electricity from renewables;

8.5.9. use EU and national financial instruments — and soft loans in particular — to encourage and facilitate investment in new CHP plant, promoting a gradual but precise programme to decommission or modernize obsolete plant;

8.5.10. adopt a common methodology for quality certification and validation of projects for new CHP plants and/or, where practically and economically feasible, for the modernization of existing plants, according to common criteria regarding a minimum efficiency threshold, inter alia in order to encourage the granting of EU and national financing for certified business plans;

8.5.11. consider making CHP plants eligible for the future 'efficiency credits' related to greenhouse gas emissions, being examined by the UN in the wake of the Kyoto decisions;

8.5.12. ensure that the key actions of the fifth framework programme, and particularly those concerning the city of tomorrow, advanced energy systems and water treatment, give adequate consideration to new CHP technologies, especially for small, flexible, decentralizable plants.

Brussels, 25 March 1998.

The President

of the Economic and Social Committee

Tom JENKINS

Opinion of the Economic and Social Committee on the 'Proposal for a Council Directive on safeguarding the supplementary pension rights of employed and self-employed persons moving within the European Union' [1]

(98/C 157/07)

On 15 January 1998 the Council decided to consult the Economic and Social Committee, under Article 235 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Social, Family, Educational and Cultural Affairs, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 12 February 1998. The rapporteur was Mr Whitworth.

At its 353rd plenary session of 25 and 26 March 1998 (meeting of 25 March 1998) the Economic and Social Committee adopted the following opinion by 98 votes to four, with five abstentions.

1. **Introduction**

1.1. From the earliest days of the European Community the Commission has sought, pursuant to Article 51 of the Treaty, to bring forward measures in the field of social security to provide freedom of movement for workers and in particular to ensure that persons moving jobs from one Member State to another do not sustain any loss of benefits in this field.

1.2. Regulation 1408/71 on the application of social security schemes to employed persons, self-employed persons and their families moving within the Community sought inter alia to remove obstacles to cross-border mobility in the field of statutory pensions. The regulation which is a complex one has been frequently amended but has achieved its objective in this particular field.

1.3. The pursuit of a similar objective in the area of occupational pensions has proved much more difficult. This is undoubtedly because of the extreme diversity of such arrangements and the laws and regulations governing them in the various Member States. Never-

[1] OJ C 5, 9.1.1998, p. 4.

theless the solution of this problem is an essential pre-requisite for the completion of the Single Labour Market, and the Commission's present proposal is timely, if not long overdue.

1.4. In 1991 the Commission published a consultation paper entitled 'Supplementary Social Security Schemes: the Role of Occupational Pensions Schemes in the Social Protection of Workers and their Implications for Freedom of Movement' [1]. In its opinion on this document the Economic and Social Committee highlighted a number of points regarding the possible coordination of occupational pensions schemes and the corresponding acquisition and exercise of rights and transfer options across the Community, and urged the Commission to take action in this respect [2].

2. The Commission proposal

2.1. The stated aim of the proposed directive is to ensure that appropriate protection is given to rights acquired, or in the course of acquisition, by members of supplementary pension schemes who move from one Member State to another.

2.2. The directive seeks to achieve this aim by the following provisions:

Article 4: Preservation of vested pension rights. A member in respect of whom contributions to an occupational pension scheme are no longer being made on his leaving an employment to work in another Member State should not lose the rights already acquired under that scheme.

Article 5: Guarantee of cross-border payments. Full payment of benefits to be made to members resident in another Member State.

Article 6: Posted employees. Members temporarily posted by their employer to work in another Member State to be allowed to continue to contribute to their home scheme on the same basis as that applicable under Regulation 1408/71 to statutory schemes (i.e. for one year extendible to two).

Article 7: Tax treatment. Such contributions to be treated by the host state as if being made to a domestic scheme.

Article 8: Provision of information. Adequate information as to their rights and choices to be provided to members when moving abroad.

3. General comments

3.1. The Economic and Social Committee welcomes the proposed directive as a limited first step towards the objective of complete freedom of movement in the field of supplementary pensions. It recognizes the complexity of the matter occasioned by widely differing pension arrangements in the 15 Member States as well as the laws, regulations and tax conditions which govern them. The Committee acknowledges that certain of the directive's provisions are already applicable in various of the Member States but not in others.

3.2. The preservation of vested pension rights required by Article 4 of the draft directive is an example of that situation. However the principle that persons moving to another Member State should be in no worse or no better situation than those remaining within the same Member State is a correct one and should be enshrined in EU legislation.

3.3. Similarly the payment of benefits in other Member States is already the norm. Regulation 1408/71 already requires this for statutory benefits and it is right that Article 1 should apply the same principle to supplementary benefits.

3.4. The Committee considers that the provision in Article 6 that contributions can continue to be made to their home scheme by temporarily posted workers and/or their employers on their behalf is the most valuable feature of the draft directive. It will greatly benefit employees of multinational companies who may in the course of their careers undertake a number of such postings and it will materially assist their employers to provide occupational pensions for them without incurring additional costs and complex administrative arrangements.

3.4.1. However the Committee believes that the one year period applicable under Regulation 1408/71 is far too short and that the provision should be applicable for the full period of the posting. It notes that Recommendation 16 of 22 December 1984 recommends that the twelve-month period should be extended with the agreement of the employer for the full duration of the assignment when employees move abroad within an organization because of special knowledge or skills or to meet specific objectives. It believes that this recommendation should be given legal effect within both Regulation 1408/71 and the current draft directive.

(1) SEC(91) 1332 final.
(2) OJ C 223, 31.8.1992, p. 13.

3.4.2. Article 6.2 will be helpful to employees posted to certain Member States (and their employers) in that they will be absolved from any legal requirement to pay contributions to a supplementary scheme in the host state if they are continuing contributions in their home state.

3.4.3. It should be noted that the term 'posted worker' in Article 3(g) is defined by reference to Title II of Regulation 1408/71 as follows: — 'A person employed in the territory of a Member State by an undertaking to which he is normally attached who is posted by that undertaking to the territory of another Member State to perform work there for that undertaking ...' Hence the term excludes persons seconded by their employer to another Member State to perform work there for a different undertaking. The Committee believes that there should be no distinction between these two categories.

3.5. Article 7 follows logically from Article 6. It is particularly significant as a first attempt to cut through the jungle of the differing tax treatment of supplementary pension contributions and benefits in the various Member States. However anomalies will still obtain; for example, in certain circumstances, an employee posted from the UK to Germany would not receive a tax deduction for his contributions which he would have at home, but when he returned to the UK the benefits for his German service would be taxable which they would not have been had he been in a German plan. In the reverse direction a posting from Germany to the UK could result in tax deductible employee contributions and tax free benefits on receipt. The Commission should encourage Member States to be flexible in establishing a satisfactory approach between each other to resolve such anomalies.

3.5.1. It is noted that the provisions of Article 7 are applicable only to members of supplementary pensions schemes as defined in Article 3(b) and not to individuals who have made their own pension provision through personal pension schemes. There is a case for such arrangements being regarded as supplementary pension schemes, particularly in those Member States where employers contribute to them on a voluntary or contractual basis.

3.6. The Committee attaches particular importance to the requirement in Article 8 regarding the provision of information to members of supplementary pension schemes moving to another Member State. It believes that the employer, as well as the manager of the scheme, should be obliged to provide the individual with full information as to the available options and the consequences of choice.

3.7. As already noted the draft directive creates inequality of treatment between posted and seconded workers (Article 6) and in the field of taxation between members of occupational schemes and individuals with personal schemes (Article 7). These distinctions should be eradicated by further measures as soon as possible.

4. **Specific comments**

4.1. *Second recital*

It should be noted that occupational pension schemes (which are the subject of this draft directive) are quite separate and distinct from the supplementary social security schemes which obtain in certain Member States; as such they do not form part of national social security regimes in those countries. Occupational pension schemes are contractual in nature and form part of an employee's contract of employment. It would be desirable for an additional recital to refer to the role of occupational pension schemes in this context.

4.2. *Article 3(a)*

It is noted that the insertion of the term 'replace' is necessary to cover the position in certain Member States where contracting-out provisions apply.

4.3. *Article 3(b)*

'Or' should be substituted for 'and' in the first line as 'occupational pension schemes' and 'collective arrangements serving the same aim' are alternatives.

4.4. *Article 3(h)*

The definition of 'Member State of origin' is defective in relation to any second or subsequent posting. In such circumstances it should be that in which the employee worked immediately prior to the initial posting.

4.5. *Article 4*

It is noted that the term 'full' preservation includes, for example, the requirement to index benefits in

defined-benefit schemes where this obtains under the rules of the scheme — as stated in part 3.1 of the Commission's Impact Assessment Form.

5. Further recommendations

5.1. As noted in point 3.1 above the Committee regards the proposed directive as a limited first step towards the objective of complete freedom of movement in the field of supplementary pensions. Reference has already been made in point 1.4 to the fact that the Committee identified a number of areas for action in its 1992 Opinion on the Role of Occupational Pension Schemes and their Implications for Freedom of Movement.

5.2. In its Opinion of 11 December 1997 [1] on the Commission's Green Paper on Supplementary Pensions in the Single Market, the Committee made a number of recommendations concerning issues identified by the Commission but not dealt with in the current draft directive. These included:

— qualifying conditions for acquiring rights; in particular the long periods necessary in some Member States;

— difficulties with transferability of vested pension rights from one Member State to another;

— tax difficulties linked to acquiring pension rights in more than one Member State; the position of a worker temporarily employed in another Member State other than on a posted basis.

5.3. The opinion also contained a number of specific recommendations on the importance of taxation for supplementary pensions.

5.4. The Committee repeats the observations and recommendations contained in its December 1997 opinion. There are a number of further aspects of the operation of occupational pensions schemes which could usefully be addressed — for example the membership of trustee bodies, custodial arrangements and calculation of transfer values. It urges the Commission to devise and propose a series of further measures in these areas in order to achieve as an ultimate objective, where the nature of the schemes so permit, the complete portability of occupational and personal pensions which it regards as an essential ingredient in the free movement of persons throughout the EU. It draws attention to the suggestion in paragraph 5.5 of that opinion as to how this matter might be progressed and considers that this should be done within a defined time frame.

5.5. The Committee recalls that in its 1992 opinion it suggested the possibility of devising a model European Company Occupational Pension Scheme, (perhaps as an appendage to the European Company Statute once this has been finally adopted), and that the possibility of trans-national industry-based schemes might be looked at. It repeats these suggestions as a possible way forward without seeking to harmonize existing national pensions laws, regulations, practices and taxation arrangements [2].

5.6. Another possibility might be an arrangement whereby an occupational pension scheme established under the laws and regulations of one Member State could have a number of sections to which employees working in other Member States might belong on a tax-qualifying basis. Thus the operation of the scheme including its prudential and custodial controls, solvency requirements and investment regulations would be regulated by the laws and regulations and accord with the practices of the home Member State, while the tax arrangements for contributions and benefits would accord with those of the host Member States for employees domiciled therein.

5.7. This would mean that a free market could operate in supplementary pensions schemes similar to that for life assurance without prejudicing the autonomy of Member States as regards taxation, social security arrangements and laws governing the operation of pension funds.

6. Conclusions

6.1. The Committee welcomes the draft Directive as a limited first step towards applying the principle of the free movement of persons to the mechanics of supplementary pension rights. It feels that the draft Directive should be amended to extend the one-year period for posted workers (paragraph 3.4.1 on the opinion), to remove the anomalies noted in paragraph 3.7 and to reflect its Specific Comments in part 4.

6.2. It recognizes the very great difficulties which inhibit progress in this area due to the widely differing pension arrangements which obtain in the various Member States as well as the laws, regulations and tax

[1] OJ C 73, 9.3.1998, p. 109.

[2] The European Company Statute was the subject of a recent opinion from the Committee in December 1997 and a further opinion will be forthcoming in due course.

arrangements which govern them.

6.3. Nevertheless it urges the Commission to continue its work in this field, taking steps in particular to address the issues identified in its Opinion of December 1997 on the Commission's Green Paper as well as the further recommendations contained in part 5 of this opinion.

Brussels, 25 March 1998.

The President
of the Economic and Social Committee
Tom JENKINS

Opinion of the Economic and Social Committee on the 'Proposal for a Council Regulation (EC) amending Regulation (EEC) No 1408/71 as regards its extension to nationals of third countries' [1]

(98/C 157/08)

On 6 January 1998 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 Social, Family, Educational and Cultural Affairs, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 12 March 1998. The rapporteur was Mr Liverani.

At its 353rd plenary session (meeting of 25 March 1998), the Economic and Social Committee adopted the following opinion by 109 votes to one, with four abstentions.

1. Introduction

1.1. The Commission proposal, which is based on Articles 51 and 235 of the EC Treaty, extends Community coordination of social security schemes, as laid down by Regulation (EEC) No 1408/71, to employed persons and self-employed persons who are insured in a Member State and who are not Community nationals.

1.2. The proposal is designed to strengthen Regulation (EEC) No 1408/71, and forms part of the drive to step up social protection and improve the legal status of third country nationals legally resident in the Community.

2. General comments

2.1. The Committee welcomes the Commission proposal. It endorses its rationale, and the recitals confirming the objective of equal social treatment of third country nationals, as already underscored in the 1994 white paper on social policy and the 1995-1997 medium-term social action programme.

2.2. Here the Committee would reiterate the guidelines put forward in its opinions on the status of migrant workers from third countries [2]. It also notes that the importance of applying the principles of non-dis-

[1] OJ C 6, 10.1.1998, p. 15.

[2] Opinions of 24 April 1991 (OJ C 159, 17.6.1991) and 26 September 1991 (OJ C 339, 31.12.1991).