

companies concerned, the ESC recommends that these terms be deleted from the articles of the proposal and

that more detailed guidelines be provided at a later stage.

Brussels, 27 January 1999.

The President
of the Economic and Social Committee
Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on the 'Proposal for a Council Regulation (EC) 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'

(1999/C 101/11)

On 29 October 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 Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 7 January 1999. The rapporteur was Mr Lemmetty.

At its 360th plenary session (meeting of 27 January 1999) the Economic and Social Committee adopted the following opinion by 124 votes in favour and two votes against, with two abstentions.

1. Gist of the Commission proposal

1.1. The Commission has put forward a proposal for a Council Regulation (EC) 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 for Miscellaneous Amendments in 1998 to Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71. The purpose of the proposal is to update these Community Regulations to take account of changes to national legislation, certain bilateral agreements concluded between Member States and the possibility of amendments to the Annexes of the implementing Regulation being made by the Commission.

1.1.1. Under the proposal, orphan's pension benefits, which are currently calculated on the basis of the provisions of Chapter 8 of Regulation No 1408/71, would be transferred to Chapter 3 and thus become subject to the provisions on pensions. The rules provided for in Chapter 8 would then only apply to family allowances for orphans.

1.1.2. It is also proposed that Article 122 of the implementing Regulation No 574/72 be amended to enable the provisions contained in the Annexes listed in Article 122 to be amended by a Commission Regulation rather than by the standard Regulation procedure applied at present.

1.1.3. The other proposed amendments concern technical changes and changes to the provisions on Member States in the Annexes.

2. General comments

2.1. The Committee welcomes the proposal, subject to certain comments. The Committee would reiterate its view that proposals must satisfy the need to reform and update regulations that are designed to facilitate coordination of social security systems.

2.2. However, the Commission has very little to say about the reasons for the proposal and its effects, and it is not clear from the proposal what the actual effects of the amendments are.

2.3. The Committee endorses the stated aim to simplify and speed up the administrative procedure. The Committee has suggested this on a number of occasions and hopes that the simplification of the entire body of Community law will be continued. The Committee also awaits the Commission proposal for an overall reform of the regulation. Simplification must not, however, take place at the expense of beneficiaries.

3. Specific comments on the articles

3.1. Article 1

3.1.1. Amendments to Regulation (EEC) No 1408/71 (points 1-3)

3.1.1.1. At present, common rules in respect of orphan's pensions and family allowances for orphans are contained in the same Chapter (Chapter 8). However, the Commission takes the view that interpretation of this Chapter by the Court has given rise to problems, particularly from the administrative point of view, and it therefore proposes that orphan's pensions be transferred to Chapter 3. As a result of this amendment, orphan's pensions would become subject to the provisions applicable to other pensions, which means that orphan's pensions would be calculated as Pro-Rata pensions⁽¹⁾. The ruler governing health care benefits for pensioners would be applied to orphans.

3.1.1.2. The Committee feels that the proposal can be justified on administrative grounds, since orphan's pensions would be treated in the same way as other pensions. From the pensioner's point of view, the proposed amendment could, in some cases, lead to a situation where the pensioner receives a pension from several Member States at the same time rather than just one pension as under the existing rules.

3.1.1.3. The Committee would also draw attention to the fact that the proposal does not contain any special transitional provisions in respect of the above-mentioned amendment. The Committee would stress that changing the rules for calculating pensions must not lead to a loss of benefits. Pensioners should have the right to choose the most advantageous scheme.

3.1.2. Proposed amendments to Annexes (points 4 and 5)

The proposed amendments are based on changes made to legislation in Member States or to bilateral agreements between Member States.

⁽¹⁾ A Pro Rata pension is one calculated on the basis of a ratio obtained by comparing the amount of pensionable time completed in a Member State to the total amount of time completed in all Member States.

Annex IIa refers to special non-contributory benefits which are granted only to beneficiaries resident in the Member State. Given the considerable importance of Annex IIa for beneficiaries and Member States, the Committee wishes to make it known that it will follow the discussions on the amendment of Annex IIa very closely.

3.2. Article 2

3.2.1. Proposed amendments to Regulation (EEC) No 574/72 (point 1)

The Commission proposal would give the Commission the power to amend the Annexes of the implementing Regulation at the request of the Member State or competent authorities. It would be possible to amend all the Annexes with a Commission regulation after the opinion of the Administrative Commission has been obtained.

The Committee considers this proposal to be justified and supports it.

3.2.2. Proposed amendments to Annexes (points 2 and 3)

The proposed amendments are a result of bilateral agreements concluded between Member States or administrative reorganization in Member States, and the Committee has no comments to make on them.

3.3. Article 3

3.3.1. Although this is a routine proposal as regards the entry into force of the amended Regulation, the Committee has certain comments to make about it (see point 3.1.1.3 above).

4. Conclusions

The Economic and Social Committee endorses the proposed amendments, subject to the comments made above. The proposed changes to administrative procedure are justified, but changing the way orphan's pensions are calculated must not lead to a loss of benefits. In addition, the Committee would reiterate the need to justify the proposed amendments in a clearer and more detailed fashion so as to make it easier to understand their purpose and consequences.

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