

# EUROPEAN PARLIAMENT

1999



2004

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*Session document*

FINAL  
**A5-0199/2002**

28 May 2002

**\*\*\*I**

## **REPORT**

on the proposal for a European Parliament and Council Regulation amending, for the benefit of European parliamentary assistants, Council Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, self-employed persons and to members of their families moving within the Community, and Council Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71 (COM(2001) 344 – C5-0279/2001 – 2001/0137(COD))

Committee on Employment and Social Affairs

Rapporteur: Marie-Hélène Gillig

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position*  
*majority of Parliament's component Members, to reject or amend*  
*the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases*  
*covered by Articles 105, 107, 161 and 300 of the EC Treaty and*  
*Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position*  
*majority of Parliament's component Members, to reject or amend*  
*the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

## CONTENTS

	Page
PROCEDURAL PAGE .....	4
LEGISLATIVE PROPOSAL .....	5
DRAFT LEGISLATIVE RESOLUTION.....	9
EXPLANATORY STATEMENT .....	10
OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET .....	11

## PROCEDURAL PAGE

By letter of 25 June 2001 the Commission submitted to Parliament, pursuant to Article 251(2) and Article 308 of the EC Treaty, the proposal for a European Parliament and Council regulation on the proposal for a European Parliament and Council Regulation amending, for the benefit of European parliamentary assistants, Council Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, self-employed persons and to members of their families moving within the Community, and Council Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71 (COM(2001) 344 - 2001/0137 (COD)).

At the sitting of 5 July 2001 the President of Parliament announced that she had referred this proposal to the Committee on Employment and Social Affairs as the committee responsible and the Committee on Legal Affairs and the Internal Market for its opinion (C5-0279/2001).

The Committee on Employment and Social Affairs had appointed Michel Rocard rapporteur at its meeting of 21 June 2001; it subsequently appointed Marie-Hélène Gillig rapporteur on 24 January 2002.

It considered the Commission proposal and draft report at its meetings of 9 October, 11 November and 3 December 2001, and 7/8 January, 18/19 February, 18 March, 17/24 April and 27/28 May 2002.

At the last meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: Theodorus J.J. Bouwman (chairman); Marie-Hélène Gillig (vice-chairman and rapporteur); Winfried Menrad (vice-chairman) and Marie-Thérèse Hermange (vice-chairman); Sylviane H. Ainardi, Jan Andersson, Elspeth Attwooll, María Antonia Avilés Perea (for Enrico Ferri), Regina Bastos, André Brie (for Arlette Laguiller), Philip Bushill-Matthews, Alejandro Cercas, Luigi Cocilovo, Proinsias De Rossa, Jillian Evans, Carlo Fatuzzo, Ilda Figueiredo, Fiorella Ghilardotti (for Enrico Boselli), Anne-Karin Glase, Richard Howitt (for Elisa Maria Damião), Stephen Hughes, Dieter-Lebrecht Koch (for Raffaele Lombardo), Ioannis Koukiadis (for Harald Ettl), Rodi Kratsa-Tsagaropoulou, Jean Lambert, Elizabeth Lynne, Mario Mantovani, Juan Andrés Naranjo Escobar (for Thomas Mann), Ria G.H.C. Oomen-Ruijten (for Mario Clemente Mastella), Manuel Pérez Álvarez, Bartho Pronk, Herman Schmid, Miet Smet, Helle Thorning-Schmidt, Claude Turmes (for Hélène Flautre), Ieke van den Burg, Anne E.M. Van Lancker and Sabine Zissener (for James L.C. Provan).

The opinion of the Committee on Legal Affairs and the Internal Market is attached.

The report was tabled on 28 May 2002.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

## LEGISLATIVE PROPOSAL

**Proposal for a European Parliament and Council regulation on the proposal for a European Parliament and Council Regulation amending, for the benefit of European parliamentary assistants, Council Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, self-employed persons and to members of their families moving within the Community, and Council Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71 ((2001) 344 – C5-0279/2001 – 2001/0137(COD))**

The proposal is amended as follows:

Text proposed by the Commission <sup>1</sup>

Amendments by Parliament

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### Amendment 1 Title and whole text

European **parliamentary** assistants

*Throughout the text:*  
assistants **to Members of the European Parliament**

### *Justification*

*The persons in question are not assistants working for the European Parliament, but assistants working for Members of that Parliament. This must be made clear, not least because, in accordance with the provisions for the payment of the secretarial assistance allowance, Members' assistants have no direct contractual relationship with the European Parliament, but are employed exclusively by Members themselves. The wording should not give the misleading impression that Members' assistants in some way form part of the Administration of the European Parliament. The term 'assistants to Members of the European Parliament' indicates this distinction more clearly than the term proposed in the draft regulation.*

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<sup>1</sup> OJ C 270 E, 25.9.2001, p. 141.

Amendment 2  
Recital 3(a) (new)

***(3a) By reason of the fact that the remuneration and social security contributions of assistants are drawn on the Community budget, assistants represent a specific category of employed persons. Inclusion of that specific category of employed persons in Regulation (EEC) No 1408/71 requires a amendment taking into account the particular characteristics of that group of employed persons.***

*Justification*

*The source of remuneration and social security contributions of MEPs' assistants fully justifies their inclusion as a specific category in Regulation 1408/71 and their right to a special scheme of options that will ensure their entitlement to social security cover despite the specific conditions of their work.*

Amendment 3  
Recital 4

(4) In order to be able to identify more easily and beyond doubt the social security legislation of the Member State to which the European parliamentary assistants are subject, and in order to provide the latter with appropriate social cover, it seemed appropriate to introduce, for their benefit, a right of option regarding the social security legislation to be applicable to them. Given the exceptional nature of these rules, justified by the assistants' specific role in regard to Members of the European Parliament, this right of option should be limited to employed assistants alone.

(4) In order to be able to identify more easily and beyond doubt the social security legislation of the Member State to which the European parliamentary assistants are subject, and in order to provide the latter with appropriate social cover, it seemed appropriate to introduce, for their benefit, a right of option regarding the social security legislation to be applicable to them. Given the exceptional nature of these rules, justified by the assistants' specific role in regard to Members of the European Parliament, this right of option should be limited to employed assistants alone, ***both those employed by one Member and those employed by several Members, regardless of the type of employment contract.***

### *Justification*

*This makes it clear that the arrangement applies to all assistants having a contractual relationship with one or more Members, including those whose employment contract is administered collectively.*

#### Amendment 4 Article 1, paragraph 1

1) In Article 1, the following point (w) is added:

"w) *European parliamentary assistant* means an employed person employed by one or more Members of the European Parliament to assist them in the performance of their elective office and during their term of office."

1) In Article 1, the following point (w) is added:

"w) *European parliamentary assistant* means an employed person employed by one or more Members of the European Parliament to assist them in the performance of their elective office and during their term of office ***or that part of it to which the contract applies.***"

### *Justification*

*If the wording of the legislation is to be clear, it should mention the possibility of the contract not covering the whole term of office.*

#### Amendment 5 ARTICLE 2 Article 14, paragraph 4 (Regulation (EEC) No 574/72)

4. Where an auxiliary staff member or European Parliament assistant, employed in the territory of a Member State other than Germany, has opted for German legislation to be applied, the provisions of that legislation shall be applied as though the auxiliary staff member or European parliamentary assistant were employed in the place where the German Government has its seat. The competent authority shall designate the competent sickness insurance

4. Where an auxiliary staff member or European Parliament assistant, employed in the territory of a Member State other than Germany, has opted for German legislation to be applied, the provisions of that legislation shall be applied as though the auxiliary staff member or European parliamentary assistant were employed in the place where the German Government has its seat ***or as though the auxiliary staff member or European parliamentary assistant were employed in the place in***

institution."

***which he had last been permanently resident in Germany.*** The competent authority shall designate the competent sickness insurance institution."

### *Justification*

*The application of Article 14(4) as it stands would result in serious discrimination against assistants who were covered by a particular occupational social insurance scheme, such as lawyers or members of other liberal professions. Such people may normally be insured with the regional bodies where they are registered as, for example, lawyers. The benefits provided by these occupational insurance schemes are considerably better than those of the statutory social security schemes. The German Government has its seat in Berlin, and the Berlin Land has no social security system for members of the liberal professions, such as lawyers. Most other Länder do have such schemes, however. The proposed rules would also create problems because lawyers, for example, or other members of the professions working for Members as scientific assistants generally continue to be registered and licensed to practise at their last place of residence in Germany. A conflict would then arise between this provision of Article 14 and the rules applying in relation to registration and obligatory social insurance in their Land of origin. Paradoxically, they would then be registered to practise in, for example, North Rhine-Westphalia, while being treated as resident in Berlin for social insurance purposes. So, under the special rules applying to Germany, it should be possible for a person to opt to be covered by the social security legislation of his most recent place of residence. This problem does not arise in the case of ordinary workers who are not members of a regulated profession and are not, therefore, subject to any special rules in terms of compulsory social insurance.*



## DRAFT LEGISLATIVE RESOLUTION

**European Parliament legislative resolution on the proposal for a European Parliament and Council regulation on the proposal for a European Parliament and Council Regulation amending, for the benefit of European parliamentary assistants, Council Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, self-employed persons and to members of their families moving within the Community, and Council Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71 ((2001) 344 – C5-0279/2001 – 2001/0137(COD))**

**(Codecision procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2001) 344<sup>1</sup>),
  - having regard to Article 251(2) and Article 308 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0279/2001),
  - having regard to Rule 67 of its Rules of Procedure,
  - having regard to the report of the Committee on Employment and Social Affairs (and the opinion of the Committee on Legal Affairs and the Internal Market) (A5-0199/2002),
1. Approves the Commission proposal as amended;
  2. Asks to be consulted again should the Commission intend to amend the proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council and Commission.

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<sup>1</sup> OJ C 270 E, 25.9.2001, p. 141.

## EXPLANATORY STATEMENT

In accordance with the European Parliament's Rules of Procedure, the responsibilities of the Committee on Employment and Social Affairs include the 'protection of living and working conditions, including the working environment'. The assignment of that responsibility to the Committee on Employment is also reason enough for its members to turn their attention to problems encountered by their staff.

The problems of assistants have long been well known: contracts of sometimes doubtful legal certainty, net remuneration and deductions varying by Member State of origin, lack of harmonisation of working conditions all have made it impossible to draw up any kind of clear reference framework approximating to a collective agreement. The arrangements have moreover been unacceptably complex and lacked transparency.

The situation has changed to some extent since the adoption of the new hiring arrangements for assistants by the Bureau on 6 July 2000. The rules now require a contract of employment and full social security cover, together with insurance against accidents at the place of work. But some of the above problems have persisted, exacerbating assistants' work insecurity and undermining their social security cover. Assistants are, in effect, migrant workers without having their rights recognised as such.

For that reason, the summer 2000 experts' report commissioned by the European Commission had envisaged using existing European free movement legislation and incorporating into it the specific situation of parliamentary assistants. That option was also identified by the expert Professor Vandersanden as the one holding out the best hope of progress on this matter.

In your rapporteur's opinion, that proposal will not provide a comprehensive solution to assistants' problems as a whole - only a genuine statute could do that. But it marks a step - and a useful one at that - towards eliminating the worst and most outrageous disparities affecting social security cover.

The amendment to Regulation 1408/71 will in fact guarantee an immediate improvement in assistants' working conditions. It consists in granting assistants a range of options in making their choice of social security reference scheme. The rapporteur supports that suggestion.

He has therefore chosen to facilitate adoption of the change proposed by the Commission by confining himself to a single amendment. That amendment is intended to distinguish assistants from other groups of workers likely to benefit from the choices available under of Regulation 1408/71 on the basis that assistants' remuneration and social security contributions are drawn on the Community budget. That distinction fully justifies their inclusion as a separate category and makes it possible to reply to the objections of all those who fear that this amendment might signal the intention to include particular new categories in Regulation 1408/71.

16 October 2001

## **OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET**

for the Committee on Employment and Social Affairs

on the proposal for a European Parliament and Council regulation amending, for the benefit of European parliamentary assistants, Council Regulation (EEC) N° 1408/71 on the application of social security schemes to employed persons, self-employed persons and to members of their families moving within the Community, and Council Regulation (EEC) N° 574/72 laying down the procedure for implementing Regulation (EEC) N° 1408/71 (COM(2001) 344 – C5-0279/2001 – 2001/0137(COD))

Draftsman: Klaus-Heiner Lehne

### **PROCEDURE**

The Committee on Legal Affairs and the Internal Market appointed Klaus-Heiner Lehne draftsman at its meeting of 10 July 2001.

It considered the draft opinion at its meetings of 17 September and 16 October 2001.

At the last meeting it adopted the following amendments unanimously.

The following were present for the vote: Willi Rothley (acting chairman); Rainer Wieland (vice-chairman); Ward Beysen (vice-chairman); Paolo Bartolozzi, Maria Berger, Philip Charles Bradbourn (for The Lord Inglewood), Bert Doorn, Janelly Fourtou, Marie-Françoise Garaud, Gerhard Hager, Malcolm Harbour, Stephen Hughes (for Carlos Candal pursuant to Rule 153(2)), Ioannis Koukiadis (for Jean-Maurice Dehousse), Helmut Kuhne (for Enrico Boselli pursuant to Rule 153(2)), Neil MacCormick, Toine Manders, Luís Marinho, Hans-Peter Mayer, Arlene McCarthy, Manuel Medina Ortega, Bill Miller, Astrid Thors (for Diana Wallis), Feleknas Uca, Michiel van Hulten (for Evelyne Gebhardt), Joachim Wuermeling, Stefano Zappalà, Jürgen Zimmerling (for Kurt Lechner) and Alejandro Cercas.

## **SHORT JUSTIFICATION**

Pursuant to Article 42 of the EC Treaty (ex Article 51 of the EC Treaty), Regulation 1408/71<sup>1</sup> was adopted with the aim of providing arrangements to secure for migrant workers and their dependants aggregation of all periods taken into account under the laws of the several countries for acquiring benefits and payment of benefits to persons resident in the territories of Member States.

As a result of Regulation 1408/71, migrant workers and their families retain rights which they have acquired in one Member State, with benefits being paid elsewhere in the Community. The Regulation also entitles them to acquire the same benefits as nationals of the host State. Acceptance of an employment relationship in another Member State therefore has no (or only minimal) adverse effect on the social security status of the worker concerned.

Regulation 1408/71 enshrines the principle that a worker is to be subject to the legislation of a single Member State only and indicates by means of a number of conflict-of-law rules what legislation is to be applicable.

The scope of this Regulation has been extended to cover self-employed persons and members of their families, students and special schemes for civil servants.

The Commission's proposal seeks to further extend its scope by adding "European parliamentary assistants" to the list of persons entitled to the benefits of Regulation 1408/71 and Regulation 574/72<sup>2</sup>.

### **Definition of the category of workers**

The Commission's proposal states that MEPs' assistants exercise a specific activity for their employers, the Members of the European Parliament.

For the sake of clarity, your draftsman has tabled an amendment in order to make it clear that the assistants have an employment contract with an individual Member of the European Parliament (hereafter MEP), not with the European Parliament, as the expression "European parliamentary assistants" could cloud this legal link.

### **Right of option**

Your draftsman considers that the right of option should also encompass the situation whereby a national of a Member State, residing in another Member State, performs work for a MEP in Brussels. There is a risk that this category of migrant workers would be dissuaded from exercising their right to freedom of movement.

The amendment concerning the option for the legislation of the Federal Republic of Germany

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<sup>1</sup> Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, self-employed persons and to members of their families moving within the Community (OJ L 149, 5.7.1971, p. 2), as updated by Regulation (EC) No 118/97 (OJ L 28, 30.1.1997, p. 1) and last amended by Regulation (EC) No 1399/1999 (OJ L 164, 30.6.1999, p. 1).

<sup>2</sup> Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71 (OJ L 74, 27.3.1972, p. 1), as updated by Regulation (EC) No 118/97 (OJ L 28, 30.1.1997, p. 1) and last amended by Commission Regulation (EC) No 89/2001 (OJ L 14, 18.1.2001, p. 16).

seeks to eliminate a discrimination against workers under a particular security system, such as lawyers and other liberal professions, which could seriously hinder their freedom of movement.

## AMENDMENTS

The Committee on Legal Affairs and the Internal Market calls on the Committee on Employment and Social Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission<sup>1</sup>

Amendments by Parliament

### Amendment 1 Title and whole text

European **parliamentary** assistants

*Throughout the text:*  
assistants **to Members of the European Parliament**

### *Justification*

*The persons in question are not assistants working for the European Parliament, but assistants working for Members of that Parliament. This must be made clear, not least because, in accordance with the provisions for the payment of the secretarial assistance allowance, Members' assistants have no direct contractual relationship with the European Parliament, but are employed exclusively by Members themselves. The wording should not give the misleading impression that Members' assistants in some way form part of the Administration of the European Parliament. The term 'assistants to Members of the European Parliament' indicates this distinction more clearly than the term proposed in the draft regulation.*

### Amendment 2

#### ARTICLE 1, PARAGRAPH 2(b)

Article 16, paragraph 4, fourth indent (new) (Regulation (EEC) No 1408/71)

- ***application of the legislation of the Member State in which they were last resident.***

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<sup>1</sup> OJ C 270 E, 25.9.2001, p. 141.

### *Justification*

*Members' assistants are often just embarking on their career and so will not necessarily have been compulsorily insured previously in accordance with the requirements of employment legislation or social security law. In many parts of the Union, there are families who do not possess the nationality of the Member State in which they reside. This would mean, for example, that an Italian who had grown up in Germany and was embarking on his first job as a Member's assistant in Brussels would not be able to opt for the application of Germany social security law even though Germany had previously been, and possibly continued to be, his home and centre of interest. The rules should be made more flexible, therefore, to ensure that the children of migrant workers' families are not placed at a disadvantage in comparison with people who are also nationals of their country of residence.*

### Amendment 3

#### ARTICLE 2

Article 14, paragraph 4 (Regulation (EEC) No 574/72)

4. Where an auxiliary staff member or European Parliament assistant, employed in the territory of a Member State other than Germany, has opted for German legislation to be applied, the provisions of that legislation shall be applied as though the auxiliary staff member or European parliamentary assistant were employed in the place where the German Government has its seat. The competent authority shall designate the competent sickness insurance institution."

4. Where an auxiliary staff member or European Parliament assistant, employed in the territory of a Member State other than Germany, has opted for German legislation to be applied, the provisions of that legislation shall be applied as though the auxiliary staff member or European parliamentary assistant were employed in the place where the German Government has its seat ***or as though the auxiliary staff member or European parliamentary assistant were employed in the place in which he had last been permanently resident in Germany.*** The competent authority shall designate the competent sickness insurance institution."

### *Justification*

*The application of Article 14(4) as it stands would result in serious discrimination against assistants who were covered by a particular occupational social insurance scheme, such as lawyers or members of other liberal professions. Such people may normally be insured with the regional bodies where they are registered as, for example, lawyers. The benefits provided by these occupational insurance schemes are considerably better than those of the statutory social security schemes. The German Government has its seat in Berlin, and the Berlin Land has no social security system for members of the liberal professions, such as lawyers. Most other Länder do have such schemes, however. The proposed rules would also create problems*

*because lawyers, for example, or other members of the professions working for Members as scientific assistants generally continue to be registered and licensed to practise at their last place of residence in Germany. A conflict would then arise between this provision of Article 14 and the rules applying in relation to registration and obligatory social insurance in their Land of origin. Paradoxically, they would then be registered to practise in, for example, North Rhine-Westphalia, while being treated as resident in Berlin for social insurance purposes. So, under the special rules applying to Germany, it should be possible for a person to opt to be covered by the social security legislation of his most recent place of residence. This problem does not arise in the case of ordinary workers who are not members of a regulated profession and are not, therefore, subject to any special rules in terms of compulsory social insurance.*