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REPORT

on the proposal for a European Parliament and Council regulation amending Regulation (EEC) 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) 574/72 laying down the procedure for implementing Regulation (EEC) 1408/71 (COM(2003) 468 – C5-0368/2003 – 2003/0184(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.

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PROCEDURAL PAGE

By letter of 31 July 2003 the Commission submitted to Parliament, pursuant to Articles 251(2), 42 and 308 of the EC Treaty, the proposal for a European Parliament and Council regulation on amending Regulation (EEC) 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) 574/72 laying down the procedure for implementing Regulation (EEC) 1408/71 (COM(2003) 468 – 2003/0184(COD)).

At the sitting of 1 September 2003 the President of Parliament announced that he had referred the 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 (C5-0368/2003).

The Committee on Employment and Social Affairs appointed Marie-Hélène Gillig rapporteur at its meeting of 24 September 2003.

The committee considered the Commission proposal and draft report at its meetings of 21-22 January and 16-17 February 2004.

At the latter/last meeting it adopted the draft legislative resolution by 17 votes to 7, with 0 abstentions.

The following were present for the vote: Winfried Menrad (acting chairwoman), Marie-Thérèse Hermange (vice-chairwoman), Marie-Hélène Gillig (vice-chairwoman and rapporteur), Jan Andersson, Elspeth Attwooll, Regina Bastos, Johanna L.A. Boogerd-Quaak (for Marco Formentini), Alejandro Cercas, Proinsias De Rossa, Harald Ettl, Jillian Evans, Carlo Fatuzzo, Roger Helmer, Stephen Hughes, Karin Jöns, Jean Lambert, Elizabeth Lynne, Thomas Mann, Mario Mantovani, Ria G.H.C. Oomen-Ruijten (for Philip Bushill-Matthews), Manuel Pérez Álvarez, Lennart Sacrédeus, Herman Schmid, Helle Thorning-Schmidt, Anne E.M. Van Lancker and Barbara Weiler.

The Committee on Legal Affairs and the Internal Market decided on 1 September 2003 not to deliver an opinion.

The report was tabled on 18 February 2004.

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a European Parliament and Council regulation on amending Regulation (EEC) 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) 574/72 laying down the procedure for implementing Regulation (EEC) 1408/71
(COM(2003) 468 – C5-0368/2003 – 2003/0184(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2003) 468)¹,
 - having regard to Articles 251(2) and Articles 42 and 308 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0368/2003),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Employment and Social Affairs (A5-0058/2004),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1
ANNEX I, POINT 2

Annex IIa, Heading D ‘SPAIN’, point c a (new) (Regulation (EEC) No 1408/71)

(ca) Mobility allowance to cover transport costs.

¹ OJ C ... / Not yet published in OJ.

Amendment 2
ANNEX I, POINT 2
Annex IIa, Heading G 'IRELAND', point d a (new) (Regulation (EEC) No 1408/71)

(da) Mobility allowance.

Amendment 3
ANNEX I, POINT 2
Annex IIa, Heading O 'UNITED KINGDOM', point b a (new) (Regulation (EEC) No 1408/71)

(ba) Income support

EXPLANATORY STATEMENT

Introduction

This report concerns the updating of Regulation 1408/71 and of Regulation 574/72, which lays down implementing procedures for the former regulation.

Regulation 1408/71 is amended annually to take account of the development of national social security schemes, incorporate changes in national laws and take account of the case law of the Court of Justice of the European Communities. It is worth noting that one of the objectives of previous annual amendments has been to seek a general overhaul of the regulations coordinating social security schemes.

General remarks

The current Commission proposal seeks essentially to update aspects of Regulation 1408/71 relating to special non-contributory cash benefits following a number of decisions by the Court of Justice.

In recent judgments (JAUCH of 8 March 2001 and LECLERE-DACONESCU of 31 May 2001), the Court has seen fit to specify the elements comprising special non-contributory cash benefits; benefits in this category are to enjoy derogations from the principle of exportability of benefits.

The Court of Justice considers that derogations from the principle of exportability of social security benefits should be interpreted strictly. This means that they can only apply to benefits with a special and non-contributory character mentioned in Annex IIa to the Regulation. It is precisely this notion of 'special' with regard to coverage of a conventional social security risk that has been the subject of the debate, the decisions by the Court and thus the amendments proposed by the Commission.

The Commission is also proposing to update Regulation 1408/71 as regards the relationships between the Regulation and the provisions of bilateral social security agreements and it is also proposing that the wording of the annexes on the Member States should be changed, along with a number of technical adjustments.

In this connection, your rapporteur is proposing three technical amendments seeking to include in Annex II a benefits provided for by national laws but not taken into account in the current Commission proposal.

Specific remarks

One important aspect of the background to this question needs to be highlighted, namely the fact that the proposal comes at a time when work on a thoroughgoing review of Regulation 1408/71 is entering its final phase.

However, the new Regulation 1408/71 and the implementing Regulation 574/72 will not enter into force immediately. These revised regulations will not apply until they have been adopted

in 2006. It is therefore important to continue with the annual review, on the one hand because of the importance of the Regulation's content (arrangements governing derogations from the principle of exportability of benefits laid down in Annex IIa of the Regulation) and, on the other hand, because of the differences in interpretation and the disputes which arise as a result.

The current proposal is therefore designed to ensure the legal security of the regulations in force, so as to provide better protection for the rights of workers and their families moving within the European Union.

Conclusion

Your rapporteur unhesitatingly welcomes the proposed amendments, which seek to facilitate the coordination of social security schemes.

These amendments are designed to improve transparency and clarity and will help strengthen the legal protection of citizens. They will also help to remove barriers still affecting the mobility of workers within the Union. The principle of mobility, whose value as a tool in the service of employment was reaffirmed at the Lisbon Summit, should be made easier to apply and, with that in view, the relevant conditions, particularly in the social field, should be more clearly defined.