

# EUROPEAN PARLIAMENT

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**A5-0234/2004**

6 April 2004

**\*\*\*II**

## **RECOMMENDATION FOR SECOND READING**

on the common position adopted by the Council with a view to the adoption of  
a European Parliament and Council regulation on the coordination of social  
security systems  
(15577/6/2003 – C5-0043/2004 – 1998/0360(COD))

Committee on Employment and Social Affairs

Rapporteur: Jean Lambert

### ***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

At its sitting of 3 September 2003 Parliament adopted its position at first reading on the proposal for a European Parliament and Council regulation on the coordination of social security systems (COM(1998) 779 – 1998/0360(COD)).

At the sitting of 29 January 2004 the President of Parliament announced that the common position had been received and referred to the Committee on Employment and Social Affairs (15577/6/2003 – C5-0043/2004).

The committee had appointed Jean Lambert rapporteur at its meeting of 26 July 1999.

It considered the common position and the draft recommendation for second reading at its meetings of 16–17 February, 18–19 March and 5–6 April 2004.

At the last meeting it adopted the draft legislative resolution by 28 votes to 0, with 8 abstentions.

The following were present for the vote: Marie-Hélène Gillig (acting chairwoman), Winfried Menrad (vice-chairman), Marie-Thérèse Hermange (vice-chairwoman), Jean Lambert (rapporteur), Jan Andersson, Elspeth Attwooll, Regina Bastos, Chantal Cauquil (for Arlette Laguiller pursuant to Rule 153(2)), Alejandro Cercas, Proinsias De Rossa, Harald Ettl, Ilda Figueiredo, Jim Fitzsimons (for Nello Musumeci pursuant to Rule 153(2)), Anne-Karin Glase, Robert Goebbels (for Karin Jöns), Ian Stewart Hudghton (for Jillian Evans pursuant to Rule 153(2)), Stephen Hughes, Liam Hyland (for Charles Pasqua pursuant to Rule 153(2)), Ioannis Koukiadis (for Anne E.M. Van Lancker), Rodi Kratsa-Tsagaropoulou, Elizabeth Lynne, Thomas Mann, Mario Mantovani, Claude Moraes, Ria G.H.C. Oomen-Ruijten (for Philip Bushill-Matthews), Manuel Pérez Álvarez, Bartho Pronk, Heide Rühle (for Hélène Flautre pursuant to Rule 153(2)), Lennart Sacrédeus, Herman Schmid, Elisabeth Schroedter (for Theodorus J.J. Bouwman), Miet Smet, Helle Thorning-Schmidt, Ieke van den Burg, Barbara Weiler and Sabine Zissener (for Luigi Cocilovo).

The recommendation for second reading was tabled on 6 April 2004.

## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the common position adopted by the Council with a view to the adoption of a European Parliament and Council regulation on the coordination of social security systems**

**(15577/6/2003 – C5-0043/2004 – 1998/0360(COD))**

**(Codecision procedure: second reading)**

*The European Parliament,*

- having regard to the Council common position (15577/6/2003 – C5-0043/2004)<sup>1</sup>,
- having regard to its position at first reading<sup>2</sup> on the Commission proposal to Parliament and the Council (COM(1998) 779)<sup>3</sup>,
- having regard to the amended proposal (COM(2003) 596)<sup>4</sup>,
- having regard to Article 251(2) of the EC Treaty,
- having regard to Rule 80 of its Rules of Procedure,
- having regard to the recommendation for second reading of the Committee on Employment and Social Affairs (A5-0234/2004),

1. Amends the common position as follows;
2. Instructs its President to forward its position to the Council and Commission.

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### Council common position

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### Amendments by Parliament

#### Amendment 1 Article 1, point 1

(l) "legislation" means, in respect of each Member State, laws, regulations and other statutory provisions and all other implementing measures relating to the social security branches covered by Article 3(1);

This term excludes contractual provisions other than those which serve to implement an insurance obligation arising from the laws and regulations referred to in the preceding subparagraph or which have been the subject of a decision by the public authorities which

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<sup>1</sup> Not yet published in OJ.

<sup>2</sup> Texts Adopted, 3.9.2003, P5\_TA(2003)0366.

<sup>3</sup> OJ C 38, 12.2.1999, p. 10.

<sup>4</sup> Not yet published in OJ.

makes them obligatory or extends their scope, provided that the Member State concerned makes a declaration to that effect, notified to ***the Commission of the European Communities***. Such declaration shall be published in the Official Journal of the European Union;

makes them obligatory or extends their scope, provided that the Member State concerned makes a declaration to that effect, notified to ***the President of the European Parliament and the President of the Council of the European Union***. Such declaration shall be published in the Official Journal of the European Union.

*(Reinstates Amendment 22 at first reading, adopted on 3 September 2003.)*

Amendment 2  
Article 28, paragraph 3

3. Paragraph 2 shall apply mutatis mutandis to the members of the family of a former frontier worker or his survivors if, during the periods referred to in paragraph 2, they were entitled to benefits in kind under Article 18(2), even if the frontier worker died before his pension commenced, provided he had been pursuing an activity as an employed or self-employed person as a frontier worker for at least ***three years*** in the five years preceding his death.

3. Paragraph 2 shall apply mutatis mutandis to the members of the family of a former frontier worker or his survivors if, during the periods referred to in paragraph 2, they were entitled to benefits in kind under Article 18(2), even if the frontier worker died before his pension commenced, provided he had been pursuing an activity as an employed or self-employed person as a frontier worker for at least ***two years*** in the five years preceding his death.

## EXPLANATORY STATEMENT

### I BACKGROUND INFORMATION

Regulation 1408/71 coordinates the social security systems of each Member State but does not seek to harmonise them. The Regulation aims to protect the social security rights of insured persons moving within the Community. The legal framework of the Regulation has been regularly tested in the European Court of Justice.

The Commission proposal on the fundamental reform of Regulation 1408/71 was presented on 21 December 1998. After the entry into force of the Amsterdam Treaty, the decision-making procedure became one of unanimity in Council and codecision with Parliament. Due to the complexity of the reform of this core legislation, the Committee agreed a special procedure consisting of allowing the Council to proceed in a preliminary examination of the proposal, with regular reports to the Committee from your Rapporteur. The Employment and Social Affairs Committee adopted its report in June 2003 and the European Parliament adopted its opinion on first reading on 3 September 2003 (A5-0226/2003).

Following the opinion of the European Parliament, the Commission presented an amended proposal and the Council adopted its Common Position, unanimously, on 26 January 2004.

### II THE COMMON POSITION

The European Parliament adopted 47 amendments on 1st reading.

The overwhelming majority of amendments (43 of the 47) was taken into account both by the Commission and the Council. Amendments 3, 4, 5, 6, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 34, 35, 37, 39 and 55 were accepted in full in the Commission's amended proposal and in the Council's Common Position.

**Amendment 7** on self-employment has been slightly reworded in Article 11.

**Amendment 11** was accepted in part both in the Commission's amended proposal and in the Council's Common Position. The first paragraph of **amendment 11** (updates) was accepted in full in the Common Position, but paragraph 2 was made more flexible in order to restrict itself to annual declarations. **Amendments 51, 52 and 44**, accepted in part by the Commission's amended proposal, are also reflected in substance in the Council's Common Position, in Article 72 c) and 75 2a) concerning the Administrative Commission and Advisory Committee: they significantly tighten the duty for better cooperation and a rapid response to emerging problems.

**Amendment 48** was accepted in the Commission's amended proposal, underlining the need for greater convergence between the coordination of social security schemes and certain provisions contained in the double taxation agreements. This amendment is not included in the Council's Common Position.

**Amendment 56** is integrated in the Commission's amended proposal but is not included in the Council's Common Position. The Council did not consider it necessary in view of the

amendments to the provisions relating to unemployment benefits for unemployed people who, during their last employment, resided in a Member State other than the competent State (cf. point 3.3.9).

**Amendments 46, 47, 50, 53 and 54** were accepted in full in the Commission's amended proposal, and their substance is taken over in the Council's Common Position.

### **III ITEMS OF PARTICULAR IMPORTANCE FOR THE EP**

#### **1. Frontier Workers**

##### **a) Definition on frontier workers**

**Amendment 16** defining "frontier worker" was accepted in full by the Council and the Commission.

##### **b) The principle of equal treatment for frontier workers**

**Amendment 47** was taken up in Recital 8.

##### **c) Access to family benefits**

**Amendment 50**, relating to entitlement to benefits in kind in the State of employment for members of the family of cross-border workers, is largely reflected in **Recital 23** and in **Article 18 (2)** of the Common Position. The Council decided that members of the family of cross-border workers may receive benefits in kind during a stay in the competent State, unless that State refuses this by virtue of an entry in Annex III to the Regulation. In this case, it is stated that family members may still receive such benefits in kind as may be necessary during a stay in the competent State. Although seven Member States are listed in Annex III, the Commission accepts this solution, which is a significant improvement over the current situation as regards entitlement for family members.

##### **d) Medical treatment for family members of frontier workers**

In view of the differences between the various national systems, it is appropriate that Member States make provision, where possible, for medical treatment for family members of frontier workers in the Member State where the latter pursue their activity (Council's Common Position, Recital 2)

##### **e) Special provision for retired frontier workers**

The Council also accepted **amendment 54** regarding access of a retired frontier worker to sickness benefits in kind in the Member State of last activity, subject to the agreement of both Member States involved (the State of activity and the competent State for sickness benefits). Such agreement is reflected in Annex V to the Common Position (see **Article 28(2)**).

##### **f) Your Rapporteur proposes an amendment to Article 28.3 to have the same qualifying period for a frontier worker prior to retirement with regard to benefits in kind under Article 18.2 for both the worker and their family.**

##### **g) Europe test for frontier workers**



The pre-examination of proposals for change in Member State systems was not accepted (Am. 45).

## **2. Taxation**

The Commission had accepted **amendment 48** in its amended proposal, underlining the need for greater convergence between the coordination of social security schemes and certain provisions contained in the double taxation agreements. However, the Council did not deem it advisable to take up amendment 48 as it considered that this Regulation was not the appropriate legal framework for dealing with taxation issues. Your Rapporteur has asked for both the Council and the Commission to indicate publicly how this question might be pursued.

## **3. Family Definition**

Amendment 49, calling for the mutual recognition of definition of the family, was rejected by the Council and the Commission who considered that Regulation 1408/71 is not the appropriate legal framework for dealing with extending the definition of the family. The over-arching Directive on the Reunion of family Members of EU Nationals now looks as if it will not contain such a provision, which would have provided the legal basis for the proposal concerning 1408/71.

## **4. Prior Authorisation**

Amendment 53 regarding travel to another Member State with the purpose of receiving benefits in kind during the stay was not entirely acceptable to the Council as the Council was not in a position to limit the scope of the competent institution's authorisation to receive appropriate treatment outside the State of residence to in-patient treatment. In the Council's opinion, the effects of such a restriction, in particular on the reimbursement arrangements between Member States, would also have had to be the subject of specific provisions (see Recital 21). However, Article 20 does now contain a positive statement effectively saying that prior authorisation shall be accorded if the medical circumstances require it. The ECJ ruling in the Inizan case of October 2004 (Case C-56/01) has a bearing on the Council's decision.

## **5. Unemployment Benefit**

The Committee had supported the Commission's proposal that unemployed persons should be able, with prior authorisation, to seek work in another country for a six-month period. The Council has chosen to maintain the current 3-month provision, with a possibility of 6 months for Member States who so choose. However, there is now the possibility to do this more than once, whereas it was a single opportunity in the past.

## IV THE NEXT STEPS

- a. **Annexes:** there are currently 3 empty annexes, which will be filled by a proposal from the Commission later in 2004, which could cover all 25 Member States. If the Regulation is updated, there will be clear criteria, especially concerning the special non-contributory benefits, which cover areas such as disability. (Parliament's amendment 55).
- b. **Implementing Regulation:** there will also be a proposal from the Commission in September this year.

**Parliament will be fully involved in these decisions. The total package concerning the updated and simplified Regulation and its constituent parts should then be ready for full implementation across 25 Member States by 2006.**

## V EVALUATION

In general, your Rapporteur feels that the Common Position represents an advance on the current Regulation. The new version is both simpler and more up-to-date. It offers more to the people of the EU and there has been no regression. The proposed new Regulation covers all those who have been covered by a social security scheme, so the coverage is wider. When complete, it should include more aspects of social security provision. The adoption of the assimilation of facts and events will be of benefit, especially for frontier workers. The number of derogations and exceptions has been reduced and the principle of good administration has been introduced. Significant progress has been made.

**Your Rapporteur therefore recommends acceptance of the Common Position, so that a firm and clear framework is provided for the next steps concerning the Annexes and the Implementing Regulation. She trusts Parliament will share the view that there is little, if anything, to be gained for the people of the EU by restarting negotiations from scratch with 25 Member States: instead, we should move forward on the basis of the proposed Common Position.** However, she would make the following observations:

Parliament can appreciate the desire of Member States to maintain a complete control of their social security systems, not least for budgetary security. However, Member States cannot continue to expound the virtues of greater mobility in the labour market if they then refuse to offer workers certain benefits by using the annexe provisions to withdraw from the general principle of equal treatment.

Equally, there is a need to find a way to build bridges between the systems to assist those wishing or needing to move within the EU. For example, workers moving abroad for family reasons are not in the same situation as those moving within their own Member State, not least for language reasons in many cases and merit special consideration. There is an obvious need to find ways in which the tax and social security systems can be brought in to better alignment, not least as these increasingly overlap in paying for social benefits.

Your Rapporteur values the support and interest shown by the Committee and the spirit of cooperation demonstrated by the Commission and the Council.