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*****II**

RECOMMENDATION FOR SECOND READING

on the Council common position for adopting a regulation of the European Parliament and of the Council amending Council Regulations (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 (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71
(12062/3/2004 – C6-0189/2004 – 2003/0184(COD))

Committee on Employment and Social Affairs

Rapporteur: Proinsias De Rossa

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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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the Council common position for adopting a regulation of the European Parliament and of the Council amending Council Regulations (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 (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71 (12062/3/2004 – C6-0189/2004 – 2003/0184(COD))

(Codecision procedure: second reading)

The European Parliament,

- having regard to the Council common position (12062/3/2004 – C6-0189/2004),
 - having regard to its position at first reading¹ on the Commission proposal to Parliament and the Council (COM(2003)0468)²,
 - having regard to the amended proposal (COM(2004)0314)³,
 - having regard to Article 251(2) of the EC Treaty,
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the recommendation for second reading of the Committee on Employment and Social Affairs (A6-0003/2005),
1. Approves the common position;
 2. Invites the Commission to take the appropriate legal action in order to obtain, within the shortest possible timetable, clarity about the issues mentioned in its statement on Annex IIa annexed to the Council's Common Position⁴ and to inform the European Parliament on the results within six months after the entry into force of the present Regulation;
 3. Notes that the act is adopted in accordance with the common position;
 4. Instructs its President to sign the act with the President of the Council pursuant to Article 254(1) of the EC Treaty;
 5. Instructs its Secretary-General to sign the act, once it has been verified that all the procedures have been duly completed, and, in agreement with the Secretary-General of the Council, to have it published in the Official Journal of the European Union;
 6. Instructs its President to forward its position to the Council and Commission.

¹ *Texts Adopted*, 11.3.2004, P5_TA(2004)0175.

² Not yet published in OJ.

³ Not yet published in OJ.

⁴ 13940/2004 ADD 1.

EXPLANATORY STATEMENT

General remarks

Regulation 1408/71 is modified 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.

The Rapporteur proposes support for the Council Common Position on the basis that all the amendments adopted by the European Parliament at 1st Reading regarding annual modifications of the Regulation for 2003 have been satisfactorily incorporated.

Moreover, the Common Position of the Council, adopted unanimously, maintains the essential aspects of the Commission's proposal. And the Commission agrees with the Common Position.

Since 1971 Regulation 1408/71 has defined the basis on which benefits are to be provided to citizens who move from one Member State to another. The revision and consolidation being dealt with here contains several new provisions aimed at improving social security rights. The Regulation continues to determine whether the citizen remains entitled to specific benefits laid down by their Member State of origin, and therefore exportable, or whether an equivalent benefit is available in the person's new Member State of residence. The Regulation fulfils an important role in realising one of the four fundamental freedoms of the EU's legislative structure: that of the free movement of European citizens. Indeed, the ability to live, work and move freely in the EU - with as little financial or administrative barriers as possible - is a tangible advantage that membership of the EU bestows on its citizens.

Revision of the current Regulation, originally created more than 30 years ago, is crucially dependant on the adoption of this Report, which constitutes a "tidying up" exercise aimed at clarifying the position of Member States with regard to specific non-contributory cash benefits.

Specific remarks on the Common Position

A particular point to mention is that the Council did not accept all of the Commission's proposal to revise the list of entries in Annex IIa. The Council does not agree with the inclusion of these particular benefits: Child care allowance (Finland); Disability Allowance and care allowance for disabled children (Sweden); Disability Living Allowance; Attendance Allowance; Carer's Allowance (United Kingdom).

The Commission in a statement, annexed to the Common Position, indicates that it continues to consider that this revision will be necessary in order to meet the criteria of the jurisprudence of the Court and the criteria agreed in the Council's Common Position.

All twenty five Member States have contributed to the compromises necessary in order to improve the exportability of benefits for citizens. These compromises include listing, in annexes, those national benefits which Member States felt should not be exportable. The list of such benefits in Annex IIa contains the 5 benefits referred to above which the Commission

believes should be deleted in order to meet criteria laid down by ECJ jurisprudence. And the Commission has reserved its right to take further legal action in this respect.

However both the Commission and Council are in agreement on the overall text and there is also agreement that the Common Position, as proposed, facilitates the earliest possible progress in clarifying the position in regard to the particular 5 benefits without interfering with the significant progress which continues to be made to achieve a high level of coordination between Member States on all other relevant benefits.

The Rapporteur is of the view that the clarification needed with regard to these five benefits are best dealt with by the Court. I am also of the view that the Parliament should not delay the adoption of this report pending such clarification, nor should we seek to reopen the compromises already reached by Council which in any case incorporate the amendments adopted by this Parliament at 1st Reading.

Conclusion

The process of revising the Regulation on coordination of social security systems is already concluded, however its new Implementing Regulation (ex-574/72) is not yet finalised. It is therefore important to continue with this 2003 annual review to ensure legal security for the Regulations and to provide better protection for the rights of those involved.

The Rapporteur agrees that adoption of this Recommendation for 2nd Reading, as it stands, best protects the position of the European Parliament and that of citizens reliant on accessibility of social security benefits on their relocation within the EU. It also ensures legal clarity until the full and complete entry into force of the new Regulation and its Implementing Regulation.

I have therefore proposed in a new Paragraph to be inserted in the legislative resolution of the Recommendation for 2nd Reading that Parliament supports the need for legal clarity and urges the use of whatever legal instruments are available to the Commission to achieve this clarity in the shortest possible time. This Amendment refers implicitly to the annulment procedure laid down in Article 230 of the Treaty EC. The use of infringement procedures can be quite tortuous and lengthy and I believe that the annulment procedure, which requires only a single step, should be used in this case.

In conclusion the Rapporteur believes that all due care is being taken by both the Commission and Council to deliver the most effective possible measures to ensure exportability of benefits to people with disability, and families. A considerable range of such benefits have already been mutually agreed by the Commission and Council and the remaining five benefits still to be determined could further enhance the social rights of people entitled to child care, disability and carers allowances in Finland, Sweden and the United Kingdom. Nevertheless the Rapporteur agrees with those Members of the Employment Committee who have argued that the Commission and the Council need to address how the free movement of families and people with disabilities can be further improved. This issue needs to be addressed in the upcoming Annexes in the reviewed 1408/71.

PROCEDURE

Title	Council common position for adopting a regulation of the European Parliament and of the Council amending Council Regulations (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 (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71
References	12062/3/2004 – C6-0189/2004 – 2003/0184(COD)
Legal basis	Articles 251(2) EC
Basis in Rules of Procedure	Rule 67
Date of Parliament's first reading	11.3.2004 P5_TA(2004)0175
Commission proposal	COM(2003)0468 – C5-0368/2003
Amended Commission proposal	COM(2004)0314
Date receipt of common position announced in plenary	18.11.2004
Committee responsible Date announced in plenary	EMPL 1.9.2003
Rapporteur(s) Date appointed	Proinsias De Rossa 16.11.2004
Previous rapporteur(s)	Marie-Hélène Gillig
Discussed in committee	2.12.2004 18.1.2005
Date adopted	18.1.2005
Result of final vote	for: 30 against: 1 abstentions: 0
Members present for the final vote	Jan Andersson, Roselyne Bachelot-Narquin, Jean-Luc Bennahmias, Philip Bushill-Matthews, Milan Cabrnock, Ole Christensen, Derek Roland Clark, Ottaviano Del Turco, Proinsias De Rossa, Harald Ettl, Richard Falbr, Ilda Figueiredo, Stephen Hughes, Ona Juknevičienė, Jan Jerzy Kułakowski, Sepp Kusstatscher, Jean Lambert, Raymond Langendries, Bernard Lehideux, Jan Tadeusz Masiel, Mary Lou McDonald, Thomas Mann, Jiří Maštálka, Ana Mato Adrover, Csaba Óry, Gabriele Zimmer
Substitutes present for the final vote	Richard James Ashworth, Elspeth Attwooll, Edit Bauer, Françoise Castex, Marian Harkin, Elisabeth Schroedter, Marc Tarabella, Yannick Vaugrenard
Date tabled – A6	24.1.2005 A6-0003/2005