Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council amending Council 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 Council Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71'

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(2006/C 24/09)

On 14 January 2005, the Council decided to consult the European Economic and Social Committee, under Article 251 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Employment, Social Affairs and Citizenship, which was responsible for the Committee's work on the subject, adopted its opinion on 5 September 2005 (Rapporteur: Mr Rodríguez García-Caro).

At its 420th plenary session held on 28 and 29 September 2005 (meeting of 28 September), the European Economic and Social Committee adopted the following opinion with 171 votes in favour and four abstentions.

1. **Introduction**

1.1 Since their adoption, Regulations Nos. 1408/71 and 574/72 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community have been successively amended to accommodate the changes that these schemes and the benefits they provide have undergone in the course of time.

1.2 These changes basically consist of bringing the Regulations into line with the legislative amendments that have been made in the Member States and adapting them to the successive rulings of the European Court of Justice. Consequently, the proposed Regulation now submitted for the Committee's consideration aims to reflect the changes that have taken place in national legislation, principally in the new Member States, and to complete the simplification of procedures on receiving medical treatment abroad, extending this modification to the procedures regarding benefits for eventualities arising from accidents at work and occupational diseases.

1.3 The last modification made to the two Regulations was produced by Regulation 631/2004 ([1]), which introduced the aforementioned changes to the procedures for receiving medical treatment in another Member State. The Committee delivered an opinion ([2]) on the regulation at the draft stage.

1.4 Nevertheless, the most substantial change to the coordination of social security schemes in the EU Member States was made by Regulation 883/2004 ([3]) of the European Parliament and of the Council which, after six years of discussion in the Union's institutions, has been adopted and published in the Official Journal of the European Union. This Regulation, replacing Regulation No 1408/71, has not yet entered into force, pending adoption of its Implementing Regulation, which will in turn replace the current Regulation No 574/72.

The EESC delivered an opinion ([4]) on the proposal for a Regulation on the coordination of social security schemes when it was presented by the Commission.

2. **Content of the proposal**

2.1 The proposal presents modifications to two Regulations, firstly Regulation No 1408/71 and secondly Regulation No 574/72 establishing the implementing procedures of the former. The two sets of amendments are not related to one another, because they arise from different legal aspects, as stated in point 1.2 of this Opinion.

2.1.1 As regards Regulation No 1408/71, modifications are made to several of its annexes. These address particular situations in the different Member States, which must be referred to specifically in these annexes if the citizens of those countries are to benefit accordingly.

2.1.2 As regards Regulation No 574/72, the modifications simplify the text and reduce the current administrative burden when healthcare is received for accidents at work or occupational diseases in another Member State, applying the same criteria for simplifying procedures for receiving general healthcare as set out in Regulation No 631/2004.

([1]) OJ L 100, 6.4.2004.

([2]) EESC Opinion on the *Proposal for a Council Regulation (EC) on Coordination of Social Security Systems* (Rapporteur: Mr Rodríguez García-Caro – OJ C 75, 15.3.2000).

([3]) OJ L 166, 30.4.2004.

([4]) EESC Opinion on the *Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, self-employed persons and their families moving within the Community, and Council Regulation (EEC) No 574/72 fixing the procedure for implementing Regulation (EEC) No 1408/71, in respect of the alignment of rights and the simplification of procedures* (Rapporteur: Mr Boldt – OJ C 32, 5.2.2004).

3. **General comments**

3.1 The Committee welcomes the content of the proposal because it considers that this pursues the approach of improving and simplifying the procedures aimed at better coordination of social security schemes in the European Union. Any change that benefits EU citizens and improves their relationship with the public authorities in the Member States will always be welcomed by this Committee.

3.2 We also welcome the proposed regulation because it specifically promotes one of the four freedoms on which the European Union was originally founded — the free movement of workers and now, and by extension of this right, the free movement of those persons affected by these rules. The Committee must therefore once again call for the various Union and Member State bodies to move ahead with eliminating all existing obstacles, in order to create both a genuine area of free movement for persons within the Union's borders, and a real social right. We welcome the content of the proposal, because it constitutes a new means of promoting a fundamental right, which applies to all citizens.

3.3 The co-decision procedure, because of its lengthy nature, may result in significant changes to the content of the proposals. In an earlier Committee opinion ([5]), on a proposal for partial amendments to the two regulations, we expressed our views on the need to participate and to give our opinion in real time, especially when dealing with this type of proposal, which relates to changes in socio-occupational legislation. This view was ratified in another later EESC opinion ([6]), which argued that we should have the opportunity to comment on any changes made to texts during the decision-making procedure. For these reasons, we would restate the need to take account of the EESC's role in this type of procedure.

3.4 The situation described in point 3.3 has become even clearer with the adoption and publication of Regulation 883/2004 ([7]) on the coordination of social security schemes. The opinion ([8]) delivered by the Committee stated the need to monitor the progress of the proposal, given its complexity and the certainty of changes to the text during the legislative process. Four years after the opinion was delivered, the Regulation has been adopted without the EESC having again stated its views on the text.

Given the importance of these types of rules and the crucial importance of the EESC's opinion being heard in good time, the Committee calls for the consultation procedure to be adapted to make the role played by organised civil society in the Union's legislative procedure more effective.

Equally, and in order to explain the view expressed by the Committee in the aforementioned opinion, we believe an own-initiative opinion should be drawn up on the new Regulation No 883/2004 on the coordination of social security schemes, which will eventually replace the current Regulation 1408/71.

3.5 Similarly, the Committee considers that the consultative role of the Advisory Committee on Social Security for Migrant Workers, set up by Title V of Regulation No 1408/71 should be performed in exact compliance with the provisions of that regulation. This committee, formed principally of trade union and employers' representatives, is the forum through which socio-economic agents convey their views directly to the institutions, in the form of opinions or proposals, on the changes that need to be made to social security at Community level.

3.6 Article 90 of Regulation No 883/2004 states that Regulation No 1408/71 shall be repealed, except under certain circumstances, and Article 91 states that this Regulation shall enter into force on the twentieth day after its publication in the Official Journal. The second paragraph of the latter article states, however, that it shall apply from the date of entry into force of the Implementing Regulation.

For this reason, and given the forthcoming launch, in 2006, of the European Year of Workers' Mobility, the Committee calls on the Union's institutions and the Member States to ensure that the procedure for drawing up and adopting the future implementing Regulation is as speedy and effective as possible so that the provisions of the new coordinating Regulation can enter into force to replace the complex provisions that make up the current Regulation No 1408/71 at the earliest opportunity.

4. **Specific comments**

4.1 Regulation 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.

4.1.1 Article 1 of the proposal amends annexes I, II, IIa, III, IV and VI of the Regulation.

([5]) EESC Opinion on the *Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, self-employed persons and their families moving within the Community, and Council Regulation (EEC) No 574/72 fixing the procedure for implementing Regulation (EEC) No 1408/71, (Rapporteur: Mr Rodríguez García-Caro* – OJ C 367, 20.12.2000).

([6]) EESC Opinion on the *Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, self-employed persons and their families moving within the Community, and Council Regulation (EEC) No 574/72 fixing the procedure for implementing Regulation (EEC) No 1408/71, in respect of the alignment of rights and the simplification of procedures* (Rapporteur: Mr Boldt – OJ C 32, 5.2.2004).

([7]) OJ L 166, 30.4.2004.

([8]) EESC Opinion on the *Proposal for a Council Regulation (EC) on coordination of social security systems* (Rapporteur: Mr Rodríguez García-Caro – OJ C 75, 15.3.2000).

4.1.2 In order to incorporate the changes that have taken place in Slovak legislation, an amendment is made to Annex I, section II, which refers to the personal scope of the regulation as regards the meaning of the term 'member of the family'.

4.1.3 Due to changes in French legislation, an amendment is made to Annex II, section I, on special schemes for self-employed persons which are excluded from the scope of the Regulation.

4.1.4 In order to reflect changes to legislation in Estonia, Latvia and Poland respectively, amendments are made to Annex II, section II on special childbirth or adoption allowances that are excluded from the scope of the Regulation. This annex is also amended as regards Luxembourg, as a consequence of a ECJ ruling stipulating that special allowances for childbirth or adoption cannot be excluded from the Regulation and are exportable family benefits.

4.1.5 Due to various updates and adaptations to the corresponding legislation in Germany, Latvia, Poland and Slovakia, amendments are made to Annex IIa of the Regulation, concerning special non-contributory benefits.

4.1.6 In order to eliminate unnecessary points and thus simplify its content, amendments are made to Annex III.A concerning provisions for social security agreements that continue to apply despite the Regulation's provision on deleting them.

Amendments are also made for the same purpose to Annex III.B on the provisions of social security agreements which do not apply to all persons to whom the Regulation applies. The numbering is adjusted, and bilateral agreements that fulfil the conditions for being listed in the annex are included.

4.1.7 Due to an incorporation into the legislation of the Czech Republic, amendments are made to Annex IV.A covering national legislation under which the amount of invalidity benefits is independent of the length of periods of insurance.

For the same reason and with regard to the Czech Republic and Estonia, amendments are made to Annex IV.C, on cases where the double pension calculation may be waived as it will never lead to a higher result.

As a result of changes to legislation in Slovakia, an amendment is made to Annex IV. D on the benefits and agreements regarding the overlapping of benefits of the same kind to which persons are entitled under legislation in two or more Member States.

4.1.8 As a result of changes to legislation in the Netherlands, amendments are made to Annex VI on particular methods for applying the legislation of certain Member States.

4.1.9 The changes made to the various annexes to Regulation No 1408/71 serve a number of purposes that the Committee wishes to highlight.

Firstly, they simplify the wording of the text, thereby making it easier to implement and to understand. Progress is thus made along the lines laid down by Regulation No 883/2004 on the coordination of social security schemes, the aim of which is to simplify and update this coordination whilst complying with national social security legislation. The Committee therefore supports these amendments.

Secondly, some national laws have introduced new allowances for certain circumstances, reflecting advances in the social regulations of these States. The Committee therefore wishes to express its satisfaction at any advances made in social rights in the different Member States, but regrets that citizens of the countries involved in the most recent enlargement should be subjected to specific administrative obstacles.

4.1.10 Lastly, the Committee is of the view that Annex II, Section II of the Regulation should be deleted. Member States should take account of the case-law of the Court of Justice stating that childbirth and adoption allowances are not special allowances but family benefits and thus exportable. We would like to see the Member States accepting this legal reality, before the Court of Justice extends it to the Union as a whole, by means of judgments.

4.2 Council Regulation No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71.

4.2.1 Article 2 of the proposal amends four articles of the Regulation, all referring to healthcare in the event of accidents at work or occupational diseases.

4.2.2 Article 60(4) and (5) on benefits in kind in the case of a stay in a Member State other than the competent State are deleted. Notification procedures that are not in practical use are deleted.

The Committee agrees with any measure that simplifies or eliminates pointless bureaucracy.

4.2.3 Article 62, on benefits in kind in the case of a stay in a Member State other than the competent State, is replaced. The introduction of the European Health Insurance Card eliminates unnecessary procedures which would in any event be resolved between the competent Member State institutions and not by the individual, and the wording remains the same as Article 21 of the Regulation as amended by Regulation No 631/2004.

The Committee supports any amendment that improves citizens' access to the benefits to which they are entitled.

4.2.4 Article 63(2) on benefits in kind for workers who transfer their residence or return to their country of residence, and for workers authorised to go to another Member State for medical treatment, is amended. The amendment is required because of the reference made in this article to Article 60(5) and (6), deleted by this proposed Regulation itself.

4.2.5 Article 66(1) on disputes concerning the occupational nature of the accident or disease is amended to delete the reference to Article 20 of the Regulation, which was itself deleted by Regulation No 631/2004.

4.2.6 The Committee supports all the amendments made, because they improve the Regulation by simplifying its content and cutting through red tape, insofar as these changes facilitate citizens' contacts with public administrations.

5. **Conclusions**

5.1 The Committee broadly welcomes the proposed Regulation, subject to the comments made in this opinion. We feel that simplifying and improving the text of Regulations Nos. 1408/71 and 574/72 to encourage the freedom of movement of persons within the Union's borders is to be welcomed, but believe it would be even more useful for Regulation No 883/2004 to enter into force, because in itself it brings comprehensive and far-reaching simplification to the way Social Security Schemes are coordinated.

5.2 Since the Committee has not been able to consider the final wording of the lengthy legislative process leading to Regulation No 883/2004 referred to above, we believe that an own-initiative opinion on the matter should be drawn up forthwith, before the legislative process for the new implementing regulation that the Commission is now completing gets underway.

5.3 We in the Committee wish to urge the Commission to conclude its proposal for an implementing regulation as swiftly as possible, and the Council and the European Parliament to take rapid action on the legislative process for adopting the regulation, in order to prevent any repetition of the delay experienced during the processing of Regulation No 883/2004, especially given that 2006 is to be designated Year of Mobility for Workers.

5.4 As regards the envisaged reforms to the different annexes to Regulation No 1408/71, the Committee calls for the reform referring to Section II of Annex II on special childbirth and adoption allowances to be deleted as soon as possible by agreement with the Member States, which still retain the right to derogate.

Brussels, 28 September 2005.

The President

of the European Economic and Social Committee

Anne-Marie SIGMUND