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DOCUMENT 148/79

Report

drawn up on behalf of the Committee on
Social Affairs, Employment and Education

on the proposals from the Commission of the
European Communities to the Council
(Doc. 137/79) for

- I. a regulation amending Regulations (EEC)
Nos. 1408/71 and 574/72 on the
application of social security schemes
to employed persons and their families
moving within the Community
- II. a regulation amending the Annexes to
Regulations (EEC) Nos. 1408/71 and
574/72 on the application of social
security schemes to employed persons
and their families moving within the
Community

Rapporteur: Mr F. PISONI

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By letter of 30 April 1979 the President of the Council of the European Communities requested the European Parliament, pursuant to Articles 2, 7 and 51 of the EEC Treaty, to deliver an opinion on the proposals from the Commission of the European Communities to the Council for

- I. a regulation amending Regulations (EEC) Nos. 1408/71 and 574/72 on the application of social security schemes to employed persons and their families moving within the Community
- II. a regulation amending the Annexes to Regulations (EEC) Nos. 1408/71 and 574/72 on the application of social security schemes to employed persons and their families moving within the Community

The President of the European Parliament referred these proposals to the Committee on Social Affairs, Employment and Education.

At its meeting of 30 April 1979 the committee appointed Mr Pisoni rapporteur.

The committee considered these proposals at the same meeting and adopted the motion for a resolution by 11 votes in favour with 3 abstentions.

Present: Mr Van der Gun, chairman; Mr Pisoni, rapporteur; Mr Albers, Mr Caro, Mr Dinesen, Lady Fisher of Rednal, Mr Glinne (deputizing for Mr Lezzi), Mr Martinelli (deputizing for Mrs Cassanmagnago Cerretti), Lord Murray of Gravesend, Mr Power, Mr Santer, Mrs Squarcialupi, Mr Schreiber and Mr Schyns (deputizing for Mr Wawrzik).

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A

The Committee on Social Affairs, Employment and Education hereby submits to the European Parliament the following motion for a resolution, together with explanatory statement:

MOTION FOR A RESOLUTION

embodying the opinion of the European Parliament on the proposals from the Commission of the European Communities to the Council for

- I. a regulation amending Regulations (EEC) Nos. 1408/71 and 574/72 on the application of social security schemes to employed persons and their families moving within the Community;
- II. a regulation amending the Annexes to Regulations (EEC) Nos. 1408/71 and 574/72 on the application of social security schemes to employed persons and their families moving within the Community

The European Parliament,

- having regard to the proposals from the Commission of the European Communities to the Council¹,
 - having been consulted by the Council (Doc. 137/79),
 - having regard to the report of the Committee on Social Affairs, Employment and Education (Doc. 148/79),
1. In approving the Commission's proposals for amending Regulations 1408/71² and 574/72³, wishes to stress particularly the great importance, in human, civic and social terms, of putting conscientious objectors who perform civilian service in substitution for military service on an equal footing with persons called up or recalled for service in the armed forces;
 2. Emphasizes that the provision for the possible amendment of Annexes 1, 4, 5, 6, 7 and 8 to Regulation 574/72 by means of regulations adopted by the Commission rather than by the Council is conducive to the simplification of procedures, which always remains a desirable objective;

¹ OJ No. C 115, 8.5.1979, p. 3

² OJ No. L 149, 5.7.1971, p. 2

³ OJ No. L 74, 27.3.1972, p. 1

3. Is of the opinion that, in any event, the other annexes to the regulations concerned could undoubtedly be amended by decisions adopted by a simple majority in the Council, not least in view of the fact that the problems and aspects with which these annexes deal are not of equal importance with those dealt with in the main body of these regulations;
4. Is in agreement with the amendments proposed to some of the annexes to the regulations in question which aim, essentially, to:
 - (a) adapt these annexes to the changes which have occurred in the social security schemes in some Member States;
 - (b) take account of bilateral agreements concluded between Member States waiving reimbursement for the provision of benefits in kind;
 - (c) simplify and speed up the payment of arrears and other single payments to the beneficiaries;
5. Is appreciative of the fact that, on the whole, these amendments result in better protection for workers who are nationals and hence, through the principle of parity of treatment, also for migrant workers;
6. Invites the Commission, nevertheless, to maintain a constant vigilance lest modifications to individual national social security schemes should, directly or indirectly, if only at the practical level, introduce discrimination between nationals and migrant workers, and to counteract any such possible developments by instituting, as urgently as possible, proceedings for infringement against States failing to observe the principle of non-discrimination;
7. Invites also the Commission to submit at the earliest possible date the further proposals necessary for the full implementation of the social security provisions embodied in the 'Action programme in favour of migrant workers and their families'¹, in order to achieve as soon as possible complete elimination of every type of discrimination and disparity in treatment still persisting which cannot be further countenanced or tolerated;

¹ Bulletin of the European Communities: Supplement 3/76

8. Draws particular attention in this context to the urgent need to adopt, as laid down in the said action programme, Community legislation to coordinate non-contributory schemes concerning, for example, guaranteed revenue for old persons, social pensions and allowances for the handicapped;
9. Considers it also essential that the Commission should continue to study and propose procedures to speed up the payment of social security benefits to migrant workers;
10. Strongly deploring the serious delays which have occurred, requests expressly that the Council of Social Affairs Ministers adopt at its very next meeting the Commission's proposals, which have already received some time ago the European Parliament's favourable opinion¹, relating to the standardization of the system of paying family benefits to workers, the members of whose families reside in a Member State other than the country of employment² and to social security for self-employed persons and their families³;
11. Expresses its profound conviction that the Community, in accordance with the provisions of Article 117 of the EEC Treaty, should make a resolute effort in the field of study and practical action in order to achieve the objective of the approximation of the social security systems of the Member States with the aim of eradicating both disparities in the treatment of Community workers and the distortions of competition which result from the differences existing between the Member States, notably as regards the levels of contributions and of benefits and the determination of the categories of the beneficiaries.

¹ OJ No. C 257, 10.11.1975, p. 10 and OJ No. C 131, 5.6.1978, p. 44

² OJ No. C 96, 29.4.1975, p. 4

³ OJ No. C 246, 17.10.1978, p. 2

EXPLANATORY STATEMENTI. Amendments to Regulations 1408/71 and 574/72

1. The first of the two proposals for regulations presented for the consideration of the Committee on Social Affairs, Employment and Education aims to introduce the following amendments to Community legislation on social security schemes for migrant workers, amendments which can most easily be explained separately according as to whether they concern Regulation No. 1408/71¹ or Regulation 574/72².

A. Regulation No. 1408/71

2. The new text of Article 13(2)(d) of this regulation essentially puts conscientious objectors serving a period of civilian service in place of military service on the same footing as those who are called up or recalled for service in the armed forces in that, if entitlement under the legislation of the State for which the military service or alternative civilian service is carried out is subject to the completion of insurance periods before entry into or release from such military or, as the case may be, civilian service, insurance periods completed under legislation of any other Member State shall be taken into account to the extent necessary, as if they were insurance periods completed under the legislation of the first State. (It should be remembered that Article 13 lays down the criteria for determining the legislation applicable to migrant workers).

3. This provision is very much to be welcomed since it results directly from a change in public attitudes with regard to the respect and protection of the freedom of thought and opinion in all its forms, which include that of conscientious objection.

4. The second amendment seeks to insert a clause in Article 95 to the effect that the annexes to Regulation 1408/71 shall form an integral part of it. This is a clause which can be legally defined as 'stylistic' in as much as it is one generally found in all pieces of legislation to which annexes are attached. The purpose is in fact to put right an omission made when the regulation was adopted and to re-establish an identity of form with Article 121 of Regulation 574/72, which already includes this clause in relation to its own annexes.

¹OJ No. L 149, 5.7.1971, p.2.

²OJ No. L 74, 27.3.1972, p.1.

B. Regulation 574/72

5. It is thought preferable to examine immediately here the question of the procedural changes proposed to the annexes to this regulation.

6. The present text of Article 121(2) lays down that the annexes (to Reg. 574/72) may be amended, at the request of the Member State or Member States concerned, by a Council regulation adopted on a proposal from the Commission after having received the opinion of the Administrative Commission for the Social Security of Migrant Workers. The Commission is now proposing that this procedure should remain in force only for Annexes 2, 3, 9 and 10 concerning, respectively, (Ann. 2) the competent institutions, (Ann. 3) the institutions of the place of residence and institutions of place of stay, (Ann. 9) the calculation of the average cost of benefits in kind and (Ann. 10) the institutions and bodies designated by the competent authorities.

7. The Commission proposes that the other annexes, i.e. nos. 1, 4, 5, 6, 7 and 8 concerning, respectively, (Ann. 1) the competent authorities, i.e. ministries, (Ann. 4) the liaison bodies, (Ann. 5) the implementing provisions of bilateral conventions which remain in force, (Ann. 6) the procedure for the payment of allowances, (Ann. 7) banks, (Ann. 8) the granting of family benefits, should be amended by a regulation of the Commission at the request of the Member State or States concerned or their competent authorities.

8. These annexes are extremely technical in nature and amendments to them are directly linked with changes in individual national arrangements and they remain strictly and exclusively within the competence of the individual Member States.

9. The Commission's proposal that the amendments to these annexes should be notified by the authorities of the individual States concerned to the President of the Commission of the European Communities, whose task it will be to publish these amendments in the Official Journal in the form of an ad hoc regulation, therefore appears justified.

10. This will mean, inter alia, a speeding up and simplification of the procedures for adapting these annexes to the technical changes made in the individual national social security schemes.

11. For all the other annexes (i.e. nos. 2, 3, 9 and 10 of Reg. 574/72 and all the annexes of Reg. 1408/71) the procedure will remain unchanged in that amendments will still have to be made by a Council regulation and it is well known that the Council observes a unanimity rule in its adoption procedures.

12. The following remarks can be made on this point:

- (a) the annexes cover aspects and problems which do not have the same importance as those considered in the body of these regulations,
- (b) Article 51 of the Treaty lays down that the Council shall act unanimously to adopt regulations in the field of social security, but there is no such requirement for the annexes,
- (c) while on the one hand it is true that these form an integral part (under Articles 95 and 121 respectively) of the regulations, it is equally clear that the annexes, as stated in point (a) above, only govern aspects which are principally of a technical and collateral nature, and they can only be brought within the scope of Article 51 by clearly distorting its meaning. This is, moreover, confirmed by the fact that the Council does not seem opposed to the abovementioned proposal that some annexes should be amended simply by means of Commission regulations.

13. The committee therefore considers that the regulations amending the annexes which will remain within the competence of the Council could easily be adopted by a simple Council majority in accordance with Article 148(1) of the Treaty ('Save as otherwise provided in this Treaty, the Council shall act by a majority of its members').

14. A favourable view must then be taken regarding the amendments made to Articles 11, 20 and 62 (of Reg. 574/72), which provide inter alia for a considerable improvement in administrative procedures for some categories of workers, and particularly workers on secondment, by creating the opportunity for them, before leaving the Member State in which they are insured, to obtain from the competent institutions a certificate testifying directly to their right to benefits in kind, without the maximum 30-day limit as at present, during this period it being presumed that the conditions for acquisition of the right to benefits in kind have been satisfied.

15. Approval must also be given to the amendment regarding the new Article 12a (of Reg. 574/72) which contains improvements with regard to procedures and documents for workers, other than those employed in international transport, who normally pursue their activity in the territory of two or more Member States and who are subject to the legislation of the Member State in whose territory they reside, as well as for workers subject to the legislation of the Member State on whose territory the undertaking or employer employing him has its registered office or place of business. These improvements with regard to procedures and documents are in particular intended to clarify the material conditions applying to the worker and to facilitate the collection of contributions and, consequently, to guarantee better protection for workers when they claim benefits.

II - Amendments to the annexes of Regulations 1408/71 and 574/72

16. The proposed amendments concern the following annexes of Reg. 1408/71:

III. Legislations under which the amount of invalidity benefits is independent of the length of insurance periods and periods of residence,

V. Special procedures for applying the legislations of certain Member States,

and, in particular, the following annexes of Reg. 574/72:

5. Implementing provisions of bilateral conventions which remain in force,

6. Procedure for the payment of allowances.

(There is also a small change in wording in Annex 10 concerning the institutions and bodies designated by the competent authorities).

17. Basically the purpose of all the amendments is to:

(a) adapt these annexes to changes that have been made in some Member States' rules in the field of social security,

(b) to register further bilateral agreements concluded between Member States concerning the waiving of reimbursement for costs incurred for benefits in kind.

A. Changes which have been made to some Member States' national rules

18. The main changes in national social security systems involving associated amendments to the annexes are the following:

19. Annex III (legislations concerning the amount of invalidity benefit) of Reg. 1408/71 has to take account of the fact that, following the adoption in 1975 of a series of measures, invalidity pensions in the United Kingdom will consist as from 6 April 1979 of two components - a flat-rate basic component and an earnings-related additional component, but the basic qualifying conditions for invalidity pension and the nature of the benefit as a whole remain unchanged.

20. Amendments are required to Annex V (special procedures for applying certain national legislations) of Reg. 1408/71 in view of changes made in certain States, the most important of which are as follows:

I. In the Federal Republic of Germany the lump sum designed to ensure that all the examinations required for adequate and effective medical treatment during pregnancy and after confinement are undergone will henceforth be granted in conjunction with the benefit in kind of 'medical treatment',

II. In the United Kingdom, following the adoption of a series of social security measures entering into force in 1975, the changes include the following:

- (i) the term 'employed workers' has been replaced with 'employed earners', except in the case of Gibraltar (the meaning remaining substantially unchanged);
- (ii) it is no longer necessary, except in the case of Gibraltar, to utilize the concept of credited contributions in respect of periods of incapacity, to take account of employment in other Member States;
- (iii) the special residence condition imposed by Northern Ireland legislation in relation to unemployment benefit has been repealed;
- (iv) family allowances have been replaced by single benefit called 'child benefit' which has become payable since April 1977 in respect of the first child also. Furthermore, the conditions under which the benefit is granted in the United Kingdom (the 'presence test') have been eased;
- (v) improvements have been made to retirement and widows' pensions in that, as from 6 April 1979, persons who have contributed as employed earners, and the widows of men who have so contributed, will be able to qualify for an earnings-related pension in addition to the flat-rate pension available to all.

B. Registration of bilateral agreements concluded between Member States

21. The amendments to Annex 5 of Reg. 574/72 for the most part concern the need to register in this annex bilateral agreements concluded between Member States concerning the total or partial waiving of reimbursement of costs incurred for benefits in kind provided in cases of sickness, maternity, accidents at work and occupational diseases and other benefits such as employment benefit.

22. Such bilateral agreements exist between Denmark and Luxembourg, France and the Federal Republic of Germany, the United Kingdom and the Federal Republic of Germany, and Ireland and the Netherlands.

23. These amendments to the annexes quoted merely note changes in national social security systems or in bilateral agreements between Member States since Community legislation has not initiated a special social security system for migrants. Their sole purpose is to coordinate the application of Member States' social security systems to these workers to safeguard the rights they enjoyed under the national systems to which they were

subject and also to ensure there is no discrimination between the treatment given to workers who are nationals and to migrants.

24. Thus, provided that they respect the principle of non-discrimination, the States remain sovereign as to any changes they may wish to make to their own social security systems, since no Community harmonization has yet been begun.

25. These considerations do not mean, however, that we should withhold approval of the changes listed above since, as has been seen, in general they lead to better national systems and improved protection for workers who are nationals and, consequently, according to the principle of equal treatment and non-discrimination, for migrant workers also.

26. Approval must also finally be given to the amendment proposed to Annex 6 of Reg. 574/72 concerning the procedure for the payment of allowances. This amendment is intended to simplify and speed up the payment of arrears and other single payments. If a beneficiary residing in a Member State is entitled to arrears and other single payments from another Member State, it is no longer necessary for these payments to be made through the liaison bodies mentioned in Annex 4 of Reg. 574/72 provided that, for the settlement of claims for refunds made by the Member State of residence, no deductions have to be made from amounts of pensions payable by the institution of another Member State. In this way delays and unnecessary administrative complications will be avoided which Parliament has always wanted to be reduced to the minimum.

27. In view of what has been stated above concerning the total sovereignty of the States over changes to their social security systems, our committee considers it extremely important to request the Commission to exercise the closest vigilance in order to prevent these changes from directly or indirectly introducing discrimination based on nationality between national workers and migrants. This vigilance must be exercised both in the preliminary examination of new legislation before it is assimilated into Community law and during its application in practice and here the Commission will have to institute as urgently as possible proceedings for infringement against States failing to observe the principle of non-discrimination.

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28. The present proposals for regulations are inter alia important in as much as they provide a new opportunity to consider the question of social security, even if only in the case of Community migrants, examining what has already been done in this field, what still remains to be done amongst the measures envisaged or requested and, finally, what can be hoped for at some future date.

29. One might recall here that the action programme in favour of migrant workers and their families¹ laid down the following objectives with regard to the social security of Community migrants:

- (a) the adoption of a uniform system for the payment of family allowances,
- (b) the adoption of Community legislation to coordinate non-contributory schemes (e.g. guaranteed revenue for old persons, social pensions, allowances for the handicapped and unemployment benefit),
- (c) the adoption of Community legislation for self-employed migrants,
- (d) the progressive elimination of all other disparities existing in Community legislation (for example in the field of the conditions of award, of calculation and export of certain benefits, of certain special methods of application of national legislation, as well as the maintenance in force of certain provisions in bilateral agreements).

30. After some delay, the Commission first presented concrete proposals on the standardization of the system of paying family benefits to workers the members of whose families reside in a Member State other than the country of employment² and this on the basis of Article 98 of Reg. 1408/71 which laid down that a uniform solution should be found before 1 January 1973.

31. The European Parliament has since indicated its support in 1975³ for the standardization criterion put forward by the Commission, which is that members of families resident in a Member State other than the worker's country of employment should benefit from the allowances of the latter State (i.e. the country of employment).

¹ COM(74) 2250 final - Doc. 465/74 - Supplement to the Bulletin of the European Communities No. 3/76. The European Parliament gave its opinion on this action programme in the report submitted by Mr ALBERS: see Doc. 160/75/rev. and OJ No. C 239, 20.10.1975, p. 33

² OJ No. C 96, 29.4.1975, p. 4 (Doc. 63/75)

³ OJ No. C 257, 10.11.1975, p. 10 (Doc. 286/75)

32. Unfortunately, and this is highly regrettable, the Council has not adopted these proposals, and hence at present there are still two systems of payment in force: one applied by eight countries based on the criterion explained above (allowances of the country of employment) which is the only one which respects the principle of non-discrimination between workers who are nationals and migrants, the other (applied by a single country, France) on the basis of which family allowances paid to family members in a Member State other than the country of employment are equal to the allowances available in the country of residence.

33. The Commission also presented at the beginning of 1978 proposals concerning the adaptation of Reg. 1408/71 and its annexes on the application of social security schemes to employed persons with a view to applying it to self-employed persons and their families¹.

34. Having noted the opinion of the European Parliament adopted in June 1978², the Commission submitted new proposals last October amending its preceding ones³ to extend the application of Reg. 1408/71 and its annexes not only to self-employed persons and their families but also to those not pursuing a professional or trade activity. However, the Council has not yet adopted these proposals either.

35. The Council must therefore be urged to adopt these two pieces of legislation to standardize the system of paying family benefits and social security for self-employed workers at its next meeting scheduled for 15 May.

36. The Commission has, nonetheless, to bear some of the responsibility. It has not submitted the proposals, mentioned in the action programme in favour of migrant workers, on the subject of coordinating non-contributory schemes and on the progressive elimination of any other type of discrimination at present existing between workers who are nationals and migrant workers. The Commission must therefore be firmly requested to remedy this failure at the earliest opportunity.

37. Finally, while appreciating the enormous difficulties which must be overcome, our committee, pursuant to Article 117 of the Treaty and particularly the second paragraph thereof, feels it must state its approval of the progressive approximation of Member States' social security schemes and expressly request the Commission to carry out studies and practical action in this field.

¹ OJ No. C 14, 18.1.1978, p. 9 (Doc. 494/77)

² OJ No. C 131, 5.6.1978, p. 44 (Doc. 87/78)

³ OJ No. C 246, 17.10.1978, p. 2 (COM(78) 466 final/2)

38. Only by pursuing this objective will it be possible to eliminate entirely both disparities of treatment between Community workers and distortions of competition which follow from the differences between the social security systems in the various countries of the EEC, particularly in relation to the size of contributions and allowances and the definition of the categories of beneficiaries.

39. A similar position was adopted by our committee in 1975 in the report by Mr LAUDRIN on some amendments to Regulations 1408/71 and 574/72¹.

¹ Doc. 356/75, paragraph 3 of the motion for a resolution