



European Economic and Social Committee

SOC/276
Social security/workers and
their families

Brussels, 25 October 2007

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

COM(2007) 159 final - 2007/0054 (COD)

On 7 May 2007, the Council decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, 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
COM(2007) 159 final - 2007/0054 (COD).

On 24 April 2007, the Bureau of the European Economic and Social Committee instructed the Section for Employment, Social Affairs and Citizenship to prepare the Committee's work on the subject.

In view of the urgency of the matter, at its 439th plenary session, held on 24 and 25 October 2007 (meeting of 25 October), the European Economic and Social Committee appointed Mr Rodríguez García-Caro¹ rapporteur-general and adopted this opinion by 64 votes in favour, with one abstention.

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1. **Conclusions**

- 1.1 The European Economic and Social Committee endorses the amendments put forward in the Annexes to Regulation No 1408/71 and is convinced that these will help to improve the Regulation's content and benefit individuals in the EU who fall within its scope. This support applies most specifically to those changes that help to bring certain benefits into the field of coordination, meaning that they will no longer be exceptions or non-exportable rights.
- 1.2 As the representative of the social partners and organised civil society, the European Economic and Social Committee also wishes to highlight the slowness of the legislative process for the proposal for a Regulation implementing Regulation No 883/2004. The Committee would not be delivering this opinion if the Regulation referred to above had entered into force. The EESC, therefore, urges the European Parliament and the Council to speed up the decision-making process as much as possible and strive to ensure that the new coordination of social security systems enters into force as swiftly as can be achieved.

2. **Introduction**

- 2.1 Since its adoption in June 1971, Regulation No 1408/71 has been successively amended, which has adapted and updated its content. These amendments are due, amongst other things, to the legislative changes that have taken place in the Member States, the bilateral agreements

¹ Subject to the approval of the plenary assembly.

adopted between Member States, consecutive rounds of EU enlargement and the adaptation of legislation to successive Court of Justice rulings on social security.

- 2.2 Since the EESC adopted its first opinion on this Regulation in January 1967², the Committee, which is made up of socio-economic stakeholders representing civil society, has, on an almost annual basis, delivered an opinion on all of the changes that have been made to the Regulation's articles or Annexes. The Committee has thus played an active role in developing a tool that is vitally important to guaranteeing the right to the free movement of workers in particular and of people in general, throughout all of the EU's Member States. This process ensured that the rights to certain benefits in the social security scheme remained in place when people moved across the EU's internal borders.
- 2.3 In 2004, the Regulation underwent the most major change in its history. With the aim of simplifying the text and improving its content and following a lengthy institutional debate, the European Parliament and the Council approved a new Regulation coordinating social security schemes³ which, under the number 883/2004, is due to replace the text currently in force. Nevertheless and because its implementing Regulation has not yet been adopted, the new text on coordination has not entered into force, which means that Regulation No 1408/71 remains fully valid.
- 2.4 The Committee has delivered its corresponding Opinions on both Regulation No 883/2004 on the coordination of social security schemes⁴, and the proposal for a Regulation adopting the implementing regulations⁵. This last proposal is still slowly wending its way through the necessary procedures in the competent institutions.
- 2.5 Because it is a living and dynamic text, Regulation No 1408/71 should incorporate the different amendments that the Member States make to their national legislation, to ensure that they are reflected in the Regulation and therefore do not damage the rights of people moving within the European Union. Ultimately, these amendments are intended to update and improve the coordination of social security systems, making it easier to implement Community legislation.
- 2.6 In legal terms, the proposal involves the derogation from and modification of some of the provisions contained in the Annexes to the Regulation and is also applicable to the European Economic Area.

² [OJ C 64, 5.4.1967.](#)

³ [OJ L 166, 30.4.2004.](#)

⁴ EESC Opinion of 27 January 2000 on coordination of social security systems; rapporteur: Mr Rodríguez García-Caro (OJ C 75 15.3.2000).

⁵ EESC opinion of 26 October 2006 on the coordination of social security systems – implementing regulations; rapporteur: Mr Greif (OJ C 324, 30.12.2006).

3. **Content of the proposal**

- 3.1 The proposal for a Regulation affects only some of the Annexes to Regulation 1408/71, and thus does not concern the main body of the text, which remains unchanged.
- 3.2 The amendments that have been made reflect the proposals put forward by the following Member States: Austria, Denmark, France, the Netherlands, Hungary, Ireland and Poland. With the exception of France, all of the amendments are the result of changes to national legislation.
- 3.3 The changes affect the following Annexes and States:
 - 3.3.1 Annex I Part I, which defines the terms "employed persons" or "self-employed persons" where these cannot be determined from the national legislation. This annex is amended as the result of legislative changes in Ireland.
 - 3.3.2 Annex I Part II, which defines the term "family members" where national legislation does not enable a distinction to be drawn between family members and other persons. This also affects Ireland for the reason given above.
 - 3.3.3 Annex II Part I, which defines the special schemes for self-employed persons excluded from the scope of the Regulation. The paragraph on France is reworded for reasons concerning complementary insurance.
 - 3.3.4 Annex II Part II, which defines special childbirth or adoption allowances excluded from the scope of the Regulation. Where Poland is concerned, the wording is amended to make the supplement to the childbirth allowance subject to coordination.
 - 3.3.5 Annex IIa, which lists non-contributory and, therefore, non-exportable benefits. This again affects Ireland because of changes to national legislation.
 - 3.3.6 Annex III Part A, which lists the provisions of agreements which continue to apply, despite the existence of Regulation (EEC) No 1408/71. This applies to agreements between Hungary and Germany and Austria, as the result of changes to Hungarian pension law.
 - 3.3.7 Annex IV, Part A, which lists the legislations referred to in the Regulation, under which the amount of invalidity benefits is independent of the length of periods of insurance. This also affects Ireland and the Netherlands as the result of changes to their legislation.
 - 3.3.8 Annex IV, Part C, which lists the cases where the double calculation of benefit may be waived, as this will never lead to a higher result. The heading 'Hungary' is withdrawn, because that country is no longer affected by this factor, as the result of changes to national

legislation. The text is also reworded in a way that affects Austria as the result of changes in its legislation on pensions.

- 3.3.9 Annex VI, which sets out special procedures for applying the legislation of certain Member States. As the result of changes to national legislation, this affects the texts inserted by Denmark, the Netherlands and Austria.
- 3.3.10 Annex VIII, which lists the schemes under which orphans are granted family benefits or supplementary or special benefits. This affects Ireland, as the result of the changes to its legislation referred to above.

4. **Comments**

- 4.1 At its plenary session held on 13 and 14 December 2006, the European Economic and Social Committee adopted an Opinion on other amendments made to Regulation No 1408/71⁶. In that opinion, the Committee expressed its hope that this would be the last set of amendments it would have to issue an opinion on and that the new implementing regulation for Regulation No 883/2004 would be adopted without further delay. Six months on, new amendments have been made to the Annexes to Regulation No 1408/71, because the implementing regulation has still not been adopted.
- 4.2 Nevertheless, the EESC wishes to express its support for the amendments made to the Regulation's annexes, and is convinced that these will help to improve the text and ultimately be of direct benefit to those EU citizens falling within its scope. The Committee therefore wishes to state its agreement most specifically with those changes that bring certain benefits into the sphere of coordination, taking them out of the annexes listing exceptions to the general implementation of benefits.
- 4.3 The European Institutions are currently discussing a number of proposals for regulations, all concerning the coordination of social security systems. Firstly, the Council is now studying chapter by chapter the proposal for a Regulation for implementing Regulation No 883/2004, on which the EESC has already delivered its opinion, and will continue to study it during the Portuguese presidency, whilst in the European Parliament, the proposal is now at first reading. Secondly, the proposal for a Regulation to set down the content of Annex XI of Regulation 883/2004 is being discussed in a process similar to the one referred to above, with the EESC having issued its corresponding opinion⁷. Account should therefore be taken of the fact that, when the Regulation on coordination was adopted, a number of its annexes became redundant due to the adoption of successive regulations. The final proposal under discussion

⁶ EESC Opinion of 13 December 2006 on Amendments to Regulation 1408/71; rapporteur: Mr Rodríguez García-Caro (OJ C 325, 30.12.2006).

⁷ EESC opinion of 14 March 2007 on The coordination of social security systems – Annex XI, rapporteur: Mr Greif (OJ C 161, 13.7.2007).

is the proposal for a Regulation amending Regulation No 1408/71 - the subject of this opinion.

- 4.4 Objectively speaking and in relation to the previous point, the current situation is one of legislative stagnation, in which amendments to an all but out-of-date regulation are still being adopted, annexes are still required for the new coordinating regulation, which should have already entered into force and the adoption process for the new implementing regulation is an unhappy reminder of the slow progress that beset decision-making on the Regulation on coordination. For all of the above reasons, the EESC once again urges the European Parliament and the Council to make the procedures for the definitive adoption of both regulations more flexible. By way of a reminder, it should be pointed out that, as long ago as 1992, the Edinburgh European Council acknowledged the need to carry out a general review of legislation with a view to simplifying the rules on coordination. Fifteen years have passed since that statement was made and the same – non-simplified – laws are still being used.
- 4.5 The complexity of the laws on the coordination of social security systems means that the public by and large struggles to understand them and is unaware of its rights in this area. It would therefore be useful, taking the opportunity provided by this opinion, to emphasise the need for national authorities to develop efficient means of sending the people of their Member States clear and concise messages informing them of their social security-related rights when they travel within the EU for whatever reason. This lack of information is even more striking in the context of short trips, whether for leisure or work purposes, in which any acute health problem can cause people serious difficulties, because they do not know their rights and the procedures they have to follow in order to receive immediate treatment.
- 4.6 Following on from this approach and supporting the assertion made in point 4.5. of the Opinion on Annex XI of Regulation 883/2004 referred to above, the EESC should draw up an own-initiative opinion to determine what problems exist in the EU in the provision of health care to individuals moving within Europe and what proposals should be made to ensure that the coordination mechanisms work properly.

Brussels, 25 October 2007.

The President
of the
European Economic and Social Committee

The Secretary-General
of the
European Economic and Social Committee

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