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REPORT

on the proposal for a Council regulation on extending the provisions of Regulation (EEC) No 1408/71 to nationals of third countries who are not already covered by these provisions solely on the ground of their nationality (COM(2002) 59 – C5-0084/2002 – 2002/0039(CNS))

Committee on Employment and Social Affairs

Rapporteur: Ria G.H.C. Oomen-Ruijten

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

By letter of 21 February 2002 the Council consulted Parliament, pursuant to Article 63(4) of the EC Treaty on the proposal for a Council regulation on extending the provisions of Regulation (EEC) No 1408/71 to nationals of third countries who are not already covered by these provisions solely on the ground of their nationality (COM(2002) 59 – 2002/0039(CNS)).

At the sitting of 27 February 2002 the President of Parliament announced that he had referred this proposal to the Committee on Employment and Social Affairs as the committee responsible and the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the Committee on Legal Affairs and the Internal Market for their opinions (C5-0084/2002).

The Committee on Employment and Social Affairs appointed Ria G.H.C. Oomen-Ruijten rapporteur at its meeting of 19 March 2002.

The committee considered the Commission proposal and the draft report at its meetings of 10–11 September, 1 October and 5 November 2002.

At the last meeting it adopted the draft legislative resolution by 18 votes to 1, with 0 abstentions.

The following were present for the vote: Theodorus J.J. Bouwman, chairman; Hans Udo Bullmann (for Karin Jöns), Philip Bushill-Matthews, Chantal Cauquil (for Sylviane H. Ainaridi), Alejandro Cercas, Proinsias De Rossa, Harald Ettl, Carlo Fatuzzo, Stephen Hughes, Ioannis Koukiadis (for Jan Andersson), Arlette Laguiller, Bartho Pronk, Lennart Sacrédeus, Miet Smet, Helle Thorning-Schmidt, Ieke van den Burg, Anne E.M. Van Lancker, Barbara Weiler and Sabine Zissener (for Anne-Karin Glase).

The opinion of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs is attached; the Committee on Legal Affairs and the Internal Market decided on 27 March 2002 not to deliver an opinion.

The report was tabled on 5 November 2002.

DRAFT LEGISLATIVE RESOLUTION

**European Parliament legislative resolution on the proposal for a Council regulation on extending the provisions of Regulation (EEC) No 1408/71 to nationals of third countries who are not already covered by these provisions solely on the ground of their nationality (COM(2002) 59 – C5-0084/2002 – 2002/0039(CNS))
(Consultation procedure)**

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2002) 59¹),
 - having been consulted by the Council pursuant to Article 63(4) of the EC Treaty (C5-0084/2002),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Employment and Social Affairs and the opinion of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0369/2002),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 4. Notwithstanding its acceptance of the chosen legal basis for this Regulation, reserves the right to reconsider it in the event of the Regulation being amended;
 5. Asks to be consulted again if the Council intends to amend the Commission proposal substantially;
 6. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1
Recital 5 a (new)

(5 a) This regulation confirms the intention of Article 34(2) of the Charter of Fundamental Rights of the European

¹ OJ C 126E, 28.5.2002, p. 388.

Union, which states that ‘Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices’, for which purpose an extension of Regulation 1408/71/EEC is needed.

Justification

Article 34(2) of the Charter of Fundamental Rights of the European Union stresses the importance which the Union accords to the right of everyone residing and moving legally in the Union to benefit from a social security system.

Amendment 2
Recital 6 a (new)

(6 a) The coordination of social security for persons from third countries residing legally in the Union is of great importance.

Justification

Self-explanatory.

Amendment 3
Recital 6 b (new)

(6 b) With a view to the forthcoming enlargement of the European Union, there is a need to extend Regulation 1408/71/EEC to cover persons from third countries residing legally in the Union.

Justification

Self-explanatory.

Amendment 4
Recital 10

(10) *The application of Regulation (EEC) No 1408/71 to these persons must not give them any entitlement to enter, to stay or to reside in a Member State or to have access to its labour market.*

(10) *In the light of the proposed Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities, as well as of the current practice and legislation of the Member States, the right of nationals from third countries to enter, stay, or reside in a Member State or to have access to its labour market falls outside the scope of this Regulation.*

Justification

This amendment aims to take a less negative view by referring to the forthcoming directive on conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities.

Amendment 5
Article 2, paragraph 6

6. If the request referred to in paragraph 4 or paragraph 5 is lodged within ***two years*** from ..., rights deriving from this Regulation shall be acquired from that date and the provisions of the legislation of any Member State on the forfeiture or lapse of rights may not be applied to the persons concerned.

6. If the request referred to in paragraph 4 or paragraph 5 is lodged within ***four years*** from ..., rights deriving from this Regulation shall be acquired from that date and the provisions of the legislation of any Member State on the forfeiture or lapse of rights may not be applied to the persons concerned.

Justification

The two-year deadline for lodging the request referred to in paragraphs 4 and 5 is too short. Those who will make use of the opportunity to lodge a request are nationals of third countries who may not know the language or be sufficiently familiar with the administrative options for lodging a request. A two-year deadline would therefore very probably pose problems for this group of people. A four-year deadline would reduce these problems considerably.

EXPLANATORY STATEMENT

Your rapporteur considers that the extension of Regulation 1408/71 to cover third country nationals, partly in view of the forthcoming enlargement of the European Union, is now particularly urgent and must be dealt with as quickly as possible.

The current situation, whereby citizens of third countries legally residing in the European Union all too often have to assert their rights by means of proceedings before the European Court of Justice in Luxembourg, is impossible for a legislature to accept. The European Parliament has already expressed its opinion on innumerable occasions in favour of the equal treatment of non-EU citizens.

The European Council in Tampere in October 1999 also stated in its conclusions that measures must be taken rapidly to ensure the fair treatment of third country nationals who reside legally on the territory of the European Union.

The original proposal for the extension of Regulation 1408/71/EEC, submitted on 12 November 1997, based on Article 51 (now Article 42) of the Treaty, enjoyed the express support of the European Parliament. However, that proposal was withdrawn by the Commission under pressure from the Council.

Your rapporteur is not convinced by the argument the Commission is now using, to the effect that it is compelled by the Khalil and others judgment (case C-95/99) to use a different legal basis.

Your rapporteur is aware of the legal implications which this change in the legal basis may have for the competences of the institutions.

Nevertheless, your rapporteur notes that the factual and technical substance and construction of the proposal should be welcomed.

Your rapporteur therefore considers that the Commission proposal should be accepted, since no separate coordination scheme is being developed for legally resident third country nationals, who are now being brought by means of bridging provisions within the scope of Regulation 1408/71/EEC.

Your rapporteur is deliberately opting for an adequate solution to the problems of this group of citizens and recommends that we should not indulge in legal hair-splitting which might impede the rapid resolution of the matter at issue. Particularly since agreement now seems to have been reached in the Council on this proposal, the proverb "strike while the iron is hot" seems to apply more than ever.

Your rapporteur is particularly pleased that both the United Kingdom and Ireland have made it known that they wish to participate in this regulation by means of their opt-ins. It is regrettable that Denmark, as a result of the protocol adopted concerning it, is excluded in principle from participating in proposals under Title IV of the Treaty.

Your rapporteur trusts that Denmark will nevertheless take part in this regulation and, in its capacity as president of the Council, will do all it can to ensure that the regulation can come into force rapidly.

8 October 2002

**OPINION OF THE COMMITTEE ON CITIZENS' FREEDOMS AND RIGHTS,
JUSTICE AND HOME AFFAIRS**

for the Committee on Employment and Social Affairs

on the proposal for a Council regulation extending the provisions of Regulation (EEC) No 1408/71 to nationals of third countries who are not already covered by these provisions solely on the ground of their nationality
(COM(2002) 59 – C5-0084/2002 – 2002/0039(CNS))

Draftsman: Margot Keßler

PROCEDURE

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Margot Keßler draftsman at its meeting of 14 May 2002.

It considered the draft opinion at its meetings of 12 September and 2 October 2002.

At the latter meeting it adopted the following conclusions unanimously.

The following were present for the vote: Jorge Salvador Hernández Mollar (chairman), Giacomo Santini (vice-chairman), Giuseppe Brienza, Charlotte Cederschiöld, Ozan Ceyhun, Carlos Coelho, Gérard M.J. Deprez, Enrico Ferri (for Bernd Posselt pursuant to Rule 153(2)), Adeline Hazan, Pierre Jonckheer, Timothy Kirkhope, Eva Klamt, Ole Krarup, Jean Lambert (for Alima Boumediene-Thiery), Baroness Sarah Ludford, Lucio Manisco (for Giuseppe Di Lello Finuoli), Bill Newton Dunn, Marcelino Oreja Arburúa, Elena Ornella Paciotti, Paolo Pastorelli (for Mary Elizabeth Banotti), Hubert Pirker, Martine Roure, Heide Rühle, Olle Schmidt (for Louisewies van der Laan), Ilka Schröder, Miet Smet (for Thierry Cornillet), Ole Sørensen (for Francesco Rutelli), Patsy Sørensen, The Earl of Stockton (for The Lord Bethell), Joke Swiebel, Anna Terrón i Cusí, Christian Ulrik von Boetticher and Christos Zacharakis (for Hartmut Nassauer).

SHORT JUSTIFICATION

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs welcomes the proposal to extend the provisions of Regulation (EEC) No 1408/71 under the terms of which a national of a third country who is legally resident in a Member State and who would like to work in another Member State will now be able to benefit from the transfer of rights acquired under a social insurance scheme.

This finally closes a gap in the law, and represents a further necessary and important step towards ensuring equal treatment for third-country nationals legally residing in a Member State. The need to ensure fair treatment for third-country nationals was stressed by the European Council at its meeting in Tampere on 15 and 16 October 1999. Action has also repeatedly been called for by Parliament, and in particular by this committee. Such measures to ensure fair treatment will assist the integration of third-country nationals legally resident in the Union, and are also to be endorsed in connection with the establishment of a common EU immigration policy. Third-country nationals make an important contribution to the European Union. The proposal to extend the provisions of Regulation (EEC) No 1408/71 acknowledges that contribution, by simplifying procedures applying to them and ensuring fair treatment in relation to social security arrangements.

Extending the provisions of Regulation (EEC) No 1408/71 relating to the coordination of social security schemes will ensure that certain rights are maintained for those moving from one Member State to another. The measure encourages mobility of workers within the EU, in the light of the need for rules on free movement of workers to be as straightforward as those on the free movement of goods.

In addition, extending the provisions of the Regulation resolves a problem which has frequently been raised in petitions addressed to Parliament. Many workers have complained that, despite their legal status in the EU, their situation has been made more difficult as a result of their not being covered by appropriate provisions on the coordination of social security schemes. Some 13 million people could potentially benefit from the proposal to extend the provisions of Regulation (EEC) No 1408/71.

Although there is wide support among members of the committee for the substance of the Commission proposal, there remain major reservations concerning the legal basis opted for by the Commission. In the light of the subject matter, it would seem more appropriate to adopt measures under Title III (free movement). This legal basis would also be more in accordance with the democratic principle, as it would require the use of the codecision procedure, resulting in greater involvement by Parliament. At present Parliament is simply consulted on measures under Title IV, although it is hoped that, pursuant to the Tampere process, the codecision procedure will be introduced in this area by 2004 at the latest.

It is also regrettable that the inclusion of third-country nationals within the scope of Regulation 1408/71 does not form part of a comprehensive review of the Regulation. However, given the importance of extending the provisions of the Regulation, swift implementation is called for. Concerns about the legal basis must not be allowed to block implementation of the measures. The substance of the proposal, and not the legal basis, must

take priority, and the Commission proposal taken as a whole should be endorsed in this instance.

AMENDMENTS

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs calls on the Committee on Employment and Social Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1 Recital 10

(10) The application of Regulation (EEC) No 1408/71 to these persons must not give them any entitlement to enter, to stay or to reside in a Member State or to have access to its labour market.

(10) In the light of the proposed Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities, as well as of the current practice and legislation of the Member States, the right of nationals from third countries to enter, stay, or reside in a Member State or to have access to its labour market falls outside the scope of this Regulation.

Justification

This amendment aims to take a less negative view by referring to the forthcoming directive on conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities.

¹ OJ C 126, 28.5.2002, p. 388.