# Social security: employed, self employed persons and families (amend. Regulations (EEC) No 1408 /71 and (EEC) No 574/72)

2003/0184(COD) - 15/11/2004 - Council position

The Council accepted in full the following three amendments:

- the insertion into the list of special non-contributory cash benefits, as contained in Annex IIa to Regulation 1408/71/EC, a benefit provided by Spanish legislation: "mobility allowance to cover transport costs". This benefit meets the revised criteria laid down in the Common Position (i.e., it must be "intended to provide solely specific protection for the disabled, closely linked to the said

person's social environment in the Member State concerned");

- the insertion into the same list a benefit provided for by Irish legislation: "mobility allowance". This also meets the revised criteria laid down in the Common Position;

- the insertion into the same list of a benefit provided by UK legislation: "income support".

The Council also accepted, subject to redrafting, the principle underlying the amendment of the Parliament which seeks to invite Member States to take measures to ensure that the prejudicial effects of certain amendments made to the list of benefits in Annex IIa (in particular when a benefit becomes non-exportable due to its inclusion in the Annex) are mitigated, with regard to persons who previously received these benefits, through transitional arrangements or bilateral solutions.

In addition:

- the Council decided not to incorporate in the common position the part of the original proposal specifying that the deduction of sickness and maternity contributions may be carried out on all pensions paid to pensioners if national legislation so provides. The Council awaits the entry into force of Regulation 883/2004/EC;

- unanimous agreement could not be reached on the Commission's proposal to remove certain specific entries from Annex IIa. Certain Member States did not accept that the criteria proposed should be used to define benefits which were appropriate for listing in Annex IIa. These Member States wanted to maintain their entries in the Annex as they regarded them as fulfilling the requirements of Article 4(2a) and they considered that current European Court of Justice jurisprudence did not justify their removal from the Annex.

In order to allow for the adoption of the Regulation in view of the significant progress made overall, the Council agreed to maintain these entries in Annex IIa pending future ECJ jurisprudence which could clarify the relevant criteria and subsequently entail revision of the Annex.

In this context, the Commission made a statement to the Council's minutes stressing that the list of entries might need to be revised on the basis of new jurisprudence from the ECJ, in particular in relation to the benefits concerned. The Commission stated that it reserved the right to seize the Court and to present a proposal, if necessary, to revise the list of entries in Annex IIa, based on the findings of the Court.

The Commission places the following statements in the Council minutes:

"The Commission envisages including some measures in the implementing Regulation to deal with the practical consequences of Article 30."

Commission Statement ad Annex IIa:

"The Commission has proposed to revise the list of entries in Annex IIa (in particular the following group of benefits: Child care allowance (Finland); Disability Allowance and care allowance for disabled children (Sweden); Disability Living Allowance; Attendance Allowance; Carer's Allowance (United Kingdom)) and continues to consider that this 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 on the Miscellaneous Amendments proposal of 2003. It entirely reserves therefore its right to seize the Court and to present a proposal, if necessary, to revise the list of entries in Annex IIa, based on the findings of the Court."