

EPSU THEME PAPER ON MOBILITY OF CIVIL SERVANTS FOR THE SOCIAL FORUM 8 NOVEMBER 2000 IN STRASBOURG

Access to equal employment in the public service

The free movement of workers is set into the European Treaty as one of the key principles to the functioning of the single market. Derogations are only accepted within a very limited scope. The relevant Article 39 does, however, totally exclude civil servants in paragraph 4: *The provisions of this Article shall not apply to employment in the public service.* The scope of this exception has been reduced by several European Court decisions, and by the 1988 Commission Communication, which made a distinction between the sectors falling under national sovereignty and other areas, the so-called priority sectors. The Communication is, however, unevenly interpreted and applied in the Member States, and exceptions are not restricted to functions safeguarding the interests of the state.

EPSU would welcome a joint approach between employers and EPSU towards the abolition of Article 39(4). Until this is possible we alternatively support the below proposals from the High Level Panel on the free movement of persons, and propose to take a joint initiative:

- *to reinforce the sectoral approach initiated in its [the Commission's] 1988 Communication, distinguishing two sectors only for the application of Article 39(4): activities typical of the State (in which respect of which nationality may be required), and any other activity of the State (access to which should be subject to the principle of equal treatment);*
- *to define in more details, and in close co-operation with the Member States, the criteria for determining whether a post falls within the scope of article 39(4), as well as those sectors which may still be reserved for nationals and, within those sectors, the levels of posts for which nationality may continue to be a condition of access.*

Coordination of social security and inter-country transfer of earned pension entitlements

Article 42 in the Treaty is the basis for adopting measures in the field of social security which are necessary to ensure the freedom of movement. The ensuing Regulation 1408/71 and Regulation 574/72 did until recently (amendment in Regulation 1606/98) exclude the co-ordination of special social security schemes for civil servants and persons treated as such. Reg. 1408/71 is now extended to cover these schemes. The extension takes account of the unique characteristics of certain special civil service pension schemes, and of the existence, or lack in some Member States (MS), of coordination between special schemes and the national general schemes, in order to set civil servants on an equal basis with general statutory pension rights prevailing in the MS. This means that periods worked under a special scheme for civil servants are recognised as periods of employment and insurance. In accordance with the earlier Dutch compromise proposal, rights from the national statutory scheme will be attributed when posting periods in other MS are not recognised as qualifying (vesting) periods in relation to special national pension schemes for civil servants. This provision aims to prevent civil servants from being caught between different special schemes and falling outside the scope of coordination of Regulation 1408/71, and risk losing coverage.

EPSU has welcomed the principle of recognition of posting periods as adopted in the extended Reg. 1408/71, although we are primarily in favour of coordination based on the special schemes. EPSU would, however, urge the social partners to play an active part in the continuous development of the Regulation.

EPSU proposes that the employers and EPSU take the joint initiative to list all the problems in connection with the coordination of social security benefits and pensions in national administration with a view to finding sustainable practices and fair and effective implementation. This might result in a future European framework agreement on coordination, or recommendations for a special Civil Servants' Regulation, as proposed by the Commission in 1991.

Elimination of other obstacles, and measures promoting mobility and increased administrative co-operation

In addition to these legal obstacles to the mobility of civil servants, a large number of other barriers exists, some of an excluding and discriminatory nature, some based on practical and cultural differences.

EPSU has raised demands:

- For mutual recognition of qualifications obtained in another Member State than where the employment is offered (i.e. recognition of diplomas, professional education, training, experience and seniority in the public sector);
- For career prospects and on the job training which do not discriminate between non-nationals and nationals;
- For dissemination of information on the structures of, and the conditions of access to the civil service in the Member States;
- That language requirements should be restricted to what is necessary for the exercise of the job, and certificates of language competency from other Member States should be accepted;
- That the same advantages be given to non-nationals having completed military service or the like as to nationals;
- For national civil service training schemes, and international posting in order to promote administrative co-operation, facilitate knowledge of systems in other national administrations, and enhance language understanding. This requires that the social partners obtain access to the "Administrative Co-operation Programme" run by DG MARKT and supervised by the Internal Market Advisory Committee;
- For enhanced status of the EURES network and a EURES database on public sector jobs;
- That the social partners in national administration are consulted on future revisions of Regulation 1408/71 or specific regulations pertaining to civil servants and persons having equivalent status;
- That civil servants should have the same rights to organisation, information and consultation, and collective bargaining as other employees.

EPSU proposes that the employers and EPSU take joint initiatives to eliminate barriers to freedom of movement of civil servants, and to secure measures to promote mobility and increased administrative co-operation.