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of : The Social Questions Working Party
on : 14 and 15 February 2006

No. Cion prop. : 5896/06 SOC 44 CODEC 93 - COM(2006) 16 final

Subject : **Proposal for a Regulation of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems**

I. INTRODUCTION

On 29 April 2004, the European Parliament and the Council adopted Regulation (EC) No 883/2004 on the coordination of social security systems (hereinafter referred to as the "Basic Regulation"). Article 89 of this Regulation requires that a Regulation laying down the procedures for its implementation is adopted. To this effect, on 31 January 2006, the Commission put forward a proposal for a Regulation implementing the Basic Regulation which was presented to the Social Questions Working Party at its meeting on 14-15 February 2006.

After a presentation by the Commission representative and an initial exchange of views, the Working Party completed a first examination of Articles 1-5, 83 and 84.

BE, CZ, DE, FR, EL, ES, FI, HU, IE, LT, LV, LU, NL, PL, SE, SI, SK and UK entered general scrutiny reservations. DK, FI, FR, MT, PL and UK entered parliamentary scrutiny reservations and DK, ES, FI, FR, NL, PL and SK linguistic reservations.

The Working Party welcomed the procedure to deal with this proposal in conjunction with the proposal for Annex XI (doc 5672/06) as set out in the Presidency note (DS 59/06) and prepared in coordination with the subsequent Presidencies. The Presidency invited delegations to make any comments concerning their respective entries in due time before the next meeting of the Working Party. It confirmed that, as in the case of the Basic Regulation, any agreement on an individual chapter would remain provisional until final agreement is reached.

II. PRESENTATION OF THE PROPOSAL AND GENERAL REMARKS BY DELEGATIONS

The Commission representative thanked all delegations for their input that had helped considerably with the drafting of the proposal and stressed that this proposal was very different from Regulation (EEC) No 574/72 as it drew on some thirty years of experience in the co-ordination of social security systems. She invited delegations to pay particular attention to their language versions of the proposal by comparison with the French¹, English and German versions in view of the need to make sure that all texts tally throughout the negotiating process.

The Commission representative outlined the four major aims of proposal which were set out to:

- a) achieve a closer and more efficient co-operation between social security institutions to fully exploit the modernisation of coordination as introduced by the Basic Regulation through:

¹ French being the original language of the proposal.

- the generalisation of the electronic exchange of data leading to a faster and more effective exchange of information between social security institutions and therefore speeding up the procedure by which benefits are granted to insured persons, in accordance with Article 78 of the Basic Regulation and with the Action Plan as recently adopted by the Administrative Commission;
 - the setting up of a public data base containing details of the various national bodies as referred to in Article 83 of the proposal;
 - the strengthening of procedures, in particular through the establishment of deadlines to comply with certain obligations or administrative requirements (in particular as provided for in Articles 3, 26, 48 and 66).
- b) simplify the Regulation :
- whenever possible, by streamlining its provisions to avoid repetition in the different chapters corresponding to the various risks covered;
 - by distinguishing the relationships between social security institutions from those between these institutions and beneficiaries;
 - by improving transparency in financial procedures between institutions and with regard to beneficiaries: the proposal seeks to reinforce and clarify the procedures of reimbursement of healthcare and unemployment benefits between institutions (articles 61 to 69) and the recovery of contributions and of benefits paid in excess (Article 70).
- c) introduce more flexibility as it would be up to the Member States to organise themselves while ensuring that coordination works smoothly. In particular, Member States could conclude administrative arrangements between each other, provided that they did not adversely affect the rights of beneficiaries (Article 9).

All delegations welcomed the proposal which they considered to be a good basis for discussion, as they felt it reflected the underlying legislation of the Basic Regulation. It was noted that the proposal would have to be discussed in detail with national institutions and stakeholders. The following comments were made from a general point of view:

- AT stressed that the structure of the proposed Regulation would have to be streamlined further in view of the need for the simplest possible provisions, on the one hand, and for ensuring legal certainty for all parties, on the other hand. In this respect, it felt that certain provisions (for instance those regarding periods of education) could be transferred to the Basic Regulation which would be more familiar to citizens. FR shared those views;
- PT felt that a balance should be struck between flexibility and Community vision and called for pragmatism with regard to the inclusion of substantive provisions in the implementing Regulation;
- FR, with the support of AT, BE, CZ, HU and SI, highlighted the need to draw from the European Court of Justice's case law, in particular with regard to the Sickness Chapter;
- BE, CZ and FR stressed the need for further work to ensure consistency with regard to the information to be provided to institutions and stakeholders; IT highlighted that citizens' rights should be fully taken into account;
- ES, EL and FR stressed that the text of the implementing Regulation should be fully consistent with the Basic Regulation and that any loopholes should be avoided. LV, SK and UK laid emphasis on the importance of terminology being correct and transparent;
- AT, FI, PT stressed the importance of the concept of residence in view of the fact that the Basic Regulation also applies to non-active persons. AT suggested that a definition of the term "place of residence" might be needed alongside other possible new definitions;

- CZ (DS 116/06) and HU suggested that, since the new Member States had not had the opportunity to propose entries for the Annexes to the Basic Regulation, this should be done now to ensure that the Regulation is ready with the annexes for all Member States before it comes into effect;
- ES reserved its opinion with regard to Annex 9 of Regulation (EEC) No 574/72 (regarding the calculation of the average annual cost of benefits in kind) being deleted;
- SK wanted to ensure the compatibility of the implementing Regulation with the reform of its national social security system and wondered whether the handling of archives was covered;
- NL asked if a transposition table would be available.

In reply to these delegations, the Commission representative indicated that:

- delegations should be cautious about any initiative to operate a legal reorganisation between the Basic Regulation and this proposal, as this would result in renegotiating measures which had already been adopted in the context of the co-decision procedure;
- the proposal was an open-handed one as it only required a single contact point on a Member State 's territory to which another Member State could pass the information. Member States would have to choose the institution which they considered to be the best suited. This would therefore allow for flexibility provided that the objectives of the Regulation were served;
- as the Sickness Chapter was closely linked to Article 23 of the proposal for a Services Directive, CION was not, at this stage, able to address this chapter in more detail;
- new definitions could be added, if necessary;

- the Commission would present a proposal regarding Annexes II and X as well as the new Member States' entries;
- no transposition table was envisaged as no such table existed for the Basic Regulation.

III. THE ELECTRONIC EXCHANGE OF DATA

Though supporting the principle of the setting up of a system for the electronic exchange of data, a number of delegations were, nevertheless, concerned that they might be unable to have a fully operating system by the time the two Regulations came into effect, as the human dimension might be a bottleneck in smaller institutions. Stressing that the overriding objective should be that the Regulation should be implemented to the full for all citizens, CZ, DE, DK, ES, FR, IT and LU felt that transitional arrangements, under which a network of paper documents would be allowed until the electronic exchange of data became fully operational, could be the easiest way. ES referred to the precedent of the Health Insurance Card in this respect. A number of delegations, the UK in particular, were against any compulsory system of electronic exchange of data without any transitional arrangements.

Whilst fully acknowledging that transitional arrangements might prove to be necessary in the end, the CION stressed the need for a general system of safe and regular electronic exchange of data between institutions and called for work to start with the Administrative Commission and the Technical Committee.

A large number of delegations and CION considered that the Administrative Commission and the Technical Committee should be invited to start work on procedures necessary for the application of Regulation (EC) 883/2004 without delay. The Presidency undertook to forward a note to delegations in this respect.

In relation to this issue, a number of delegations (FI, NL, SE and UK) considered that the respective responsibilities of liaison bodies and access points would have to be discussed in detail and specified clearly in a separate article. EE, LT, SI and SK felt that more clarity would be needed on the concept of "access point". While sharing those views, DE and PT were of the view that this issue should be discussed at a later stage.

FI was of the view that a single point would not be sufficient.

Concerns were also expressed by several delegations (AT, DE, EL, UK) about time limits. CION stressed that the intention was not to interfere with time limits set at national level and confirmed to SK that controls and sanctions were left to the Member States to decide.

IV. CONCLUSION

In the light of the discussions, the Presidency undertook to suggest changes to the text of Articles 1 - 5 and 83 and 84, as well as to Annex 4, as set out in the Annex. Any new text appears in bold, deletions are indicated by [...]. Delegations' scrutiny reservations appear in footnotes.

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
laying down the procedure for implementing Regulation (EC) No 883/2004 on
the coordination of social security systems

(Text with relevance for the EEA and for Switzerland)

TITLE I – GENERAL PROVISIONS

Chapter I - Definitions

Article 1

Definitions

1. For the purposes of **the present** Regulation, the definitions set out in Regulation (EC) No 883/2004 shall apply.
2. In addition to the definitions referred to in paragraph 1,²
 - a) “access point” **means a** body designated by the competent authority of a Member State **for one or more branches of social security referred to in Article 3 of Regulation (EC) No 883/2004**, to send and receive electronically the data necessary for the application of Regulation (EC) No 883/2004 and the present Regulation via the joint network through which data are exchanged between the [...] institutions of this Member State and the [...] institutions and/or the [...] **access point** of other Member States;

² UK entered a scrutiny reservation in relation to the definitions of "liaison body" and "access point" as it considered that their responsibilities should be laid down in a specific Article.

- b) “liaison body” **means** a body designated by the competent authority of a Member State, for one or more branches of social security referred to in Article 3 of Regulation (EC) No 883/2004, to respond to requests for information and assistance from Member States’ institutions and which the latter may approach in accordance with Title IV of this Regulation;
- c) “document” **means** a set of data, irrespective of the medium used, [...] **structured in such a way that it could be** exchanged **also** electronically and which must be communicated to allow Regulation (EC) No 883/2004 and the present Regulation to function³;
- d) “standardised electronic message” **means** any **structured electronic** document [...] **in a format [...] defined** for the exchange of information between Member States’ institutions **and/or access points**;
- e) “transmission by electronic means” **means** transmission **of data** using electronic equipment for processing [...];
- f) “Technical Commission” **means** the body referred to in Article 73 of Regulation (EC) No 883/2004⁴;
- g) “Audit Board” **means** the body referred to in Article 74 of Regulation (EC) No 883/2004⁵.

³ UK scrutiny reserve on the definition of "document".

⁴ The need for this definition will be examined at a later stage of the negotiations when the final version of the text has been agreed to.

⁵ The need for this definition will be examined at a later stage of the negotiations when the final version of the text has been agreed to.

Article 2

Scope and rules for exchanges between institutions

1. The Member States' institutions shall [...] **exchange** all data necessary for establishing and determining the rights and obligations of persons covered by Regulation (EC) No 883/2004[...].
2. Where a [...] person has mistakenly submitted information, documents or claims to an institution **in the territory of a Member State** other than that **in which the institution** designated in accordance with this Regulation **is situated**, the information, documents or claims must be resubmitted immediately by the former institution to the institution designated in accordance with **the present** Regulation, indicating the date on which they were initially submitted. This date shall be binding on the latter institution **with the exception of implicit decisions**.
3. Data shall be transferred between Member States' institutions either directly by the institutions themselves or indirectly via the access point or the liaison body.
4. [Where data are transferred indirectly via the access point or the liaison body, this access point or liaison body shall be regarded as fulfilling the role and function of the **requested** institution in this Member State with regard to time-limits for responding to claims submitted.]⁶

Article 3⁷

*Scope and rules for exchanges between **the persons concerned** and institutions*

1. **Persons** covered by Regulation (EC) No 883/2004 shall be required to forward to the

⁶ The Presidency suggests deleting this paragraph in the light of the discussions.

⁷ SK placed a scrutiny reserve on the deletion of paragraphs 4 to 7.

relevant institution **the** information, **documents or** supporting **evidence** necessary to establish his/her situation or that of his/her family, to establish or maintain his/her rights and obligations and to determine the applicable legislation and his/her obligations under it.

[...]

2. [The Member State which collects data under its legislation or in the situation referred to in Article 52 shall guarantee that the persons concerned have the right of access to these data and the right to rectify them, in accordance with Community provisions on the protection of individuals with regard to the processing of personal data and the free movement of these data.]⁸
3. The **relevant** institutions [...] shall forward the [...] information and issue the [...] documents **necessary for the application of Regulation (EC) 883/2004 and the present Regulation to the** [...] persons **concerned**.
4. [...]
5. [...]
6. [...]
7. [...]
8. The Administrative Commission shall stipulate the practical arrangements for implementing this provision in the event that **information, documents or decisions are** sent to the person concerned by electronic means.

⁸ The Presidency suggests deleting this paragraph on account of the overarching provision in Article 77 of Regulation (EC) No. 883/2004 and of the fact that this provision takes up only some aspects of internationally accepted rules on data protection.

Article 4

Format and method of exchanging data

1. The Administrative Commission shall lay down the **structure**, content **and the modalities** of the documents and [...] the standardised electronic messages.
2. The transmission of data between the institutions, the access points or the liaison bodies shall be carried out by electronic means under a common secure framework that can guarantee the confidentiality and protection of exchanges of data.⁹
3. In their communications with **the persons concerned**, the **relevant** institutions shall **use the modalities appropriate for each case and** favour the use of electronic means **as far as possible**.

Article 5

*Legal value of documents and supporting **evidence** issued in another Member State*

1. Documents issued by the institution of a Member State and showing the position of a person for the purposes of the application of Regulation (EC) No. 883/2004 and of **the present** Regulation, and supporting **evidence on the base of which the documents have been** issued [...], shall be accepted by the institutions of the other Member States so long as they have not been withdrawn or declared to be invalid by [...] the Member State in which they were issued.

⁹ This paragraph contains the principle of the electronic exchange of data. The implementation of this principle necessitates further work by the Administrative Commission. Depending on the outcome of this work, transition periods for the Member States concerned may be necessary under Title V.

2. Where there is doubt about the validity of a document or the accuracy of the facts on which the particulars contained therein are based, the institution of the Member State that receives the document shall contact the issuing institution to ask it for the necessary clarification and, where appropriate, the withdrawal of the said document. **It is incumbent on the latter institution to reconsider the grounds for the issue of the document and, if necessary, withdraw it.**
3. Where no agreement is reached between the institutions concerned in the month following the date on which the institution that received the document submitted its request, the matter may be brought before the Administrative Commission [...] **via the authorities concerned** in order to reconcile the points of view within six months of the date on which the matter was brought before it.

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Article 83

Notifications

1. The Member States shall notify the European Commission of the details of the bodies defined in Article 1 (m), (q) and (r) of Regulation (EC) No 883/2004 and Article 1 **(2)(a)** and (b) of **the present** Regulation, and the institutions [...] **designated in accordance with the present** Regulation.
2. The bodies specified in paragraph 1 shall be provided with an electronic identity in the form of an identification code and electronic address.
3. The Administrative Commission shall establish the **structure, content and the modalities** [...], including the common format and model, for notification of the details specified in paragraph 1.

4. Annex 4 to **the present** Regulation gives details of the public data base containing the information specified in paragraph 1. **Any entry in this public data base is legally binding.**
5. The Member States shall be responsible for keeping the information specified in paragraph 1 up to date **in accordance with the procedure specified in this paragraph.**

Article 84

Documents

1. [...]
2. [...]¹⁰

¹⁰ Article 84 (2) will be integrated in Article 9.

ANNEX 4

Competent authorities and institutions, institutions of the place of residence and stay, access points, institutions and bodies designated by the competent authorities.

(Article 83(4))