

Social security: implementing Regulation (EC) No 883/2004 on the coordination of the social security systems

2006/0006(COD) - 07/01/2009 - Commission communication on Council's position

The Council common position keeps many of the amendments proposed by the Parliament and incorporated in the Commissions amended proposal (see the summary of the amended proposal on these points, dated 15/10/2008).

The Commission's positive assessment of the Council common position is based on a close monitoring of the provisions in the light of the four underlying principles of the

Commission's proposal:

1. organising more effective and closer cooperation between social security institutions to enable all stakeholders to benefit from the modernisation of Regulation 883/04;
2. simplifying the implementing Regulation;
3. improving the transparency of the financial procedures between the institutions and in respect of persons covered by the Regulation;
4. flexibility and effectiveness in setting the rules.

Overall, the Commission considers that the vast majority of the modifications made by the Council contribute to improving the processes and procedures in order to provide the benefits in a speedier and more efficient way. The changes also usefully clarify further the roles and responsibilities of the various parties (for example on posting of workers, on scheduled treatment, on unemployment benefits and medical examinations and administrative checks).

The Commission also considers that the text of the Council common position maintains the delicate balance between the rights and obligations of individuals compared with the prerogatives of the social security institutions and competent authorities.

Main differences between the Commission's amended proposal and the Council common position:

- **Electronic exchange of data:** the Council has clarified in a new provision (Article 96) the possibility for a transitional period for electronic data exchanges between institutions of the Member States and has set out their limits. The Commission supports this point as it responds to the needs of some Member States to prepare themselves whilst ensuring that reaping the benefits of the electronic exchange would not be deferred beyond a date agreed by all Member States;
- **Conversion of insurance periods:** Article 13 contains a detailed provision allowing the Member States to convert the period of insurance expressed in different units for the purposes of aggregation. The Commission's proposal aimed to simplify this provision derived from Regulation 574/72. It was based on the assumption that only 5-day weeks were used. The discussion in Council showed that this was not the case as some Member States' legislation still prescribes calculation (at least for some schemes) on the basis of a 6 or 7 day week (e.g. in the case of self-employed persons). The Commission therefore agrees to include this provision in the text for the time being;
- **Deadlines for the introduction and settlement of claims between Member States:** the Council considered it necessary to extend the deadlines proposed by the Parliament and the Commission for

the introduction and settlement of claims and for the settlement of disputes (12 months for the introduction of claims, 18 months for the settlement of claims and 36 months for the settlement of disputes). Some Member States were of the opinion that any reduction of those deadlines could only be introduced in the light of both experience and technological progress. The Commission shares this approach to a certain extent. The procedure has been improved and broken down into stages. The Commission acknowledges the lack of experience with this new procedure. Furthermore, the Commission accepts the review clause introduced in Article 87 because the work currently carried out by the Audit Board, which assists the Administrative Commission for the Coordination of Social Security Systems, has already produced positive results;

- **the costs of travel and stay of a person accompanying a person with disabilities:** the Commission, in agreement with the European Parliament's option, recalls that, in accordance with the European Court of Justice case law and taking into account the limits of a Regulation which aims to coordinate and not harmonise social security legislation, this issue is a matter for national legislation. The position of the Council is in accordance with the current state of law concerning travel costs that are inseparable from the medical treatment of the insured person. The Commission therefore accepts the Council common position on this point. The situation of disabled patients and accompanying persons (and also persons accompanying children as regards their travel and accommodation costs) could be dealt with through another legislative instrument with a legal basis aimed at approximating national legislations.

In conclusion: the Commission has been careful to ensure that individual rights are maintained, for instance in the fields of occupational diseases, accidents at work and family benefits. It recognises the difficulty of this task given the diversity and specificities of the national social security legislation of the 27 Member States. The Commission agrees that a certain degree of flexibility is necessary in the procedures, for instance with regard to time limits.

The Commission considers that the Council common position improves some of the measures contained in the Commission's proposal. In particular, it clarifies certain criteria with the result that some of the key concepts set out in the basic Regulation will be implemented in a more homogenous way, such as determination of the legislation applicable or posting of workers. The Commission also notes that the Council common position largely takes account of the position of the European Parliament. Lastly, the Commission considers the compromise reached by the Council on the most sensitive issues as the start of a dynamic process to allow all Member States to align themselves with the position of the European Parliament. It therefore gives overall support to the Council common position.