

Coordination of social security systems: amending Annexes

2006/0008(COD) - 07/01/2009 - Commission communication on Council's position

The Commission notes that it can support the Council common position, which takes account, to a large extent, of the European Parliament amendments (69 of the 77 amendments proposed by the Parliament at first reading).

Nevertheless, the Commission makes the following comments:

- **with regard to the amendments in relation to Annex III:** under current rules, a member of the family of a frontier worker, who by definition does not reside in the competent Member State (that is, the Member State of employment whose legislation applies as regards access to sickness benefits) is not entitled to medical care in the competent Member State. After a very difficult negotiation on this point in 2003, and taking into account the need for unanimous agreement, a solution was finally found. Following this approach, Articles 18 (2) and 24 (2) of Regulation (EC) No 883/04 provide that the members of the family of a frontier worker shall be entitled to benefits in kind during their stay in the competent Member State. However, some exceptions to this principle are provided for in Annex III. Although the Commission would have preferred a different outcome, it accepted the compromise because it represents real progress for the family members of frontier workers. No other approach would have obtained the requisite unanimity in Council. The Parliament also followed the same approach at the time, which made the adoption of Regulation (EC) No 883/04 possible.

The Commission also supports the European Parliament amendment which aims to repeal Annex III after five years for all Member States. However, the Council common position led to a halfway house solution recommending: (i) a review of Annex III five years after the date of application of the Regulation; (ii) a new paragraph to provide that the period of validity of some Member States' entries in Annex III would be limited to four years. Although the Commission regrets that it has not been possible to achieve more progress on this issue in Council, it considers that the compromise reached by Council is the start of a dynamic process that will allow all Member States to align themselves with the position of the European Parliament. It therefore accepts the compromise, which it considers a step forward compared to the current situation of Annex III;

- **with regard to entries in Annex IV:** the Commission recalls that a pensioner who does not reside in the competent Member State (i.e. the one paying the pension and responsible for the health care costs of their pensioners in the Member State of residence) is currently entitled only to sickness benefits in his Member State of residence. However, under Regulation (EC) No 883/04, when a Member State is listed in Annex IV, a pensioner will have the right to return in this Member State and have access to health care as an additional right. This means that not only will the competent Member State bear the health care costs payable to the Member State of residence, but also the cost of sickness benefits for the same person in its own territory. Italy was among the entries. Shortly after the adoption of Regulation (EC) No 883/2004, the Italian authorities reassessed their position and decided they were not able to grant, for the time being, additional rights for pensioners. Taking note of these new developments, the Commission proposed the deletion of the 'Italy' entry from Annex IV. In its amendment, the European Parliament wishes to maintain the 'Italy' entry in Annex IV of Regulation (EC) No 883/2004. However, taking into account the specific nature of Annex IV, the Commission confirms its proposal to delete the 'Italy' entry;

- **with regard to the other changes made by the Council:** the Commission considers that these changes are, overall, positive for the persons concerned and can therefore accept them.

Conclusion: the Commission considers that the compromise reached by Council is the start of a dynamic process that will allow all Member States to align themselves with the position of the European Parliament. It notes that it will endeavour to pursue and contribute to this process.

Lastly, the adoption of this Regulation, which fills in the blank annexes of Regulation (EC) No 883/04 and of the implementing Regulation, is a prerequisite to make it possible for Regulation (EC) No 883/04 to become applicable in 2010.