

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

2006/0006(COD) - 17/12/2008 - Council position

In its common position, the Council could accept 145 of the 162 amendments, as either wholly or partially incorporated into the Commission's amended proposal. It also accepted, subject to redrafting, a dozen other amendments while sometimes only keeping certain parts of the text proposed by the European Parliament at first reading. That is the case for the following amendments:

- **exchange of personal data between national administrations competent for social security:** the Council could only accept part of this amendment as it felt that the detailed provisions suggested by Parliament in the other parts of this amendment might interfere with the internal organisation of the Member States in this area, which is in any case already covered by Directive 95/46/EC on data protection;
- **certificate indicating the wages stated by the employer:** the Council considers that this amendment goes further than the information needed for social security purposes and therefore goes beyond the objectives of the Regulation.

However, the Council did not deem it advisable to take up, among others, the following amendments:

- **the costs of travel and stay of a person accompanying a person with disabilities:** the Council was of the view that the costs of travel and stay that are inseparable from the treatment of the insured person should be assumed by the competent institution provided that the national legislation of this institution so provides and that an authorisation has been granted. Furthermore, the Council could not accept the last part of the amendment concerning the reimbursement of travel and stay costs for a person accompanying a person with disabilities. It considered that this would go beyond the scope of the coordination of social security systems, at this would result into an obligation for the Member State to provide a new benefit in the field of sickness insurance;
- **deadlines for the introduction and settlement of claims:** the Council considered it necessary to extend the deadlines proposed by the Commission for the introduction and settlement of claims as well as 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). The Council could not therefore accept the amendments which aim to maintain the deadlines proposed by the Commission, as most Member States were of the opinion that any such deadlines could only be introduced in the light of experience and of the technological progress which is likely to make the exchanges between institutions faster. However, bearing in mind the importance of this issue for the European Parliament, the Council agreed on the principle that the time limits for the payments of claims should be reviewed four years after the entry into force of the Regulation, on the basis of the report on the implementing Regulation, with the aim of reducing the time limits in a significant way.

The Council also made several modifications to the text of the original proposal, so as to clarify it or facilitate its application. The main modifications to the text include the following:

- **provisional payment or advance payment of benefit:** a payment is considered provisional if the process of investigating the claim is under way and its outcome could affect the amount of the benefit to be awarded. An advance payment is paid by the institution of the Member State under whose legislation the person concerned will have a right to a pro-rata pension. While in agreement

with the substance in Article 51(2), the Council felt that some amendments should be made and, in particular, that the term "immediately" should be replaced by "without delay";

- **unemployment benefits:** the Council considered that some amendments were necessary to provide that the competent institution of the place of residence, which will grant the benefits, has the leading role. Thus, when the unemployed person decides to make himself also available to the employment services of the Member State where he pursued his last professional activity by registering there as a person seeking work, he should inform the competent institution of the Member State of residence;
- **transitional provisions:** the Council felt that Article 87(8) of the basic Regulation should be amended to provide that, if a person is subject to the legislation of a Member State other than the one determined in accordance with Title II of Regulation (EEC) No 1408/71, that legislation should continue to apply as long as the relevant situation remains unchanged and, in any case, for a maximum period of **10 years** from the date of implementation of this Regulation, unless the person concerned requests that he/she be subject to the legislation applicable under this Regulation. This is a transitional provision which is in the interests of the person concerned as it aims to avoid the transitional treatment of his/her situation lasting for an excessively long period.

Conclusion: the Council welcomes the spirit of cooperation which prevailed with the European Parliament during the first reading of this major piece of draft legislation and which allowed the two institutions already to reduce the scope of potential disagreement to a very large extent. It considers that its Common Position goes largely in the direction of the concerns voiced by Parliament that the reform of the coordination of social security systems should ensure that the new rules will improve and simplify procedures for both employers (in particular the SMEs), and insured persons (both employees and self-employed workers), as well as for EU citizens in general, on the one hand, and social security institutions on the other.