Social security: coordination of the national systems to promote the free movement of persons (repeal. Regulation (EEC) No 1408/71)

1998/0360(COD) - 26/01/2004 - Council position

The common position, agreed unanimously, essentially preserves the Commission's initial proposal as amended by the amended proposal. The common position therefore consists in particular of the following essential elements: - the personal scope of the Regulation is extended to cover all nationals of Member States who are covered by the social security legislation of a Member State. This means that not only employed workers, self-employed workers, civil servants, students and pensioners but also non-active persons are protected by the coordination rules. This simplifies and clarifies the rules determining the legislation applicable in cross-border situations; - the material scope of the Regulation is extended to cover statutory pre-retirement schemes, which means that the beneficiaries of such schemes will have a guarantee that benefits will be paid, will be covered for health care and will receive family benefits even if they reside in another Member State; - the principles of equal treatment and the assimilation of facts are strengthened; - insured persons staying temporarily in another Member State will be able to benefit from health care judged to be medically necessary during that stay; - there is provision for a greater obligation for cooperation and mutual assistance between the institutions of the Member States for the benefit of citizens. As regards the amendments approved by the European Parliament in its first reading, the common position accepts 31 out of the 47 proposed. These aim in particular to: - call on the Administrative Commission "to foster and develop cooperation between Member States and their institutions in social security matters, particularly with a view to responding to particular questions from certain categories of persons; to facilitate, in the field of coordination of social security, transnational cooperation measures"; - make the link between social security legislations and certain contractual provisions; - provide the principle of equal treatment which is important for all workers, not only for cross-border workers as defined by the Regulation; - provide entitlement to benefits in kind in the State of employment for members of the family of cross-border workers; - make clear that that members of the family of cross-border workers may receive benefits in kind during a stay in the competent State, unless that State refuses this by virtue of an entry in Annex III to the Regulation; - provide that a retired former cross-border worker may continue to receive benefits in kind in the former State of employment, on condition that the latter State and the State bearing the cost of benefits have opted for this solution and are listed in Annex V. Given the fact that seven Member States are already listed in this annex, the Commission can accept this solution as a compromise which improves the situation for pensioners who are former cross-border workers. With regard to the new provisions introduced by the Council, they can be summarised as follows: - Title I - General provisions : the Council, for reasons of legal safety, has opted for an exhaustive list of branches ofsocial security instead of the indicative list in the Commission proposal, adding the branch "pre-retirement " to the current list; - Title II - Determining the legislation to which a person is subject : the Council includes details of the legislation applicable either in the context of an unemployment situation or in the event of carrying out activities in the territory of two or more Member States; - Title III - Chapter 1: Sickness, maternity and paternity : the Council has amended the structure of the chapter. Sections have been inserted in order to distinguish provisions relating to pensioners and members of their families from those applicable to other categories of insured persons. A distinction is also made between benefits in kind and cash benefits. With regard more specifically to pensioners, the common position makes amendments which essentially have implications for the sharing of the burden of benefits between institutions. In this regard the Council, for both benefits in kind and cash benefits, preferred to maintain the status quo. Since financial arrangements between the institutions of the Member States are dealt with here, and in principle insured persons' entitlement to sickness protection is not affected; - Title III - Chapter 2: Industrial accidents and occupational diseases : the common position provides for the principle of bearing the costs on condition that the institution has agreed in advance to

such transport, taking due account of the elements used to justify it. The Commission considers that this problem deserved a bolder solution. It points out that this question may be examined at a later stage within the framework of the implementing Regulation; - Title III - Chapter 3: Death grants : the Council has included a specific chapter for death grants, as set out in the current Regulation 1408/71/EEC, although they were dealt with in the Commission proposal as sickness benefits in kind. - Title III - Chapter 4: invalidity benefits : the Commission had proposed replacing the current "dual" system of coordination with a single coordination system, so that invalidity benefits are always calculated in accordance with the provisions of the chapter on "pensions". The common position makes provision for maintaining the "dual" system, but only for those Member States which have an "A" system and have opted for this approach by means of an entry in an annex; - Title III - Chapter 5: Old-age and survivor's pensions : one amendment concerns the aggregation of pensions with benefits of a different nature, dealing with situations of unjustified aggregation. The common position also maintains the provision in the current Regulation 1408 /71/EEC whereby a Member State is not obliged to grant a pension if the length of periods completed under its legislation amounts to less than one year and if, taking only these periods into account, no entitlement to benefits has been established under the provisions of that legislation. In this case, the periods in question are taken into account by the other Member States concerned. Since the provision lays down that there shall be no loss of rights for the insured person, the Commission can accept this position. The common position also maintains the provisions particular to special schemes for civil servants, which is acceptable to the Commission, given the particular characteristics of theseschemes; - Title III - Chapter 6: Unemployment : the Commission proposal introduced two basic amendments to the chapter: - extending from three months to six the period during which the unemployed person may seek work in another Member State without losing entitlement to unemployment benefits; - ending the current system whereby the unemployed cross-border worker receives unemployment benefits from the State of residence rather than the competent State (the State where he was last employed). The Council was unable to reach agreement on these two points. In order to reach a compromise, two aspects have been singled out: the treatment of unemployed persons on the one hand and, on the other, the distribution of the financial burden of unemployment allowances between the State of last employment and the State of residence. With regard to the situation for the persons concerned, the common position provides for: - maintaining the current three-month period during which the unemployed person may seek work in another Member State without losing entitlement to unemployment allowances, while permitting the competent institution to extend this period to six months; - maintaining the current system whereby the unemployed cross-border worker receives unemployment benefits from the State of residence (with the obligation to be available to the employment services of that State); - the system is supplemented, however, by the unemployed cross-border worker also having the right to be available to the employment services of the competent State. With regard to the sharing of the financial burden between the Member States, the current principle in Regulation 1408/71/EEC of the State of residence having competence has been maintained. However, the competent State (State of last employment) should, for a period of three months, reimburse to the State of residence the costs of unemployment benefits paid by the latter State. This period of reimbursement is extended to five months where the worker has carried out an activity during 12 of the preceding 24 months in the Member State to whose legislation he was last subject. In order to answer the concerns of Luxembourg, a specific transitional provision has been inserted; - Title III - Chapter 7: Pre-retirement benefits : the Commission laid down a particular provision on aggregation owing to the nature of pre-retirement benefits and to the fact that the legislation of the Member States does not make entitlement to this type of benefits subject to the completion of periods of residence. In its common position, the Council excludes the rule on the aggregation of periods for granting benefits; - Title III - Chapter 8: Family benefits : to recall the Commission proposal aimed to restructure this chapter, laying down a single rule for all family benefits where entitlements exist in a number of Member States: the State laying down the highest amount pays the benefits, with the burden then being shared in proportion to the number of States concerned. The common position opts for a less ambitious solution, but one consisting of a single chapter and identical provisions for all categories of persons, putting an end to the existing distinction between pensioners and orphans on the one hand and othercategories of insured persons on the other. In order to determine the legislation applicable where entitlements exist in a number of Member States, the Council has adopted a coherent set of priority rules, giving priority to the

legislation of the Member State of employment. The system established also guarantees that the insured person is paid the highest amount of benefits, in the form of a differential supplement paid by another Member State whose legislation also establishes an entitlement to benefits. The common position also lays down favourable provisions for orphans in Article 69 and greater cooperation between the Member States on the implementation of the priority rules (Article 68 (3)). In contrast, the Council decided to exclude advances on maintenance payments from the scope of the Regulation. It has also maintained the exclusion for special birth and adoption benefits currently in Regulation 1408/71/EEC, owing to their close link with the socio-economic environment of the State concerned; - Title IV - Administrative Commission and Advisory Committee for the coordination of social security systems : the common position provides clarification on certain points of the terms of reference of the Administrative Commission and the Technical Commission (Article 73 d)). It also inserts in the Regulation a provision relating to the Audit Board which is currently in the implementing Regulation. - Title V - Miscellaneous provisions : the common position makes substantial improvements with a view to strengthening the duty of cooperation between institutions but also between the institutions and insured persons; - Title VI - Transitional and final provisions : provision is made for a transition period for the implementation of Article 65 (2) and (3) for Luxembourg which corresponds to the global agreement of the Council on the unemployment chapter. The Council has also added a provision to ensure that the Member States introduce provisions relating to supplying the appropriate information on changes brought about by the new Regulation. Finally, the Council has established methods to support the changeover from the current Regulation 1408/71/EEC to the new coordination instrument. In this regard, a particular provision is inserted in Article 90 so that Regulation 1408/71/EEC retains its force until certain Regulations and agreements referring to this Regulation are repealed or amended.