

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.1.2004
COM(2004) 44 final

1998/0360 (COD)

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to the second subparagraph of Article 251(2) of the EC Treaty

concerning the

common position of the Council on the adoption of a Regulation of the European Parliament and of the Council on the coordination of social security systems

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1. BACKGROUND

On 21 December 1998, the Commission presented to the European Parliament and the Council its proposal for a Regulation COM(1998) 779 final. The European Economic and Social Committee delivered its opinion on 27 January 2000. The European Parliament presented its opinion on first reading on 3 September 2003. It adopted 47 amendments. The Commission accepted 40 in full, three in part, and rejected four.

Following the opinion of the European Parliament and in accordance with Article 250(2) of the EC Treaty, the Commission adopted an amended proposal (COM(2003) 596 final), which was forwarded to the European Parliament and the Council on 10 October 2003.

The Council reached a partial political agreement on a common position on 1 December 2003 and adopted its common position unanimously on 26 January 2004.

2. AIM OF THE COMMISSION PROPOSAL

Regulation (EEC) No 1408/71[1] ensures the coordination of the social security schemes of Member States in order to protect the rights of persons moving within the European Union.

Since its adoption in 1971, the Regulation has undergone a considerable number of amendments in order to take account of changes to national legislation, improve certain provisions, remedy deficiencies or cover the situation of particular categories of persons. Furthermore, certain provisions require clarification in order to avoid interpretation problems, as evidenced by the large number of judgments on coordination issues delivered by the Court of Justice. The goal pursued by coordination must also be adapted to changes in the European Union as a whole.

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[1] Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, OJ L 149, 5.7.1971, p. 2 Updated by Council Regulation (EC) No 118/97 (OJ L 28, 30.1.1997, p.1) and last amended by Regulation (EC) No 1386/2001 of the European Parliament and of the Council (OJ L 187, 10.7.2001, p.1).

Coordination rules are not just intended to ensure free movement for employed persons; they are also increasingly about protecting the social security rights of all persons moving within the European Union. Coordination must therefore be seen from the perspective of European citizenship and the building of a social Europe.

In order to meet these needs, the Commission proposal therefore has the dual aim of on the one hand simplifying the coordination of social security systems and, on the other, of modernising it.

3. COMMENTS ON THE COMMON POSITION

3.1. General comments

The unanimous political agreement reached by the Council on 1 December 2003 was taken over in the common position adopted on 26 January 2004.

The common position of the Council 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.

The Commission accepts the common position which, while less ambitious than its initial proposal, amended following Parliament’s opinion, represents a point of balance given the constraints and characteristics of the Member States’ various social security systems. It constitutes an important advance in terms of the free movement of citizens while safeguarding their social security rights.

3.2. The European Parliament's amendments on first reading

The European Parliament adopted 47 amendments on first reading.

Amendments 3, 4, 5, 6, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 34, 35, 37, 39 and 55 were accepted in full both in the Commission's amended proposal and in the Council's common position.

Amendments 7 and 52 were accepted in the amended proposal and were subject, in the common position, to rewording which may be approved by the Commission (cf. Articles 1 l) and 76 (6) of the common position).

Amendments 11, 44 and 51 were accepted in part in the amended proposal and in the common position.

The first paragraph of **amendment 11** was accepted in full in the common position, but paragraph 2 was made more flexible in order to restrict itself to annual declarations, which appears to be more in line with the aim of the provision.

Combined amendments 51 and 44, accepted in part by the amended proposal, are also reflected in substance in the common position, Article 72 c) of which calls 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".

The Commission had accepted **amendment 48** in its amended proposal, underlining the need for greater convergence between the coordination of social security schemes and certain provisions contained in the double taxation agreements. This amendment is not included in the Council's common position.

Amendment 56 is integrated in the amended proposal but is not included in the common position. The Council did not consider it necessary in view of the amendments to the provisions relating to unemployment benefits for unemployed people who, during their last employment, resided in a Member State other than the competent State (cf. point 3.3.9.).

Amendments 46, 47, 50, 53 and 54 were accepted in full in the amended proposal, and their substance is taken over in the common position.

Amendment 46, relating to the link between social security legislations and certain contractual provisions, is taken into account in recital 6 of the common position. The Council is planning to proceed in stages with, initially, an evaluation of experience by the Member States which have given notification of such contractual provisions. The Commission supports this position, which will permit analysis of whether there is a need to introduce legislation aimed at coordinating certain provisions of agreements.

Amendment 47 is reflected in recital 8 of the common position. It has been extended to cover all workers not resident in the State in which they work. The Commission is in favour of this expanded wording, as the principle of equal treatment is important for all workers, not only for cross-border workers as defined by the Regulation.

Amendment 50, relating to entitlement to benefits in kind in the State of employment for members of the family of cross-border workers, is largely reflected in recital 23 and in Article 18 (2) of the common position. The Council decided 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. In this case, it is stated that family members may still receive such benefits in kind as may be necessary during a stay in the competent State. Although seven Member States are listed in Annex III, the Commission accepts this solution, which is a significant improvement over the current situation as regards entitlement for family members.

Amendment 53 is reflected in part in recital 21 and Article 20 of the common position. The Council has maintained the principle of prior authorisation for non-hospital care. Although the Commission regrets that this advance could not be made within the framework of the Regulation, it nevertheless points out that the bearing by the competent institution of the costs of such care obtained abroad without prior authorisation is possible in principle on the basis of Article 49 of the Treaty, in accordance with the case law of the Court of Justice[2]. In these conditions; and bearing in mind the specific characteristics of the Regulation and the aim thereof, as examined most recently by the Court in the Inizan case[3], the Commission can accept the position.

Amendment 54 is reflected in part in Article 28 (2). This provision states 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.

Amendments 38, 40, 45 and 49 were not accepted either in the amended proposal or in the common position. The Commission considers that provisions such as those referred to in **amendments 38 and 40** are more suited to the implementing Regulation. With regard to **amendments 45 and 49**, these exceed the scope of the coordination of social security schemes as laid down by the EC Treaty.

3.3. New provisions introduced by the Council, and the Commission's position

3.3.1. Recitals

A number of recitals have been amended or added for greater coherence with the amendments in the Commission proposal (recitals 1a, 2, 5, 8, 9, 10, 11, 18, 20, 22, 23, 29, 30, 31, 32, 33, 35, 36, 41, 42, 43 and 44).

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2 Judgments given on 28.4.1998, Kohll (case C-158/96) and Decker (C-120/95); judgment given on 12.7.2001, Smits and Peerbooms (C-157/99), judgment given on 13.5.2003, Müller-Fauré/Van Riet (C-385/99).

3 Judgment given on 23.10.2003, Case C-56/01.

3.3.2. Provisions relating to Title I –General provisions

Apart from the amendments by Parliament integrated into the common position, only Article 4 has undergone certain amendments:

– the Council, for reasons of legal safety, has opted for an exhaustive list of branches of social security instead of the indicative list in the Commission proposal, adding the branch "pre-retirement " to the current list;

– as part of the definitions, reference is made to "regulatory provisions concerning branches of social security" that include various "benefits"; it is specified that the Regulation applies to special non-contributory benefits, but not to benefit schemes for victims of war or of the consequences of war.

The Commission accepts these amendments, which reflect the acquis and represent a modest but positive advance over the current situation.

3.3.3. Provisions relating to Title II – Determining the legislation to which a person is subject

The common position amends Articles 11 and 13.

Details of the legislation applicable are given in these Articles, 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. These details are fully acceptable to the Commission and are such as to contribute to the improved application of coordination.

3.3.4. Provisions relating to Title III – Chapter 1: Sickness, maternity and paternity

The structure of the chapter has been amended in the common position.

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. These amendments to the structure permit greater clarity in the provisions without involving an intrinsic loss of entitlement for insured persons.

Death benefits, which in the Commission proposal were considered as sickness benefits in kind, no longer figure in this chapter but in a specific chapter (cf. point 3.3.6).

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, the Commission accepts the Council's position.

Following the amendments concerning the bearing of the financial burden of care for pensioners, the Council did not adopt the solution in the Commission proposal concerning the designation of the State responsible for collecting contributions for the funding of sickness insurance. It provides for these contributions to continue to be collected in principle by the Member State bearing the financial burden of benefits for the pensioner on the basis of its legislation.

A provision is also inserted to resolve the question of the aggregation of cash benefits for unlimited care (care allowances) which are regarded as sickness benefits. The Commission accepts this amendment, which draws the conclusions of the case law of the Court[4] in practice.

3.3.5. Provisions relating to Title III – Chapter 2: Industrial accidents and occupational diseases

The common position does not significantly amend the Commission proposal on this chapter. Basically, the amendments consist of deleting provisions which have become superfluous (particularly in Article 42 of the Commission proposal), owing to the addition in Article 5 of the general principle of assimilation of facts. Certain rules inserted in Article 46 of the Commission proposal to take account of the particular nature of certain legislations have been deleted as a result of changes in the legislation in question.

With regard to transport costs for the victim of an industrial accident or occupational disease, 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.

3.3.6. Provisions relating to Title III – Chapter 3: Death grants

In the common position, the Council has included a specific chapter for death grants, as set out in the current Regulation (EEC) No 1408/71, although they were dealt with in the Commission proposal as sickness benefits in kind.

The Commission can accept this position in so far as implementation of the current provisions does not appear to have given rise to any particular difficulties.

3.3.7. Provisions relating to Title III – Chapter 4: invalidity benefits

For reasons of simplification, 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".

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4 Judgment given on 5.3.1998, Case C-160/96.

The current system lays down that, if a person has been insured exclusively under legislations where the amount of invalidity benefit is independent of the length of insurance periods ("A" systems), that person is entitled to a single benefit, granted by the Member State where the person was insured at the time the invalidity occurred ("single pension" system).

If the person was insured either exclusively under legislations where the amount depends on the length of the insurance period ("B" systems) or under both types of insurance, he is entitled to benefits calculated in accordance with the chapter on "pensions" ("pro rata" system).

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.

For the Commission, this is an acceptable compromise. While regretting the fact that this simplification could not take place, the Commission notes that the current system does not appear to cause any major difficulties.

3.3.8. Provisions relating to Title III – Chapter 5: Old-age and survivor's pensions

The Commission proposal did not fundamentally change the provisions of this chapter, as the simplification exercise consisted mainly of making the applicable rules more comprehensible by improving the terminology used and the structure of the chapter. The Council's common position does not overturn the provisions of this chapter.

One amendment concerns Article 55 on the aggregation of pensions with benefits of a different nature, dealing with situations of unjustified aggregation. This is acceptable to the Commission.

The common position also maintains the provision in the current Regulation (EEC) No 1408/71 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 these schemes.

3.3.9. Provisions relating to 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 (EEC) No 1408/71 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 in point 10 of Article 87 (this stipulates that the provisions referred to in Article 65 (2) and (3) shall apply to Luxembourg not later than two years following the date of implementation of the new Regulation).

The Commission can accept this position overall. Firstly, it points out that the conditions under which the unemployed person may seek employment in another Member State without losing unemployment allowances are improved with a view to facilitating job-seeking. In addition, the cross-border worker is in a better position to find employment since he can register to seek work both in the State of residence and in the State in which he formerly worked. These two elements, offering an unemployed person a better chance of finding employment, correspond to the Commission's aims and constitute an improvement over the current situation. On the other hand, the arrangements relating to the sharing of the financial burden of

unemployment benefits between the Member States do not affect the unemployed person's entitlement to benefit.

3.3.10. Provisions relating to Title III – Chapter 7: Pre-retirement benefits

In its proposal, 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. This exclusion is explained by the fact that statutory pre-retirement schemes (the Regulation based on Article 42 of the EC Treaty applies only to statutory social security schemes) only exist in a limited number of Member States (cf. recital 33 of the common position).

With regard to the characteristics of pre-retirement schemes, the Commission can accept this position, taking into account the fact that there has been significant progress, since by including "pre-retirement" in the scope of the Regulation although it was previously excluded, the principles contained in Title I will apply to pre-retirement benefits, which means that, in particular, the principle of equal treatment, the export of benefits and the granting of family and sickness benefits to the persons concerned will be guaranteed.

3.3.11. Provisions relating to Title III – Chapter 8: Famiy benefits

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 other categories 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)).

The Commission accepts this position, which clarifies and facilitates implementation of the provisions of this chapter and also maintains entitlement to the highest family benefits for insured persons.

In contrast, the Council decided to exclude advances on maintenance payments from the scope of the Regulation (cf. Article 1 (z) and recital 36). It has also maintained the exclusion for special birth and adoption benefits (cf. Article 1 (z)) currently in Regulation (EEC) No 1408/71, owing to their close link with the socio-economic environment of the State concerned.

With regard to advances on maintenance payments, the Commission can accept this position, having regard to the characteristics of the benefits in question and to the specific problems which their coordination poses in practice. On the other hand, the Commission regrets that no agreement could be reached on the inclusion of special birth and adoption benefits. Nevertheless, bearing in mind the balanced overall nature of this chapter, with regard to the extension of benefits to non-active persons, the Commission can accept the Council's position.

3.3.12. Provisions relating to Title III – Chapter 9: Special non-contributory benefits

In this chapter, the common position adopts Parliament's amendment No 55, which was accepted in full in the Commission's amended proposal.

3.3.13. Provisions relating to Title IV – Administrative Commission and Advisory Committee for the coordination of social security systems

The common position provides clarification on certain points (Article 72 b), c), d), f) and g)) 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.

The Commission proposal contained no provision relating to the Advisory Committee for the coordination of social security systems, owing to the existence of a Commission proposal to merge the Advisory Committee on social security for migrant workers with the Advisory Committee for migrant workers[5]. As this proposal has not yet been implemented, there is justification for a provision to be inserted to define the composition and tasks of this committee.

3.3.14. Provisions relating to Title V – Miscellaneous provisions

The common position makes substantial improvements to Article 76 with a view to strengthening the duty of cooperation between institutions but also between the institutions and insured persons. The Commission considers these aspects to be very positive. On the one hand, these provisions can only facilitate the implementation of the provisions of the Regulation, and on the other they will enable insured persons to demand to have their situation regulated under the strengthened obligation for cooperation between institutions.

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5 COM(1998) 394.

3.3.15. Provisions relating to Title VI –Transitional and final provisions

The common position amends Article 87, particularly in order to support the consequences of amendments introduced which are likely to affect the situation of certain insured persons (cf. points 8 and 9). As provisions of this type are traditional and essential where coordination rules are evolving, the Commission accepts this position, which takes account of the general interests of insured persons.

In addition, provision is made for a transition period for the implementation of Article 65 (2) and (3) for Luxembourg (cf. point 3.3.9) 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. The Commission can only approve this initiative for the benefit of all persons affected by the Regulation.

Finally, the Council has established methods to support the changeover from the current Regulation (EEC) No 1408/71 to the new coordination instrument. In this regard, a particular provision is inserted in Article 90 so that Regulation (EEC) No 1408/71 retains its force until certain Regulations and agreements referring to this Regulation are repealed or amended. The Commission supports this position.

4. CONCLUSIONS/GENERAL COMMENTS

The Commission approves the common position as a whole, as it broadly meets the aims of the Commission proposal. Moreover, it takes into account most of Parliament's amendments. At the end of long negotiations, although greater simplification in some areas would have been preferable, it constitutes a balanced and positive overall compromise for insured persons over all chapters. Under these conditions, the Commission considers this instrument to be essential in order for citizens to exercise their right of free movement while safeguarding their social security rights.

5. COMMISSION STATEMENTS

See Annex.

ANNEX

DRAFT STATEMENT FOR THE COUNCIL MINUTES

Joint statement from the Council and the Commission:

"Recognising that this Regulation will not become applicable until all of the Annexes have been completed and the Implementing Regulation has been adopted, the Council and the Commission agree that a number of entries or provisions should be inserted into the Annexes and the Implementing Regulation, as follows:

1) Annex XI (ad Articles 3 (2) and 70 (2)(c)):

Taking into account the specific situation under Austrian and German legislation concerning special non-contributory cash benefits, the territorial scope of which is confined to part of their territory and which are excluded by virtue of Article 4(2b) of Regulation (EEC) No 1408/71, the following entries should be inserted in Annex XI to the Regulation:

"AUSTRIA"

This Regulation does not apply to benefits granted under Bundeslaender legislation for disabled persons and persons in need of care.

"**GERMANY**"

This Regulation does not apply to benefits granted under Laender legislation for the disabled, and in particular for the blind.

2) the Implementing Regulation and Annex XI (ad Articles 5 and 6)

Specific provisions, to be established in the context of the Implementing Regulation, should aim both at preventing any possible overlapping impact of the principle of assimilation of facts or events under the legislation of two or more Member States and, at complementing, by analogy, the priority rules already provided for under the existing Article 15 of Regulation (EEC) No 574/72, which will be reintroduced in the new Implementing Regulation.

In cases where it is ascertained that, due to the specific features of national legislation, the unconditional implementation of the principle of assimilation of facts or events could lead to objectively unjustified results, the Member State concerned would seek for the appropriate Annex XI entry, guaranteeing specific coordination in the light of the principle of proportionality.

3) the Implementing Regulation (ad Articles 24 to 26 and 35)

A balanced sharing between Member States of the cost of benefits in kind for pensioners and members of their family must be established. In cases where the reimbursement between States of the cost of benefits in kind to pensioners and members of their families – under Articles 24 to 26 of the text – is carried out on the basis of a fixed amount, the fixed amount will constitute 85% of the average annual cost of benefits in kind for pensioners and members of their families in the State of residence. The remaining 15% is expected to concern the cost of benefits in kind for pensioners and members of their families, which become medically necessary during their stay in Member States other than the State of residence. To avoid Member States which have opted for the possibility under Article 27(2), and are listed in

Annex IV, being overburdened by comparison with Member States which have not so opted, the States listed in Annex IV will reimburse to the State of residence of the pensioner or the members of his family only a reduced lump sum amounting to 80 % of the cost.

This condition shall be reflected in the provisions on the reimbursement of the cost of benefits in kind for pensioners and members of their families that are to be laid down in the Implementing Regulation.

Provision shall also be made in the Implementing Regulation to ensure that a Member State that calculates average annual costs does not impose double payment on other Member States.

4) the Implementing Regulation (ad Article 27(5))

Ireland, Germany and the Netherlands being concerned about the administrative and possible financial implications of Article 27(5), a satisfactory solution should be found in the implementing Regulation in order to avoid problems connected to double payment and of cost control.

5) the Implementing Regulation (ad Article 30)

The application of Article 5, in relation to Article 30, will be dealt with in the Implementing Regulation.

6) Annex XI (ad Article 34)

The following paragraph shall be registered in Annex XI:

"*(b) When applying Article 34, the Netherlands will provide a list of estimates of the amounts which are as close as possible to the actual expenditure incurred.*"

7) Annex XI (ad Article 46)

The following entry concerning the United Kingdom should be inserted in Annex XI:

Where Article 46 applies, if the person concerned suffers incapacity for work leading to invalidity while subject to the legislation of another Member State, the United Kingdom shall, for the purposes of Section 30A(5) of the Social Security Contributions and Benefits Act 1992, take account of any periods during which the person concerned has received, in respect of that incapacity for work:

(i) cash sickness benefits or wages or salary in lieu thereof,

(ii) benefits within the meaning of Chapters 4 and 5 granted in respect of the invalidity which followed that incapacity for work under the legislation of the other Member State, as though they were periods of short-term incapacity benefit paid in accordance with Sections30A(1)-(4) of the Social Security Contributions and Benefits Act 1992.

The following entry concerning Ireland should be inserted in Annex XI:

Where Article 46 applies, if the person concerned suffers incapacity for work leading to invalidity while subject to the legislation of another Member State, Ireland shall, for the purposes of Section 95(1)(a) of the Social Welfare (Consolidation) Act, 1993 take account of any periods during which, in respect of the invalidity that followed that incapacity for work, he was regarded as being incapable of work under Irish legislation.

8) Implementing Regulation (ad Article 50):

Given the general interest in determining a common procedure for implementing uniformly this Article with regard to the date to be counted for the date of submission of a claim in respect of each institution concerned, in those "extraordinary" cases where the person concerned, when submitting the initial claim, provides no indication whatsoever of periods of insurance or residence having being completed under the legislation of a particular Member State, providing full information of his/her entire insurance career only at a later date (second claim or effective submission of the initial claim, sometimes at a very remote date), it was agreed that the issue of the administrative and economic consequences of such a retroactive – "deferred" – involvement of the institutions concerned, both for the latter and the ad hoc claimant, shall be dealt with under a comprehensive provision of a general character, to be established in the context of the Implementing Regulation, which should expressly and comprehensively define the overall mutual rights and obligations both for the insured and the institutions involved.

In the light of the principles of equivalence and effectiveness for the purposes of fulfilling the objectives of Article 42 of the Treaty (from which Article 50 stems), to the extent that such a delayed – a posterior effective – claim may be assimilated to an express request for postponement of the award of benefits (intentional omission), specific provisions should first expressly state that such an assimilation is subject to the legislation in question containing more favourable provisions in respect of the retroactive effects of a claim than those of the Implementing Regulation and, secondly, that, although the person concerned has submitted the initial claim on a form, clearly asking for detailed information on the periods of insurance, employment or residence in the territory of another State and has been informed about the consequences of possible omissions from his/her part, has either given no indication or has merely given a negative reply in the corresponding sections of the document.

9) Annex XI (ad Article 51):

The following entry concerning Denmark should be inserted in Annex XI:

1. Notwithstanding the provisions of Article 6 of the Regulation, persons who have not been gainfully employed in one or more Member States are entitled to a Danish social pension only if they have been, or have previously been, permanent residents of Denmark for at least three years, subject to the age-limits prescribed by Danish legislation. Subject to Article 4, Article 7 does not apply to a Danish social pension to which entitlement has been acquired by such persons.

2. The above-mentioned provisions do not apply to Danish social pension entitlement for the family members of persons who are or have been gainfully employed in Denmark, nor for students or the members of their families.

10) Annex XI (ad Article 52):

It is agreed that the issue raised by Sweden in the context of article 52 should be first examined by the Administrative Commission and, if an appropriate solution cannot be found in that context, that it should be solved by an Annex XI – "SWEDEN" entry.

11) Annex XI (ad Article 54):

The following entry concerning Finland should be inserted in Annex XI:

For the purposes of determining entitlement and of calculating the amount of the Finnish national pension under Articles 52 to 54, pensions acquired under the legislation of another Member State are treated in the same way as pensions acquired under Finnish legislation.

12) Implementing Regulation (ad Article 56):

For the calculation of benefits or parts of benefits which are financed exclusively by a funded pension scheme, only the capital accrued in this sense in this scheme is taken into account. It will depend on the ongoing further examination of this question whether an explicit provision in this sense is necessary in the Implementing Regulation.

13) Annex XI (ad Article 60)

The existing Annex VI entries in respect of special schemes for civil servants shall be maintained by Spain in Annex XI.

14) Annex XI (ad Article 62 (1))

Ireland underlined that the agreement on this paragraph should not anticipate the outcome of the discussions on Annex XI.

15) Implementing Regulation (ad Article 87 (8))

Provisions concerning the notification to the previously competent institution by the person concerned or by the newly competent institution shall be included in the Implementing Regulation.

The Council and the Commission further acknowledge that

16) International agreements (ad Articles 11(3)(c) and 65(6) and (7))

The agreement of Portugal on Articles 11 (3)(c) and 65(6) and (7) is without prejudice to Portugal's request for fair treatment in the sharing of costs between Portugal and other States which are not members of the European Union, in the context of the agreements to be negotiated following the adoption of the this Regulation.

The Council and the Commission also agree that the following articles should be interpreted as follows:

17. ad Article 20(2)

Without prejudice to the provisions outlined in Article 20 (2), Ireland seeks to clarify that national criteria in addition to the 'medically justifiable time limit' referred to in the text of Article 20 (2) can be applied by the Irish competent institutions when considering the referral of patients to another Member State under the Regulation. Ireland does, however, fully agree that the application of such additional national criteria must be in accordance with the provisions of Community Law.

18. ad Article 35(2)

It is up to each individual Member State as a creditor to determine whether its legal or administrative structure is such that a reimbursement on the basis of actual expenditure is appropriate or not. This determination applies vis-à-vis all Member States unless other methods of reimbursement have been mutually agreed according to paragraph 3.

19. ad Article 84(2)

Article 84 (2) shall not be interpreted as imposing obligations on a Member State to do more than is required or permitted according to national legislation or procedures."