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COMMISSION OF THE EUROPEAN COMMUNITIES

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**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 amending
Regulation (EC) No 883/2004 on the coordination of social security systems, and
determining the contents of its annexes**

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1. BACKGROUND

Date of transmission of the proposals to the European Parliament and the Council: - concerning the proposal (COM(2006) 7 final (document 2006/0008/COD)) - concerning the proposal (COM(2007) 376 final (document 2007/0129 (COD)))	24 January 2007 3 July 2007
Date of the opinion of the European Economic and Social Committee:	26 October 2006
Date of the opinion of the European Parliament, first reading:	9 July 2008
Date of transmission of the amended proposal ((COM(2008) 648 final (document 2006/0008/COD))	15 October 2008
Date of adoption of the political agreement:	5 November 2008
Date of adoption of the common position:	17 December 2008

On 29 April 2004, the European Parliament and the Council adopted Regulation (EC) No 883/2004¹ on the coordination of social security systems which is intended to replace Regulation (EEC) No 1408/71².

Regulation 883/2004 includes Annexes that contain provisions in respect of individual Member States. The contents of certain of these annexes had not yet been determined when the Regulation was adopted.

¹ OJ L166, 30.4.2004, corrected version in OJ L 200, 7.6.2004, p.1.

² Council Regulation (EEC) No 1408/71 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 of 5.7.1971, p. 2. Regulation last amended by Regulation (EC) No 1992/2006 (OJ L 392 of 30.12.2006, p. 1).

Regulation 883/2004 therefore provides that the contents of its Annexes II (provisions of conventions which remain in force), X (special non-contributory cash benefits) and XI (special provisions for the application of the legislation of the Member States) should be determined before the date of application of the Regulation.

Some of the Annexes to Regulation 883/2004 also had to be adapted to take into account the requirements of the Member States that have acceded to the European Union since the adoption of the Regulation, as well as recent developments in other Member States.

Against this background, the Commission adopted two proposals for Regulations on 24 January 2006 and 3 July 2007, respectively:

- Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 883/2004 on the coordination of social security systems, and determining the content of Annex XI;
- Proposal for a Regulation of the European Parliament and of the Council amending the annexes to Regulation (EC) No 883/2004 on the coordination of social security systems.

These proposals are based on Articles 42 and 308 of the EC Treaty and require unanimity.

The Commission presented its amended proposal on 15 October 2008 taking on board the amendment of the European Parliament to merge the two original proposals into a single text. The procedure concerning the proposal (Document 2007/0129/COD) has been abandoned as a result of the incorporation of its contents into the procedure relating to the first proposal (Document 2006/0008/COD).

2. OBJECTIVE OF THE COMMISSION PROPOSAL

The proposal for a Regulation determining the content of Annex XI provides for supplementary provisions regarding specific aspects of individual Member States' legislation to ensure that Regulation 883/2004 is applied smoothly in the Member States concerned. In accordance with the general objective of simplification, the proposal contains fewer entries than the corresponding Annex VI in the current Regulation (EEC) No 1408/71.

Annexes II and X of Regulation 883/2004, which were left empty, had equivalent provisions in Annexes III and IIa of Regulation 1408/71. The remainder of the Annexes, which were amended by this proposal, already contain provisions in respect of several Member States, but need to be complemented to take account of the Member States which acceded to the EU after 29 April 2004, the date of adoption of Regulation 883/2004. Some of these Annexes also have corresponding provisions in Regulation 1408/71. However, Annex I Part 1 (advances of maintenance payments) and Annexes III and IV (special rules for health care benefits) are new.

3. COMMENTS ON THE COMMON POSITION

3.1. General observations

The common position adopted by the Council on 17 December 2008 largely takes into account the position of the European Parliament by accepting 69 of the 77 amendments.

The Commission accepted all the European Parliament amendments in its modified proposal. However, the Council did not accept amendments 6, 11, 12, 20, 23, 24 in relation to Annex III and 78 rev.

3.2. Comments with regard to the common position on amendment 20 and derived amendments 6, 11, 12, 24 in relation to Annex III

Annex III of Regulation 883/2004 contains a list of Member States which apply 'Restriction of rights to benefits in kind for members of the family of a frontier worker' in the competent Member State. This annex, despite its negatively-worded title 'restrictions', in fact constitutes progress for many of the persons concerned compared with their current situation under Regulation 1408/71. 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 found in order to take account of the flexibility shown by a lot of Member States to grant a new right, on the one hand, and to accommodate the difficulties of other Member States which were not in a position to do so, on the other.

Following this approach, Articles 18 (2) and 24 (2) of Regulation 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 Commission also notes that this approach will allow family members of frontier workers residing in eight Member States to benefit from a new right. The Parliament also followed the same approach at the time, which made the adoption of Regulation 883/04 possible.

The Commission supports the European Parliament amendment 20 which aims to extend the right provided for by Article 18 of Regulation 883/2004 to all Member States within five years (Annex III should be repealed after five years for all Member States). During the discussions in Council, some Member States stressed, as a matter of principle and given the lack of experience in the application of the Regulation, that the delicate compromise reached under Regulation No 883/2004 should not be altered. The majority of the other Member States were in a position to accept the amendment in a spirit of compromise. Moreover, six Member States, listed in Annex III, showed even more flexibility as they were willing to accept repealing Annex III after four years.

Against this background, the Council common position provides that:

- Articles 18(2) and 28(1) of Regulation 883/2004 would be amended to state that Annex III will be reviewed five years after its application, and

- A new paragraph (10a) would be added to Article 87 of Regulation 883/2004 to provide that the period of validity of some Member States' entries in Annex III would be limited to four years.

The Commission regrets that it has not been possible to achieve more progress on this issue in Council. However, it acknowledges the efforts of the Presidency in this regard. 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. The Commission, which shares the position of the European Parliament, will endeavour to pursue, and contribute to, this process. For the time being and following a pragmatic approach, the Commission accepts the compromise as it is a step forward compared to the current situation of Annex III.

3.3. Comments with regard to Council's position on amendment 23

Amendment 23 relates to Annex II to Regulation 883/2004 (Provisions of Conventions which remain in force and which, where applicable, are restricted to the persons covered thereby). In point 36 of this Annex, under the Portugal-United Kingdom entry, the Parliament includes a reference to Article 2(1) of the Protocol on medical treatment of 15 November 1978 which is already covered by Annex III of Council Regulation (EEC) No 1408/71.

This Protocol does not appear in Annex II in the Council's common position as the two Member States concerned have indicated that they have decided not to apply Article 2(1) of this Protocol as from 1 September 2008. The Commission takes note of the decision of both parties to the Agreement and its consequences for the updating of Annex II to Regulation 883/2004.

3.4. Comments with regard to Council's position regarding entries in Annex IV, amendment 78 rev

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 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 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 78 rev the European Parliament wishes to maintain the 'Italy' entry in Annex IV of Regulation 883/2004.

Taking into account the specific nature of Annex IV, the Commission confirms its proposal to delete the 'Italy' entry. The Commission considers that if no flexibility is given to Member States which choose at a certain point to grant additional rights but afterward need to reassess their position (as they are responsible for organising and financing social security systems), positive annexes might disappear in the future.

3.5. Other changes made by the Council to the Commission's proposal

The Council common position also contains the following changes:

- Article 15 of Regulation 883/2004:

The terms ‘auxiliary staff’ have been replaced by the terms ‘contract staff’ in the common position in accordance with the Staff Regulations;

The Commission welcomes this update of the Regulation.

- Scheduled treatment in the context of accidents at work or occupational diseases; Article 36 paragraph 1 of Regulation 883/2004 and paragraph 2:

The Council common position provides that provisions dealing with sickness benefits (Articles 17, 18(1), 19(1) and 20(1)) shall also apply to benefits relating to accidents at work and occupational diseases.

Paragraph 2 of Article 36 was part of the Commission proposal for the implementing Regulation of Regulation 883/04 (Article 33). It concerns the specific conditions for the authorisation of scheduled treatment in the context of accidents at work or occupational diseases. This provision, which is in favour of the persons concerned, was not included in Regulation 883/04. The Council agreed to incorporate this provision into the basic Regulation rather than into the implementing Regulation.

The Commission welcomes both provisions as they are in favour of the persons concerned.

- Article 87(8) of Regulation 883/2004:

The modification introduced in the Council common position in paragraph 8 of Article 87 aims to clarify the way this transitional measure can be applied to all stakeholders. It provides for a maximum time period of 10 years during which a person can remain subject to the legislation of a Member State other than the one determined in accordance with Title II of Council Regulation (EEC) No 1408/71.

The Commission can accept this change, as fixing a maximum time period is intrinsically linked to the idea of a transitional measure. A ten-year period seems an appropriate length of time to give both the persons concerned and the institutions the opportunity to reassess the situation in accordance with the legislation applicable.

4. CONCLUSION

The Commission has been particularly vigilant to ensure that the individual rights of mobile citizens were maintained, for instance in the field of occupational diseases and accidents at work. The Commission notes that the Council common position largely takes account of the amendments of the European Parliament.

On the most sensitive issues, 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. The Commission will endeavour to pursue, and contribute to, this process.

Lastly, the adoption of this Regulation, which fills in the blank annexes of Regulation 883/04 and of the implementing Regulation, is a prerequisite to make it possible for Regulation 883/04 to become applicable in 2010.

Regulation 883/04 improves the social security rights of citizens exercising their rights to free movement. Once in force, Regulation 883/04 will have a direct impact on the daily life of millions of EU citizens.

In view of the above, the Commission can give overall support to the Council common position.