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COMMISSION OF THE EUROPEAN COMMUNITIES

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2006/0006 (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 proposal for a Regulation of the
European Parliament and of the Council laying down the procedure for implementing
Regulation (EC) No 883/2004 on the coordination of social security systems**

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1. BACKGROUND

Date of transmission of the proposal to the EP and the Council (document COM (2006)16 final — 2006/0006(COD):	31 January 2006
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:	15 October 2008
Date of adoption of the common position:	17 December 2008

2. OBJECTIVE OF THE COMMISSION PROPOSAL

The objective of the proposal for an implementing Regulation is to complete the process of modernising the existing rules in this field, thus replacing the current implementing Regulation¹. It aims, in particular, to define for all the parties involved (insured persons, their employers, social security institutions and the competent authorities of the Member States) the procedures for implementing the rules set out in the basic Regulation (EC) No 883/2004². The proposal is based on Articles 42 and 308 of the EC Treaty and requires unanimity.

The proposal completes the modernisation accomplished through the basic Regulation and seeks to improve current procedures by simplifying and clarifying them. The proposal also clarifies the rights and obligations of the various parties. In all parts of the Regulation, new structured procedures and processes provide for a platform for enhanced cooperation between institutions and promote transparency and mutual trust. This enhanced cooperation is supported by a new system of electronic data exchange between the Member States, which improves efficiency and accuracy.

¹ Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to their families moving within the Community, OJ L 74, 27.3.1972, p.1.

² OJ L166, 30.4.2004, corrected version in OJ L 200, 7.6.2004, p.1.

3. ANALYSIS OF THE COMMON POSITION

3.1 Overall position on the Council common position

The common position of the Council takes on board a significant number of amendments proposed by the Parliament and incorporated into the Commission's amended proposal. The Commission accepted all EP amendments, except amendments 26 and 55.

The Commission's positive assessment of the Council common position is based on a close monitoring of the provisions in the light of the four underlying principles of the Commission's proposal:

- organising more effective and closer cooperation between social security institutions to enable all stakeholders to benefit from the modernisation of Regulation 883/04;
- simplifying the implementing Regulation;
- improving the transparency of the financial procedures between the institutions and in respect of persons covered by the Regulation;
- flexibility and effectiveness in setting the rules.

The Commission welcomes the Council's efforts in taking on board the EP amendments as comprehensively as possible. Most of them have been accepted in substance. The remaining differences are about phrasing and terminology due to the need to ensure consistency throughout the Regulation. As a result of the length of the negotiation process (six Presidencies) and the complexity and number of provisions, a thorough screening of the text took place under the last Presidency. The Commission fully endorses this 'cleaning-up' exercise as it aims to ensure consistency throughout the text and improve legal certainty.

Other differences concern technical aspects, in particular as regards the technological requirements for electronic data exchange. Most of the changes result from experts' work in this field, for example the definition of an 'electronic contact point' in Article 1(2) (a), Annex IV and the provision for a transitional period for electronic data exchange in Article 96. The Commission supports these technical changes.

Overall, the Commission considers that the vast majority of the modifications made by the Council contribute to improving the processes and procedures in order to provide the benefits in a speedier and more efficient way (see in particular Article 2(1); Article 3(2), Articles 3 to 7 and Articles 16, 17, 28, 35, 44 and 90 dealing with information). The changes also usefully clarify further the roles and responsibilities of the various parties (see for example Article 14 on posting of workers, Article 26 on scheduled treatment, Article 56 on unemployment benefits and Article 88 dealing with medical examinations and administrative checks). The Commission also considers that the text of the Council common position maintains the delicate balance between the rights and obligations of individuals compared with the prerogatives of the social security institutions and competent authorities.

3.2 European Parliament amendments included in full, in part, or in principle in the amended proposal and included in full, in part, or in principle in the common position

The Council was able to accept 145 of the 162 amendments, either wholly or partially included into the Commission's amended proposal, namely amendments No 2, 4, 5, 7-8, 12, 14, 17-25, 27-34, 36-47, 49-54, 56-71, 73-78, 80-88, 90-107, 109-132, 134-146, 147 (first part), 148 (first part), 149, and 152-162.

The Council also accepted, subject to redrafting, the principles underlying amendments No 3 (new recital 8a), 6 and 9 (definitions of 'access point' and 'standardised electronic message'), 10 (reference to the disabled introduced alongside the reference to the elderly), 11 (rules for exchanges between institutions), 15 (exchange of personal data between national administrations and the protection of such data), 16 (rules for exchanges between beneficiaries and institutions), 26 (provisional application of legislation and provisional granting of benefits), 28 (administrative agreements between two or more Member States), 48 (procedure for application of Article 13 of the basic Regulation), 72 (deadline for replying to a request for authorisation of medical treatment in another Member State), 97 and 98 (additional provisions for the calculation of benefits).

3.3 European Parliament amendments not included in the amended proposal and not included in the Council common position

- Amendment No 15 (Article 3(2)) — exchange of personal data between national administrations and the protection of such data — as far as the reference to Directive 95/46/EC on processing of personal data and the content of Annex IV to Regulation 883/04 are concerned.
- Amendment No 26 (Article 6(4)) — while in agreement with the Article, the Council and the Commission were of the view that the text should be further clarified as set out in Article 6(5) of the common position.
- Amendment No 55 (Article 19(2)) — this amendment provides that the certificate determining the legislation applicable will indicate the wages stated by the employer. The Council shared the Commission's view that this goes further than the information needed for social security purposes and the objectives of the Regulation.

3.4 Main differences between the Commission's amended proposal and the Council common position

- Electronic exchange of data: in conjunction with Article 4(2), the Council has clarified in a new provision (Article 96) the possibility for a transitional period for electronic data exchanges between institutions of the Member States and has set out their limits. The Commission supports this point as it responds to the needs of some Member States to prepare themselves whilst ensuring that reaping the benefits of the electronic exchange would not be deferred beyond a date agreed by all Member States.
- Conversion of insurance periods: Article 13 contains a detailed provision allowing the Member States to convert the period of insurance expressed in different units for the purposes of aggregation. The Commission's proposal aimed to simplify this provision derived from Regulation 574/72. It was based on the assumption that only 5-day weeks were used. The discussion in Council showed that this was not the case as some Member States' legislation still prescribes calculation (at least for some schemes) on the basis of a 6- or 7-day week (e.g. in the case of self-employed persons). The Commission therefore agrees to include this provision in the text for the time being. The conversion table ensures

that the conversion of periods does not entail any loss of insurance periods. Furthermore it will be used as a common tool for an automatic calculation process, thereby reducing the risk of errors.

- Deadlines for the introduction and settlement of claims between Member States (amendments 164 – 167). The Council considered it necessary to extend the deadlines proposed by the Parliament and the Commission for the introduction and settlement of claims and 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). Some Member States were of the opinion that any reduction of those deadlines could only be introduced in the light of both experience and technological progress. The Commission shares this approach to a certain extent. The procedure has been improved and broken down into stages. The Commission acknowledges the lack of experience with this new procedure. Furthermore, the Commission accepts the review clause introduced in Article 87 because the work currently carried out by the Audit Board, which assists the Administrative Commission for the Coordination of Social Security Systems, has already produced positive results. Based on the above, the Commission can accept the text of the Council common position.
- Article 26(6) — amendment 79. The Commission supported the European Parliament amendment relating to the reimbursement of travel and accommodation costs for a person accompanying a person with disabilities. However, according to the European Court of Justice case law and taking into account the limits of a Regulation which aims to coordinate and not harmonise social security legislation, the Commission acknowledges that it is a matter for national legislation. The position of the Council is in accordance with the current state of law concerning travel costs that are inseparable from the medical treatment of the insured person. The Commission therefore accepts the Council common position on this point. The situation of disabled patients and accompanying persons (and also persons accompanying children as regards their travel and accommodation costs) could be dealt with through another legislative instrument with a legal basis aimed at approximating national legislations.

4. CONCLUSION

The Commission has been careful to ensure that individual rights are maintained, for instance in the fields of occupational diseases, accidents at work and family benefits. The Commission recognises the difficulty of this task given the diversity and specificities of the national social security legislation of the 27 Member States. The Commission agrees that a certain degree of flexibility is necessary in the procedures, for instance with regard to time limits.

The Commission emphasises that the agreement to improve cooperation between institutions of the Member States through a common and secure network for the electronic exchange of information for social security purposes (EESSI) is a major feature of the modernised coordination under Regulation 883/04. Cooperation between social security institutions on financial matters has been clarified and better structured.

The Commission considers that the Council common position improves some of the measures contained in the Commission's proposal. In particular, it clarifies certain criteria with the result that some of the key concepts set out in the basic Regulation will be implemented in a more homogenous way, such as determination of the legislation applicable or posting of

workers. This represents progress for all parties involved. The Commission also notes that the Council common position largely takes account of the position of the European Parliament.

The Commission considers the compromise reached by the Council on the most sensitive issues as the start of a dynamic process to allow all Member States to align themselves with the position of the European Parliament. The Commission recognises the value of this process and will endeavour to pursue and contribute to it.

Lastly, the adoption of this 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 gives overall support to the Council common position.