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REPORT

from : Permanent Representatives Committee (Part 1)

to : Council (EPSCO)

No. Cion prop. : 5896/06 SOC 44 CODEC 93 - COM(2006) 16 final

Subject : **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**
- **Title III, Chapters II (Benefits in respect of accidents at work and occupational diseases) and III (Death grants).**
= **Partial general approach**

I. INTRODUCTION

1. On 29 April 2004, the European Parliament and the Council adopted Regulation (EC) No 883/2004¹ on the coordination of social security systems (hereinafter referred to as the "basic Regulation") which is intended to replace Regulation (EEC) No 1408/71². Article 89 of the basic Regulation requires that a Regulation laying down the procedures for its implementation be adopted. To this effect, on 31 January 2006, the Commission submitted the above-mentioned proposal for a Regulation to the Council.

¹ OJ L166, 30.4.2004, corrigendum OJ L 200, 7.6.2004.

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).

2. The objective of the proposal for an implementing Regulation is to complete the process of modernising the rules currently applicable in this field, thus replacing the current implementing Regulation (Regulation (EEC) No 574/72). It aims, in particular, to define for all the parties involved (insured persons, their employers as the case may be, social security institutions and the competent authorities of the Member States) the procedures for implementing in practice the rules set out in the basic Regulation.
3. The proposal completes the modernisation accomplished by virtue of the basic Regulation and seeks to improve current procedures by simplifying them and clarifying the existing provisions in many areas. In this respect, the proposal is intended to clarify the rights and obligations of the various stakeholders.
4. The proposed legal bases being Articles 42 and 308 of the Treaty, the Council is required to act unanimously, in accordance with the co-decision procedure with the European Parliament.
5. The European Parliament delivered its opinion on 9 July 2008.³ The Economic and Social Committee delivered its opinion on 26 October 2006.
6. In view of the subject matter, the Regulation to be adopted will also apply to the European Economic Area.
7. Due to the complexity and urgency of this file, and in accordance with the approach already taken in Council's discussions on the basic Regulation, it has been decided to aim for Council's agreement on a chapter-by-chapter basis.

³ Doc. 11373/08.

8. In accordance with this procedure, on 1 June 2006 the Council reached a partial general approach on Titles I and II of the draft implementing Regulation and on the relevant parts of the draft Regulation amending the basic Regulation and determining the content of Annex XI (docs. 9584/06 ADD 1 and 9613/06).
9. On 1 December 2006, the Council reached a partial general approach on Title III, Chapter IV, of the draft implementing Regulation and on the relevant parts of the draft Regulation amending the basic Regulation and determining the content of Annex XI (docs 15600/06 and 15596/06).
10. On 30 May 2007, the Council reached a partial general approach on Title III, Chapter I, and Title IV, Chapter I, of the draft implementing Regulation and on the relevant parts of the draft Regulation amending the basic Regulation and determining the content of Annex XI (docs. 9747/07, 9752/07 and 9759/07).
11. On 5 December 2007, the Council reached a partial general approach (doc.15211/07) on:
 - Title III, Chapters V and VI of the proposal;
 - Title IV, Chapter II.

in parallel with the relevant parts of the proposal for a Regulation amending the basic Regulation and determining the content of Annex XI (doc. 15213/07).

12. On 9 June 2008, the Council reached a further partial general approach (doc.9988/08) on Title IV (Financial Provisions), Chapter III (Recovery of benefits provided but not due, recovery of provisional payments and contributions, offsetting and assistance with recovery).

13. At its meeting on 24 September 2008, the Permanent Representatives Committee reached unanimous agreement in principle (subject to one parliamentary scrutiny reservation) on the text of Title III, Chapters II (Benefits in respect of accidents at work and occupational diseases) and III (Death grants), as set out in Annex I to this note. The Committee reached further unanimous agreement (subject to one parliamentary scrutiny reservation) on the text of Title V (Miscellaneous, transitional and final provisions) as set out in Annex I to doc. 13366/08.

The UK delegation maintained a parliamentary scrutiny reservation. All delegations maintained linguistic scrutiny reservations pending availability of the texts in their own language versions.

14. The explanatory note in Annex II to this note states that the Council's agreement on the text of Title III, Chapters II and III, of the draft Regulation will be provisional since only part of the text of the draft Regulation has been examined. It also provides further clarifications with regards to Article 32.

II. CONCLUSION

15. The Permanent Representatives' Committee therefore invites the Council to reach a partial general approach on the text of Title III, Chapters II and III, of the draft Regulation, as set out in Annex I, subject to the conditions laid down in the Explanatory Note, as set out in Annex II.

Draft

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

TITLE III – SPECIAL PROVISIONS CONCERNING THE VARIOUS CATEGORIES OF BENEFITS

Chapter II – Benefits in respect of accidents at work and occupational diseases

Article 32⁴

*right to benefits in kind and in cash in the event of residence or stay
in a Member State other than the competent Member State*

1. For the purposes of the application of Article 36 of the basic Regulation , the procedures laid down in Articles 24 to 27 of the implementing Regulation shall apply *mutatis mutandis*.
2. When providing special benefits in kind in connection with accidents at work and occupational diseases under national legislation of the Member State of stay or residence, the institution of that Member State shall without delay inform the competent institution.⁵
3. (deleted).

⁴ See explanatory note.

⁵ See explanatory note.

Article 33

Authorised treatments
(deleted)⁶

Article 34

Procedure in the event of an accident at work or occupational disease which occurs in a Member State other than the competent Member State

1. If the accident at work occurs or the occupational disease is diagnosed for the first time in a Member State other than the competent Member State, the declaration or notification of the accident at work or the occupational disease, where the declaration exists under national legislation, shall be carried out in accordance with the legislation in the competent Member State, without prejudice, where appropriate, to the other legal provisions in force in the Member State in which the accident at work occurred or in which the first medical diagnosis of the occupational disease was made, which remain applicable in such cases. The declaration or notification shall be addressed to the competent institution.
2. The institution of the Member State in the territory of which the accident at work occurred or in which the occupational disease was first diagnosed, shall notify the competent institution of medical certificates drawn up in the territory of this Member State .

⁶ The following new paragraph 2a should be inserted in Article 36 of the basic Regulation:
“1. *Without prejudice to any more favourable provisions in paragraphs 2 and 2a of this Article, Articles 17, 18(1), 19(1) and 20(1) shall also apply to benefits relating to accidents at work or occupational diseases.*
2. *Unchanged.*
2a. *The competent institution may not refuse to grant the authorisation provided for in Article 20(1) of the basic Regulation to an employed or self-employed person who has sustained an accident at work or has contracted an occupational disease and who is entitled to benefits chargeable to that institution, where the treatment appropriate to his/her condition cannot be given in the Member State in which the person resides within a time limit which is medically justifiable, taking into account his/her current state of health and the probable course of his/her illness.*
3. *Unchanged.*”

3. Where, as a result of an accident while travelling to and from work which occurs in the territory of a Member State other than the competent Member State, an inquiry is necessary in the territory of the first Member State in order to determine any entitlement to relevant benefits, a person may be appointed for this purpose by the competent institution, which shall inform the authorities of that Member State. The institutions shall cooperate with each other in order to assess all relevant information and to consult the reports and any other documents relating to the accident.
4. Following treatment, a detailed report accompanied by medical certificates relating to the permanent consequences of the accident or disease, in particular the injured person's present state and the recovery or stabilisation of injuries, shall be sent upon request of the competent institution. The relevant fees shall be paid by the institution in the place of residence or by the institution in the place of stay, where appropriate, at the rate applied by that institution to the charge of the competent institution.
5. At the request of the institution in the place of residence or stay, where appropriate, the competent institution shall notify it of the decision setting the date for the recovery or stabilisation of injuries and, where appropriate, the decision concerning the granting of a pension.

Article 35

Dispute concerning the occupational nature of the accident or disease

1. Where the competent institution disputes the application of the legislation relating to accidents at work or occupational diseases under Article 36(2) of the basic Regulation, it shall without delay inform the institution in the place of residence or stay which provided the benefits in kind, which will then be considered as sickness insurance benefits.

2. When a final decision has been taken on this subject, the competent institution shall without delay inform the institution in the place of residence or stay which provided the benefits in kind.

In case an accident at work or occupational disease is not established, benefits in kind shall then continue to be provided as sickness benefits if the person concerned is entitled to them.

In case an accident at work or occupational disease is established, sickness benefits in kind provided to the person concerned shall be considered as accident at work or occupational disease benefits from the date on which the accident at work occurred or the occupational disease was first medically diagnosed.

3. The second sub-paragraph of Article 6(4) of the implementing Regulation shall apply *mutatis mutandis*.

Article 36

Procedure in the event of exposure to the risk of an occupational disease in several Member States

1. In the case referred to in Article 38 of the basic Regulation, the declaration or notification of the occupational disease shall be sent to the competent institution for occupational diseases of the last Member State under the legislation of which the person concerned pursued an activity likely to cause the said disease.

When the institution to which the declaration or notification was sent establishes that an activity likely to cause the occupational disease in question was last pursued under the legislation of another Member State, it shall send them and all accompanying certificates to the equivalent institution in that Member State.

2. Where the institution of the last Member State under the legislation of which the person concerned pursued an activity likely to cause the occupational disease in question establishes that the person concerned or his/her survivors do not meet the requirements of that legislation, inter alia because the person concerned had never pursued in that Member State an activity which has caused the occupational disease or because that Member State does not recognise the occupational nature of the disease, the said institution shall forward without delay to the institution of the previous Member State under the legislation of which the person concerned pursued an activity likely to cause the occupational disease in question the notification and all accompanying certificates, including the findings and reports of medical examinations performed by the first institution.
3. Where appropriate, the institutions shall go back according to the same procedure as far as to the equivalent institution in the Member State under whose legislation the person concerned first pursued an activity likely to cause the occupational disease in question.

Article 37

Exchange of information between institutions and advance payments in the event of an appeal against rejection

1. In the event of an appeal against a decision to refuse benefits taken by the institution of one of the Member States under the legislation of which the person concerned pursued an activity likely to cause the occupational disease in question, that institution shall inform the institution to which the declaration or notification was sent, in accordance with the procedure provided for in Article 36(2) of the implementing Regulation, and shall subsequently inform it, when a final decision is reached.

2. Where a person is entitled to benefits under the legislation applied by the institution to which the declaration or notification was sent, that institution shall make the advance payments, the amount of which shall be determined, where appropriate, after consulting the institution which made the decision against which the appeal was lodged, in such a way that overpayments are avoided. The latter institution shall reimburse the advance payments made if, as a result of the appeal, it is obliged to provide these benefits. That amount will then be deducted from the benefits due to the person concerned, in accordance with the procedure provided for in Article 71 and 72 of the implementing Regulation.
3. The second sub paragraph of Article 6(4) of the implementing Regulation shall apply *mutatis mutandis*.

Article 38

Aggravation of an occupational disease

In the cases covered by Article 39 of the basic Regulation, the claimant must provide the institution in the Member State from which he/she is claiming entitlement to benefits with details concerning benefits previously granted for the occupational disease in question. That institution may contact any other previously competent institution in order to obtain the information it considers necessary.

Article 39

Assessment of the degree of incapacity in the event of occupational accidents or diseases which occurred previously or subsequently

Where a previous or subsequent incapacity for work was caused by an accident which occurred when the person concerned was subject to the legislation of a Member State which makes no distinction according to the origin of the incapacity to work, the competent institution or the body designated by the competent authority of the Member State in question :

- shall, upon request by the competent institution of another Member State, provide information concerning the degree of the previous or subsequent incapacity for work, and where possible, information making it possible to determine whether the incapacity is the result of an accident at work within the meaning of the legislation applied by the institution in the other Member State;
- shall take into account the degree of incapacity caused by these previous or subsequent cases when determining the right to benefits and the amount, in accordance with the applicable legislation.

Article 40

Submission and investigation of claims for pensions or supplementary allowances

1. In order to receive a pension or supplementary allowance under the legislation of a Member State, the person concerned or his/her survivors residing in the territory of another Member State shall submit, where appropriate, a claim either to the competent institution or to the institution in the place of residence, which shall send it to the competent institution.

The claim shall contain the necessary information in accordance with the legislation applied by the competent institution.

2. (deleted).⁷

⁷ The following horizontal provision should be inserted in Article 3 of the implementing Regulation: *The relevant institution shall notify the claimant residing or staying in another Member State of its decision directly or through the liaison body of the Member State of residence or stay. When refusing the benefits it shall also indicate the reasons for refusal, the remedies and periods allowed for appeals. A copy of this decision shall be sent to other involved institutions.*"

Article 41

Special implementing measures

1. For the Member States referred to in Annex 2, the provisions of Title III, Chapter 2 of the basic Regulation relating to benefits in kind shall apply to persons entitled to benefits in kind solely on the basis of a special scheme for civil servants only to the extent specified therein.
2. Article 31(2) second sentence and (3) of the implementing Regulation shall apply *mutatis mutandis*.

Chapter III – Death grants

Article 42

Claim for death grants

For the purposes of applying Articles 42 and 43 of the basic Regulation, the claim for death grants shall be sent either to the competent institution or to the institution in the claimant's place of residence, which shall send it to the competent institution.

The claim shall contain the necessary information in accordance with the legislation applied by the competent institution.

Draft Explanatory Note

The text which should be submitted to the Council constitutes only a part of the Commission proposal; the examination of the few remaining Articles will continue over the forthcoming month.

Since a legislative text can be given final approval only as a whole, partial agreement on Title III, Chapters II and III, is by definition subject to subsequent review, depending on how the rest of the Act develops.

In addition:

- with regard to Article 32, it was agreed that the document to be established by the Administrative Commission for the determination of the legislation applicable should clearly require that an indication be given with regard to the worker's entitlement to any benefits in respect of accidents at work and occupational diseases;
- as in the case of Article 36(1) and (2) of the basic Regulation, it was agreed that paragraphs (1) and (2) of Article 32 should be considered jointly.

Moreover, delegations' acceptance of this text is subject to final approval of the draft Regulation amending Regulation (EC) No 883/2004 on the coordination of social security systems and determining the content of Annex XI.