



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 24 September 2008**

**13366/08**

---

---

**Interinstitutional File:  
2006/0006 (COD)**

---

---

**SOC 527  
CODEC 1181**

## **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 V: Miscellaneous, transitional and final provisions.**

= **Partial general approach**

---

### **I. INTRODUCTION**

1. On 29 April 2004, the European Parliament and the Council adopted Regulation (EC) No 883/2004<sup>1</sup> on the coordination of social security systems (hereinafter referred to as the "basic Regulation") which is intended to replace Regulation (EEC) No 1408/71<sup>2</sup>. 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.

---

<sup>1</sup> OJ L166, 30.4.2004, corrigendum OJ L 200, 7.6.2004.

<sup>2</sup> 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.<sup>3</sup> 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.

---

<sup>3</sup> 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 doc.13365/08. The Committee further reached 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 this note.

The UK delegation maintained a parliamentary scrutiny reservation. All delegations maintained linguistic scrutiny reservations pending availability of the text 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 V of the draft Regulation will be provisional since only part of the text of the draft Regulation has been examined.

## II. CONCLUSION

15. The Permanent Representatives' Committee therefore invites the Council to reach a partial general approach on the text of Title V 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 V – MISCELLANEOUS, TRANSITIONAL AND FINAL PROVISIONS**

*Article 82*

*Medical examination and administrative checks*

1. Without prejudice to other specific provisions, where a recipient or a claimant of benefits, or a member of his/her family, is staying or residing within the territory of a Member State other than that in which the debtor institution is located, the medical examination shall be carried out, at the request of this latter institution, by the institution of the beneficiary's place of stay or residence in accordance with the procedures laid down by the legislation applied by this institution.

The debtor institution shall inform the institution of the place of stay or residence of any special requirements, if necessary, to be followed and points to be covered by the medical examination

2. The institution of the place or stay or residence shall forward a report to the debtor institution that requested the medical examination. This institution shall be bound by the findings of the institution of the place of stay or residence.

The debtor institution shall reserve the right to have the beneficiary examined by a doctor of its own choice. However, the beneficiary may be asked to return to the Member State of the debtor institution only if he or she is able to make the journey without prejudice to his/her health and the cost of travel and accommodation is paid for by the debtor institution.

3. Where a recipient or a claimant of benefits, or a member of his/her family, is staying or residing in the territory of a Member State other than that in which the debtor institution is located, the administrative check shall, at the request of the debtor institution, be performed by the institution of the beneficiary's place of stay or residence.<sup>4</sup>

The provisions of paragraph 2 shall also apply in this case.

4. Paragraphs 2 and 3 shall also apply to determine or control the state of dependence of a recipient or a claimant of long-term care benefits mentioned in Article 34 of the basic Regulation.

The competent authorities or competent institutions of two or more Member States may agree specific provisions and procedures to improve fully or partly labour market readiness of claimants and recipients and their participation to any schemes or programmes available in the Member State of stay or residence for that purpose.

5. By exception to the principle of free of charge mutual administrative cooperation in Article 76(2) of the basic regulation, the effective amount of the expenses of controls mentioned in paragraphs 1 to 4 shall be refunded to the institution which was instructed with it, by the debtor institution which required of him to them.

---

<sup>4</sup> The following new paragraph 2a should be included in Article 5 of the draft implementing Regulation:  
*"Pursuant to Article 5(2) of this Regulation, where there is doubt about the information provided by the persons concerned, the validity of a document or supporting evidence or the accuracy of the facts on which the particulars contained therein are based, the institution of the place of stay or residence shall, at the request of the competent institution, proceed to the necessary verification of this information or document, subject of possibilities to carry it out."*

*Article 83*  
*Notifications*

1. The Member States shall notify the European Commission of the details of the bodies defined in Article 1(m), (q) and (r) of the basic Regulation and Article 1(a) and (b) of the implementing Regulation, and the institutions designated in accordance with the implementing Regulation.
2. The bodies specified in paragraph 1 shall be provided with an electronic identity in the form of an identification code and electronic address.
3. The Administrative Commission shall establish the structure, content and modalities, including the common format and model, for notification of the details specified in paragraph 1.
4. Annex 4 to this Regulation gives details of the public data base containing the information specified in paragraph 1. The database shall be established and managed by the European Commission. The Member States shall, however, be responsible for the input of their own national contact information into this database. Moreover, the Member States shall ensure the accuracy of the input of the national contact information required under paragraph 1.<sup>5</sup>

---

<sup>5</sup> New recital (4a) to be inserted in the Preamble: "*Whereas achieving the goal of maximising the smooth operation of the complex procedures that implement the rules on the coordination of social security systems means that the efficient management of the procedures requires a system for the immediate updating of Annex 4 of this Regulation; the preparation and application of these provisions requires close cooperation between the Member States and the Commission; the implementation of these provisions must be carried out rapidly in view of the consequences that delays have for citizens and administrations alike; it is therefore necessary that the Commission should be empowered to establish and manage a database to ensure that the database must be operational as soon as possible prior to the date of application of this Regulation; the Commission should, in particular, take the necessary steps to integrate all measures contained in Article 83 of this Regulation and shown in Annex 4 into this database.*"

5. The Member States shall be responsible for keeping the information specified in paragraph 1 up to date in accordance with the notification procedure specified in this paragraph.

*Article 84*  
*Documents*

1. (deleted)
2. (deleted)

*Article 85*  
*Information*

1. The Administrative Commission shall prepare the information needed to ensure that the parties concerned are aware of their rights and the administrative formalities required to assert them. This information shall, where possible, be disseminated electronically via publication on line on sites accessible to the public. The Administrative Commission shall ensure that the information is regularly updated and pay attention to the quality of services provided to customers.
2. The Advisory Committee referred to in Article 75 of the basic Regulation may issue opinions and recommendations on improving the information and its dissemination.
3. The Member States shall ensure that the necessary information is made available to the persons covered by the basic Regulation in order to inform them of the changes introduced by this basic Regulation and by the implementing Regulation to enable them to assert their rights. They shall also provide for user-friendly services.
4. The competent authorities shall ensure that their institutions are aware of and apply all the Community provisions, legislative or otherwise, including the decisions of the Administrative Commission, in the areas covered by and within the terms of the basic Regulation and the implementing Regulation.
5. (deleted).

*Article 86*

*Currency conversion*

For the purposes of applying the basic Regulation and the implementing Regulation, the exchange rate between two currencies shall be the reference rate published by the European Central Bank. The date to be taken into account for determining the exchange rate shall be fixed by the Administrative Commission.

*Article 87*

*Statistics*

The competent authorities shall compile statistics on the application of the basic Regulation and the implementing Regulation and forward them to the secretariat of the Administrative Commission. These data shall be collected and organised according to the plan and method defined by the Administrative Commission. The European Commission shall be responsible for disseminating the information.

*Article 88*

*Amendment of the Annexes<sup>6</sup>*

Annexes 1, 2, 3, 4 and 5 the implementing Regulation and Annexes VI, VII, VIII and IX of the basic Regulation may be amended by Commission Regulation at the request of the Administrative Commission.

---

<sup>6</sup> New paragraph 3 to be added to Article 9:

*"Provisions contained in implementing agreements concluded between two or more Member States with the same purpose, or which are similar to those referred to in paragraph 2, which are in force on the day preceding the entry into force of the implementing Regulation, and are included in Annex 5 to Council Regulation (EEC) No 574/72, shall continue to apply, for the purposes of dealing between two or more Member States, provided they are also included in Annex 1 to this Regulation."*

In addition, the title of Annex I should read:

*"Implementing provisions for bilateral agreements remaining in force and other implementing agreements"*  
*(Article 8(1) and Article 9(2) and (3))*

*Article 89<sup>7</sup>*  
*Transitional provisions*

The provisions of Article 87 of basic Regulation shall apply to the situations covered by the implementing Regulation.

*Article 89a*  
*Transitional provisions relating to pensions*

- (1) Where the contingency arises before the date of implementation in the territory of the Member State concerned and the claim for pension has not been awarded before that date, such claim shall give rise to a double award, in as much as benefits must be granted, pursuant to such contingency, for a period prior to that date:
- (a) for the period prior to the date of implementation of this Regulation in the territory of the Member State concerned, in accordance with Regulation (EEC) No. 1408/71 or agreements in force between the Member States concerned,

---

<sup>7</sup> Article 87(8) of the basic Regulation should be amended as follows:

"8. *If, as a result of this Regulation, a person is subject to the legislation of a Member State other than the one determined in accordance with Title II of Regulation (EEC) No 1408/71, that legislation shall continue to apply as long as the relevant situation remains unchanged and in any case for a maximal period of 10 years from the implementation of this Regulation unless the person concerned requests that he/she be subject to the legislation applicable under this Regulation. The request shall be submitted within three months after the date of application of this Regulation to the competent institution of the Member State whose legislation is applicable under this Regulation if the person concerned is to be subject to the legislation of that Member State as of the date of application of this Regulation. If the request is made after the time limit indicated, the changeover shall take place on the first day of the following month.*"

- (b) for the period commencing on the date of implementation of this Regulation in the territory of the Member State concerned, in accordance with the basic Regulation.

However, if the amount calculated pursuant to the provisions referred to under (a) is greater than that calculated pursuant to the provisions referred to under (b), the person concerned shall continue to be entitled to the amount calculated pursuant to the provisions referred to under (a).

- (2) A claim for invalidity, old age or survivors' benefits submitted to an institution of a Member State from the date of implementation of this Regulation in the territory of the Member State concerned shall automatically necessitate the reassessment of the benefits which have been awarded for the same contingency prior to that date by the institution or institutions of one or more Member States, in accordance with the basic Regulation; such reassessment may not give rise to any reduction in the amount of the benefit awarded.

#### *Article 89b*

##### *Transitional period for electronic data exchanges*

1. Each Member State may benefit from a transitional period for exchanging data by electronic means as provided for by Article 4 paragraph 2 of this Regulation.

These transitional periods shall not exceed 24 months from the date of entry into force referred to in Article 91.

However, if the delivery of the necessary Community infrastructure (EESSI) is significantly delayed with regard to the entry into force of this Regulation, the Administrative Commission may agree on any appropriate extension of these periods.

2. The practical modalities for any necessary transitional periods referred to in paragraph 1 shall be laid down by the Administrative Commission with a view of ensuring the necessary data exchange for the application the basic Regulation and this Regulation.

*Article 90*

*Repeal*

1. Council Regulation (EEC) No 574/72 is repealed with effect from the date of entry into force of the implementing Regulation.

However, Regulation (EEC) No 574/72 shall remain in force and continue to have legal effect for the purposes of:

- a) Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the grounds of their nationality<sup>8</sup> until such time as the said Regulation is repealed or amended;
- b) Council Regulation (EEC) No 1661/85 of 13 June 1985 laying down the technical adaptations to the Community rules on social security for migrant workers with regard to Greenland<sup>9</sup>, until such time as the said Regulation is repealed or amended;
- c) the Agreement on the European Economic Area<sup>10</sup>, the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons<sup>11</sup> and other agreements containing a reference to Regulation (EEC) No 574/72, until such time as the said agreements are amended on the basis of this Regulation.

---

<sup>8</sup> OJ L 124, 20.5.2003, p. 1.

<sup>9</sup> OJ L 160, 20.6.1985, p. 7.

<sup>10</sup> OJ L 1 of 3.1.1994, p. 1.

<sup>11</sup> OJ L 114, 30.4.2002, p. 6. Agreement most recently amended by Decision No 2 of the EU-Swiss Joint Committee (OJ L 187, 26.7.2003, p. 55).

2. In Council Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community<sup>12</sup>, and more generally in all other Acts of the Community the references to Regulation (EEC) No 574/72 shall be understood as referring to the implementing Regulation.

*Article 91*

*Final provisions*

This Regulation shall be published in the Official Journal of the European Union and shall enter into force on<sup>13</sup>

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament*

*The President*

*For the Council*

*The President*

---

<sup>12</sup> OJ L 209, 25.7.1998, p. 46.

<sup>13</sup> Note to the services of the Official Journal : "please insert the date corresponding to the first day of the month which follows the period of 6 months from the date of publication and in any case not earlier than 1 January 2010."

**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 V is by definition subject to subsequent review, depending on how the rest of the Act develops.

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.