

L'EUROPE

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Focus on ...

Implementing regulation on the coordination of social security n°883/2004

On 31 January 2006, the Commission adopted a **proposal for a Regulation** which implements the provision of Regulation 883/2004, the modernised and simplified Regulation on the coordination of social security schemes. Therefore by 2009 the new **Regulation n°883/2004 should replaced the current Regulation n°108/71.**

The proposal defines the **practical procedures** for social security institutions as well as EU citizens: what steps in order to apply for the payment of a pension, how the institutions are to exchange information to ensure that the insured persons' full career is taken into account, how to define the residence...

What's new ? Mainly provisions to get a closer and **more effective cooperation** between social security institutions. It is a question of facilitating the procedures for insured persons and reducing time needed for institutions to respond and to process cross-border cases. Today, it takes two years to get a pension through the coordination process.

The ambitious European network for social security is dropped. The institutions covered by the Regulation would have just to share with each other all data necessary for establishing and determining rights and obligations, through an **"access point"** designated by each Member State. Any supporting document issued by an institution would have to be accepted by others on the basis of the principle of **mutual confidence**. Moreover, in case of uncertainty, **provisional application** of legislation and provisional payment of benefits would have to be made.

1/2006

At last, "because the social security schemes covered by Regulation n°883/2004 are based on **solidarity** between all insured persons » mechanisms would insure more effective recovery of claims relating to benefits not due or contributions not paid.

☞ *Proposal for a Regulation laying down the procedure for implementing regulation EN n°883/2004 on the coordination of social security systems COM(2006)16 final*

SUMMARY

- **FOCUS ON :** *Implementing Regulation on the coordination of social security n°883/2004* P.1
- **PORTABILITY :** *Proposal for transferability of pension rights* P.2
- **MOBILITY :** *a European report shows the positive impact of the 2004 enlargement* P.2
- **OPEN METHOD OF COORDINATION :** *Second synthesis report on pensions* P.3
- **GENERAL INTEREST :** *a new communication on services of general interest* P.4
- **SERVICES :** *Brussels puts forward amended proposal on services in the EU single market* P.4
- **POSTING OF WORKERS :** *Communication on the posting of workers in the framework of provision of services* P.5
- **SOCIAL DIALOGUE :** *First multisector agreement* P.6
- **OTHER COUNTRIES :** *United-Kingdom : State pension age to rise to 68 by 2048* P.6
- **SOCIAL :** *Extraordinary summit on "flexisecurity" by the end of 2007* P.6

PORTABILITY

Proposal for transferability of pension rights

The Commission's proposed directive on the portability of supplementary pension rights (*see Bref n°3/2005*) is discussed in the Council and the European Parliament.

The proposal aims to complete the Directive 98/49/EC on safeguarding the supplementary pension rights with provisions regulating conditions governing acquisition of rights (minimum age, waiting period), preservation of dormant pension rights and transferability: an outgoing worker should have the choice between maintaining his rights within the supplementary scheme of his former job and the transfer of his acquired rights.

The proposal covers all supplementary pension schemes *with the exception for the schemes covered by the Regulation n°1408/71: ARRCO and AGIRC are thus out of the scope*. Whatever, financed on a pay-as-you-go-basis, they could not be concerned by transferability.

The European Parliament is working on the *first reading to publish next November*.

The Directive is under the unanimity vote.

☞ Proposal for a directive on improving the portability of supplementary pension rights COM(2005)507 final 20.10.2005

Including schemes covered by the Regulation n°1408/71 ?

The draft report of the parliamentary committee asks for the application of the Directive to all supplementary pension schemes including complementary pension schemes which have come into the Regulation n°1408/71, at least to the entitlements allocated after the entry into force of the Directive. The Netherlands and the Denmark both support this position which is carried out by the Dutch MP Ieke van der Burg.

AEIP expressed its opinion in a press release to stress out that **schemes covered by regulation n°1408/71 should be maintained out of the scope** of the draft directive in the interests of **consistency** of the directives regarding pensions into the second pillar such as Directive 2003/41/EC. The previous directive on safeguarding supplementary pension rights

98/49/EC provides that no pension or benefit should be subject to both the provisions of this Directive and those of Regulations (EEC) No 1408/71 and (EEC) No 574/72, and therefore any supplementary pension scheme which comes within the scope of those Regulations, because a Member State has made a declaration to that effect under Article 1(j) of Regulation (EEC) No 1408/71, cannot be subject to the provisions of this Directive;

AGIRC and ARRCO in charge of the presidency of AEIP through Bernard DEVY (vice-president of ARRCO) is following closely this issue, in partnership with the **Finnish member TELA** which is also a coordinated first pillar complementary scheme.

MOBILITY

A European Commission report shows the positive impact of the 2004 enlargement

A European Commission report published in February shows that workers' mobility from the **Central and Eastern countries** to EU15 has had mostly positive effects and has been in most countries quantitatively less important than foreseen..

New Member States (EU 10) nationals represented less than 1% of the working age population in all countries except Austria (1,4% in 2005) and above all Ireland (3,8% in 2005). The latter has seen relatively the largest inflow of workers.

The Commission makes the link between the good economic performance of 3 countries (Ireland, United Kingdom and Sweden) and the choice they made not to apply national restrictions to free movement of workers.

Transitional arrangements: second phase 2006-2009

After the enlargement on May 2004, Member States have had the faculty to introduce transitional arrangements regarding the access to their labour market by workers from 8 new Member (Malta and Cyprus did not fall under this exemption). The first phase ended on May 2006 and EU15 had to notify whether they will go on applying restrictions.

France, as Belgium and Luxembourg, notified that it intends to lift restrictions gradually in sectors with recruitment problems. Spain, Greece and Finland will lift restrictions. The Netherlands has postponed its decision to open up the labour market. Germany, Austria and Denmark will keep restrictions up to 2009.

It has been noted that Hungary, Poland and Slovenia impose reciprocal restrictions on labour flows in the opposite direction.

☞ *Report on the functioning of the transitional arrangements set out in the 2003 Accession treaty (period 1 May 2004-30 April 2006) COM/2006/0048/final*

OPEN METHOD OF COORDINATION

Second synthesis report on adequate and sustainable pensions

The second round of the open method of coordination in the field of pensions was presented in a synthesis report from the Commission issued on 27 February 2006.

The National Strategy Reports (NSR) presented by 25 Member States in the summer 2005 (see *Bref n°2/2005*) were discussed in a peer review involving the Social Protection Committee and the Economic Policy Committee, around the 3 common objectives of **adequacy**, **financial sustainability** and **adaptability** of pension schemes.

In the commission opinion, the same issues highlighted in the previous 2003 Joint report on Pensions still remain a priority:

- **Working longer** with the objective of increasing the employment rate of older workers (aged 55-64) to 50% (41 % in EU-25 in 2004) and the objective of an increase of 5 years of the effective age of exit from the labour market ;
- **Strengthening the link between contributions and benefits** through automatic adjustment mechanisms as in Sweden, Finland or Poland ;
- **Adapting pension systems** to structural changes and new needs such as credits for breaks in the work career for education, child and old-age care.

Two other issues emerge in the light of recent reforms:

- **Secure private pensions** complementing and partially replacing public pension provision ;

- Strengthening the **governance** of pension systems to increase transparency of pension systems and more consensual decision-making.

Further steps : the Commission intends to focus policy analysis and exchange of best practices on key issues via **horizontal studies** and workshops to provide inputs into future Joint report on social protection. The key issues for future horizontal work would be:

- The design of **minimum income** provisions for older people ;
- The link between the **flexibility** in the age of retirement and longer working lives ;
- Key issues in the development of **private pensions** (security, efficiency, transition costs...);
- Developing regular review and **adjustment** mechanisms.

☞ *Synthesis report on adequate and sustainable pensions COM(2006)62 final 27.02.2006*

The Economic Policy Committee projections against the backdrop

The projections regarding pensions have been established by the working Group on Ageing Populations (AWG) and issued at the same time as the report on adequate and sustainable pensions **steered** by the DG Employment and Social affairs.

The report on the Impact of ageing populations on public spending gathers age-related public expenditure projections as the common basis of work for the 25 State Members. The key conclusions are the following:

- The **old-age dependency** ratio (65+) is projected to double and Europe will go from having four people of working age for every elderly citizen currently to a ratio of two to one by 2050 ;
- **Public spending** is projected to increase for the EU15 except Austria and, in a smaller extent, Italy and Sweden due to their notional contribution-defined schemes;
- For the **EU 10 new** Members, the results are more various with an **initial decrease of public pension expenditure** in some countries like Poland due partly to pension reforms enacted

during the last 10 years which involve a partial switch of the public old-age pension scheme into private funded schemes ;

- More generally, the **evolution of the generosity of pension systems is projected to decline** with the projected fall of the “benefit ratio” of public pensions relative to wages as a result of reforms which index pension benefits on prices instead of wages and/or partial switch from statutory social security pension provision to private funded schemes. This move toward private sector pension creates new challenges for policy makers on regulation for securing adequate retirement income.

☞ *Impact of ageing populations on public spending on pensions, health and long-term care, education and unemployment benefits for the elderly ECFIN/EPC(2006)REP/238final (06.02.2006)*

GENERAL INTEREST

A new communication on social services of general interest

On 26 April, the Commission adopted an expected communication on social services of general interest (*see Bref n° 2/2005*). The document issued from DG Employment and social affairs, proposes steps to ensure that EU legal framework takes the specific characteristics of social services into account, especially the freedom to provide services. It constitutes the starting point for a large consultation.

Two categories of social services are identified:

1. **Statutory and complementary social security schemes**, covering the main risks of life. ARRCO and AGIRC schemes which are both entrusted by law of a mission of general interest are fully concerned.

Healthcare is not covered by this process: a specific initiative on health services is planned by the Commission.
2. **Other essential services provided directly to the person** such as rehabilitation and training, social housing or caring for elderly.

In complement of the **modified proposal for a directive on services** adopted on 4 April (*see below*), the Commission attempts to clarify the scope of the market rules in the field of social services and to define case by case the specificity of social services of general interest.

The Commission has launched a study to look at the situation of each Member State and will produce every two years a report describing the latest trends on social services of general interest.

The first report is planned for **mid-2007**.

☞ *Communication from the Commission “Implementing the Community Lisbon programme : social services of general interest in the European Union” COM(2006) 577 final*

SERVICES

Commission puts forward amended proposal on services in the EU single market

On 4 April, the Commission (DG Internal Market lead by Charlie McGREEVY) adopted an amended proposal for a directive on services in the EU market (so-called “Bolkenstein”). The amended proposal incorporates most of the amendments proposed by the European parliament in first reading (*see Bref 3/2005*).

On 29 May, the Council of Ministry get a political agreement on the amended proposal and a **second reading of the Parliament will take place in the mid-November**.

Now composed of 112 “whereas” and 47 articles, the new proposal provides a lot of exemptions and refers many times to the concept of **“overriding reasons relating to the public interest”**.

In line with the European Council conclusions, the Commission stresses the need to preserve the **“European social model”**.

There is no reference to the rules of the country of origin any more and a liberalisation of public services is now formally excluded: Member States are competent to define and organise services of general interest, in conformity with Community law.

A important point: **in case of conflict with provisions of specific regulations** such as Directive 96/71/EC concerning the posting of workers or Regulation n°1408/71 on the coordination of social security, **these provisions prevail**.

- **Services of general interest:** the Commission agrees to exclude services of general interest from the scope of the

directive. However services of general economic interest fall within the scope ;

- **Social services** : social services pursuing social welfare objectives such as social housing services, childcare and family services are not affected, because considered as “*a manifestation of the principles of social cohesion and solidarity*” ;
- **Healthcare services** : the Commission accepted the exclusion of healthcare services and commits to come forward with a specific initiative on health services to provide greater legal certainty and clarity for situations which are not solved by regulation n°1408/71 ;
- **Social security** : as a non-economic activity, the management of social security schemes is not covered by the concept of services and thus by the directive ; moreover, the proposal “*does not affect social security legislation of the Member State, as referred to the Regulation n°1408/71*” ;
- **Occupational pensions**, as financial services, are excluded from the scope ;
- **Conditions of employment** in the host country: the Commission introduced a provision to specify that the directive does not affect labour law, including contractual provision ; the directive 96/71/EC on posting workers is fully applicable to providers of services who post workers to perform work on a temporary basis in a Member State other than one whose law governs the relationship ;
- **The «overriding reasons relating to public interest»** are mentioned such as “*social policy objectives ; the social protection of workers ; the preservation of the financial balance of the social security system*” in the extent of the principles of non-discrimination, necessity and proportionality.

In the **administrative simplification field**, the European Commission does not agree with the idea for a European point of single contact : Member States have to set up within three years **points of single contact** to allow service providers to complete all the formalities at a distance and by electronic means.

☞ *Amended proposal for a directive on services in the internal market COM(2006)160 final*

Point of single contact in France

Article L 243-1-2 of the social security code provides for a point of single contact to collect formalities and statutory contributions from employers established in another country who employ workers in France. **AGIRC and ARRCO** have also dedicated a single institution to manage the complementary pension for these wage-earners whose employer is set abroad.

POSTING OF WORKERS

A communication on the posting of workers in the framework of provision of services

As a response to the amended proposal for a directive on services which does not deal with posting of workers (*see above*), DG Employment and Social affairs of the Commission issued on the same day (4 April) a **communication** on «*Guidance on the posting of workers in the framework of provision of services* ».

The document recalls to Member States that the Posting Directive adopted in 1996 (Directive 96/49/EC) requires that minimum terms and conditions of employment in force, by law or by collective agreements, must apply to workers posted temporarily by their employer on their territory. It includes maximum work periods, minimum paid holidays, minimum rates of pay, etc... but does not cover social security which is governed by Regulation n°1408/71.

In a 2006 report annexed to the Communication, the Commission's services highlights the need to **improve the monitoring of the implementation and enforcement of the posting directive**, particularly through the exchange of best practices and loyal cooperation between Member states.

Over the coming 12 months, the Commission will address a questionnaire to national authorities and social partners and its conclusions could lead to infringement procedures.

Four measures are moreover addressed:

- No obligation for a service provider to have a permanent representative on the territory of the host country ;
- No prior authorisation can be requested by the host country for the posting of workers ;
- The possibility for Member States to ask for declaration on the posting of workers prior the beginning of work to facilitate controls in the host countries ;

- The need for service providers to keep social documents such as time-sheets or documents related to health and safety conditions at the place of work.

☞ *Communication Guidance on the posting of workers in the framework of provision of services COM(2006)159 final*

How many posted workers are there in the EU?

The Commission underlines that many Member States have difficulties in providing reliable estimates related to the number of posted workers. According to the Commission's report based on information received from the Member States:

In 2001, in France: 12 000 posted workers

In 2002, in Austria: 3 550 posted workers

In 2003, in Germany: 105 854 posted workers

SOCIAL DIALOGUE

First multisector agreement

On 25 April, the first European multisector agreement was signed by social partners through their own procedures. It aims to list the good practices to protect workers in many sectors against crystalline silica dust.

In this category of agreement so-called "Process-oriented texts", European social partners make recommendations to their members for follow-up minimum standards : it has to be distinguished from intersectoral agreements implemented in accordance with article 139 of the Treaty, whatever they are :

- implemented by Council decision and monitored by the Commission (1995 Framework agreement on parental leave ; 1997 Framework agreement on part-time work ; 1999 Framework agreement on fixed-term work)
- or implemented and monitoring by the social partners (2002 Framework agreement on telework ; 2004 Framework agreement on work-related stress)

OTHER COUNTRIES

United-Kingdom : State pension age to rise to 68 by 2048

On 25 April, the British government approved the Pensions Commission proposals for a gradual rise in the State pension age to 68. It is also proposed to set up a National pension savings scheme which workers would be automatically enrolled

into. Moreover indexation on wages for statutory pensions could be re-established by 2012.

The European Court of Human Rights ECHR held the conformity of differential pensionable ages between men and women

In its judgment on 25 April, the European Court of Human rights held that there had been no violation of Article 14 (prohibition of discrimination) of the European convention on Human rights taken in conjunction with Article 1 of Protocol n°1 (protection of property) The difference in State pensionable age between men and women in the United Kingdom is considered as reasonably and objectively justified.

Then, it appears no contradictory with the European Court of Justice who agrees the same solution in a case issued on 23 May (case 196/98 Hepple), the Directive 79/7/EC authorising differences on ages in statutory old-age pension schemes.

☞ *ECHR 12 April 2006 Stec v /The United-Kingdom*

SOCIAL

Extraordinary Summit on "flexisecurity" by the end of 2007

Vladimir SPIDLA , Employment and social Affairs Commissioner announced that the Commission will organise an extraordinary social summit and present a report by the end of 2007 on the balance between flexibility and employment security ("flexicurity").



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