

AC 608/16
Main conclusions of the 348 th meeting of the Administrative Commission
SECRETARIAT – 9.12.2016

Orig. EN

**ADMINISTRATIVE COMMISSION
FOR THE COORDINATION OF SOCIAL SECURITY SYSTEMS**

**Main conclusions of the
348th meeting of the Administrative Commission**

Brussels, 19-20 October 2016

A. AGENDA

The agenda (note AC 605/16REV2) was approved without changes.

B. APPROVAL OF MINUTES

The minutes set out in note AC 142/16, AC321/16 and note AC 323/16 were approved subject to some minor clarifications.

C. COMMUNICATIONS AND QUESTIONS

The Presidency provided information on the proposal for the revision of the Posting of Workers Directive.

The Secretariat informed delegations that there has been an orientation debate held by the college of Commissioners on 12 October 2016 concerning the partial revision of Regulations (EC) Nos 883/2004 and 987/2009. It also reported on the Annual Conference of National Contact Points on Fraud and Error that took place on 17-18 October 2016 and communicated staff changes in the Social Security Coordination unit of DG EMPL.

I. ITEMS FOR APPROVAL/NOTICE WITHOUT DISCUSSION

The Administrative Commission approved without discussion the following items:

- a) Nominations for membership to the Ad-Hoc Groups established for the definition of data to be exchanged electronically (AC 242/16REV);
- b) Updated list of additional or special family benefits for orphans pursuant to Article 61 of Regulation (EC) No 987/2009 (AC 391/16) subject to a technical clarification.

- c) Report on the use of the European Health Insurance Card (EHIC) (AC 386/16REV) subject to a technical clarification;
- d) Report on the use of the Portable Document S2 (AC 387/16REV) subject to technical clarifications;
- e) Report on the monitoring of healthcare reimbursement (AC 388/16REV) subject to a technical clarification;
- f) Improvements to the existing statistical questionnaire concerning the Portable Document S2 (AC 389/16REV)

The Administrative Commission also took note of the following item:

- f) National Contact Points nominated pursuant to Decision H5 of the Administrative Commission to promote cooperation between Member States to combat fraud and error within the field of social security coordination (AC 392/16).

II. FOLLOW UP TO THE FORUM ON THE INTERNATIONAL DIMENSION OF SOCIAL SECURITY OF 6 OCTOBER 2016

Delegations took note of the outcomes of the Forum on the international dimension of social security on 6 October 2016. Delegations requested that the Secretariat to prepare a draft of some standard clauses for approval by the Administrative Commission that can be presented in a paper to inform future negotiations on the mandate of Association Agreements

III. FOLLOW UP THE REFLECTION FORUM ON FAMILY BENEFITS OF 15 DECEMBER 2015

The Administrative Commission approved the mandate of an **ad hoc group on family benefits** as set out in note AC720/16REV to examine the following five issues in more detail in order to make recommendations to the Administrative Commission:

- i) the application of Case C-347/12 *Wiering*;
- ii) methods of calculating the differential supplement;
- iii) the definition of "family member" and Case C-363/08 *Slanina*
- iv) Special rules for special types of family benefits and
- v) determination of competence and priority for payment of family benefits in more complex cross-border situations.

Representatives from 20 Member States were also approved as Members of the Group which will begin its work in November 2016. A rapporteur will be nominated at the first meeting of the ad-hoc group and this nomination will be put forward for approval at the next meeting of the Administrative Commission in December. It was agreed that the minutes of the 348th Meeting of the Administrative Commission would record that in chairing the work of the ad-hoc group on family benefits, the rapporteur should pay due regard to the gender perspective.

IV. FOLLOW UP TO THE DISCUSSION ON NON-RECOGNITION OF DATES OF APPLICATIONS SUBMITTED PURSUANT TO ARTICLE 68(3)(B) OF REGULATION (EC) NO 883/2004

Delegations discussed the interpretation of Article 68(3)(b) concerning the date of claim of family benefits where the claim was initially made to an institution other than the competent institution which has priority. Delegations were reminded of the judgment of the CJEU in Case C-543/13, *Fischer-Lintjens* concerning the interpretation of Article 76(5) where it was held that the application of national legislation on backdating should not have the effect of

depriving a person of all social security cover for a certain period without all the relevant circumstances being taken into account. All delegations were reminded that the efficient processing of claims for family benefits relies on good cooperation and that in accordance with Article 68(3)(a) the receiving institution shall forward the application without delay to the competent institution.

Delegations were invited to submit information on the administrative practices they apply with a view to develop, if needed guidance or a recommendation on common criteria that should be requested of a claimant in an application for national family benefits that would facilitate the identification of a cross-border element for the purposes of applying Articles 67, 68 and 76(4) of the basic Regulation.

V. DECLARATIONS PURSUANT TO ARTICLE 9 OF REGULATION (EC) NO 883/2004

Delegations took note of the findings of the CJEU in the case C12/14 Commission v Malta and the role assigned to the Administrative Commission in resolving disputes over the material scope of the Regulations in case of doubt. All delegations were reminded of their responsibilities under Article 9 and asked to have a closer look to their social security system and to make sure that their declaration is correct. The Secretariat informed delegations of its intention to support Member States in this process through informal feedback based on an analysis of the FreSsco network.

In relation to the supplement in the Member State of residence under Article 58 Regulation (EC) No 883/2004 in case of pensions paid by another Member State in a single payment, delegations were invited to bring concrete cases to the attention of the Administrative Commission.

VI. SUBMISSIONS TO AND DECISIONS OF THE CONCILIATION BOARD

The United Kingdom provided an update on the dispute between Belgium and Gibraltar (CB – 1/15) advising that the Gibraltar authorities accepted the decision of the Conciliation Board and would withdraw the PDA1 forms.

The Austrian and Hungarian authorities provided an update on the follow-up to the second decision of the Conciliation Board concerning a dispute over PDA1 forms issued by the Hungarian authorities to workers in Austria. A further update was requested for the next meeting of the Administrative Commission.

The Chair of the Conciliation Board informed delegations that it could not accept a referral of a dispute concerning Belgian and Polish authorities regarding the status of self-employed Polish sent workers in Belgium (case CB-5/15) in light of disputed facts. The Polish and Belgian delegations reported that they were cooperating bilaterally to resolve the issue.

Delegations took note of a dispute between the Belgian and Romanian authorities concerning PDA1 forms issued to workers on an in-land boat and a disputed interpretation of Article 11(4) of Regulation (EC) No 883/2004. It was agreed further bilateral discussions between the parties were necessary.

VII. FOLLOW UP TO THE WORKING PARTY OF THE ADMINISTRATIVE COMMISSION ON THE REPORT OF THE AD HOC GROUP ON POSTING ISSUES OF 2 JUNE 2016

The Administrative Commission approved a road map for implementing the recommendations of the ad-hoc group on posting issues (AC 718/16).

VIII. INFORMATION ON THE COMMISSION'S WEBSITE REGARDING NATIONAL INSTITUTIONS RESPONSIBLE FOR ISSUING OR RECEIVING THE PD A1

Delegations were informed of changes to the Commission website on Member States and national institutions which wish to be notified about postings. In order to build up an additional web page informing citizens and employers of the national authority in each Member State that is competent for issuing a PDA1, more specific information/guidance is needed

IX. STATISTICAL REPORTING ON THE COORDINATION OF SOCIAL SECURITY SCHEMES

Delegations approved statistical reports in relation to:

- export of Family Benefits, subject to minor clarifications requested by some delegations
- aggregation of periods of unemployment insurance subject to a technical clarifications requested by some delegations,
- export of unemployment benefits, subject to minor clarifications requested by some delegations.

Delegations took note of the findings of the statistical reports on portable document S1 as well as on cross-border old age, survivors' and invalidity pensions – approval of these two reports will be deferred to the next meeting of the Administrative Commission subject to inclusion of corrections and clarifications discussed at the meeting and provided in writing.

As regards the 2017 data collection exercise (reference year 2016), delegations approved improvements to (i) the questionnaire for Export of Family Benefits and (ii) the questionnaire on EHIC subject to a technical clarification raised by a delegation. A new questionnaire on maternity and equivalent paternity benefits as well proposed improvements to the questionnaire for cross-border old age, survivors' and invalidity pensions will be submitted for their approval at the next meeting of the Administrative Commission subject to inclusion of corrections and clarifications discussed at the meeting and provided in writing.

X. REIMBURSEMENT OF UNEMPLOYMENT BENEFITS PURSUANT TO ARTICLE 65 (6) AND (7) OF REGULATION (EC) NO 883/2004 AND ARTICLE 70 OF REGULATION (EC) NO 987/2009

The delegations discussed the correct interpretation of Article 65(7) of Regulation 883/2004 concerning the timeframe for reimbursement of unemployment benefit and whether this can be restricted according to the maximum period of granting under the national legislation of the Debtor State. Delegations were invited to provide written comments on this issue which will inform discussions at a future meeting of the Administrative Commission.

XI. THE IMPLEMENTATION OF DECISION H7 TO THE ICELANDIC KRONA

Delegations concluded that for currency conversion in the case of Iceland, delegations should use the daily conversion rate fixed by the Central Bank of Iceland, as indicated in Decision No 133/2011 of the EEA Joint Committee.

XII. THE INCLUSION OF THE DATE OF ISSUE ON THE EHIC

Delegations took note of the proposal from one delegation for inclusion of the date of issue on the EHIC. Delegations were invited to provide their opinions on the topic, including information of the similar difficulties explaining the nature of the challenges, the practice of

healthcare providers in checking the fact that the patients are insured in another country, including the use of PRCs, practical difficulties with reimbursements, and magnitude of the problems faced in terms of number and frequency of cases, as well as the proposals from delegations on how these could be solved. The Administrative Commission will discuss further this question based on this information.

XIII. FOLLOW UP TO THE DISCUSSION ON INTERPRETATION OF ARTICLE 80(2) AND ARTICLE 76(7) OF REGULATION (EC) NO 883/2004 AND ARTICLE 5 OF REGULATION (EC) NO 987/2009 IN RELATION TO THE HAGUE CONVENTION ABOLISHING THE REQUIREMENT OF LEGALISATION FOR FOREIGN PUBLIC DOCUMENTS

Delegations took note of a presentation from DG JUST on Regulation 2016/1191 on simplifying the acceptance of certain public documents in the EU.

XIV. EESSI

The Administrative Commission took note of the progress of the EESSI project and the work and recommendations of the Technical Commission presented by its Chair (note AC 676/16), and appointed the Chair and Vice-chair of the Change Management Board (Annex 4 of note AC 645/16REV).

The Administrative Commission approved the principles developed in the 3rd National Implementation Planning Workshop (note AC 711/16).

All delegations except one approved the 43 Business Use Cases submitted (note AC 757/165REV2). A bilateral discussion will be held with the abstaining Member State to address any further comments that they might have.

The Administrative Commission also approved the EESSI Transition Plan (AC note 376/16REV), and took note of information about the approach for review and approval of Structure Electronic Documents version 4. It also took note that Regulation (EC) 1182/1971 applies for the calculation of timers and deadlines where they are required in the electronic data exchanges.

XV. MISCELLANEOUS AMENDMENTS

Delegations took note that the British delegation withdrew its request concerning amendment to Annex VI of the Regulation (EC) No 883/2004.

Delegations took note of the request from the Estonian delegation for an entry into Annex XI of Regulation (EC) No 883/2004. Delegations had no objection to the request from the Estonian delegation being included as an amendment in the Regulation.

XVI. CHANGES IN MEMBER STATE LEGISLATION

Delegations took note on the following legislative changes in the Member States' legislations:

- introduction of a new paternity benefit in Ireland
- reforms to family benefits under Luxembourgish legislation.

XVII. DRAFT AGENDAS OF THE MEETINGS OF THE ADMINISTRATIVE COMMISSION IN THE SECOND HALF OF 2016 AND PROVISIONAL PLANNING OF MEETINGS IN 2017

Delegations took note of the topics identified for discussion for the second half of 2016 and provisional planning for the meetings in 2017.

The meeting was chaired by Mr Jaroslav Kováč, representative of the Slovak Republic, the Member State which holds the Presidency at the Council of the European Union from 1 July to 31 December 2016.