

AC 889/16
Main conclusions of the 349 th meeting of the Administrative Commission
SECRETARIAT – 10.03.2017

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

**Main conclusions of
the Reflection Forum of the Administrative Commission on the Principle of
Assimilation of Facts**

&

the 349th meeting of the Administrative Commission

Brussels, 13-15 December 2016

**MAIN CONCLUSIONS OF THE REFLECTION FORUM ON THE ASSIMILATION OF FACTS ON
13 DECEMBER 2016**

National experts from the Member States took note of the report on the principle of assimilation of facts produced by FreSsco (962/16). National experts actively participated in a discussion on the following topics:

- Jurisprudence of the CJEU related to the assimilation principle
- Delineation of the scope and limitations of the principle of assimilation of facts
- Delimitation between Articles 4 and 5 of Regulation (EC) No 883/2004
- Salary linked benefits – cash benefits and assimilation of income
- Delimitation between the application of Articles 5 and 6 of Regulation (EC) No 883/2004 and Decision H6

**MAIN CONCLUSIONS OF THE 349TH MEETING OF THE ADMINISTRATIVE COMMISSION
ON 14-15 DECEMBER 2016**

A. AGENDA

The agenda (note AC 886/16REV) was approved without changes.

B. APPROVAL OF MINUTES

Minutes of the 347th meeting of the Administrative Commission on 20-21 June 2016 were approved in (BG, CS, DA, DE, EL, EN, ES, ET, FI, FR, HU, IT, LT, LV, MT, NL, PL, PT, RO, SK, SL, SV, HR) (AC 364/16)

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 the proposal for the revision of the EU Regulations on Social Security Coordination (COM(2016)815) had been adopted by the Commission on 13 December 2016.

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 242/16REV2); This included the nominations and changes received from some delegations after the date of publication of note.
- b) Report on the Portable Document S1 (AC 736/16REV) subject to technical clarifications requested by one delegation;
- c) Report on cross-border old-age, survivors' and invalidity pensions (AC 737/16REV)
- d) Improved statistical questionnaire on cross-border old-age, survivors' and invalidity pensions (AC 737/16REV)
- e) New statistical questionnaire on maternity and equivalent paternity benefits (AC 738/16) subject to a technical clarification requested by a delegation;
- f) Average costs of benefits in kind 2014 and 2015 (AC 894/16)
- g) Claims situation as at 31 December 2015 between Social Security Institutions in the Member States (AC 786/16REV)

II. RECOVERY OF OVERPAID PENSIONS

Delegations took note of the FreSsco report on recovery of overpaid pensions (AC 958/16).

III. REPORT OF THE AD-HOC GROUP ON RECOVERY

Delegations agreed that the report of the ad-hoc group on recovery has fulfilled the mandate set by the Administrative Commission as regards the assessment of the recovery report. Delegations are asked to apply the recovery measures efficiently (including use of the relevant SED)

IV. STATISTICAL REPORTING ON THE COORDINATION OF SOCIAL SECURITY SCHEMES

Delegations approved statistical reports in relation to:

- Portable Document A1 subject to technical clarifications requested by some delegations
- Recovery procedures, subject to technical clarifications requested by the some delegations and a linguistic amendment to the EN language version of Annex II to the report.

Delegations took note of the provisional calendar for the collection of statistical data in 2017 and of the fact that the updating of EHIC information for the DG EMPL website and EHIC smartphone application will be launched early 2017.

V. AMENDMENT OF PORTABLE DOCUMENTS

Delegations approved the amendment of the Portable Document S2 as outlined in note AC 925/16

VI. AD HOC GROUP ON FAMILY BENEFITS

Delegations approved the rapporteur of the ad-hoc group on family benefits and additional nominees for this group. Delegations took note of the information provided by the rapporteur concerning the work programme of the Ad-hoc group

VII. EESSI

- a) The Administrative Commission took note of the progress of the EESSI project and the work and recommendations of the EESSI Executive Board and Technical Commission, as presented by the respective Chairpersons.
- b) The Director of DG EMPL Directorate D, presented an overview of the key plans for implementation of EESSI outlining the planned operational support and service strategy for EESSI for Production Ready Release and post Production Ready Release in particular in relation to the RINA application after the transitional period.
- c) The Administrative Commission approved the completion of Pilot Phase 3 and commencement of the work on Production Ready Release Phase.
- d) Delegations took note of the proposed changes to Decision E1 concerning the start of electronic exchanges through EESSI as outlined in note AC 924/16. Delegations are invited to provide comments in writing on the draft text which will be revised in light of the feedback and then submitted for approval via the written procedure.
- e) Delegations approved the mandate for external testing partners for the Production Ready Release annexed to note 923/16REV2.
- f) The Administrative Commission approved 27 Business Use Cases and granted conditional approval to S_BUC_19 subject to the outcome of the dry-run activity, as outlined in note AC 926/16.
- g) Delegations also discussed the exchange of data in highly sensitive cases and were invited to provide details on the types of cases which they consider challenging to deal with, the measures which under national law they apply to uphold privacy and the anticipated volume of such cases to be exchanged under EESSI.

VIII. NEW DATA PROTECTION REGULATION

Delegations took note of a presentation from DG JUST on Regulation 2016/679 on the General Data Protection Regulation and its potential implications for social security coordination

IX. STATE OF PLAY ON THE UPDATE REGARDING NATIONAL INSTITUTIONS RESPONSIBLE FOR ISSUING THE PD A1 AS REPORTED ON THE COMMISSION WEBSITE

Delegations were informed of intended changes to the Commission's website <http://europa.eu/youreurope/citizens/national-contact->

[points/index_en.htm?topic=work&contacts=id-611492](https://ec.europa.eu/euro-just/points/index_en.htm?topic=work&contacts=id-611492) in order to inform citizens and employers of the national authority in each Member State that is competent for issuing a PDA1. Delegations are requested to provide any possible final amendments or corrections to the information contained in note AC 896/16 by the end of this year.

X. 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 had first discussions on the following draft proposals prepared to implement the recommendations of the **Ad-hoc Group on posting issues**:

- a) Amendment of Decision A1 concerning the dialogue and conciliation procedure,
- b) Amendment of Decision A2 concerning the interpretation of Article 12 of Regulation (EC) No 883/2004,
- c) New Recommendation A1 concerning the issuance of Portable Document A1,
- d) Mutual information about the authentication features of a PD A1
- e) Amendment of Portable Document A1.

Delegations engaged in a constructive discussion and were encouraged to send comments in writing (separately for each proposal). The proposed amendments to Decisions A1 and A2 as well as the proposed Recommendation A1 will be discussed in greater detail in the Working Party of the Administrative Commission on 14th March 2017.

XI. SUBMISSIONS TO AND DECISIONS OF THE CONCILIATION BOARD

In relation to the **Conciliation Board**, the Austrian authorities provided an update on the follow-up to the case CB-4/15 concerning a dispute between the **Hungarian** and the **Austrian** authorities. Both parties wait for the outcome of the related CJEU case C-527/16, Alpenrind.

The **Belgian** and **Polish** delegations presented a joint request for transferral to the Conciliation Board by note AC 912/16 concerning the requirement of significant activities in the sending State in accordance with Article 12(2) of Regulation (EC) No 883/2004. This request was approved by the Administrative Commission (case CB-1/16).

The **Belgian** and **Romanian** delegations provided an update concerning PD A1 forms issued to workers on a river tug-boat and a disputed interpretation of Article 11(4) of Regulation (EC) No 883/2004. The Romanian text of this provision has been rectified (Corrigendum in OJ of 1.11.2016). As the Romanian authorities see no possibility to revoke the PDs A1 issued on the basis of the former misleading version of this provision, the dispute remained unresolved.

XII. 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

Delegations agreed to defer discussion on this topic to the next meeting of the Administrative Commission

XIII. EUROPEAN PLATFORM TACKLING UNDECLARED WORK

Delegations were informed on the European Platform on Undeclared Work and possible synergies between the work programme of this Platform and activities of the Administrative Commission.

XIV. ANNUAL DISCUSSION ON FRAUD AND ERROR

Delegations participated in the Annual Discussion on Fraud and Error and in this context approved the annual report on fraud and error (subject to some minor clarifications from delegations) and took note of a presentation from the rapporteur of the Steering Committee for the Platform on Cross-Border Social Security Fraud and Error on the activities of the Steering Committee in 2016 and planned actions for 2017. Delegations agreed that the Steering Committee should be consulted on the design of the annual questionnaire on fraud and error for 2017.

XV. AUDIT BOARD ISSUES

Delegations were provided with an update on progress in relation to the settlement of historic uncontested claims predating the coming into force of Regulations (EC) Nos 883/2004 and 987/2009. Delegations were reminded of the previously agreed deadline of 19 May 2015. Delegations were urged to promptly settle uncontested debts or if necessary to agree bilaterally on a clear time frame for payment. Creditor Member States are to send an update of the old claims by 15 February.

Delegations also approved Parts I and III of the Guidelines of Decision S6 related to retroactivity and the introduction of inventories and agreed the recommendation that an ad hoc group will work to propose tools for administrative cooperation that will be incorporated as an addendum to the guidelines

XVI. THE FORMAT OF THE EUROPEAN HEALTH INSURANCE CARD (EHIC)

Delegations agreed to postpone the discussion on this topic to the next meeting of the Administrative Commission

XVII. MISCELLANEOUS AMENDMENTS

Delegations were consulted on a request from the Polish delegation for amendments to Annex 1 to Regulations (EC) No 883/2004 reflecting a special birth allowance for disabled children. Delegations had no objection to the request from the Polish delegation being included as an amendment in the Regulation.

XVIII. CHANGES TO MEMBER STATE LEGISLATION

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

- related to family benefits in Germany
- related to unemployment benefits in Denmark
- related to family benefits in Luxembourg

XIX. 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 first half of 2017 and the calendar for the meetings in 2017.

Delegations took note of the Maltese Presidency work programme in the first half of 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.