

AC 381/18
Main conclusions of the 354th meeting of the Administrative Commission
SECRETARIAT – 31.01.2019

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

**Main conclusions of the
354th meeting of the Administrative Commission**

21-22 March 2018 at 10:00h*

A. Agenda

The agenda was approved.

B. Approval of Minutes

The Minutes of the 351st meeting of the Administrative Commission on 27-28 June 2017 and Minutes of the Reflection Forum on Healthcare in cross border situations on 12 December 2017 were removed from the agenda and will be listed for approval at the next meeting.

C. Communications and Questions

The Presidency provided information on the latest state of play of the proposal for the revision of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 and the proposal for the revision of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009

The Secretariat informed the delegations of recent staff changes affecting EMPL/D2.

The Secretariat reminded the delegations to provide linguistic comments on the Decision No E6 and that the exercise for Article 9 Declarations was launched and that the deadline for submitting contribution is 13 April.

The Secretariat informed the delegations that on 27 October 2017 an EU survey was launched with a few questions for all delegations regarding the mapping of healthcare providers accepting the EHIC and making it possible for citizens to apply for an EHIC via the website and/or the mobile app and kindly requested the delegations to provide their replies by 31 March.

* The meeting will start at 10.00am on Wednesday 21 March 2018. It is anticipated that the meeting on Thursday 22 March 2018 will start at 9.30am. Precise timings may vary depending on progress on the agenda.

The Secretariat informed the delegations of the main deliverables envisaged under the MoveS network's Work Programme for 2018 and 11 seminars, that are envisaged for this year.

The Secretariat kindly requested that delegations notify the Secretariat of any changes they wish to make regarding the information on EMPL website regarding Member States wishing to be notified of all posting situations on their territory in accordance with Article 15(1) Regulation (EC) No 987/2009, any changes to the Administrative Commission mailing list and contact list and to take note of the AGM procedure as presented in note AC 27/18.

I. The Social Fairness Package adopted on 13 March 2018

Jordi CURELL GOTOR (Director of the Directorate for Labour Mobility within DG EMPL) presented the Commission proposal COM(2018)131 on establishing a European Labour Authority ("the Authority"), adopted on 13 March 2018 as part of the Social Fairness Package (presentation made available on CircaBC). He outlined the objectives of the proposal, the planned tasks of the future Authority, as well as the way in which it will interact with existing tools and committees.

In reply to the questions asked by several delegations, Mr CURELL underlined that reaching a common understanding about the details of the proposal will be crucial in the course of the decision-making procedure in the Council and the European Parliament, and discussion in these fora will lead to defining the exact contours of the Authority, including its role in social security coordination and link to the work of the Administrative Commission.

He explained that the Authority will be set up in the form of an EU Agency with its own legal personality. The proposal aims to provide a clear dividing line of maintaining the competences of the Administrative Commission for handling questions of interpretation on social security coordination rules, while creating the Authority to support this and deal with daily management of operational tasks. The Authority will report to the Administrative Commission on financial and technical aspects of social security coordination, as the Audit Board and Technical Commission do today, and it will have the possibility to create dedicated working groups bringing together national experts to discuss specific topics, in addition to having National Liaison Officers from each Member State as part of its staff.

Mediation by the Authority will take place under the same limits as the conciliation mechanism under social security coordination, and it will not be legally binding. Mediation cases are proposed to start either on request of at least one of the Member States concerned by a dispute, or on the initiative of the Authority, in which case all Member States concerned by the case have to agree to participate. Inspections under the coordination of the Authority are proposed to be done in agreement with the Member States concerned and in line with their national legislation.

The Authority's activities aim to cover social security coordination rules, and all persons under these rules, including those who are not economically active. The EEA countries and Switzerland would participate in the work of the Authority similarly to the way they are involved in other Agencies where they are observers.

The Administrative Commission took note of the Commission proposal regarding the European Labour Authority, part of the Social Fairness Package.

II. Approval/notice without discussion

The Administrative Commission approved without discussion the following items: Nominations for membership to the Ad-Hoc Groups established for the definition of data to be exchanged electronically; Nominations for membership in the EESSI Executive Board; Nominations of members to the Conciliation Board; 2018 Work Programme of the Steering Committee of the Fraud and Error Platform; Corrigendum to the Polish version of Decision No R1 of 20 June 2013 concerning the interpretation of Article 85 of Regulation (EC) No 987/2009; Correction of material errors in Recommendation No A1 of 18 October 2017 concerning the issuance of the attestation referred to in Article 19(2) of Regulation (EC) No 987/2009 of the European Parliament and of the Council.

The Administrative Commission took note without discussion the following items: 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 - the note would be revised to include the information provided by the United Kingdom and Latvia after its publication; Audit Board issues – Outstanding uncontested claims introduced under Regulation (EEC) No 574/72.

The debtor Member States were urged to settle the remaining claims as soon as possible.

III. Outcome of the Working Party of the Administrative Commission on Digitalisation and social security coordination of 20 March 2018

The Administrative Commission took note of the outcome of the Working Party.

IV. Final report of the Ad hoc Group on Family Benefits

The delegations thanked the AHG for its works and the Administrative Commission approved that the AHG fulfilled its mandate. The Presidency and the Secretariat will reflect on the follow-up to the recommendations in the report of the AHG.

V. Follow up to discussion on the interpretation of Decision No H3

The Secretariat explained that - further to the discussions in the meeting of December 2017 on interpretation of Decision No H3 - it had informed the German court that no consensus had been reached on the questions raised by it.

Delegations were invited to submit written comments on the proposal made by the Secretariat. The Secretariat would further reflect on how Decision No H3 would be revised.

VI. Provisional entitlement to benefits in kind under Article 36 paragraph (2) of Regulation (EC) No 883/2004 and Article 33 paragraph (2) and Article 35 of Regulation (EC) No 987/2009

The Chair reminded the delegations that the provisional entitlement to benefits in kind under Article 36(2) of Regulation (EC) No 883/2004 has been discussed several times, at the 340th, 345th and most recently at the 352nd and 353rd meetings of the Administrative Commission. Discussions on this issue so far have not resulted in reaching common understanding. A summary of the previous discussions is available in note AC 697/17. The delegations voted as agreed in the previous meeting.

The Administrative Commission did not agree on any of the two proposed options.

The delegations were encouraged to continue cooperating in order to resolve their differences in approach in the interests of good collaboration. The delegations which voted in favour of option 2 were invited to inform if they intend to agree on any specific bilateral arrangements on this issue.

VII. Submissions to and decisions of the Conciliation Board

- a) **Follow up to the Opinion of the Conciliation Board on the issue of applicable legislation to employees working on board a vessel at sea submitted upon request of the French and Spanish delegations (case CB – 1/17)**

The French and Spanish delegations were invited to report on the progress in the next meeting and all interested delegations to submit their comments in writing on the need to clarify the application of Article 11(4) in the Practical Guide or by other means the Administrative Commission disposes of.

- b) **Follow up to the Opinion of the Conciliation Board on the issue of “substantial activities” submitted upon request of the Belgian and Romanian delegations (case CB – 2/17)**

The Romanian delegation agreed to withdraw the Portable Documents A1 issued for the Romanian company posting employees to Belgium.

VIII. Follow up to the changes approved to Portable Document A1

The delegations were reminded that the Administrative Commission decided in its 352nd meeting to amend the Portable Document A1 so that it may also be issued in *lex loci laboris* situations.

After exchange of delegations' views the Administrative Commission agreed that follow-up work is needed to implement the changes already approved to Portable Document A1. Delegations were invited to send their comments in writing on the questions put forward by the Finnish delegation.

IX. Fines imposed by Member States when a PD A1 is not presented in case of an inspection

The Administrative Commission took note of the Commission position in the matter of fines imposed by Member States when a PD A1 is not presented in case of an inspection. In addition, the European Commission would consult internally on how this position could be shared in writing.

X. The format of the European Health Insurance Card (EHIC) - the date of issue

The Secretariat announced that it will not take further steps to amend the format of the EHIC.

The delegations agreed to decide by vote on the proposal to include a date of issue on the EHIC with a transitional period of 10 years at the next meeting of the Administrative Commission.

XI. Healthcare in the overseas territories

The delegations were invited to submit comments in writing with regards to the application of the coordination regulations in their overseas territories or parts of their territories where the coordination Regulations apply/do not apply.

XII. Amendments to Portable Document U1

a) Proposal to amend the "notes" following changes in national legislation

The Administrative Commission approved the proposals to amend the "notes" following changes in national legislation from Bulgarian, Belgian, Czech, German, Spanish, Italian and Portuguese delegations.

b) Proposal to amend sections 2.3.1 and 2.3.2

The delegations were invited to provide comments in writing. If by the date specified in Aide Memoire, no additional information will be provided to support the need to amend 2.3.1 and 2.3.2, the changes will not be proposed.

c) Proposal to amend section 3.7

The views on proposal were divergent; the delegations were invited to provide comments in writing by the date specified in Aide Memoire.

d) Prevention of fraud and error

The Secretariat took into account the Italian proposal to add a number on each page of the PDU1 in order to prevent fraud and error, Polish proposal to add institution stamp and signature on each page of the document, as well as Greek opinion to additionally seal the pages of the document and Spanish opinion to include person's name on each page of the document.

The Chair concluded that the same approach should be taken as for PD A1 with regard to PD U1 and that a horizontal recommendation in this regard should be proposed at the June meeting.

XIII. EESSI

The Administrative Commission welcomed the updates about the progress of the EESSI project and the work of the Technical Commission and Executive Board. The AC supported the 2018 work programme of the Executive Board.

The Administrative Commission approved the updated process for monitoring the progress of participating countries during the national implementation period and the coordination of EESSI live exchanges.

The Administrative Commission took note of the outcomes of the 11th CMB meeting and approved the Change Requests; the release of the 4 Change Requests is suspended at present and the Technical Commission will have the opportunity to recommend when they would be included in the planned releases.

The Administrative Commission approved the conclusions reached in the Technical Commission 78th meeting.

XIV. Preparedness exercise in the context of the United Kingdom leaving the European Union

Jordi CURELL GOTOR (Director of the Directorate for Labour Mobility within DG EMPL), updated delegations on the state of the negotiations on the Withdrawal Agreement in the Council Working Group on Article 50 TFEU. He advised the delegates to liaise with their national representatives in this Group to keep up to date on any developments.

Mr CURELL specifically reflected on the future of the Portable Documents (PDs) issued before the withdrawal date.

Following the delegations' interventions Mr CURELL recognised the sensitivity of the social security aspects in the context of the withdrawal, as they particularly concern individuals in need of administrative assistance and agreed that priority should be given to have a common understanding of the Withdrawal Agreement, so it is applied uniformly when it enters into force and adequate information is provided to the citizens. He took note of the request to organise expert meetings dedicated to social security in that context, which should however be first agreed by the Council.

The Administrative Commission took note that work is needed in order to facilitate the withdrawal process, both for the citizens and for the social security institutions. Delegations were invited to send their written contributions on possible difficulties in the field of social security coordination in the context of the United Kingdom's withdrawal from the EU.

XV. Changes in Member States legislation

The Swedish and Latvian delegations presented the recent developments in national legislation.

XVI. Miscellaneous amendments - Council and European Parliament Regulation

The Danish delegation informed of its decision to withdraw their note on updating to Annex II in the Regulation (EC) No 883/2004 and other impact adjustments.

XVII. Draft agendas of the meetings of the Administrative Commission in the first half of 2018

The draft agenda for 355th meeting of the Administrative Commission and its Working Party were presented.

XVIII. Other Business

There was no other business to discuss and closed the meeting.