



Committee on Legal Affairs

20.3.2017

NATIONAL PARLIAMENT REASONED OPINION ON SUBSIDIARITY

Subject: Reasoned opinion of the French Senate on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 883/2004 on the coordination of social security systems and Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 (COM(2016)0815 – C8-0521/2016 – 2016/0397(COD))

Under Article 6 of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality, national parliaments may, within eight weeks of the date of transmission of a draft legislative act, send the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why they consider that the draft in question does not comply with the principle of subsidiarity.

The French Senate has sent the attached reasoned opinion on the aforementioned proposal for a regulation.

Under Parliament's Rules of Procedure the Committee on Legal Affairs is responsible for matters relating to compliance with the subsidiarity principle.

ANNEX

No 102

SENATE

ORDINARY SESSION, 2016-2017

8 March 2017

PLEASE NOTE:

PROVISIONAL TEXT

Only the final published version is binding.

EUROPEAN RESOLUTION

CONTAINING A REASONED OPINION

on the compliance with the subsidiarity principle of the proposal for a regulation amending Regulation (EC) No 883/2004 on the coordination of social security systems and Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 (COM(2016) 815 final)

Pursuant to Article 73(g), paragraphs 4 and 5, of the Senate's Rules of Procedure, the resolution adopted by the Senate's Committee on Social Affairs, worded as follows, has become a Senate resolution:

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See publications: Senate 392 (2016-2017).

The main purpose of the proposal for a regulation amending Regulation (EC) No 883/2004 on the coordination of social security systems and Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 (COM(2016) 815 final) is to give national authorities the necessary tools to monitor the social security status of posted workers.

It establishes clearer procedures for cooperation between these authorities in order to tackle potentially unfair or abusive practices.

For example, it renders more stringent the obligations with which institutions must comply which deliver Portable Document A1, certifying the social security legislation applicable to a posted worker, as regards the verification of relevant information in order to ensure that the information contained in the document is correct.

It also lays down clear time limits for exchanges of information between national authorities.

The proposal also seeks to facilitate exchanges of information from one country to another between social security institutions and labour inspectorates and immigration or tax authorities of the Member States, in order to ensure that all legal requirements relating to employment, health, security, immigration and taxation are complied with.

However, the proposal permits the use of implementing acts to establish a standard procedure with a time limit for issue, the format and the content of the document – Form A1 – certifying the applicable social security legislation.

The implementing acts will also concern the determination of the situations in which the document is issued and the points to be checked before issuing the document.

They will deal with the question of the withdrawal of the document when its accuracy and validity are contested by the competent institution of the Member State of employment.

Having regard to Article 88-6 of the Constitution,

the Senate makes the following observations:

- recourse to implementing acts pertains to an essential element of the draft regulation, as the purpose is to step up measures to combat fraud;
- implementing acts are not forwarded to national parliaments for scrutiny of compliance with the subsidiarity principle;
- in view of the numerous cases of falsification of Form A1, it seems vital to render this document secure, to arrange for the document's cancellation by a court where its validity is in doubt, and to establish a prior declaration procedure, which gives rise to intensive debate between the co-legislators – something that recourse to implementing acts does not permit;
- the Court of Justice of the European Union considers that Member States must be allowed a margin of discretion with regard to the use of posting forms for the purpose of monitoring by the host Member States; restrictions on freedom to provide services are therefore permitted if there is an overriding reason of general interest which is not already safeguarded and which

can ensure the attainment of the objective which it purses, provided that the restrictive measure is proportionate;

– the harmonisation proposed by the Commission contradicts that position by imposing a procedure for determination of the situations in which the document is issued, and the particulars that it is to contain.

For these reasons, the Senate is of the view that the proposal for a regulation COM(2016) 815 final does not comply with the principle of subsidiarity, and it therefore asks for this view to be taken into account.

This text became a Senate resolution on 8 March 2017.

The President,
Signed: Gérard LARCHER

Meeting of the Committee on European Affairs of Thursday, 9 February 2017

Social and health questions - Coordination of social security schemes: Reasoned Opinion by Mr Alain Vasselle

Mr Alain Vasselle, rapporteur. - In December 2016, the European Commission submitted a proposal for revising the regulations of 2004 and 2009 for the coordination of social security schemes. The proposal is intended to facilitate worker mobility, ensure fair treatment of taxpayers on the one hand and mobile workers on the other, and improve cooperation between the administrative authorities of the Member States. The proposed amendments notably take into account the judgments delivered by the Court of Justice of the European Union in the Dano and Alimanovic cases in 2014 and 2015, which drew attention to the phenomenon, denounced by various countries, of 'benefits tourism': nationals of Member States moving to other Member States in order to draw benefits there.

I would remind you that, under Article 48 TFEU, the coordination of social security schemes does not determine who is entitled to be insured under national legislation or the type of benefits to be granted; these remain matters for the Member States. Union action can be taken only to establish criteria for identifying the system under which any mobile citizen falls.

The proposal for a regulation submitted by the European Commission is intended, in particular, to ensure that national authorities have the tools that they need in order to verify the status of posted workers for social security purposes. Thus it contains a clause concerning A1 certificates. These documents make it possible to certify that a posted worker is affiliated to the social security scheme of the posting country. Our committee's various reports on the subject have mentioned the risks of fraud relating to these certificates.

The Commission proposal provides for harmonisation of the procedure for issuing A1 forms and harmonisation of their content. The harmonisation is to be brought about by means of implementing acts adopted by the Commission. In principle, implementing acts should only be used in relation to a non-essential part of a proposal for European legislation. This is not the case here, as the aim is to step up measures to combat fraud. Moreover, I would remind you that implementing acts are not forwarded to national parliaments for scrutiny of compliance with the subsidiarity principle.

In view of the numerous cases of falsification of Form A1, it seems vital to render this document secure, to arrange for the document to be stripped of its status by a court where its validity is in doubt, and to establish a prior declaration procedure. All this gives rise to intensive debate between the co-legislators – something that recourse to implementing acts does not permit. That also entails monitoring by national parliaments of compliance with the subsidiarity principle.

The Court of Justice of the European Union considers, incidentally, that Member States must be allowed a margin of discretion with regard to the use of posting forms for the purpose of monitoring by the host Member States. Restrictions on freedom to provide services are therefore permitted if there is an overriding reason of general interest which is not already safeguarded and

which can ensure the attainment of the objective which it pursues, provided that the restrictive measure is proportionate. The harmonisation proposed by the Commission contradicts that position by imposing a procedure for determination of the situations in which the document is issued, and the particulars that it is to contain.

For these reasons, we can take the view that this proposal does not comply with the principle of subsidiarity. I propose that you adopt the reasoned opinion which has been distributed to you.

Mr Jean Bizet, Chair . - This proposal is an important one. This is a proposal that goes to the heart of the subsidiarity principle. There is a form of dumping by certain Eastern European countries.

After the debate, the Committee on European Affairs adopted unanimously the motion for a resolution containing a reasoned opinion.

Motion for a European resolution containing a reasoned opinion

The main purpose of the proposal for a regulation amending Regulation (EC) No 883/2004 on the coordination of social security systems and Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 (COM(2016) 815 final) is to give national authorities the necessary tools to monitor the social security status of posted workers.

It establishes clearer procedures for cooperation between these authorities in order to tackle potentially unfair or abusive practices.

For example, it renders more stringent the obligations with which institutions must comply which deliver Portable Document A1, certifying the social security legislation applicable to a posted worker, as regards the verification of relevant information in order to ensure that the information contained in the document is correct.

It also lays down clear time limits for exchanges of information between national authorities.

The proposal also seeks to facilitate exchanges of information from one country to another between social security institutions and labour inspectorates and immigration or tax authorities of the Member States, in order to ensure that all legal requirements relating to employment, health, security, immigration and taxation are complied with.

However, the proposal permits the use of implementing acts to establish a standard procedure with a time limit for issue, the format and the content of the document – Form A1 – certifying the applicable social security legislation.

The implementing acts will also concern the determination of the situations in which the document is issued and the points to be checked before issuing the document.

They will deal with the question of the withdrawal of the document when its accuracy and validity are contested by the competent institution of the Member State of employment.

Having regard to Article 88-6 of the Constitution,

the Senate makes the following observations:

- recourse to implementing acts pertains to an essential element of the draft regulation, as the purpose is to step up measures to combat fraud;
- implementing acts are not forwarded to national parliaments for scrutiny of compliance with the subsidiarity principle;
- in view of the numerous cases of falsification of Form A1, it seems vital to render this document secure, to arrange for the document to be stripped of its status by a court where its validity is in doubt, and to establish a prior declaration procedure, which gives rise to intensive debate between the co-legislators – something that recourse to implementing acts does not permit;
- the Court of Justice of the European Union considers that Member States should be allowed a margin of discretion as regards the use of posting forms for purposes of monitoring by host Member States; restrictions on freedom to provide services are therefore permitted if there is an overriding reason of general interest which is not already safeguarded and which can ensure the attainment of the objective which it pursues, provided that the restrictive measure is proportionate;
- the harmonisation proposed by the Commission contradicts that position by imposing a procedure for determination of the situation in which the document is issued, and the particulars that it is to contain.

For these reasons, the Senate takes the view that the proposal for a regulation COM(2016) 815 final does not comply with the principle of subsidiarity, and it therefore asks for this view to be taken into account.