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Title

DIALOGUE AND CONCILIATION PROCEDURE

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References:

- **Recitals :** 2, 6 IR
- **BR:** Art. 76
- **IR:** Arts. 5, 6 , 16(4) and 60.
- **AC Decision:** No A1 of 12th June 2009 concerning the establishment of a dialogue and conciliation procedure concerning the validity of documents, the determination of the applicable legislation and the provision of benefits under Regulation (EC) No 883/2004.
- **ECJ CASE Law:** Case C-202/97 Fitzwilliam; Case C-178/97 Banks; C- 2/05 Herbosch Kiere.

Comments:

- The emphasis of the new coordination regulations is on making the rights of individuals more effective. This objective can be achieved only through a new dimension of more efficient cooperation between institutions, see recital 2 of IR.
- An important aspect of this cooperation is mutual trust. The principle of sincere cooperation enshrined in Article 10 EC requires the competent institution to carry out a proper assessment of the facts relevant for the application of the rules relating to the determination of the legislation applicable. The institutions in other Member States should in principle trust and accept in good faith the assessment carried out by the other institution. This principle has been incorporated into Article 5 IR concerning the legal value of documents and supporting evidence issued in another MS.
- This principle of mutual trust may not, however, answer all questions about the situation of the person concerned and his/her family. So it goes without saying that institutions should therefore in the normal course of events be able to contact each other (phone, e-mail, fax...) in order to check, or confirm, information which has been already provided by SED .
- This good practice of speedy and direct communication already exists between some institutions and should, under the modernised coordination regime, further develop as the way to deal with most difficulties. Working in this way under the modernised rules presents two particular advantages: first, it enables both institutions to avoid entering into the more formal, structured process of dialogue and conciliation; and secondly, it decreases the risk that legislation will be provisionally applied and benefits provisionally granted (see Article 6 IR on provisional application

and provisional granting of benefits).

- However, it cannot be excluded that in certain situations genuine differences of opinion and difficulties in applying the rules will persist. These cases can therefore benefit from a period of structured dialogue, carried out according to strict time limits, that is provided by the two dialogue stages of the new dialogue and conciliation procedure.
- The dialogue and conciliation procedure has been designed as a form of fallback or safety net, that is, where there is a disagreement between institutions or authorities of two or more Member States about:
 1. the validity of a document or the accuracy of facts on which the document is based (Article 5 IR);
 2. about the determination of applicable legislation (Article 6(1) IR);or about, in the case of family benefits, which legislation is applicable by priority right (Article 60(4)).
- The details of this dialogue and conciliation procedure, including the applicable time limits, are set out in decision A1 of the Administrative Commission. For a visual representation of the procedure, see the Annex to this note. What needs to be underlined is that the principal aim of this formalised procedure is to solve differences of opinion via dialogue between the institutions or authorities. With this in mind, the procedure provides for at least two distinct stages: compulsory dialogue; and optional conciliation.
- If the dialogue procedure is unsuccessful, then the matter may be referred by the competent authority of the Member State to the Administrative Commission. Note that this referral to conciliation is optional. Moreover, an institution cannot on its own decide to refer a disagreement to the Administrative Commission. The decision to refer to conciliation has to be taken by a competent authority of the Member State.
- In its revised Rules of Procedure, the Administrative Commission has the possibility to set up a special Conciliation Board. The aim of this Board is to assist the AC in its tasks of dialogue and dispute settlement, which would give the AC the appropriate and visible tool to also deal with such cases. The details of this Conciliation Board are currently finalised by the AC.

To go further:

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