



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 2 March 2012**

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**NOTE**

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from: Council Secretariat  
to: Permanent Representatives Committee (Part I)

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No. Cion prop.: 5063/11 SOC 7 CODEC 8

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Subject: 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

- Consideration of the European Parliament's amendments with a view to an agreement in first reading.

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1. On 20 December 2010, the Commission submitted the above-mentioned proposal which is intended to update Regulations (EC) No 883/2004 (the "basic Regulation") and (EC) No 987/2009 (the "implementing Regulation") to reflect changes in Member States' national social security legislations and to keep track with developments in social reality that affect the coordination of social security systems. It also includes proposals from the Administrative Commission for the Coordination of Social Security Systems that are aimed at improving and modernising the social security *acquis* in accordance with Article 72(f) of Regulation (EC) No 883/2004.

2. The proposal is based on Article 48 TFEU (qualified majority and ordinary legislative procedure).
3. The European Parliament has not yet delivered its position at first reading
4. The proposed Act has relevance for the European Economic Area and for Switzerland and should therefore be extended to the European Economic Area and Switzerland.
5. On 1 December 2011, the Council (EPSCO) reached a general approach on the text of the draft Regulation as set out in doc. 17998/11.
6. Following informal contacts between the Presidency, the Commission and Parliament's Representatives, the European Parliament's Employment and Social Affairs Committee approved the text of a draft legislative Resolution on 1 March 2012.
7. With the exception of linguistic changes in draft amendments Nos 3, 5, 11, 13, 14, 15, 16, 20, 23, 25, 30, 32 and 33 which the Social Questions Working Party found acceptable, the draft amendments adopted by the EP Committee are similar to the changes to the Commission's proposal as agreed by the Council in doc. 17998/11.
8. Against this background, the formal procedure requires that a letter be sent by the President of the Permanent Representatives Committee to Parliament proposing that an agreement in first reading could be reached, subject to Parliament agreeing to the full package of amendments.
9. The Parliament is expected to deliver its Opinion in first reading at its plenary session on 17-20 April 2012.

10. In order to facilitate final adoption of the Regulation on the basis of the Council accepting all the European Parliament's amendments in first reading, in accordance with Article 294(4) of the Treaty, the Permanent Representatives Committee is invited to confirm, on the basis of the consolidated version of the draft Regulation incorporating the EP's amendments, as set out in the Annex to this document, that these amendments are acceptable and to agree to the Parliament being informed accordingly.
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**Draft**

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL<sup>1</sup>**

**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**

**(Text with relevance for the EEA and Switzerland)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 48 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

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<sup>1</sup> The EP amendments to the Commission proposal are in bold

- (1) To take account of legal changes in certain Member States and to guarantee legal certainty for stakeholders, Regulations (EC) No 883/2004 and (EC) No 987/2009 need to be adapted.
- (2) Relevant proposals of the Administrative Commission for the Coordination of Social Security Systems concerning the coordination of social security schemes with a view to improving and modernising the *acquis* were received. The agreed proposals have been included in this text.
- (3) Changes in social reality can affect the coordination of social security systems. To respond to these changes, amendments in the field of the determination of applicable legislation and unemployment benefits are proposed.
- (4) In situations where a person is working in two or more Member States, it should be clarified that the condition of pursuing a "substantial part of the activity" within the meaning of Article 13(1) of Regulation (EC) No 883/2004 also applies to persons pursuing activities for various undertakings or employers.
- (5) *Annex III to Council Regulation (EEC) No 3922/91 of 16 December 1991 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation<sup>1</sup> defines the concept "home base" for aircrew members under Union law. In order to facilitate the application of Title II of the Regulation (EC) No 883/2004 for this group of persons, it is justified to create a special rule by using this notion of "home base" as the criterion for determining the applicable legislation for aircrew members. On the other hand, the applicable legislation for aircrew members should remain stable and the "home base" principle should not result in frequent changes of applicable legislation due to the industry's work patterns or seasonal demands.*

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<sup>1</sup> *OJ L 373, 31.12.1991, p. 4.*

- (6) *A new Article 65a should be inserted into Regulation (EC) No 883/2004 in order to ensure that a self-employed frontier worker who becomes wholly unemployed receives benefits, if he/she has completed periods of insurance as a self-employed person or periods of self-employment recognised for the purposes of granting unemployment benefits in the competent Member State and if no unemployment benefits system covering self-employed persons exists in the Member State of residence.*

*Such a new provision should be reviewed in the light of the experience after two years of implementation and, if necessary, adjusted.*

- (7) Regulations (EC) No 883/2004 and (EC) No 987/2009 should therefore be amended accordingly.

HAVE ADOPTED THIS REGULATION:

## Article 1

Regulation (EC) No 883/2004 is amended as follows:

**-1. After Recital (18a), a new Recital (18b) is added:**

***"18b. Annex III to Council Regulation (EEC) No 3922/91 of 16 December 1991 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation<sup>2</sup> defines the concept of a home base for aircrew members as the location nominated by the operator to the crew member from where the crew member normally starts and ends a duty period, or a series of duty periods, and where, under normal conditions, the operator is not responsible for the accommodation of the crew member concerned. In order to facilitate the application of Title II for this group of persons, it is justified to use this notion of home base as criterion for determining the applicable legislation for aircrew members. On the other hand, the applicable legislation for aircrew members should remain stable and the home base principle should not result in frequent changes of applicable legislation due to the industry's work patterns or seasonal demands.***

**1. In Article 9 *paragraph* (1) is replaced by the following:**

**"1. The Member States shall notify the European Commission in writing of the declarations made in accordance with Article 1 *letter* (1), the legislation and schemes referred to in Article 3, the conventions entered into as referred to in Article 8(2), the minimum benefits referred to in Article 58 and the lack of an insurance system as referred to in Article 65a(1), as well as substantive amendments made subsequently. *Such notifications shall indicate the date from which this Regulation will apply to the schemes specified in the declarations by the Member States.*"**

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<sup>2</sup> ***OJ L 373, 31.12.1991, p. 4.***

2. In Article 9, paragraph (2) is replaced by the following:

"2. These notifications shall be submitted to the European Commission every year and shall be given the necessary publicity."

**2a. In Article 11, a new paragraph (5) is added:**

**"5. An activity as an aircrew member performing air passenger or freight services shall be deemed as an activity pursued in the Member State where the home base, as defined in Annex III to Council Regulation (EEC) No 3922/91 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation<sup>3</sup> is located.**

3. In Article 12, paragraph 1 is replaced by the following:

"1. A person who pursues an activity as an employed person in a Member State on behalf of an employer which normally carries out its activities there and who is posted by that employer to another Member State to perform work on that employer's behalf shall continue to be subject to the legislation of the first Member State, provided that the anticipated duration of such work does not exceed 24 months and that he/she is not sent to replace another posted person."

4. In Article 13, paragraph 1 is replaced by the following:

"1. A person who normally pursues an activity as an employed person in two or more Member States shall be subject to:

(a) the legislation of the Member State of residence if he/she pursues a substantial part of his/her activity in that Member State, or

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<sup>3</sup> *OJ L 373, 31.12.1991, p. 4*



- (b) if he/she does not pursue a substantial part of his/her activity in the Member State of residence:
- (i) the legislation of the Member State in which the registered office or place of business of the undertaking or employer is situated if he/she is employed by one undertaking or employer, or ***if he/she is employed by two or more undertakings or employers that have their registered office or place of business in a single Member State only; or***
  - (ii) the legislation of the Member State in which the registered office or place of business of the undertaking or employer is situated outside the Member State of residence if he/she is employed by two or more undertakings or employers, ***that have their registered offices or places of business situated in two Member States, one of which is the Member State of residence; or***
  - (iii) the legislation of the Member State of residence if he/she is employed by two or more undertakings or employers, ***and at least two of them*** have their registered office or place of business in different Member States ***other than*** the Member State of residence."

5. In Article 36, paragraph 2a is replaced by the following:

"2a. The competent institution may not refuse to grant the authorisation provided for in Article 20(1) to ***a*** person who has sustained an accident at work or has contracted an occupational disease and who is entitled to benefits chargeable to that institution, where the treatment appropriate to his/her condition cannot be given in the Member State in which the person resides within a time limit which is medically justifiable, taking into account his/her current state of health and the probable course of his/her illness."

**5a. Article 63 is replaced by the following:**

***"For the purpose of this Chapter, Article 7 shall apply only in the cases provided for by Articles 64, 65 and 65a and within the limits prescribed therein."***

**5b. After Article 65, a new Article 65a is added:**

***"Article 65a***

***Special provisions for wholly unemployed self-employed frontier workers where no unemployment benefits system covering self-employed persons exists in the Member State of residence.***

- 1. By way derogation from Article 65, a wholly unemployed person who as a frontier worker most recently completed periods of insurance as a self-employed person or periods of self-employment recognised for the purposes of granting unemployment benefits and whose Member State of residence has submitted notification that no possibility exists for any category of self-employed persons to be covered by the unemployment benefits system in that Member State, shall register with and make himself / herself available to the employment services in the Member State in which he/she pursued his/her last activity as a self-employed person and continuously adhere to the conditions laid down under the legislation of the latter Member State when he/she applies for benefits. The wholly unemployed person may, as a supplementary step, make himself / herself available to the employment services of the Member State of residence.***
- 2. Benefits shall be provided to the unemployed person referred to in paragraph 1 by the Member State to whose legislation he / she was last subject in accordance with the legislation that that Member State applies.***

3. *If the person referred to in paragraph 1 does not wish to become or remain available to the employment services of the Member State of last activity after having been registered there, and wishes to seek work in the Member State of residence, the provisions of Article 64 shall apply mutatis mutandis, except for Article 64(1)(a). The competent institution may extend the period referred to in the first sentence of Article 64(1)(c) up to the end of the period of entitlement to benefits."*

6. In Article 71, paragraph 2 is replaced by the following:

"2. The Administrative Commission shall act by **a** qualified majority as defined by the Treaties, *except when adopting its rules which shall be drawn up by mutual agreement among its members.*

Decisions on questions of interpretation referred to in Article 72(a) shall be given the necessary publicity."

6a. *The following Article shall be inserted:*

*Article 87a*

*Transitional provision for application of Regulation (EC) No xx/2012*

- "1. If, as a result of Regulation (EU) xx/2012, a person is subject to the legislation of a Member State other than the one determined in accordance with Title II of this Regulation, as applicable before ... \*, that legislation shall continue to apply as long as the relevant situation remains unchanged and, in any case, for no longer than 10 years from ... \*\*, unless the person concerned requests that he/she be subject to the legislation applicable under this Regulation as amended by Regulation (EU) xx/2012. The request shall be submitted within three months after ... \*\*\* to the designated institution of the Member State of residence if the person concerned is to be subject to the legislation determined under this Regulation as amended by Regulation (EU) xx/2012. If the request is made after the time limit indicated, the change of applicable legislation shall take place on the first day of the following month.*
  
- 2. No later than the second calendar year after ... \*\*\*\*, the Administrative Commission shall evaluate the implementation of the provisions set up in Article 65a and present a report on their application. On the basis of this report, the European Commission may, as appropriate, submit proposals to amend those provisions.*

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*\* OJ insert the date of entry into force of Regulation (EU) No xxx/2012*

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7. Annexes X and XI are amended in accordance with the Annex to this Regulation.

*Article 2*

Regulation (EC) No 987/2009 is amended as follows:

1. *In Article 6, paragraph 1* is amended as follows:

- (a) point (b) is replaced by the following:

"(b) the legislation of the Member State of residence where the person concerned pursues employment or self-employment in two or more Member States and performs part of his/her activity or activities in that Member State, or where the person is not employed or self-employed;"

- (b) point (c) is replaced by the following:

"(c) in *all* other cases, the legislation of the Member State, the application of which was first requested when the person pursues an activity, or activities, in two or more Member States."

2. In Article 14, paragraph 5 is replaced by the following:

"5. For the purposes of the application of Article 13(1) of the basic Regulation, a person who 'normally pursues an activity as an employed person in two or more Member States' shall refer to a person who simultaneously, or in alternation, for the same undertaking or employer or for various undertakings or employers, exercises one or more separate activities in two or more Member States."

3. In Article 14, the following *paragraphs 5a and 5b* are added:

"5a. For the purposes of application of Title II of the basic Regulation, "registered office or place of business" shall refer to registered office or place of business where the essential decisions of the undertaking are adopted and where the functions of its central administration are carried out.

*For the purposes of Article 13(1) of the basic Regulation, an employed aircrew member normally pursuing air passenger or freight services in two or more Members States shall be subject to the legislation of the Member State where the home base as defined in Annex III to Council Regulation (EEC) No 3922/91 is located".*

*5b. Marginal activities shall be disregarded for the purposes of the determining of the applicable legislation under Article 13 of the basic Regulation. Article 16 of the implementing Regulation applies in these cases mutatis mutandis."*

4. *In* Article 15(1), the second sentence is replaced by the following:

"That institution shall issue to the person concerned the attestation referred to in Article 19(2) of the implementing Regulation and shall without delay make information concerning the legislation applicable to the person concerned, pursuant to Article 11(3)(b) or Article 12 of the basic Regulation, available to the institution designated by the competent authority of the Member State in which the activity is pursued."

5. In Article 54, paragraph 2 is replaced by the following:

"2. For the purposes of applying Article 62(3) of the basic Regulation, the competent institution of the Member State to whose legislation the person concerned was subject in respect of his/her last activity as an employed or self-employed person shall, without delay, at the request of the institution of the place of residence, provide it with all the information necessary to calculate unemployment benefits which can be obtained in the Member State where it is situated, in particular the salary or professional income received."

5a. *In Article 55, paragraph 1, the first sentence is replaced by the following:*

*"In order to be covered by Article 64 or Article 65a of the basic Regulation, the unemployed person going to another Member State shall inform the competent institution prior to his/her departure and request a document certifying that he/she retains entitlement to benefits under the conditions laid down in Article 64(1)(b) of the basic Regulation."*

6. In Article 55, the following paragraph 7 is added:

"7. Paragraphs 2 to 6 shall apply mutatis mutandis to the *situation covered by Article 65a(3) referred to in* the basic Regulation".

6a. *In Article 56, paragraph 1 is replaced by the following:*

*"Where the unemployed person decides, in accordance with Article 65(2) or 65a(1) of the basic Regulation, to make him/herself also available to the employment services in the Member State not providing the benefits by registering there as a person seeking work, he/she shall inform the institution and the employment services of the Member State providing the benefits."*

*At the request of the employment services of the Member State not providing the benefits, the employment services in the Member State providing the benefits shall send the relevant information concerning the unemployed person's registration and his/her search for employment."*

7. In Article 56, paragraph 2 is replaced by the following:

"2. Where the legislation applicable in the Member States concerned requires the fulfilment of certain obligations and/or job-seeking activities by the unemployed person, the obligations and/or job-seeking activities by the unemployed person in the Member State providing the benefits shall have priority.

The non-fulfilment by the unemployed person of all the obligations and/or job-seeking activities in the Member State which does not provide the benefits shall not affect the benefits awarded in the other Member State."

### *Article 3*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ...,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*



Annex X and XI to Regulation (EC) No 883/2004 are amended as follows:

1. Annex X is amended as follows:

(a) In section "NETHERLANDS" point (a) is replaced by the following:

"(a) Work and Employment Support for Disabled Young Persons Act of 24 April 1997 (Wet Wajong)";

(b) In section "UNITED KINGDOM";

(i) Point (c) is deleted;

(ii) The following point (e) is added:

"(e) Employment and Support Allowance Income-related (Welfare Reform Act 2007 and Welfare Reform Act (Northern Ireland) 2007)."

2. Annex XI is amended as follows:

(a) *In section "GERMANY" point 2 is replaced by the following:*

*"Notwithstanding Article 5(a) of this Regulation and Article 7 of the Sozialgesetzbuch VI (Volume VI of the Social Code), a person who is compulsorily insured in another Member State or receives an old-age pension under the legislation of another Member State may join the voluntary insurance scheme in Germany."*

(b) *In Section "FRANCE" point 1 is deleted.*

(c) Section "NETHERLANDS" is amended as follows:

(i) In point "1. Health care insurance" point (g) is deleted;

(ii) The following point (h) is added:

"(h) For the purposes of Article 18(1) of this Regulation, the persons referred to in point 1(a)(ii) of this Annex who stay temporarily in the Netherlands shall be entitled to benefits in kind in accordance with the policy offered to insured persons in the Netherlands by the institution of the place of stay, taking into account Article 11(1), (2) and (3) and Article 19(1) of the Zorgverzekeringswet (Health Care Insurance Act), as well as to benefits in kind provided for by the Algemene Wet Bijzondere Ziektekosten (General Act on Exceptional Medical Expenses).";

(iii) In point 2 "(Dutch legislation on general old-age insurance)" is replaced by "General Old Age Pensions Act";

(iv) In point 2(b) "that legislation" is replaced by "the above legislation";

(v) In point 2(g) "(Dutch legislation on general law for surviving dependants)" is replaced by "(General Surviving Relatives Act)";

(vi) In point 3 "(Dutch general law on insurance for surviving dependants)" is replaced by "(General Surviving Relatives Act)";

(vii) In point 3(d) "that legislation" is replaced by "the above legislation";

(viii) In point 4(a)(i) first indent, "(Act on Incapacity for Work)" is replaced by "(Disability Insurance Act)";

(ix) In point (4)(a)(ii) "(Self-employed Persons Act on Incapacity for Work)" is replaced by "(Self-employed Persons Disablement Benefits Act)".

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