



EUROPEAN UNION

THE EUROPEAN PARLIAMENT

THE COUNCIL

Brussels, 23 April 2012
(OR. en)

2010/0380 (COD)

PE-CONS 11/12

SOC 154
OC 91
CODEC 497

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: 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
COMMON GUIDELINES
Consultation deadline for Croatia: 7.5.2012

**REGULATION (EU) No .../2012
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

of

**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 procedure¹,

¹ Position of the European Parliament of 18 April 2012 (not yet published in the Official Journal) and decision of the Council of

Whereas:

- (1) To take account of legal changes in certain Member States and to guarantee legal certainty for stakeholders, Regulation (EC) No 883/2004 of the European Parliament and of the Council¹ and Regulation (EC) No 987/2009 of the European Parliament and of the Council² need to be adapted.
- (2) Relevant proposals were received from the Administrative Commission for the Coordination of Social Security Systems concerning the coordination of social security schemes with a view to improving and modernising Union law and have been included in this Regulation.
- (3) Changes in social reality can affect the coordination of social security systems. In order to respond to such changes, amendments in the field of the determination of applicable legislation and unemployment benefits are necessary.

¹ OJ L 166, 30.4.2004, p. 1.

² OJ L 284, 30.10.2009, p. 1.

- (4) The concept of "home base", for flight crew and cabin crew members, under Union law is defined in Annex III to Council Regulation (EEC) No 3922/91 of 16 December 1991 on the harmonization of technical requirements and administrative procedures in the field of civil aviation¹. In order to facilitate the application of Title II of Regulation (EC) No 883/2004 to this group of persons, it is justified to create a special rule whereby the concept of "home base" becomes the criterion for determining the applicable legislation for flight crew and cabin crew members. However, the applicable legislation for flight crew and cabin crew 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.
- (5) In situations where a person is working in two or more Member States, it should be made clear 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.

¹ OJ L 373, 31.12.1991, p. 4.

- (6) Regulation (EC) No 883/2004 should be amended by inserting a new provision that ensures 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. That provision should be reviewed in the light of the experience after two years of implementation and, if necessary, it should be amended.
- (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 hereby amended as follows:

- (1) The term "the Commission of the European Communities" is replaced by the term "the European Commission" throughout the text.
- (2) The following Recital is inserted:

"18b. In Annex III to Council Regulation (EEC) No 3922/91 of 16 December 1991 on the harmonization of technical requirements and administrative procedures in the field of civil aviation^{*}, the concept of "home base" for flight crew and cabin crew members is defined 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 of this Regulation for flight crew and cabin crew members, it is justified to use the concept of "home base" as the criterion for determining the applicable legislation for flight crew and cabin crew members. However, the applicable legislation for flight crew and cabin crew 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.

^{*} OJ L 373, 31.12.1991, p. 4."

(3) Article 9 is replaced by the following:

"Article 9

Declarations by the Member States on the scope of this Regulation

1. The Member States shall notify the European Commission in writing of the declarations made in accordance with point (l) of Article 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. Such notifications shall indicate the date from which this Regulation will apply to the schemes specified by the Member States therein.
2. These notifications shall be submitted to the European Commission every year and shall be given the necessary publicity."

(4) The following paragraph is added to Article 11:

- "5. An activity as a flight crew or cabin crew member performing air passenger or freight services shall be deemed to be an activity pursued in the Member State where the home base, as defined in Annex III to Regulation (EEC) No 3922/91, is located."

(5) 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."

(6) 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:

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

(b) if he/she does not pursue a substantial part of his/her activity in the Member State of residence:

(i) to 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

- (ii) to the legislation of the Member State in which the registered office or place of business of the undertakings or employers is situated if he/she is employed by two or more undertakings or employers which have their registered office or place of business in only one Member State; or
- (iii) to the legislation of the Member State in which the registered office or place of business of the undertaking or employer is situated other than the Member State of residence if he/she is employed by two or more undertakings or employers, which have their registered office or place of business in two Member States, one of which is the Member State of residence; or
- (iv) to the legislation of the Member State of residence if he/she is employed by two or more undertakings or employers, at least two of which have their registered office or place of business in different Member States other than the Member State of residence."

(7) 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 who 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 he/she resides within a time-limit which is medically justifiable, taking into account his/her current state of health and the probable course of the illness."

(8) Article 63 is replaced by the following:

"Article 63

Special provisions for the waiving of residence rules

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."

(9) The following article is inserted:

"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 of derogation from Article 65, a wholly unemployed person who, as a frontier worker, has most recently completed periods of insurance as a self-employed person or periods of self-employment recognised for the purposes of granting unemployment benefits in a Member State other than his/her Member State of residence and whose Member State of residence has submitted notification that there is no possibility for any category of self-employed persons to be covered by an unemployment benefits system of 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, when he/she applies for benefits, shall continuously adhere to the conditions laid down under the legislation of the latter Member State. 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 wholly unemployed person referred to in paragraph 1 by the Member State to whose legislation he/she was last subject in accordance with the legislation which that Member State applies.
3. If the wholly unemployed 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, Article 64 shall apply mutatis mutandis, except 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."

(10) 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."

(11) The following Article is inserted:

"Article 87a

Transitional provision for application of Regulation (EU) No .../2012

1. If as a result of the entry into force of Regulation (EU) No .../2012, a person is subject, in accordance with Title II of this Regulation, to the legislation of a different Member State than that to which he/she was subject before that entry into force, the legislation of the Member State applicable before that date shall continue to apply to him/her for a transitional period lasting for as long as the relevant situation remains unchanged and, in any case, for no longer than ten years from the date of entry into force of Regulation (EU) No .../2012. Such a person may request that the transitional period no longer applies to him/her. Such request shall be submitted to the institution designated by the competent authority of the Member State of residence. Requests submitted by ...* shall be deemed to take effect on ...**. Requests submitted after ...* shall take effect on the first day of the month following that of their submission.

2. No later than ...***, the Administrative Commission shall evaluate the implementation of the provisions laid down in Article 65a of this Regulation 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.

* OJ: please insert the date - three months after the date of entry into force of Regulation (EU) No .../2012.

** OJ: please insert the date of entry into force of Regulation (EU) No .../2012.

*** OJ: please insert the date - two calendar years after the date of entry into force of Regulation (EU) No .../2012."

- (12) Annexes X and XI are amended in accordance with the Annex to this Regulation.

Article 2

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

- (1) In Article 6(1), points (b) and (c) are replaced by the following:
 - "(b) the legislation of the Member State of residence if the person concerned pursues employment or self-employment in two or more Member States and performs part of his/her activity or activities in the Member State of residence, or if the person concerned is neither employed nor self-employed;
 - (c) in all other cases, the legislation of the Member State, the application of which was first requested if the person pursues an activity, or activities, in two or more Member States."
- (2) Article 14 is amended as follows:
 - (a) 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.";

(b) the following paragraphs are inserted:

"5a. For the purposes of the application of Title II of the basic Regulation, 'registered office or place of business' shall refer to the 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 flight crew or cabin crew member normally pursuing air passenger or freight services in two or more Member 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 of 16 December 1991 on the harmonization of technical requirements and administrative procedures in the field of civil aviation*, is located.

5b. Marginal activities shall be disregarded for the purposes of determining the applicable legislation under Article 13 of the basic Regulation. Article 16 of the implementing Regulation shall apply to all cases under this Article.

* OJ L 373, 31.12.1991, p. 4."

(3) In Article 15(1), the second sentence is replaced by the following:

"That institution shall issue the attestation referred to in Article 19(2) of the implementing Regulation to the person concerned and shall without delay make information concerning the legislation applicable to that person, 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."

(4) 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."

(5) Article 55 is amended as follows:

(a) in paragraph 1, the first subparagraph 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 his/her entitlement to benefits under the conditions laid down in Article 64(1)(b) of the basic Regulation."

(b) the following paragraph is added:

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

(6) In Article 56, paragraphs 1 and 2 are replaced by the following:

"1. Where the unemployed person decides, in accordance with Article 65(2) or Article 65a(1) of the basic Regulation, to make himself/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 that is providing the benefits shall send the relevant information concerning the unemployed person's registration and his/her search for employment.

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

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

(1) Annex X is amended as follows:

(a) In the 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 the section "UNITED KINGDOM";

(i) Point (c) is deleted;

(ii) The following point 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 the section "GERMANY", point 2 is replaced by the following:

"2. 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 the section "FRANCE", point 1 is deleted.

(c) The section "NETHERLANDS" is amended as follows:

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

(ii) The following point 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) Point 2 is amended as follows:

- (a) In the introductory wording and point (a), "(Dutch legislation on general old-age insurance)" is replaced by "(General Old Age Pensions Act)";
- (b) In the first subparagraph of point (b), the words "that legislation" are replaced by the words "the above legislation";
- (c) In the second subparagraph of point (g), "(Dutch legislation on general law for surviving dependants)" is replaced by "(General Surviving Relatives Act)";

(iv) Point 3 is amended as follows:

- (a) In the introductory wording, "(Dutch general law on insurance for surviving dependants)" is replaced by "(General Surviving Relatives Act)";
- (b) In the first subparagraph of point (d), the words "that legislation" are replaced by the words "the above legislation";

- (v) Point 4 is amended as follows:
- (a) In point (a)(i) first indent, "(Act on Incapacity for Work)" is replaced by "(Disability Insurance Act)";
 - (b) In point (a) (ii), "(Self-employed Persons Act on Incapacity for Work)" is replaced by "(Self-employed Persons Disablement Benefits Act)."
-