



EUROPEAN PARLIAMENT

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Plenary sitting

A7-0043/2012

5.3.2012

*****I**
REPORT

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(2010)0794 – C7-0005/2011 – 2010/0380(COD))

Committee on Employment and Social Affairs

Rapporteur: Milan Cabrnoch

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**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(2010)0794 – C7-0005/2011 – 2010/0380(COD))**

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2010)0794),
 - having regard to Article 294(2) and Article 48 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0005/2011),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Employment and Social Affairs (A7-0043/2012),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

**Proposal for a regulation
Citation 4**

Text proposed by the Commission

Amendment

*Having regard to the opinion of the
European Economic and Social
Committee,*

deleted

Amendment 2

Proposal for a regulation Recital 5

Text proposed by the Commission

(5) *The diversity and evolution of the conditions under which professional activities are pursued make it necessary to take into account the situation of highly mobile workers. New labour supply structures have become evident amongst others in the air transport sector. Linking the applicable legislation for aircrew members to the Member State where the registered office or place of business of the undertaking or employer employing him/her is situated only is effective if there is a sufficiently close connection to the registered office or place of business. For aircrew members it is considered appropriate to refer to 'home base' as specification of the notion of 'registered office or place of business' for the application of Regulation (EC) No 883/2004.*

Amendment

(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 aviation¹ 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.*

¹ OJ L 373, 31.12.1991, p. 4.

Amendment 3

Proposal for a regulation Recital 6

Text proposed by the Commission

(6) Article 65 (5) of Regulation (EC) No 883/2004 *should be amended* to ensure that self-employed *persons* receive benefits *in accordance with* the *legislation* of the competent Member State *to offer them* the *best prospects of re-integrating into the labour market in their* Member State of residence *when returning to that State.*

Amendment

(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.

Amendment 4

Proposal for a regulation

Article 1 – point -1 (new)

Regulation (EC) No 883/2004

Recital 18 b (new)

Text proposed by the Commission

Amendment

-1. The following recital is inserted after Recital (18a):

"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 aviation¹ defines the concept "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 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.

Amendment 5

Proposal for a regulation

Article 1 – point 1

Regulation (EC) No 883/2004

Article 9 – paragraph 1

Text proposed by the Commission

1. In Article 9(1), **the first sentence** 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(1), the legislation and schemes referred to in Article 3, the conventions entered into as referred to in Article 8(2) **and** the minimum benefits referred to in Article 58, as well as substantive amendments made subsequently."

Amendment

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 **point (1) 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 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.**"

Amendment 6

Proposal for a regulation

Article 1 – point 2 a (new)

Regulation (EC) No 883/2004

Article 11 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

2a. The following paragraph is added to Article 11:

"4a. 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 aviation¹, is located.

¹ OJ L 373, 31.12.1991, p. 4."

Amendment 7

Proposal for a regulation

Article 1 – point 4

Regulation (EC) No 883/2004

Article 13 – paragraph 1 – point b – subpoint i

Text proposed by the Commission

(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

Amendment

(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 situated in a single Member State only; or*

Amendment 8

Proposal for a regulation

Article 1 – point 4

Regulation (EC) No 883/2004

Article 13 – paragraph 1 – point b – subpoint ii

Text proposed by the Commission

(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 and *at least one of these undertakings has its* registered *office* or *place* of business in a

Amendment

(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,*

single Member *State outside* the Member State of residence, or

one of which is the Member State of residence; or

Amendment 9

Proposal for a regulation

Article 1 – point 4

Regulation (EC) No 883/2004

Article 13 – paragraph 1 – point b – subpoint iii

Text proposed by the Commission

(iii) the legislation of the Member State of residence if he/she is employed by two or more undertakings or employers, *who* have their registered office or place of business in different Member States *outside* the Member State of residence.

Amendment

(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."

Amendment 10

Proposal for a regulation

Article 1 – point 5

Regulation (EC) No 883/2004

Article 36 – paragraph 2 a

Text proposed by the Commission

2a. The competent institution may not refuse to grant the authorisation provided for in Article 20(1) to *an insured* 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.

Amendment

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."

Amendment 11

Proposal for a regulation
Article 1 – point 5 a (new)
Regulation (EC) No 883/2004
Article 63

Text proposed by the Commission

Amendment

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."

Amendment 12

Proposal for a regulation
Article 1 – point 6
Regulation (EC) No 883/2004
Article 65 – paragraph 5

Text proposed by the Commission

Amendment

6. In Article 65, paragraph 5 is replaced by the following:

deleted

'5.(a) Unless otherwise provided by point (b), the unemployed person referred to in the first and second sentences of paragraph 2 shall receive benefits in accordance with the legislation of the Member State of residence as if he/she had been subject to that legislation during his/her last activity as an employed or self-employed person. Those benefits shall be provided by the institution of the place of residence.

(b) Where the legislation of the Member State of residence does not provide insurance for self-employed persons against the risk of unemployment, the unemployed person referred to in the first and second sentences of paragraph 2, who was insured in the Member State of his/her last activity as a self-employed person against unemployment shall receive benefits in accordance with the

legislation of the latter Member State.

(c) However, a worker other than a frontier worker who has received benefits at the expense of the competent institution of the Member State to whose legislation he/she was last subject shall firstly receive, on his/her return to the Member State of residence, benefits in accordance with Article 64, the receipt of the benefits in accordance with (a) being suspended for the period during which he received benefits under the legislation to which he/she was last subject.'

Amendment 13

Proposal for a regulation

Article 1 – point 6 a (new)

Regulation (EC) No 883/2004

Article 65 a (new)

Text proposed by the Commission

Amendment

The following Article is inserted after Article 65:

"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 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."

Amendment 14

Proposal for a regulation

Article 1 – point 7

Regulation (EC) No 883/2004

Article 71 – paragraph 2 – subparagraph 1

Text proposed by the Commission

"2. The **rules of the** Administrative Commission shall be drawn up by mutual agreement among its members.

Amendment

"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.

Amendment 15

Proposal for a regulation

Article 1 – point 7

Regulation (EC) No 883/2004

Article 71 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

In all other cases, the Administrative Commission shall act by a qualified majority as defined by the Treaties.

deleted

Amendment 16

Proposal for a regulation

Article 1 – point 7 a (new)

Regulation (EC) No 883/2004

Article 87 a (new)

Text proposed by the Commission

Amendment

The following Article is inserted:

"Article 87a

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

1. If, as a result of Regulation (EU) No 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) No 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) No xxx/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.*

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

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

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

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

Amendment 17

Proposal for a regulation

Article 2 – point 1 – point b

Regulation (EC) No 987/2009

Article 6 – paragraph 1 – point c

Text proposed by the Commission

"(c) in 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."

Amendment

"(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."

Amendment 18

Proposal for a regulation

Article 2 – point 2

Regulation (EC) No 987/2009

Article 14 – paragraph 5

Text proposed by the Commission

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, ***with the exception of marginal activities.***

Amendment 19

Proposal for a regulation

Article 2 – point 3

Regulation (EC) No 987/2009

Article 14 – paragraph 5 a – subparagraph 2

Text proposed by the Commission

In the situation of aircrew members performing air passenger or freight services the “registered office or place of business” as defined in Title II of the basic Regulation shall be deemed to be 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.

Amendment 20

Proposal for a regulation

Article 2 – point 3 a (new)

Regulation (EC) No 987/2009

Article 14 – paragraph 5 b (new)

Text proposed by the Commission

Amendment

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.

Amendment

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 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 is located.

(3a) In Article 14, the following

paragraph 5b is added:

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

Amendment 21

Proposal for a regulation

Article 2 – point 5 a (new)

Regulation (EC) No 987/2009

Article 55 – paragraph 1

Text proposed by the Commission

Amendment

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

"1. 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."

Amendment 22

Proposal for a regulation

Article 2 – point 6

Regulation (EC) No 987/2009

Article 55 – paragraph 7

Text proposed by the Commission

Amendment

7. Paragraphs **1** to 6 shall apply mutatis mutandis to the **persons referred to in Article 65(5)(b)** of the basic Regulation, **except for paragraph 1 (c) of this Article.**

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

Amendment 23

Proposal for a regulation

Article 2 – point 6 a (new)

Regulation (EC) No 987/2009

Article 56 – paragraph 1

Text proposed by the Commission

Amendment

7. 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 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 *providing the benefits* shall send the relevant information concerning the unemployed person's registration and his/her search for employment."

Amendment 24

Proposal for a regulation

Annex – point 2 – point -a (new)

Regulation (EC) No 883/2004

Annex XI

Text proposed by the Commission

Amendment

(-a) In 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."

Amendment 25

Proposal for a regulation

Annex – point 2 – point -aa (new)

Regulation (EC) No 883/2004

Annex XI

Text proposed by the Commission

Amendment

(-aa) In section "FRANCE", point 1 is deleted.

PROCEDURE

Title	Amendment of 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		
References	COM(2010)0794 – C7-0005/2011 – 2010/0380(COD)		
Date submitted to Parliament	20.12.2010		
Committee responsible Date announced in plenary	EMPL 18.1.2011		
Rapporteur(s) Date appointed	Milan Cabrnoch 20.1.2011		
Discussed in committee	5.12.2011	25.1.2012	29.2.2012
Date adopted	1.3.2012		
Result of final vote	+: -: 0:	42 0 1	
Members present for the final vote	Regina Bastos, Edit Bauer, Heinz K. Becker, Pervenche Berès, Vilija Blinkevičiūtė, Philippe Boulland, Milan Cabrnoch, Alejandro Cercas, Ole Christensen, Emer Costello, Andrea Cozzolino, Frédéric Daerden, Karima Delli, Sari Essayah, Richard Falbr, Marian Harkin, Nadja Hirsch, Stephen Hughes, Danuta Jazłowiecka, Ádám Kósa, Veronica Lope Fontagné, Olle Ludvigsson, Thomas Mann, Elisabeth Morin-Chartier, Csaba Óry, Konstantinos Poupakis, Licia Ronzulli, Elisabeth Schroedter, Nicole Sinclair, Joanna Katarzyna Skrzydlewska, Jutta Steinruck, Andrea Zannoni, Inês Cristina Zuber		
Substitute(s) present for the final vote	Georges Bach, Malika Benarab-Attou, Kinga Göncz, Silvana Koch-Mehrin, Jan Kozłowski, Svetoslav Hristov Malinov, Ramona Nicole Mănescu, Gabriele Zimmer		
Substitute(s) under Rule 187(2) present for the final vote	Phil Bennion, Silvia-Adriana Țicău		
Date tabled	6.3.2012		