

EN

EN

EN



EUROPEAN COMMISSION

Brussels, 20.12.2010
COM(2010) 794 final

2010/0380 (COD)

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**

(Text with relevance for the EEA and Switzerland)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

This proposal is intended to update Regulations (EC) No 883/2004 and (EC) No 987/2009 to reflect changes in Member States' national social security legislation and to keep track with changes in social reality that affect the coordination of social security systems.

Moreover, this proposal includes proposals from the Administrative Commission for the Coordination of Social Security Systems (hereafter: Administrative Commission) that are aimed at improving and modernising the *acquis* in accordance with Article 72 (f) of Regulation (EC) No 883/2004.

The amendments in this proposal are aimed at guaranteeing legal certainty for stakeholders.

General context

The proposal concerns a regular update of Regulations (EC) No 883/2004 and (EC) No 987/2009. Its aim is to ensure proper EU coordination of national social security systems. It reflects legal changes at national level and takes stock of recent developments in cross-border mobility that affect the coordination of social security systems.

Existing provisions in the area of the proposal

The existing provisions are laid down in Regulation (EC) No 883/2004 (last amended by Regulation (EC) No 988/2009) and Regulation (EC) No 987/2009.

Regulations (EC) No 883/2004 and (EC) No 987/2009 have to be adjusted to keep them up to date with the developments in national legislation and the changes in social reality that affect the coordination of social security systems. In addition, relevant proposals aiming at improving the coordination system were received from the Administrative Commission. These proposals, together with other technical adaptations to the text are incorporated in this proposal. This proposal will also update and amend the references to national legislation in certain annexes to the Regulations.

Consistency with other policies and objectives of the Union

Not applicable.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

Consultation of interested parties

²¹¹ *Consultation methods, main sectors targeted and general profile of respondents*

Member States were invited to submit proposals for miscellaneous amendments to the Regulations for 2010. The Administrative Commission in addition requested amendments updating and clarifying Regulations (EC) No 883/2004 and (EC) No 987/2009.

Summary of responses and how they have been taken into account

The proposals which are considered to be compatible with EU law and to which the Administrative Commission agreed are incorporated in this proposal.

221 Scientific/expertise domains concerned

Social security coordination.

222 Methodology used

Discussion in two meetings of the Administrative Commission in 2010 and, where needed, further discussion to obtain clarification, particularly on the details of national legislation, with representatives of the Administrative Commission from the Member States concerned.

223 Main organisations/experts consulted

Administrative Commission, as well as representatives from the individual Member States concerned.

2249 Summary of advice received and used

The existence of potentially serious risks with irreversible consequences has not been mentioned.

Agreement of the Administrative Commission to update, complete and improve the text and to update certain entries for Member States in the annexes to Regulations (EC) No 883/2004 and (EC) No 987/2009.

226 Means used to make the expert advice publicly available

None.

Impact assessment

As of 1 of May 2010, two modernised Regulations (EC) No 883/2004 and (EC) No 987/2009 on the coordination of social security systems are applied in all EU Member States. The modernised social security Regulations are the result of ten years of negotiations between Member States. The need for modernisation came, among others, from changes in national legislation and from the case law of the Court of Justice of the European Union (CJEU).

Member States frequently amend their national social security legislation. As a consequence, the references made to national legislation in EU legislation coordinating social security systems can become outdated which will create legal uncertainty for stakeholders when applying the Regulations.

The references in Regulations (EC) No 883/2004 and (EC) No 987/2009 therefore need to be updated to correctly reflect legal changes at national level and changes in social reality correctly. The Regulations can be updated only by means of a Regulation.

One of the main features of the modernised coordination provisions is simplification. Simplifying the Regulations makes them easier to interpret and reduces the scope for conflicting views. To ensure that the simplified provisions fully protect citizens' rights, some provisions needed to be amended, in particular in the field of applicable legislation and unemployment benefits. In the provision on determining the applicable legislation for the situation where a person is working in two or more Member States, the criterion of "substantial part of the activity" will be extended and the notion of "registered office or place of business" will be concretized. Amendments in the field of unemployment benefits are needed to provide a satisfactory solution in the situation where a self-employed person has been insured for unemployment in the Member State of last activity but returns to his Member State of residence which does not have any unemployment insurance for self-employed persons.

The last few years have shown an increased tendency towards new forms of mobility. New labour supply structures can be noticed amongst others in air transport, where companies provide their services from so-called "home bases" in different Member States. The Commission reflects on preparing a Paper in 2011 on changed patterns of mobility in relation to the right of free movement of workers and social security in which it will identify which specific actions the Commission needs to take in order to better respond to the needs of different types of migrant workers. Without wanting to anticipate the Paper, the Commission deems it appropriate to already specify the notion of "registered office or place of business" for aircrew members, in order to assist the institutions in determining the location of the "registered office or place of business" and to facilitate the application of Regulation (EC) No 883/2004 in this sector. Particularly relevant here is that the concept of "home base" has already been defined in Regulation (EC) 1899/2006 of the European Parliament and of the Council of 12 December 2006 amending Council Regulation (EEC) No 3922/91 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation and is already in use in that sector.

Although Regulations (EC) No 883/2004 and (EC) No 987/2009 are applied as of 1 May 2010, they reflect the state of play of Member States' legislation of 26 January 2004 (for Regulation (EC) No 883/2004) and of 17 December 2008 (for Regulation (EC) No 987/2009). It is in the interest of the citizens concerned that the Regulations are updated within a reasonable time after changes have been made to national legislation of the Member States. Only Regulations that are up to date with the developments in national legislation and whose provisions are clear and complete can guarantee transparency and certainty for stakeholders and provide full protection for mobile citizens.

This proposal facilitates the coordination of social security systems in the Member States and contributes to the protection of citizens migrating within the EU. Most of the changes have been proposed by the Member States and the by Administrative Commission. In terms of workload or costs, it is estimated that the proposed amending Regulation will make no substantive difference to the present situation of social security coordination for institutions and administrations, workers or employers or non-active citizens.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

This proposal supplements, clarifies and updates some of the provisions of Regulations (EC) No 883/2004 and (EC) No 987/2009 to reflect changes in Member States' national social security legislation and changed patterns of mobility affecting the coordination of the social security systems. The changes will facilitate the efficient application of the EU legislation coordinating social security schemes and improve the protection of individuals moving within the EU.

Legal basis

Article 48 TFEU.

Subsidiarity principle

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the EU.

The objectives of the proposal cannot be sufficiently achieved by the Member States for the following reasons.

EU action in the form of coordination measures in the field of social security is required by Article 48 of the TFEU and is necessary to guarantee that the right to free movement laid down in the TFEU can be fully exercised. Without such coordination, there would be a risk that freedom of movement would be inoperable, since people would be less likely to make use of this right if it meant, in essence, losing social security rights already acquired in another Member State. Existing EU legislation on social security does not aim at replacing the different national systems. It should be stressed that the proposed amending Regulation is not a harmonisation measure and does not go beyond what is necessary for effective coordination. The proposal basically aims at updating the existing coordinating rules to reflect the legal changes that have been made at national level and to implement changes that have become necessary due to changing social reality. It also aims to complement and improve the text of the Regulations with the aim of protecting citizens' rights when they are moving within the EU.

Even though the proposal is, therefore, mainly based on contributions by Member States, Member States could not adopt such provisions at national level since this could potentially conflict with the Regulations. Therefore it is necessary to ensure that the bodies of and annexes to the Regulations are properly adapted so that the Regulations can apply effectively within the EU.

Social security coordination concerns cross-border situations where no Member State can act alone. The EU coordinating legislation replaces the numerous existing bilateral agreements. This not only simplifies social security coordination for Member States but also ensures equal treatment of EU citizens who are insured in accordance with national social security legislation.

EU action will better achieve the objectives of the proposal for the following reasons(s):

Coordination of social security schemes makes sense only at EU level. The aim is to ensure that coordination of social security schemes operates effectively throughout all Member States. This is based on, and justified by, the free movement of persons within the EU.

There are no qualitative indicators, but the Regulations concern each EU citizen moving, for whatever reason, within the territory of the EU.

The proposal is purely a coordinating measure which can be taken only at EU level. Member States remain responsible for organising and financing their own social security systems.

The proposal therefore complies with the subsidiarity principle.

Proportionality principle

The proposal complies with the proportionality principle for the following reason(s):

Regulations (EC) No 883/2004 and (EC) No 987/2009 require this form of action because a Regulation may be amended only by a Regulation. The action does not touch upon the system of coordination itself. Member States remain solely responsible for organising and financing their national social security schemes.

The proposal makes it easier for the Member States and their institutions to coordinate social security systems and aims at protecting the individuals moving within the EU, by updating and improving certain provisions of Regulations (EC) No 883/2004 and (EC) No 987/2009 and some of the annexes to Regulation (EC) No 883/2004. The amended provisions are mainly based on proposals by the Member States which means that any potential financial and administrative burden is minimised and proportionate to the abovementioned objective. Conversely, without such an update of Regulations (EC) No 883/2004 and (EC) No 987/2009 the financial and administrative burdens would be likely to be greater, as the provisions would not meet changing needs of the Member States.

Choice of instruments

Proposed instruments: Regulation.

Other means would not be adequate for the following reason(s):

There is no alternative because a Regulation may be amended only by a Regulation.

4. BUDGETARY IMPLICATION

The proposal has no implications for the EU budget.

5. OPTIONAL ELEMENTS

European Economic Area and Switzerland

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.

Detailed explanation of the proposal

Article 1

Article 1 concerns the amendments to Regulation (EC) No 883/2004.

A. Amendment of Article 9

1. Amendment of Article 9(1)

In Article 9, the reference to Article 1, *paragraph* (1) in Article 9(1) of Regulation (EC) No 883/2004 should be read "Article 1, *letter* (1)". Furthermore, the notification of a contractual provision in accordance with the second subparagraph of Article 1(1) of Regulation (EC) No 883/2004 is to be made separately from, and is a prerequisite for, the declaration to be made in accordance with Article 9 of Regulation (EC) No 883/2004.

2. Amendment of Article 9(2)

Article 9(2) of Regulation (EC) No 883/2004 should be amended in order to bring it in line with the second subparagraph of Article 71(2) of Regulation (EC) No 883/2004.

B. Amendment of Article 12(1)

The proposed amendment clarifies that a posted person cannot be replaced by another *posted* person after the posting period of the first person expires. The word "posted" was omitted here by accident.

C. Amendment of Article 13(1)

In the current text of Article 13(1), the condition of pursuing a "substantial part" of the activity does not apply to the situation in which a person is working in two or more Member States for various undertakings or employers. This is not in line with the intention when negotiated in Council, especially not for the situation in which the activity pursued in the Member State of residence is relatively small. The purpose of this amendment is to make clear that the condition of pursuing a "substantial part" of the activity also applies to a person who normally pursues an activity for various undertakings or employers in two or more Member States. In the situation where the condition of "substantial part" of the activity has not been fulfilled in the Member State of residence, the applicable legislation is the legislation of the other Member State in which the registered office or place of business of the undertaking(s) or employer(s) is or are located. If it is not possible to appoint one Member State in which registered office or place of business is situated, e.g. when there are two or more employers who are established in two different Member States outside the Member State of residence, the legislation of the Member State of residence will be applicable. The amendment aims at avoiding the manipulation of the applicable legislation, while respecting the principle of simplification and pragmatism.

D. Amendment of Article 36 (2a)

Article 36(2a) of Regulation (EC) No 883/2004 should be amended in order to bring its personal scope of application into line with that of the rest of Chapter 2 of Title III of Regulation (EC) No 883/2004 and with the third subparagraph of Article 26(2) of Regulation (EC) No 987/2009 which governs the parallel issue in the field of sickness, maternity and equivalent paternity benefit.

E. Amendment of Article 65 (5)

The amendment addresses the situation where a self-employed person has been insured for unemployment in the Member State of last activity and, once unemployed, returns to his/her

Member State of residence which does not have any unemployment insurance for self-employed.

In such a situation, unlike for employed persons, the transfer of the responsibility for the payment of unemployment benefits from the Member State of last activity to the Member State of residence is not possible as the legislation of the latter Member State does not provide for unemployment benefits for self-employed persons. However, in accordance with the purpose of Article 65 as confirmed by the case-law of the CJEU (see CJEU rulings on Article 71 of Regulation 1408/71 which corresponds to the new Article 65 of Regulation 883/2004, e.g. Cases C-454/93 *Van Gestel* [1995] ECR I-1707, 58/87 *Rebmann* [1988] ECR 3467) the persons subject to that Article have a right, once unemployed, to return to their State of residence and seek work there. The reasoning behind this Article is that these persons have the best prospects of reintegrating into the labour market of their Member State of residence, due to their close ties there. To this end, their right to social benefits shall not be restricted, especially where those benefits represent the counterpart of contributions which they have paid (Case C-228/07 *Petersen* [2008] ECR I-6989). Furthermore, the European Court of Human Rights has found that a right to unemployment benefits linked to the payment of contributions to the unemployment insurance fund is to be brought – as a pecuniary right – under the protection of Article 1 Protocol No. 1 of the European Convention (*Gaygusuz v. Austria*).

F. Amendment of Article 71 (2)

The need to clarify the voting procedure of the Administrative Commission emerged in discussions thereon. The proposed voting procedure reflects the new developments introduced by the Treaty of Lisbon, in particular the new Article 48 TFEU.

Article 2

Article 2 concerns the amendments to Regulation (EC) No 987/2009.

A. Amendment of Article 6(1)

The wording of this Article has been realigned more closely to what was agreed in Council. In point 1(b) it is now clarified that the legislation of the Member State of residence cannot be applied provisionally if the person concerned does not pursue any activities in the Member State of residence.

B. Amendment of Article 14(5)

The amendment clarifies that marginal and ancillary activities, that are insignificant in terms of time and economic returns, shall not be taken into account for the determination of the applicable legislation on the basis of Title II of Regulation (EC) No 883/2004. The activities as such remain relevant for the application of national social security legislation; if the marginal activity generates social security affiliation, the contributions shall be paid in the competent Member State for the overall income from all activities.

The objective of the amendment is twofold:

1) to simplify the existing provision by deleting the distinction between "simultaneous" or "alternating" activities and thus enhancing the legal certainty for persons who pursue an

effective and genuine activity in one Member State and in parallel only a marginal activity in another Member State, and

2) to avoid possible misuse of the provisions on applicable legislation of Regulation (EC) No 883/2004.

C. Insertion of Paragraph 14(5a)

This amendment ensures that the meaning of "registered office or place of business" is applied in accordance with the case law of the CJEU and other EU Regulations. The amendment serves as a steppingstone for additional elements to be defined by the Administrative Commission.

For aircrew members the "registered office or place of business" is deemed to be the "home base". The concept of the "home base" is recognised and used in this sector and already defined by Regulation (EEC) No 3922/91, which facilitates and justifies its use within the field of coordination of social security systems. The reference to the "home base" for aircrew members does not affect the principle that the situation of each crew member should be examined separately and on the basis of objective information in order to determine which legislation is applicable on the basis of Title II of Regulation (EC) No 883/2004.

D. Amendment of Article 15(1)

This amendment brings the text of this Article into line with the final agreement in the second reading of the European Parliament in the co-decision procedure to adopt Regulation (EC) No 987/2009 to inform the person concerned on the applicable legislation to him/her in cases of posting.

E. Amendment of Article 54(2)

The amendment fixes an error made during the linguistic check in the Council and restores the original meaning of the provision.

F. Insertion of Article 55(7)

A new paragraph is added in order to apply the procedure used for the export of benefits *mutatis mutandis* to the situation covered by the new provision of Article 65(5)(b) of Regulation (EC) No 883/2004, except for the provision concerning the time restriction of the entitlement referred to in paragraph 1 (c) of Article 55 of Regulation (EC) No 987/2009.

G. Amendment of Article 56(2)

The text needs to be amended in order to address the situation where the person subject to the new Article 65(5)(b) of Regulation (EC) No 883/2004 registers him/herself, as a supplementary step, also with the employment services in the State of his/her last activity.

In such a case, it should be the obligations and job-seeking activities in the State of last activity that have priority as that State provides the benefits to the person. The new wording gives priority to the obligations and job-seeking activities in the State providing the benefits and rules out negative effect of their non-fulfilment in the other Member State.

Annex

A. Amendment of Annex X to Regulation (EC) No 883/2004

Annex X lists the special non-contributory cash benefits. In the Section "NETHERLANDS", the Disablement Assistance Act for Handicapped Young Persons of 24 April 1997 (Wajong), will be replaced by the "Work and Employment Support for Disabled Young Persons Act" (Wet Wajong).

Like the former Act, the income support provided by the new Act is offered to young disabled persons who, as a result of their disability, have a limited capacity to work and whose income falls below the statutory minimum wage. The young disabled persons who fulfil certain conditions can receive income support, to supplement their income up to the level of the statutory minimum wage, if the income that they receive out of work is below 75% of the statutory minimum wage. The income protection can also be afforded to young handicapped persons who are studying and need financial support as well as to the young people who cannot work at all, i.e. those who are completely and permanently unable to work.

This new entry by the Netherlands was examined by the Administrative Commission and the income support was considered to be a special non-contributory cash benefit within the meaning of Article 70 of Regulation (EC) No 883/2004.

In the Section "UNITED KINGDOM" a new special non-contributory cash benefit will be listed for UK, namely the Employment and Support Allowance Income-related (herewith ESA(IR)).

The prime objective of the ESA (IR) is to guarantee a minimum subsistence income having regard to the economic and social situation in the UK. Income-related ESA is available where a person's contribution record or financial situation is such that no, or inadequate, contributory Employment and Support Allowance is payable.

ESA (IR) was considered by the Administrative Commission to be a special non-contributory cash benefit in the sense of Article 70 of Regulation (EC) No 883/2004 that could be listed in Annex X to Regulation (EC) No 883/2004.

Also in the "UNITED KINGDOM" section, the Income Support will be deleted from the Annex. The creation of the new means-tested benefits (Jobseeker's Allowance, Employment and Support Allowance and State Pension Credit) for specific risk categories has as effect that the Income support has become a limited subsistence benefit, payable to people with no, or a very low, income. As social assistance is excluded from the scope of Regulation (EC) No 883/2004, the Income Support is to be delisted.

B. Amendment of Annex XI to Regulation (EC) No 883/2004

1. Amendment of Section "NETHERLANDS"

The entry of point 1(h) extends the right to receive benefits in kind during a stay in the Netherlands to a pensioner and his or her family members who are insured under the legislation of another Member State and offers an additional advantage to pensioners and their family members in the field of sickness benefits.

Point 1(g) can be deleted as the no-claims refund has been replaced with the introduction of a mandatory risk excess into the Dutch health insurance system.

The other changes in Annex XI concern linguistic amendments to ensure consistency in the references to the Dutch legislation.

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**

(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,

Having regard to the opinion of the European Economic and Social Committee¹,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (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) 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.

¹ OJ C , , p . .

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.

- (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.
- (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. 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."

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."

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

(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

(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 single Member State outside 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, who have their registered office or place of business in different Member States outside 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 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."

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

"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."

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

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

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

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

8. 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. Article 6(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 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, with the exception of marginal activities."

3. In article 14, the following paragraph 5a is 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.

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 deemed to be the "home base", as defined in Annex III to Council Regulation (EEC) No 3922/91² on the harmonisation of technical requirements and administrative procedures in the field of civil aviation."

4. 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."

² OJ L373, 31.12.1991, p. 4.

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."

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

"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. 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

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:

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)".