

Social security: coordination of social security systems and implementation

2010/0380(COD) - 20/12/2010 - Legislative proposal

PURPOSE: to amend 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.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

BACKGROUND: 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.

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the references made to national legislation in EU legislation coordinating social security systems can become outdated which will create legal uncertainty for stakeholders when applying the Regulations.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. This proposal seeks to update the abovementioned Regulations.

IMPACT ASSESSMENT: the impact assessment states that 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.

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.

LEGAL BASIS: Article 48 of the Treaty on the Functioning of the EU (TFEU). 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.

CONTENT: 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.

Technically, the main amendments concern the following points:

Amendments to Regulation (EC) No 883/2004:

- **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;

- **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 specific case-law of the Court of Justice of the EU 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;
- **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.

Amendments to Regulation (EC) No 987/2009:

- **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;
- **insertion of Paragraph 14(5a):** 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 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.

Annexes: lastly, the text includes a number of purely technical amendments to Regulation (EC) No 883/2004.

BUDGETARY IMPLICATION: This proposal has no implications for the EU budget.