Basic information

2010/0380(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Social security: coordination of social security systems and implementation Amending Regulation (EC) No 883/2004 1998/0360(COD) Amending Regulation (EC) No 987/2009 2006/0006(COD) **Subject** 4.10.10 Social protection, social security 4.15.04 Workforce, occupational mobility, job conversion, working conditions	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
EMPL Employment and Social Affairs	CABRNOCH Milan (ECR)	20/01/2011
	Shadow rapporteur ESSAYAH Sari (PPE) CERCAS Alejandro (S&D) OVIIR Siiri (ALDE) LAMBERT Jean (Verts /ALE) ZIMMER Gabriele (GUE /NGL)	

Council of the European Union

Council configuration	Meetings	Date
Employment, Social Policy, Health and Consumer Affairs	3099	2011-06-17
Employment, Social Policy, Health and Consumer Affairs	3131	2011-12-01
Education, Youth, Culture and Sport	3164	2012-05-10

European Commission

Commission DG	Commissioner
Employment, Social Affairs and Inclusion	ANDOR László

Key events

Date	Event	Reference	Summary

20/12/2010	Legislative proposal published	COM(2010)0794	Summary
18/01/2011	Committee referral announced in Parliament, 1st reading		
17/06/2011	Debate in Council		
01/12/2011	Debate in Council		Summary
01/03/2012	Vote in committee, 1st reading		
06/03/2012	Committee report tabled for plenary, 1st reading	A7-0043/2012	Summary
18/04/2012	Decision by Parliament, 1st reading	T7-0121/2012	Summary
18/04/2012	Results of vote in Parliament		
18/04/2012	Debate in Parliament		
10/05/2012	Act adopted by Council after Parliament's 1st reading		
22/05/2012	Final act signed		
22/05/2012	End of procedure in Parliament		
08/06/2012	Final act published in Official Journal		

Technical information

Procedure reference	2010/0380(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	Amending Regulation (EC) No 883/2004 1998/0360(COD) Amending Regulation (EC) No 987/2009 2006/0006(COD)
Legal basis	Treaty on the Functioning of the European Union TFEU 048
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	EMPL/7/04954

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE476.065	21/11/2011	
Amendments tabled in committee		PE478.720	18/01/2012	
Committee report tabled for plenary, 1st reading/single reading		A7-0043/2012	06/03/2012	Summary
Text adopted by Parliament, 1st reading/single reading		T7-0121/2012	18/04/2012	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	00011/2012/LEX	23/05/2012	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2010)0794	20/12/2010	Summary
Commission response to text adopted in plenary	SP(2012)388	30/05/2012	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	IT_SENATE	COM(2010)0794	09/02/2011	
Contribution	PT_PARLIAMENT	COM(2010)0794	11/02/2011	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act

Regulation 2012/0465
OJ L 149 08.06.2012, p. 0004 Summary

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.

Social security: coordination of social security systems and implementation

2010/0380(COD) - 01/12/2011

The Council agreed, by qualified majority, on a general approach on amendments to the coordination of social security systems regulations 883/2004 and 987/2009, thus paving the way to seek an agreement at first reading with the European Parliament.

The amendments aim at providing a satisfactory solution in the case of wholly unemployed, formerly self-employed, frontier workers who were insured in their country of activity against unemployment and who have returned to their member state of residence, where no insurance against the risk of unemployment exists (new article 65a in regulation 883/2004).

Article 65a introduces a derogation whereby the country of last activity would provide unemployment benefits to a wholly unemployed self-employed person who had resided outside the competent member state, if there is no possibility for any category of self-employed persons to be covered by the unemployment benefits system in the country of residence.

Adopted amendments also cover the use of the "home base" criterion for determining the legislation applicable to aircrew members (new paragraph in article 14 of regulation 987/2009).

The aim of the amendment is to clarify the notion of "registered office or place of business" as "home base" for flying personnel. The home base is the place from which the air crew member habitually carries out his or her work in performance of his or her contract.

Social security: coordination of social security systems and implementation

2010/0380(COD) - 06/03/2012 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Employment and Social Affairs adopted the report drafted by Milan CABRNOCH (ECR, CZ) 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.

The committee recommends that the European Parliament’s position, adopted at first reading under the ordinary legislative procedure, should amend the Commission proposal as follows:

Unemployment benefits for self-employed frontier workers: it is proposed to insert a new Article 65a 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 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.

Provision of new measures for aircrew members: Annex III to Council Regulation (EEC) No 3922/91 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation 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.

To recall, Annex III to Council Regulation (EEC) No 3922/91 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.

It should be noted that the proposed amendments are presented in line with each of the regulations covered by this proposed amendment to regulations No. (EC) 883/2004 on the coordination of social security systems and (EC) No. 987/2009 laying down detailed rules for implementing Regulation (EC) No 883/2004.

Social security: coordination of social security systems and implementation

2010/0380(COD) - 18/04/2012 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 540 votes to 19 with 30 abstentions, a 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.

Parliament adopted its position in first reading following the ordinary legislative procedure. The amendments adopted in plenary are the result of a compromise between Parliament and Council. They amend the Commission proposal as follows:

Unemployment benefits for self-employed frontier workers: Members inserted a new Article 65a into Regulation (EC) No 883/2004 ensuring 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.

Provision of new measures for aircrew members: Annex III to Council Regulation (EEC) No 3922/91 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation 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.

To recall, Annex III to Council Regulation (EEC) No 3922/91 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.

It should be noted that the proposed amendments are presented in line with each of the regulations covered by this proposed amendment to regulations No. (EC) 883/2004 on the coordination of social security systems and (EC) No. 987/2009 laying down detailed rules for implementing Regulation (EC) No 883/2004.

Social security: coordination of social security systems and implementation

2010/0380(COD) - 22/05/2012 - Final act

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 to take account of legal changes in certain Member States and to guarantee legal certainty for stakeholders.

LEGISLATIVE ACT: Regulation (EU) No 465/2012 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.

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 Regulation shall update the abovementioned Regulations. Other technical amendments are included to facilitate and ensure the legal security of these Regulations.

CONTENT: the Council adopted a regulation amending regulations 883/2004 and 987/2009 on the coordination of social security systems, following a first-reading agreement with the European Parliament.

Main amendments: the amendments are aimed inter alia at providing a satisfactory solution in the case of wholly unemployed, formerly self-employed, frontier workers who were insured in their country of activity against unemployment and who returned to their Member State of residence where no insurance against the risk of unemployment exists.

- Unemployment benefits for self-employed frontier workers: Regulation (EC) No 883/2004 is amended by inserting a new provision (Article 65a) 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.

- Provision of new measures for aircrew members: Annex III to Council Regulation (EEC) No 3922/91 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation 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.

Additional amendments are of a technical nature and concern the following:

- **Article 13(1) of Regulation (EC) No 883/2004** : 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.
- **Article 71(2) of Regulation (EC) No 883/2004** : clarification of the voting procedure by the Administrative Commission.
- **Article 14 (5) of Regulation (EC) No 987/2009** : clarification of the definition of marginal activities.
- **New Article 14(5a)** : introduction of a new Article 14 (5a) in close cooperation with the new definition of "home base" for the crew, for the application of Regulation (EC) No 883/2004.

- **Article 56(1) and (2)** : replacement of paragraphs to reflect changes made in Article 65 (5) of Regulation (EC) No 883/2004.
- **Annexes** : technical modifications made to the Annexes of Regulation (EC) No 883/2004.

ENTRY INTO FORCE: 28.06.2012.