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#### NOTE

From:	Presidency
To:	Delegations
No. Cion doc.:	15642/16 - COM(2016) 815 final
Subject:	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) <i>- Presidency compromise package</i>

Changes compared to the preliminary political agreement of December 2021 (set out in document ST 15068/21 ADD1) are marked in **bold** and deletions by [...]. Deletions of whole articles or paragraphs compared to the initial Commission proposal are marked with [...].

**REGULATION .../2019**  
**OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of ...**

**amending Regulation (EC) No 883/2004 on the coordination of social security systems and  
Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC)  
No 883/2004**

**(Text with relevance for the EEA and Switzerland)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 48 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the Committee of the Regions<sup>1</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) A modernised system of social security coordination started to apply from 1 May 2010 with Regulations (EC) No 883/2004 and (EC) No 987/2009.

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<sup>1</sup> OJ C 342, 12.10.17, p. 65.

<sup>2</sup> OJ C 345, 13.10.2017, p. 85.

- (2) These Regulations were updated by Regulation (EU) No 465/2012 of the European Parliament and of the Council of 22 May 2012 to supplement, clarify and update certain provisions of Regulations, especially in the field of the determination of the applicable legislation and unemployment benefits, and to make technical adaptations to the references to national legislation in the Annexes.
- (3) It has emerged from evaluations and discussions within the Administrative Commission for the Coordination of Social Security Systems that in the areas of long-term care benefits, unemployment benefits and family benefits the modernisation process should continue in order to make the rules relating to those benefits fairer, clearer and easier to apply by means of exchanges of experience and best administrative practices. To facilitate such exchanges, also the use of new technologies should be promoted.
- (4) It remains essential that the coordination rules keep pace with the evolving legal and societal context in which they operate by further facilitating the exercise of citizens' rights while at the same time ensuring legal clarity, a fair and equitable distribution of the financial burden among the institutions of the Member States involved, administrative simplicity and enforceability of the rules.
- (5) [...]
- (6) Long-term care benefits have so far not been included explicitly within the material scope of Regulation (EC) No 883/2004 but in principle coordinated following the rules applicable to sickness benefits, leading to legal uncertainty both for institutions and persons claiming long-term care benefits. There is a need to develop a stable legal framework appropriate to long-term care benefits within the Regulation that continues the coordination as sickness benefits as a general rule and to include a clear definition and a list of such benefits.

- (7) [...]
- (8) In the area of unemployment benefits, the rules on the aggregation of periods of insurance should be applied uniformly by all Member States.
- (8a) In order to ensure a real link between the unemployed person and the labour market of the Member State providing unemployment benefits, with the exception of wholly unemployed cross-border workers referred to in Article 65(2), (2a) **and (3b)** of Regulation (EC) No 883/2004, the rules on the aggregation of periods for the purpose of conferring entitlement to unemployment benefits should be subject to the condition that the insured person has most recently completed an uninterrupted period of at least one month of insurance, employment or self-employment in that Member State and thereby contributed to the financing of the unemployment benefit scheme of that Member State over a predefined period. Otherwise, the penultimate Member State in which that person completed a period of insurance, employment or self-employment should become competent, if the person completed such a period in that Member State. In this case, registration with the employment services of the Member State of most recent insurance should have the same effect as registration with the employment services of the Member State in which the unemployed person had been previously insured. In cases where the person did not complete such period in those Member States, the Member State of most recent insurance, employment or self-employment should become competent.
- (9) In order to improve the opportunities for unemployed persons moving to another Member State to look for work and their chances for reintegration into the labour market and to address skills mismatches across borders, Member States may decide to exercise the possibility to extend the period of export of unemployment benefits up to the end of the period of the person's entitlement to benefits.

- (10) There is a need to ensure greater parity of treatment for frontier and cross-border workers by ensuring they receive unemployment benefits from the Member State of last activity provided that they have completed, **during their last activity, an uninterrupted six-month** period of insurance, employment or self-employment in that Member State [...]. **Nonetheless, it is important to valorise the contributions made to the social security systems of the Member State of last activity by cross-border workers who have contributed for a long time to that Member State. Therefore, where a cross-border worker has most recently contributed for at least an uninterrupted 24 months before becoming unemployed, he or she should enjoy a longer period of export to the Member State of residence than those who contributed for a shorter period.**
- (10a) The labour market in Luxembourg is characterised by a number of specific features. Frontier workers make up a very significant proportion of total employment in Luxembourg, which greatly exceeds the proportion of frontier workers in the working population of any other Member State. The introduction of the new rules relating to frontier and cross-border workers is expected to place a very high administrative burden on the Luxembourg public employment authority due to a significant increase in the number of frontier workers for whom it would become the competent institution. It is therefore appropriate to grant Luxembourg an additional phasing-in period during which Articles 65 and 86 of Regulation (EC) No 883/2004 and Articles 56 and 70 of Regulation (EC) 987/2009 in force before *[the entry into force of the Regulation (EU) xxxx]* continue to apply so as to allow that Member State the time required to take all necessary preparatory steps for a smooth transition from the current regulatory framework to the new rules and to adjust its social security system. During this transitional period, Article 56a of Regulation (EC) 987/2009 should not apply to Luxembourg.
- (11) In order to take into account the judgement of the Court of Justice of the European Union in the Case C-347/12 *Wiering*, for the purpose of the calculation of the differential supplement, there are two categories of family benefits of the same kind: family benefits in cash primarily intended to replace income not earned due to child-raising, and all other family benefits.

- (11a) Family benefits in cash primarily intended to replace parts or the whole income not earned, or income that the person cannot earn, due to child-raising periods are designed to meet the individual and personal needs of the parent subject to the legislation of the competent Member State and therefore are distinguishable from other family benefits as they are intended to compensate a parent for loss of income or salary during time spent raising a child rather than solely meeting general family expenses.
- (12) In order to enable a timely update of Regulation (EC) No 883/2004 to the developments at the national level, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the European Commission in respect of amending the Annexes to Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.<sup>3</sup> In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and Council should receive all documents at the same time as Member States' experts, and their experts should systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (13) With a view to supporting Member States in their efforts to combat fraud and error in the application of the coordination rules, it is necessary to establish a further permissive legal basis to facilitate the processing of personal data about persons to whom Regulations (EC) No 883/2004 and (EC) No 987/2009 apply, in compliance with Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>23</sup>. This would enable a Member State to compare data held by its competent institutions against that held by another Member State in order to identify errors or inconsistencies that require further investigation.
- (14) [...]

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<sup>3</sup> OJ L 123, 12.5.2016, p. 1–14 .

- (15) With a view to expediting the procedure for the verification and withdrawal of documents in cases of fraud and error, it is necessary to strengthen the collaboration and the exchange of information between the issuing institution and the institution requesting a withdrawal. Where there is doubt about the validity of a document or about the correctness of supporting evidence, it is in the interest of the Member States and the persons concerned that the institutions concerned reach an agreement within a reasonable period of time.
- (15a) As regards documents concerning the social security legislation which applies to the holder, there should be a detailed procedure for the cooperation in case of doubts on their validity. It is also necessary to lay down further rules on retroactivity in case a document is withdrawn or rectified. This includes the situations in which the Member States involved should consider to conclude an agreement based on Article 16 of Regulation (EC) No 883/2004 for part or all of the periods covered by the document.
- (16) To ensure the effective and efficient operation of the coordination rules it is necessary to clarify the rules for determining applicable legislation for employees who pursue their economic activity in two or more Member States in order to provide a greater parity with the conditions that apply to persons who are sent to pursue economic activity in a single Member State.
- (16a) Moreover, the link with the social security system of the Member State of origin of employed persons sent to another Member State should be reinforced by providing for a minimum period of prior affiliation.

- (17) Implementing powers should be conferred on the European Commission in order to ensure uniform conditions for the implementation of Articles 12 and 13 of Regulation (EC) No 883/2004 and for the implementation of the rules on recovery in Regulation (EC) No 987/2009. Those powers should be exercised in accordance with Article 5 of Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers.<sup>4</sup>
- (18) If a Member State is unable to notify within the deadline the annual average cost per person in each age group for a reference year, it is necessary to provide an alternative that the Member State may submit claims for that year based on the annual average costs for the immediately preceding year published in the Official Journal. The reimbursement of the expenditure on benefits in kind on the basis of fixed amounts should be as close as possible to the actual expenditure; therefore a derogation from the notification obligation should be subject to the approval by the Administrative Commission and should not be granted in a consecutive year.
- (19) The offsetting procedure that applies in situations where the legislation of a Member State was applied provisionally in accordance with Article 6 of Regulation (EC) No 987/2009 should also be extended to other cases where an institution was not competent to grant benefits or receive contributions. In addition, in this context, it is necessary to disapply divergent limitation provisions in national law to ensure that a retroactive settlement between the institutions is not impeded by any incompatible time-limits laid down in national legislation while at the same time establishing a uniform limitation period of three years counting backwards from the commencement of the dialogue procedure referred to under Article 5(2) and 6(3) of this Regulation to ensure this procedure for resolving such disputes is not frustrated.

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<sup>4</sup> OJ L 55, 28.2.2011, p. 13.



- (20) Effective recovery is a means of preventing and tackling fraud and abuse and ensuring the smooth functioning of social security schemes. The recovery procedures contained in Chapter III of Title IV of Regulation 987/2009 are based upon the procedures and rules set up in Council Directive 2008/55/EC<sup>5</sup>. This Directive has been superseded by Directive 2010/24/EU concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures<sup>6</sup>, which introduced a uniform instrument to be used for enforcement measures as well as a standard form for notification of instruments and measures relating to claims. In a review by the Administrative Commission for the coordination of social security systems most Member States found it advantageous to use a uniform instrument for enforcement similar to that foreseen by Directive 2010/24/EU. It is therefore necessary that the rules for mutual assistance in recovery of social security claims reflect the new measures in Directive 2010/24/EU in order to ensure more effective recovery and smooth functioning of the coordination rules.
- (21) To take account of legal changes in certain Member States and to guarantee legal certainty for stakeholders, the Annexes to Regulation (EC) No 883/2004 need to be adapted.
- (21a) The European Data Protection Supervisor has been consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 and has adopted an opinion<sup>7</sup>.
- (22) While a number of provisions of this Regulation can be applied immediately as they do not require any further implementation, it is appropriate to provide for a date of application of certain provisions of this Regulation that would allow sufficient time for the implementation of those provisions.

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<sup>5</sup> Council Directive 2008/55/EC of 26 May 2008 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures (OJ L 150, 10.6.2008, p. 28).

<sup>6</sup> Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (OJ L 84, 31.3.2010, p. 1).

<sup>7</sup> OJ C 92, 26.4.2007, p. 15.

HAVE ADOPTED THIS REGULATION:

*Article 1*

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

1. [...]

1a.new After Recital 2, a new Recital 2a is inserted:

"(2a) Articles 45 and 48 of the Treaty of the Functioning of the European Union ensure free movement of workers entailing the abolition of any discrimination based on nationality and provide for the adoption of the necessary measures in the field of social security to secure that freedom. In addition, under Article 21 of the Treaty of the Functioning of the European Union, every Union citizen has the right to move and reside freely within the territory of the Member States subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect."

2. [...]

2a.new Recital 5 is replaced with the following:

"It is necessary, within the framework of such coordination, to guarantee within the Union equality of treatment under the different national legislations for the persons concerned."

2aa.new After Recital 5, a new Recital 5(-a) is inserted:

"In applying the principle of equal treatment provided for in this Regulation, the case-law of the Court needs to be respected. The Court has interpreted that principle and the relationship between this Regulation and Directive 2004/38/EC, among others, in its judgements in recent cases C-140/12 Brey, C-333/13 Dano, C-67/14 Alimanovic, C-299/14 Garcia-Nieto and C-308/14 Commission v the United Kingdom."

3. After Recital 5, the following is inserted:

"[...]

(5b) Member States should ensure that economically inactive EU mobile citizens are not prevented from satisfying the condition of having comprehensive sickness insurance cover in the host Member State, as laid down in Directive 2004/38/EC. They should be allowed, in accordance with national laws and practices, to contribute in a proportionate manner to a scheme for sickness coverage if they are not otherwise able to fulfil the relevant criteria for access to sickness insurance in the Member State in which they habitually reside.

[...]"

4. Recital 18b is replaced with the following:

"In Annex III, Subpart FTL to Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and the Council, as amended by Commission Regulation (EU) No 83/2014/EU of 29 January 2014 amending Regulation (EU) No 965/2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and the Council, the concept of 'home base' for flight crew and cabin crew members is defined as the location, assigned 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 circumstances, the operator is not responsible for the accommodation of the crew member concerned."

5. Recital 24 is replaced by the following:

"(24) In line with the case law of the Court of Justice long-term care benefits for insured persons and members of their families should, in principle, continue to be coordinated following the rules applicable to sickness benefits. However, these rules should take into account the specific nature of long term care benefits. It is also necessary to provide for specific provisions in case of overlapping of long-term care benefits in kind and in cash."

5a.new After Recital 24, the following is inserted:

"(24a) Long-term care benefits refer only to those benefits which have the primary purpose of addressing the care need of a person, who on account of impairment due to, for example, old age, disability or illness, requires considerable assistance from others to carry out essential activities of daily living for an extended period of time. Moreover, long-term care benefits refer only to those benefits which can be considered as social security benefits within the meaning of the Regulation. In line with the case law of the Court of Justice in, for example, Case C-433/13, *Commission v Slovak Republic*, social security benefits are those benefits granted without any individual and discretionary assessment of personal needs to beneficiaries on the basis of a legally defined position and long-term care benefits should be interpreted accordingly. In particular, long-term care benefits do not include social or medical assistance. Benefits granted on a discretionary basis, after an individual assessment of the claimant's personal needs, are not long-term care benefits covered by this Regulation."

5b.new After Recital 32, the following is inserted:

"(32a) It is for the Member States to decide whether to exercise the possibility to extend the period of six months offered by Article 64(1)(c) of this Regulation, in accordance with Union law, including the judgment of the Court of Justice in case C-551/16 *Klein Schiphorst*.

(32c) Article 45 TFEU guarantees the freedom of movement for workers within the Union and prohibits any discrimination based on nationality between workers of the Member States as regards, inter alia, employment. Regulation (EU) No 492/2011 on freedom of movement for workers within the Union clarifies that frontier workers should also enjoy such fundamental right without discrimination, and as provided in Article 5 thereof, Member States should ensure that nationals of other Member States who are seeking employment in their territory receive the same assistance by their employment services as that afforded to their own nationals.

(32d) Member States should also refer to the Decision 573/2014/EU of 15 May 2014 on enhanced cooperation between Public Employment Services (PES) establishing a Union-wide network of PES and aiming at encouraging cooperation between Member States in the field of employment within the areas of PES responsibility, including by supporting increased voluntary geographical and occupational mobility on a fair basis to meet specific labour market needs."

6. After Recital 35 the following is inserted:

"(35-a) For the purpose of calculating the differential supplement, this Regulation should take into account the judgement of the Court of Justice in Case C-347/12 *Wiering* while providing the necessary clarifications and simplifications. Taking into account the special nature of the various family benefits of the Member States, two types of family benefits should be distinguished as being of different kinds based on their main purpose, objectives and the basis on which they are granted."

(35a) Family benefits in cash which are primarily intended to replace income not earned, whether in part or in full, or income that the person cannot earn, due to child-raising, can be distinguished from other family benefits intended to meet family expenses. As such benefits could be considered as individual rights which are personal to the parent subject to the legislation of the competent Member State it should be possible to exclusively reserve them to the parent concerned. Such individual benefits should be listed in Part I of Annex XIII to this Regulation. The Member State with secondary competence may elect that the rules of priority in the case of overlapping of rights to family benefits under the legislation of the competent Member State and under the legislation of the Member State of residence of members of the family should not apply to such benefits. Where a Member State chooses to disapply the priority rules it must do so consistently in respect of all entitled persons in an analogous situation and be listed in Part II of Annex XIII.

(35b) Regulation No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, will be taken into account, where relevant."

7. After Recital 39, the following is inserted:

"(39a) The relevant EU data protection acquis, in particular Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) applies to the processing of personal data pursuant to this Regulation."

7a.new After Recital 40, the following are inserted:

**(40aa-new) “In determining the location of the registered office or place of business of an undertaking, where a person pursues activity in two or more Member States, a series of factors should be taken into account in the framework of an overall assessment, giving due weight to each of them according to the circumstances of the case and to the habitual nature of the activity, in order to determine where the functions of the central administration are carried out or where the undertaking performs genuine activity. Examples of such factors are the length of time that the undertaking has been established in the Member State, the place where the undertaking uses office space, pays company taxes, the turnover or the place where financial and particularly banking transactions mainly take place.”**

**(40a) “In accordance with the principles laid down in Article 6 of Regulation (EU) 2018/1724, as from 12 December 2023 Member States are to ensure that users, subject to the establishment of the relevant procedures, can access and complete a request[...] for the determination of applicable legislation in accordance with Title II [...] fully online [...]. The procedure [...] should be user-friendly and implemented in accordance with Article 39 of Regulation (EU) 2018/1724. The present Regulation and Article 4 of the implementing Regulation require Member States to progressively use new technologies for the exchange, access and processing of the data required to apply the coordination rules. These include [...] the procedures referred to in Articles 15 [...], 16 and 19 of the implementing Regulation. [...] It is of outmost importance to respond to the potentials of new technology and digitalisation in relation to the coordination rules, including via Electronic Exchange of Social Security Information (EESSI).”**

(40b) “Where a person pursues his or her activity in a Member State other than the competent Member State, the competent institution of the Member State whose legislation is applicable should **as a main rule** be informed thereof in advance. However, exceptions to the rule of prior notification **should apply in relation to business trips and activities with a duration of no more than three days within a period of a calendar month. As in these situations there is no requirement to notify, the competent institution will not issue an attestation unless it is requested to do so. In addition, in cases where, due to the urgent nature of the activity it is not possible to inform the competent institution in advance, it should be possible to notify the competent institution no later than three days after the start of the activity. In this situation the competent institution will issue an attestation after reception of the notification**”

8. After Recital 45, the following recitals are inserted:

"(46) In order to enable the timely update of this Regulation to take developments at the national level into account, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the European Commission in respect of amending the Annexes to this Regulation and Regulation (EC) No 987/2009. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.<sup>8</sup> In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and Council should receive all documents at the same time as Member States' experts, and their experts should systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

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<sup>8</sup> COM(2015) 216 final.



(47) This Regulation respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union and the European Convention of Human Rights, and has to be implemented in accordance with those rights and principles.

(48) [...]"

9. Article 1 is amended as follows:

(a) [...]

(b) Point (i)(1)(ii) is replaced with the following:

"(i)(1)(ii) with regard to benefits in kind pursuant to Title III, Chapter 1, any person defined or recognised as a member of the family or designated as a member of the household by the legislation of the Member State in which he/she resides";

(c) Point (va)(i) is replaced with the following:

"(va) (i) for the purposes of Title III, Chapter 1 with regard to sickness, maternity and equivalent paternity benefits, benefits in kind provided for under the legislation of a Member State which are intended to supply, make available, pay directly or reimburse the cost of medical care and products and services ancillary to that care."

(ca) new After Point (va)(i) , the following is inserted:

"(-ii) for the purposes of Title III, Chapter 1 with regard to long-term care benefits, benefits in kind provided for under the legislation of a Member State which are intended to supply, make available, pay directly or reimburse the cost of long-term care as referred to in the definition under point (vb).".

(d) The following point is inserted after point (va):

"(vb) 'Long-term care benefit' means a benefit in kind or in cash the purpose of which is to address the care need of a person who, on account of impairment, requires considerable assistance from another person or persons to carry out essential activities of daily living for an extended period of time in order to support his/her personal autonomy; this includes benefits granted for the same purpose to the person providing such assistance;"

9(a)new In Article 3(1), point (a) is replaced with the following:

"(a) sickness and long-term care benefits;"

10. [...]

11. [...]

12. Article 11 is amended as follows:

(a) Paragraph 2 is replaced with the following:

"2. For the purposes of this Title, persons receiving cash benefits because or as a consequence of their activity as an employed or self-employed person shall be considered to be pursuing the said activity. This shall not apply to invalidity, old-age or survivors' pensions, to pensions in respect of accidents at work or occupational diseases or to long-term care benefits in cash provided to the person in need of care."

(b) Paragraph 5 is replaced by the following:

"5. An activity as a flight crew or cabin crew member performing air passenger or freight services shall be deemed to be an activity pursued in the Member State where the home base, as defined in Annex III, Subpart FTL to Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and the Council as amended by Commission Regulation (EU) No 83/2014/EU of 29 January 2014, is located."

13. Article 12 is replaced by the following:

*"Article 12*

**Special rules**

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 sent 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 the person is not replacing another previously sent employed person covered by this paragraph or a self-employed person covered by paragraph 2.

2. A person who normally pursues an activity as a self-employed person in a Member State who goes to pursue a similar activity in another Member State shall continue to be subject to the legislation of the first Member State, provided that the anticipated duration of such activity does not exceed 24 months and that the person is not replacing another previously sent employed person covered by paragraph 1 or a self-employed person covered by this paragraph.

2a. Where an employed person covered by paragraph 1 or a self-employed person covered by paragraph 2 does not complete the work or activity and is replaced by another person, the other person shall continue to be subject to the legislation of the Member State from which he/she is sent or in which he/she normally pursues an activity as a self-employed person provided that the total duration of work or activity by all persons concerned in the second Member State does not exceed 24 months and the other conditions laid down in paragraph 1 or 2 are fulfilled."

14. In Article 13, the following paragraph 4a is inserted after paragraph 4:

"4a. A person who is pursuing an employed or self-employed activity in one Member State and is simultaneously receiving unemployment benefits from another Member State shall be subject to the legislation of the Member State paying the unemployment benefits."

14a.new Title III, Chapter 1 is replaced with:

"Sickness, long-term care, maternity and equivalent paternity benefits"

14b.new Article 19 is replaced with the following:

*"Article 19*

### **Stay outside the competent Member State**

1. Unless otherwise provided for by paragraph 2, an insured person and the members of his/her family staying in a Member State other than the competent Member State shall be entitled to the benefits in kind which become necessary during their stay either on medical grounds or due to the need for long-term care, taking into account the nature of the benefits and the expected length of the stay. These benefits shall be provided on behalf of the competent institution by the institution of the place of stay, in accordance with the provisions of the legislation it applies, as though the persons concerned were insured under the said legislation.

2. The Administrative Commission shall establish a list of benefits in kind which, in order to be provided during a stay in another Member State, require for practical reasons a prior agreement between the person concerned and the institution providing the benefit."

14c.new Article 20, point 1 is replaced with the following:

"1. Unless otherwise provided for by this Regulation, an insured person travelling to another Member State with the purpose of receiving, during the stay, benefits in kind referred to in Article 1(va) (i) of this Regulation, shall seek authorisation from the competent institution."

14d.new Article 30 is replaced with the following:

*"Article 30*

### **Contributions by pensioners**

1. The institution of a Member State which is responsible under the legislation it applies for making deductions in respect of contributions for sickness, long-term care, maternity and equivalent paternity benefits, may request and recover such deductions, calculated in accordance with the legislation it applies, only to the extent that the cost of the benefits pursuant to Articles 23 to 26 is to be borne by an institution of the said Member State.

2. Where, in the cases referred to in Article 25, the acquisition of sickness, long-term care, maternity and equivalent paternity benefits is subject to the payment of contributions or similar payments under the legislation of a Member State in which the pensioner concerned resides, these contributions shall not be payable by virtue of such residence."

15. In Article 32, the following paragraph 3 is added:

"3. Where a member of the family has a derivative right to benefits according to the legislation of more than one Member State, the following priority rules shall apply:

(a) in the case of rights available on a different basis, the order of priority shall be as follows:

(i) rights available on the basis of an activity as an employed or self-employed person of the insured person;

(ii) rights available on the basis of the receipt of a pension by the insured person;

(iii) rights available on the basis of residence of the insured person;

(b) in the case of derivative rights available on the same basis, the order of priority shall be established by referring to the place of residence of the member of the family as a subsidiary criterion;

(c) in cases where it is impossible to establish the order of priority on the basis of the preceding criteria, as a last criterion, the longest period of insurance of the insured person under a national pension scheme shall be applicable."

15a.new After Article 33, the following is inserted:

*"Article 33a*

**Long-term care benefits**

1. The Administrative Commission shall, after consulting the social partners, draw up a detailed list of long-term care benefits which meet the criteria contained in Article 1 (vb) of this Regulation, specifying which are benefits in kind and which are benefits in cash and if the benefit is provided to the person in need of care or to the person providing such care.

2. Where a long-term care benefit falling under this Chapter has also the characteristics of benefits coordinated under a different Chapter of Title III, by way of derogation, a Member State may coordinate such benefit in accordance with the rules of the latter Chapter, provided that the outcome of such coordination is in general at least as favourable for the beneficiaries as if the benefit was coordinated as a long-term care benefit under this Chapter and it is listed in the Annex XII specifying which Chapter of Title III applies.

2a. Article 34 (1) and (3) of this Regulation shall apply also to benefits listed in Annex XII."

16. Article 34 is replaced with the following:

*"Article 34*

**Overlapping of long-term care benefits**

1. If a recipient of long-term care benefits in cash, which are provided under Articles 21 or 29, is, at the same time and under this Chapter, entitled to claim benefits in kind intended for the same purpose from the institution of the place of residence or stay in another Member State, and an institution in the first Member State is also required to reimburse the cost of these benefits in kind under Article 35, the general provision on prevention of overlapping of benefits laid down in Article 10 shall be applicable, with the following restriction only: if the person concerned claims and receives the benefit in kind, the amount of the benefit in cash shall be reduced by the amount of the benefit in kind which is or could be claimed from the institution of the first Member State required to reimburse the cost.

2. [...]

3. Two or more Member States, or their competent authorities, may agree on other or supplementary measures which shall not be less advantageous for the persons concerned than the principles laid down in paragraph 1.

4. Where, during the same period and for the same children, long-term care benefits in cash are provided for under the legislation of more than one Member State, the priority rules in the event of overlapping laid down in Article 68(1) shall be applicable."

17. [...]

18. In Article 50(2), the term "Article 52(1) (a) or (b)" is replaced by the term "Article 52(1)(b)".

18a.new Before Article 61, the following is inserted:

*"Article 60a*

### **Special rules on aggregation of periods for unemployment benefits**

For the purposes of the application of Article 6 within this Chapter, only the periods which are taken into account under the legislation of the Member State in which they were completed for the purpose of acquiring and retaining the right to unemployment benefits shall be aggregated by the competent Member State."



19. Article 61 is replaced by the following:

*"Article 61*

**Special rules on aggregation of periods of insurance, employment or self-employment**

1. Except in the cases referred to in Article 65(2), 65(2a) and (3b) the application of Articles 6 and 60a by the Member State of most recent insurance, employment or self-employment shall be conditional on the person concerned having most recently completed an uninterrupted period of at least one month of insurance, employment, or self-employment, in accordance with the legislation under which the benefits are claimed.
2. Where an unemployed person has not completed an uninterrupted period of at least one month of insurance, employment or self-employment in accordance with paragraph 1, that person shall be entitled to unemployment benefits in accordance with the legislation of the penultimate Member State where he or she completed a period of insurance, employment or self-employment, provided that such period was an uninterrupted period of at least one month. The Member State which becomes competent in accordance with this paragraph shall provide the unemployment benefits, in accordance with its legislation, after applying Articles 6 and 60a, to the extent necessary, and under the conditions and subject to the limitations laid down in Article 64a.
3. Where an unemployed person has not completed an uninterrupted period of at least one month of insurance, employment or self-employment in any of the Member States referred to in paragraphs 1 and 2, the Member State of most recent insurance, employment or self-employment shall become competent, and shall provide the unemployment benefits, in accordance with its legislation, after applying Articles 6 and 60a, to the extent necessary."

19a.new Article 62 is replaced with the following:

*"Article 62*

**Calculation of benefits**

1. The competent institution of a Member State whose legislation provides for the calculation of benefits on the basis of the amount of the previous salary or professional income shall take into account exclusively the salary or professional income received by the person concerned in respect of his/her last activity as an employed or self-employed person under the said legislation.
2. Paragraph 1 shall also apply where the legislation administered by the competent institution provides for a specific reference period for the determination of the salary or professional income which serves as a basis for the calculation of benefits and where, for all or part of that period, the person concerned was subject to the legislation of another Member State.
3. By way of derogation from paragraphs 1 and 2, as far as the unemployed persons covered by the first and second **subparagraphs** of Articles 65(2) **and 65(3b)** are concerned, the institution of the Member State of residence shall take into account, under the conditions and limitations of the legislation it applies, the salary or professional income received by the person concerned in the Member State to whose legislation he or she was subject during his or her last activity as an employed or self-employed person, in accordance with the implementing Regulation."

19b.new Article 63 is replaced with the following:

*"Article 63*

**Special provisions for the waiving of residence rules**

For the purposes of this Chapter, Article 7 shall apply only in the cases provided for by Articles 64, 64a and 65 shall apply within the limits prescribed therein."

20. Article 64 is amended as follows:

(a) Paragraph 1(c) is replaced with the following:

"the unemployed person shall retain his or her entitlement to benefits for a period of six months from the date when the unemployed person ceased to be available to the employment services of the Member State which he or she left, provided that the total duration for which the benefits are provided does not exceed the total duration of the period of his or her entitlement to benefits under the legislation of that Member State; the competent services or institutions may extend the period of six months up to the end of the period of that person's entitlement to benefits;"

(b) Paragraph 3 is replaced with the following:

"Unless the legislation of the competent Member State is more favourable, between two periods of employment the maximum total period for which an unemployed person shall retain his or her entitlement to benefits under paragraph 1 and Article 64a shall be six months; the competent services or institutions may extend that period up to the end of the period of that person's entitlement to benefits."

21. After Article 64, the following Article 64a shall be inserted:

*"Article 64a*

**Special rules for unemployed persons who moved to another Member State  
without fulfilling the conditions of Article 61(1) and Article 64**

1. In the situation referred to in Article 61(2), the Member State that becomes competent shall provide unemployment benefits, in accordance with its legislation, for the period laid down in Article 64(1)(c), if the unemployed person makes himself/herself available to the employment services in the Member State of most recent period of insurance, employment or self-employment and adheres to the conditions laid down under the legislation of that Member State. In this case, registration with the employment services of the Member State of the most recent period of insurance, employment or self-employment shall have the same effect as registration with the employment services of the competent Member State. Article 64 (2) to (4) shall apply *mutatis mutandis*.
2. Alternatively, if the unemployed person referred to in paragraph 1 wishes to seek work in a Member State other than the Member State competent for unemployment benefits or the Member State of most recent period of insurance, employment or self-employment, Article 64 shall apply *mutatis mutandis*. For these purposes, Article 64(1)(a) shall be read as referring to the employment services of the Member State of most recent period of insurance, employment or self-employment."

22. Article 65 is replaced by the following:

*"Article 65*

**Unemployed persons who resided in a Member State other than the competent State**

1. A **person who is** wholly, partially or intermittently unemployed [...] **and** who, during his or her last activity as an employed or self-employed person resided in a Member State other than the competent Member State, shall make himself or herself available to the employment services in the competent Member State, or **where applicable**, in the case of partially or intermittently unemployed persons, to **his or her** employer[...].

**Such a** [...] person [...] shall receive benefits in accordance with the legislation of the competent Member State as if he or she were residing in that Member State and shall be entitled to the rights and comply with the obligations laid down in the applicable legislation. Such benefits shall be provided by the institution of the competent Member State.

2. By way of derogation from paragraph 1, a wholly unemployed person [...] **who** during his or her last activity as an employed or self-employed person [...], resided in a Member State other than the competent Member State [...] **and** continues to reside in or has returned to that **Member State [...]** **after becoming unemployed, and who during that last activity** did not complete [...] an **uninterrupted six-month** period of insurance, employment or self-employment [...] exclusively under the legislation of the competent Member State [...], **shall make himself or herself available to the employment services in the Member State of residence.**

[...] **The unemployed** person [...] referred to in the first subparagraph shall receive benefits in accordance with the legislation of the Member State of residence as if he or she had completed all periods of insurance, employment or self-employment under the legislation of that Member State. Such benefits shall be provided by the institution of the Member State of residence.

[...]

[...] **Alternatively**, a wholly unemployed person [...] **referred to in this paragraph**, who would be entitled to unemployment benefits solely under the national legislation of the competent Member State may make himself or herself available to the employment services in that Member State and receive benefits in accordance with the legislation of that Member State as if he or she were residing there **without the application of Article 6 [...]**.

2a. Paragraph 2 shall not apply to a wholly unemployed person who has **most recently** completed periods of insurance as a self-employed person or periods of self-employment recognised for the purposes of granting unemployment benefits in a Member State other than his or her Member State of residence and whose Member State of residence has submitted notification under Article 9 of the basic Regulation that there is no possibility for any category of self-employed persons to be covered by an unemployment benefits system of that Member State.

3. If a wholly unemployed person as referred to in paragraph 1, the **third** subparagraph of paragraph 2 or paragraph 2a does not wish to become or remain available to the employment services of the competent Member State after having been registered there and decides to seek work in the Member State of residence, Article 64, with the exception of point (a) of paragraph 1 thereof, shall apply *mutatis mutandis*.

3a. Where a wholly unemployed person as referred to in paragraph 3 has completed **most recently an uninterrupted** period of at least 24 months of insurance, employment or self-employment exclusively in the Member State to whose legislation he or she was last subject prior to becoming unemployed, his or her entitlement to unemployment benefits shall be retained for a period of 10 months, provided that the total duration for which the benefits are provided does not exceed the total duration of the period of entitlement to benefits under the legislation of the competent Member State. The competent institution may extend the period of 10 months until the end of the period of that person's entitlement to benefits.

3b. Where a wholly unemployed person as referred to in paragraph 3 or 3a decides to seek work in the Member State of residence and he or she previously completed periods of insurance, employment or self-employment under the legislation of that Member State, aggregated with periods completed in the Member State of the last activity and other Member States of other previous activities, he or she may, **after the end of the period during which he or she receive benefits from the institution of the competent Member State under paragraphs 3 or 3a**, claim unemployment benefits under the legislation of the Member State of residence, as if he or she had completed all periods in that Member State.

The competent institution of the Member State of residence shall [...] grant unemployment benefits in accordance with the legislation of that Member State. The period during which the unemployed person received benefits under the legislation of the competent Member State shall be deducted from the period of entitlement to benefits under the legislation of the Member State of residence.

4. Wholly unemployed persons referred to in this Article may make himself or herself available to the employment services of the competent Member State or the Member State of residence, in addition to making themselves available to the employment services of the Member State providing the benefits under paragraphs 1 or 2.

5. [...]

22a.new Article 65a is deleted.

22b.new Article 68 is amended as follows:

(a) Paragraph 2 is replaced with the following:

"2. In the case of overlapping entitlements, family benefits shall be provided in accordance with the legislation designated as having priority in accordance with paragraph 1. Entitlements to family benefits by virtue of other conflicting legislation or legislations shall be suspended up to the amount provided for by the first legislation for benefits of the same kind and a differential supplement shall be provided, if necessary, for the sum which exceeds this amount. However, such a differential supplement does not need to be provided for children residing in another Member State when entitlement to the benefit in question is based on residence only."

(b) After paragraph 2 the following is inserted:

"2a. For the purposes of calculating the differential supplement for family benefits under paragraph 2 of this Article there shall be two categories of benefits of the same kind:

- a) family benefits in cash primarily intended to replace parts or the whole income not earned, or income that the person cannot earn, due to child-raising; and
- b) all other family benefits."



23. After Article 68a, the following is inserted:

*"Article 68b*

**Special provision for family benefits in cash intended to replace income during the period of child raising**

1. Family benefits referred to in paragraph 2a (a) of Article 68 which are listed in Part I of Annex XIII shall be awarded under the legislation of the competent Member State solely to the person subject to that legislation. There shall be no derived right to such benefits. Article 68a of this Regulation shall not apply to such benefits nor shall the competent institution be required to take into account a claim submitted by the other parent, a person treated as a parent or institution acting as guardian of the child or children pursuant to Article 60(1) of the Implementing Regulation.

2. By way of derogation from Article 68(2), in cases of overlapping entitlements under conflicting legislation or legislations, a Member State may award a family benefit referred to in paragraph 1 in full to a beneficiary regardless of the amount provided for by the first legislation. Member States that elect to apply such a derogation shall be listed in Part 2 of Annex XIII by reference to the family benefit to which the derogation applies."

23a.new In Article 72 a new point (ea) is inserted:

"(ea) provide opinions, if requested by the European Commission, in the early preparation of the draft of the implementing acts referred to in Article 76a of this Regulation and Article 86a of the Implementing Regulation [...], and make any relevant suggestions to the European Commission for the revision of the said implementing acts;"

24. After Article 75, the following Article 75a is inserted in "Title V MISCELLANEOUS PROVISIONS":

*"Article 75a*

**Obligation of competent authorities**

1. The competent authorities shall in accordance with their national law and/or practice, ensure that their relevant institutions are informed of and apply all provisions, legislative or otherwise, including the decisions of the Administrative Commission, in the areas covered by and within the terms of this Regulation and the implementing Regulation.
2. In order to ensure the correct determination of the applicable legislation, the competent authorities shall promote, where appropriate, the cooperation between their institutions and other relevant bodies, such as labour inspectorates, in their Member States."

25. After Article 76, the following Article 76a is inserted:

*"Article 76a*

**Power to adopt implementing acts**

1. The Commission shall adopt implementing acts to specify the procedure, including where appropriate, time limits, to be followed in order to ensure the implementation under uniform conditions of Articles 12 and 13 of this Regulation. Those implementing acts shall establish standard procedures for:
  - the issuance, the format and the contents of a portable document certifying the social security legislation which applies to the holder,
  - [...]

- the elements to be verified before the document can be issued, withdrawn or rectified,
- the withdrawal or rectification of the document by the issuing institution in accordance with Articles 5 and 19a of the implementing Regulation.

2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 76 b(2) of this Regulation.

3. [...]."

25a.new After Article 76a, the following Article 76b is inserted:

*"Article 76b*

**Examination procedure**

1. The Commission shall be assisted by a committee. The Committee is a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this Article, Article 5 of Regulation (EU) No 182/2011 shall apply."

26. Article 87b is inserted as follows:

*"Article 87b*

**Transitional provision for application of Regulation (EU) xxxx<sup>9</sup>**

1. No rights shall be acquired under Regulation (EU) xxxx for the period before the respective dates of application of the relevant provisions set out in Article 3 of Regulation (EU) xxxx.
2. Any period of insurance and, where appropriate, any period of employment and self-employment or residence completed under the legislation of a Member State before the respective dates of application of the relevant provisions set out in Article 3 of Regulation (EU) xxxx in the Member State concerned shall be taken into consideration for the determination of rights acquired under this Regulation.
3. Subject to paragraph 1, a right shall be acquired under Regulation (EU) xxxx even if it relates to a contingency arising before its date of application in the Member State concerned.
4. Chapter 6 of Title III of this Regulation in force before [the entry into force of the Regulation (EU) xxxx] shall continue to apply to unemployment benefits for which applications were submitted before [*OJ please insert the exact date corresponding to 24 months after entry into force of Regulation (EU) xxxx*].
5. Chapter 1 of Title III of this Regulation in force before [the entry into force of the Regulation (EU) xxxx] shall continue to apply to long-term care benefits for which applications were submitted before [*OJ please insert the exact date corresponding to 24 months after entry into force of Regulation (EU) xxxx*].

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<sup>9</sup> [To be inserted].

6. Chapter 8 of Title III of this Regulation in force before [the entry into force of the Regulation (EU) xxxx] shall continue to apply to family benefits for children who were born before [OJ please insert the exact date corresponding to 24 months after entry into force of Regulation (EU) xxxx].

7. If as a result of the entry into force of Regulation (EU) xxxx a person is subject, in accordance with Title II of this Regulation, to the legislation of a Member State other than that to which he or she was subject before the application of Regulation (EU) xxxx, the legislation of the Member State applicable before the application of Regulation (EU) xxxx shall continue to apply to him or her for a transitional period lasting for as long as the relevant situation remains unchanged and, in any case, for no longer than 10 years from the date of entry into force of Regulation (EU) xxxx. However, the overall duration of the transitional period provided for in this paragraph and that provided for in Article 87a(1) may not exceed 10 years. Such person may request that the transitional period no longer apply to him or her. Such request shall be submitted to the institution designated by the competent authority of the Member State of residence. Requests submitted within three months after [OJ please insert the exact date corresponding to 24 months after entry into force of Regulation (EU) xxxx] shall be deemed to take effect on the day before [OJ please insert the exact date corresponding to 24 months after entry into force of Regulation (EU) xxxx]. Requests submitted after [OJ please insert the exact date corresponding to 27 months after entry into force of Regulation (EU) xxxx] shall take effect on the first day of the month following that of their submission.

This paragraph does not apply for Article 12 of this Regulation. Article 12 of this Regulation in force before [OJ please insert the date of the entry into force of Regulation (EU) xxxx] shall continue to apply to employed persons who are sent or self-employed who go to pursue a similar activity in another Member State before [OJ please insert the exact date corresponding to 24 months after entry into force of Regulation (EU) xxxx].

8. Articles 65 and 86 of Regulation (EC) No 883/2004 in force before *[OJ please insert the date of entry into force of Regulation (EU) xxxx]* shall continue to apply to Luxembourg until *[OJ please insert the exact date corresponding to 3 years after the date of application specified in the second paragraph of Article 3 of Regulation (EU) xxxx]*.

However, Luxembourg may notify the Commission that it is necessary to prolong this period for a further 2 years. Such notification of prolongation shall be made in good time before the end of the three-year period referred to in the previous paragraph. This notification shall be published in the Official Journal."

27. Article 88 shall be replaced by the following:

*"Article 88*

#### **Delegating the power to update the Annexes**

The European Commission is empowered to adopt delegated acts in accordance with Article 88a to periodically amend the Annexes to this Regulation and the implementing Regulation following a request from the Administrative Commission.

*Article 88a*

#### **Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The delegation of power referred to in Article 88 shall be conferred on the European Commission for an indeterminate period of time from *[the date of entry into force of the Regulation (EU) xxxx]*.

3. The delegation of the power referred to in Article 88 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.

5. As soon as it adopts a delegated act, the European Commission shall notify it to the European Parliament and to the Council simultaneously.

6. A delegated act adopted pursuant to Article 88 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiring of that period, the European Parliament and the Council have both informed the European Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council."

27a.new After Article 90, the following new article is inserted:

*"Article 90a*

**Evaluation**

In the report provided for in Article 87c of the implementing Regulation, the Commission shall also assess whether the scope of long-term care benefits should be extended so as to cover work-related benefits."

28. Annexes I, II, III, IV, X and XI are amended in accordance with the Annex to this Regulation.
29. Annexes XII and XIII are inserted in accordance with the Annex to this Regulation.

## *Article 2*

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

- 1.new The following recital is inserted after recital (13):

"(13a) In order to support job-seekers in their search for employment, taking into account the realities of cross-border regions, Member States should encourage members and partners of the European network of employment services (EURES) to participate in specific cooperation and service structures, and ensure that job-seekers who reside in a Member State other than the competent Member State have access to the provided support services in cross-border regions."

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

"(18a) Certain specific rules and procedures are required for the reimbursement of the cost of benefits incurred by a Member State of residence in cases where the persons concerned are insured in a different Member State. Member States that need to be reimbursed on the basis of fixed expenditure should notify the annual average costs per persons within a given deadline to allow the reimbursement to occur as promptly as possible. If a Member State is unable to notify the annual average cost per person in each age group for a reference year within the deadline, it is necessary to provide an alternative that the Member State may submit claims for that year based on the annual average costs previously published in the Official Journal. The reimbursement of the expenditure on benefits in kind on the basis of fixed amounts should be as close as possible to the actual expenditure; therefore a derogation from the notification obligation should be subject to the approval by the Administrative Commission and should not be granted in a consecutive year."



2. Recital 19 is replaced with the following:

"(19) Procedures between institutions for mutual assistance in recovery of social security claims should be strengthened in order to ensure more effective recovery and smooth functioning of social security schemes. Effective recovery is also a means of preventing and tackling abuses and fraud and is a way of ensuring the sustainability of social security schemes. This involves the adoption of new procedures, taking as a basis a number of existing provisions in Council Directive 2010/24/EU concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures<sup>10</sup>, in particular through the adoption of a uniform instrument for enforcement and the adoption of standard procedures for requesting mutual assistance and notification of instruments and measures relating to the recovery of a social security claim."

3. The following recitals are inserted after recital (24):

"(25) The action to combat fraud and error is part of the proper implementation of Regulation (EC) No 883/2004 and this Regulation. It is, therefore, in the interest of legal certainty that this Regulation contains a clear legal basis for permitting competent institutions to exchange personal data with relevant authorities in other Member States relating to persons whose rights and obligations under Regulation (EC) No 883/2004 and this Regulation have already been established or to whom the Regulations apply, in order to prevent or identify fraud and error as part of the ongoing proper implementation of these Regulations. It is also necessary to ensure that such exchanges are made in accordance with Regulation (EU) 2016/679.

In addition, for the purposes of fight against fraud and error and in order to provide accurate and efficient service for the mobile citizens, these Regulations need to provide a clear legal basis for the Member States to exchange information with each other, either on an individual level concerning an individual case or on a general level with data matching.

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<sup>10</sup> OJ L 84, 31.3.2010, p. 1.

(26) In order to protect the rights of the persons concerned, Member States should ensure that any data requests and responses are necessary and proportionate to the proper implementation of Regulation (EC) No 883/2004 and this Regulation."

4. In Article 1(2), the following points are inserted after paragraph (e):

"(ea) 'fraud' means any intentional act or intentional omission to act, in order to obtain or receive social security benefits or to avoid paying social security contributions, contrary to the law of the Member State(s) concerned, the basic Regulation, or this Regulation;

(eb) 'business trip' means a temporary activity as an employed or self-employed person, which is limited in time and which is related to the business interests of the employer or, in the case of a self-employed person, the person concerned, excluding the provision of services or the delivery of goods, but including attending business meetings, cultural and scientific events, conferences and seminars, such as those related to academic research, or receiving training;"

5. Article 2 is amended as follows:

(a) After paragraph 2, the following is added:

"2a. The institutions shall also exchange data necessary to detect changes in circumstances relevant to such rights and obligations of the persons to whom the basic Regulation applies, as well as to detect inaccuracies in the data that these rights are based upon. This data may be verified by comparing it with that of the institution of the other Member State concerned using electronic means of data exchange or access granted to the other institution's database. This verification shall be possible concerning either individual cases or for comparing the data on multiple persons simultaneously. The request for information and any response to that request shall be necessary and proportionate."

(b) After paragraph 4, the following is added:

"5. [...]"

6. The Administrative Commission shall draw up an indicative list of the types of data which can be exchanged under paragraph 2a and the European Commission shall give such list the necessary publicity.

7. The data exchanges under paragraph 2a shall comply with the requirements of the Regulation of the European Parliament and of the Council on the protection of individuals with regard the processing of personal data and on the free movement of such data (General Data Protection Regulation), as also provided for by Article 77 of the basic Regulation. Where necessary, the Administrative Commission shall identify which entities are to be entitled to make such exchanges. Any decision taken on the basis of the data exchange shall be based on sufficient evidence and be subject to effective remedies."

6. In Article 3, paragraph 3 is deleted

7. Article 5 is replaced with the following:

"1. Documents issued by the institution of a Member State and showing the position of a person for the purposes of the application of the basic Regulation and of the implementing Regulation, and supporting evidence on the basis of which the documents have been issued, shall be accepted by the institutions of the other Member States for as long as they have not been withdrawn or declared to be invalid by the Member State in which they were issued.

1a. Where not all sections indicated as compulsory are filled in, the institution of the Member State that receives the document shall without delay notify the issuing institution of the defect in the document. The issuing institution shall either rectify the document as soon as possible or confirm that the conditions of issuing the document are not fulfilled. If the mandatory information missing is not provided within 30 working days the requesting institution may proceed as if the document had never been issued and shall in that case inform the issuing institution thereof.

2. Without prejudice to Article 19a, where there is doubt about the validity of a document or the accuracy of the facts on which the document is based, the institution of the Member State that receives the document shall ask the issuing institution for the necessary clarification and, where appropriate, the withdrawal or rectification of that document. The issuing institution shall reconsider the grounds for issuing the document and, if necessary, withdraw or rectify it.

3. Where there is doubt about the information provided by the person/s concerned, the validity of a document or supporting evidence or the accuracy of the facts on which the document is based, any institution concerned shall, insofar as this is possible, at the request of the competent institution, proceed to the necessary verification of this information or document.

4. Where no agreement is reached between the institutions concerned, the matter may be brought before the Administrative Commission by the competent authorities no earlier than one month following the date on which the institution that received the document submitted its request. The Administrative Commission shall endeavour to reconcile the points of view within six months of the date on which the matter was brought before it. In doing so and in accordance with Article 72(a) of the basic Regulation, the Administrative Commission may adopt a decision on the interpretation of the relevant provisions of the basic Regulation and this Regulation. The competent authorities and institutions concerned shall take the necessary measures to apply such decision of the Administrative Commission, without prejudice to the right of the authorities, institutions and persons concerned to have recourse to the procedures and tribunals provided for by the legislation of the Member States, by this Regulation or by the Treaty."

8. Article 14 is amended as follows:

(a) Paragraph 1 is replaced by the following:

"1. For the purposes of the application of Article 12(1) of the basic Regulation, 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 sent by that employer to another Member State' shall include a person who is recruited with a view to being sent to another Member State, provided that for a period of at least three months immediately before the start of his employment, the person concerned has already been subject to the legislation of the Member State in which his employer is established."

(aa)new A new paragraph 1a is inserted:

"1a. Once a person has been sent in accordance with Article 12(1) of the basic Regulation or pursued an activity as self-employed in another Member State in accordance with Article 12(2) of the basic Regulation for 24 months in total, either continuously or with interruptions not longer than two months, no new period under Article 12 (1) or Article 12(2) for the same employed or self-employed person and the same Member State may start until at least two months have elapsed from the end of the previous period. A derogation may be granted in specific circumstances."

(ab)new Paragraph 3 is replaced with the following:

"3. For the purposes of the application of Article 12(2) of the basic Regulation, the words 'who normally pursues an activity as a self-employed person' shall refer to a person who habitually carries out substantial activities in the territory of the Member State in which he is established. In particular, that person must have already pursued his activity for a period of at least three months before the date when he wishes to take advantage of the provisions of that Article and, during any period of temporary activity in another Member State, must continue to fulfil, in the Member State where he is established, the requirements for the pursuit of his activity in order to be able to pursue it on his return."

- (b) Paragraph 5a is replaced by the following:

"5a. For the purpose of the application of Title II of the basic Regulation, 'registered office or place of business' shall refer to the registered office or place of business where the essential decisions of the undertaking are adopted and where the functions of its central administration are carried out **or where the undertaking performs genuine activity.**

In determining the location of the registered office or place of business, a series of factors shall be taken into account [...], **as well as** the habitual nature of the activity pursued.

The determination shall be carried out in the framework of an overall assessment, giving due weight to each **relevant factor according to the circumstances of the case [...]**. The Administrative Commission shall lay down the detailed arrangements for the determination."

- (ba) Paragraph 10 is replaced by the following:

"The determination of the applicable legislation under Article 13 of the basic Regulation shall apply for a maximum period of 24 months, taking into account the situation projected for the following 12 calendar months.

Once the period of 24 months has elapsed, the applicable legislation shall be reassessed in the light of the employee's situation."

- (c) A new paragraph 12 is inserted after paragraph 11

"12. For the purposes of applying Article 13 of the basic Regulation, in relation to a person who resides outside the territory of the Union and pursues his/her activities as an employed or self-employed person in two or more Member States, the provisions of the basic Regulation and the implementing Regulation on the determination of the applicable legislation shall apply *mutatis mutandis* subject to the provision that his or her residence shall be deemed to be in the Member State where the person pursues the major part of his/her activities in terms of working time within the territory of the Union."

9. (a) The title of Article 15 is replaced with the following:

"Procedures for the application of Article 11(3)(b) and (d), Article 11(4), Article 11(5) and Article 12 of the basic Regulation (on the provision of information to the institutions concerned)"

- (aa) Paragraph 1 is replaced with the following:

"1. Unless otherwise provided for by Article 16 of the implementing Regulation [...], where a person pursues his or her activity in a Member State other than the Member State competent under Title II of the basic Regulation, the employer or, in the case of a person who does not pursue an activity as an employed person, the person concerned, shall inform the competent institution of the Member State whose legislation is applicable thereof **before the start of the activity** [...]. That institution shall issue the attestation referred to in Article 19(2) of the implementing Regulation to the person concerned and shall without delay make information concerning the legislation applicable to that person, pursuant to [...] Article 12 of the basic Regulation, available to the institution designated by the competent authority of the Member State in which the activity is pursued. **This paragraph shall not apply to business trips or to activities with a duration of no more than three days within a calendar month.**"

- (ab) After paragraph 1, **three** new paragraphs are added:

**"1a. In cases where, due to the urgent nature of the activity, it is not possible in practice to inform the competent institution before the start of the activity in another Member State, the employer or, in the case of a person who does not pursue an activity as an employed person, the person concerned, shall inform the competent institution of the Member State whose legislation is applicable no later than three days after the start of the activity.**

"1aa. In situations falling under [...] Article 12 of the basic Regulation, where the attestation referred to in Article 19(2) of [...] **the implementing** Regulation is not yet issued under paragraph 1, at the request of the institution of the Member State in which the activity is pursued, the employer or, in the case of a person who does not pursue an activity as an employed person, the person concerned shall provide that institution with evidence showing either that he or she has informed the competent institution of the Member State whose legislation is applicable pursuant to paragraph 1 of this Article, or that **he or she falls under one of the exceptions laid down in paragraph 1 of this Article [...]**. Such evidence may be provided in paper or in electronic form."

"1ab. [...] **The coordination rules laid down in Articles 19a and 20(4) shall apply to the institutions referred to in this Article for the purposes laid down herein.**"

(b) Paragraph 2 is replaced with the following:

"2. Paragraph 1, **1a**, 1aa and 1ab of this Article shall apply *mutatis mutandis* to persons covered by Article 11(3)(b) and (d) and **11(4) and** Article 11(5) of the basic Regulation."

(c) Paragraph 3 is deleted

10. Paragraphs 1, 2, 3 and 5 of Article 16 are replaced with the following:

"1. A person who pursues activities in two or more Member States shall inform the institution designated by the competent authority of the Member State of residence thereof. This information may also be provided by the employer on the person's behalf.



2. The designated institution of the place of residence shall without delay determine the legislation applicable to the person concerned, having regard to Article 13 of the basic Regulation and Article 14 of the implementing Regulation. If this institution determines that the legislation of the Member State where this institution is situated applies, it shall inform the designated institutions of each Member State in which an activity is pursued and/or in which the employer is situated of its determination of the applicable legislation.

3. If the designated institution of the place of residence determines that the legislation of another Member State applies, that determination shall be provisional, and this institution shall without delay inform the designated institutions of each Member State in which an activity is pursued and/or in which the employer is situated of this provisional determination of the applicable legislation. The provisional determination shall become definitive two months after the institutions designated by the competent authorities of the Member States concerned being informed of it, unless at least one of these institutions informs the designated institution of the place of residence by the end of this two months period that it cannot yet accept the provisional determination or that it takes a different view on this.

5. The competent institution of the Member State whose legislation is determined to be applicable either provisionally or definitively shall without delay inform the person concerned and his/her employer of the determination."

11. Paragraphs 3-4 of Article 19 are replaced with the following:

"3. Whenever an institution is asked to issue the attestation referred to in paragraph 2, it shall carry out a proper assessment of the facts relevant for the application of the rules set out in Title II of the basic Regulation and confirm that the information contained in the attestation is correct.

4. [...]

5. [...]"

11a.new After Article 19, the following is inserted:

*"Article 19a*

**Cooperation in case of doubts about the validity of issued documents concerning  
the applicable legislation**

1. Where there is doubt about the validity of a document showing the position of the person for the purposes of the applicable legislation or the accuracy of the facts on which the document is based, the institution of the Member State that receives the document shall ask the issuing institution for the necessary clarification and, where appropriate, the withdrawal or rectification of that document. The requesting institution shall substantiate its request and provide relevant supporting documentation that gave rise to the request.
2. When receiving such a request, the issuing institution shall reconsider the grounds for issuing the document and, where an error is detected, withdraw it or rectify it within 30 working days from the receipt of the request. The withdrawal or rectification shall have retroactive effect. However, in cases where there is a risk of disproportionate outcome, and in particular, of the loss of status as an insured person for the whole or part of the relevant period in all Member States concerned, the Member States shall consider to apply Article 16 of the basic Regulation. Where the issuing institution considers that, on the basis of the available evidence, there is no doubt that the applicant of the document has committed fraud, it shall withdraw or rectify the document without delay and with retroactive effect.
3. If the issuing institution, having reconsidered the grounds for issuing the document is unable to detect any error it shall forward to the requesting institution all available evidence within 30 working days from the receipt of the request. In urgent cases, where the reasons for urgency have been clearly indicated and substantiated in the request, this shall be done within ten working days from the receipt of the request, notwithstanding that the issuing institution may not have completed its deliberations pursuant to paragraph 2 above.

4. Where the requesting institution having received the available evidence continues to have doubts about the validity of a document or the accuracy of the facts on which the particulars contained therein are based or that the information upon which the document was issued is not correct, it may submit evidence to that effect and make a further request for clarification and where appropriate the withdrawal or rectification of that document by the issuing institution in accordance with the procedure and timeframes set out above.

5. If the doubts of the receiving institution persist and no agreement is reached between the institutions concerned, Article 5(4) applies accordingly."

11b.new In Article 20, after paragraph 2, the following paragraphs are inserted:

"3. For the purposes of application of Title II of the basic Regulation, the institutions of the Member States shall respond to queries received from the institutions of the other Member States within **30** working days from the receipt of the request.

4. In case a person pursues an activity as an employed or a self-employed person in another Member State without the attestation referred to in Article 19(2) of this Regulation, **in accordance with Article 15(1) of the implementing Regulation [...]**, the relevant institution in that Member State can request the institution of the Member State whose legislation is applicable information concerning the legislation applicable to that person.

If the requested institution does not reply within **30** working days from the receipt of the request, the requesting institution may proceed as if no document has been issued and shall inform the requested institution accordingly. If subsequently, the attestation is issued by the requested institution that attestation shall have, where appropriate, retroactive effect."

12. [...]

13. In Title III, Chapter 1 the title is replaced by the following:

"Sickness, long-term care, maternity and equivalent paternity benefits".

14. Article 23 is replaced with the following:

*"Article 23*

**Regime applicable to the event of the existence of more than one regime in the  
Member State of residence or stay**

If the legislation of the Member State of residence or stay comprises more than one scheme of sickness, long-term care, maternity and paternity insurance for more than one category of insured persons, the provisions applicable under Articles 17, 19(1), 20, 22, 24 and 26 of the basic Regulation shall be those of the legislation on the general scheme for employed persons."

15. [...]

- 15a.new Article 25 section A is amended as follows:

- (a) point 1 is replaced with the following:

"1. For the purposes of the application of Article 19 of the basic Regulation, the insured person shall present to the health care or long-term care provider in the Member State of stay a document issued by the competent institution indicating his entitlement to benefits in kind. If the insured person does not have such a document, the institution of the place of stay, upon request or if otherwise necessary, shall contact the competent institution in order to obtain one."

- (b) point 3 is replaced with the following:

"3. The benefits in kind referred to in Article 19(1) of the basic Regulation shall refer to the benefits in kind which are provided in the Member State of stay, in accordance with its legislation, and which become necessary on medical grounds or due to the need for long-term care with a view to preventing an insured person from being forced to return, before the end of the planned duration of stay, to the competent Member State to obtain the necessary treatment or long-term care benefits."

15b.new Article 26 paragraph 4 is replaced by the following:

"4. At any time during the procedure granting the authorisation, the competent institution shall retain the right to have the insured person examined by a doctor or a qualified person, in accordance with national law or practice, of its own choice in the Member State of stay or residence."

16. [...]

17. Article 31 is amended as follows:

(c) [...]

(d) [...]

(e) paragraph 2 is replaced with the following:

"The competent institution shall also inform the institution of the place of residence or stay about the payment of long-term care benefits in cash where the legislation applied by the latter institution provides for the long-term care benefits in kind included in the list referred to in Article 33a (1) of the basic Regulation."

17a.new Article 32(1) is replaced with the following:

"1. When a person or a group of persons are exempted upon request from compulsory sickness or long-term care insurance and such persons are thus not covered by a sickness or long-term care insurance scheme to which the basic Regulation applies, the institution of another Member State shall not, solely because of this exemption, become responsible for bearing the costs of benefits in kind or in cash provided to such persons or to a member of their family under Title III, Chapter I, of the basic Regulation."

18. [...]

19. Article 43(3) is replaced with the following:

"3. The institution of each Member State shall calculate, under its applicable legislation, the amounts due that correspond to periods of voluntary or optional continued insurance which, under Article 53(3)(c) of the basic Regulation, are not subject to another Member State's rules relating to withdrawal, reduction or suspension."

19a.new After Article 54, the following is inserted:

*"Article 54a*

**Procedures for the application of Article 61(2) of the basic Regulation**

-1. In the situation referred to in Article 61(2) of the basic Regulation, the unemployed person shall register as a person seeking work with the employment services of the Member State of most recent period of insurance, employment or self-employment and shall submit a claim for benefit to the institution of that Member State. If the claim is submitted to the institution of the Member State referred to in Article 61(2) of the basic Regulation, that institution shall immediately forward the claim to the institution of the Member State of most recent period of insurance, employment or self-employment for investigation. The date on which the initial claim was submitted shall apply in all institutions concerned.

1. Following the investigation of the claim by the institution of the Member State of the most recent period of insurance, employment or self-employment, if it is determined that the unemployed person does not satisfy the conditions for aggregation referred to in Article 61(1) of the basic Regulation, and it is evident from the information available to it that the unemployed person completed the necessary period to be entitled to receive benefits in accordance with Article 61(2) of the basic Regulation, it shall immediately send a document to the institution of the Member State referred to in Article 61(2) of the basic Regulation. Otherwise, the institution of the Member State of most recent period of insurance, employment or self-employment shall contact the institution referred to in Article 61(2) of the basic Regulation, prior to sending the document, in order to determine whether the period specified in Article 61(2) of the basic Regulation was completed in that Member State.

2. The document referred to in paragraph 1 shall include necessary information on the situation of the unemployed person. The Administrative Commission shall determine the format and content of such document."

19b.new Article 55(1) is replaced with the following:

"In order to be covered by Articles 64, 64a(2) or 65(3) of the basic Regulation, the unemployed person going to another Member State shall inform the competent institution prior to his or her departure and request a document certifying that he or she retains his or her entitlement to benefits under the conditions laid down in Article 64(1)(b) of the basic Regulation."

20. Article 55(4) is replaced with the following:

"The institution in the Member State to which the unemployed person has gone shall immediately send a document to the competent institution containing the date on which the unemployed person registered with the employment services and his or her new address.

If, in the period during which the unemployed person retains entitlement to benefits, any circumstance likely to affect the entitlement to benefits arises, the institution in the Member State to which the unemployed person has gone shall send immediately to the competent institution and to the person concerned a document containing the relevant information.

The institution in the Member State to which the unemployed person has gone shall provide relevant information on a monthly basis concerning the follow-up of the unemployed person's situation, in particular whether the latter is still registered with the employment services and is complying with organised checking procedures."

21. Article 55(7) is replaced by the following:

"Paragraphs 2 to 6 shall apply *mutatis mutandis* to the situations covered by Articles 64a and 65(3) of the basic Regulation."

22. The following paragraph -1 is inserted in Article 56:

"-1. The competent institution referred to in Article 65(1), in the last sentence of Article 65(2) or in Article 65(2a) of the basic Regulation shall inform wholly unemployed persons of their rights and obligations and shall provide them with documents which shall include all necessary information related to the receipt of unemployment benefits in accordance with its legislation in the Member State of residence. The relevant institutions shall provide each other with the necessary information to support the job-seeking activities of unemployed persons who resided in a Member State other than the competent Member State and to inform them about the applicable control procedures and conditions, and to which employment service they shall make themselves available. The institution of the Member State of residence shall, upon request of the competent institution, immediately inform the competent institution of any circumstances of which it is aware and which are likely to affect the entitlement to benefits, in particular, if the wholly unemployed persons have taken up employment or have become self-employed in the Member State of residence."

23. Article 56 is amended as follows:

(a) Paragraph 1 is replaced by the following:

"1. Where, in accordance with Article 65(4) of the basic Regulation, an unemployed person decides to make himself or herself also available to the employment services in the Member State not providing the benefits, by registering there as a person seeking work, he or she shall inform the institution and the employment services of the Member State providing the benefits."



Where requested by the employment services of the Member State not providing the benefits, the employment services in the Member State that is providing the benefits shall send the relevant information concerning the unemployed person's registration and his/her search for employment. The employment services of the Member State not providing the benefits shall also, upon request of the competent institution, immediately inform the competent institution of any circumstances of which it is aware and which are likely to affect the entitlement to benefits, in particular, if the wholly unemployed persons have taken up employment or have become self-employed in the Member State of residence.";

(b) Paragraph 3 is deleted.

23a.new After Article 56, the following new article is inserted:

*"Article 56a*

**Enhanced measures of support and cooperation for unemployed persons who resided in a Member State other than the competent Member State**

1. The competent authorities or competent institutions of two or more Member States shall cooperate and may agree amongst themselves specific procedures and time-limits concerning the follow-up of the unemployed person's situation as well as other measures to facilitate the job-seeking activities of unemployed persons who reside in a Member State other than the competent Member State.
2. The Member States concerned shall ensure that the unemployed persons covered by Article 65 of the basic Regulation have access in each of their territories to the European network of employment services (EURES), and to the support services in cross-border regions, where available, in accordance with Regulation (EU) No 2016/589 of 13 April 2016 on a European network of employment services (EURES), workers' access to mobility services and the further integration of labour markets<sup>11</sup>."

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<sup>11</sup> OJ L 107, 22.04.2016

24. [...]
25. In Article 64 paragraph 1 the first indent is replaced by the following:
- " - the index ( $i = 1, 2, 3$  and  $4$ ) represents the four age groups used for calculating the fixed amounts:
- $i = 1$ : persons aged under 65,
- $i = 2$ : persons aged from 65 to 74,
- $i = 3$ : persons aged from 75 to 84,
- $i = 4$ : persons aged 85 and over,"
26. Article 65 is replaced with the following:

*"Article 65*

#### **Notification of annual average costs**

1. The annual average cost per person in each age group for a specific year shall be notified to the Audit Board at the latest by the end of the second year following the year in question.
2. The annual average costs notified in accordance with paragraph 1 shall be published each year in the Official Journal of the European Union after approval by the Administrative Commission.

3. Where a Member State is unable to notify the average costs for a specific year by the deadline referred to in paragraph 1, it shall by the same deadline ask permission from the Administrative Commission and the Audit Board to use the annual average costs for that Member State as published in the Official Journal of the European Union for the year preceding the specific year in which notification is outstanding. When seeking such permission, the Member State is required to explain the reasons why it is unable to notify the annual average costs for the year in question. If the Administrative Commission, having considered the opinion of the Audit Board, approves the request of the Member State, the aforementioned annual average costs shall be republished in the Official Journal of the European Union.

4. The derogation in paragraph 3 shall not be granted for consecutive years."

26-a.new Article 66 paragraph 2 is replaced with the following:

"2. The reimbursements between the institutions of the Member States, provided for in Articles 35 and 41 of the basic Regulation, shall be made via the liaison body. There may be a separate liaison body for reimbursements under Article 35 and Article 41 of the basic Regulation. Mutual claims may be off-set between the liaison bodies."

26a.new Article 67 paragraph 3 is replaced with the following:

"3. In the case referred to in the second subparagraph of Article 6(5) and Article 73(2) of the implementing Regulation, the period set out in paragraphs 1 and 2 of this Article shall not start before the competent institution has been identified."

26b.new Article 67 paragraph 7 is replaced with the following:

"7. The Audit Board shall facilitate the final closing of accounts in cases where a settlement cannot be reached within the period set out in paragraph 6, and, upon a reasoned request by one of the parties, shall give its opinion on a dispute within nine months following the month in which the matter was referred to it."

26c.new Article 68 paragraph 2 is replaced with the following:

"2. The interest shall be calculated on the basis of the reference rate applied by the European Central Bank to its main refinancing operations plus two percentage points. The reference rate applicable shall be that in force on the first day of the month on which the payment is due."

27. Article 70 is deleted.

27a.new Article 72(1) is replaced with the following:

"Unless otherwise provided for in Article 73 of this Regulation, if the institution of a Member State has paid undue benefits to a person, that institution may, within the terms and limits laid down in the legislation it applies, request the institution of any other Member State responsible for paying benefits to the person concerned to deduct the undue amount from arrears or on-going payments owed to the person concerned regardless of the social security branch under which the benefit is paid. The institution of the latter Member State shall deduct the amount concerned subject to the conditions and limits applying to this kind of offsetting procedure in accordance with the legislation it applies in the same way as if it had made the overpayments itself, and shall transfer the amount deducted to the institution that has paid undue benefits."

28. Article 73 is replaced with the following:

*"Article 73*

**Settlement of undue benefits in cash and in kind and contributions in case of a retroactive change of the applicable legislation or other situations where an institution was not competent**

1. In the event of a retroactive change of the applicable legislation, including situations referred to in Article 6(4) and (5) of the implementing Regulation, as well as in other cases where an institution which was not competent unduly paid or provided benefits or unduly received contributions, that institution shall draw up a statement of the amount paid or received and shall send it to the institution identified as being competent for the purpose of their reimbursement, at the latest six months after the change in the applicable legislation has been determined or the institution responsible for granting the benefits or receiving the contributions has been identified.

2. Benefits in kind shall be reimbursed by the institution identified as being competent in accordance with Articles 66 to 68 of the implementing Regulation.

3. The institution identified as being competent for paying the cash benefits shall deduct the amount it has to reimburse to the institution which was not competent or only provisionally competent from the arrears of the corresponding benefits it owes to the person concerned and shall transfer the amount deducted to the latter institution without delay.

If the amount of unduly paid benefits exceeds the amount of arrears payable by the institution identified as being competent, or if arrears do not exist, the institution identified as being competent shall deduct this amount from ongoing payments subject to the conditions and limits under the legislation it applies, and without delay transfer the amount deducted to the institution which had unduly paid the cash benefits for the purpose of their reimbursement.

4. The institution which has unduly received contributions from a legal and/or natural person shall not reimburse the amounts in question to the person who paid them until that institution has ascertained from the institution identified as being competent the sums due to it by the person concerned.

Upon the request of the institution identified as being competent, which shall be made at the latest three months after it has received the statement of the amount paid or received, the institution that unduly received contributions shall transfer those contributions to the institution identified as being competent for that period for the purpose of settling the situation concerning the contributions owed by the legal and/or natural person to it. The contributions transferred shall be retroactively deemed as having been paid to the institution identified as being competent.

If the amount of unduly received contributions exceeds the amount the legal or natural person owes to the institution identified as being competent, the institution which unduly received contributions shall reimburse the amount in excess [...] to the legal and/or natural person concerned, as calculated in accordance with national law.

5. The existence of time limits under national legislation shall not be a valid ground for the refusal of the settlement of claims between institutions under this Article.

6. In the case of procedures under Article 5(2) or 6(3) of this Regulation, this Article shall not apply to claims which are older than 36 months at the date when the procedure commenced.

7. Two or more Member States may commonly agree on specific provisions and procedures that are different from those provided in paragraphs 1 to 6 of this Article, and in relation to benefits in kind, apply Article 35(3) of the basic Regulation, provided that those provisions and procedures are not to the disadvantage of the person/s concerned.

8. The Administrative Commission shall lay down the detailed arrangements for applying this Article."

28a.new Article 75(1) is replaced with the following:

"1. For the purposes of this Section:

- 'claim' means any claim relating to contributions or to benefits that were unduly paid or provided, including interest, fines, administrative penalties and any other charges and costs connected with the claim in accordance with the legislation of the Member State making the claim;
- 'applicant party' means, in respect of each Member State, any institution which makes a request for information, notification or recovery concerning a claim as defined above,
- 'requested party' means, in respect of each Member State, any institution to which a request for information, notification or recovery can be made,
- 'the date on which the claim is due' means, the date by which the debt should have been paid according to national legislation of the Member State of the applicant party,"

28b.new Article 75(3) is deleted.

29. After Article 75(3) the following paragraph 4 is added:

"4. Where a refund of social security contributions relates to a person who resides or stays in another Member State, the Member State from which the refund is to be made may, in accordance with Article 2(2) of this Regulation, inform the Member State of residence or stay of the upcoming refund, without having first received a prior request to do so."

30. [...]

31. Article 77 is replaced with the following:

*"Article 77*

**Notification**

1. The requested party shall, at the request of the applicant party, and in accordance with the rules in force for the notification of similar instruments or decisions in its own Member State, notify the addressee of all instruments and decisions, including those of a judicial nature, which come from the Member State of the applicant party and which relate to a claim and/or to its recovery.

2. The request for notification shall be accompanied by a standard form containing at least the following information:

(a) name, address and other data relevant to the identification of the addressee;

(b) the purpose of the notification and the period within which notification should be effected;

(c) a description of the attached document and the nature and amount of the claim concerned;

(d) name, address and other contact details regarding:

(i) the office responsible with regard to the attached document, and, if different;

(ii) the office where further information can be obtained concerning the notified document or concerning the possibilities to contest the payment obligation.



3. The requested party shall without delay inform the applicant party [...] of the action taken on its request for notification and, particularly, of the date on which the decision or instrument was forwarded to the addressee.

4. The applicant party shall make a request for notification pursuant to this Article only when it is unable to notify in accordance with the rules governing the notification of the document concerned in its Member State, or when such notification would give rise to disproportionate difficulties.

5. The requested party shall ensure that notification in the Member State of the requested party is effected in accordance with the national laws, regulations and administrative practices in force in the Member State of the requested party.

6. Paragraph 5 is without prejudice to any other form of notification made by an authority of the Member State of the applicant party in accordance with the rules in force in that Member State. An authority in the Member State of the applicant party may notify any document directly by registered mail or electronically to a person within the territory of another Member State."

32. Article 78 is modified as follows:

a) Paragraph 1 is replaced with the following:

"1. At the request of the applicant party, the requested party shall recover claims which are the subject of an instrument permitting enforcement in the Member State of the applicant party. Any request for recovery shall be accompanied by a uniform instrument permitting enforcement by the Member State of the requested party."

- b) Paragraph 2 is replaced with the following:

"2. The applicant party may only make a request for recovery if:

(a) the claim or the instrument permitting its enforcement are not contested in its own Member State, except in cases where the second subparagraph of Article 81(2) of this Regulation applies;

(b) [...]

(c) the period of limitation according to its own legislation has not expired."

- c) Paragraph 3 is replaced with the following:

"3. Before the applicant party makes a request for recovery, appropriate recovery procedures available in the Member State of the applicant party shall be applied, except in the following situations:

a) where it is obvious that there are no assets for recovery in the Member State of the applicant party or that such procedures will not result in the payment in full of the claim, and the applicant party has specific information indicating that the person concerned has assets in the Member State of the requested party

b) where recourse to such procedures in the Member State of the applicant party would give rise to disproportionate difficulty.

Where a requested party receives a request for recovery from an applicant party, at the request of the requested party the applicant party shall provide any additional information which would be necessary to the requested party in the recovery of the claim. The applicant party shall not be obliged to supply the information specified in Article 76(3) of this Regulation."

ca)new Paragraph 4 is replaced with the following:

"4. The request for recovery shall also contain a declaration by the applicant party confirming that the conditions laid down in paragraphs 2 and 3 have been fulfilled."

d) The following paragraph 6 is inserted:

"6. The request for recovery of a claim may be accompanied by other documents relating to the claim issued in the Member State of the applicant party."

33. Article 79 is replaced with the following

*"Article 79*

#### **Instrument permitting enforcement of the recovery**

1. The uniform instrument permitting enforcement in the Member State of the requested party shall reflect the substantive content of the initial instrument permitting enforcement, and shall constitute the sole basis for the recovery and precautionary measures taken in the Member State of the requested party. It shall not be subject to any act of recognition, supplementing or replacement in that Member State.

2. The uniform instrument permitting enforcement shall include:

(a) the name, address and any other relevant information relating to the identification of the natural or legal person concerned and/or to the third party holding his or her assets;

(b) the name, address and any other relevant information regarding the office responsible for the assessment of the claim, and, if different, the office where further information can be obtained concerning the claim or the possibilities for contesting the payment obligations;

- (c) information relevant to the identification of the instrument permitting its enforcement, issued in the Member State of the applicant party;
- (d) a description of the claim, including its nature, the period covered by the claim, the date on which the claim is due and any other dates of relevance to the enforcement process and the amount of the claim, including the principal, any interest, fines, administrative penalties and all other charges and costs due indicated in the currencies of the Member States of the applicant and requested parties;
- (e) the date of notification of the instrument to the addressee by the applicant party and/or by the requested party;
- (f) the date from which and the period during which enforcement is possible under the laws in force in the Member State of the applicant party;
- (g) any other relevant information."

34. Article 80 is replaced with the following:

*"Article 80*

**Payment arrangements and deadlines**

1. Claims shall be recovered in the currency of the Member State of the requested party. Subject to Article 85(1a), the requested party shall remit the entire amount of the claim that it recovers to the applicant party.

In remitting the amount of the claim to the applicant party, the requested party shall also provide relevant information relating to the identification of the natural or legal person concerned as referred to in Article 79(2) of this Regulation.

2. The requested party may, where the laws, regulations or administrative provisions in force in its own Member State so permit allow the debtor time to pay or authorise payment by instalment. Any interest charged by the requested party in respect of such extra time to pay shall also be remitted to the applicant party. The requested party shall subsequently inform the applicant party of any such decision.

From the date on which the recovery request is received, the requested party shall charge interest for late payment in accordance with the laws, regulations and administrative provisions in force in the Member State of the requested party."

35. Article 81 is replaced with the following:

*"Article 81*

**Contestation concerning the claim or the instrument permitting enforcement of its recovery and contestation concerning enforcement measures**

1. If, in the course of the recovery procedure, the claim, the initial instrument permitting enforcement in the Member State of the applicant party or the uniform instrument permitting enforcement in the Member State of the requested party, the validity of a notification made by an authority in the Member States of the applicant party are contested by an interested party, the action shall be brought by that interested party before the appropriate authorities of the Member State of the applicant party, in accordance with the laws in force in that Member State. The applicant party shall notify the requested party of this action without delay. The interested party may also inform the requested party of the action.

2. As soon as the requested party has received the notification or information referred to in paragraph 1 either from the applicant party or from the interested party, it shall suspend the enforcement procedure pending the decision of the appropriate authority in the matter, unless the applicant party makes a request to recover the claim in accordance with the second subparagraph of this paragraph. Should the requested party deem it necessary, and without prejudice to Article 84 of the implementing Regulation, it may take precautionary measures to guarantee recovery of the claim insofar as the laws or regulations in force in its own Member State allow such action for similar claims.

Notwithstanding the first subparagraph, the applicant party may, in accordance with the laws, regulations and administrative practices in force in its own Member State, request the requested party to recover a contested claim, in so far as the relevant laws, regulations and administrative practices in force in the requested party's Member State allow such action. Any such request shall be reasoned. If the result of the contestation is subsequently favourable to the debtor, the applicant party shall be liable for the reimbursement of any sums recovered, together with any compensation due, in accordance with the legislation in force in the requested party's Member State."

3. Where the contestation concerns enforcement measures taken in the Member State of the requested party, or the validity of the notification made by an authority of the requested party, the action shall be brought before the appropriate authority of that Member State in accordance with its laws and regulations.

4. [...]

5. [...]"

*(N.B. Paragraphs 4 and 5 are dealt with under new Article 81a)*

35a.new After Article 81, the following is inserted:

*"Article 81a*

**Withdrawals and amendments**

1. The applicant party shall inform the requested party immediately of any subsequent amendment to its request for recovery or of the withdrawal of its request, indicating the reasons for amendment or withdrawal.
2. If the amendment of the request is caused by a decision of the appropriate authority referred to in Article 81(1), the applicant party shall communicate this decision together with a revised uniform instrument permitting enforcement in the Member State of the requested party. The requested party shall then proceed with further recovery measures on the basis of the revised instrument.

Recovery or precautionary measures that were already taken on the basis of the original uniform instrument permitting enforcement in the Member State of the requested party may be continued on the basis of the revised instrument, unless the amendment of the request is due to invalidity of the initial instrument permitting enforcement in the Member State of the applicant party or the original uniform instrument permitting enforcement in the Member State of the requested party.

Articles 79 and 81 shall apply in relation to the revised instrument.

3. If the request is amended for any other reason and such amendment includes a reduction in the amount of the claim, the requested party shall continue recovery or precautionary measures already taken but such enforcement shall be limited to the amount of the claim still outstanding."

36. Article 82 is replaced with the following:

*"Article 82*

**Limits applying to assistance**

1. Without prejudice to the competence to grant the assistance, the requested party shall not be obliged:

(a) to grant the assistance provided for in Articles 78 to 81 of this Regulation if recovery of the claim would, because of the situation of the debtor, create serious economic or social difficulties in the Member State of the requested party, insofar as the laws, regulations or administrative practices in force in the Member State of the requested party allow such action for similar national claims;

(b) to grant the assistance provided for in Articles 76 to 81 of this Regulation, if the initial request under Articles 76 to 78 of this Regulation applies to claims more than five years old, dating from the date on which the claim is due in the Member State of the applicant party to the date of the initial request for assistance. However, if the claim or the initial instrument permitting enforcement in the Member State of the applicant party is contested, the five year period shall be deemed to begin from the moment that it is established that the claim or the instrument permitting recovery may no longer be contested.

Moreover, in cases where a postponement of the deadline for payment or an instalment plan is accepted by the authorities of the Member State of the applicant party, the five-year period shall be deemed to begin from the moment when the entire payment period has come to its end.



However, in such cases the requested party shall not be obliged to grant the assistance in respect of claims which are more than 10 years old, calculated from the date on which the claim is due in the Member State of the applicant party.

2. The requested party shall inform the applicant party of the grounds for refusing a request for assistance."

37. Article 84 is replaced with the following:

*"Article 84*

### **Precautionary measures**

1. Upon reasoned request by the applicant party, the requested party shall take precautionary measures, in accordance with its national law and administrative practice, to ensure recovery where a claim or the instrument permitting enforcement in the Member State of the applicant party is contested at the time when the request is made, or where the claim is not yet the subject of an instrument permitting enforcement in the Member State of the applicant party, in so far as precautionary measures would also be possible, in a similar situation, under the national law and administrative practices of the Member State of the applicant party.

The document drawn up for permitting precautionary measures in the Member State of the applicant party and relating to the claim for which mutual assistance is requested, if any, shall be attached to the request for precautionary measures in the Member State of the requested party. This document shall not be subject to any act of recognition, supplementing or replacement in the Member State of the requested party.

2. The request for precautionary measures may be accompanied by other documents relating to the claim, issued in the Member State of applicant party.

3. For the purposes of implementing the first paragraph, the provisions and procedures laid down in Articles 78, 79, 81 and 82 of this Regulation shall apply *mutatis mutandis*."

38. In Article 85(1) is replaced with the following:

"1. The requested party shall recover from the natural or legal person concerned and retain any costs it incurs that are linked to recovery, in accordance with the laws and regulations of the Member State of the requested party that apply to similar claims.

1a. Where the costs linked to recovery cannot be recovered from the debtor in addition to the amount of the claim, these costs shall either be deducted from any amount which were actually recovered or, where this is not possible, be reimbursed by the applicant party. The applicant party and requested party may agree on a reimbursement arrangement specific to the case, or may agree to waive the reimbursement of such costs."

39. After Article 85, Article 85a is introduced as follows:

*"Article 85a*

**Presence in administrative offices and participation in administrative enquiries**

1. By agreement between the applicant party and the requested party and in accordance with the arrangements laid down by the requested party, officials authorised by the applicant party may, with a view to promoting mutual assistance provided for in this Section:

(a) be present in the offices where the administrative authorities of the Member State of the requested party carry out their duties;

(b) be present during administrative enquiries carried out in the territory of the Member State of the requested party;

(c) assist the competent officials of the Member State of the requested party during court proceedings in that Member State.

2. In so far as it is permitted under the legislation in force in the Member State of the requested party, the agreement referred to in point (b) of paragraph 1 may provide that officials of the Member State of applicant party may interview individuals and examine records.

3. Officials authorised by the applicant party who make use of the possibilities offered by paragraphs 1 and 2 shall at all times be able to produce written authority stating their identity and their official capacity."

39a. new Article 86 is deleted

39b.new The following Article 86a is inserted into Title IV, Chapter III, Section 2:

*"Article 86a*

**Power to adopt implementing acts**

1. The Commission shall, by means of implementing acts, further specify the procedure for recovery. Those implementing acts shall establish:

a) practical arrangements needed for the application of this section as regards the sending of information and documents or decisions by electronic means to the person concerned in accordance with Article 4;

b) the format of the uniform instrument referred to in Article 79;

- c) the information to be given by the requested party to the applicant party about the state of progress or outcome of the request and the applicable time frame in that respect;
- d) the measures to be taken by the institutions concerned in case of an amendment or withdrawal of the claim which is the subject of a request for recovery;
- e) further detailed rules needed for implementing Articles 75(2), 76, 77, 78, 79, 80, 81, 82(1), 83 second subparagraph, 84, 85 and 85a; and
- f) the determination of a minimum threshold for the amounts for which a request for recovery can be made.

2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 76b of Regulation (EC) No 883/2004."

40. Article 87 is amended as follows

a) In paragraph 4 the reference to "Article 34" is deleted and replaced with "Article 1(vb)",

b) At the end of paragraph 6, the following sentence is added:

"However, if the institution which was requested to carry out the check also uses the findings for the granting of benefits on its own account to the person concerned under the legislation it applies, it shall not claim the expenses referred to in the previous sentence."

40a.new After Article 87, the following article is inserted:

"Article 87c

#### **Evaluation**

No later than three years after [*OJ please insert the exact date corresponding to 24 months after entry into force of Regulation (EU) xxxx*], the Commission shall carry out an evaluation on compliance with the time-limits referred to in Title II of Regulation (EC) No 987/2009 and on the implementation of the rules in Article 14(5a) of Regulation (EC) No 987/2009. The Commission shall present a report with the results of this evaluation to the European Parliament, the Council and the Economic and Social Committee. Member States shall provide the Commission with necessary information for the preparation of this report."

41. Article 89(3) is deleted.

42. Article 92 is deleted.

43. In Article 93, the term "Article 87" is replaced by "Articles 87 to 87b".

44. Article 94a is inserted as follows:

"Article 94a

#### **Specific transitional provisions**

Until the entry into force of Regulation (EU) XXX, Articles 56 and 70 of the version of the implementing Regulation in force before [the date of entry into force of the Regulation (EU) xxxx] shall continue to apply to unemployment benefits for which applications were submitted before [*OJ please insert the exact date corresponding to 24 months after entry into force of Regulation (EU) xxxx*].

Articles 56 and 70 of this Regulation in force before the entry into force of Regulation (EU) xxxx shall continue to apply to Luxembourg until *[OJ please insert the exact date corresponding to 3 years after the date application specified in the second paragraph of Article 3 of Regulation (EU) xxxx]*. Also, during this transitional period, Article 56a of this Regulation shall not apply to Luxembourg.

However, Luxembourg may notify the Commission that it is necessary to prolong this period for a further 2 years. Such notification of prolongation shall be made in good time before the end of the three-year period referred to in the previous paragraph. This notification shall be published in the Official Journal.

Article 73 of this Regulation in force before the entry into force of Regulation (EU) xxxx shall continue to apply to settlements of claims which started before *[OJ please insert the exact date corresponding to 24 months after entry into force of Regulation (EU) xxxx]*.

Section 3 of Chapter III of Title IV of this Regulation in force before the entry into force of Regulation (EU) xxxx shall continue to apply to requests and contestations made before *[OJ please insert the exact date corresponding to 24 months after entry into force of Regulation (EU) xxxx]*."

45. Article 96 is amended as follows:

(a) The second sentence of paragraph 1 is replaced as follows:

"However, with the exception of Article 107, Regulation (EEC) No 574/72 shall remain in force and continue to have legal effect for the purposes of:"

(b) A new paragraph 1a is added after paragraph 1

"1a. For the purposes of the legislation referred to in paragraph 1, the rules on currency conversion shall be governed by Article 90 of this Regulation."

### Article 3

#### Entry into force and date of application

This Regulation shall enter into force on the first day of the month following the date of its publication in the *Official Journal of the European Union*.

It shall apply from the date of entry into force of this Regulation, except for the amendments relating to Articles 1, 3, 11(2), 12, 13(4a), 19, 20, 30, 32, 33a, 34, 60a-65, 68, 68b and Annex XII and Annex XIII of Regulation 883/2004 and to Articles 5(1a)-(4), 14(1)-14(5a), 14(10), 14(12), 15 [...], 16, 19a, 20(3), 20(4), 23-25, 28, 31, 32, 54a-56, 56a, 67, 70, 73, 77-85 of Regulation 987/2009, which shall apply from [*OJ please insert the exact date corresponding to 24 months after entry into force*].

The change relating to Article 64 of Regulation 987/2009 shall apply from 1 January of the calendar year following the calendar year in which this Regulation entered into force.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg,

*For the European Parliament*

*For the Council*

*The President*

*The President*

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**ANNEX TO REGULATION (EU) XXXX**

**Annexes to Regulation (EC) No 883/2004 are modified as follows:**

1. Annex I is amended as follows:

(a) Part I is amended as follows:

- i. the section "ESTONIA" is replaced with the following:

"ESTONIA

Maintenance allowances under the Family Benefits Act of 1 January 2017";

- i. the section "SLOVAKIA" is replaced by the following:

"SLOVAKIA

Substitute maintenance payments provided under the Act No 201/2008 Coll. on substitute maintenance as amended.";

- ii. The section "SWEDEN" is replaced by the following:

"SWEDEN

Maintenance support (Chapters 17-19 of the Social Insurance Code)".



(b) Part II is amended as follows:

- i. the section "HUNGARY" is deleted;
- ii. the section "POLAND" is replaced with the following:

"POLAND

Single payment birth grant (Act on Family Benefits)

One-off benefit for the birth of a child who was diagnosed with a severe and irreversible disability or an untreatable life-threatening illness, which originated in the period of prenatal development of the child or during labour";

- ii. the section "ROMANIA" is deleted;
- iii. the section "SLOVAKIA" is replaced with the following:

"SLOVAKIA

Childbirth allowance";

- iii. a new section is added after the section "FINLAND" with the following content:

"SWEDEN

Adoption allowance (Chapter 21 of the Social Insurance Code (2010:110))"

2. Annex II is amended as follows:

- i. the section "GERMANY-AUSTRIA" is replaced with the following:

"GERMANY-AUSTRIA

Article 14(2)(g), (h), (i) and (j) of the Convention on social security of 4 October 1995 (determination of competencies between both countries with regard to former insurance cases and acquired insurance periods); the application of that provision remains restricted to the persons covered by it.";

- ii. the section "SPAIN-PORTUGAL" is deleted.

3. In Annex III, the sections "ESTONIA", "SPAIN", "CROATIA", "ITALY", "LITHUANIA", "HUNGARY", "NETHERLANDS", "FINLAND" and "SWEDEN" are deleted.

4. Annex IV is amended as follows:

- (a) the section "ESTONIA" is inserted after "GERMANY";
- (b) the section "LITHUANIA" is inserted after "CYPRUS";
- (c) the section "MALTA" is inserted after "HUNGARY";
- (d) the section "PORTUGAL" is inserted after "POLAND";
- (e) the section "ROMANIA" is inserted after "PORTUGAL";
- (f) the section "SLOVAKIA" is inserted after "SLOVENIA";
- (g) the section "FINLAND" is inserted after "SLOVAKIA";
- (h) the section "UNITED KINGDOM" is inserted after "SWEDEN".

5. Annex X is amended as follows:

- (a) the section "CZECH REPUBLIC" is deleted;
- (b) in the section "GERMANY", paragraph (b) is replaced by the following:

“(b) Benefits to cover subsistence costs under the basic provision for jobseekers in accordance with Book II of the Social Code).”;
- (c) in the section "ESTONIA":
  - i. paragraph (a) is deleted;
  - ii. [...];
- (d) in the section "HUNGARY", in paragraph (b) ";" is replaced by "." and paragraph (c) is deleted;
- (e) the following section "ROMANIA" is inserted after the section "PORTGUAL":

"ROMANIA

Social allowance for pensioners (Government Emergency Ordinance No. 6/2009 establishing minimum guaranteed social pension, endorsed by Law No. 196/2009).”;
- (f) the section "SLOVENIA" is deleted;
- (fa) in section "FINLAND", in paragraph (b) ";" is replaced with "." and paragraph (c) is deleted;

- (g) the section “SWEDEN” is replaced by:

"SWEDEN

- (a) Housing supplements for persons receiving a pension (Chapters 99-103 of the Social Insurance Code);
- (b) Maintenance support for the elderly (Chapter 74 of the Social Insurance Code).”;
- (h) in the section "UNITED KINGDOM", "." at the end of paragraph (e) is replaced by ";" and the following paragraph is added:
- "(f) Personal Independence Payment mobility component (in Great Britain legislation, Part 4 of The Welfare Reform Act 2012 and in Northern Ireland Legislation, Part 5 of the Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006 (N.I. 1))).".

6. Annex XI is amended as follows:

- (a) In the section "CZECH REPUBLIC", the current paragraph is numbered paragraph "1." and a new paragraph is added after it with the following content:

"2. Notwithstanding Article 5 and 6 of this Regulation, for the purposes of granting the supplementary benefit in respect of insurance periods completed under the legislation of the former Czech and Slovak Federal Republic, solely the insurance periods completed under the Czech legislation can be taken into account in order to meet the condition of at least one year of Czech pension insurance within the defined period after the date of dissolution of the federation (§ 106a, paragraph 1, letter b) of Act No. 155/1995 Col., on pension insurance).";

- (b) In the section "GERMANY", paragraph 3 is replaced by the following:

"3. For the purpose of granting cash benefits under §47(1) of SGB V, §47(1) of SGB VII and § 24i of SGB V to insured persons who live in another Member State, German insurance schemes calculate net pay, which is used to assess benefits, as if the insured person lived in Germany, unless the insured person requests an assessment on the basis of the net pay which he actually receives. For the purpose of granting parental leave benefit under the Federal Parental Allowance and Parental Leave Act (BEEG) to persons living in another Member State, the competent institution for German parental leave benefit shall calculate the average monthly earned income under §§2c to 2f of the Act, which is used to assess benefits, as if the person lived in Germany. In doing so, if tax bracket IV is applicable under the second sentence of §2e(3) of BEEG because the beneficiary was not classified in any German tax bracket during the assessment period, he may request that the parental leave benefit be assessed on the basis of his actual net income taxed in the Member State of residence.";

- (c) In the section "ESTONIA", the current paragraph is numbered paragraph 1 and a new paragraph (2) is inserted:

"2. For the purpose of calculating *pro rata* work ability allowance in accordance with Article 52(1)(b) of this Regulation, the periods of residence completed in Estonia will be taken into account starting from the age of 16 until the contingency occurred.";

- (ca) The section "MALTA" is replaced with the following:

"MALTA

Special provisions for civil servants

(a) Solely for the purposes of the application of Articles 49 and 60 of this Regulation, persons employed under the Malta Armed Forces Act (Chapter 220 of the Laws of Malta), the Police Act (Chapter 164 of the Laws of Malta), the Prisons Act (Chapter 260 of the Laws of Malta) and the Civil Protection Act (Cap 411 of the Laws of Malta) shall be treated as civil servants.

(b) Pensions payable under the above Acts and under the Pensions Ordinance (Chapter 93 of the Laws of Malta) shall, solely for the purposes of Article 1(e) of the Regulation, be considered as 'special schemes for civil servants'.";

- (d) The section "NETHERLANDS" is amended as follows:

- i. paragraph 1(c) is replaced with the following:

"(c) The provisions of the Zorgverzekeringswet (Health Care Insurance Act) and the Wet langdurige zorg (Longterm care act) concerning liability for the payment of contributions shall apply to the persons referred to in point (a) and the members of their families. In respect of members of the family, the contributions shall be levied on the person from whom the right to health care is derived with the exception of the members of the family of military personnel living in another Member State, who shall be levied directly.";

- ii. paragraph 1(d) is replaced with the following:

"(d) The provisions of the Zorgverzekeringswet (Health Care Insurance Act) concerning late insurance shall apply *mutatis mutandis* in the event of late registration with the CAK (Central Administration Institution) in respect of the persons referred to in point 1(a)(ii).";

iii. paragraph 1(e) is replaced with the following:

"(e) Persons entitled to benefits in kind by virtue of the legislation of a Member State other than the Netherlands who reside in the Netherlands or 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 residence or the place of stay, taking into account Article 11(1), (2) and (3), Article 19(1) and Article 20 (1) of the Zorgverzekeringswet (Health Care Insurance Act), as well as to benefits in kind provided for by the Wet langdurige zorg (Longterm care act).";

iv. paragraph 1(f) is replaced with the following:

"(f) For the purposes of Articles 23 to 30 of this Regulation, the following benefits (in addition to pensions covered by Title III, Chapters 4 and 5 of this Regulation) shall be treated as pensions due under Dutch legislation:

- pensions awarded under the ABP privatization Act (Wet privatisering ABP);
- pensions awarded under the Enabling Military Pensions Act (Kaderwet militaire pensioenen);
- benefits for incapacity for work awarded under the Act on benefits for incapacity for work for military personnel (Wetarbeidsongeschiktheidsvoorziening militairen) (Military Personnel Incapacity for Work Act);
- pensions awarded under the Railway pension fund privatization Act (Wet privatisering Spoorwegpensioenfonds);

- pensions awarded under the Reglement Dienstvoorwaarden Nederlandse Spoorwegen (Regulation governing conditions of employment of the Netherlands Railway Company),
  - benefits awarded to persons before reaching the legal pensionable age pursuant to a pension scheme, the object of which is to provide benefits for employed persons and former employed persons in their old age, or a benefit in the event of premature exit from the labour market pursuant to a regulation under an official or a collective labour agreement concerning premature exit from the labour market or a regulation concerning premature exit from the labour market for persons aged 55 or over,
  - benefits awarded to military personnel and civil servants under a scheme applicable in the event of redundancy, superannuation and early retirement;
  - benefits awarded to surviving relatives, receiving survivors' benefits under one or more of the abovementioned regulations;
  - other collective invalidity -, old-age- and survivors' pensions according to a pension agreement or pension regulation within the meaning of the Pensionsact (Pensioenwet).";
- v. the following paragraph is inserted after paragraph 1(f):

"(fa) Any person as referred to in Article 69(1) of the Zorgverzekeringswet (Health Care Insurance Act) who, on the last day of the month preceding that in which he/she reaches the age of 65, is receiving a pension or a benefit treated, on the basis of point (f) of this section, as a pension payable under Dutch legislation, shall be regarded as a pension claimant for the purposes of Article 22 of this Regulation until he/she reaches the pensionable age referred to in Article 7a of the Algemene Ouderdomswet (General Old Age Pensions Act).";



vi. paragraph 1(h) is replaced with the following:

"(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), 19(1) and Article 20 (1) of the Zorgverzekeringswet (Health Care Insurance Act), as well as to benefits in kind provided for by the Wet langdurige zorg (Longterm care act).";

(e) The following section "SLOVAKIA" is inserted after the section "AUSTRIA":

"SLOVAKIA

Notwithstanding Article 5 and 6 of this Regulation, for the purposes of granting the supplementary benefit in respect of insurance periods completed under the legislation of the former Czech and Slovak Federal Republic, solely the insurance periods completed under the Slovak legislation can be taken into account in order to meet the condition of at least one year of Slovak pension insurance within the defined period after the date of dissolution of the federation (*§ 69b, paragraph 1, letter b) of Act No. 461/2003 Col., on Social Insurance*).";

(f) In the section "SWEDEN":

i. paragraphs 1 and 2 are deleted;

ii. in paragraph 3, "(Act 2000:798)" is replaced by:

"(Chapter 6 of the Act on the Implementation of the Social Insurance Code concerning Chapters 53–74)";

iii. in paragraph 4:

- in the heading, the reference to "Chapter 8 of the Lag (1962:381) om allmän försäkring (the National Insurance Act)" is replaced by "Chapter 34 of the Social Insurance Code";
- in paragraph (b), the reference to "Chapter 8, paragraphs 2 and 8 of the abovementioned Act", is replaced by "Chapter 34, Sections 3, 10 and 11 of the above-mentioned Act" and the reference to "the Act on income-based old-age pension (1998:674)" is replaced by "Chapter 59 of the Social Insurance Code";

iv. in paragraph 5 (a), the reference to "(Act 2000:461)" is replaced by "(Chapter 82 of the Social Insurance Code)".

(g) In the section "UNITED KINGDOM":

i. paragraphs 1 and 2 are replaced by the following:

"1. Where, in accordance with United Kingdom legislation, a person who reached pensionable age before 6 April 2016 may be entitled to a retirement pension if:

(a) the contributions of a former spouse or civil partner are taken into account as if they were that person's own contributions; or

(b) the relevant contribution conditions are satisfied by that person's spouse, civil partner, former spouse or former civil partner, then provided, in each case, that the spouse or civil partner or former spouse or civil partner is or had been exercising an activity as an employed or self-employed person, and had been subject to the legislation of two or more Member States, the provisions of Chapter 5 of Title III of this Regulation shall apply in order to determine entitlement under United Kingdom legislation. In this case, references in the said Chapter 5 to 'periods of insurance' shall be construed as references to periods of insurance completed by:

(i) a spouse, civil partner, former spouse or former civil partner where a claim is made by:

- a married person or civil partner, or
- a person whose marriage or civil partnership has terminated otherwise than by the death of the spouse or civil partner; or

(ii) a former spouse or civil partner, where a claim is made by:

- a widow, widower or civil partner who immediately before pensionable age was not entitled to widowed parent's allowance, or
- a widow whose husband died before 9 April 2001 who immediately before pensionable age was not entitled to widowed mother's allowance, widowed parent's allowance or widow's pension, or who is only entitled to an age-related widow's pension calculated pursuant to Article 52(1)(b) of this Regulation, and for this purpose 'age-related widow's pension' means a widow's pension payable at a reduced rate in accordance with section 39(4) of the Social Security Contributions and Benefits Act 1992.

This point does not apply to persons who reach pensionable age on or after 6 April 2016.

2. For the purposes of applying Article 6 of this Regulation to the provisions governing entitlement to attendance allowance, carer's allowance, and disability living allowance and personal independence payment, a period of employment, self-employment or residence completed in the territory of a Member State other than the United Kingdom shall be taken into account in so far as is necessary to satisfy conditions as to required periods of presence in the United Kingdom, prior to the day on which entitlement to the benefit in question first arises."

ii. paragraph 4 is replaced by:

"4. Where Article 46 of this Regulation applies, if the person concerned suffers incapacity for work leading to invalidity while subject to the legislation of another Member State, the United Kingdom shall, for the purposes of Section 30A (5) of the Social Security Contributions and Benefits Act 1992, Part 1 of the Welfare Reform Act 2007 or the corresponding Northern Ireland provisions, take account of any periods during which the person concerned has received, in respect of that incapacity for work:

- (i) cash sickness benefits or wages or salary in lieu thereof, or
- (ii) benefits within the meaning of Chapters 4 and 5 of Title III of this Regulation granted in respect of the invalidity which followed that incapacity for work, under the legislation of the other Member State, as though they were periods of, as appropriate, short-term incapacity benefit paid in accordance with Sections 30A (1)-(4) of the Social Security Contributions and Benefits Act 1992, Employment and Support Allowance (Assessment phase) paid in accordance with Part 1 of the Welfare Reform Act 2007 or corresponding Northern Ireland provisions.

In applying this provision, account shall only be taken of periods during which the person would have been incapable of work within the meaning of the United Kingdom legislation."

7. After Annex XI, the following Annexes are inserted:

"ANNEX XII

LONG-TERM CARE BENEFITS PROVIDED IN DEROGATION FROM ARTICLE  
33A(2)

(Article 33a(2))

AUSTRIA

Long-term care benefit in cash (Federal Long-Term care benefit Act, BGBl. I Nr. 110/1993 as amended) granted as a result of accidents at work or occupational diseases is coordinated under Chapter 2 of Title III – Benefits in respect of accidents at work and occupational diseases.

FRANCE

- (a) Constant attendance allowance (Social Security Code, Article L.355-1) is coordinated under the Chapter 4 of Title III – Invalidity benefits or under the Chapter 5 of Title III – Old age benefit, depending of the benefit the care supplement is paid in addition to.
- (b) Supplementary benefit for constant attendance (Social Security Code, Article L.434-2) is coordinated under Chapter 2 of Title III – Benefits in respect of accidents at work and occupational diseases.

GERMANY

Long term care benefits in respect of accidents at work and occupational diseases (Book VII of the German Social Code paragraph 44) is coordinated under Chapter 2 of Title III – Benefits in respect of accidents at work and occupational diseases.

## POLAND

Care supplement (The Act of 17 December 1998 on old-age and invalidity benefits from the Social Insurance Fund) is coordinated under Chapter 4 of Title III – Invalidity benefits or under Chapter 5 of Title III – Old age benefit, depending on the benefit that the care supplement is paid in addition to.";

### "ANNEX XIII

#### FAMILY BENEFITS IN CASH INTENDED TO REPLACE INCOME DURING CHILD-RAISING PERIODS

(Article 68b)".

Part I Family benefits in cash which are intended to replace income during periods of  
child-raising<sup>12</sup>

(Article 68b(1))

## AUSTRIA

- (a) Flat-rate Childcare Allowance (Childcare Allowance Act, 2001/103)
- (b) Childcare Allowance as replacement of gainful income (Childcare Allowance Act, 2001/103)
- (c) Partner bonus (Childcare Allowance Act, 2001/103)

## BELGIUM

Right to parental leave in the framework of professional career break (Royal Decree of 29/10/1997 concerning the introduction of a parental leave in the framework of a professional career break)

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<sup>12</sup> Cyprus, Greece, Malta, Ireland, Netherlands and United Kingdom indicated that they do not consider any of their family benefits to qualify as family benefits in cash intended to replace income during periods of child raising (*please note that this footnote is inserted only for information purposes and that it will not be included in the final text when published in the OJ*).

## BULGARIA

- (a) Pregnancy and child birth benefit (Social Insurance Code, promulgated SG No. 110 from 17.12.1999, in force since 1 January 2000) starting from the 6<sup>th</sup> month of age of the child
- (b) Benefit upon Adoption of a Child between 2 and 5 Years of Age (Social Insurance Code, promulgated SG No. 110 from 17.12.1999, in force since 1 January 2000)
- (c) Benefit for raising a small child (Social Insurance Code, promulgated SG No. 110 from 17.12.1999, in force since 1 January 2000)

## CZECH REPUBLIC

Parental Allowance (State Social Support Act no. 117/1995 Coll., as amended)

## DENMARK

- (a) Pay Refund (Act on Maternity Equalization Scheme for the private sector) starting from the 15th week after the birth
- (b) Maternity and Paternity Benefits in cash (Consolidation Act on Entitlement to leave and Benefits in the Event of Childbirth) starting from the 15th week after the birth

## ESTONIA

Parental Benefit (Family Benefits Act of 15 June 2016)

## FINLAND

Parental Allowance (Sickness Insurance Act, 1224/2004)

## FRANCE

- (a) The complement of free choice of activity applicable (children\_born/adopted before 1<sup>st</sup> January 2015) (Article 60-II of Social Security Financing Act for 2004)
- (b) The shared child-rearing benefit (PREPARE) (children born on the 1<sup>st</sup> January 2015 or after) (Article 8-I-7° - Act No. 2014-873 of 4 August 2014 for real equality between women and men)

## GERMANY

Parental Allowance (Parental Allowance and Parental Leave Act)

## HUNGARY

Child care fee (Act LXXXIII of 1997 on the Services of the Compulsory Health Insurance System)

## ITALY

Allowance for parental leave (Legislative Decree of 26 March 2001, n. 151)

## LATVIA

Parents' benefit (Law On Maternity and Sickness Insurance of 06.11.1995)

## LITHUANIA

Childcare benefit (Law of the Republic of Lithuania of 21 December 2000 on Sickness and Maternity Social Insurance No IX-110; as amended)

## LUXEMBOURG

Parental Leave Replacement Income (Law of 3rd November 2016 reforming parental leave)

## POLAND

- (a) A supplement to the family allowance for child care in the period of parental leave (Act Of 28 November 2003 on Family Benefits)
- (b) Parental Benefit (Act of 28 November 2003 on family benefits)



## PORTUGAL

- (a) Parental allowance (Decree-Laws No 89/2009 of 9 April 2009, and No 91/2009 of 9 April 2009) starting from 7<sup>th</sup> week after the childbirth
- (b) Extended parental allowance (Decree-Laws No 89/2009 of 9 April 2009, and No 91/2009 of 9 April 2009)
- (c) Adoption allowance (Decree-Laws No 89/2009 of 9 April 2009, and No 91/2009 of 9 April 2009)

## ROMANIA

Monthly Child Raising Indemnity (Government Emergency Ordinance no. 111 of 8 December 2010 regarding the parental leave and the monthly child raising indemnity, with the subsequent amendments and additions)

## SLOVAKIA

Parental Allowance (Parental Allowance Act No. 571/2009, as amended)

## SLOVENIA

- (a) Parental Compensation (Parental Protection and Family Benefits Act, Official gazette No. 26/14 and 15/90, ZSDP-1)
- (b) Parental Allowance (Parental Protection and Family Benefits Act, Official gazette No. 26/14 and 15/90, ZSDP-1)

SWEDEN

Parental benefit (Social Insurance Code)

Part II Member States which award family benefits referred in Article 68b in full

(Article 68b(2))

ESTONIA

FINLAND

LITHUANIA

LUXEMBOURG

SWEDEN."