Regulation (EU) No 465/2012 of the European Parliament and of the Council of 22 May 2012 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 of relevance to the EEA and to the EU/Switzerland Agreement)

REGULATION (EU) No 465/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 22 May 2012

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 of relevance to the EEA and to the EU/Switzerland Agreement)

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,

Acting in accordance with the ordinary legislative procedure[(1)],

Whereas:

(1) To take account of legal changes in certain Member States and to guarantee legal certainty for stakeholders, Regulation (EC) No 883/2004 of the European Parliament and of the Council[(2)] and Regulation (EC) No 987/2009 of the European Parliament and of the Council[(3)] need to be adapted.

(2) Relevant proposals were received from the Administrative Commission for the Coordination of Social Security Systems concerning the coordination of social security schemes with a view to improving and modernising Union law and have been included in this Regulation.

(3) Changes in social reality can affect the coordination of social security systems. In order to respond to such changes, amendments in the field of the determination of applicable legislation and unemployment benefits are necessary.

(4) The concept of 'home base', for flight crew and cabin crew members, under Union law is defined in Annex III to Council Regulation (EEC) No 3922/91 of 16 December 1991 on the harmonization of technical requirements and administrative procedures in the field of civil aviation[(4)]. In order to facilitate the application of Title II of Regulation (EC) No 883/2004 to this group of persons, it is justified to create a special rule whereby the concept of 'home base' becomes the criterion for determining the applicable legislation

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) No 465/2012 of the European Parliament and of the Council. (See end of Document for details)*

for flight crew and cabin crew members. However, the applicable legislation for flight crew and cabin crew members should remain stable and the 'home base' principle should not result in frequent changes of applicable legislation due to the industry's work patterns or seasonal demands.

(5) In situations where a person is working in two or more Member States, it should be made clear that the condition of pursuing a 'substantial part' of the activity within the meaning of Article 13(1) of Regulation (EC) No 883/2004 also applies to persons pursuing activities for various undertakings or employers.

(6) Regulation (EC) No 883/2004 should be amended by inserting a new provision that ensures that a self-employed frontier worker who becomes wholly unemployed receives benefits if he/she has completed periods of insurance as a self-employed person or periods of self-employment recognised for the purposes of granting unemployment benefits in the competent Member State and if no unemployment benefits system covering self-employed persons exists in the Member State of residence. That provision should be reviewed in the light of the experience after two years of implementation and, if necessary, it should be amended.

(7) Regulations (EC) No 883/2004 and (EC) No 987/2009 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

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

(1) The term 'the Commission of the European Communities' is replaced by the term 'the European Commission' throughout the text.

(2) The following recital is inserted:

(18b) In Annex III to Council Regulation (EEC) No 3922/91 of 16 December 1991 on the harmonization of technical requirements and administrative procedures in the field of civil aviation[(5)], the concept of "home base" for flight crew and cabin crew members is defined as the location nominated by the operator to the crew member from where the crew member normally starts and ends a duty period, or a series of duty periods, and where, under normal conditions, the operator is not responsible for the accommodation of the crew member concerned. In order to facilitate the application of Title II of this Regulation for flight crew and cabin crew members, it is justified to use the concept of "home base" as the criterion for determining the applicable legislation for flight crew and cabin crew members. However, the applicable legislation for flight crew and cabin crew members should remain stable and the home base principle should not result in frequent changes of applicable legislation due to the industry's work patterns or seasonal demands..

(3) Article 9 is replaced by the following:

Article 9

Declarations by the Member States on the scope of this Regulation

1 The Member States shall notify the European Commission in writing of the declarations made in accordance with point (l) of Article 1, the legislation and schemes referred to in Article 3, the conventions entered into as referred to in Article 8(2), the minimum benefits referred to in Article 58, and the lack of an insurance system as referred to in Article 65a(1), as well as substantive amendments. Such notifications shall indicate the date from which this Regulation will apply to the schemes specified by the Member States therein.

2 These notifications shall be submitted to the European Commission every year and shall be given the necessary publicity..

(4) The following paragraph is added to Article 11:

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 to Regulation (EEC) No 3922/91, is located..

(5) In Article 12, paragraph 1 is replaced by the following:

1. A person who pursues an activity as an employed person in a Member State on behalf of an employer which normally carries out its activities there and who is posted by that employer to another Member State to perform work on that employer's behalf shall continue to be subject to the legislation of the first Member State, provided that the anticipated duration of such work does not exceed 24 months and that he/she is not sent to replace another posted person..

(6) In Article 13, paragraph 1 is replaced by the following:

1. A person who normally pursues an activity as an employed person in two or more Member States shall be subject:

a to the legislation of the Member State of residence if he/she pursues a substantial part of his/her activity in that Member State; or

b if he/she does not pursue a substantial part of his/her activity in the Member State of residence:

(i) to the legislation of the Member State in which the registered office or place of business of the undertaking or employer is situated if he/she is employed by one undertaking or employer; or

(ii) to the legislation of the Member State in which the registered office or place of business of the undertakings or employers is situated if he/she is employed by two or more undertakings or employers which have their registered office or place of business in only one Member State; or

(iii) to the legislation of the Member State in which the registered office or place of business of the undertaking or employer is situated other than the Member State of residence if he/she is employed by two or more undertakings or employers, which have their registered office

or place of business in two Member States, one of which is the Member State of residence; or

(iv) to the legislation of the Member State of residence if he/she is employed by two or more undertakings or employers, at least two of which have their registered office or place of business in different Member States other than the Member State of residence..

(7) In Article 36, paragraph 2a is replaced by the following:

2a. The competent institution may not refuse to grant the authorisation provided for in Article 20(1) to a person who has sustained an accident at work or who has contracted an occupational disease and who is entitled to benefits chargeable to that institution, where the treatment appropriate to his/her condition cannot be given in the Member State in which he/she resides within a time-limit which is medically justifiable, taking into account his/her current state of health and the probable course of the illness..

(8) Article 63 is replaced by the following:

Article 63

Special provisions for the waiving of residence rules

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

(9) The following Article is inserted:

Article 65a

Special provisions for wholly unemployed self-employed frontier workers where no unemployment benefits system covering self-employed persons exists in the Member State of residence

1 By way of derogation from Article 65, a wholly unemployed person who, as a frontier worker, 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/her Member State of residence and whose Member State of residence has submitted notification that there is no possibility for any category of self-employed persons to be covered by an unemployment benefits system of that Member State, shall register with and make himself/herself available to the employment services in the Member State in which he/she pursued his/her last activity as a self-employed person and, when he/she applies for benefits, shall continuously adhere to the conditions laid down under the legislation of the latter Member State. The wholly unemployed person may, as a supplementary step, make himself/herself available to the employment services of the Member State of residence.

2 Benefits shall be provided to the wholly unemployed person referred to in paragraph 1 by the Member State to whose legislation he/she was last subject in accordance with the legislation which that Member State applies.

3 If the wholly unemployed person referred to in paragraph 1 does not wish to become or remain available to the employment services of the Member State of last activity after having been registered there, and wishes to seek work in the Member State of residence, Article 64 shall apply *mutatis mutandis*, except Article 64(1)(a). The competent institution may extend the period referred to in the first sentence of Article 64(1)(c) up to the end of the period of entitlement to benefits..

(10) In Article 71, paragraph 2 is replaced by the following:

2. The Administrative Commission shall act by a qualified majority as defined by the Treaties, except when adopting its rules which shall be drawn up by mutual agreement among its members.

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

(11) The following Article is inserted:

Article 87a

Transitional provision for application of Regulation (EU) No 465/2012

1 If as a result of the entry into force of Regulation (EU) No 465/2012, a person is subject, in accordance with Title II of this Regulation, to the legislation of a different Member State than that to which he/she was subject before that entry into force, the legislation of the Member State applicable before that date shall continue to apply to him/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) No 465/2012. Such a person may request that the transitional period no longer applies to him/her. Such request shall be submitted to the institution designated by the competent authority of the Member State of residence. Requests submitted by 29 September 2012 shall be deemed to take effect on 28 June 2012. Requests submitted after 29 September 2012 shall take effect on the first day of the month following that of their submission.

2 No later than 29 June 2014, the Administrative Commission shall evaluate the implementation of the provisions laid down in Article 65a of this Regulation and present a report on their application. On the basis of this report, the European Commission may, as appropriate, submit proposals to amend those provisions..

(12) Annexes X and XI are amended in accordance with the Annex to this Regulation.

Article 2

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

(1) In Article 6(1), points (b) and (c) are replaced by the following:

(b) the legislation of the Member State of residence if the person concerned pursues employment or self-employment in two or more Member States and performs part of his/her activity or activities in the Member State of residence, or if the person concerned is neither employed nor self-employed;