Regulation (EC) No 988/2009 of the European Parliament and of the Council of 16 September 2009 amending Regulation (EC) No 883/2004 on the coordination of social security systems, and determining the content of its Annexes (Text with relevance for the EEA and for Switzerland)

REGULATION (EC) No 988/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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(Text with relevance for the EEA and for Switzerland)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 42 and 308 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Economic and Social Committee[(1)],

Acting in accordance with the procedure laid down in Article 251 of the Treaty[(2)],

Whereas:

(1) Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems[(3)] provides for the content of Annexes II, X and XI to that Regulation to be determined before its date of application.

(2) Annexes I, III, IV, VI, VII, VIII and IX to Regulation (EC) No 883/2004 should be adapted in order to take into account both the requirements of the Member States which have acceded to the European Union since that Regulation was adopted and recent developments in other Member States.

(3) Articles 56(1) and 83 of Regulation (EC) No 883/2004 provide for special provisions for the implementation of the legislation of certain Member States to be set out in Annex XI to that Regulation. Annex XI is intended to take account of the particularities of the various social security systems of Member States in order to facilitate the application of the rules on coordination. A number of Member States have asked for entries concerning the application of their social security legislation to be included in this Annex and have provided the Commission with legal and practical explanations of their legislation and systems.

(4) In accordance with the need for rationalisation and simplification, a common approach is needed in order to ensure that entries in respect of different Member States which are of a similar nature or pursue the same objective are in principle dealt with in a similar manner.

(5) As the aim of Regulation (EC) No 883/2004 is to coordinate social security legislation for which Member States are exclusively responsible, entries which are not compatible with its purpose or objectives, and entries seeking solely to clarify the interpretation of national legislation, should not be included in that Regulation.

(6) Some requests raised issues that were common to several Member States: it is therefore appropriate to deal with those issues at a more general level, either by clarification in the body of Regulation (EC) No 883/2004 or in another of its Annexes, which should therefore be amended accordingly, or through a provision in the implementing Regulation referred to in Article 89 of Regulation (EC) No 883/2004, rather than by inserting similar entries in Annex XI for several Member States.

(7) Article 28 of Regulation (EC) No 883/2004 should be amended in order to clarify and extend its scope and to ensure that the members of the family of former frontier workers may also benefit from the possibility of continuing medical treatment in the former country of employment of the insured person after his/her retirement, unless the Member State where the frontier worker last pursued his/her last activity is listed in Annex III.

(8) It is appropriate to assess the significance, frequency, scale and costs relating to the application of the restriction of rights to benefits in kind for members of the family of frontier workers under Annex III to Regulation (EC) No 883/2004 for those Member States still listed in that Annex 4 years after the date of application of that Regulation.

(9) It is also appropriate to deal with certain specific issues in other Annexes to Regulation (EC) No 883/2004, according to their purpose and content, rather than in Annex XI thereto, in order to ensure consistency in the Annexes to that Regulation.

(10) Some Member States' entries in Annex VI to Regulation (EEC) No 1408/71 of the Council[(4)] are now covered by certain general provisions in Regulation (EC) No 883/2004. Consequently, a number of entries in Annex VI to Regulation (EEC) No 1408/71 have become superfluous.

(11) In order to facilitate the use of Regulation (EC) No 883/2004 by citizens when asking for information or making claims to the institutions of the Member States, references to the legislation of the Member States concerned should also be made in the original language wherever necessary in order to avoid any possible misunderstanding.

(12) Regulation (EC) No 883/2004 should therefore be amended accordingly.

(13) Regulation (EC) No 883/2004 provides that it is to apply from the date of entry into force of the implementing Regulation. This Regulation should therefore apply from the same date,

HAVE ADOPTED THIS REGULATON:

Article 1

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

1. the following recital shall be inserted after recital (17):

(17a) Once the legislation of a Member State becomes applicable to a person under Title II of this Regulation, the conditions for affiliation and entitlement to benefits should be defined by the legislation of the competent Member State while respecting Community law.;

2. the following recital shall be inserted after recital (18):

(18a) The principle of single applicable legislation is of great importance and should be enhanced. This should not mean, however, that the grant of a benefit alone, in accordance with this Regulation and comprising the payment of insurance contributions or insurance coverage for the beneficiary, renders the legislation of the Member State, whose institution has granted that benefit, the applicable legislation for that person.;

3. in Article 1, the following point shall be inserted:

(va) "Benefits in kind" means:

(i) for the purposes of Title III, Chapter 1 (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. This includes long-term care benefits in kind.;

(ii) for the purposes of Title III, Chapter 2 (accidents at work and occupational diseases), all benefits in kind relating to accidents at work and occupational diseases as defined in point (i) above and provided for under the Member States' accidents at work and occupational diseases schemes.;

4. Article 3(5) shall be replaced by the following:

5. This Regulation shall not apply to:

a social and medical assistance or

b benefits in relation to which a Member State assumes the liability for damages to persons and provides for compensation, such as those for victims of war and military action or their consequences; victims of crime, assassination or terrorist acts; victims of damage occasioned by agents of the Member State in the course of their duties; or victims who have suffered a disadvantage for political or religious reasons or for reasons of descent.;

5. Article 14(4) shall be replaced by the following:

4. Where the legislation of a Member State makes admission to voluntary insurance or optional continued insurance conditional upon residence in that Member State or upon previous activity as an employed or self-employed person, Article 5(b) shall apply only to persons who have been subject, at some earlier stage, to the legislation of that Member State on the basis of an activity as an employed or self-employed person.;

6. in Article 15, the term 'auxiliary staff' shall be replaced by 'contract staff';

7. Article 18(2) shall be replaced by the following:

2. The members of the family of a frontier worker shall be entitled to benefits in kind during their stay in the competent Member State.

Where the competent Member State is listed in Annex III however, the members of the family of a frontier worker who reside in the same Member State as the frontier worker shall be entitled to benefits in kind in the competent Member State only under the conditions laid down in Article 19(1).;

8. Article 28(1) shall be replaced by the following:

1. A frontier worker who has retired because of old-age or invalidity is entitled in the event of sickness to continue to receive benefits in kind in the Member State where he/she last pursued his/her activity as an employed or self-employed person, in so far as this is a continuation of treatment which began in that Member State. "Continuation of treatment" means the continued investigation, diagnosis and treatment of an illness for its entire duration.

The first subparagraph shall apply *mutatis mutandis* to the members of the family of the former frontier worker unless the Member State where the frontier worker last pursued his/her activity is listed in Annex III.;

9. Article 36(1) shall be replaced by the following:

1. Without prejudice to any more favourable provisions in paragraphs 2 and 2a of this Article, Articles 17, 18(1), 19(1) and 20(1) shall also apply to benefits relating to accidents at work or occupational diseases.;

10. in Article 36, the following paragraph shall be inserted:

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

11. Article 51(3) shall be replaced by the following:

3. Where the legislation or specific scheme of a Member State makes the acquisition, retention or recovery of the right to benefits conditional upon the person concerned being insured at the time of the materialisation of the risk, this condition shall be regarded as having been satisfied if that person has been previously insured under the legislation or specific scheme of that Member State and is, at the time of the materialisation of the risk, insured under the legislation of another Member State for the same risk or, failing that, if a benefit is due under the legislation of another Member State for the same risk. The latter condition shall, however, be deemed to be fulfilled in the cases referred to in Article 57.;

12. Article 52(4) shall be replaced by the following:

4. Where the calculation pursuant to paragraph 1(a) in one Member State invariably results in the independent benefit being equal to or higher than the pro rata benefit, calculated in accordance with paragraph 1(b), the competent institution shall waive the pro rata calculation, provided that:

(i) such a situation is set out in Part 1 of Annex VIII;

(ii) no legislation containing rules against overlapping, as referred to in Articles 54 and 55, is applicable unless the conditions laid down in Article 55(2) are fulfilled; and

(iii) Article 57 is not applicable in relation to periods completed under the legislation of another Member State in the specific circumstances of the case.;

13. the following paragraph shall be added to Article 52:

5. Notwithstanding the provisions of paragraphs 1, 2 and 3, the pro rata calculation shall not apply to schemes providing benefits in respect of which periods of time are of no relevance to the calculation, subject to such schemes being listed in part 2 of Annex VIII. In such cases, the person concerned shall be entitled to the benefit calculated in accordance with the legislation of the Member State concerned.;

14. in Article 56(1)(c), the words 'where necessary' shall be inserted before 'in accordance with the procedures laid down in Annex XI';

15. in Article 56(1), the following point shall be added:

(d) In the event that point(c) is not applicable because the legislation of a Member State provides for the benefit to be calculated on the basis of elements other than periods of insurance or residence which are not linked to time, the competent institution shall take into account, in respect of each period of insurance or residence completed under the legislation of any other Member State, the amount of the capital accrued, the capital which is considered as having been accrued or any other element for the calculation under the legislation it administers divided by the corresponding units of periods in the pension scheme concerned.;

16. in Article 57, the following paragraph shall be added:

4. This Article shall not apply to schemes listed in Part 2 of Annex VIII.;

17. in Article 62(3), the term 'frontier workers' shall be replaced by 'unemployed persons';

18. the following Article shall be inserted:

Article 68a

Provision of benefits

In the event that family benefits are not used by the person to whom they should be provided for the maintenance of the members of the family, the competent institution shall discharge its legal obligations by providing those benefits to the natural or legal person in fact maintaining the members of the family, at the request and through the agency of the institution in their Member State of residence or of the designated institution or body appointed for that purpose by the competent authority of their Member State of residence.;

19. Article 87 shall be amended as follows: