Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (Text with relevance for the EEA and for Switzerland)

REGULATION (EC) No 987/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 16 September 2009

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

(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 Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems[(1)], and in particular Article 89 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Economic and Social Committee[(2)],

Acting in accordance with the procedure laid down in Article 251 of the Treaty[(3)],

Whereas:

(1) Regulation (EC) No 883/2004 modernises the rules on the coordination of Member States' social security systems, specifying the measures and procedures for implementing them and simplifying them for all the players involved. Implementing rules should be laid down.

(2) Closer and more effective cooperation between social security institutions is a key factor in allowing the persons covered by Regulation (EC) No 883/2004 to access their rights as quickly as possible and under optimum conditions.

(3) Electronic communication is a suitable means of rapid and reliable data exchange between Member States' institutions. Processing data electronically should help speed up the procedures for everyone involved. The persons concerned should also benefit from all the guarantees provided for in the Community provisions on the protection of natural persons with regard to the processing and free movement of personal data.

(4) Availability of the details (including electronic details) of those national bodies likely to be involved in implementing Regulation (EC) No 883/2004, in a form which allows them to be updated in real time, should facilitate exchanges between Member States' institutions. This approach, which focuses on the relevance of purely factual

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information and its immediate accessibility to citizens, is a valuable simplification which should be introduced by this Regulation.

(5) Achieving the smoothest possible operation and the efficient management of the complex procedures implementing the rules on the coordination of social security systems requires a system for the immediate updating of Annex 4. The preparation and application of provisions to that effect calls for close cooperation between the Member States and the Commission, and their implementation should be carried out rapidly, in view of the consequences of delays for citizens and administrative authorities alike. The Commission should therefore be empowered to establish and manage a database and ensure that it is operational at least from the date of entry into force of this Regulation. The Commission should, in particular, take the necessary steps to integrate into that database the information listed in Annex 4.

(6) Strengthening certain procedures should ensure greater legal certainty and transparency for the users of Regulation (EC) No 883/2004. For example, setting common deadlines for fulfilling certain obligations or completing certain administrative tasks should assist in clarifying and structuring relations between insured persons and institutions.

(7) The persons covered by this Regulation should receive from the competent institution a timely response to their requests. The response should be provided at the latest within the time-limits prescribed by the social security legislation of the Member State in question, where such time-limits exist. It would be desirable for Member States whose social security legislation does not make provision for such time-limits to consider adopting them and making them available to the persons concerned as necessary.

(8) The Member States, their competent authorities and the social security institutions should have the option of agreeing among themselves on simplified procedures and administrative arrangements which they consider to be more effective and better suited to the circumstances of their respective social security systems. However, such arrangements should not affect the rights of the persons covered by Regulation (EC) No 883/2004.

(9) The inherent complexity of the field of social security requires all institutions of the Member States to make a particular effort to support insured persons in order to avoid penalising those who have not submitted their claim or certain information to the institution responsible for processing this application in accordance with the rules and procedures set out in Regulation (EC) No 883/2004 and in this Regulation.

(10) To determine the competent institution, namely the one whose legislation applies or which is liable for the payment of certain benefits, the circumstances of the insured person and those of the family members must be examined by the institutions of more than one Member State. To ensure that the person concerned is protected for the duration of the necessary communication between institutions, provision should be made for provisional membership of a social security system.

(11) Member States should cooperate in determining the place of residence of persons to whom this Regulation and Regulation (EC) No 883/2004 apply and, in the event of a

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dispute, should take into consideration all relevant criteria to resolve the matter. These may include criteria referred to in the appropriate Article of this Regulation.

(12) Many measures and procedures provided for in this Regulation are intended to ensure greater transparency concerning the criteria which the institutions of the Member States must apply under Regulation (EC) No 883/2004. Such measures and procedures are the result of the case-law of the Court of Justice of the European Communities, the decisions of the Administrative Commission and the experience of more than 30 years of application of the coordination of social security systems in the context of the fundamental freedoms enshrined in the Treaty.

(13) This Regulation provides for measures and procedures to promote the mobility of employees and unemployed persons. Frontier workers who have become wholly unemployed may make themselves available to the employment services in both their country of residence and the Member State where they were last employed. However, they should be entitled to benefits only from their Member State of residence.

(14) Certain specific rules and procedures are required in order to define the legislation applicable for taking account of periods during which an insured person has devoted time to bringing up children in the various Member States.

(15) Certain procedures should also reflect the need for a balanced sharing of costs between Member States. In particular in the area of sickness, such procedures should take account of the position of Member States which bear the costs of allowing insured persons access to their healthcare system and the position of Member States whose institutions bear the cost of benefits in kind received by their insured persons in a Member State other than that in which they are resident.

(16) In the specific context of Regulation (EC) No 883/2004, it is necessary to clarify the conditions for meeting the costs of sickness benefits in kind as part of scheduled treatments, namely treatments for which an insured person goes to a Member State other than that in which he is insured or resident. The obligations of the insured person with regard to the application for prior authorisation should be specified, as should the institution's obligations towards the patient with regard to the conditions of authorisation. The consequences for the chargeability of the costs of care received in another Member State on the basis of an authorisation should also be clarified.

(17) This Regulation, and especially the provisions concerning the stay outside the competent Member State and concerning scheduled treatment, should not prevent the application of more favourable national provisions, in particular with regard to the reimbursement of costs incurred in another Member State.

(18) More binding procedures to reduce the time needed for payment of these claims between Member States' institutions are essential in order to maintain confidence in the exchanges and meet the need for sound management of Member States' social security systems. Procedures for the processing of claims relating to sickness and unemployment benefits should therefore be strengthened.

(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

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functioning of the coordination rules. Effective recovery is also a means of preventing and tackling abuses and fraud and 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 2008/55/EC of 26 May 2008 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures[(4)]. Such new recovery procedures should be reviewed in the light of the experience after five years of implementation and adjusted if necessary, in particular to ensure they are fully operable.

(20) For the purposes of provisions on mutual assistance regarding the recovery of benefits provided but not due, the recovery of provisional payments and contributions and the offsetting and assistance with recovery, the jurisdiction of the requested Member State is limited to actions regarding enforcement measures. Any other action falls under the jurisdiction of the applicant Member State.

(21) The enforcement measures taken in the requested Member State do not imply the recognition by that Member State of the substance or basis of the claim.

(22) Informing the persons concerned of their rights and obligations is a crucial component of a relationship of trust with the competent authorities and the Member States' institutions. Information should include guidance on administrative procedures. The persons concerned may include, depending on the situation, the insured persons, their family members and/or their survivors or other persons.

(23) Since the objective of this Regulation, namely the adoption of coordination measures in order to guarantee the effective exercise of the free movement of persons, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve that objective.

(24) This Regulation should replace Council Regulation (EEC) No 574/72 of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community[(5)],

HAVE ADOPTED THIS REGULATION:

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TITLE I

GENERAL PROVISIONS

CHAPTER I

Definitions

Article 1

Definitions

1 For the purposes of this Regulation:

a ‘basic Regulation’ means Regulation (EC) No 883/2004;

b ‘implementing Regulation’ means this Regulation; and

c the definitions set out in the basic Regulation shall apply.

2 In addition to the definitions referred to in paragraph 1,

a ‘access point’ means an entity providing:

(i) an electronic contact point;

(ii) automatic routing based on the address; and

(iii) intelligent routing based on software that enables automatic checking and routing (for example, an artificial intelligence application) and/or human intervention;

b ‘liaison body’ means any body designated by the competent authority of a Member State for one or more of the branches of social security referred to in Article 3 of the basic Regulation to respond to requests for information and assistance for the purposes of the application of the basic Regulation and the implementing Regulation and which has to fulfil the tasks assigned to it under Title IV of the implementing Regulation;

c ‘document’ means a set of data, irrespective of the medium used, structured in such a way that it can be exchanged electronically and which must be communicated in order to enable the operation of the basic Regulation and the implementing Regulation;

d ‘Structured Electronic Document’ means any structured document in a format designed for the electronic exchange of information between Member States;

e ‘transmission by electronic means’ means the transmission of data using electronic equipment for the processing (including digital compression) of data and employing wires, radio transmission, optical technologies or any other electromagnetic means;

f ‘Audit Board’ means the body referred to in Article 74 of the basic Regulation.