Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (Text with relevance for the EEA and for Switzerland)

[[X1]REGULATION (EC) No 883/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 29 April 2004

on the coordination of social security systems

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

[[X1]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 presented after consultation with the social partners and the Administrative Commission on Social Security for Migrant Workers[(1)],

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) The rules for coordination of national social security systems fall within the framework of free movement of persons and should contribute towards improving their standard of living and conditions of employment.

(2) The Treaty does not provide powers other than those of Article 308 to take appropriate measures within the field of social security for persons other than employed persons.

(3) Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community[(4)] has been amended and updated on numerous occasions in order to take into account not only developments at Community level, including judgments of the Court of Justice, but also changes in legislation at national level. Such factors have played their part in making the Community coordination rules complex and lengthy. Replacing, while modernising and simplifying, these rules is therefore essential to achieve the aim of the free movement of persons.

(4) It is necessary to respect the special characteristics of national social security legislation and to draw up only a system of coordination.

(5) It is necessary, within the framework of such coordination, to guarantee within the Community equality of treatment under the different national legislation for the persons concerned.

Changes to legislation: *There are outstanding changes not yet made to Regulation (EC) No 883/2004 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(6) The close link between social security legislation and those contractual provisions which complement or replace such legislation and which have been the subject of a decision by the public authorities rendering them compulsory or extending their scope may call for similar protection with regard to the application of those provisions to that afforded by this Regulation. As a first step, the experience of Member States who have notified such schemes might be evaluated.

(7) Due to the major differences existing between national legislation in terms of the persons covered, it is preferable to lay down the principle that this Regulation is to apply to nationals of a Member State, stateless persons and refugees resident in the territory of a Member State who are or have been subject to the social security legislation of one or more Member States, as well as to the members of their families and to their survivors.

(8) The general principle of equal treatment is of particular importance for workers who do not reside in the Member State of their employment, including frontier workers.

(9) The Court of Justice has on several occasions given an opinion on the possibility of equal treatment of benefits, income and facts; this principle should be adopted explicitly and developed, while observing the substance and spirit of legal rulings.

(10) However, the principle of treating certain facts or events occurring in the territory of another Member State as if they had taken place in the territory of the Member State whose legislation is applicable should not interfere with the principle of aggregating periods of insurance, employment, self-employment or residence completed under the legislation of another Member State with those completed under the legislation of the competent Member State. Periods completed under the legislation of another Member State should therefore be taken into account solely by applying the principle of aggregation of periods.

(11) The assimilation of facts or events occurring in a Member State can in no way render another Member State competent or its legislation applicable.

(12) In the light of proportionality, care should be taken to ensure that the principle of assimilation of facts or events does not lead to objectively unjustified results or to the overlapping of benefits of the same kind for the same period.

(13) The coordination rules must guarantee that persons moving within the Community and their dependants and survivors retain the rights and the advantages acquired and in the course of being acquired.

(14) These objectives must be attained in particular by aggregating all the periods taken into account under the various national legislation for the purpose of acquiring and retaining the right to benefits and of calculating the amount of benefits, and by providing benefits for the various categories of persons covered by this Regulation.

(15) It is necessary to subject persons moving within the Community to the social security scheme of only one single Member State in order to avoid overlapping of the applicable provisions of national legislation and the complications which could result therefrom.

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(16) Within the Community there is in principle no justification for making social security rights dependent on the place of residence of the person concerned; nevertheless, in specific cases, in particular as regards special benefits linked to the economic and social context of the person involved, the place of residence could be taken into account.

(17) With a view to guaranteeing the equality of treatment of all persons occupied in the territory of a Member State as effectively as possible, it is appropriate to determine as the legislation applicable, as a general rule, that of the Member State in which the person concerned pursues his/her activity as an employed or self-employed person.

[F1(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.**]**

(18) In specific situations which justify other criteria of applicability, it is necessary to derogate from that general rule.

[F1(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.**]**

[F2(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.**]**

(19) In some cases, maternity and equivalent paternity benefits may be enjoyed by the mother or the father and since, for the latter, these benefits are different from parental benefits and can be assimilated to maternity benefits *strictu sensu* in that they are provided during the first months of a new-born child's life, it is appropriate that maternity and equivalent paternity benefits be regulated jointly.

(20) In the field of sickness, maternity and equivalent paternity benefits, insured persons, as well as the members of their families, living or staying in a Member State other than the competent Member State, should be afforded protection.

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(21) Provisions on sickness, maternity and equivalent paternity benefits were drawn up in the light of Court of Justice case-law. Provisions on prior authorisation have been improved, taking into account the relevant decisions of the Court of Justice.

(22) The specific position of pension claimants and pensioners and the members of their families makes it necessary to have provisions governing sickness insurance adapted to this situation.

(23) In view of the differences between the various national systems, it is appropriate that Member States make provision, where possible, for medical treatment for family members of frontier workers in the Member State where the latter pursue their activity.

(24) It is necessary to establish specific provisions regulating the non-overlapping of sickness benefits in kind and sickness benefits in cash which are of the same nature as those which were the subject of the judgments of the Court of Justice in Case C-215/99 *Jauch* and C-160/96 *Molenaar*, provided that those benefits cover the same risk.

(25) In respect of benefits for accidents at work and occupational diseases, rules should be laid down, for the purpose of affording protection, covering the situation of persons residing or staying in a Member State other than the competent Member State.

(26) For invalidity benefits, a system of coordination should be drawn up which respects the specific characteristics of national legislation, in particular as regards recognition of invalidity and aggravation thereof.

(27) It is necessary to devise a system for the award of old-age benefits and survivors' benefits where the person concerned has been subject to the legislation of one or more Member States.

(28) There is a need to determine the amount of a pension calculated in accordance with the method used for aggregation and pro rata calculation and guaranteed by Community law where the application of national legislation, including rules concerning reduction, suspension or withdrawal, is less favourable than the aforementioned method.

(29) To protect migrant workers and their survivors against excessively stringent application of the national rules concerning reduction, suspension or withdrawal, it is necessary to include provisions strictly governing the application of such rules.

(30) As has constantly been reaffirmed by the Court of Justice, the Council is not deemed competent to enact rules imposing a restriction on the overlapping of two or more pensions acquired in different Member States by a reduction of the amount of a pension acquired solely under national legislation.

(31) According to the Court of Justice, it is for the national legislature to enact such rules, bearing in mind that it is for the Community legislature to fix the limits within which the national provisions concerning reduction, suspension or withdrawal are to be applied.

(32) In order to foster mobility of workers, it is particularly appropriate to facilitate the search for employment in the various Member States; it is therefore necessary to ensure closer and more effective coordination between the unemployment insurance schemes and the employment services of all the Member States.

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(33) It is necessary to include statutory pre-retirement schemes within the scope of this Regulation, thus guaranteeing both equal treatment and the possibility of exporting pre-retirement benefits as well as the award of family and health-care benefits to the person concerned, in accordance with the provisions of this Regulation; however, the rule on the aggregation of periods should not be included, as only a very limited number of Member States have statutory pre-retirement schemes.

(34) Since family benefits have a very broad scope, affording protection in situations which could be described as classic as well as in others which are specific in nature, with the latter type of benefit having been the subject of the judgments of the Court of Justice in Joined Cases C-245/94 and C-312/94 *Hoever and Zachow* and in Case C-275/96 *Kuusijärvi*, it is necessary to regulate all such benefits.

(35) In order to avoid unwarranted overlapping of benefits, there is a need to lay down 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 the members of the family.

(36) Advances of maintenance allowances are recoverable advances intended to compensate for a parent's failure to fulfil his/her legal obligation of maintenance to his/her own child, which is an obligation derived from family law. Therefore, these advances should not be considered as a direct benefit from collective support in favour of families. Given these particularities, the coordinating rules should not be applied to such maintenance allowances.

(37) As the Court of Justice has repeatedly stated, provisions which derogate from the principle of the exportability of social security benefits must be interpreted strictly. This means that they can apply only to benefits which satisfy the specified conditions. It follows that Chapter 9 of Title III of this Regulation can apply only to benefits which are both special and non-contributory and listed in Annex X to this Regulation.

(38) It is necessary to establish an Administrative Commission consisting of a government representative from each Member State, charged in particular with dealing with all administrative questions or questions of interpretation arising from the provisions of this Regulation, and with promoting further cooperation between the Member States.

(39) The development and use of data-processing services for the exchange of information has been found to require the creation of a Technical Commission, under the aegis of the Administrative Commission, with specific responsibilities in the field of data-processing.

(40) The use of data-processing services for exchanging data between institutions requires provisions guaranteeing that the documents exchanged or issued by electronic means are accepted as equivalent to paper documents. Such exchanges are to be carried out in accordance with the Community provisions on the protection of natural persons with regard to the processing and free movement of personal data.