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From:	General Secretariat of the Council
To:	Permanent Representatives Committee
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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) - Presidency proposal for a compromise package

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Delegations will find attached the Presidency proposal for a compromise package on the above proposed Regulations.

**Presidency proposal for a compromise package**

**I. Applicable legislation chapter**

**A. Prior notification and exemptions**

**Proposal for a new article no. [XX], Regulation 987/2009**

**Assessment and Review clause**

No later than [three years after the entry into application of Article 15 of this Regulation], the Commission shall, taking into account the latest technological developments and the situation of the labour mobility across the Union, assess the opportunity to modify the rules in Article 15 of this Regulation. On that basis, and after appropriate consultations, the Commission shall present, if appropriate, a legislative proposal.

**Proposal for Recital 40b, Regulation 883/2004**

To ensure that social security coordination rules remain fit for purpose, it is important to take into account the technological progress and benefits of digitalisation, in particular in streamlining and simplifying exchange of information between the competent institutions. Technological advances in social security coordination, such as a fully implemented and operational EESSI, can contribute significantly to simplify the process and compliance with the rule of prior notification.

Already today, EESSI is used for rapid, secure and paperless exchanges between social security institutions across Europe, sharing the information on the applicable legislation. In its Communication COM(2023) 501 final of September 6, 2023 the Commission called on Member States to ensure that EESSI is fully implemented by the end of 2024. This revision of the Regulations comes as an opportunity for the Commission to explore, with interested Member States, the possibility to adjust current functionalities of EESSI in order to make it possible to notify the competent institution of the Member State in which the activity is pursued at an early stage of the process, when the request for the determination of applicable legislation in accordance with Title II is made.

It is important that, as we progress towards more sophisticated technological and digital tools, prior notification becomes fully digital.

### **Proposal for Recital 40bb, Regulation 883/2004**

The European Parliament Resolution P9\_TA(2021)0473 of November 25, 2021 calls on the Commission to put forward a legislative proposal for a European Social Security Pass with a view to providing national authorities such as labour and social security inspectorates and social partners, where they are carrying out or are involved in labour and social security inspections, with a real-time instrument to effectively enforce national and EU law.

The ESSPASS pilot project is aiming at providing a ground for the establishment of a digital instrument facilitating the application of EU rules on social security coordination, thus ensuring fair labour mobility in the Union. It aims to make it easier for citizens to exercise their social security rights across borders. It would equally simplify procedures for companies, for instance when sending their employees to work abroad. The ESSPASS would allow to verify the authenticity, integrity and validity of social security entitlement documents, such as the portable document A1 and the European Health Insurance Card.

According to the Commission Communication COM(2023) 501 final of September 6, 2023, ESSPASS builds on relevant EU digital initiatives. The European Digital Identity framework and the standardised EU digital wallets, once implemented, would be used to identify mobile citizens, store and share the digital and secured attestations proving social security rights.

The Council Conclusions on digitalisation in social security coordination, approved by the Council on November 28, 2023, call on the Commission to examine, in collaboration with the Member States, the next steps on the ESSPASS project, based on the results of the ongoing pilot activities.

#### **Proposal for Recital 40bbb, Regulation 883/2004**

Member States should continue investing in the digitalisation of their social security systems, as appropriate, also with a view to ensuring seamless digital experiences for mobile citizens and businesses. To support this process, various EU funding instruments have been made available, such as the Cohesion policy funds, the Digital Europe Programme or InvestEU. Measures aimed at digitalising public services and modernizing public administration processes are part of all national Recovery and Resilience Plans, which need to allocate at least 20% of the plan's total resources to digital objectives.

#### **Proposal for Recital 40bbbb, Regulation 883/2004**

The European Labour Authority (ELA) assists Member States and the Commission in their effective application and enforcement of Union law related to labour mobility and the coordination of social security systems within the Union and thereby contributes to ensuring fair labour mobility across the Union. According to Regulation (EU) 2019/1149, the ELA should promote the potential use of electronic exchange mechanisms and databases between the Member States to facilitate the access to data in real time and detection of fraud, and may suggest possible improvements in the use of those mechanisms and databases.

## **Proposal for Article 76(a), Regulation 883/2004**

### **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 and the corresponding procedures set out in the Implementing Regulation. Those implementing acts shall establish standard procedures for:
  - the issuance, the format and the contents of the attestation certifying the social security legislation which applies to the holder, as well as of the acknowledgment of receipt of the request for such an attestation,
  - -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 the procedure set out in 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.

## **Proposal for Recital 40a, Regulation 883/2004**

In accordance with Regulation (EU) 2018/1724 (“Single Digital Gateway Regulation”), as from 12 December 2023 Member States are to ensure that employers or persons concerned, subject to the establishment of the relevant procedures, can access and complete a request for the determination of applicable social security legislation fully online. A fully online procedure includes an automatic acknowledgement of receipt and the delivery of the output of the procedure. The procedure should be user-friendly and implemented in accordance with Article 39 of Regulation (EU) 2018/1724. The present Regulation requires Member States to progressively use new technologies for the exchange, access and processing of the data required to apply the social security coordination rules. These include the procedures referred to in Articles 15, 16 and 19 of the implementing Regulation.

### **Proposal for Article 19 (2), Regulation 987/2009**

At the request of the person concerned or of the employer, the competent institution of the Member State whose legislation is applicable pursuant to Title II of the basic Regulation shall provide an attestation that such legislation is applicable and shall indicate, where appropriate, until what date and under what conditions. The attestation shall be issued in a standardized format, which will contribute to the authentication of the attestation.

### **Proposal for Article 15, Regulation 987/2009**

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 and request the attestation referred to in Article 19(2) of this Regulation.
- 1a(-1) Upon the request in paragraph 1, the competent institution shall issue the attestation 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. If the attestation is not delivered immediately, the competent institution of the Member State whose legislation is applicable shall issue an acknowledgement of receipt of the request to the person concerned.
- 1a(-2) Paragraphs 1 and 1a(-1) shall not apply to business trips.
- 1a(-3) Except for the construction sector as defined in the Annex XX to this Regulation, paragraphs 1 and 1a(-1) shall not apply to activities with a duration of no more than three consecutive days within a period of thirty consecutive days.

- 1aa Where the competent institution of the Member State where the activity is carried out has a doubt about the information provided by the employer or the person concerned, the validity of a document or supporting evidence or the accuracy of the facts on which the document is based, that institution may request the competent institution of the Member State whose legislation is applicable to provide further information. The competent institution of the Member State whose legislation is applicable shall provide such information as is at its disposal within 30 working days of receipt of such a request.
2. Notwithstanding paragraph 1, in respect of persons covered by Article 11(3)(b) and (d) of the basic Regulation, the employer shall inform the competent institution of the Member State whose legislation is applicable thereof whenever possible before the start of the activity.

#### **Proposal for Recital 40c, Regulation 883/2004**

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 be informed thereof in advance. For business trips and activities outside the construction sector with a duration of no more than three consecutive days within a period of thirty consecutive days, there is no requirement to inform the competent institution of the Member State whose legislation is applicable pursuant to Title II of this Regulation.

#### **Proposal for a new Recital in Regulation 987/2009**

Eurostat data show that both the number of accidents at work, including fatal accidents, and their incidence rate are particularly high in the construction sector. In the most recent data available from 2021, 22,5% of all fatal accidents at work in the Union happened in the construction sector. Taking into account the utmost importance of having certainty as regards the social security coverage for the workers carrying out activities in this high-risk sector, the exemption of prior notification for postings with a duration of no more than three consecutive days within a period of thirty consecutive days shall not apply in the construction sector.

## **Annex XX**

Construction sector within the meaning of Article 15 of Regulation 987/2009 includes all building work relating to the construction, repair, upkeep, alteration or demolition of buildings, and in particular the following work:

- a. excavation
- b. earthmoving
- c. actual building work
- d. assembly and dismantling of prefabricated elements
- e. fitting out or installation
- f. alterations
- g. renovation
- h. repairs
- i. dismantling
- j. demolition
- k. maintenance
- l. upkeep, painting and cleaning work
- m. improvements



## **B. Pluriactivity**

### **Proposal for Recital 40aa-new, Regulation 883/2004**

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 to determine where the essential decisions of the undertaking are adopted and where the functions of the central administration are carried out. Examples of such factors are the turnover, the places where general meetings are held, and the habitual nature of the activity pursued. The list of the abovementioned factors is non-exhaustive and other factors may prove relevant in determining the location of the registered office or place of business of an undertaking, in the framework of an overall assessment, giving due weight to each relevant factor according to the circumstances of the case.

### **Proposal for Article 14 (5a), Regulation 987/2009**

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.

In determining the location of the registered office or place of business, a series of factors shall be taken into account.

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."

## **II. Unemployment BENEFITS CHAPTER**

### **C. Unemployment BENEFITS**

#### **Proposal for Article 65, Regulation 883/2004**

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 and who during that last activity did not complete an uninterrupted 25 weeks 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 wholly 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 without the application of Article 6 of this regulation, 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.

- 2a. Paragraph 2 shall not apply to a wholly unemployed person who during his or her most recent activity before becoming unemployed 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 receives 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.

## **Proposal for Recital 10, Regulation 883/2004**

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, at least a minimum uninterrupted period of insurance, employment or self-employment in that Member State. In addition, it is important to valorise the contributions made to the social security systems of the Member State of last activity by frontier and cross-border workers who have contributed for a long time to that Member State. Therefore, where a frontier or a cross-border worker has most recently contributed for at least an uninterrupted period of 24 months before becoming unemployed, he or she should be entitled to a longer period of export to the Member State of residence than those who contributed for a shorter period.

### **New recital on seasonal workers – to be accompanied by a Commission statement published in the Official Journal section C:**

The Communication from the Commission “Guidelines on seasonal workers in the EU in the context of the COVID-19 outbreak” of July 17, 2020, the Council conclusions on improving the working and living conditions of seasonal and other mobile workers approved on October 9, 2020 and the European Parliament resolution P9\_TA(2020)0176 of June 19, 2020 on European protection of cross-border and seasonal workers in the context of the COVID-19 crisis, among other initiatives, recognized that seasonal workers are often more vulnerable than other mobile workers. This Regulation contributes to facilitating the exercise of social security rights for mobile seasonal workers as well. It is however important that additional efforts are made in other policy areas as regards working and living conditions, including occupational health and safety. To adequately protect seasonal workers, it is particularly important to provide them with relevant information regarding their rights and obligations in a clear and understandable language.

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