



EUROPEAN COMMISSION

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Proposal for a

**COUNCIL DECISION**

**on the position to be taken by the European Union in the Joint Committee established under the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons as regards the replacement of Annex II to that Agreement on the co-ordination of social security schemes**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

On 1 June 2002, the Agreement between the European Community and its Member States of the one part and the Swiss Confederation of the other, on the Free Movement of Persons entered into force. Annex II to this Agreement provides for the coordination of social security schemes.

Under Article 18 of the Agreement, the EU-Swiss Joint Committee on the Free Movement of Persons may adopt amendments to Annex II of the Agreement. Article 2 of Decision 2002/309/EC, Euratom of the Council, and of the Commission as regards the Agreement on Scientific and Technological Cooperation, of 4 April 2002 on the conclusion of seven Agreements with the Swiss Confederation, provides that the Council, on a proposal from the Commission, lays down the position to be taken by the Union as regards such decisions of the Joint Committee.

To ensure coherent and correct application of EU legislation and to avoid administrative and possibly legal difficulties, Annex II of the Agreement should refer to all the relevant EU legislation and the Decisions of the Administrative Commission for the Coordination of Social Security Systems. Therefore, Annex II of the Agreement needs to be updated in particular to integrate the modernised system for the coordination of social security schemes which became applicable within the EU on 1 May 2010, i.e. Regulation No 883/2004 as amended by Regulation No 988/2009, its implementing Regulation No 987/2009 and the decisions and recommendations of the Administrative Commission. Regulations No 883/2004, 988/2009 and 987/2009 state that they are with relevance for Switzerland.

To that end, the Commission presented a proposal for a Council Decision on the position to be taken by the Union in the Joint Committee established by the Agreement on 28 June 2010. The Commission proposal was subsequently amended in order to refer to Article 48 TFEU (coordination of social security systems), in conjunction with Article 218(9) TFEU, as legal basis.

The Council adopted its Decision on 6 December 2010. The Council Decision was adopted on the basis of Article 79 TFEU, in conjunction with Article 218(9) TFEU. The Commission issued a Declaration in favour of Article 48 TFEU as the correct legal basis. The Commission recalled, in particular, that Article 48 TFEU allows for the extension of EU acquis in the field of social security to third country nationals and that the objectives and provisions of the Agreement on the Free Movement of Persons aim at extending EU legislation, in particular provisions on the free movement of workers, to Swiss nationals in the EU.

Article 79 TFEU falls under Title V (area of freedom, security and justice) and implies the applicability of Protocols n° 21 and 22. As a consequence, the Council Decision did not bind the United Kingdom, Ireland or Denmark.

Ireland and Denmark subsequently aligned themselves with the position of the Union, but not the United Kingdom. The representative of the EU within the Joint Committee proposed to Switzerland the adoption of the draft Joint Committee decision on the basis of the position taken by the Council, on behalf of the EU and of its Member States, including Ireland and Denmark (which had aligned themselves with the position of the Union), but with the

exception of the United Kingdom. The United Kingdom presented its specific position on its own. The United Kingdom proposed, more concretely, the non-applicability of the rules on coordination of social security systems to those economically non-active persons who are covered under the EU coordination rules since the entry into force of Regulation No 883/2004, in the relations between Switzerland and the United Kingdom.

By letter dated 2 September 2011, Switzerland has informed the representative of the EU within the Joint Committee that the proposed Joint Committee decision and the proposal from the United Kingdom are not acceptable to Switzerland as such. First of all, Switzerland regrets that the EU has not endorsed the text which had already been approved by the Swiss Government in March 2011. This text corresponds to the original Commission proposal. Secondly, Switzerland indicates that it could only accept any such reservation for the United Kingdom if further derogations were introduced as regards non-active persons which would be applicable in relation to all EU Member States.

The Swiss refusal implies that a new Council Decision is necessary on the position to be taken by the EU within the Joint Committee for the revision of Annex II. This proposal for a new Council Decision is based on Article 48 TFEU, in conjunction with Article 218(9) TFEU, as the Commission remains convinced that this is the correct legal basis. Moreover, this proposal takes into account the text of the draft Joint Committee decision which had met the approval of the Swiss Government in March 2011, which can also best ensure achievement of the objective of homogeneous and coherent application of the EU legislation on the coordination of social security systems in the relations between the EU and Switzerland.

## **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

The updated version of Annex II of the attached proposal is the result of technical discussions involving social security experts in particular from the Swiss social security administration and from the European Union. The result was submitted for information to the 318<sup>th</sup> meeting of the Administrative Commission for the Coordination of Social Security Systems on 16 December 2009, where delegations welcomed this proposal. Updating Annex II of the Agreement will simplify and modernise coordination of social security systems between Switzerland and EU Member States by introducing in particular the new Regulation No 883/2004 as amended by Regulation No 988/2009 and Regulation No 987/2009. This will have a positive impact in comparison with the existing legislation and will improve administrative procedures for all users of the Regulations, including national social security authorities, employers (in particular small and medium-sized businesses) and individual citizens.

## **3. LEGAL ELEMENTS OF THE PROPOSAL**

### **SECTION A: ACTS REFERRED TO**

With regard to **Regulation No 883/2004**, the reasons for the entries to the Annexes regarding Switzerland are as follows:

- With regard to **Annex I (I) of Regulation No 883/2004** ('Advances of maintenance payments'), Switzerland avails itself of the opportunity to exempt the advances of maintenance payments from the application of R 883/04 by making a special entry.

- With regard to **Annex I (II) of Regulation No 883/2004** ('special childbirth and adoption allowances'), there is no change in substance and this entry corresponds to the current entry in Annex II section II of Regulation 1408/71).
- With regard to **Annex II of Regulation No 883/2004** ('provisions of conventions which remain in force...'):

Those entries which correspond to Annex III, part A and part B of Regulation 1408/71 and which concern the payment of cash benefits to persons resident in a third country are not listed any more in this Annex. EU nationals residing in third country can rely on Article 4 of Regulation 883/2004 since this equal treatment clause does not refer any more to "residence in the EU" (which corresponds to Article 3 (1) modified by Regulation 647/2005).

Switzerland will have to export pensions on the basis of Article 4 of Regulation No 883/2004 (equality of treatment), since its national legislation guarantees the payment of Swiss pensions to Swiss nationals worldwide.

There will be an improvement in rights for EU nationals who are currently not covered by a bilateral agreement, such as nationals of Estonia, Latvia, Lithuania, Hungary, Malta, Poland, Romania and Slovakia, since Switzerland will now have to export pensions to nationals of all EU Member States in third countries as Switzerland does for Swiss citizens.

With regard to the entry concerning **Germany-Switzerland**, there are two conventions which are already listed in the current Annex III of Regulation No 1408/71:

The convention under point a) offers non-active residents of Büsingen who are not otherwise insured in Germany the option of joining the Swiss health insurance scheme (point i) and facilitates the access to the German sickness insurance scheme for workers returning to Germany (point ii).

The convention under point b) concerns unemployment insurance and enables frontier workers from Büsingen to receive, under certain conditions, unemployment benefits as if they were resident in Switzerland. Article 8(5) of this convention provides that Germany (district of Büsingen) shall contribute a sum equivalent to the cantonal contribution under Swiss law towards the cost of actual places on employment-promotion measures for workers subject to this provision. With regard to the entry concerning **Spain-Switzerland**, this corresponds to the current entry in Annex III of Regulation No 1408/71. The entry refers to the Spanish 'Convenio especial', i.e. foreign workers returning to Spain can join the Spanish sickness scheme and they are therefore no longer obliged to be insured as pensioners under Swiss sickness insurance.

With regard to the entry concerning **Italy-Switzerland**, this concerns the aggregation of periods completed in third countries, and it enables the taking into account of insurance periods of Swiss or Italian citizens in third countries to fulfil the conditions for entitlement to Italian pensions (unilateral provision). This entry is necessary since Switzerland is not in a position to apply recommendation P1 concerning the Gottardo judgment since it is directly based on the TFEU (ex EC-Treaty).

- With regard to **Annex III of Regulation No 883/2004** ('restriction of rights to benefits in kind for members of the family of a frontier worker'), there is no entry concerning Switzerland.

- With regard to **Annex IV of Regulation No 883/2004** ('more rights for pensioners returning to the competent member State'), Switzerland is added to this list.
- With regard to **Annexes V, VI and VII of Regulation No 883/2004**, there is no entry concerning Switzerland.
- With regard to **Annex VIII, part 1 of Regulation No 883/2004** ('cases in which the pro rata calculation shall be waived pursuant to Art. 52 (4)'), Switzerland is listed with regard to its scheme already mentioned under Annex IV C to Regulation 1408/71, i.e. the calculation of pensions under the Swiss law in accordance with Art 52 (1) (a) results in a benefit equal to or higher than the pro rata benefit calculated in accordance with Art. 52 (1) (b).
- With regard to **Annex VIII, part 2 of Regulation No 883/2004** ('cases in which Art. 52 (5) applies'), the Swiss old-age, survivors' and invalidity pensions under the statutory occupational benefit plans are listed. This scheme is currently listed under Annex IV C to Regulation 1408/71. This scheme is listed in part 2 of Annex VIII of Regulation 883/2004 since its pensions are calculated out of accumulated and capitalised individual savings, i.e. periods of time are of no relevance to the calculation.
- With regard to **Annex IX, part II of Regulation No 883/2004** ('benefits referred to in Art. 54 (2) (b) of the Regulation, the amount of which is determined by reference to a credited period deemed to have been completed between the date on which the risk materialised and a later date'), there is an entry concerning the Swiss Survivors' and invalidity pensions under the statutory occupational benefit plans. This entry corresponds to the current entry in Annex IV.D, part 2 of Regulation No 1408/71.
- With regard to **Annex X of Regulation No 883/2004** ('special non-contributory cash benefits'), **entries n° 1, 2 and 3** correspond to the current Annex IIa entries. However, taking into account that these entries were inserted before the stricter criteria under Annex IIa of Regulation No 1408/71 were introduced by Regulation No 647/2005 (which correspond to the criteria of Annex X of Regulation No 883/2004), maintaining the inscriptions into Annex X necessitates that these entries comply with the requirements set under Annex X. In this respect, these entries can be justified as follows:

With regard to **entry No 1** concerning supplementary benefits (Federal Supplementary Benefits Act of 19 March 1965) and similar benefits provided for under cantonal legislation:

In view of Regulation No 883/2004, the Swiss delegation requested keeping in the list of special non-contributory cash benefits the supplementary benefits as listed in current Annex IIa of Regulation 1408/71 giving the following justification:

#### 1. Description of the benefit

Concerning Federal benefits, these benefits are granted when the old-age, invalidity or survivors' pension does not cover basic needs. The conditions of granting the benefits are as follows. The claimant must:

- be under the minimum income established to cover basic needs (accommodation, health insurance, food);
- be entitled to an old-age, invalidity or survivors' pension;

- be domiciled and resident in Switzerland.

Benefits amount to the difference between the minimum set-out income and the person's real income (pensions, income of partner, assets). The benefits are financed exclusively by general taxes of the Confederation and the cantons.

Current amounts set out for the minimum income:

- single: CHF 18.720/year
- couple: CHF 28.080/year

Concerning cantonal benefits, the cantons may grant similar additional supplementary benefits to old-age, invalidity or survivors' pension that complement the federal supplementary benefits.

Currently eight cantons have such a parallel system of supplementary benefits to old-age, invalidity or survivors' pension. As a rule, the person must receive federal a supplementary benefits to be entitled to cantonal benefits.

## 2. Qualification as special non-contributory benefit

The federal and cantonal supplementary benefits meet all the necessary criteria to be considered special non-contributory benefits under Article 70 (2) of Regulation No 883/2004, taking into account all the relevant case law of the European Court of Justice concerning special non-contributory benefits:

- (a) They are special (mixed-type) benefits: On the one hand, they have social security characteristics as the persons concerned have a clearly defined legal entitlement to them. They are intended to supplement pensions in order to guarantee a minimum subsistence income and are therefore linked to basic pensions and the risks of old age or invalidity. On the other hand, they have characteristics of social assistance as they are only granted to pensioners whose total income does not reach the minimum set out by the legislation. It is closely linked to the socio-economic situation in Switzerland since it corresponds to minimum basic needs in Switzerland. They do not depend on periods of work or contributions;
- (b) They are non-contributory: they are exclusively financed by taxes and do not depend on any contributions.

With regard to **entry No 2** concerning pensions in the case of hardship under invalidity insurance (Article 28 subparagraph 1a of the Federal Invalidity Insurance Act of 19 June 1959, as amended on 7 October 1994), the Swiss delegation requested that this entry be kept as listed in current Annex IIa of Regulation No 1408/7 for the following reasons:

### 1. Description of the benefit

The hardship pension was abolished as of 1 January 2004. It was replaced by supplementary benefits but it is still granted in some cases on the basis of transitory rules (circa 500 current beneficiaries) and has therefore to be listed in Annex X of Regulation No 883/04.

The hardship pension is a supplementary amount granted to persons entitled to a quarter of an invalidity pension (invalidity degree between 40% and 49%) whose personal situation is difficult and does not allow a decent minimum subsistence income ('hardship cases'). The hardship supplement corresponds to a quarter of a pension. As a result, the beneficiary will get the equivalent of a half-pension. The hardship pension is only paid in Switzerland.

The conditions for granting the benefits are as follows. Claimants must:

- be entitled to an invalidity pension;
- lack of sufficient means;
- be domiciled and resident in Switzerland.

## 2. Qualification as special non-contributory benefit

The invalidity pension in the case of hardship meet all the necessary criteria to be considered a special non-contributory benefit under Article 70 (2) of Regulation No 883/2004, taking into account all the relevant case law of the European Court of Justice concerning special non-contributory benefits, reference is made to the ECJ judgment of 29 April 2004 in case C-160/02, Skalka:

- (a) It is a special (mixed-type) benefit: On the one hand, it has social security characteristics as the persons concerned have a clearly defined legal entitlement to it. Its purpose is to supplement ordinary pensions to guarantee a minimum subsistence income. It is linked to basic invalidity pensions and the risk of invalidity. On the other hand, it has characteristics of social assistance as it is only granted to pensioners in difficult economic situation. It is closely linked to the socio-economic situation in Switzerland since its amount is based on the ordinary pension. They are not based on periods of work or contributions;
- (b) The benefit is of a non-contributory nature, since it is financed by taxes and does not depend on contributions.

With regard to **entry No 3** concerning non-contributory mixed benefits in the event of unemployment, as provided for under cantonal legislation, because of the following reasons:

### 1. Description of the benefit

Eight cantons have introduced such allowances: Basel-Stadt, Geneva, Jura, Neuchâtel, Schaffhausen, Tessin, Uri, Zug. These benefits are granted to jobseekers whose rights to federal unemployment benefits have ceased, in order to reintegrate them in employment and avoid social assistance and social exclusion.

The conditions for entitlement are that claimants must:

- be under a minimum income established by the canton;
- have no further entitlement to federal unemployment benefits;
- seek a job and make themselves available for work;

- be domiciled and resident in the canton.

The types of the benefits are: daily allowances and/or indemnities for various reintegration measures (training courses, etc.).

They are financed exclusively by taxes.

## 2. Qualification as special non-contributory benefit

These cantonal supports for job-seekers meet all the necessary criteria to be qualified as special non-contributory benefits according to Article 70 (2) of Regulation 883/2004, taking into account all relevant jurisprudence of the European Court of Justice concerning special non-contributory benefits:

- (a) They are special (mixed-type) benefits: On the one hand, they have social security characteristics as the persons concerned have a clearly defined legal entitlement to them. They are intended to complement federal unemployment benefits in order to guarantee a minimum income and are clearly linked to the risk of unemployment. On the other hand, they have characteristics of social assistance as they are only granted to job-seekers whose total income does not reach the minimum set out by the legislation. They are closely linked to the socio-economic situation in Switzerland since they refer to minimum income in the canton of residence and are related to the local labour market. They do not depend on periods of contributions;
- (b) They are non-contributory: they are exclusively financed by taxes and do not depend on any contributions.

With regard to **entry No 4** concerning non-contributory extraordinary invalidity pensions for young disabled people (Art. 39 of the Federal Invalidity Insurance Act of 19 June 1959), Switzerland justified the entry as follows:

In view of Regulation No 883/2004, which will also apply to non active persons, the Swiss delegation requested the inclusion of extraordinary pensions for non active disabled persons in the list of special non-contributory cash benefits because of the following justification:

### 1. Description of the benefit

To be entitled to a regular Swiss invalidity pension, insured persons must have paid contributions during at least three years at the time of incapacity for work (invalidity). Persons disabled since birth or childhood cannot fulfil this condition as they are incapable for work before reaching the age from which contributions are levied.

These persons are entitled to a special benefit corresponding to the amount of the minimal regular invalidity pension. The benefit is granted to persons over the age of 18 years and as long as they live in Switzerland.

As this benefit is not calculated on the basis of contributions, it is called the 'extraordinary invalidity pension'.

### 2. Qualification as special non-contributory benefit

The extraordinary invalidity pension meets all the necessary criteria to be considered a special non-contributory benefit according to Article 4 (2a) of Regulation No 1408/71, taking into account all the relevant case law of the European Court of Justice concerning special non-contributory cash benefits:

- (a) It is a hybrid (mixed-type) benefit: On the one hand, it possesses social security characteristics as the persons concerned have a clearly defined legal entitlement to it and it covers the risk of invalidity. On the other hand, it is close to social assistance in the sense that it is not dependent on periods of work or contributions and it is intended to relieve need by guaranteeing a minimum subsistence income to a socially disadvantaged group (disabled young people);
- (b) It is a special benefit: It is a replacement allowance intended for those who do not satisfy the conditions of insurance for obtaining a regular invalidity pension. It is closely linked to the socio-economic situation in Switzerland since it corresponds to the minimum pension in Switzerland;
- (c) It is non-contributory: It is not financed by contributions. The Federal Government bears the entire costs of this benefit.

In case C-154/05 Kersbergen-Lap and Dams-Schipper the European Court of Justice (ECJ) considered the Dutch Wajong benefit to be a special non-contributory benefit. The ECJ has confirmed this judgment in case C-287/05 Hendrix. Like the Swiss extraordinary invalidity pension, the Dutch Wajong provides for the payment of a benefit to young persons who are suffering from long-term incapacity for work but do not meet the conditions for obtaining a regular invalidity pension.

In order not to create a less favourable situation compared to the status quo, the entry proposed by Switzerland shall be limited to persons who have not been subject, before their incapacity for work, to the Swiss legislation on the basis of an activity as an employed (e.g. as an apprentice) or self-employed person.

– With regard to **Annex XI of Regulation No 883/2004 ('special provisions for the application of the legislation of the member States')**:

– With regard to **entries No 1 and 2**, Switzerland justified its proposals as follows:

Switzerland proposes to maintain the two entries in Annex VI of Regulation 1408/71 concerning the admission to the Swiss voluntary pension insurance (point 1) and the optional continued insurance (point 2) for persons living outside of the territorial scope of the Swiss-EU Agreement on Free Movement of Persons. These entries shall be inserted into Annex XI of Regulation 883/2004. Reason for these entries:

Concerning **entry No1 (Voluntary insurance)**:

Nationals of Switzerland and the EU Member States can apply, optionally, for membership of the Swiss old-age, survivors' and invalidity insurance schemes.

As the voluntary insurance is partly financed by Swiss State revenues, only persons with a close link to Switzerland are allowed to become members of this insurance scheme. Therefore, they must have been insured for five years in the Swiss old age, survivors' and invalidity insurance before asking for membership. This requirement applies equally to Swiss

and EU nationals residing outside of the territorial scope of the Agreement on Free Movement of Persons.

Concerning **entry No 2** (Continued insurance when working for a Swiss employer abroad):

Persons working for a Swiss employer abroad may continue paying insurance contributions under the old-age, survivors' and invalidity schemes. However, the employer, who will pay half of the contributions, must agree to the arrangement. As the continued insurance is partly financed by Swiss State revenues, only persons with a close link to Switzerland are allowed to become members of this insurance scheme. Therefore, they must have been insured for five years in the Swiss old age, survivors' and invalidity insurance before asking for membership. This requirement applies equally to Swiss and EU nationals residing outside of the territorial scope of the Agreement on Free Movement of Persons.

Concerning **entry No 3**, this corresponds to the existing entry No 3 in Annex VI of Regulation No 1408/71. This option right gives more rights to migrant workers and their family members. This right has been asked for by migrant workers since they can avoid paying higher health care contributions in Switzerland than they would in their respective Member State.

Concerning **entry No 4**, Switzerland proposes to maintain this entry, which corresponds to point 3a of Annex VI of Regulation No 1408/71 regarding non-occupational accidents. This entry shall be inserted into Annex XI of Regulation No 883/2004.

Persons working in Switzerland and living in Austria, Germany, France or Italy are allowed to choose to be insured against sickness in their State of residence rather than in Switzerland (opting out; point 3(b) of Annex VI, Switzerland, of Regulation No 1408/71).

In such cases, simultaneous responsibility might arise in case of non-work related accidents between the Swiss accident insurance institution and the sickness insurance institution of the State of residence. In fact, non-occupational accidents are treated as occupational accidents and industrial diseases under the Swiss legislation while they are treated as sickness benefits in kind under the legislation of the EU Member States concerned.

A clear provision on the distribution of costs is necessary.

Concerning **entry No 5**, this corresponds to the existing entry No 3b of Annex VI of Regulation No 1408/71. It concerns the situation when a person who works in Switzerland and resides in another Member State has opted to be insured in the country of residence. In this situation, this entry ensures that Article 19 of Regulation No 883/2004 applies so that the person concerned receives medically necessary care during a stay in (non-financially competent) Switzerland.

The wording has been improved in order to ensure that family members are covered as well.

**Entries No 4 and 6 of Annex VI of Regulation 1408/71** are no longer necessary since these situations are covered by Articles 18 and 27(2) of Regulation No 883/2004.

With regard to **entry No 6**, this corresponds to the current entry No 5 of Annex VI of Regulation No 1408/71. It stipulates in accordance with Article 62 (1) of the new Implementing Regulation No 987/2009 that the competent institution will reimburse the institution that provided benefits in Switzerland the actual amount shown in that institution's

accounts. This is also applicable to benefits provided in Switzerland to persons who have opted to be insured in the country of residence according to entry No 3 (a) of Annex XI.

Concerning **entry No 7**, this corresponds to the current entry No 7 of Annex VI of Regulation No 1408/71 and Switzerland proposes to maintain point 7 of Annex VI of Regulation No 1408/71 regarding sickness benefits in cash.

In Switzerland, insurance for sickness benefits in cash is optional. Everybody who is insured in Switzerland for sickness benefits in kind is entitled to join this additional insurance scheme.

Insured persons are free to change their insurance company at any time. In this case, the new insurer is allowed to exclude payment for risks and diseases which already existed before the person joined.

However, if the person concerned was obliged to change the insurer because he or she had taken up a new employment or had moved to a place where the previous insurer does not operate, he or she must be accepted by the new insurer without any further restriction. In such cases, the previous insurer must issue a certificate showing that the change of institution was involuntary. The new insurer is bound by this document which is valid for a period of three months. Until the previous insurer has not delivered the certificate to the insured person, he remains responsible for any benefits in cash not covered by the new insurer.

If a person was previously insured by an institution in an EU Member State, he or she cannot obtain a certificate proving that the conditions for admittance without reserve are met. In order to protect such persons, previous periods of health insurance in another Member State are taken into account and the exclusion of coverage for pre-existing diseases or risks does not apply. As within Switzerland, the change of institution must be concluded within three months.

**Point 8 of Annex VI of Regulation No 1408/71** is not being taken over into Annex XI of Regulation No 883/2004. In Switzerland, invalidity insurance cover depends on either residence or gainful activity in Switzerland. Persons living outside Switzerland (e.g. frontier workers), who give up their gainful activity due to an illness or an accident, are no longer insured and cannot pay contributions. If such persons have worked in Switzerland for less than a year, they are not entitled to an invalidity pension, as they do not fulfil the minimum period of contribution. Until the end of 2007, the minimum contribution period was of only one year. In order to allow former frontier workers to complete this minimum period of contribution, point 8 of Annex VI obliges them to pay contributions to the Swiss pension insurance scheme for one year from the beginning of incapacity for work, as long as they are not subject to the legislation of another Member State on the grounds of a new activity.

On 1 January 2008 the minimum contribution period for Swiss invalidity pensions was raised to three years. Now this entry is superfluous: Keeping a person insured and forcing him/her to pay contributions is no longer justified since this supplementary year would in many cases have no impact on the entitlement and it is incompatible with the competence rules laid down in Annex II of Regulation No 883/2004.

Concerning entry No **8**, this entry corresponds to entry No 9 of Annex VI of Regulation No 1408/71 and the reasons for this entry are as follows: According to Swiss invalidity insurance legislation, rehabilitation measures are only granted as long as the person concerned is insured. The insurance cover depends on either residence or gainful activity in Switzerland.

Persons living outside Switzerland (e.g. frontier workers), who give up their gainful activity due to an illness or an accident, are no longer insured. The entry in Annex XI guarantees that these persons can still benefit from rehabilitation measures, although Switzerland has ceased to be the competent State. It concerns mostly professional training measures, intended to integrate the person back to work. The continuation of the insurance throughout the duration of the measures can also enable the person concerned to reach the minimum insurance period for an invalidity pension, if necessary.

The existing entry has been modified since the situations to which this provision applies have to be more precisely defined. It will only cover the period immediately after the termination of employment in Switzerland, therefore the wording '*until the payment of an invalidity pension*' has been inserted, so pensioners shall not be entitled to these benefits.

With regard to the **application of Regulation No 987/2009**, the entries to the Annexes regarding Switzerland are justified as follows:

- With regard to **Annex 1 of Regulation No 987/2009** ('implementing provisions for bilateral agreements...'), bilateral arrangements with France and Italy fixing special procedures for the reimbursement of health care benefits are listed;
- With regard to **Annexes 3 and 5 of Regulation No 987/2009**, there are no entries concerning Switzerland.

## **SECTION B: ACTS OF WHICH THE CONTRACTING PARTIES SHALL TAKE DUE ACCOUNT**

This section contains the new set of Decisions taken by the Administrative Commission for the Coordination of Social Security Systems.

## **SECTION C: ACTS OF WHICH THE CONTRACTING PARTIES SHALL TAKE NOTE**

This section contains the set of Recommendations taken by the Administrative Commission for the Coordination of Social Security Systems.

## **PROTOCOL**

With regard to the Protocol to Annex II, it deals with 3 issues:

First, with regard to the **unemployment insurance** concerning workers holding a Swiss residence permit for a period of less than one year, this point has been updated in relation to EU-8 and EU-2 nationals, to which the current system of refunding continues applying. This system of refunding shall apply with regard to EU-8 nationals until 30 April 2011, see current point 4 of the Protocol to Annex II of the EU-Switzerland Agreement, and with regard to EU-2 nationals until 31 May 2016, see point 5 of Annex II of the Protocol to the EU-Switzerland Agreement regarding the participation of Bulgaria and Romania.

Second, concerning the **Swiss allowances for helpless persons** (Federal Act of 19 June 1959 on invalidity insurance (LAI) and Federal Act of 20 December 1946 on old-age and survivors' pensions (LAVS) as amended on 8 October 1999), these benefits cannot be listed under Annex X of Regulation No 883/2004 since they do not fulfil the more restrictive conditions as set out since Regulation No 647/2005. However, taking into account that it was agreed several

years before the entry into force of Regulation No 647/2005 to list this benefit under Annex IIa of Regulation No 1408/71, taking into account that Switzerland demands the status quo concerning this benefit by reference to the static nature of the Agreement, and taking into account that Switzerland accepts, in general, the stricter requirements concerning Annex X of Regulation No 883/2004, the non-exportation of this benefit is being dealt with as a separate point in the Protocol to this Agreement.

Third, with regard to the entry on the **benefits under the Occupational benefit plans** concerning old-age, survivors' and invalidity pensions: this transitory regulation was terminated on 31 May 2007, five years after the entry into force of the Agreement. However, it is possible that there are old cases covered by this regulation (persons who left Switzerland before 31 May 2007 but did not yet apply for the benefit), and for this reason, this entry is maintained.

In this context, Article 3 (1) has been adapted ('nationals of *certain* Member States') since the transitory arrangements relating to unemployment insurance for persons holding a Swiss residence permit valid for less than one year apply only for nationals of EU 8 and EU 2 Member States; see the enlargement Protocols: Protocol of 26 October 2004 to the Agreement (OJ L 89, 28.3.2006, p. 30) and Protocol of 27 May 2008 (JO L 124, 20.5.2009, p. 53).

Article 3 (1) has also been adapted for the purpose of completion by introducing a reference to the Protocol to the points already mentioned in this Protocol regarding Swiss allowances for helpless persons and regarding benefits under the Occupational benefit plans.

#### **4. BUDGETARY IMPLICATION**

The proposal does not have implications for the EU budget.

Proposal for a

## **COUNCIL DECISION**

**on the position to be taken by the European Union in the Joint Committee established under the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons as regards the replacement of Annex II to that Agreement on the co-ordination of social security schemes**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 48, in conjunction with Article 218(9) thereof,

Having regard to Decision 2002/309/EC, Euratom of the Council, and of the Commission as regards the Agreement on Scientific and Technological Cooperation, of 4 April 2002 on the conclusion of seven agreements with the Swiss Confederation<sup>1</sup>, and in particular Article 2 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the Free Movement of Persons (hereinafter referred to as 'the Agreement') entered into force on 1 June 2002.
- (2) Article 18 of the Agreement provides that the Joint Committee may, by decision, adopt amendments to the Agreement, inter alia to Annex II to the Agreement, dealing with the co-ordination of social security schemes.
- (3) In order to preserve a coherent and correct application of EU legislation and to avoid administrative and possibly legal difficulties, Annex II to the Agreement needs to be amended to integrate new legal acts of the Union to which the Agreement does not currently refer.
- (4) In the interests of clarity and rationality, Annex II and the Protocol to that Annex should be codified,

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<sup>1</sup> OJ L 114, 30.4.2002, p. 1.

HAS ADOPTED THIS DECISION:

*Article 1*

The position to be taken by the Union in the Joint Committee established under Article 14 of the Agreement of 21 June 1999 between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons shall be based on the draft decision of the Joint Committee set out in Annex I to this Decision.

*Article 2*

The Declaration set out in Annex II to this Decision is approved and shall be made on behalf of the Union in the Joint Committee when the Joint Committee adopts its decision referred to in Article 1.

Done at Brussels,

*For the Council  
The President*

## ANNEX I

*Draft*

### **DECISION No .../... OF THE JOINT COMMITTEE**

established under the Agreement between  
the European Community and its Member States, of the one part,  
and the Swiss Confederation, of the other,  
on the free movement of persons

**of .....**

**replacing Annex II to that Agreement on the co-ordination of social security schemes**

THE JOINT COMMITTEE,

Having regard to the Agreement of 21 June 1999 between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons (hereinafter referred to as 'the Agreement'), and in particular Article 18 thereof,

Whereas:

- (1) The Agreement was signed on 21 June 1999 and entered into force on 1 June 2002.
- (2) Annex II to the Agreement on the co-ordination of social security schemes should be updated to take account of new legal acts of the European Union, in particular Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems<sup>2</sup> and the measures adopted to implement that regulation.
- (3) Regulation (EC) No 883/2004 has replaced 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<sup>3</sup>.
- (4) In the interests of clarity and rationality, Annex II and the Protocol to that Annex should be consolidated in a legally binding version.
- (5) Annex II to the Agreement should be maintained in line with the evolution of the relevant legal acts of the European Union.

HAS ADOPTED THIS DECISION:

*Article 1*

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<sup>2</sup> OJ L 166, 30.4.2004, p. 1.

<sup>3</sup> OJ L 149, 5.7.1971, p. 2.

Annex II to the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the Free Movement of Persons (hereinafter referred to as "the Agreement") is replaced by the Annex to this Decision.

*Article 2*

This Decision is established in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, the texts in each of these languages being equally authentic.

*Article 3*

The Decision shall enter into force on the day following the day of its adoption.

Done at ..., ....

*For the Joint Committee*

*The Chairman*

*The Secretaries*

## ANNEX

### 'ANNEX II

#### **Co-ordination of social security schemes**

##### *Article 1*

- (1) The contracting parties agree, with regard to the coordination of social security schemes, to apply among themselves the acts of the European Union to which reference is made in, and as amended by, section A of this Annex, or rules equivalent to such acts.
- (2) The term 'Member State(s)' contained in the acts referred to in section A of this Annex shall be understood to include Switzerland in addition to the States covered by the relevant acts of the European Union.

##### *Article 2*

- (1) For the purposes of applying the provisions of this Annex, the contracting parties shall take into due account the acts of the European Union referred to in section B of this Annex.
- (2) For the purposes of applying the provisions of this Annex, the contracting parties shall take note of the acts of the European Union referred to in section C of this Annex.

##### *Article 3*

- (1) Special provisions concerning the transitory arrangements relating to unemployment insurance for nationals of certain EU Member States holding a Swiss residence permit valid for less than one year, concerning the Swiss allowances for helpless persons and concerning benefits under the occupational benefit plans regarding old-age, survivors' and invalidity pensions are set out in the Protocol to this Annex.
- (2) The Protocol forms an integral part of this Annex.

#### **SECTION A: ACTS REFERRED TO**

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<sup>4</sup> (OJ L 166, 30.4.2004), as amended by 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<sup>5</sup>

For the purposes of this Agreement, Regulation (EC) No 883/2004 shall be adapted as follows:

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<sup>4</sup> OJ L 166, 30.4.2004, p.1.

<sup>5</sup> OJ L 284, 30.10.2009, p. 43.

- a) The following shall be added to Annex I, section I

**'Switzerland**

Cantonal legislation concerning the advances of maintenance payments based on Articles 131 par. 2 and 293 par. 2 of the Federal Civil Act.'

- b) The following shall be added to Annex I, section II

**'Switzerland**

Birth grants and adoption grants pursuant to the relevant cantonal legislation based on article 3 par. 2 of the Federal Family Allowances Act.'

- c) The following shall be added to Annex II

**'Germany-Switzerland**

- a) Convention on social security of 25 February 1964, as amended by Complementary Conventions No 1 of 9 September 1975 and No 2 of 2 March 1989:

i) point 9b, paragraph 1, Nos 1-4 of the Final Protocol (legislation applicable and entitlement to sickness benefits in kind for residents of the German exclave of Büsingen);

ii) point 9e, paragraph 1(b), first, second and fourth sentences, of the Final Protocol (access to voluntary sickness insurance in Germany by relocation in Germany).

- b) Convention on unemployment insurance of 20 October 1982, as amended by the Additional Protocol of 22 December 1992:

i) Article 8(5), Germany (district of Büsingen) shall contribute a sum equivalent to the cantonal contribution under Swiss law towards the cost of actual places on employment-promotion measures for workers subject to this provision.

**Spain-Switzerland**

Point 17 of the Final Protocol to the Convention on social security of 13 October 1969, as amended by the Complementary Convention of 11 June 1982; persons insured under the Spanish scheme by virtue of this provision are exempted from the requirement to join the Swiss sickness insurance scheme.

**Italy-Switzerland**

Article 9(1) of the Convention on social security of 14 December 1962, as amended by Complementary Convention No 1 of 18 December 1963, the Complementary Agreement of 4 July 1969, the Additional Protocol of 25 February 1974 and Complementary Agreement No 2 of 2 April 1980.'

- d) The following shall be added to Annex IV

**'Switzerland'**

e) The following shall be added to Annex VIII, part 1

**'Switzerland**

All claims for old-age, survivors' and invalidity pensions under the basic scheme (Federal Law on old-age and survivors' insurance and Federal Law on invalidity insurance) and statutory old-age pensions under the statutory occupational benefit plans (Federal Law on occupational benefits plans for old-age, survivors' and invalidity insurance).'

f) The following shall be added to Annex VIII, part 2

**'Switzerland**

Old-age, survivors' and invalidity pensions under the statutory occupational benefit plans (Federal Law on occupational benefits plans for old-age, survivors' and invalidity insurance).'

g) The following shall be added to Annex IX, part II

**'Switzerland**

Survivors' and invalidity pensions under the statutory occupational benefit plans (Federal Law on occupational benefits plans for old-age, survivors' and invalidity insurance).'

h) The following shall be added to Annex X

'1. Supplementary benefits (Federal Supplementary Benefits Act of 19 March 1965) and similar benefits provided for under cantonal legislation.

2. Pensions in the case of hardship under invalidity insurance (Article 28 subparagraph 1a of the Federal Invalidity Insurance Act of 19 June 1959, as amended on 7 October 1994).

3. Non-contributory mixed benefits in the event of unemployment, as provided for under cantonal legislation.

4. Non-contributory extraordinary invalidity pensions for disabled persons (Article 39 of the Federal Invalidity Insurance Act of 19 June 1959) who have not been subject, before their incapacity for work, to the Swiss legislation on the basis of an activity as an employed or self-employed person.'

i) The following shall be added to Annex XI

**'Switzerland**

1. Article 2 of the Federal Old-Age and Survivors' Insurance Act and Article 1 of the Federal Invalidity Insurance Act, which govern voluntary insurance in these insurance branches for Swiss nationals resident in States not subject to this Agreement, shall be applicable to persons resident outside Switzerland who are nationals of the other States to which this Agreement applies, and to refugees and stateless persons resident in the territory of these States, where these persons join the voluntary insurance scheme not later than one year after the date on which they ceased to be covered by old-age, survivors' and invalidity insurance after a continuous period of insurance of at least five years.

2. Where a person ceases to be insured under Swiss old-age, survivors' and invalidity insurance after a continuous period of insurance of at least five years, he shall continue to be entitled to be insured with the agreement of the employer if he works in a State to which this Agreement does not apply for an employer in Switzerland and if he submits an application to this effect within six months of the date on which he ceases to be insured.
3. Compulsory insurance under Swiss sickness insurance and possible exemptions
  - (a) The Swiss legal provisions governing compulsory sickness insurance shall apply to the following persons not resident in Switzerland:
    - (i) persons subject to Swiss legal provisions under Title II of the Regulation;
    - (ii) persons for whom Switzerland shall bear the costs of benefits according to Articles 24, 25, 26 of the Regulation;
    - (iii) persons receiving Swiss unemployment insurance benefits;
    - (iv) family members of persons referred to in (i) and (iii) or of an employed or self-employed person resident in Switzerland who is insured under the Swiss sickness insurance scheme, unless these family members are resident in one of the following States: Denmark, Spain, Hungary, Portugal, Sweden or the United Kingdom;
    - (v) family members of persons referred to in (ii) or of a pensioner resident in Switzerland who is insured under the Swiss sickness insurance scheme, unless these family members are resident in one of the following States: Denmark, Portugal, Sweden or the United Kingdom.

As family members are considered those persons who are defined as family members according to the legislation of the state of residence.

- (b) Persons referred to in (a) may, on request, be exempted from compulsory insurance if and as long as they are resident in one of the following States and can prove that they are eligible for cover in the event of sickness: Germany, France, Italy, Austria, and, with regard to persons referred to in (a) (iv) and (v), Finland and, with regard to persons referred to in (a)(ii), Portugal.

This request

- (aa) must be submitted within three months of the date on which the obligation to take out insurance in Switzerland comes into effect; where, in justified cases, the request is submitted after this deadline, the exemption shall take effect as from the commencement of the insurance obligation;
- (bb) shall apply to all family members residing in the same state.

4. Where a person subject to Swiss legal provisions under Title II of the Regulation is, in application of 3(b), subject for the purposes of sickness insurance to the legal provisions of another State covered by this Agreement, the costs of these benefits in

kind for non-occupational accidents shall be shared equally between the Swiss insurer against occupational and non-occupational accidents and industrial diseases and the competent sickness insurance institution if an entitlement exists to benefits in kind from both bodies. The Swiss insurer against occupational and non-occupational accidents and industrial diseases shall meet all costs in the event of occupational accidents, accidents on the way to work or industrial diseases, even where there is an entitlement to benefits from a sickness insurance body in the country of residence.

5. Persons who are working, but not residing in Switzerland and who have statutory insurance cover in their State of residence in accordance with point 3(b), as well as their family members, shall benefit from the provisions of Article 19 of the Regulation during a stay in Switzerland.
  6. For the purposes of applying Articles 18, 19, 20, 27 of the Regulation in Switzerland, the competent insurer shall bear all invoiced costs.
  7. Periods of daily allowance insurance completed under the insurance scheme of another State to which this Agreement applies shall be taken into account for reducing or lifting a possible reserve in daily allowance insurance in the event of maternity or sickness where the person becomes insured with a Swiss insurer within three months of ceasing to be covered by insurance in another country.
  8. Where a person who was gainfully employed or self-employed in Switzerland and covering his vital needs has had to cease his activity owing to an accident or illness and is no longer subject to Swiss legislation on invalidity insurance, he shall be considered to be covered by that insurance for the purpose of eligibility for rehabilitation measures until the payment of an invalidity pension and throughout the period during which he benefits from these measures, provided that he has not taken up a new activity outside Switzerland.'
2. **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<sup>6</sup>

**For the purposes of this Agreement, Regulation (EC) No 987/2009 shall be adapted as follows:**

- a) The following shall be added to **Annex 1**

'Arrangement between Switzerland and France of 26 October 2004 fixing the special procedures for the reimbursement of health care benefits

Arrangement between Switzerland and Italy of 17 November 2005 fixing the special procedures for the reimbursement of health care benefits'

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 the members of their families moving within the Community, as last amended by Regulation (EC)

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<sup>6</sup> OJ L 284, 30.10.2009, p.1.

No 592/2008 of the European Parliament and of the Council of 17 June 2008<sup>7</sup> and when referred to in Regulations (EC) No 883/2004 or No 987/2009 or when cases are concerned which occurred in the past.

4. **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, to self-employed persons and to the members of their families moving within the Community, as last amended by Commission Regulation (EC) No 120/2009 of 9 February 2009<sup>8</sup> and when referred to in Regulations (EC) No 883/2004 or No 987/2009 or when cases are concerned which occurred in the past.
5. **398 L 49 Council Directive 98/49/EC** of 29 June 1998<sup>9</sup> on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community.

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<sup>7</sup> OJ L 177, 4.7.2008, p.1.

<sup>8</sup> OJ L 39, 10.2.2009, p.29.

<sup>9</sup> OJ L 209, 25.7.98, p. 46.

## **SECTION B: ACTS OF WHICH THE CONTRACTING PARTIES SHALL TAKE DUE ACCOUNT**

- (1) Decision of the Administrative Commission for the Coordination of Social Security Systems No A1 of 12 June 2009 concerning the establishment of a dialogue and conciliation procedure concerning the validity of documents, the determination of the applicable legislation and the provision of benefits under Regulation (EC) No 883/2004 of the European Parliament and of the Council<sup>10</sup>.
- (2) Decision of the Administrative Commission for the Coordination of Social Security Systems No A2 of 12 June 2009 concerning the interpretation of Article 12 of Regulation (EC) No 883/2004 of the European Parliament and of the Council on the legislation applicable to posted workers and self-employed workers temporarily working outside the competent State<sup>11</sup>.
- (3) Decision of the Administrative Commission for the Coordination of Social Security Systems No A3 of 17 December 2009 concerning the aggregation of uninterrupted posting periods completed under the Regulations No 1408/71 and 883/2004<sup>12</sup>.
- (4) Decision of the Administrative Commission for the Coordination of Social Security Systems No E1 of 12 June 2009 concerning the practical arrangements for the transitional period for the data exchange via electronic means referred to in Article 4 of Regulation (EC) No 987/2009 of the European Parliament and of the Council<sup>13</sup>.
- (5) Decision of the Administrative Commission for the Coordination of Social Security Systems No F1 of 12 June 2009 concerning the interpretation of Article 68 of Regulation (EC) No 883/2004 relating to priority rules in the event of overlapping of family benefits<sup>14</sup>.
- (6) Decision of the Administrative Commission for the Coordination of Social Security Systems No H1 of 12 June 2009 concerning the framework for the transition from Council Regulations (EEC) No 1408/71 and No 574/72 to Regulations (EC) No 883/2004 and (EC) No 987/2009 of the European Parliament and of the Council and the application of Decisions and Recommendations of the Administrative Commission for the coordination of social security systems<sup>15</sup>.
- (7) Decision of the Administrative Commission for the Coordination of Social Security Systems No H2 of 12 June 2009 concerning the methods of operation and the composition of the Technical Commission for Data Processing of the Administrative Commission for the Coordination of Social Security Systems<sup>16</sup>.
- (8) Decision of the Administrative Commission for the Coordination of Social Security Systems No H 3 of 15 October 2009 concerning the date to be taken into

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<sup>10</sup> OJ C 106, 24.4.2010, p.1.

<sup>11</sup> OJ C 106, 24.4.2010, p.5.

<sup>12</sup> OJ C 149, 8.6.2010,, p 3.

<sup>13</sup> OJ C 106, 24.4.2010, p.9.

<sup>14</sup> OJ C 106, 24.4.2010, p.11.

<sup>15</sup> OJ C 106, 24.4.2010, p.13.

<sup>16</sup> OJ C 106, 24.4.2010, p.17.

consideration for determining the rates of conversion referred to in Article 90 of Regulation (EC) No 987/2009 of the European Parliament and of the Council<sup>17</sup>.

- (9) Decision of the Administrative Commission for the Coordination of Social Security Systems No H 4 of 22 December 2009 concerning the composition and working methods of the Audit Board of the Administrative Commission for the Coordination of Social Security Systems<sup>18</sup>.
- (10) Decision of the Administrative Commission for the Coordination of Social Security Systems No H 5 of 18 March 2010 concerning cooperation on combating fraud and error within the framework of Regulations (EC) No 883/2004 and (EC) No 987/2009 on the coordination of social security systems<sup>19</sup>.
- (11) Decision of the Administrative Commission for the Coordination of Social Security Systems No P1 of 12 June 2009 on the interpretation of Articles 50(4), 58 and 87(5) of Regulation (EC) No 883/2004 of the European Parliament and of the Council for the award of Invalidity, Old-Age and Survivors' benefits<sup>20</sup>.
- (12) Decision of the Administrative Commission for the Coordination of Social Security Systems No S1 of 12 June 2009 concerning the European Health Insurance Card<sup>21</sup>.
- (13) Decision of the Administrative Commission for the Coordination of Social Security Systems No S2 of 12 June 2009 concerning the technical specifications of the European Health Insurance Card<sup>22</sup>.
- (14) Decision of the Administrative Commission for the Coordination of Social Security Systems No S3 of 12 June 2009 defining the benefits covered by Articles 19(1) and 27(1) of Regulation (EC) No 883/2004 of the European Parliament and of the Council and Article 25(A) (3) of Regulation (EC) No 987/2009 of the European Parliament and of the Council<sup>23</sup>.
- (15) Decision of the Administrative Commission for the Coordination of Social Security Systems No S4 of 2 October 2009 concerning refund procedures for the implementation of Articles 35 and 41 of Regulation (EC) No 883/2004 of the European Parliament and of the Council<sup>24</sup>.
- (16) Decision of the Administrative Commission for the Coordination of Social Security Systems No S5 of 2 October 2009 on interpretation of the concept of 'benefits in kind' as defined in Article 1 (va) of Regulation (EC) No 883/2004 in the event of sickness or maternity pursuant to Article 17, Article 19, Article 20, Article 22, Article 24 (1), Article 25, Article 26, Article 27 (1, 3, 4 and 5), Article 28, Article 34 and Article 36 (1 and 2) of Regulation (EC) No 883/2004 and on calculation of the

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<sup>17</sup> OJ C 106, 24.4.2010, p.56.

<sup>18</sup> OJ C 107, 27.4.2010, p.3.

<sup>19</sup> OJ C 149, 8.6.2010, p. 5.

<sup>20</sup> OJ C 106, 24.4.2010, p.21.

<sup>21</sup> OJ C 106, 24.4.2010, p.23.

<sup>22</sup> OJ C 106, 24.4.2010, p.26.

<sup>23</sup> OJ C 106, 24.4.2010, p.40.

<sup>24</sup> OJ C 106, 24.4.2010, p.52.

amounts to be refunded under Articles 62, 63 and 64 of Regulation (EC) No 987/2009 of the European Parliament and of the Council <sup>25</sup>.

- (17) Decision of the Administrative Commission for the Coordination of Social Security Systems No S6 of 22 December 2009 concerning the registration in the Member State of residence under Article 24 of Regulation (EC) No 987/2009 and the compilation of the inventories provided for in Article 64 (4) of Regulation (EC) No 987/2009<sup>26</sup>.
- (18) Decision of the Administrative Commission for the Coordination of Social Security Systems No S7 of 22 December 2009 concerning the transition from Regulations (EEC) No 1408/71 and No 574/72 to Regulations (EC) No 883/2004 and No 987/2009 and the application of reimbursement procedures<sup>27</sup>.
- (19) Decision of the Administrative Commission for the Coordination of Social Security Systems No U1 of 12 June 2009 concerning Article 54(3) of Regulation (EC) No 987/2009 of the European Parliament and of the Council relating to increases in unemployment benefit for dependent members of the family<sup>28</sup>.
- (20) Decision of the Administrative Commission for the Coordination of Social Security Systems No U2 of 12 June 2009 concerning the scope of Article 65(2) of Regulation (EC) No 883/2004 of the European Parliament and of the Council on the right to unemployment benefits of wholly unemployed persons other than frontier workers who were resident in the territory of a Member State other than the competent Member State during their last period of employment or self-employment<sup>29</sup>.
- (21) Decision of the Administrative Commission for the Coordination of Social Security Systems No U3 of 12 June 2009 concerning the scope of the concept of 'partial unemployment' applicable to the unemployed persons referred to in Article 65(1) of Regulation (EC) No 883/2004<sup>30</sup>.

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<sup>25</sup> OJ C 106, 24.4.2010, p.54.

<sup>26</sup> OJ C 107, 27.4.2010, p.6.

<sup>27</sup> OJ C 107, 27.4.2010, p.8.

<sup>28</sup> OJ C 106, 24.4.2010, p.42.

<sup>29</sup> OJ C 106, 24.4.2010, p.43.

<sup>30</sup> OJ C 106, 24.4.2010, p.45.

## **SECTION C: ACTS OF WHICH THE CONTRACTING PARTIES SHALL TAKE NOTE**

- 1 Recommendation of the Administrative Commission for the Coordination of Social Security Systems No U1 of 12 June 2009 concerning the legislation applicable to unemployed persons engaging in part-time professional or trade activity in a Member State other than the State of residence<sup>31</sup>.
- 2 Recommendation of the Administrative Commission for the Coordination of Social Security Systems No U2 of 12 June 2009 concerning the application of Article 64(1)(a) of Regulation (EC) No 883/2004 to unemployed persons accompanying their spouses or partners pursuing a professional or trade activity in a Member State other than the competent State<sup>32</sup>.

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<sup>31</sup> OJ C 106, 24.4.2010, p.49.

<sup>32</sup> OJ C 106, 24.4.2010, p.51.

## PROTOCOL TO ANNEX II TO THE AGREEMENT

### I. Unemployment insurance

The following arrangements shall apply to workers who are nationals of the Czech Republic, the Republic of Estonia, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Poland, the Republic of Slovenia and the Slovak Republic until 30 April 2011 and to workers who are nationals of the Republic of Bulgaria and Romania until 31 May 2016.

1. The following rules shall apply with respect to unemployment insurance for workers holding a residence permit with a period of validity of less than one year:

1.1 Only workers who have paid contributions in Switzerland for the minimum period required under the Federal Unemployment Insurance and Insolvency Allowances Act (*loi fédérale sur l'assurance-chômage obligatoire et l'indemnité en cas d'insolvabilité* - LACI)<sup>33</sup> and who also satisfy the other conditions of eligibility for unemployment benefit shall be entitled to such benefit provided by the unemployment insurance under the conditions laid down by law.

1.2 A portion of the contributions levied for workers whose period of contribution is too short to give entitlement to unemployment benefit in Switzerland under 1.1 shall be refunded to their States of origin in accordance with the provisions of 1.3. in order to contribute towards the cost of benefits provided to these workers in the event of full unemployment; these workers shall then have no entitlement to benefit in the event of their being fully unemployed in Switzerland. They shall, however, be entitled to allowances for bad weather and in the event of the employer becoming insolvent. Benefits in the event of full unemployment shall be paid by the State of origin, provided that the workers concerned make themselves available for work. Periods of insurance completed in Switzerland shall be taken into account in the same way as if they had been completed in the State of origin.

1.3 The portion of the contributions levied for workers referred to in 1.2 shall be refunded on an annual basis in accordance with the following provisions:

a) The total contributions of these workers shall be calculated, by country, on the basis of the annual number of workers employed and the average annual contributions paid for each worker (employer's and employee's contributions).

b) Of the amount calculated in this way, a portion thereof corresponding to the relative share represented by unemployment benefit as a percentage of all the allowances referred to in 1.2 shall be refunded to the workers' States of origin, and a portion shall be retained by Switzerland as a reserve for subsequent benefits.<sup>34</sup>

c) Switzerland shall, on an annual basis, provide a statement showing the contributions refunded. If the States of origin so request, it shall indicate the bases for the calculation and

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<sup>33</sup> Currently 12 months.

<sup>34</sup> Refunded contributions for workers who will exercise their right to unemployment benefit in Switzerland after having paid contributions for at least 12 months - over several periods of residence - within the space of two years.

the sums refunded. The States of origin shall each year notify Switzerland of the number of recipients of unemployment benefit as referred to in 1.2.

2. If a Member State concerned by this arrangement encounters difficulties with the ending of the arrangements for refunding of contributions, or Switzerland encounters difficulties with the aggregation arrangements, the matter may be referred to the Joint Committee by any of the contracting parties.

## II. Allowances for helpless persons

Allowances for helpless persons granted under the Swiss Federal Act of 19 June 1959 on invalidity insurance (LAI) and under the Federal Act of 20 December 1946 on old-age and survivors' pensions (LAVS) as amended on 8 October 1999 shall be provided exclusively if the person concerned resides in Switzerland.

## III. Occupational benefit plans concerning old-age, survivors' and invalidity pensions

Notwithstanding Article 10 (2) of Council Regulation (EEC) No 1408/71, the vested benefit provided for under the Federal Act on free movement among occupational benefit plans concerning old-age, survivors' and invalidity pensions (*Loi fédérale sur le libre passage dans la prévoyance professionnelle vieillesse, survivants et invalidité*) of 17 December 1993 shall be paid out on request to an employed or self-employed person who intends to leave Switzerland for good and who, under Title II of the Regulation, will no longer be subject to Swiss law, provided that they leave Switzerland within five years of this Agreement entering into effect.'

## **ANNEX II**

### **DECLARATION**

#### **on the Declaration on Swiss attendance of committees**

The Administrative Commission on Social Security for Migrant Workers referred to in the second indent of the Declaration on Swiss attendance of committees (OJ L 114 of 30.4.2002 p. 72) has been renamed as Administrative Commission for the Coordination of Social Security Systems by Article 71 of Regulation (EC) No 883/2004 of the European Parliament and of the Council.