

Council Decision of 16 December 2011 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 (2011/863/EU)

## COUNCIL DECISION

of 16 December 2011

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

(2011/863/EU)

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<sup>(2)</sup> ("the Agreement") was signed on 21 June 1999 and 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, including Annex II thereto on the co-ordination of social security schemes.
- (3) In order to preserve a coherent and correct application of the legal acts of the Union 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 to the Agreement and the Protocol to that Annex should be codified.
- (5) The position of the Union in the Joint Committee should therefore be based on the draft Decision set out in Annex I to this Decision,

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**Changes to legislation:** There are currently no known outstanding effects for the Council Decision of 16 December 2011 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 (2011/863/EU). (See end of Document for details)

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HAS ADOPTED THIS DECISION:

*Article 1*

The position to be taken by the Union in the Joint Committee established by Article 14 of 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 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 hereby approved and shall be made on behalf of the Union in the Joint Committee when the latter adopts its Decision referred to in Article 1.

*Article 3*

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

Done at Brussels, 16 December 2011.

*For the Council*

*The President*

M. SAWICKI

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**Changes to legislation:** There are currently no known outstanding effects for the Council Decision of 16 December 2011 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 (2011/863/EU). (See end of Document for details)

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## 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, 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.

### 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 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<sup>(3)</sup> ("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 was last amended by Decision No 1/2006 of 6 July 2006<sup>(4)</sup> and should now be updated to take account of the new legal acts of the European Union that have entered into force since then, 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>(5)</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>(6)</sup>.
- (4) In the interests of clarity and rationality, Annex II to the Agreement 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:

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**Changes to legislation:** There are currently no known outstanding effects for the Council Decision of 16 December 2011 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 (2011/863/EU). (See end of Document for details)

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### *Article 1*

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 ("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 co-ordination of social security schemes, to apply among themselves the legal 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 legal acts referred to in section A of this Annex shall be understood to include Switzerland in addition to the States covered by the relevant legal 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 legal 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 legal 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 Member States of the European Union holding a Swiss

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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:

### LEGAL 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>(7)</sup>, 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>(8)</sup>

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

- (a) The following shall be added to Annex I, section I:  
*Switzerland*
- Cantonal legislation concerning the advances of maintenance payments based on Articles 131 paragraph 2 and 293 paragraph 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 paragraph 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*

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**Changes to legislation:** There are currently no known outstanding effects for the Council Decision of 16 December 2011 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 (2011/863/EU). (See end of Document for details)

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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 benefit 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 benefit 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 benefit plans for old-age, survivors' and invalidity insurance).;

(h) The following shall be added to Annex X:  
*Switzerland*

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:

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**Changes to legislation:** There are currently no known outstanding effects for the Council Decision of 16 December 2011 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 (2011/863/EU). (See end of Document for details)

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### 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

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- (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>(9)</sup>

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

The following shall be added to Annex 1:



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**Changes to legislation:** *There are currently no known outstanding effects for the Council Decision of 16 December 2011 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 (2011/863/EU). (See end of Document for details)*

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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 20 December 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<sup>(10)</sup>, as last amended by Regulation (EC) No 592/2008 of the European Parliament and of the Council of 17 June 2008<sup>(11)</sup>, as applicable between Switzerland and the Member States before the entry into force of this Decision, 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 laying down 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<sup>(12)</sup>, as last amended by Commission Regulation (EC) No 120/2009 of 9 February 2009<sup>(13)</sup>, as applicable between Switzerland and the Member States before the entry into force of this Decision, 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) Council Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community<sup>(14)</sup>.

## SECTION B:

### **LEGAL 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>(15)</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>(16)</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 Council Regulation (EEC) No 1408/71 and Regulation (EC) No 883/2004 of the European Parliament and of the Council<sup>(17)</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>(18)</sup>.

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- (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 of the European Parliament and of the Council relating to priority rules in the event of overlapping of family benefits<sup>(19)</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 (EEC) 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>(20)</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>(21)</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 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>(22)</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>(23)</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 Council Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 of the European Parliament and of the Council on the coordination of social security systems<sup>(24)</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>(25)</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>(26)</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>(27)</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>(28)</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

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implementation of Articles 35 and 41 of Regulation (EC) No 883/2004 of the European Parliament and of the Council<sup>(29)</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 of the European Parliament and of the Council in the event of sickness or maternity pursuant to Articles 17, 19, 20, 22, 24 (1), 25, 26, 27 (1, 3, 4 and 5), 28, 34 and 36 (1 and 2) of Regulation (EC) No 883/2004 and on calculation of the 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>(30)</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>(31)</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) Nos 1408/71 and 574/72 to Regulations (EC) Nos 883/2004 and 987/2009 and the application of reimbursement procedures<sup>(32)</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>(33)</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>(34)</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 of the European Parliament and of the Council<sup>(35)</sup>.

## SECTION C:

### LEGAL 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>(36)</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 of the European Parliament and of the Council to unemployed persons accompanying their spouses or partners pursuing a professional or trade activity in a Member State other than the competent State<sup>(37)</sup>.

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## 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>(38)</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>(39)</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 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.

**Changes to legislation:** *There are currently no known outstanding effects for the Council Decision of 16 December 2011 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 (2011/863/EU). (See end of Document for details)*

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## 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 that person leaves Switzerland within five years of this Agreement entering into effect.

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**Changes to legislation:** There are currently no known outstanding effects for the Council Decision of 16 December 2011 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 (2011/863/EU). (See end of Document for details)

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- (1) OJ L 114, 30.4.2002, p. 1.
- (2) OJ L 114, 30.4.2002, p. 6.
- (3) OJ L 114, 30.4.2002, p. 6.
- (4) OJ L 270, 29.9.2006, p. 67.
- (5) OJ L 166, 30.4.2004, p. 1.
- (6) OJ L 149, 5.7.1971, p. 2.
- (7) OJ L 166, 30.4.2004, p. 1.
- (8) OJ L 284, 30.10.2009, p. 43.
- (9) OJ L 284, 30.10.2009, p. 1.
- (10) OJ L 149, 5.7.1971, p. 2.
- (11) OJ L 177, 4.7.2008, p. 1.
- (12) OJ L 74, 27.3.1972, p. 1.
- (13) OJ L 39, 10.2.2009, p. 29.
- (14) OJ L 209, 25.7.1998, p. 46.
- (15) OJ C 106, 24.4.2010, p. 1.
- (16) OJ C 106, 24.4.2010, p. 5.
- (17) OJ C 149, 8.6.2010, p. 3.
- (18) OJ C 106, 24.4.2010, p. 9.
- (19) OJ C 106, 24.4.2010, p. 11.
- (20) OJ C 106, 24.4.2010, p. 13.
- (21) OJ C 106, 24.4.2010, p. 17.
- (22) OJ C 106, 24.4.2010, p. 56.
- (23) OJ C 107, 27.4.2010, p. 3.
- (24) OJ C 149, 8.6.2010, p. 5.
- (25) OJ C 106, 24.4.2010, p. 21.
- (26) OJ C 106, 24.4.2010, p. 23.
- (27) OJ C 106, 24.4.2010, p. 26.
- (28) OJ C 106, 24.4.2010, p. 40.
- (29) OJ C 106, 24.4.2010, p. 52.
- (30) OJ C 106, 24.4.2010, p. 54.
- (31) OJ C 107, 27.4.2010, p. 6.
- (32) OJ C 107, 27.4.2010, p. 8.
- (33) OJ C 106, 24.4.2010, p. 42.
- (34) OJ C 106, 24.4.2010, p. 43.
- (35) OJ C 106, 24.4.2010, p. 45.
- (36) OJ C 106, 24.4.2010, p. 49.
- (37) OJ C 106, 24.4.2010, p. 51.
- (38) Currently 12 months.

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**Changes to legislation:** *There are currently no known outstanding effects for the Council Decision of 16 December 2011 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 (2011/863/EU). (See end of Document for details)*

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- (39) 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.

**Changes to legislation:**

There are currently no known outstanding effects for the Council Decision of 16 December 2011 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 (2011/863/EU).