

PART TWO

AN INTRODUCTION TO REGULATION 883/2004

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1. INTRODUCTION

Regulation 883/2004 lays down the general principles regarding the coordination of social security rights of persons moving within the Community, with the detailed procedural and administrative matters being dealt with in Regulation 987/09.

Both Regulation 883/2004 and Regulation 987/09 (“the Regulations”) are applicable throughout the EEA.¹

In particular, Regulation 987/09 provides information on the application of Regulation 883/2004 in each EEA State. So, for example, it provides information on the bodies administering social security schemes in each EEA State and aspects of the social security schemes of each EEA State.

The Administrative Commission for the Coordination of Social Security assists the national authorities applying Regulation 883/2004.² It is mainly composed of representatives of the EC Member States. Its purpose is to deal with all administrative questions and questions of interpretation concerning the Regulations and to foster cooperation in social security between EC Member States.

The Administrative Commission issues “decisions” on the interpretation of the Regulations and on cooperation between EEA States. These “decisions” of the Administrative Commission are not really decisions in the legal sense as they are not binding. Instead, they simply set out the common understanding of the EEA States on various issues concerning the Regulations. However, decisions of the Administrative Commission are important and should be followed when applying the Regulations.

The final body to decide questions regarding the interpretation of the Regulations is the European Court of Justice. The European Court of Justice is also responsible for deciding whether or not an EC Member State has complied with its obligations under the Regulations. Judgments of the European Court of Justice automatically override any contrary Administrative Commission decisions.

¹ See Annex VI to the EEA Agreement.

² See Article 71 of Regulation 883/2004 for the composition and working methods of the Administrative Commission.

Although the three EEA States not in the EC (Iceland, Liechtenstein and Norway) are, strictly speaking, not obliged to follow all European Court of Justice judgments, in practice they do so.

2. GENERAL PRINCIPLES OF REGULATION 883/2004

2.1 INTRODUCTION

All 30 EEA States and Switzerland have different social security systems. Rather than adopting measures designed to harmonise the different national systems, Community law provides for coordination. The aim of Regulation 883/2004 is to *coordinate* them so that EEA nationals who move around the EEA have their social security entitlements protected as if they had remained in the one EEA State during the course of their working lives. In the framework of coordination EEA States retain the right to determine the types of benefits and the conditions for granting them. However, Community law imposes certain rules and principles so as to ensure that application of the different national systems does not harm persons who exercise their right to free movement.

Regulation 883/2004 is based on four main principles which are designed to achieve this goal. However, Regulation 883/2004 also contains many *exceptions* to these principles.³

The four main principles are:

- the principle of equality of treatment including the principle of equal treatment of benefits, income, facts or events;
- the applicable legislation principle;
- the aggregation principle;
- the export principle.

There is also a rule, known as the rule against overlapping benefits, which is designed to ensure that those who move around the EEA cannot make unfair gains in terms of social security entitlements.

Each of these principles and rules is briefly outlined below.

2.2 THE PRINCIPLE OF EQUALITY OF TREATMENT

³ These are discussed in subsequent chapters of the Guidance notes.

Article 12 of the EC Treaty generally prohibits discrimination based on nationality in all areas within the scope of application of the EC Treaty. There is an identical provision in the EEA Treaty.⁴

Article 4 of Regulation 883/2004 also contains a prohibition on discrimination on grounds of nationality. It provides that persons to whom Regulation 883/2004 applies are subject to the same obligations and enjoy the same benefits under the legislation of any other EEA State as nationals of that other EEA State.

This principle of *equality of treatment* applies to both direct and indirect discrimination on grounds of nationality.

- *Direct* discrimination occurs where there is a distinction based explicitly on nationality. An example of direct discrimination would be a law that allowed only Irish nationals to be paid a certain benefit.
- *Indirect* discrimination occurs where a law does not draw a distinction based on nationality, but non-nationals in practice are *exclusively or mainly adversely affected*. The European Court of Justice has even found indirect discrimination where nationals of one EEA State can meet the requirements of a law *more easily* than nationals of other EEA States.

Once a claimant has shown that a rule predominantly or exclusively affects non-nationals, the burden of proof switches to the EEA State to show that the rule is *objectively justified* by reasons other than nationality. In order to do this, the EEA State must show that the rule is proportionate. That involves showing that the rule:

- pursues a legitimate aim,
- is appropriate (in the sense of being capable of achieving the legitimate aim) and
- is necessary for the achievement of that aim.⁵

e.g. 1A Luxembourg law only granted Maternity Benefit to persons resident in Luxembourg for a year. The European Court of Justice held that this was indirectly discriminatory: in practice the residency requirement was more easily met by nationals of Luxembourg than by nationals of other EEA States.⁶

⁴ Article 4 EEA.

⁵ See Case 171/88 Rinner Kühn [1989] ECR 2743 (a sex equality case under Article 119 EC).

⁶ Case C-111/91 Commission v. Luxembourg [1993] ECR I-817.

e.g.2A German law provided that a person in receipt of an Accident Pension and an Old-Age Pension could have their Old-Age Pension reduced if the sum of the two pensions exceeded 95% of the worker's former annual earnings upon which the pensions were calculated. However, if the Accident Pension was not paid by the German authorities but instead by the authorities of another EEA State, then the Old-Age Pension was reduced regardless of whether the sum of the pensions exceeded 95% of the worker's former annual earnings. The Court of Justice held that this was indirectly discriminatory on grounds of nationality since it placed migrant workers at a disadvantage. Germany argued that the law was objectively justified since it was very difficult in practice for the German institution calculating the benefit to find out what the former earnings were in other EEA States. The European Court of Justice rejected this argument. The Court appears to have doubted that the avoidance of administrative difficulties, of itself, was sufficiently legitimate to justify a discriminatory law.⁷

e.g.3 A French law provided benefits to women over 65 who had had large families. However, it was a requirement for eligibility for the benefit that at least five of the children be French nationals. The conditions for eligibility were not directly discriminatory since there was no requirement that the women claiming benefit be French. However, the Court of Justice held that the conditions for eligibility were indirectly discriminatory since non-nationals were less likely than French nationals to have at least five French national children. France argued that the law was objectively justified since it was designed to boost the birth rate in *France* and not elsewhere. The European Court of Justice rejected this argument. One of the factors that the Court took into account was that the benefit was designed for women over 65. It appears that the Court took into account the fact that women of child-bearing age were unlikely to have more children because they would receive greater benefits in old age. The measure therefore was not appropriate, in the sense of being capable of achieving the legitimate aim of increasing the birth rate.⁸

⁷ See Case 10/90 Masgio [1991] ECR 1119.

⁸ See Case 237/78 Toia [1979] ECR 2645.

2.3 THE PRINCIPLE OF EQUAL TREATMENT OF BENEFITS, INCOME, FACTS OR EVENTS

The principle of equal treatment outlined in Paragraph 2.2 above has been strengthened by a specific provision⁹ stipulating cross border recognition of facts or events.

According to this principle facts or events occurring in one Member State must be taken into account by another Member State as though they had taken place in its own territory.

e.g.1

A migrant worker in Ireland who becomes unemployed and qualifies for Jobseeker's Benefit would be entitled to increases in respect of his/her adult and child dependants residing in another Member State under the same conditions as if his/her family members resided with him/her in Ireland. The payment of any social security benefits to the Spouse/Civil Partner in the other Member State would be assimilated for the purposes of applying Irish legislation. Equally, any earnings from employment of the Spouse/Civil Partner in the other Member State would be taken in to account to determine if the earnings are below the threshold set out in Irish legislation.

However, the assimilation of facts or events that occurred in a Member State can not render another Member State competent or its legislation applicable.¹⁰

e.g.2

A person returns to live in Ireland having become unemployed in another Member State. Article 5 does not have the effect of rendering Ireland the competent State for the provision of unemployment benefits nor does it require Ireland to apply the principle of aggregation.

⁹ Article 5 of Regulation 883/2004

¹⁰ Recital 11 of Regulation 883/2004 (in the Preamble to the Regulation)

Equally, the assimilation of facts or events that occurred in a Member State can not interfere with the principle of aggregation of periods of insurance completed in another Member State.¹¹ This means that periods of insurance are not being created by the principle of assimilation of facts and events and only periods of insurance which are completed under the legislation of another Member State are to be taken into account by applying the principle of aggregation of periods.

2.4 THE APPLICABLE LEGISLATION PRINCIPLE

According to this principle, a person should be subject to the legislation of only one EEA State at a time. This principle is designed to avoid the complications that would result if a person were simultaneously subject to the social security legislation of more than one EEA State. The principle also prevents the possibility of no legislation being applicable due to cross-border movement. Most rules for determining the legislation applicable provide that the legislation of the Member State in which a person is employed is applicable.

Regulation 883/2004 has elaborate rules for determining which EEA State's legislation should apply at any particular time.

2.5 THE AGGREGATION PRINCIPLE

According to this principle, periods of insurance, employment, self-employment or residence, as appropriate, built up in one EEA State should be recognised when calculating benefit entitlements in another EEA State.

In Ireland, to be eligible for many benefits, it is necessary to have completed certain periods of insurance during which contributions are paid. The aggregation principle is designed to avoid the following type of problem. Suppose that in both Ireland and the United Kingdom it is necessary to have paid contributions for 5 years in order to qualify for an invalidity pension. Suppose also that a person works in the United Kingdom for 3 years and pays contributions there. S/he then moves

¹¹ Recital 10 of Regulation 883/2004

to Ireland and works for a further 4 years there, also paying contributions. S/he then applies for an Irish Invalidity Pension. If the Irish authorities were not obliged to aggregate the 3 years of contributions made in the United Kingdom, then the person would receive no invalidity pension, even though s/he had worked and paid contributions for a total of 7 years.

2.6 THE EXPORT PRINCIPLE

According to this principle, nationals of one EEA State are entitled to have their benefit paid in any other EEA State. For example, a person entitled to a pension in Ireland who moves to another EEA State is entitled to have his/her pension paid to him/her there.

However, there are certain exceptions to this principle. For example, this principle does not extend to special non-contributory benefits e.g. State pension (Non-Contributory).

2.7 THE RULE AGAINST OVERLAPPING BENEFITS

2.7.1. The rule against overlapping benefits

The rule against overlapping benefits provides that the Regulation can neither confer nor maintain the right to several benefits of the same kind for one and the same period of compulsory insurance¹², unless there is specific provision allowing for such overlap.¹³

Thus, the rule against overlapping benefits prevents Regulation 883/2004 being used to enable a person to claim benefits of the same kind in different EEA States in respect of the same period of compulsory insurance. The rule therefore operates as an exception to the aggregation principle by preventing the aggregation of periods of compulsory insurance coinciding in point of time in order to claim eligibility for the same kind of benefits in two or more EEA States.

Benefits are of the same kind when:

- their purpose and subject matter;

¹² See Article 10 of Regulation 883/2004

¹³ See Articles 53-55 of Regulation 883/2004.

- the method of calculation; and
- the conditions of entitlement are identical.¹⁴

Purely formal characteristics should not be considered when assessing whether benefits are of the same kind. Benefits are not of the same kind if they are linked to different insurance records.¹⁵

e.g.1 An Invalidity Pension, which was based on the recipient's own insurance record, and a Survivor's Pension, which was based on the employment record of the recipient's Spouse/Civil Partner, were held not to be of the same kind since they were based on different insurance records.¹⁶

There is a very important *exception* to the rule against overlapping benefits: the rule does not apply as regards certain payments of Invalidity, State Pension (Contributory), and Survivor's Benefits.

2.7.2. National overlapping rules

Regulation 883/2004 also allows EEA States to lay down their own national rules against overlapping. Regulation 883/2004 provides that rules of national law governing the reduction, suspension or withdrawal of benefits in cases of overlapping with other social security benefits or any other form of income may be invoked even where such benefits or income was acquired under the law of another EEA State.¹⁷

In Ireland, national rules on overlapping are only relevant in the context of qualified adult allowances. See subsection 8.1 of Part 7, "Invalidity, State Pension (Contributory), Survivor's Benefits" chapters 2 & 3 of Regulation 883/2004 for further information.

¹⁴ See Case 171/82 Valentini [1982] ECR 2157.

¹⁵ See Case 197/85, Stefanutti, [1987] ECR 3855.

¹⁶ See Case 197/85 Stefanutti [1987] ECR 3855.

¹⁷ See Article 53(3) of Regulation 883/2004.

3. BASIC DEFINITIONS AND KEY CONCEPTS IN REGULATIONS 883/2004 AND 987/09 (THE IMPLEMENTING REGULATION)

Article 1 of the Regulation defines certain terms commonly used in Regulation 883/2004. The most important are listed here:

3.1 RESIDENCE

Residence is defined in Regulation 883/2004 to mean habitual residence.¹⁸

EU Regulation 987/09 (The Implementing Regulation) sets out further elements to be taken into account where there is a difference of views between two or more Member States in determining the State of residence of the person.¹⁹ The rule provides that an overall assessment of all available information should be taken into account which may include:

- The duration and continuity of the person's presence in the Member State concerned;
- The nature of the any activity pursued, including its stability or whether it is habitually pursued and the duration of any work contract, the exercise of any non-remunerated activity;
- The person's family status and family ties;
- In the case of students, the source of their income;
- The person's housing situation and its permanence
- In which State does the person pay tax

This is not an exhaustive list and the underlying principle is to establish where the person's centre of interest lies as demonstrated from an assessment of all the facts.

These elements reflect the ruling of the European Court of Justice and are in line with the rules that apply nationally.

¹⁸ Article 1(j) of Regulation 883/2004. (See <http://www.welfare.ie/publications/hrc.html> for note on Habitual Residence)

¹⁹ Article 11 of 987/09

(See <http://www.welfare.ie/publications/hrc.html> for Note on Habitual Residence). Under national legislation a person is habitually resident where the *principal centre of his/her interests* is.²⁰

[In determining the principal centre of a person's interests, account should be taken of:

- *The length and continuity of residence in that particular country.* For example, a person who has a home or close family in Ireland would normally be habitually resident here.
- *Length and purpose of any absences from that country.* For example, a person who has emigrated from Ireland may have lost his/her habitual residence here. However, if s/he returns frequently or maintains a home in Ireland or his/her Spouse/Civil Partner and children remain in Ireland, s/he may still be habitually resident here.
- *Nature of any employment in another country to which a person moves for a time.* For example, if a person is engaged in genuine and effective work in Ireland, then s/he is likely to be habitually resident here. However, if a person has genuine and effective work in another country and he maintains a home in that other country, that raises the presumption that s/he is habitually resident in that country.
- *Intention of the person, as it appears from the circumstances.* The intention of a person to remain in Ireland for the foreseeable future does not, of itself, mean that his/her habitual residence is in Ireland. However, if s/he has an intention to remain in Ireland for the foreseeable future *and* there are factors which show this (e.g. the purchase of a home in Ireland, selling any home abroad), this can indicate that the person is habitually resident in Ireland.]

This is not an exhaustive or conclusive list. There may be other factors that are important in deciding whether a person is habitually resident or not.

An additional rule is provided for under the EU rules for cases where the elements outlined above cannot solve a difference of views between Member States. In this event, the tie breaker shall be the intention of the person.²¹ However, this intention has to be evident also from the elements outlined above.

²⁰ Case C-102/91 Knoch [1992] ECR I-4341; Case 76/76 Di Paolo [1977] ECR 315; Case 13/73 Angenieux v Hakenberg.

²¹ See Article 11(2) of 987/09

In this guidebook, the word "residence" means "habitual residence."

3.2 STAY

Stay means temporary residence.²² A person who is "staying" in a state is therefore not "resident" in that state, in the sense that that term is defined in 3.1 above.

In this guidebook, the word "stay" means "temporary residence."

3.3 COMPETENT AUTHORITY

The competent authority is defined in respect of each EEA State to mean the Minister, Ministers or other equivalent authority responsible for social security schemes throughout or in any part of the territory of the EEA State in question.²³

In *Ireland*, the competent authority is:

- the Minister for Social Protection for benefits under the Social Welfare Acts, e.g. Jobseekers, Sickness and Maternity benefits, Invalidity, State Pensions (Contributory and Transitional), Widowed/Surviving Civil Partner pensions and Child Benefit
- the Minister for Health and Children for benefits falling under the Health Acts, e.g. Health Services

The competent authorities for all other EEA States are contained electronically on the following address

http://ec.europa.eu/employment_social/social-securitydirectory/welcome.seam?langId=en²⁴

3.4 INSTITUTION

Institution means the body or authority responsible for administering the social security legislation of each EEA State.²⁵

²² See Article 1(k) of Regulation 883/2004.

²³ Article 1(m) of Regulation 883/2004.

²⁴ Click on advance search and follow instructions to find competent authority you wish to know

Often, an EEA State will have several different institutions administering its social security system. For example, in *Ireland* the institution for cash benefits is the Department of Social and Family Affairs whereas the Health Services Executive is the institution for benefits in kind relating mainly to health services.

²⁵ See Article 1(p) of Regulation 883/2004.

3.5 COMPETENT INSTITUTION

The competent institutions are the institutions competent to deal with decisions on insurability, claims, award of payments and provision of services.

In *Ireland* the institution for cash benefits is the Department of Social and Family Affairs. The Health Service Executive is the institution for benefits in kind relating mainly to health services.

The full definition of a competent institution is given in Regulation 883/2004.²⁶ The list of competent institutions in each EEA State is available electronically on http://ec.europa.eu/employment_social/social-security-directory/welcome.seam?langId=en²⁷

3.6 INSTITUTION OF THE PLACE OF RESIDENCE, INSTITUTION OF THE PLACE OF STAY

The institution of the place of residence is the institution competent to provide benefits to a person at his place of residence.²⁸

The institution of the place of stay is the institution competent to provide benefits to a person at his place of temporary residence.²⁹

In *Ireland* the institution for cash benefits is the Department of Social and Family Affairs. The Health Service Executive is the institution for benefits in kind relating mainly to health services.

A full list of institutions of the place of residence and stay is provided electronically http://ec.europa.eu/employment_social/social-security-directory/welcome.seam?langId=en.³⁰

3.7 COMPETENT STATE

²⁶ See Article 1(q) of Regulation 883/2004.

²⁷ Click on advance search and follow instructions to find competent institution you wish to know.

²⁸ See Article 1(r) of Regulation 883/2004.

²⁹ See Article 1(r) of Regulation 883/2004.

³⁰ Click on advance search and follow instructions to find relevant information you wish to know

The competent state is the Member State in whose territory the competent institution is situated.³¹

3.8 INSURED PERSON

Regulation 883/2004 applies to all EU nationals who are insured under national law, whether they are employed, self-employed students, civil servants, pensioners or non-active, as well as to the members of their families and to their survivors.

The term “insured person” is defined in Regulation 883/2004³² as any person who satisfies the conditions under the legislation of the EEA States whose legislation applies in accordance with the rules set out in Title II to have the right to benefits. See “*Part 3 Applicable Legislation*” for further details of these rules.

3.9 ACTIVITY AS AN EMPLOYED PERSON AND ACTIVITY AS A SELF-EMPLOYED PERSON

The terms “activity as employed person” and “activity as a self-employed person” are defined in Regulation 883/2004.³³ In general, activity as an employed person or as self-employed person means any activity or equivalent situation treated as such for the purposes of the social security legislation of the EEA State in which the activity was carried out.

In Ireland:

- any person who is compulsorily or voluntarily insured pursuant to the provisions of Sections 12, 24 and 70 of the Social Welfare Act 2005 is an employed person.
- any person who is compulsorily or voluntarily insured pursuant to the provisions of Sections 20 and 24 of the Social Welfare Act 2005 is a self-employed person.

Once a person is carrying out an activity in such a manner that s/he falls within the definition of an activity as an employed or self-employed person in Article 1(a) and (b) of the Regulation, it does not

³¹ Article 1(s) of Regulation 883/2004.

³² See Article 1(c) of Regulation 883/2004.

³³ See Article 1(a) and (b) respectively of Regulation 883/2004.

matter whether s/he is or is not *in reality* employed or self-employed as normally understood.³⁴ Thus, for example, in *Ireland* any person compulsorily or voluntarily insured pursuant to Sections 12, 24 and 70 of the Social Welfare Act 2005 is carrying out an activity as an employed person for the purposes of Regulation 883/2004, even if s/he does not come within the definition of an employee for the purposes of Irish *labour law*.

The system under which a person is insured is therefore the key issue.

Normally persons are only covered by Regulation 883/2004 for the benefits in respect of which they are insured. It should be noted however, that the periods of insurance taken into account under Regulation 883/2004 are restricted to the benefits for which these periods provide cover. For example, a self-employed person in Ireland is insured for State Pensions (Contributory and Transitional) and Widow(er)s/Surviving Civil Partner's pension, Guardian's Payment (contributory), State pension (contributory), Maternity Benefit and Adoptive Benefit. If, for example, s/he moved to another EEA State and subsequently claimed Jobseekers Benefit there, his/her periods of insurance as a self-employed person in Ireland could not be taken into account for the purposes of qualifying for that benefit in the other State.

Similarly, a person coming to Ireland who becomes insured as a self-employed person is not covered by Irish legislation for the purposes of Jobseeker's Benefit and therefore any periods of insurance completed in other EEA States which have provided such cover could not be taken into account for claiming that benefit.

3.10 LEGISLATION

The definition of "legislation" is given in the Regulation.³⁵ In outline, it covers:

- all statutes, regulations and other provisions and all other implementing measures relating to branches and schemes of social security within the scope of Regulation 883/2004.

³⁴ See as regards employed persons Case 75/63 Unger [1964] ECR 177 and as regards self-employed persons Case 300/84 Van Roosmalen [1986] ECR 3097.

³⁵ See Article 1(1) of Regulation 883/2004.

- It generally excludes provisions of industrial agreements on social security since 1 October 1972. It also generally excludes the special schemes for the self-employed listed in Regulation 1408/71.³⁶ *Ireland* has no such schemes.

3.11 REFUGEE

Regulation 883/2004 uses the internationally accepted definition of refugee in the Geneva Convention.³⁷ Under that Convention, as amended,³⁸ a person is regarded as a refugee if, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, s/he is outside the country of his/her nationality and is unable or, owing to such fear, is unwilling to return to that country.

3.12 STATELESS PERSON

A *stateless person* has the meaning assigned to it in Article 1 of the Convention on the Status of Stateless Persons, signed in New York on 28 September 1954,³⁹ i.e. a person who is not considered as a national by any State under the operation of its law.

3.13 MEMBER OF THE FAMILY

Regulation 883/2004 defines who is a member of the family.⁴⁰ Like the definition of an employed or self-employed person, each EEA State

³⁶ See Annex II to Regulation 1408/71. For Iceland, Liechtenstein and Norway see the EEA Agreement and Decision of the EEA Joint Committee No. 82/97.

³⁷ See Article 1(g) of Regulation 883/2004 and Article 1 of the Convention on the Status of Refugees, signed at Geneva on 28 July 1951.

³⁸ Originally, the Geneva Convention only defined refugees as being persons who, *as a result of events occurring before 1 January 1951*, feared persecution. The definition in the Geneva Convention was amended by the New York Protocol to the Geneva Convention dated 31 January 1967. This amendment recognised that a person could be a refugee if the events giving rise to the fear of persecution occurred after 1 January 1951. Unfortunately, the wording of the definition in Regulation 883/2004 does not refer to the New York Protocol. However, the Administrative Commission has accepted that the term refugee should be interpreted in accordance with the amendment made by the New York Protocol. See the minutes of 242nd Administrative Commission meeting as well as those of the 240th meeting and the notes of the Secretariat, 291/93 and 215/93.

³⁹ See Article 1(h) of Regulation 883/2004.

⁴⁰ See Article 1(i) of Regulation 883/2004.

has some power to define who a member of the family is under its own national social security legislation.

In Ireland, the Social Welfare Acts gives definitions of members of the family for the various benefits.

3.14 PENSION

The term “pension” covers not only the pension itself but also lump-sum benefits which can be paid in lieu of pensions, and payments made by way of reimbursement of contributions. The definition of “pension” also covers revalorization increases and supplementary allowances.⁴¹

3.15 FAMILY BENEFITS

Family benefits mean all cash benefits or benefits in kind intended to meet family expenses under national legislation, excluding advances of maintenance payments and special childbirth or adoption allowances.⁴²

In *Ireland* the following are family benefits:

- Child Benefit;
- Family Income Supplement;
- One Parent Family Payments;
- Guardian’s Payment (Non-contributory) Pension
- Domiciliary Care Allowance

3.16 PERIODS OF INSURANCE

Periods of insurance means all periods of contributions or employment or self-employment recognised as periods of insurance by the legislation under which they were completed or considered completed, and all periods treated as such by that legislation.⁴³ This definition is important when applying the aggregation principle. In Ireland, periods

⁴¹ See Article 1(w) of Regulation 883/2004.

⁴² See Article 1(z) and Annex I, of Regulation 883/2004.

⁴³ See Article 1(t) of Regulation 883/2004.

of insurance are periods for which contributions are paid. Suppose that in another EEA State, periods of insurance are periods of employment or self-employment. If she/he paid contributions for two years in Ireland and was employed in the other EEA State for three years, then the Department of Social Protection (DSP) when applying the aggregation principle must recognise the three years of employment as periods of insurance because the EEA State where they were completed recognised them as periods of insurance.

Suppose that in another EEA State periods spent on certain state organised training courses are treated as periods of insurance. If a person spent time doing such courses in that EEA State, then the DSP in applying the aggregation principle would also be obliged to have to regard these periods as periods of insurance.

3.17 VOLUNTARY OR OPTIONAL CONTINUED INSURANCE

Many EEA States operate systems of voluntary or continued optional insurance. For example, in *Ireland* if a person is under 66 and no longer obliged to pay PRSI contributions compulsorily, then contributions can be made voluntarily. In reality, this is a form of optional continued insurance.

Currently, in Ireland, to become a voluntary contributor one must have paid at least 260 weeks PRSI as an employee or self employed person. (check with local office for possible amendments to latest rules)

Regulation 883/2004 provides that where, as in Ireland, admission to voluntary or optional continued insurance is conditional upon completion of periods of insurance, any periods of insurance or residence completed under the legislation of other EEA States must be taken into account provided that the person was at some earlier stage subject to the legislation of Ireland as an employed or self-employed person.⁴⁴

e.g.1 A works in the UK and pays contributions for 100 weeks. She then moves to Ireland and pays contributions for another 100 weeks compulsorily. She then seeks to make contributions on a voluntary basis in Ireland. Her Irish contributions are insufficient to permit her to do so. However, once her UK contributions are

⁴⁴ See Article 14 (5) of Regulation 883/2004

aggregated, she meets the 260 weeks of contributions requirement.

Regulation 883/2204 has a number of other special rules for voluntary and optional continued insurance schemes. These are discussed in later chapters.

4. BASIC DEFINITIONS AND KEY CONCEPTS IN REGULATION 987/09

4.1 Introduction

The aim of Regulation 987/09 is to define the procedures needed to implement the principles of Regulation 883/2004. One of the fundamental objectives of the Regulations is to reform and simplify the means by which EEA States exchange information, which was previously carried out by paper based forms (commonly referred to as E forms). Under the revised Regulations (883/2004 & 987/09) provision is made to exchange information by electronic means. As a consequence it was necessary to define a number of new terms which are relevant in this new system. The most important terms are explained below.

4.2 ACCESS POINT

An “access point” is an electronic gateway between the EEA States and has the task of sending and receiving data electronically. It also carries out the function of automatic routing based on addresses and intelligent routing based on software. The concept of an access point also includes the possibility of human intervention.⁴⁵

4.3 DOCUMENT

The concept of “document” covers the set of data to be exchanged, irrespective of the means to be used i.e. electronically or on printed paper.⁴⁶

4.4 STRUCTURED ELECTRONIC DOCUMENT

As indicated by its name a structured electronic document concerns a structured format for the exchange of documents.⁴⁷

⁴⁵ See Article 1(2)(a) of Regulation 987/09

⁴⁶ See Article 1(2)(c) of Regulation 987/09

4.5 TRANSMISSION BY ELECTRONIC MEANS

This definition sets out the different possibilities for exchanging information by electronic means.⁴⁸

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⁴⁷ See Article 1(2)(d) of Regulation 987/09

⁴⁸ See Article 1(2)(e) of Regulation 987/09