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From:	Presidency
To:	Permanent Representatives Committee/Council
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Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EC) No 883/2004 on the coordination of social security systems and regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 (Text with relevance for the EEA and Switzerland)

Delegations will find attached a Presidency steering note on the above mentioned subject, with a view to the Council (EPSCO) meeting on 3 March 2017.

Social Security Coordination in the EU

Presidency discussion paper

EPSCO Council, 3 March 2017

On 13 December 2016 the Commission presented a proposal to revise certain rules on the coordination of social security systems¹ set out in Regulations (EC) Nos 883/2004² ("basic Regulation") and 987/2009³ ("implementing Regulation"). The general objective of the proposal is to continue the modernisation of these EU rules by making them clearer and fairer, and to improve their enforceability. In particular, the proposal focuses on access to social benefits in four areas: (i) unemployment benefits, (ii) long-term care benefits, (iii) economically inactive mobile citizens and (iv) family benefits. The Commission also proposes strengthening the administrative rules on social security coordination for (v) posted workers and giving Member State authorities better tools to address potentially unfair practices or abuse.

Towards a modernised European Social Security Coordination

The right of EU citizens and their families to move freely and to reside in any EU Member State is enshrined in the EU Treaties and is considered a cornerstone of EU integration. Every citizen has the right to move freely to another Member State to work, or to look for work, and to reside there for that purpose. Free movement of workers is one of the four fundamental freedoms of the Single Market, a central element in building a stronger EU economy based on economic freedoms and, at the same time, in protecting the rights of workers.

¹ COM (2016) 815

² Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, OJ L 166, 30.4.2004, p.1, corrigendum OJ L 200, 7.6.2004.

³ 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, OJ L 284, 30.10.2009.

Free movement of persons and workers would not be possible without EU rules on coordination of social security. Each Member State retains competence for the design and scope of its own social security system, without harmonising the national systems. The rules provide legal certainty to citizens to whom a social security regime applies in a cross-border situation, thereby preventing a person from being left without protection or having double coverage in a cross-border situation. By safeguarding social security entitlements and removing indirect obstacles to the free movement of workers and services, it grants mobile EU citizens a genuine possibility to live or work in another country.

The social and economic reality in the Member States has been constantly evolving. Consequently, adapting the rules to reflect the changed situation is one of the central drivers of the proposed text. Modernising the legal framework should lead to better legal clarity, a fairer and more equitable distribution of the financial burden among the Member States and administrative simplicity and enforceability of the rules. By doing so, the equal treatment of European citizens who are insured under national social security legislation should be ensured, and the exercise of their rights when moving from one Member State to another should be facilitated substantially.

Need for a revision

Since the entry into force of the current regulations on 1 May 2010, the context in which Member States operate has changed significantly. Various Member States have experienced multiple crises, in particular the sovereign debt crisis with strong pressure on national budgets and social expenditure. As a result, Member States introduced new measures in their national social policy systems to respond to the new challenges, and to the demographic changes. Furthermore, in recent years, the European Court of Justice (ECJ) has delivered a number of judgments in the area of social security which have responded to this changing context in a significant manner. Moreover, in some cases the lack of clarity concerning the precise rights and obligations, and the divergence in the interpretation of the rules, have acted as a driver to update the existing coordinating rules.

Clearer and more easily enforceable rules are in the interest of Member States, citizens and businesses alike. Improved rules would enhance the opportunities and conditions for labour mobility and for protection of workers' rights, while providing effective tools for national authorities to fight abuse or fraud.

The Commission proposal

(i) The changes proposed in the field of **unemployment benefits** which reinforce the link between the Member State where an insured person contributes (or has contributed) to the financing of the social security system and the obligation to award benefits are intended to facilitate the free movement of jobseekers while ensuring that safeguards are in place to avoid placing an undue burden on the social security system of the host Member State. Jobseekers will be allowed to export their unemployment benefits for a period of at least 6 months, as opposed to the current minimum period of 3 months. This will give them, according to the Commission, a better chance of finding work, and will help tackle EU-wide unemployment and skill mismatches.

For frontier workers (workers who live in one country, work in another country, and go home at least once a week), the Member State where they worked for the last 12 months would be responsible for paying unemployment benefits. This reflects the principle that the Member State which has received the contributions should pay the benefits. Member States may require that someone has worked for at least 3 months on its territory before becoming unemployed can rely on previous experience in another Member State in order to claim unemployment benefits.

(ii) The proposal also introduces a new chapter for the coordination of **long-term care benefits**. It intends to provide a definition of long-term care and of those benefits to be listed in a new Annex to Regulation (EC) No 883/2004. This would provide an appropriate and stable regime for long-term care by ensuring even burden-sharing between Member States and providing legal clarity and transparency for citizens, institutions and other stakeholders.

(iii) Based on ECJ case law, the proposal further clarifies that Member States may decide not to grant **certain social security benefits** to mobile citizens who are **economically inactive**. This means that persons who are neither working nor actively looking for a job only have a legal right of residence, in accordance with Residence Directive 2004/38/EC, when they have means of subsistence and comprehensive health coverage. These amendments come after a series of ECJ judgments requiring the Regulations to be amended for reasons of clarity, transparency and legal certainty. Member States may choose to limit equal treatment for special non-contributory cash benefits as though they were ‘social assistance benefits’ under the terms of Directive 2004/38/EC, and for other social security benefits claimed by economically inactive citizens to the extent permitted by that Directive. This jurisprudence, which is presently not reflected in the Regulation, implies that access to benefits for economically inactive citizens in the host Member State may be made conditional *inter alia* upon that citizen holding a legal right of residence in that Member State.

(iv) The proposal also contains new provisions in relation to the coordination of **family benefits** intended to replace income during child-raising periods, also known as ‘child-raising allowances’. These allowances are aimed at compensating parents for loss of income during periods of child-raising. Through the proposed amendments, such child-raising allowances will be considered as individual and personal rights of the parent rather than a benefit for the family as a whole, and thus the secondary competent Member State will have the optional right to derogate from the anti-overlapping rules and award such benefits in full to the entitled person. Such Member States will be listed in an Annex.

(v) The proposal aims to strengthen the administrative rules on social security coordination for **posted workers**. It seeks to clarify the conflict rules on applicable legislation and the relationship between the Regulations and Directive 96/71/EC concerning the posting of workers in the framework of the provision of services. It strengthens the administrative rules on social security coordination in the fields of information exchange and verification of the social security status of such workers in order to prevent potentially unfair practices or abuse. The proposal also grants new implementing powers to the Commission in accordance with Article 291 TFEU to in order to flesh out a uniform approach to the issuance, verification and withdrawal of the Portable Document A1 (a certificate concerning the social security legislation which applies to the holder).

Against this background, the debate should help to give major political orientations in the area under revision with a view to improving the coordination of EU social security rules, increasing legal clarity, establishing fair and equitable burden-sharing, as well as simplifying administrative rules in order to make them easier to enforce.

Ministers are invited to specifically address the core issues, as indicated in the following questions:

- (1) The Court of Justice has made it clear that free movement of citizens comes with rights and obligations. While all EU citizens are entitled to free movement, whether they are economically active or not, free movement is not an unconditional right to free access to the social security systems of other Member States.
 - *Will the proposed codification of the recent case law concerning access by economically inactive citizens to social security benefits in the host Member State contribute to increasing the legal clarity?*

2) In its proposal, the Commission aims at strengthening cooperation between institutions and labour inspectorates to ensure that national authorities have adequate means to verify the social security status of posted and other highly mobile workers and to address potentially unfair practices or abuses.

- *Do the proposed changes relating to the Portable Document A1 facilitate better enforcement of the existing social security rules? Which other measures in this area could contribute to achieving that goal?*

(3) The impact assessment accompanying this proposal has identified several problems, including the unbalanced distribution of the financial burden, the risk of loss of protection or double payments, the lack of transparency and legal certainty for citizens and institutions, the unequal treatment of citizens in comparable situations, and disincentives to work or continue working in another Member State.

- *Do the proposed amendments adequately address the problems identified in the impact assessment? Are there any other problems which the proposal has not addressed?*
