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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	6 July 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

No. Cion doc.:	COM(2021) 364 final
Subject:	Proposal for a COUNCIL DECISION establishing the position to be adopted on behalf of the European Union in the Specialised Committee on Social Security Coordination established by the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, as regards the adoption of a decision to amend the Annexes to the Protocol on Social Security Coordination

Delegations will find attached document COM(2021) 364 final.

Encl: COM(2021) 364 final



Brussels, 6.7.2021
COM(2021) 364 final

2021/0180 (NLE)

Proposal for a

COUNCIL DECISION

establishing the position to be adopted on behalf of the European Union in the Specialised Committee on Social Security Coordination established by the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, as regards the adoption of a decision to amend the Annexes to the Protocol on Social Security Coordination.

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

The Commission proposes that the Council establishes the position to be adopted on the Union's behalf in the Specialised Committee on Social Security Coordination established by the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (“the Trade and Cooperation Agreement”)¹ on the adoption of a decision of this Specialised Committee to amend Annexes SSC-1, 3, 4, 5, 6 and 8 as well as Appendix SSCI-1 of Annex SSC-7 to the Protocol on Social Security Coordination to the Trade and Cooperation Agreement.

2. CONTEXT OF THE PROPOSAL

2.1. The Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland of the other part

The Trade and Cooperation Agreement establishes the basis for a broad relationship between the European Union and the United Kingdom and includes provisions on the coordination of social security systems between the European Union and the United Kingdom. It entered into force on 1 May 2021, having been provisionally applied since 1 January 2021.

2.2. The Specialised Committee on Social Security Coordination

The Specialised Committee on Social Security Coordination (“the Specialised Committee”) is established under Article 8(1)(p) of the Trade and Cooperation Agreement. Annex 1 to the Trade and Cooperation Agreement lays down the rules of procedure of the Specialised Committees.

The tasks of the Specialised Committee are laid down in Article 8(4) of the Agreement and include:

- Monitoring the implementation and ensuring the proper implementation of the Agreement,
- Adopting decisions and recommendations, including amendments to the Agreement in the cases provided therein,
- Discussing technical issues arising from the implementation of the Agreement.

2.3. The envisaged act of the Specialised Committee on Social Security Coordination

The Specialised Committee can adopt a decision amending the Annexes and Appendices to the Protocol on Social Security Coordination (“the Protocol”) pursuant to Article SSC.68 thereof.

The purpose of the envisaged act is to complete and correct the Annexes to the Protocol with the entries of the Member States and the United Kingdom, which were unknown at the time

¹ OJ L 444, 31.12.2020, p. 14. In the process of authentication of the Trade and Cooperation Agreement, the articles have been renumbered in agreement with the United Kingdom.

that the Trade and Cooperation Agreement was signed. These corrections do not amend the essential elements of the Protocol.

The envisaged decision will become binding on the Parties in accordance with Article 10(1) of the Trade and Cooperation Agreement. In accordance with Rule 9(3) of Annex 1 on Rules of procedure of the Partnership Council and Committees, decisions adopted by the Specialised Committee will specify the date on which they take effect.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

3.1. Annex SSC-1 to the Protocol on Social Security Coordination

Pursuant to Article SSC.3 (4) (a) and (d) special non-contributory cash benefits listed in Part 1 of Annex SSC-1 and long-term care benefits listed in Part 2 of Annex SSC-1 are excluded from the scope of the Protocol.

The title of Annex SSC-1 is inaccurate since it refers to benefits ‘in cash’, whereas Part 2 of this Annex will include long-term care benefits in kind as well. The definition of long-term care benefits in Article SSC.1(r) also includes cash benefits as well as in kind benefits. Therefore, the title of Annex SSC-1 should be corrected and the term “in cash” should be removed.

Part 1 of Annex SSC-1 lists the special non-contributory cash benefits of the Member States and of the United Kingdom. However, the listed benefits should be corrected as some States have abolished certain benefits listed, while other States recently introduced new special non-contributory cash benefits. Therefore, a correction is required as regards the benefits listed under the United Kingdom as well as Belgium, Bulgaria, Czech Republic, Estonia, Germany, Hungary, Ireland, Lithuania, Poland, Portugal, Slovenia, Spain and Sweden. For Poland and the United Kingdom, new benefits should be added to the list.

Following the removal of the term “in cash” in the Title of Annex SSC-1, Part 2 of this Annex should be completed with long-term care benefits in kind available under the legislation of 9 Member States, namely Belgium, Croatia, Denmark, Germany, Latvia, Lithuania, Luxembourg, Portugal and Sweden. Further corrections and additions to Part 2 should be made as regards the United Kingdom as well as 23 Member States, namely Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Spain and Sweden.

3.2. Annex SSC-3 to the Protocol on Social Security Coordination.

Annex SSC-3 lists the States, which provide more rights as regards sickness benefits in kind to pensioners returning to the competent state pursuant to Article SSC.25(2) of the Protocol. This list should be completed with Latvia, Lithuania, Portugal and Romania.

3.3. Annex SSC-4 to the Protocol on Social Security Coordination

Annex SSC-4 concerns cases in which the pro-rata calculation shall be waived or shall not apply. It consists of two parts. Part 1 lists for the States the cases in which the pro-rata calculation shall be waived pursuant to Article SSC.47(4) of the Protocol and should be corrected as regards Ireland, Latvia, Portugal and Sweden. Part 2 lists the cases in which Article SSC.47(5) of the Protocol applies, which should be corrected as regards the Czech Republic, Portugal and Sweden.

3.4. Annex SSC-5 to the Protocol on Social Security Coordination

Annex SSC-5 lists the benefits and agreements, which allow the application of Article SSC.49. It consists of three parts. In parts I and II, the entries as regards Sweden should be corrected. In part III, the date of the Nordic Convention on social security should be corrected.

3.5. Annex SSC-6 to the Protocol on Social Security Coordination

Annex SSC-6 contains special provisions for the application of the legislation of the Member States and the United Kingdom. New entries from the Czech Republic and the United Kingdom should be inserted while the entry of Estonia should be removed and the entry of Sweden should be corrected.

3.6. Appendix SSCI-1 of Annex SSC-7 to the Protocol on Social Security Coordination

Appendix SSCI-1 lists administrative arrangements between two or more States laying down procedures other than those provided for by Annex SSC-7. These arrangements continue to apply in accordance with Article SSCI-8. This Appendix should be modified to reflect the decision of the Swedish government not to apply a bilateral arrangement between Sweden and the United Kingdom in cases covered by the Protocol on Social Security Coordination.

3.7. Annex SSC-8 to the Protocol on Social Security Coordination

In its notification of 25 January 2021, the Union has informed the United Kingdom in accordance with Article SSC.11(6) that all Member States notified the Union of their wish to derogate from Article SSC.10 in accordance with Article SSC.11(1) in relation to detached workers. Pursuant to Article SSC.11(6) Annex SSC-8 should therefore be updated with the list of 27 Member States applying the provisions of Article SSC.11 (1).

4. LEGAL BASIS

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing *‘the positions to be adopted on the Union’s behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.’*

The decision, which the Specialised Committee is called upon to adopt, constitutes an act having legal effects. The envisaged act will be binding on the Parties in accordance with Article 10 of the Agreement.

The envisaged act does not supplement or amend the institutional framework of the Agreement.

The sole objective and content of the envisaged act relate to amending the Annexes and Appendices to the Protocol on Social Security Coordination to, on the one hand, address omissions and deficiencies while not amending the essential elements therein, and on the other hand, update Annex SSC-8 in accordance with Article SSC.11 of the Protocol.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union’s behalf.

The envisaged act pursues objectives in the area of social security coordination. Therefore, the substantive legal basis of the proposed decision is Article 48 TFEU.

4.1. Conclusion

The legal basis of the proposed decision should be Article 48 TFEU, in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE ENVISAGED ACT

As the decision of the Specialised Committee will amend the Protocol to the Trade and Cooperation Agreement, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

Proposal for a

COUNCIL DECISION

establishing the position to be adopted on behalf of the European Union in the Specialised Committee on Social Security Coordination established by the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, as regards the adoption of a decision to amend the Annexes to the Protocol on Social Security Coordination.

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 the proposal from the European Commission,

Whereas:

- (1) The Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part ('the Trade and Cooperation Agreement'), was concluded by the Union by Council Decision (EU) 2021/689² of 29 April 2021 and entered into force on 1 May 2021, having been provisionally applied since 1 January 2021.
- (2) Pursuant to Article 778(1) of the Trade and Cooperation Agreement, the Protocols and Annexes to that Agreement form an integral part thereof. In accordance with Article 783(3) of the Trade and Cooperation Agreement, as from the date from which the Agreement is provisionally applied, references to the date of its entry into force are to be understood as references to the date from which it is provisionally applied.
- (3) Article 8(4)(c) of the Trade and Cooperation Agreement empowers the Specialised Committee on Social Security Coordination to adopt decisions, including amendments, and recommendations in respect of all matters where this Agreement so provides. Pursuant to Article SSC.68 of the Protocol on Social Security Coordination, the Specialised Committee on Social Security Coordination may amend the Annexes and Appendices to that Protocol. In accordance with Article 10, the decisions adopted by a Committee are binding on the Parties.
- (4) Annexes SSC-1 to 6 to the Protocol on Social Security Coordination, insofar as these Annexes reflect the national legislation of the Member States and the United Kingdom, should be amended, notably to take into account recent changes to national legislation. The title of Annex SSC-1 should be corrected so as not to refer only to benefits 'in cash'. Appendix SSCI-1 of Annex SSC-7 should be amended to reflect the decision of one of the Parties to an arrangement listed therein.

² OJ L 149, 30.4.2021, p. 2.

- (5) Article SSC.11(6) of the Protocol on Social Security Coordination requires the Parties to publish an updated Annex SSC-8 as soon as possible after a period of one month from the entry into force of the Trade and Cooperation Agreement. The Specialised Committee on Social Security Coordination should adopt a decision to comply with that obligation.
- (6) It is therefore appropriate to establish the position to be taken on the Union's behalf in the Specialised Committee on Social Security Coordination regarding these amendments of Annexes SSC-1, 3, 4, 5, 6 and 8 as well as Appendix SSCI-1 of Annex SSC-7 to the Protocol on Social Security Coordination.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the Specialised Committee on Social Security Coordination established by Article 8(1)(p) of the Trade and Cooperation Agreement shall be based on the draft act of the Specialised Committee attached to this Decision.

Article 2

The Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*