Council of the European Union

Brussels, 13 November 2020
(OR. en)

Interinstitutional File:
2020/0326(NLE)

12963/20
ADD 1

AELE 91
CH 29
MI 487
SOC 701
PREP-BXT 32

PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	12 November 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2020) 735 final - ANNEX I
Subject:	ANNEX to the Proposal for a COUNCIL DECISION on the position to be taken by the European Union within 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 amendment of Annex II to that Agreement on the coordination of social security schemes

Delegations will find attached document COM(2020) 735 final - ANNEX I.

Encl.: COM(2020) 735 final - ANNEX I

EUROPEAN
COMMISSION

Brussels, 12.11.2020
COM(2020) 735 final

ANNEX

ANNEX

to the

Proposal for a COUNCIL DECISION

on the position to be taken by the European Union within 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 amendment of Annex II to that Agreement on the coordination of social security schemes

ANNEX

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 …

amending Annex II to that Agreement on the coordination 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[1] ('the Agreement') and in particular Article 14 and 18 thereof,

Whereas:

(1) The Agreement ceases to apply to the United Kingdom of Great Britain and Northern Ireland ("United Kingdom") as a consequence of the United Kingdom's withdrawal from the European Union

(2) Pursuing to article 23 of the Agreement, rights acquired by private individuals shall not be affected in the event of termination of the agreement and the Contracting Parties shall settle by mutual agreement what action is to be taken in respect of rights in the process of being acquired,

(3) Article 33 of the Withdrawal Agreement concluded between the European Union and the European Atomic Energy Community and the United Kingdom ("Withdrawal Agreement") states that Title III of Part Two of the Withdrawal Agreement shall apply to nationals of Iceland, the Principality of Liechtenstein, the Kingdom of Norway and Switzerland provided that those countries have concluded and apply corresponding agreements with the United Kingdom, which apply to Union citizens, as well as with the European Union which apply to the United Kingdom nationals,

(4) Article 26(b) of the Agreement between the United Kingdom and Switzerland on citizens' rights ("Citizens' Rights Agreement") following the withdrawal of the United Kingdom from the European Union and the Free Movement of Persons Agreement states that the provisions of Part III of that agreement shall apply to Union citizens, provided that the Union has concluded and applies corresponding agreements with the United Kingdom which apply to Swiss nationals, as well as with Switzerland which applies to United Kingdom nationals,

(5) It is necessary to provide reciprocal protection of social security rights for United Kingdom nationals, as well as their family members and survivors, who, by the end of the transition period, as defined in Article 126 of the Withdrawal Agreement, are or

[1] OJ L 114, 30.4.2002, p. 6.

have been in a cross-border situation involving one or more of the Contracting Parties to the Agreement and the United Kingdom at the same time.

HAS DECIDED AS FOLLOWS:

Article 1

Annex II to the Agreement is amended as set out in the Annex to this Decision.

Article 2

This Decision is established in the Bulgarian, Croatian, 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

This Decision shall enter into force on the date of its adoption by the Joint Committee and apply from the end of the transition period as defined in Article 126 of the Withdrawal Agreement.

Done at …….,

For the Joint Committee
The Chairman
The Secretaries

Annex

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 is amended as follows:

(1) Article 3 shall be amended as follows:

In paragraph 1 "the Protocol" shall be replaced by "Protocol I"

In paragraph 2 "The Protocol" shall be replaced by "Protocol I"

(2) A new article 4 shall be added after Article 3:

'Article 4

1. The arrangements relating to the protection of rights acquired by private individuals under this Agreement as a consequence of the United Kingdom's withdrawal from the European Union are set out in Protocol II of this Annex.

2. Protocol II forms integral part of this Annex.'

(3) After section C the title "Protocol" shall be replaced by "Protocol I"

(4) A new Protocol II shall be added after Protocol I:

'Protocol II to Annex II to the Agreement on the free movement of persons

"CONSIDERING that Article 33 of the Withdrawal Agreement concluded between the European Union and the European Atomic Energy Community and the United Kingdom of Great Britain and Northern Ireland states that Title III of Part Two of the Withdrawal Agreement shall apply to nationals of Iceland, the Principality of Liechtenstein, the Kingdom of Norway and Switzerland provided that those countries have concluded and apply corresponding agreements with the United Kingdom of Great Britain and Northern Ireland, which apply to Union citizens, as well as with the European Union which apply to the United Kingdom nationals,

CONSIDERING that Article 26b of the Agreement between the United Kingdom of Great Britain and Northern Ireland and Switzerland on citizens' rights following the withdrawal of the United Kingdom from the European Union and the Free Movement of Persons Agreement states that the provisions of Part III of that agreement shall apply to Union citizens, provided that the Union has concluded and applies corresponding agreements with the United Kingdom of Great Britain and Northern Ireland which apply to Swiss nationals, as well as with Switzerland which applies to United Kingdom nationals,

RECOGNISING that it is necessary to provide reciprocal protection of social security rights for United Kingdom nationals, as well as their family members and survivors who, by the end of the transition period, are or have been in a cross-border situation involving one or more of the Contracting Parties to the Free Movement of Persons Agreement and the United Kingdom of Great Britain and Northern Ireland at the same time.

ARTICLE 1

Definitions and references

1. For the purposes of this Protocol the following definitions shall apply:

(a) "Withdrawal Agreement" shall mean the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community[2];

(b) "Citizens' Rights Agreement" shall mean the Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on citizens' rights following the withdrawal of the United Kingdom from the European Union and the Free Movement of Persons Agreement;

(c) "States covered" shall mean the Member States of the Union and Switzerland;

(d) "transition period" shall mean the transition period referred to in Article 126 of the Withdrawal Agreement;

(e) the definitions in Article 1 of Regulation (EC) No 883/2004[3] and Article 1 of Regulation (EC) No 987/2009[4].

2. For the purposes of this Protocol, all references to Member States and competent authorities of Member States in provisions of Union law made applicable by this Protocol shall be understood as including the United Kingdom and its competent authorities.

ARTICLE 2

[2] OJ L 29, 31.1.2020, p. 7

[3] 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 as corrected in OJ L 200, 7.6.2004, p. 1.)

[4] 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, p. 1).

Persons covered

1. This Protocol shall apply to the following persons:

(a) United Kingdom nationals who are subject to the legislation of one of the States covered at the end of the transition period, as well as their family members and survivors;

(b) United Kingdom nationals who reside in one of the States covered, and are subject to the legislation of the United Kingdom at the end of the transition period, as well as their family members and survivors;

(c) persons who do not fall within points (a) or (b) but are United Kingdom nationals who pursue an activity as an employed or self-employed person in one or more of the States covered at the end of the transition period, and who, based on Title II of Regulation (EC) No 883/2004, are subject to the legislation of the United Kingdom, as well as their family members and survivors;

(d) stateless persons and refugees, residing in one of the States covered or in the United Kingdom, who are in one of the situations described in points (a) to (c), as well as their family members and survivors.

2. The persons referred to in paragraph 1 shall be covered for as long as they continue without interruption to be in one of the situations set out in this paragraph involving both one of the States covered and the United Kingdom at the same time.

3. This Protocol shall also apply to United Kingdom nationals who do not, or who no longer, fall within one of the situations set out in paragraph 1 of this Article but who fall within Article 10 of the Withdrawal Agreement or within Article 10 of the Citizens' Rights Agreement, as well as their family members and survivors.

4. The persons referred to in paragraph 3 shall be covered for as long as they continue to have a right to reside in one of the States covered under Article 13 of the Withdrawal Agreement or Article 12 of the Citizens' Rights Agreement, or a right to work in their State of work under Article 24 or 25 of the Withdrawal Agreement or Article 20 of the Citizens' Rights Agreement.

5. Where this Article refers to family members and survivors, those persons shall be covered by this Protocol only to the extent that they derive rights and obligations in that capacity under Regulation (EC) No 883/2004.

ARTICLE 3

Social security coordination rules

1. The rules and objectives set out in Article 8 and in this Annex of the Free Movement of Persons Agreement, Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 of the European Parliament and of the Council shall apply to the persons covered by this Protocol.

2. The States covered shall take due account of the Decisions and Recommendations of the Administrative Commission for the Coordination of Social Security Systems attached to the

European Commission, set up under Regulation (EC) No 883/2004 ("Administrative Commission") listed in this Annex.

ARTICLE 4

Special situations covered

1. The following rules shall apply in the following situations to the extent set out in this Article, insofar as they relate to persons not or no longer covered by Article 2:

(a) United Kingdom nationals, as well as stateless persons and refugees residing in the United Kingdom who have been subject to the legislation of one of the States covered before the end of the transition period, as well as their family members and survivors shall be covered by this Protocol for the purposes of reliance on and aggregation of periods of insurance, employment, self-employment or residence, including rights and obligations deriving from such periods in accordance with Regulation (EC) No 883/2004; for the purposes of the aggregation of periods, periods completed both before and after the end of the transition period shall be taken into account in accordance with Regulation (EC) No 883/2004;

(b) the rules set out in Articles 20 and 27 of Regulation (EC) No 883/2004 shall continue to apply to United Kingdom nationals, as well as stateless persons and refugees residing in the United Kingdom who, before the end of the transition period, had requested authorisation to receive a course of planned health care treatment pursuant to Regulation (EC) No 883/2004, until the end of the treatment. The corresponding reimbursement procedures shall also apply even after the treatment ends. Such persons and the accompanying persons shall enjoy the right to enter and exit the State of treatment in accordance with Article 14 of the Withdrawal Agreement mutatis mutandis and with Article 13 of the Citizens' Rights Agreement mutatis mutandis;

(c) the rules set out in Articles 19 and 27 of Regulation (EC) No 883/2004 shall continue to apply to United Kingdom nationals, as well as stateless persons and refugees residing in the United Kingdom who are covered by Regulation (EC) No 883/2004 and who are on a stay at the end of the transition period in one of the States covered or the United Kingdom, until the end of their stay. The corresponding reimbursement procedures shall also apply even after the stay or treatment ends;

(d) the rules set out in Articles 67, 68 and 69 of Regulation (EC) No 883/2004 shall continue to apply, for as long as the conditions are fulfilled, to awards of family benefits to which there is entitlement at the end of the transition period for United Kingdom nationals, as well as stateless persons and refugees residing in the United Kingdom who are subject to the legislation of the United Kingdom and have family members residing in one of the States covered at the end of the transition period;

(e) in the situations set out in point (d) of this paragraph, for any persons who have rights as family members at the end of the transition period under Regulation (EC) No 883/2004, such as derived rights for sickness benefits in kind, that Regulation and the corresponding provisions of Regulation (EC) No 987/2009 shall continue to apply for as long as the conditions provided therein are fulfilled.

2. The provisions of Chapter 1 of Title III of Regulation (EC) No 883/2004 as regards sickness benefits shall apply to persons receiving benefits under point (a) of paragraph 1 of this Article.

This paragraph shall apply mutatis mutandis as regards family benefits based on Articles 67, 68 and 69 of Regulation (EC) No 883/2004.

ARTICLE 5

Reimbursement, recovery and offsetting

The provisions of Regulations (EC) No 883/2004 and (EC) No 987/2009 on reimbursement, recovery and offsetting shall continue to apply in relation to events, insofar as they relate to persons not covered by Article 2, that:

(a) occurred before the end of the transition period; or

(b) occur after the end of the transition period and relate to persons who were covered by Articles 2 or 4 when the event occurred.

ARTICLE 6

Development of law and adaptations

1. Notwithstanding paragraph 3, references in this Protocol to Regulations (EC) No 883/2004 and (EC) No 987/2009 or provisions thereof, shall be understood as references to the acts or provisions as incorporated into the Free Movement of Persons Agreement, as applicable on the last day of the transition period.

2. Where Regulations (EC) No 883/2004 and (EC) No 987/2009 are amended or replaced after the end of the transition period, references to those Regulations in this Protocol shall be understood as referring to those Regulations as amended or replaced, in accordance with the acts listed in Part II of Annex I to the Withdrawal Agreement, as regards the Union, and Part II of Annex I to the Citizens' Rights Agreement, as regards Switzerland.

3. Regulations (EC) No 883/2004 and (EC) No 987/2009 shall, for the purposes of this Protocol, be understood as comprising the adaptations listed in Part III of Annex I to the Withdrawal Agreement, as regards the Union, and Part III of Annex I of the Citizens' Rights Agreement, as regards Switzerland.

4. For the purposes of this Protocol, the amendments and adaptations referred to in paragraphs 2 and 3 shall take effect on the day following the day on which the corresponding amendments and adaptations of Annex I to the Withdrawal Agreement or of Annex I to the Citizens' Rights Agreement take effect, whichever is the latest.'