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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) 736 final
Subject:	Proposal for a COUNCIL DECISION on the position to be adopted, on behalf of the European Union, within the EEA Joint Committee, concerning the amendment to Annex VI (Social Security) to the EEA Agreement

Delegations will find attached document COM(2020) 736 final.

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EUROPEAN
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Brussels, 12.11.2020
COM(2020) 736 final

2020/0327 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be adopted, on behalf of the European Union, within the EEA Joint Committee, concerning the amendment to Annex VI (Social Security) to the EEA Agreement

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be adopted on the Union's behalf in the EEA Joint Committee in connection with the envisaged adoption of the Joint Committee Decision concerning an amendment of Annex VI (Social Security) to the EEA Agreement

2. CONTEXT OF THE PROPOSAL

2.1. The EEA Agreement

The Agreement on the European Economic Area ('the EEA Agreement') guarantees equal rights and obligations within the Internal Market for citizens and economic operators in the EEA. It provides for the inclusion of EU legislation covering the four freedoms throughout the 30 EEA States comprising of EU Member States, Norway, Iceland and Liechtenstein. In addition, the EEA Agreement covers cooperation in other important areas such as research and development, education, social policy, the environment, consumer protection, tourism and culture, collectively known as "flanking and horizontal" policies. The Agreement entered into force on 1 January 1994. The European Union together with its Member States is a party to the Agreement.

2.2. The EEA Joint Committee

The EEA Joint Committee is responsible for the management of the EEA Agreement. It is a forum for exchanging views linked to functioning of the EEA Agreement. Its decisions are taken by consensus. In accordance with the Treaty of Lisbon, responsibility for coordinating EEA matters on the EU side is with the European External Action Service.

2.3. The envisaged act of the EEA Joint Committee

The EEA Joint Committee is expected to adopt an EEA Joint Committee Decision regarding the amendment of Annex VI (Social Security) to the EEA Agreement ('the envisaged act').

The purpose of the envisaged act is to ensure reciprocal protection of social security rights for United Kingdom nationals, stateless persons and refugees, 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 EEA Agreement and the United Kingdom of Great Britain and Northern Ireland at the same time.

The envisaged act will become binding on the parties in accordance with Articles 103 and 104 of the EEA Agreement.

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

It is necessary to provide reciprocal protection of social security rights for United Kingdom nationals, stateless persons and refugees, as well as their family members and survivors, who, by the end of the transition period, as defined in Article 126 of 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 ("Withdrawal Agreement")[1], are or have been in a cross-border situation involving one or more of the Contracting Parties to the EEA Agreement and the United Kingdom of Great Britain and Northern Ireland at the same time.

According to Article 33(1) of the Withdrawal Agreement[2], Title III thereof (on the coordination of social security systems) shall apply also to nationals of the EEA EFTA States, provided that those countries conclude the corresponding agreements with the United Kingdom (which would apply to Union citizens) and with the Union (which would apply to United Kingdom nationals).

As the EEA EFTA States have already concluded the relevant agreements with the United Kingdom, it is now for the Union and the EEA EFTA States to conclude agreements which would ensure that United Kingdom nationals within the scope of the Withdrawal Agreement and of the Agreement on arrangements between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland following the withdrawal of the United Kingdom from the European Union ("Separation Agreement") are protected in their social security rights acquired before the end of the transition period or to be acquired afterwards.

The draft Decision of the EEA Joint Committee (annexed to the proposed Council Decision) therefore aims to amend Annex VI (Social Security) to the EEA Agreement in order to ensure that such social security rights of United Kingdom nationals continue to be preserved.

The content and nature of the draft of the annexed Decision of the EEA Joint Committee go beyond what can be considered mere technical adaptations in the sense of the Council Regulation No 2894/94. The Union position shall therefore be established by the Council.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

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 concept of '*acts having legal effects*' includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are '*capable of decisively influencing the content of the legislation adopted by the EU legislature*'[3].

[1] OJ L 29, 31.1.2020, p. 7.
[2] OJ L 29, 31.1.2020, p. 7.
[3] Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

4.1.2. Application to the present case

The EEA Joint Committee is a body set up by an agreement, namely the EEA Agreement. The act, which the EEA Joint Committee is called upon to adopt, constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Articles 103 and 104 of the EEA Agreement.

The envisaged act does not supplement or amend the institutional framework of the Agreement. Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

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. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

With regard to an envisaged act that simultaneously pursues a number of objectives, or that has several components, which are inseparably linked without one being incidental to the other, the substantive legal basis of a decision under Article 218(9) TFEU will have to include, exceptionally, the various corresponding legal bases.

4.2.2. Application to the present case

The envisaged act pursues objectives and has components in the area of social security and provision of power. These elements of the envisaged act are inseparably linked without one being incidental to the other.

Therefore, the substantive legal basis of the proposed decision comprises the following provisions: Article 48 and Article 352 of the Treaty on the Functioning of the European Union.

4.3. Conclusion

The legal basis of the proposed decision should be Article 48 and Article 352, in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE ENVISAGED ACT

As the act of the EEA Joint Committee will amend Annex VI on Social Security, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

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on the position to be adopted, on behalf of the European Union, within the EEA Joint Committee, concerning the amendment to Annex VI (Social Security) to the EEA Agreement

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article(s) 48 and 352, in conjunction with Article 218(9) thereof,

Having regard to Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area[4], and in particular Article 1(3) thereof

Having regard to the proposal from the European Commission,

Whereas:

(1) The Agreement on the European Economic Area[5] ('the EEA Agreement') entered into force on 1 January 1994.

(2) Pursuant to Article 98 of the EEA Agreement, the EEA Joint Committee may decide to amend, inter alia, Annex VI to the EEA Agreement, which contains provisions on social security.

(3) Article 33 of 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 ("Withdrawal Agreement")[6] states that the provisions of Title III of Part Two of the Withdrawal Agreement shall apply to nationals of Iceland, the Principality of Liechtenstein, the Kingdom of Norway 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.

(4) Article 32 of the Agreement on arrangements between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland following the withdrawal of the United Kingdom from the European

[4] OJ L 305, 30.11.1994, p. 6.
[5] OJ L 1, 3.1.1994, p. 3.
[6] OJ L 29, 31.1.2020, p. 7.

Union, the EEA Agreement and other agreements applicable between the United Kingdom and the EEA EFTA States by virtue of the United Kingdom's membership of the European Union ("Separation Agreement") states that the provisions of Title III of Part Two of the Separation 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 nationals of the EEA EFTA States, as well as with the EEA EFTA States which apply to United Kingdom nationals.

(5) It is therefore necessary to provide reciprocal protection of social security rights for United Kingdom nationals, stateless persons and refugees, 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 Agreement on the European Economic Area and the United Kingdom of Great Britain and Northern Ireland at the same time.

(6) The position of the Union in the EEA Joint Committee should therefore be based on the draft EEA Joint Committee Decision set out in the Annex to this Decision,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted on the Union's behalf within the EEA Joint Committee on the proposed amendment of Annex VI (Social Security) to the EEA Agreement shall be based on the draft decision of the EEA Joint Committee attached to this Decision.

Article 2

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

Done at Brussels,

For the Council
The President