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## REPORT

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 1)
No. Cion doc.:	ST 15642/21 - COM(2016) 815 final
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) - Analysis of the compromise text with a view to agreement

## I. INTRODUCTION

On 13 December 2016, the Commission submitted its proposal to amend 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. The general objective of the proposal is to continue the modernisation of EU social security coordination rules by making them clearer and fairer, and by improving their enforceability, thus contributing to the facilitation of free movement of persons within the EU.

In particular, the proposal focuses on six areas: (i) access by economically inactive mobile citizens to certain social benefits, (ii) applicable legislation for sent workers and persons working in two or more Member States, (iii) long-term care benefits, (iv) family benefits and (v) unemployment benefits; as well as includes further (vi) miscellaneous amendments.

The proposed legal basis is Article 48 TFEU, which requires that the European Parliament and the Council act in accordance with the ordinary legislative procedure.

The European Economic and Social Committee delivered its opinion on 5 July 2017<sup>1</sup>.

The Committee of Regions delivered its opinion at its session on 12-13 July 2017<sup>2</sup>.

The Council adopted its general approach on 21 June 2018<sup>3</sup>.

The European Parliament adopted its negotiations mandate on 11 December 2018<sup>4</sup>.

## **II. ELEMENTS OF THE PROVISIONAL AGREEMENT**

At the eighth trilogue, on 19 March 2019, the negotiating teams of the Council, the Parliament and the Commission have reached a provisional agreement, which includes the following main elements:

### **1) Family Benefits**

The two-basket approach, codifying the Wiering judgement (C-347/12), as suggested by the Council, has been accepted.

### **2) Equal Treatment (of economically inactive citizens to certain social benefits)**

The case-law of the Court of Justice has not been codified, however a list of relevant case-law is maintained in the recitals, as proposed by the General Approach. An additional recital was added to reflect that in accordance with each Member States' laws or practices, mobile citizens should not be prevented from contributing to sickness coverage schemes.

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<sup>1</sup> OJ C 345, 13.10.2017, p. 85.

<sup>2</sup> OJ C 342, 12.10.17, p. 65.

<sup>3</sup> ST 10295/18

<sup>4</sup> P8\_A(2018)0270

The Rapporteur for the lead Committee (EMPL) is Gabriele BISCHOFF (DE/S&D).

### 3) Long-Term Care Benefits

The scope of the coordination of long-term care benefits is maintained as proposed in the General Approach. The Commission is to evaluate the agreed scope of long-term care benefits three years following the entry into application.

### 4) Unemployment Benefits

*i) Aggregation:* the Council's General Approach, with the basic principle of a one-month affiliation period before aggregation takes place in a certain Member State, is taken on-board.

*ii) Export:* the minimum export period is extended from 3 months to 6 months, as originally proposed by the Commission.

*iii) Unemployed persons who resided in a Member State other than the competent Member State:* The intervention logic of the General Approach is taken on-board, namely to apply the *lex loci laboris* principle for the determination of the competent Member State, after a certain period of employment, self-employment or insurance has been completed in the Member State of most recent activity. This period is extended from 3 months to 6 months. Furthermore, this category of workers will be able to export their unemployment benefits for up to 15 months, unless the period of entitlement is shorter.

## 5) Applicable Legislation

Prior notification: Instead of the 'deposit' or 'daily fees' envisioned by the Parliament to ensure institutions' cooperation, the provisional agreement contains a mechanism, which allows for a cooperation between the national authorities, with a 35 working days deadline for response by the competent Member State. An exception for business trips is added;

Prior affiliation and interruption period: both employed and self-employed will be subject to 3 months of prior affiliation to the social security system of their Member State of origin, before they can be sent to work in another Member State. A minimum of 2 months of interruption period is foreseen for employed and self-employed persons alike, after the 24 months of maximum period of being 'sent' have elapsed;

Activity in two or more Member States: While the Parliament's objective was to introduce the working time of the worker as the primary determining factor in which legislation is applicable; the provisional agreement maintains the status quo (Article 13 of the basic Regulation). The indicative list which helps determine the registered office or place of business of the employer proposed by the General Approach in the implementing Regulation has been slightly updated and streamlined;

Maximum duration of affiliation to the sending Member State's social security system: 24 months is kept as per the General Approach;

Deposit and daily fees: these concepts have not been taken on-board;

Delegated/Implementing acts for A1 forms: the provisional agreement includes only implementing acts, as foreseen by the General Approach.

## 6) **Miscellaneous**

This chapter is maintained largely as in the General Approach. Some minor modifications are inserted. Among them, the insertion of the evaluation clause concerning the scope of long-term care benefits, compliance with the deadlines set out in Title II of the implementing Regulation and on the implementation of the criteria used for determining the Member State of the registered office or place of business of an employer.

On 29 March 2019, Coreper I rejected the preliminary political agreement, due to a number of divisive elements, mainly included in the Unemployment Benefits and Applicable Legislation chapters.

In the second part of 2019, under the Finnish Presidency, the Council and the European Parliament agreed to resume the political negotiations on a limited scope of issues on Unemployment Benefits and Applicable Legislation chapters. Nine further trilogues were held under the Finnish, German, Portuguese and Slovenian presidencies.

At the seventeenth trilogue, on 16 December 2021, the negotiating teams of the Council, the Parliament and the Commission have reached a provisional agreement, which includes the following main elements:

- 1) **i) Family Benefits, ii) Equal Treatment (of economically inactive citizens to certain social benefits), iii) Long-Term Care Benefits and iv) Miscellaneous**

The content of the preliminary political agreement reached on 19 March 2019 on these four chapters has not been modified.

2) **Unemployment Benefits**

*i) Export:* the minimum general export period is extended from 3 months to 6 months, as originally proposed by the Commission. In order to be entitled to the export of the unemployment benefits, a person shall have completed either an uninterrupted three-month period, or an interrupted six-month period of insurance, employment or self-employment during a period of 24 months, exclusively under the legislation of the competent Member State.

*ii) Unemployed persons who resided in a Member State other than the competent Member State:* the intervention logic of the General Approach is taken on-board, namely to apply the *lex loci laboris* principle for the determination of the competent Member State, after a certain period of insurance, employment or self-employment has been completed in the Member State of most recent activity. This period is set to 3 uninterrupted months or six interrupted months. In addition, all workers in cross border situations having at least 24 uninterrupted months of insurance, employment or self-employment exclusively in the competent Member State, are entitled to unemployment benefits for a period of 10 months, unless the period of entitlement under the national legislation of the competent Member State is shorter.

### 3) **Applicable Legislation**

Prior notification: A mandatory prior notification is introduced. However, a two-tier model for exceptions has been added, as follows:

- An exception for 'business trips';
- An exception for those exceptional cases, where it was not possible to notify before the start of the activity abroad. In these cases, the employer or the self-employed person shall notify the institution in the sending Member State no later than 3 days after the start of the activity abroad.

Activity in two or more Member States: The working time of the worker as the primary determining factor which legislation is applicable has been deleted. Thus, the indicative list which helps determine the registered office or place of business of the employer has been streamlined;

### **III. CONCLUSION**

Should the Committee of Permanent Representatives approve the informally agreed text as set out in the Addendum to this Note, the formal procedure requires that a letter be sent by the President of the Permanent Representatives Committee to the Parliament notifying that an agreement in first reading could be reached, subject to the Parliament agreeing to adopt the identical text at its plenary session.

In order to pave the way for the final adoption of the Regulation, in accordance with Article 294 TFEU, the Permanent Representatives Committee is invited to confirm, on the basis of the consolidated text set out in the Addendum, that this text is acceptable, and to agree to inform the Parliament accordingly.

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