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REPORT

From:	General Secretariat of the Council
To:	Delegations
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Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on establishing contingency measures in the field of social security coordination following the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union - Final compromise text approved by Coreper

In the Annex to this document, delegations will find the final compromise text of the Proposal for a Regulation on contingency measures in the field of social security coordination approved by Coreper on 22 February 2019.

Changes compared to the Commission proposal (5949/19) are marked by **bold underline** and deletions by ~~strikethrough~~.

REGULATION 2019/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of ...

on establishing contingency measures in the field of social security coordination following the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union

(Text with relevance to the EEA and Switzerland)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 48 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) On 29 March 2017, the United Kingdom of Great Britain and Northern Ireland (the ‘United Kingdom’) submitted the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. The Treaties will cease to apply to the United Kingdom from the date of entry into force of a withdrawal agreement or failing that, two years after that notification, that is to say from 30 March 2019, unless the European Council, in agreement with the United Kingdom, unanimously decides to extend that period.

- (2) In the absence of a withdrawal agreement or of an extension of the two-year period after the United Kingdom's notification, of its intention to withdraw from the Union, on 30 March 2019, the Union rules on social security coordination provided in Regulation (EC) No 883/2004 on the coordination of social security systems¹ and Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004² will also cease to apply to and in the United Kingdom.
- (3) As a result, persons who, in their capacity of Union citizens, have legitimately exercised the right to freedom of movement enshrined in Articles 45 and 49 of the Treaty prior to the date of the United Kingdom's withdrawal from the Union, can no longer rely on those rules as regards their social security entitlements based on facts and events that occurred and periods of insurance, (self) employment or residence that were completed before the withdrawal date, and which involved the United Kingdom. Stateless persons and refugees who are or have been subject to the legislation of one or more Member States and in situations involving the United Kingdom, as well as members of the family and survivors of all these categories will equally be affected.
- (4) To achieve the aim of safeguarding social security entitlements for the persons concerned, Member States should continue applying the Union's principles of equality of treatment, of assimilation and of aggregation laid down by Regulations (EC) No 883/2004 and 987/2009 as well as the rules of these Regulations necessary to give effect to the said principles, as regards persons covered, facts or events that occurred and periods completed prior to the withdrawal of the United Kingdom from the Union.

¹ 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).

² 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).

- (4a) This Regulation does not affect existing social security conventions and agreements between the United Kingdom and one or more Member States which are in compliance with Article 8 of Regulation (EC) No 883/2004 and Article 9 of Regulation (EC) No 987/2009. This Regulation is without prejudice to the possibility for the Union or the Member States to take measures addressing the administrative cooperation and exchange of information with the competent institutions in the United Kingdom for the purpose of giving effect to the principles of this Regulation. Furthermore, this Regulation does not affect any competence of either the Union or the Member States to conclude social security conventions and agreements with third countries, or with the United Kingdom covering the period after the day on which the Treaties cease to apply to and in the United Kingdom.**
- (4b) This Regulation does not affect any rights acquired or in the process of being acquired in accordance with the legislation of a Member State during the period before the date of application of this Regulation. Good cooperation is necessary for such rights to be protected and upheld. It is important to ensure that appropriate and timely information is available to the persons concerned.**
- (5) Since the objective of this Regulation, namely ~~t~~To achieve a uniform unilateral application of the social security principles of equality of treatment, of assimilation and of aggregation cannot be sufficiently achieved by the Member States but can rather, by reason of coordinating their response, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective. ~~, it is necessary to introduce this contingency Regulation.~~**

(5b) In view of the fact that in the absence of a withdrawal agreement or of an extension of the two-year period after the United Kingdom's notification, the Treaties will cease to apply to and in the United Kingdom on 30 March 2019, and in view of the need to provide legal certainty, it was considered appropriate to provide for an exception to the eight-week period referred to in Article 4 of Protocol No 1 on the role of national Parliaments in the European Union, annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community.

(6) This Regulation should **enter into force as a matter of urgency on the day following that of its publication in the *Official Journal of the European Union* and should** apply as from the day following that on which the Treaties cease to apply to and in the United Kingdom unless a withdrawal agreement concluded with the United Kingdom has entered into force by that date.

HAVE ADOPTED THIS REGULATION:

Article 1

Definitions

For the purposes of this Regulation, the definitions provided for in Article 1 of Regulation (EC) No 883/2004 and Article 1 of Regulation (EC) No 987/2009 shall apply.

Article 2

Persons covered

This Regulation shall apply to the following persons:

- (a) nationals of a Member State, stateless persons and refugees, who are or have been subject to the legislation of one or more Member States and who are or have been in a situation involving the United Kingdom of Great Britain and Northern Ireland (the ‘United Kingdom’) before ~~30 March 2019~~ **the date of application of this Regulation**, as well as their family members and survivors;
- (b) nationals of the United Kingdom who are or have been subject to the legislation of one or more Member States before ~~30 March 2019~~ **the date of application of this Regulation**, as well as their family members and survivors.

Article 3

Matters covered

This Regulation shall apply to all branches of social security provided for in Article 3 of Regulation (EC) No 883/2004.

Article 4

Equality of treatment

The principle of equality of treatment as laid down in Article 4 of Regulation (EC) No 883/2004 shall apply to the persons referred to in Article 2 of this Regulation, as regards ~~facts or events~~ **any situation** that has~~ve~~ occurred in the United Kingdom before ~~30 March 2019~~ **the date of application of this Regulation**.

Article 5

Assimilation and aggregation

1. The principle of assimilation as laid down in Article 5 of Regulation (EC) No 883/2004 shall apply as regards benefits or income acquired and facts or events that have occurred in the United Kingdom before ~~30 March 2019~~ **the date of application of this Regulation**.
2. The principle of aggregation as laid down in Article 6 of Regulation (EC) No 883/2004 shall apply as regards periods of insurance, employment, self-employment or residence in the United Kingdom before ~~30 March 2019~~ **the date of application of this Regulation**.
3. Any other provisions of the Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 necessary to give effect to the principles laid down under paragraphs 1 and 2 of this Article shall apply.

Article 5a

Relations of this Regulation and other coordination instruments

1. **This Regulation shall be without prejudice to the existing social security conventions and agreements between the United Kingdom and one or more Member States which are in compliance with Article 8 of Regulation (EC) No 883/2004 and Article 9 of Regulation (EC) No 987/2009.**
2. **This Regulation shall be without prejudice to social security conventions and agreements between the United Kingdom and one or more Member States concluded after the day on which the Treaties cease to apply to and in the United Kingdom pursuant to Article 50(3) of the Treaty on European Union and covering the period before the date of application of this Regulation, provided they give effect to the principles laid down in Article 5(1) and (2), apply the provisions referred to in Article 5(3) of this Regulation, are based on the principles of Regulation (EC) No 883/2004 and in keeping with the spirit thereof.**

Article 5b

Report

One year after date of application, the Commission shall submit to the European Parliament and the Council a report on the implementation of this Regulation. The report shall address, in particular, practical problems arising for the persons concerned, including those arising from the lack of continuity of the coordination of social security systems.

Article 6

Entry into force

This Regulation shall enter into force on the ~~twentieth~~ day following that of its publication in the *Official Journal of the European Union*.

It shall apply from the day following that on which the Treaties cease to apply to and in the United Kingdom pursuant to Article 50(3) of the Treaty on European Union.

However, this Regulation shall not apply if a withdrawal agreement concluded with the United Kingdom in accordance with Article 50(2) of the Treaty on European Union has entered into force by that date.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament

For the Council

The President

The President