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REPORT

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 1)
No. Cion doc.:	15642/16 + ADD1-ADD8
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 final 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 2017¹.

The Committee of Regions delivered its opinion at its session on 12-13 July 2017².

The Council adopted its general approach on 21 June 2018³.

The European Parliament adopted its negotiations mandate on 11 December 2018⁴.

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.

¹ <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/coordination-social-security-systems>

² <http://cor.europa.eu/en/activities/opinions/pages/opinion-factsheet.aspx?OpinionNumber=CDR%20849/2017>

³ ST 10295/18

⁴ P8_A(2018)0270

The Rapporteur for the lead Committee (EMPL) is Guillaume BALAS (FR/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.

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.
