



Council of the
European Union

127245/EU XXV. GP
Eingelangt am 16/12/16

Brussels, 16 December 2016
(OR. en)

Interinstitutional File:
2016/0397 (COD)

15642/16
ADD 1

SOC 812
EMPL 549
CODEC 1910

PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	15 December 2016
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2016) 815 final ANNEX 1
Subject:	ANNEX 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)

Delegations will find attached document COM(2016) 815 final ANNEX 1.

Encl.: COM(2016) 815 final ANNEX 1



EUROPEAN
COMMISSION

Strasbourg, 13.12.2016
COM(2016) 815 final

ANNEX 1

ANNEX

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)

{SWD(2016) 460 final}

{SWD(2016) 461 final}

1. Annex I is amended as follows:

(a) Part I is amended as follows:

- i. the section “SLOVAKIA” is replaced by the following:

“SLOVAKIA

The substitute child maintenance benefit (payment of child maintenance) under the Act No. 452/2004 Coll. of substitute child maintenance benefit as amended and supplemented in the Family Act No. 36/2005 Coll. as amended and supplemented by later regulations”;

- ii. The section “SWEDEN” is replaced by the following:

“SWEDEN

Maintenance support (Chapters 17-19 of the Social Insurance Code)”.

(b) Part II is amended as follows:

- i. the section “HUNGARY” is deleted;
- ii. the section “ROMANIA” is deleted;
- iii. a new section is added after the section "FINLAND" with the following content:

"SWEDEN

Adoption allowance (Chapter 21 of the Social Insurance Code (2001:110))"

2. In Annex II, the section "SPAIN-PORTUGAL" is deleted.

3. In Annex III, the sections "ESTONIA", "SPAIN", "CROATIA", "ITALY", "LITHUANIA", "HUNGARY", "NETHERLANDS", "FINLAND" and "SWEDEN" are deleted.

4. Annex IV is amended as follows:

- (a) the section “ESTONIA” is inserted after “GERMANY”;
- (b) the section “LITHUANIA” is inserted after "CYPRUS”;
- (c) the section “MALTA” is inserted after “HUNGARY”;
- (d) the section "PORTUGAL" is inserted after "POLAND”;
- (e) the section "ROMANIA" is inserted after "PORTUGAL”;
- (f) the section “SLOVAKIA” is inserted after “SLOVENIA”

- (g) the section "FINLAND" is inserted after "SLOVAKIA";
 - (h) the section "UNITED KINGDOM" is inserted after "SWEDEN".
5. Annex X is amended as follows:
- (a) the section "CZECH REPUBLIC" is deleted;
 - (b) in the section "GERMANY", paragraph (b) is replaced by the following:

“(b) Benefits to cover subsistence costs under the basic provision for jobseekers in accordance with Book II of the Social Code).”;
 - (c) in the section "ESTONIA":
 - i. paragraph (a) is deleted;
 - ii. in paragraph (b), "." is replaced by ";" and a new paragraph is added:

“(c) Funeral Benefit (State Funeral Benefits Act of 08 November 2000).”;
 - (d) in the section "HUNGARY", in paragraph (b) ";" is replaced by "." and paragraph (c) is deleted;
 - (e) the following section "ROMANIA" is inserted after the section "PORTUGAL":

"ROMANIA

Social allowance for pensioners (Government Emergency Ordinance No. 6/2009 establishing minimum guaranteed social pension, endorsed by Law No. 196/2009).";
 - (f) the section "SLOVENIA" is deleted;
 - (g) the section "SWEDEN" is replaced by:

"SWEDEN

 - (a) Housing supplements for persons receiving a pension (Chapters 99-103 of the Social Insurance Code);
 - (b) Maintenance support for the elderly (Chapter 74 of the Social Insurance Code).”;
 - (h) in the section "UNITED KINGDOM", "." at the end of paragraph (e) is replaced by ";" and the following paragraph is added:

"(f) Personal Independence Payment mobility component (in Great Britain legislation, Part 4 of The Welfare Reform Act 2012 and in Northern Ireland Legislation, Part 5 of the Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006 (N.I. 1)).”.
6. Annex XI is amended as follows:

- (a) In the section "CZECH REPUBLIC", the current paragraph is numbered paragraph "1." and a new paragraph is added after it with the following content:

"2. Notwithstanding Article 5 and 6 of this Regulation, for the purposes of granting the supplementary benefit in respect of insurance periods completed under the legislation of the former Czech and Slovak Federal Republic, solely the insurance periods completed under the Czech legislation can be taken into account in order to meet the condition of at least one year of Czech pension insurance within the defined period after the date of dissolution of the federation (§ 106a, paragraph 1, letter b) of Act No. 155/1995 Col., on pension insurance).";

- (b) In the section "GERMANY", paragraph 3 is replaced by the following:

"3. For the purpose of granting cash benefits under §47(1) of SGB V, §47(1) of SGB VII and § 24i of SGB V to insured persons who live in another Member State, German insurance schemes calculate net pay, which is used to assess benefits, as if the insured person lived in Germany, unless the insured person requests an assessment on the basis of the net pay which he actually receives. For the purpose of granting parental leave benefit under the Federal Parental Allowance and Parental Leave Act (BEEG) to persons living in another Member State, the competent institution for German parental leave benefit shall calculate the average monthly earned income under §§2c to 2f of the Act, which is used to assess benefits, as if the person lived in Germany. In doing so, if tax bracket IV is applicable under the second sentence of §2e(3) of BEEG because the beneficiary was not classified in any German tax bracket during the assessment period, he may request that the parental leave benefit be assessed on the basis of his actual net income taxed in the Member State of residence.";

- (c) In the section "ESTONIA", the current paragraph is numbered paragraph 1 and a new paragraph (2) is inserted:

"2. For the purpose of calculating *pro rata* work ability allowance in accordance with Article 52(1)(b) of this Regulation, the periods of residence completed in Estonia will be taken into account starting from the age of 16 until the contingency occurred.";

- (d) In the section "NETHERLANDS", the following paragraph is inserted after paragraph 1(f):

"(fa). Any person as referred to in Article 69(1) of the Zorgverzekeringswet (Health Care Insurance Act) who, on the last day of the month preceding that in which he/she reaches the age of 65, is receiving a pension or a benefit treated, on the basis of point (f) of this section, as a pension payable under Dutch legislation, shall be regarded as a pension claimant for the purposes of

Article 22 of this Regulation until he/she reaches the pension age referred to in Article 7a of the Algemene Ouderdomswet (General Old Age Pensions Act).";

- (e) The following section "SLOVAKIA" is inserted after the section "AUSTRIA":

"SLOVAKIA

Notwithstanding Article 5 and 6 of this Regulation, for the purposes of granting the supplementary benefit in respect of insurance periods completed under the legislation of the former Czech and Slovak Federal Republic, solely the insurance periods completed under the Slovak legislation can be taken into account in order to meet the condition of at least one year of Slovak pension insurance within the defined period after the date of dissolution of the federation (§ 69b, paragraph 1, letter b) of Act No. 461/2003 Col., on Social Insurance).";

- (f) In the section "SWEDEN":

- i. paragraphs 1 and 2 are deleted;
- ii. in paragraph 3, "(Act 2000:798)" is replaced by:

"(Chapter 6 of the Act on the Implementation of the Social Insurance Code concerning Chapters 53–74)";

- iii. in paragraph 4:

- in the heading, the reference to "Chapter 8 of the Lag (1996:381) om allmän försäkring (the National Insurance Act)" is replaced by "Chapter 34 of the Social Insurance Code";
- in paragraph (b), the reference to "Chapter 8, paragraphs 2 and 8 of the abovementioned Act", is replaced by "Chapter 34, Sections 3, 10 and 11 of the above-mentioned Act" and the reference to "the Act on income-based old-age pension (1998:674)" is replaced by "Chapter 59 of the Social Insurance Code";

- iv. in paragraph 5 (a), the reference to "(Act 2000:461)" is replaced by "(Chapter 82 of the Social Insurance Code)".

- (g) In the section "UNITED KINGDOM":

- i. paragraphs 1 and 2 are replaced by the following:

"1. Where, in accordance with United Kingdom legislation, a person who reached pensionable age before 6 April 2016 may be entitled to a retirement pension if:

(a) the contributions of a former spouse or civil partner are taken into account as if they were that person's own contributions; or

(b) the relevant contribution conditions are satisfied by that person's spouse, civil partner, former spouse or former civil partner, then provided, in each case, that the spouse or civil partner or former spouse or civil partner is or had been exercising an activity as an employed or self-employed person, and had been subject to the legislation of two or more Member States, the provisions of Chapter 5 of Title III of this Regulation shall apply in order to determine entitlement under United Kingdom legislation. In this case, references in the said Chapter 5 to 'periods of insurance' shall be construed as references to periods of insurance completed by:

(i) a spouse, civil partner, former spouse or former civil partner where a claim is made by:

- a married person or civil partner, or
- a person whose marriage or civil partnership has terminated otherwise than by the death of the spouse or civil partner; or

(ii) a former spouse or civil partner, where a claim is made by:

- a widow, widower or civil partner who immediately before pensionable age was not entitled to widowed parent's allowance, or
- a widow whose husband died before 9 April 2001 who immediately before pensionable age was not entitled to widowed mother's allowance, widowed parent's allowance or widow's pension, or who is only entitled to an age-related widow's pension calculated pursuant to Article 52(1)(b) of this Regulation, and for this purpose 'age-related widow's pension' means a widow's pension payable at a reduced rate in accordance with section 39(4) of the Social Security Contributions and Benefits Act 1992.

This point does not apply to persons who reach pensionable age on or after 6 April 2016.

2. For the purposes of applying Article 6 of this Regulation to the provisions governing entitlement to attendance allowance, carer's allowance, and disability living allowance and personal independence payment, a period of employment, self-employment or residence completed in the territory of a Member State other than the United Kingdom shall be taken into account in so far as is necessary to satisfy conditions as to required periods of presence in the United Kingdom, prior to the day on which entitlement to the benefit in question first arises."

ii. paragraph 4 is replaced by:

"4. Where Article 46 of this Regulation applies, if the person concerned suffers incapacity for work leading to invalidity while subject to the legislation of another Member State, the United Kingdom shall, for the purposes of Section 30A (5) of the Social Security Contributions and Benefits Act 1992, Part 1 of the Welfare Reform Act 2007 or the corresponding Northern Ireland provisions, take account of any

periods during which the person concerned has received, in respect of that incapacity for work:

- (i) cash sickness benefits or wages or salary in lieu thereof, or
- (ii) benefits within the meaning of Chapters 4 and 5 of Title III of this Regulation granted in respect of the invalidity which followed that incapacity for work, under the legislation of the other Member State,

as though they were periods of, as appropriate, short-term incapacity benefit paid in accordance with Sections 30A (1)-(4) of the Social Security Contributions and Benefits Act 1992, Employment and Support Allowance (Assessment phase) paid in accordance with Part 1 of the Welfare Reform Act 2007 or corresponding Northern Ireland provisions.

In applying this provision, account shall only be taken of periods during which the person would have been incapable of work within the meaning of the United Kingdom legislation."

7. After Annex XI, the following Annexes are inserted:

"ANNEX XII

**LONG-TERM CARE BENEFITS IN CASH PROVIDED IN DEROGATION
FROM ARTICLE 35A(1) OF CHAPTER 1A**

(Article 35a(3))";

"ANNEX XIII

**FAMILY BENEFITS IN CASH INTENDED TO REPLACE INCOME
DURING CHILD-RAISING PERIODS**

(Article 68b)".

**Part I Family benefits in cash which are intended to replace income during
periods of child-raising**

(Article 68b(1))

**Part II Member States which award family benefits referred in Article 65b(1) in
full**

(Article 68b(2))."