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Delegations will find attached document SWD(2016) 461 final.

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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

**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)

{ COM(2016) 815 final }
{ SWD(2016) 460 final }

Executive Summary Sheet

Impact assessment on initiative to partially revise Regulation (EC) No 883/2004 of the European Parliament and of the Council on the coordination of social security systems and its implementing Regulation (EC) No 987/2009

A. Need for action

Why? What is the problem being addressed?

The proposal concerns EU rules on coordination of social security on long-term care benefits; unemployment benefits; family benefits and access for economically inactive citizens to certain social benefits.

For **long-term care benefits**, three problems were identified: (i) Lack of clarity for citizens and institutions; (ii) Lack of clarity in legal framework; (iii) Risk of losing benefits, or double payments. As a result, the cross-border coordination of long-term care benefits does not function efficiently. 1.8 million insured persons live in a Member State other than the one where they are insured against sickness. Of these, 45.000 use in kind benefits and 35.000 use in cash benefits. The number of cross-border users of long-term care benefits will increase by 11% in 2020 in comparison to 2013 and by 28% in 2030.

For **unemployment benefits** the problems concern: (i) divergent application of aggregation rules by Member States (ii) low number of persons exporting their unemployment benefit (iii) the inconsistent treatment of unemployed persons who reside in a different State from their former State of Work (frontier workers and other cross-border workers); (iv) unsatisfactory reimbursement rules. The consequences are inefficient processing of unemployment benefits, uneven distribution of financial burden and potential barriers for unemployed persons reintegrating into the labour market. In 2014, there were an estimated 91,700 unemployed cross-border workers 53,800 of whom are frontier workers, approximately 25.000 aggregation cases and 27,300 cases of export were reported.

For **social benefits**, the recent judgments in Cases C-140/12 *Brey*, C-133/13 *Dano*; and C-308/14 *Commission v United Kingdom* clarified that Member States may choose to limit equal treatment for special non-contributory cash benefits and other social security benefits claimed by the economically inactive citizens to the extent permitted by the Free Movement Directive. This jurisprudence is not reflected in the Regulation leading to a lack of transparency. In 2014, there were an estimated 3.7 million economically inactive mobile EU citizens. Nearly 80% derive rights (residence rights and/or rights to benefits) from economically active family members and who are therefore entitled to equal treatment with the family members of national workers. The remaining 20% are affected by the current lack of clarity and transparency as regards their rights to claim benefits in their host state.

For export of **family benefits**, three problems were identified: i) perceptions of unfairness in the comparative purchasing power of exported family benefits ii) the risk that the rules reduce incentives for parents to work and share child-raising responsibilities; (iii) administrative difficulties in particular, awarding certain types of benefits on the basis of derived rights. This creates challenges for public authorities and has potentially negative consequences on families where one or both parents work in a different Member State to the State where their child resides. In 2013, on average 1% of child benefits were exported for 506 thousand children living in another Member State.

What is this initiative expected to achieve?

The overall objective is the modernisation by ensuring legal clarity, a fair and equitable distribution of the financial burden among the institutions of the Member States involved and administrative simplicity and enforceability of the rules.

The specific objectives for **long-term care benefits** are to:

- Establish an appropriate stable regime,
- Ensure even burden-sharing between Member States,
- Provide legal clarity and transparency for citizens, institutions and other stakeholders.

For **unemployment benefits** to:

- Ensure a uniform and consistent application of the aggregation and calculation rules that reflects the degree of integration of a worker in a Member State,
- Ensure mobile EU workers are protected when they seek and take up work in another Member State,

- Remove the distinction between frontier workers and other cross-border workers as regards the State in which they can claim the benefits, while promoting reintegration into the labour market,
- Ensure that the financial burden for unemployment benefits is distributed between Member States in proportion to the level of contributions or tax received and without a reimbursement mechanism,
- Provide for a systematic and easy to administer cooperation and control mechanism to monitor the fulfilment of rights and obligations by the unemployed person residing in a Member State other than the one paying the benefits.

For **social benefits** to:

- Ensure legal clarity and transparency on the rights of workers, jobseekers and economically inactive mobile EU citizens, including the extent to which Member States' social security institutions are permitted to limit the principle of equal treatment principle for access to social benefits.

For **family benefits** to:

- Ensure a clear and transparent link between the Member State issuing family benefits and the recipients,
- Minimize barriers or disincentives to parents' ongoing participation in the labour market,
- Ensure family benefits as processed as efficiently as possible.

What is the value added of action at the EU level?

Effective and efficient coordination needs to take account of changes in Member States' national social security and social changes. Action at EU level will ensure a uniform interpretation and protection of rights of mobile EU citizens and their family members that could not be achieved by Member States alone.

B. Solutions

What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?

For **long-term care benefits**, two legislative policy options (with 2 sub-options) were considered:

1. The competent Member State provides long-term care benefits in cash and reimburses the cost of benefits in kind provided by the Member State of residence (following the existing principles for sickness benefits with clarifications),
2. The Member State of residence provides all long-term care benefits with reimbursement by the competent Member State 2a) no supplement by the competent Member State 2b) with supplement.

Three options were discarded: (1) the introduction of a safeguarding provision, (2) making the residence State responsible for providing all long-term care benefits without reimbursement and (3) making the competent Member State responsible for providing all long-term care benefits (export).

Option 1 is the preferred option to ensure the stable application of the rules.

For **unemployment benefits**: Three legislative policy options were considered to ensure the uniform application of the **aggregation and calculation rules for unemployment benefits**:

1. Aggregation after only one day of employment,
2. Aggregation after a period of a) one or b) three months of employment,
3. Using reference earnings received in Member State of previous employment for the calculation of unemployment benefits after either a) one or b) three months of employment in the competent Member State,
4. horizontal option for the recognition of insurance periods for aggregation.

The preferred option 2b will be combined with an obligation for the Member State of previous employment to provide unemployment benefits where this condition is not fulfilled and the horizontal option. This will ensure a minimum level of integration in the host Member State before entitlement to claim unemployment benefits and a consistent approach by Member States. Further, mobile workers will be protected when they do not fulfil this period in the Member State of last activity.

Two legislative policy options were considered to extend the minimum period for an **export** of unemployment benefits:

1. Extending the minimum period for an export of unemployment benefits from three to six months with discretion to export the benefit for the whole period of entitlement,
2. Extending the period of export of unemployment benefit to the whole period of entitlement,

The preferred option is 1 combined with a reinforced cooperation mechanism between employment services

concerned to support cross-border job search.

Three legislative policy options were considered for unemployment benefits for **frontier and other cross-border workers**:

1. Providing a choice for frontier workers as to where to claim unemployment benefits in the same way as for other cross-border workers,
2. Making the State of last activity responsible for the payment of unemployment benefits with the sub-options of a) requiring frontier workers to register with the employment service of the responsible State or b) giving them a choice between registering with the employment service of the competent State or their State of residence,
3. Making the State of last activity responsible for the payment of unemployment benefits when the frontier worker worked there for at least 12 months and attributing otherwise the responsibility to the Member State of residence with the sub-options of a) requiring frontier workers to register with the employment service of the responsible State or b) giving them a choice between registering with the employment service of the competent State or the State of residence.

The preferred option 3a offers the best compromise as regards an equitable and administratively cost-effective burden sharing.

For **social benefits**, the options contemplated¹ have been legislative (amending the regulation):

1. a) Allowing a derogation to the equal treatment principle in Article 4 concerning social assistance only,
b) Allowing a derogation to the equal treatment principle in Article 4 concerning a wider array of tax financed benefits,
c) Allowing a precise derogation to the equal treatment principle concerning special non-contributory cash benefits in Article 70;
2. Removing special non-contributory cash benefits providing subsistence income from Regulation 883/2004,
3. A non-legislative (clarifying the rules through a communication) has also been considered.

In order to achieve the objective of ensuring legal clarity and transparency in the most efficient and effective way the preferred option is a combination of 1a and 1b.

For **family benefits**, as an alternative to the status quo, two legislative options were considered concerning the link between the level of family benefits received and costs incurred:

1. Indexation of exported family benefits to State of residence of the child a) upwards & downwards adjustment or b) downwards only,
2. State of residence has primary competence to pay family benefits.

The option of removing the obligation to export family benefits was considered but discarded for legal reasons.

In addition, a horizontal legislative option for coordinating child-raising allowances was considered. This has three variants a) individual rights for salary-related child-raising allowances with mandatory obligation for the secondary competent Member State to derogate from the anti-overlapping rules (i.e. pay the benefit in full), b) the same approach as (a) but for all child raising allowance (salary-related and flat rate) and c) the same approach as (b) but with an optional derogation from the anti-overlapping rules (i.e. a secondary competent state can either pay in full or pay a "top-up" only where its benefits are higher than the State with primary competence).

The preferred option is to maintain the status quo combined with horizontal option c. This combination ensures that primary responsibility for family benefits is retained by the Member State of economic activity where a parent pays taxes and social security contributions; this protects family members and upholds the best interests of the child. By introducing the horizontal option c, it is also possible to promote a balance between work and family life during periods of child-raising by placing a greater emphasis on individual rights and supporting those Member

¹ The CJEU ruling 308/14 *Commission v United Kingdom* has affected the impact assessment of alternative options. Following the judgment, Member States may make the access of economically inactive citizens both to social assistance and social security benefits subject to fulfilling the conditions of the Free Movement Directive. The situation is different for jobseeker whose right of residence is conferred directly by the Treaty on the Functioning of the European Union. As this report was approved by the Regulatory Scrutiny Board prior to this judgment, the authors have not substantially revised the options or the analysis of their impact, which does not reflect this differentiated treatment of economically inactive citizens and jobseekers.

States who are actively promoting greater gender balance without imposing this obligation

Who supports which option?

For **long-term care benefits**, the Baseline Scenario (status quo) was supported by eight Member States²; two opposed this option. Increasing social protection for vulnerable citizens was also highlighted as a concern by NGOs and citizens. Option 1 gained most support from the Member States (16 in favour – none opposed). No Member States supported Option 2.

For **unemployment benefits** the reaction of Member States, experts, social partners, NGO's and other stakeholders was mixed and, apart from the horizontal option, there was no clear majority in favour of any option. The majority of individual respondents to the public consultation favoured extending the export period for unemployment benefits and a right of choice for frontier workers.

For **social benefits**, 11 Member States supported amending Article 4 of Regulation 883/2004 to allow derogations for social assistance. Two Member States supported removing special non-contributory cash benefits from the Regulation. Four Member States favoured providing administrative guidance. Views from social partners were mixed some advocating stronger safeguards to protect social security systems from unreasonable burden others stressing the potential detrimental impacts on vulnerable citizens. As these measures constitute codification of case law it did not form part of the public consultation.

For **family benefits**, the baseline Scenario was supported by 17 out of 28 of Member States, NGOs and social partners representing workers were also in favour as was the majority of respondents in the public consultation. Option 1a and 1b received low support from Member States (four Member States were in favour of option a) and none for option b). Option 2 received support as first or second choice from 10 Member States, while the views of the NGOs, Social Partners and Public Consultation were mixed. The Horizontal Options were developed in direct response to feedback from 4 Member States, the Council, the Parliament, the social partners, the Advisory Committee on Equal Opportunities for Women and Men and other stakeholders on the need for more flexible working practices to support parents. As they were developed later in the consultation process, only informal consultation took place.

C. Impacts of the preferred option

What are the benefits of the preferred option (if any, otherwise main ones)?

Long-term care benefits

Option 1 brings greater legal certainty, transparency and stability of the regime. A separate Chapter categorising the rules for long-term care benefits will provide a clear distinction from the provisions on sickness benefits and social assistance. Citizens and institutions will benefit from this clarification. Implementation costs will be low as it does not drastically change the current system. By facilitating the comparison of benefits this option could reduce disputes between institutions and save time and money spent per case. It is also coherent with the objective of increasing protection of persons in need of long-term care.

Unemployment benefits

The preferred options ensure a stronger link between the competent institutions and the claimant. The proposal for frontier workers and the grant of a longer period of export are likely to facilitate labour market reintegration and thus have a positive impact on mobile workers; an overall positive impact is expected from the abolition of the reimbursement procedure. The extension of the export period will increase the chances for integration into the Labour Market, but have no direct economic impact, as the export period never exceeds underlying entitlement.

Social benefits

The preferred option will clarify the rights of EU mobile citizens and facilitate informed choices by citizens. It may reduce regulatory costs (litigation costs and costs on legal advice) and give greater visibility to the existing safeguards for the host Member State's welfare system, while preserving citizens' rights when exercising freedom of movement.

Family benefits

The impact of the baseline scenario is neutral. The horizontal option c may remove disincentives for working

² Member States opinions expressed in the Administrative Commission for social security coordination

parents to share child-raising responsibilities. Providing that benefits may only be awarded on the basis of individual entitlement will achieve a clear and transparent link between the Member State issuing the benefit and the recipient. It will also simplify procedures thereby decreasing regulatory costs for public authorities and reducing delays in processing claims.

No impact is foreseen in relation to the initiative concerning environmental issues.

What are the costs of the preferred option (if any, otherwise main ones)?

Long-term care benefits

Implementation costs are expected to be low and in the long term, it will save time and money spent per case by the Member States.

Unemployment benefits

The preferred option for the **aggregation of periods and the calculation of benefits** is unlikely to have a substantial overall effect on expenditure. Based on the current rules, minor overall savings can be expected (€ 29 m for the 23 reporting Member States).

An extension of the minimum **export period** of unemployment benefits from 3 to 6 months will have no direct economic impact, as the period of export never exceeds the period of underlying entitlement to unemployment benefits.

The preferred option for unemployment benefits for **frontier workers**, may lead to a slight increase of overall payments (€ 442 m instead of € 416 m under the baseline scenario).

Social benefits

As codification of existing case law, no significant costs are expected.

Family benefits

The impact of the baseline scenario is neutral. The horizontal option c may mean that some parents lose existing entitlement on the basis of derived rights however, in light of the low levels of compliance among Member States with the requirement to grant derived rights in relation to child-raising allowances the impact is expected to be limited. The horizontal option may also entail a negative economic impact as secondary competent Member States may pay more in benefits. However, Member States will have a choice as to whether or not to disapply the anti-accumulation rules therefore any economic impact will be voluntary. The optional nature of the derogation may reduce the beneficial impact of this change for working parents

No negative impact is foreseen in relation to the initiative concerning environmental issues.

How will businesses, SMEs and micro-enterprises be affected?

No direct impact is expected for businesses, SMEs and micro-enterprises.

Will there be significant impacts on national budgets and administrations?

Long-term care benefits:

N/A

Unemployment benefits:

N/A

Social benefits:

N/A

Family Benefits:

Horizontal options c may increase expenditure by the secondary competent Member State of on average 60%, however, Member States will have a choice as to whether or not to disapply the anti-overlapping rules.

Will there be other significant impacts?

Long-term care benefits

The new rules will contribute to a smoother coordination of long-term care benefits and hence to freedom of movement and residence. They will ensure that citizens, with care-needs are not disadvantaged in exercising

their right to free movement within the EU.

Social benefits:

The option gives greater visibility to the existing safeguards in EU law to prevent economically inactive Union citizens from using the host Member State's welfare system to fund their means of subsistence.

Unemployment benefits

The extension of the period of export will allow job seekers to make better use of the European labour market.

Family benefits

The horizontal options offer superior protection to fundamental rights in relation to the rights of the family (Article 33(2)) to reconcile family and professional life.

D. Follow up

When will the policy be reviewed?

The implementation progress of the revision will be evaluated by the Commission 5 years after the application of the revised legal framework.