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COUNCIL OF THE EUROPEAN UNION
(Employment, Social Policy, Health and Consumer Affairs)

21 and 22 June 2018

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MEETING ON THURSDAY 21 JUNE 2018 (9:30)

1. Adoption of the agenda

The Council adopted the agenda set out in 9866/18.

2. Approval of "A" items

a) Non-legislative list

10005/18

The Council adopted the "A" items listed in 10005/18 including COR and REV documents presented for adoption. A statement related to these items is set out in the Annex.

b) Legislative list (Public deliberation in accordance with Article 16(8) of the Treaty on European Union)

10006/18

Employment and Social Policy

1. **Revision of Directive 96/71 on Posting of Workers**



9383/18 + ADD 1
PE-CONS 18/18
SOC

Adoption of the legislative act

approved by Coreper, Part 1, 20.06.2018

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, with Lithuania, Latvia, Croatia and United Kingdom abstaining and Hungary and Poland voting against, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 53(1) and Article 62 TFEU).

Statements related to this item are set out in the Annex.

Internal Market and Industry

2. **Directive on a proportionality test before adoption of new regulation of professions**



10061/18
PE-CONS 19/18
COMPET

Adoption of the legislative act

approved by Coreper, Part 1, 20.06.2018

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, pursuant to Article 294(4) of the Treaty on the Functioning of the European Union. (Legal basis: Article 46, Article 53(1) and Article 62 TFEU).

EMPLOYMENT AND SOCIAL POLICY

Legislative deliberations

(Public deliberation in accordance with Article 16(8) of the Treaty on European Union)

3. **Revision of Regulations on coordination of social security systems (883/04 and 987/09)**  10052/18
15642/16 + ADD 1
+ ADD 1 REV 1
General approach

The Council reached a general approach as set out in 10295/18.

A number of delegations submitted statements to the Council minutes as set out in the Annex (Joint statement by AT, BE, CY, DE, DK, LU, MT and NL; Joint statement by AT and DK; by PL, DE and SK; Joint statement by FI, LV, SE and UK).

4. **Directive on transparent and predictable working conditions**  10054/18
16018/17
General approach

The Council reached a general approach as set out in 10299/18.

Several delegations (EE, DE, AT and SE, as well as the Commission) submitted statements to the Council minutes as set out in the Annex.

Non-legislative activities

5. **European Semester 2018**  10015/18 + COR 1
Policy debate

- a) **Recommendations on the 2018 National Reform Programmes to each Member State**  10023/18
9454/18
9512/18 + COR 1
Approval

The Council approved the employment and social policy related aspects of the country specific recommendations. HU transmitted a statement as set out in the Annex.

- b) **Assessment of the 2018 Country-specific Recommendations (CSRs) and the implementation of the 2017 CSRs: Opinions of the EMCO and the SPC Committees**
Endorsement

 9931/18

The Council endorsed the opinions of EMCO and SPC.

- c) **Council Decision on Guidelines for the employment policies of the Member States (Legal basis proposed by the Commission: Article 148(2) TFEU)**
Political agreement

 10088/18
 14805/17 + ADD 1

The Council reached a political agreement on the Employment Guidelines (10088/18).

HU submitted a statement to the Council minutes as set out in the Annex.

Adoption will follow after the lawyer-linguist revision of the text.

Legislative deliberations

(Public deliberation in accordance with Article 16(8) of the Treaty on European Union)

6. **Regulation on establishing a European Labour Authority**
Progress report

  9659/18
7203/18

The Council took note of the progress report as set out in 9659/18.

7. **Directive on work-life balance**
General approach

  10055/18
8633/17 + ADD 1

The Council reached a general approach as set out in 10291/18.

ES submitted a statement to the Council minutes as set out in the Annex.

8. **Directive on equal treatment (Art. 19)**
Progress report

  9734/18
11531/08

The Council took note of the progress report as set out in 9734/18.

Non-legislative activities

9. Conclusions on the future of work: A lifecycle approach

Adoption

 10057/18

The Council adopted the conclusions as set out in 10134/18.

10. Conclusions on the "Free Movement of Workers - the fundamental freedom ensured but better targeting of EU funds would aid worker mobility" (CoA SR No 6/2018)

Adoption

 9497/18

The Council adopted the Conclusions as set out in 10301/18.

11. Conclusions on integrated early childhood development policies as a tool for reducing poverty and promoting social inclusion

Adoption

 9724/18 + COR 1
+ COR 2

The Council adopted the Conclusions as set out in 10306/18.

12. 2018 Pension Adequacy Report: Key conclusions on the Joint SPC and Commission report

Endorsement

 9523/18 + ADD 1
+ ADD 2

The Council endorsed the key conclusions on the 2018 Pension Adequacy Report.

Any other business

13. a) **European Social Fund Plus (ESF+) and European Globalisation Adjustment Fund (EGF)** 
Information from the Commission

The Council took note of the information provided by the Commission.

- b) **Current files**
- i) **Legislative proposals** 
(Public deliberation in accordance with Article 16(8) of the Treaty on European Union)
- ii) **Non-legislative proposals** 
Information from the Presidency on the state of play

The Council took note of the information provided by the Presidency.

- c) **Transitional arrangements regarding the free movement of workers from Croatia**  10043/18
Information from the Commission

The Council took note of the information provided by the Commission.

- d) **Recent international developments in the field of employment and social policy** 
Information from the Commission

The Council took note of the information provided by the Commission.

- e) **Work programme of the incoming Presidency** 
Information from the Austrian delegation

The Council took note of the oral information provided by the incoming Austrian Presidency.

MEETING ON FRIDAY 22 JUNE 2018

HEALTH

Legislative deliberations

(Public deliberation in accordance with Article 16(8) of the Treaty on European Union)

14. **Regulation on health technology assessment**  9805/18
Policy debate 5844/18

The Council held a policy debate providing guidance for the continued examination of the proposal by its preparatory bodies.

Non-legislative activities

15. **The future of health in the EU**  9798/18
Policy debate

The Council held a policy debate on the future of health in the EU.

16. **Conclusions on "Healthy nutrition for children: The healthy future of Europe"**  9796/18
Adoption

The Council adopted the conclusions as set out in 9796/18 and decided to have them published in the Official Journal of the European Union.

Any other business

17. a) **Current legislative proposals**
(Public deliberation in accordance with Article 16(8) of the Treaty on European Union)



- i) **Public health aspects related to the manufacturing waivers of supplementary protection certificate (SPC) for medicinal products**

10187/18
9485/18

Information from the Hungarian delegation

The Council took note of the information provided by the HU delegation and of interventions by the DK, EL, IT, NL, PL, PT, RO and SK delegations and of the Commission.

- ii) **Regulation amending Regulation (EC) No 726/2004 as part of the Veterinary Medicines Package**

13240/14

Oral information from the Presidency

The Council took note of the oral information provided by the Presidency and of an intervention by the Commission.

- b) **Communication on strengthened cooperation against vaccine preventable diseases**
Recommendation on strengthened cooperation against vaccine preventable diseases



8676/18 + ADD 1
8679/18

Presentation by the Commission

The Council took note of the information provided by the Commission and of an intervention by the PL delegation.

- c) **Communication on enabling the digital transformation of health and care in the Digital Single Market**



6451/18

Information from the Commission

The Council took note of the information provided by the Commission and of interventions by the DE, EE and FR delegations.

d) **Outcomes of conferences organised by the Bulgarian Presidency**

 10186/18

Information from the Presidency

The Council took note of the information provided by the Presidency and of an intervention by the Commission.

e) **Work programme of the incoming Presidency**



Information from the Austrian delegation

The Council took note of the oral information provided by the incoming Austrian Presidency and of an intervention by the Commission.



First reading



Special legislative procedure



Public debate proposed by the Presidency (Article 8(2) of the Council's Rules of Procedure)



Item based on a Commission proposal

Statements to the discussion items set out in 9866/18

Ad "B" item 3: **Revision of Regulations on coordination of social security systems**
(883/04 and 987/09)
General approach

**JOINT STATEMENT BY BELGIUM, DENMARK, GERMANY, CYPRUS,
LUXEMBOURG, MALTA, NETHERLANDS AND AUSTRIA**

"With this joint declaration Belgium, Denmark, Germany, Cyprus, Luxembourg, Malta, Netherlands and Austria wish to express our grave concerns regarding the general approach of the Council reached on EPSCO June 21, 2018 on the revision of the Unemployment Benefits Chapter in Regulations (EC) No 883/2004 and 987/2009, particularly regarding the aggregation of periods, cross-border and frontier workers and transitional periods. We find the agreed text unbalanced. The goal of fair burden sharing is in our opinion not achieved. Our unemployment benefit schemes are now less protected and the main purpose of unemployment schemes to get unemployed persons as quickly as possible back to work could be endangered.

We believe that a closer connection with the Member State of last activity should exist in the aggregation situation, and that it is essential that the mobile worker has established a genuine link with the labour market of the Member State of last activity before receiving unemployment benefits. We believe that the proposal for increasing the period of prior affiliation with the Member State of last activity has not been adequately addressed. The European Commission's proposal on the requirement of a minimum qualifying period of an uninterrupted period of at least three months' insurance, employment or self-employment in the Member State of last activity has been reduced to one month thus creating greater disparity between the positions of the different Member States. A period of one month of insurance, employment or self-employment is not sufficient to establish a genuine connection to the labour market in the Member State of last activity. In the spirit of compromise a period of 3 months may be considered a step in the right direction. The Member State of last insurance should have the right to forego the 3 months condition, and apply aggregation for the unemployed person and provide unemployment benefits in accordance with its national legislation.

As regards cross-border and frontier workers, we would like to stress that the unemployment benefit is not a regular wage loss benefit. In principle, it provides a replacement income, with the emphasis on getting the unemployed person back to work as quickly as possible. We are of the opinion that the employment services in the Member State of residence have better prerequisites for and possibilities of assisting the unemployed in finding a new job and of ensuring that the conditions for receiving unemployment benefits are actually complied with. For the system to work, the incentives must be in the right place: payment of the benefit and control and activation measures should go hand in hand. While changes in the unemployment chapter should focus on improving the existing regulatory framework by stimulating cross-border cooperation between Member States to achieve work resumption, the Presidency's proposal switches the competence for the payment of the benefit from the Member State of residence to the Member State of last employment. The proposal thereby insufficiently reflects the special nature of unemployment benefits and ignores the fact that work resumption is a key issue that needs to be addressed.

On this basis, the Member States signing this declaration are of the opinion that the competence for cross-border and frontier workers should remain unchanged, namely that the Member State of residence should remain the competent Member State to provide unemployment benefits. If the existing reimbursement mechanism is perceived as a problem by some Member States, then work should focus on reimbursement to achieve a better solution.

Furthermore, a shift of competence regarding cross-border and frontier workers will trigger disproportionate administrative burdens and have significant financial impacts on national systems, as entire processes and work-streams would have to be fundamentally overhauled. It is also essential to stress notable differences in the cross-border components of their labour markets.

For these reasons, we cannot agree to the modifications proposed by the Presidency. Our compromise proposals have not been accepted. In addition, we are of the opinion that these modifications require significant and lengthy preparatory work at the level of national administrations. This would mean that the transitional period for the unemployment benefits chapter has to allow for sufficient time to account for the implementation of appropriate processes. We find that seven years is an appropriate period to ensure a well-functioning implementation."

STATEMENT BY DENMARK AND AUSTRIA

"Denmark and Austria fully support the free movement of workers in the European Union. We welcome workers from all parts of the European Union and appreciate their contribution to our society. Many EU-citizens have chosen to settle in Denmark and Austria with their family where they enjoy access to social security coverage.

For the Danish and Austrian government it is important to maintain public support to the EU and to the free movement of workers. We risk undermining public support if the rules on free movement are not logical and reasonable. It is reasonable and logic that people living in Denmark or in Austria with their family receive the same benefits as Danish and Austrian citizens living with their family here. It is not reasonable and logic that people working in Denmark or Austria with family members in other Member States receive full family benefits even if costs of living are much lower in the state of residence.

In many Member States the amount of family benefits paid depends on the income of the parents. This means that those parents who earn more and who pay higher taxes receive lower family benefits or do not receive any family benefits at all, while those who pay lower taxes are eligible to receive family benefits in full. The consequence of having income thresholds for family benefits in some Member States is that those Member States which do not have income thresholds in their legislation end up paying the full amount of family benefits to citizens from other Member States, rather than only a differential supplement.

We therefore firmly believe that it is fully in line with the principle of free movement to adjust family benefits with the cost of living in the Member State of residence of the children.

The anomalies outlined above are inconsistent with the rules of the regulation and should be solved at the European level in order to create a coherent European coordination framework and ensure the credibility of the EU. It is clear that this "double unfairness" was definitely not intended by the European legislator when the coordination rules for family benefits were originally formulated.

Therefore, Denmark and Austria cannot accept the general approach that does not reform the coordination rules for family benefits."

STATEMENT BY POLAND

"Poland, accepting a "package approach" and drawing on an objective analysis of the positive and negative consequences of each of the negotiated chapters, supports the draft amendment of Regulations 883/2004 and 987/2009 in the spirit of compromise.

Nevertheless, Poland requests to note that in the area of applicable legislation the approved draft contains a number of adverse and problematic solutions. These are in particular:

extension of the replacement ban of a posted employed person and a posted self-employed person (Article 12 of Regulation 883/2004), retroactive effect of erroneous issue of the A1 document (Article 19a paragraph 2 of Regulation 987/2009), and inadequate, in particular to the realities of international transport, definition of the concept of „registered office or place of business" (Article 14(5a) of the Regulation 987/2009).

Moreover, the effects of these solutions have not been reliably assessed. It has not been demonstrated in any way how the proposed changes would be translated into the fight against frauds and errors in the area of social security, nor an analysis has been carried out of what would be the long-term consequences of the new provisions for employees, small and medium enterprises and social security institutions.

Poland is deeply convinced that the common interest of all European Union Member States is both the fight against unfair and illegal practices in the field of the applicable legislation and the protection of the rights of migrant workers. However, it is necessary to strike a balance in implementing these objectives. In the opinion of Poland, the proposed solutions do not fully meet this requirement."

STATEMENT BY GERMANY

"Germany appreciates the efforts made by the Bulgarian and previous presidencies regarding the draft amendments to the coordination regulations.

The general approach significantly improves many aspects of the initial Commission proposal. Germany has already supported the partial approaches on equal treatment, applicable legislation, family benefits and long-term care and continues to do so. Germany also consents to the approach with regard to the miscellaneous provisions.

However, Germany cannot agree to the position of the Council regarding the provisions on unemployment benefits. In addition to the reasons outlined in the Joint Declaration made together with Austria, Belgium, Cyprus, Denmark, Luxembourg, Malta and the Netherlands, Germany would like to point out that the Council's approach may also lead to considerable gaps of protection for Union citizens and thus cannot be regarded as promoting free movement.

Finally, Germany holds the view that Member States should be given the possibility to adapt the amount of the benefit for children living in another Member State to the costs of living in that Member State. Germany therefore regrets that the general approach lacks an adequate discussion of this subject.

To conclude, as these negative aspects prevail over the positive achievements, Germany cannot support the general approach."

STATEMENT BY THE SLOVAK REPUBLIC

"The Slovak Republic appreciates the work done by the Maltese, Estonian and Bulgarian Presidency on the revision of the social security coordination rules. The Slovak Republic reaffirms the importance of the modernised and simplified legal framework on the coordination of the social security systems.

The Slovak Republic reiterates its concerns on the possible adverse implications of the changes in the family benefits chapters on mobile workers and their families. Particularly, the limitation of the derived right to certain family benefits is capable of having negative impact on the income of mobile workers' families. The detailed justification of the Slovak position is contained in the Declaration of the Slovak Republic to the minutes of the Council from December 7, 2017.

Despite the changes in the family benefits chapter, the Council position on the whole revision contains undoubtedly many positive elements with the potential to improve the functioning of the currently applicable legal regime. Moreover, the Slovak Republic recognizes the need to proceed with the negotiations on the whole revision.

The Slovak Republic therefore supports Council's General Approach on the whole revision of the Regulations on the coordination of social security systems (883/04 and 987/09)."

JOINT STATEMENT OF FINLAND, LATVIA, SWEDEN AND THE UNITED KINGDOM

"Finland, Latvia, Sweden and the United Kingdom can accept this general approach, agree with the Commission and the Presidency that the amended provisions regarding long-term care benefits do not entail any change in the scope of the Regulation and thank the Estonian Presidency for all the work done to clarify these provisions during their Presidency.

Accordingly, the amended provisions are corresponding to the scope in, Finland's, Latvia's Sweden's and the United Kingdom's declaration on the scope of this Regulation pursuant to Article 9 of Regulation (EC) No 883/2004."

Ad "B" item 4: **Directive on transparent and predictable working conditions** *General approach*

STATEMENT BY ESTONIA

"Proposal for a directive on transparent and predictable working conditions lays down new aspects for the protection of workers. While Estonia agrees with the overall aim of the proposal to provide additional protection to workers, we also believe that there is a strong need to enable enough flexibility for Member States, allowing them, when transposing the directive, to take into account the different systems and practices of Member States, especially the fact that their systems provide more protection to workers.

Estonian national legislation already fulfils or exceeds the level of protection required by the proposal.

Estonia agrees with the necessity and importance of providing protection from dismissal for workers.

Estonian legislation recognizes only limited grounds for dismissal, stated by law. The employer has the obligation to justify the cancellation of the employment contract and during the labour dispute, the employer has to prove that grounds for dismissal were correct and justified. Estonia strongly opposes the idea of considering employer in every case to act by mala fide, abusing the limits of the labour law.

This derives from paragraphs 3 to 6 of article 17, which assume that the employer has disregarded the restrictions while dismissing the employee. Estonian labour law is based on a different assumption, providing more protection and a more positive approach.

Thereby Estonia does not agree with the obligation imposed by paragraphs 3 to 6 of article 17, as specificities regarding the burden of proof in case of dismissal should be left for Member States to decide and regulate. Estonia's support for the overall proposal does not constitute an acceptance with before mentioned provisions."

STATEMENT BY THE FEDERAL REPUBLIC OF GERMANY

"The Federal Republic of Germany appreciates the effort made by the Bulgarian Presidency on the proposal for a Directive of the European Parliament and of the Council on transparent and predictable working conditions in the European Union. The Federal Republic of Germany stresses that it supports the objective of the proposal to improve the working conditions in the European Union.

In that context, the Federal Republic of Germany would like to point out that it is of the opinion that the German law already complies with the requirements laid down in Article 17(2). In the negotiations of the Working Party on Social Questions, the Commission indicated that the employer might also provide the grounds for the dismissal pursuant to Article 17(2) in a legal proceeding. Article 17(2) does not require to present the grounds before a court.

According to the German Protection Against Dismissal Act (Kündigungsschutzgesetz), which is applicable in enterprises with at least 10 employees, the termination of an employment relationship is only justified in explicitly specified cases. Thus, a dismissal based on other grounds is not allowed. From the point of view of the Federal Republic of Germany, the level of protection provided by the German Protection Against Dismissal Act hence stipulates an even higher standard than required by Article 17(2).

In addition to that, the German law lays down rules of protection against adverse treatment or consequences (prohibition of victimisation). Thus, German law already prohibits dismissals as a consequence of workers having exercised their rights. In the case of dismissal, the worker can initiate legal proceedings claiming that the dismissal is not justified by any of the grounds laid down in the German Protection Against Dismissal Act or that it does not comply with the rules of protection against adverse treatment or consequences.

Therefore, the Federal Republic of Germany is of the opinion that the rules the German law provides for the protection against dismissal, contain provisions that, in parts, are more favourable for workers than those laid down in the Directive and that the Federal Republic of Germany is hence not required to additionally implement the less protective provisions."

STATEMENT BY AUSTRIA

"Austria agrees with the overall aim of the proposal to improve working conditions by promoting more secure and predictable employment while ensuring labour market adaptability.

But Austria also sees a strong need to provide enough flexibility for Member States and to allow them, when transposing the directive, to take into account their different systems and practices.

Austrian legislation provides for a high level of protection and even exceeds the level of protection required by the proposal in certain aspects.

As regards Art. 17 concerning protection from dismissal and burden of proof Austria cannot agree with this proposal as it interferes strongly with our well established dismissal system and does not leave enough flexibility for Member States."

STATEMENT BY SWEDEN

"Sweden can support the general approach, but would like the following remark on article 12 to be taken into consideration in the continued process.

Sweden considers that it would be beneficial if article 12 clearly expressed respect for national labour law models and recognized the role of the social partners and their autonomy when it comes to regulating working conditions through collective agreements with respect to the Treaties.

Consequently, Sweden would like to recall that the Interinstitutional Proclamation on the European Pillar of Social Rights states that it is necessary to respect the social partners' autonomy and their right to negotiate and conclude collective agreements at the appropriate level and to ensure that the social partners are encouraged to negotiate and conclude collective agreements in matters relevant to them."

STATEMENT BY THE COMMISSION

"The Commission confirms that directives adopted under Article 153(2) TFEU establish minimum requirements. Where a Member State's legal order contains provisions, which are more favourable to workers than those laid down in such directive, that Member State is thus not required to additionally implement the less protective provisions of that directive."

STATEMENT BY HUNGARY

"While Hungary is firmly committed to fight corruption, it has to be stressed that statements in the recommendations with regard to the functioning of the Hungarian national prosecution are not sufficiently justified.

The recommendation on prosecutorial efforts is underpinned only by a statement in the recital on the absence of focus on starting investigations into high-level cases. Nevertheless, this allegation is not supported by any objective statistical figure or any other evidence, only by statistics at the perception level (cited by the country report) which is however misleading as they concern sanctions instead of starting investigations. It should also be noted that perception surveys contain several other statistical data from which different conclusions could be drawn. Furthermore, legal definition of high-level corruption is more than uncertain and differs from what is commonly understood by this concept in the general public.

Notwithstanding the ongoing establishment of the European Public Prosecutor's Office in an enhanced cooperation by a number of Member States, prosecution constitutes an important part of national sovereignty and remains to be part of national competence. The decision of a Member State not to take part in the new European body shall be respected by the institutions of the European Union and shall not be challenged by recommendations aiming to touch upon its national prosecutorial activities.

With regard to the foregoing, Hungary regrets that the recommendations include these vague statements on Hungarian prosecution, and the Hungarian Government believes that such practice should be avoided as it undermines trust in EU instruments and institutions."

STATEMENT BY HUNGARY

"Hungary is strongly committed to work towards a prosperous, sustainable and social Europe as it was confirmed by Heads of States and Governments in Rome. In the Rome Declaration it was agreed to continue efforts to further develop a Union that is based on sustainable growth, promotes economic and social progress, cohesion and convergence, while upholding the integrity of the internal market and fully respecting the division of competences laid down in the Treaties.

Hungary would also like to remind about the conclusions of the European Council. On 14 December 2017 the European Council recalled the Social Summit in Gothenburg and highlighted that implementing the European Pillar of Social Rights at Union and Member State level, with due regard to their respective competences should be taken forward. On 22-23 March 2018 the European Council reconfirmed that 'Delivering on the European Pillar of Social Rights is a shared political commitment and responsibility of the EU and its Member States. Its implementation will be monitored with due regard to the respective competences of the Union and Member States.'

Hungary also recalls Article 148 of the Treaty on the Functioning of the European Union (TFEU) declaring that the Guidelines for the Employment Policies of the Member States shall be consistent with the broad guidelines adopted pursuant to Article 121 (2) of the TFEU.

In this context, Hungary is of the opinion that in order to reach our common goals on improving the well-being of our society several tools – Including but not solely the European Semester or the Social Pillar – could be used. At the same time, we have concerns on the implementation of the Social Pillar through the European Semester process. We believe that the European Semester should focus on the progress aiming at achieving our common goals and its results and should not concentrate on defining concrete instruments and tools to be applied by the Member States. It should also serve the monitoring of steps taken for this direction but it should leave enough room for manoeuvre of the Member States to implement their own policy measures.

The Social Pillar is a political guidance that expresses principles and rights and for them to be legally enforceable, they require dedicated measures or legislation to be adopted at the appropriate level. The Interinstitutional Proclamation underlines that the Social Pillar should be implemented taking due account of different socio-economic environments and the diversity of national systems, including the role of social partners, and in accordance with the principles of subsidiarity and proportionality. Furthermore they are understood within the Union's competences laid down in the Treaties and therefore, does not affect the right of the Member States to define the fundamental principles of their social protection systems and manage their public finances, and must not significantly affect the financial equilibrium thereof.

Hungary believes that we need a strong Europe where economic, employment, social and competitiveness aspects are mutually reinforcing. The Hungarian Government follows this path. We are convinced that economic prosperity provides the fundamental basis of social wellbeing while we have to operate our social models that are functioning, meaningful and financially sustainable."

STATEMENT BY SPAIN

"Spain considers it necessary to act at European level to establish common legislation on family-related leave.

The Proposal for a Directive on work-life balance is a highly appropriate instrument by which to contribute towards greater effective equality between men and women, to achieve joint responsibility for family care, and to reconcile work and private life. Spain fully shares its objectives.

The Directive to be discussed at today's EPSCO Council meeting is a step forward because it introduces into labour relations the right to work-life balance measures and establishes—for the first time—paid paternity and parental leave. The focus on the role of fathers deserves to be acknowledged, since this is a key factor.

However, despite this progress, Spain considers that more should have been done in the negotiation of the Proposal to preserve certain minimums guaranteeing the key aspects for an effective contribution to greater equality.

Spain is convinced that EU policies on work-life balance must be designed on the basis of common principles such as:

- Full compensation for the economic losses of women or men who take care of their children during their earliest stages of infancy. This entails ensuring a high level of pay on leave.
- The non-transferability of leave, to ensure balanced use.
- The design of leave to encourage equal use and for as similar a time period as possible, so that the period for which women are absent from the job market is reduced to a minimum compared with that of men, which should have a positive effect on their employment situation.

Achieving this objective through EU policies is a complex task due to the diversity of models across the European Union. A certain degree of flexibility is therefore needed to accommodate different models of protection, especially those that comply with the above principles.

Finally, it must be feasible for the Member States to assume the obligations arising from the Directive, and a sustainable introduction of these new rights must be facilitated."

◦ ◦

Statements to the non-legislative "A" items set out in 10005/18

Ad "A" item 2: **Commission Regulation (EU) .../... of XXX amending Regulation (EU) No 873/2012 on transitional measures concerning the Union list of flavourings and source materials set out in Annex I to Regulation (EC) No 1334/2008 of the European Parliament and of the Council as regards the extension of the transition period of Article 4 concerning the flavouring 'grill flavour concentrate (vegetable)' FL no. 21.002**
Decision not to oppose adoption

STATEMENT BY THE UNITED KINGDOM

"The UK is disappointed that the proposed measure provides for the extension of the transitional period for one grill flavouring only ('grill flavour concentrate (vegetable)' FL no. 21.002) and does not cover the other two grill flavourings for which applications were submitted (i.e. Grillin' 5078 FL no 21.003 and Grillin' CB-200SF FL No 21.004).

Both Grillin' flavourings (FL No 21.003 and 21.004) are the subject of equivocal EFSA opinions resulting from a lack of data and in the UK's view, do not as such provide sufficient justification for risk management action. Their exclusion from this proposal of will result in the removal of products from the market despite no proven safety concerns. This is an undesirable precedent as further scientific studies are being undertaken by the applicant which would enable for a more thorough assessment of their safety to be made.

In accordance with the objectives of the flavouring legislation (Regulation (EC) No 1334/2008) the UK considers that it would have been more appropriate to extend the transitional period set out in Article 4 of Regulation (EU) No 873/2012 for all three grill flavourings until such time that a more robust assessment of their safety can be carried out and subsequent risk management measures become justifiable. This approach would have ensured a consistent treatment of the three grill flavouring applications."

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Ad "A" item 1: **Revision of Directive 96/71 on Posting of Workers**
Adoption of the legislative act

STATEMENT BY THE COMMISSION

"Article 3(7), second subparagraph, of Directive 96/71/EC as amended by the Directive adopted today, lays down that allowances specific to the posting shall be considered to be part of remuneration, unless they are paid in reimbursement of expenditure actually incurred on account of the posting, such as expenditure on travel, board and lodging. It also provides that "[t]he employer shall, without prejudice to point (h) of the first subparagraph of paragraph 1, reimburse the posted worker for such expenditure in accordance with the national law and/or practice applicable to the employment relationship".

The Commission understands that the "national law and/or practice applicable to the employment relationship" is in principle the national law and /or practice of the home Member State, unless otherwise determined in accordance with EU rules on private international law. In the light of the Court's judgment in Case C-396/13 (paragraph 59), reimbursement also covers the situation where the employer defrays costs of the workers without the latter having first to pay them and then seek to have them reimbursed.

The Commission notes that the Directive adopted today foresees that, because of the highly mobile nature of work in international road transport, the revised rules on posting will apply to that sector only from the date of application of a legislative act amending Directive 2006/22/EC as regards enforcement requirements and laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EC for posting drivers in the road transport sector.

The Commission calls on the European Parliament and the Council to adopt that act swiftly in order to adapt the rules to the specific needs of posted workers in the sector while ensuring proper functioning of the internal road transport market.

Until the date of application of the sector-specific legislative act, Directive 96/71/EC and Directive 2014/67/EU remain in force in road transport. These legislative acts do not apply to road transport operations which do not constitute posting.

The Commission will continue to closely monitor the proper enforcement of the current rules in particular in the road transport sector and where appropriate take action."

STATEMENT BY CROATIA, LATVIA AND LITHUANIA

"Croatia, Latvia and Lithuania support the aim to improve the situation of posted workers. However, despite some improvements that have now been included in the *proposal for a Directive of the European Parliament and of the Council amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of service*, we consider that the text has not reached the right balance between the protection of workers and the freedom to provide services.

In addition to the concerns expressed in the statement annexed to the *minutes of the 3569th meeting of the Council of the European Union (Employment, Social Policy, Health and Consumer Affairs), held in Luxembourg on 23 October 2017*, on the concept of remuneration, the impact on competitiveness as well as potential adverse consequences of this proposal, we believe that the compromise text with the European Parliament contains several provisions which exceed the scope of the directive and cause legal uncertainty and consequently might lead to a restriction of freedom to provide cross-border services within the European Union.

Besides, we are of the opinion that the transposition period of 2 years without a proper transitional period fails to acknowledge the practical implications of adaptation to a substantially new set of rules, especially for SMEs."

STATEMENT BY THE CZECH REPUBLIC, SLOVAKIA AND PORTUGAL

"The EPSCO Council, in its General Approach reached in October 2017 recognised that sufficient time was necessary for adaptation of companies (especially SMEs) to the new rules for posted workers (particularly to the newly introduced concept of remuneration) and agreed on 4 years of deferred applicability of the revised Directive. This was also accepted by the European Commission.

Being aware of the concessions that the co-legislators made in the process of negotiations, the final compromise reached in the trilogues resulted, regrettably, in a significant shortening of the period of deferred applicability to mere 2 years, making it identical with the period for transposition of the Directive.

In this respect, the Czech Republic, Slovakia, Portugal call on the Member States and the European Commission to take these circumstances (as well as the complexity of the issues that this revision aims to introduce) duly into consideration when making assessment if the new rules on posting of workers are observed and complied with and what sanctions are proportionate, primarily during the initial period after the revised Directive enters into effect in 2020."

STATEMENT BY HUNGARY AND POLAND

"We are committed to the protection of workers, to combatting fraud and abuses, as well as safeguarding the integrity of the Internal Market. We believe that Directive 96/71/EC concerning the posting of workers in the framework of the provision of services (hereafter: Directive 96/71/EC) created a delicate balance between the protection of workers and the freedom to provide services. We regret that the modification of that Directive was proposed before the effects of the application of its Enforcement Directive (2014/67/EU¹) could be seen.

We are of the opinion that the amendment of Directive 96/71/EC will restrict the freedom to provide services in an unjustified and disproportionate manner. Instead of being an instrument for the protection of workers it will likely be a tool for protectionist measures. With all likelihood it will render the legal institution of posting itself meaningless and will be highly detrimental to the competitiveness of the Union as a whole.

We are also concerned about the legal uncertainty of several provisions. In particular small and medium-sized enterprises (SMEs) will be affected negatively by the legal uncertainty and the increased administrative burden. The 2-year long transition period does not provide sufficient time to adapt to the new rules in particular for SMEs.

We are of the position that the amendment to Directive 96/71/EC and the separate proposal on laying down special posting rules in the road transport sector (lex specialis) should have been treated as a package. The negotiations on the lex specialis are still ongoing; therefore, the amendment to Directive 96/71/EC by definition cannot be considered as a balanced text. While only the Court of Justice of the European Union is entitled to interpret EU law, nevertheless we are of the view that application of the current posting rules to the road transport sector is doubtful. It is our understanding that this legal interpretation will be unaffected by the amendment to Directive 96/71/EC either."

¹ Directive 2014/67/EU on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System