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REPORT

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| 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) - Partial general approach |

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 five areas: (i) unemployment benefits, (ii) long-term care benefits, (iii) access by economically inactive mobile citizens to certain social benefits, (iv) family benefits and (v) applicable legislation for posted and sent workers and persons working in two or more Member States.

The proposed legal basis is Article 48 of the Treaty on the Functioning of the European Union, which requires that the European Parliament and the Council act in accordance with the ordinary legislative procedure.

The European Parliament is still to deliver its position at first reading.

The European Economic and Social Committee delivered its opinion on 5 July 2017.

The Committee of Regions delivered its opinion at its session on 12-13 July 2017.

II. DISCUSSIONS IN THE COUNCIL PREPARATORY BODIES

Under the Estonian Presidency the Social Questions Working Party (SQWP) started the examination of the parts of the proposal concerning long-term care benefits (LTCB) and family benefits. Very complex technical discussions were held in nine meetings¹.

Long-term care benefits (LTCB)

In its proposal, the Commission introduced as a distinct branch LTCB which had been so far conceived as a part of sickness benefits. The objective of this new branch is to reflect the increasing significance and number of these benefits in national social security systems due to the ageing of the society.

¹ 5-6 July, 6-7 September, 3-4 October, 30 October and 15-16 November 2017

Following very complex technical discussions and intensive brainstorming in the SQWP, the Presidency has amended the definition of LTCB in Regulation 883/2004 (basic Regulation) with the aim of addressing different systems of the Member States. The Presidency has also proposed adding a new Recital 24a which clarifies further the underlying concept of care need of a person based on impairment. The recital makes also clearer the difference between the benefits falling within the scope of the Regulation and the ones that are not, in line with the case law of the European Court of Justice (ECJ).

With regard to the coordination of LTCB, the Commission proposed to create a distinct chapter on LTCB applying the rules of Chapter I of Title III of the basic Regulation (sickness, maternity and equivalent paternity benefits) *mutatis mutandis*. The direction taken by the SQWP was similar, but instead of a separate chapter for LTCB, they are integrated in Chapter 1. The SQWP examined the individual provisions under that chapter and proposed adjusting Articles 19, 20 and 30 of the basic Regulation and respectively Article 25 of Regulation 987/2009 (implementing Regulation) to LTCB in addition to the ones proposed by the Commission. The Presidency has also proposed splitting the definition of benefits in kind into two subparagraphs due to the specific nature of long-term care.

Based on delegations' inputs, the Presidency has established, for the purpose of a new Annex XII, a list of LTCB provided in derogation from Article 33a(2) whereby the Member States may coordinate certain LTCB under other chapters of Title III of the basic Regulation, provided the outcome of such coordination is in general at least as favourable to the beneficiaries. There was a broad agreement that paragraphs 1 and 3 of Article 34 of the basic Regulation, which lays down rules of prevention of overlapping, would also apply to those cases.

In order to establish which Member State is competent for LTCB for children, the reference has been made to respective rules already existing under the chapter on family benefits.

Family benefits (FB)

The Commission proposed to consider family benefits intended to replace income during child-raising as an individual right, and thus not a derived right, and an optional right for the secondary competent Member State to pay the benefit in full.

Following in-depth technical discussions, intensive brainstorming and drafting work in the SQWP, the texts of Article 68b(1) and the relating Recital 35a of the basic Regulation in relation to the concept of income replacement benefits were adjusted. The objective of this is to also cover individual child-raising benefits allocated to a non-working parent raising a child and hence being unable to take up work.

In order to deal with the request by delegations to take into account the Wiering case C-347/12, the Presidency suggested to apply the calculation rules of the differential supplement only for the benefits of the same kind. Bearing in mind the special nature of the various family benefits of the Member States, the SQWP also agreed to distinguishing between two categories of family benefits.

The SQWP further established a list of family benefits of individual nature under Article 68b(1) in Part 1 of the new Annex XIII and a list of countries derogating from the anti-overlapping provision under Article 68(2) in Part 2 of Annex XIII, which wish to pay the benefit in full.

On 24 November 2017, the Committee of Permanent Representatives examined the compromise text as it resulted from the work of the SQWP, and agreed to submit it to the EPSCO Council for reaching a partial general approach.

The approved text is attached in Annex I (long-term care benefits) and Annex II (family benefits) to this Report.

The numbering of the paragraphs is in relation to the Commission proposal (doc. 15642/16).

Remaining reservations

SK has maintained its general scrutiny reservation and a linguistic reservation.

DK, NL, PL and UK have maintained their parliamentary reservations.

The Commission has affirmed its original proposal at this stage and maintained a scrutiny reservation on any changes thereto.

III. CONCLUSION

The Council is invited to reach a partial general approach on the compromise text as set out in the Annexes to this Report at its session (EPSCO) on 7 December 2017.

Provisions in proposal related to: *Long-term care*

Regulation (EC) No. 883/2004

Recital 24

In line with the case law of the Court of Justice long-term care benefits for insured persons and members of their families should, in principle, continue to be coordinated following the rules applicable to sickness benefits. However, these rules should take into account the specific nature of long term care benefits. It is also necessary to provide for specific provisions in case of overlapping of long-term care benefits in kind and in cash.

Recital 24a

Long-term care benefits refer only to those benefits which have the primary purpose of addressing the care need of a person, who on account of impairment due to, for example, old age, disability or illness, requires considerable assistance from others to carry out essential activities of daily living for an extended period of time. Moreover, long-term care benefits refer only to those benefits which can be considered as social security benefits within the meaning of the Regulation. In line with the case law of the Court of Justice in, for example, Case C-433/13, Commission v Slovak Republic, social security benefits are those benefits granted without any individual and discretionary assessment of personal needs to beneficiaries on the basis of a legally defined position and long-term care benefits should be interpreted accordingly. In particular, long-term care benefits do not include social or medical assistance. Benefits granted on a discretionary basis, after an individual assessment of the claimant's personal needs, are not long-term care benefits covered by this Regulation.

Article 1

Definitions

(c) 'insured person', in relation to the social security branches covered by Title III, Chapters 1 and 3, means any person satisfying the conditions required under the legislation of the Member State competent under Title II to have the right to benefits, taking into account the provisions of this Regulation;

(i)(1)(ii) with regard to benefits in kind pursuant to Title III, Chapter 1, any person defined or recognised as a member of the family or designated as a member of the household by the legislation of the Member State in which he/she resides;

(va) 'Benefits in kind' means:

- (i) for the purposes of Title III, Chapter 1 with regard to sickness, maternity and equivalent paternity benefits, benefits in kind provided for under the legislation of a Member State which are intended to supply, make available, pay directly or reimburse the cost of medical care and products and services ancillary to that care.
- (-ii) for the purposes of Title III, Chapter 1 with regard to long-term care benefits, benefits in kind provided for under the legislation of a Member State which are intended to supply, make available, pay directly or reimburse the cost of long-term care as referred to in the definition under point (vb).

(vb) 'Long-term care benefit' means a benefit in kind or in cash the purpose of which is to address the care need of a person who, on account of impairment, requires considerable assistance from another person or persons to carry out essential activities of daily living for an extended period of time in order to support his/her personal autonomy; this includes benefits granted for the same purpose to the person providing such assistance.

Article 3

Matters covered

1. This Regulation shall apply to all legislation concerning the following branches of social security:
 - (a) sickness and long-term care benefits;
 - (ba) [...]

Article 11

General rules

2. For the purposes of this Title, persons receiving cash benefits because or as a consequence of their activity as an employed or self-employed person shall be considered to be pursuing the said activity. This shall not apply to invalidity, old-age or survivors' pensions, to pensions in respect of accidents at work or occupational diseases or to long-term care benefits in cash provided to the person in need of care.

Title III, Chapter 1

Sickness, long-term care, maternity and equivalent paternity benefits

Article 19

Stay outside the competent Member State

1. Unless otherwise provided for by paragraph 2, an insured person and the members of his/her family staying in a Member State other than the competent Member State shall be entitled to the benefits in kind which become necessary during their stay either on medical grounds or due to the need for long-term care, taking into account the nature of the benefits and the expected length of the stay. These benefits shall be provided on behalf of the competent institution by the institution of the place of stay, in accordance with the provisions of the legislation it applies, as though the persons concerned were insured under the said legislation.

Benefits in kind, including those in conjunction with chronic or existing illnesses, childbirth or long-term care, are not covered by this Article when the objective of the stay in another Member State is to receive these benefits.

2. The Administrative Commission shall establish a list of benefits in kind which, in order to be provided during a stay in another Member State, require for practical reasons a prior agreement between the person concerned and the institution providing the benefit.

Article 20

Travel with the purpose of receiving benefits in kind - Authorisation to receive appropriate treatment outside the Member State of residence

1. Unless otherwise provided for by this Regulation, an insured person travelling to another Member State with the purpose of receiving, during the stay, benefits in kind referred to in Article 1(va) (i) of this Regulation, shall seek authorisation from the competent institution.

Article 30

Contributions by pensioners

1. The institution of a Member State which is responsible under the legislation it applies for making deductions in respect of contributions for sickness, long-term care, maternity and equivalent paternity benefits, may request and recover such deductions, calculated in accordance with the legislation it applies, only to the extent that the cost of the benefits pursuant to Articles 23 to 26 is to be borne by an institution of the said Member State.
2. Where, in the cases referred to in Article 25, the acquisition of sickness, long-term care, maternity and equivalent paternity benefits is subject to the payment of contributions or similar payments under the legislation of a Member State in which the pensioner concerned resides, these contributions shall not be payable by virtue of such residence.

Article 32

Prioritising of the right to benefits in kind - special rule for the right of members of the family to benefits in the Member State of residence

3. Where a member of the family has a derivative right to benefits according to the legislation of more than one Member State, the following priority rules shall apply:
 - (a) in the case of rights available on a different basis, the order of priority shall be as follows:
 - (i) rights available on the basis of an activity as an employed or self-employed person of the insured person;
 - (ii) rights available on the basis of the receipt of a pension by the insured person;
 - (iii) rights available on the basis of residence of the insured person;

- (b) in the case of derivative rights available on the same basis, the order of priority shall be established by referring to the place of residence of the member of the family as a subsidiary criterion;
- (c) in cases where it is impossible to establish the order of priority on the basis of the preceding criteria, as a last criterion, the longest period of insurance of the insured person under a national pension scheme shall be applicable.

Article 33a

Long-term care benefits

1. The Administrative Commission shall draw up a detailed list of long-term care benefits which meet the criteria contained in Article 1 (vb) of this Regulation, specifying which are benefits in kind and which are benefits in cash and if the benefit is provided to the person in need of care or to the person providing such care.
 2. benefits coordinated under a different Chapter of Title III, by way of derogation, a Member State may coordinate such benefit in accordance with the rules of the latter Chapter, provided that the outcome of such coordination is in general at least as favourable for the beneficiaries as if the benefit was coordinated as a long-term care benefit under this Chapter and it is listed in the Annex XII specifying which Chapter of Title III applies.
- 2a. Article 34 (1) and (3) of this Regulation shall apply also to benefits listed in Annex XII.

Article 34

Overlapping of long-term care benefits

1. If a recipient of long-term care benefits in cash, which are provided under Articles 21 or 29, is, at the same time and under this Chapter, entitled to claim benefits in kind intended for the same purpose from the institution of the place of residence or stay in another Member State, and an institution in the first Member State is also required to reimburse the cost of these benefits in kind under Article 35, the general provision on prevention of overlapping of benefits laid down in Article 10 shall be applicable, with the following restriction only: if the person concerned claims and receives the benefit in kind, the amount of the benefit in cash shall be reduced by the amount of the benefit in kind which is or could be claimed from the institution of the first Member State required to reimburse the cost.
2. [...]
3. Two or more Member States, or their competent authorities, may agree on other or supplementary measures which shall not be less advantageous for the persons concerned than the principles laid down in paragraph 1.
- 3a. Where, during the same period and for the same children, long-term care benefits in cash are provided for under the legislation of more than one Member State, the priority rules in the event of overlapping laid down in Article 68(1) shall be applicable.

ANNEX XII (new)

LONG-TERM CARE BENEFITS PROVIDED IN DEROGATION FROM ARTICLE 33a (2)

(Article 33a (2))

AUSTRIA

Long-term care benefit in cash (Federal Long-Term care benefit Act, BGBl. I Nr. 110/1993 as amended) granted as a result of accidents at work or occupational diseases is coordinated under Chapter 2 of Title III – Benefits in respect of accidents at work and occupational diseases.

FRANCE

- (a) Constant attendance allowance (Social Security Code, Article L.355-1) is coordinated under the Chapter 4 of Title III – Invalidity benefits or under the Chapter 5 of Title III – Old age benefit, depending of the benefit the care supplement is paid in addition to.
- (b) Supplementary benefit for constant attendance (Social Security Code, Article L.434-2) is coordinated under Chapter 2 of Title III – Benefits in respect of accidents at work and occupational diseases.

GERMANY

Long term care benefits in respect of accidents at work and occupational diseases (Book VII of the German Social Code paragraph 44) is coordinated under Chapter 2 of Title III – Benefits in respect of accidents at work and occupational diseases.

POLAND

Care supplement (The Act of 17 December 1998 on old-age and invalidity benefits from the Social Insurance Fund) is coordinated under Chapter 4 of Title III – Invalidity benefits or under Chapter 5 of Title III – Old age benefit, depending on the benefit that the care supplement is paid in addition to.

Title III, Chapter 1

Sickness, long-term care, maternity and equivalent paternity benefits

Article 23

Regime applicable to the event of the existence of more than one regime in the Member State of residence or stay

If the legislation of the Member State of residence or stay comprises more than one scheme of sickness, long-term care, maternity and paternity insurance for more than one category of insured persons, the provisions applicable under Articles 17, 19(1), 20, 22, 24 and 26 of the basic Regulation shall be those of the legislation on the general scheme for employed persons.

Article 24

Residence in a Member State other than the competent Member State

3. This Article shall apply *mutatis mutandis* to the persons referred to in Articles 22, 24, 25 and 26 of the basic Regulation.

Article 25

Stay in a Member State other than the competent Member State

A. Procedure and scope of right

1. For the purposes of the application of Article 19 of the basic Regulation, the insured person shall present to the health care or long-term care provider in the Member State of stay a document issued by the competent institution indicating his entitlement to benefits in kind. If the insured person does not have such a document, the institution of the place of stay, upon request or if otherwise necessary, shall contact the competent institution in order to obtain one.

2. *[no changes]*
3. The benefits in kind referred to in Article 19(1) of the basic Regulation shall refer to the benefits in kind which are provided in the Member State of stay, in accordance with its legislation, and which become necessary on medical grounds or due to the need for long-term care with a view to preventing an insured person from being forced to return, before the end of the planned duration of stay, to the competent Member State to obtain the necessary treatment or long-term care benefits.

Article 28

Long-term care benefits in cash in the event of stay or residence in a Member State other than the competent Member State

1. In order to be entitled to long-term care benefits in cash pursuant to Article 21(1) of the basic Regulation the insured person shall apply to the competent institution. The competent institution shall, where necessary, inform the institution of the place of residence thereof.

Article 31

Application of Article 34 of the basic Regulation

1. The competent institution shall inform the person concerned of the provision contained in Article 34 of the basic Regulation regarding the prevention of overlapping of benefits. The application of such rules shall ensure that the person not residing in the competent Member State is entitled to benefits of at least the same total amount or value as those to which he would be entitled if he resided in that Member State.
2. The competent institution shall also inform the institution of the place of residence or stay about the payment of long-term care benefits in cash where the legislation applied by the latter institution provides for the long-term care benefits in kind included in the list referred to in Article 33a (1) of the basic Regulation.

Article 32

Special implementing measures

1. When a person or a group of persons are exempted upon request from compulsory sickness or long-term care insurance and such persons are thus not covered by a sickness or long-term care insurance scheme to which the basic Regulation applies, the institution of another Member State shall not, solely because of this exemption, become responsible for bearing the costs of benefits in kind or in cash provided to such persons or to a member of their family under Title III, Chapter I, of the basic Regulation.

4. [...]

Title IV, Chapter 1

Reimbursement of the cost of benefits in application of Article 35 and Article 41 of the basic Regulation

Article 87

Medical examination and administrative checks

4. Paragraphs 2 and 3 shall also apply in determining or checking the state of dependence of a recipient or a claimant of the long-term care benefits mentioned in Article 1(vb) of the basic Regulation.

6. As an exception to the principle of free-of-charge mutual administrative cooperation in Article 76(2) of the basic Regulation, the effective amount of the expenses of the checks referred to in paragraphs 1 to 5 shall be refunded to the institution which was requested to carry them out by the debtor institution which requested them. However, if the institution which was requested to carry out the check also uses the findings for the granting of benefits on its own account to the person concerned under the legislation it applies, it shall not claim the expenses referred to in the previous sentence.

Provisions in proposal related to: *Family Benefits*

Regulation (EC) No. 883/2004

Recital 35 –a (new)

For the purpose of calculating the differential supplement, this Regulation should take into account the judgement of the Court of Justice in Case C-347/12 *Wiering* while providing the necessary clarifications and simplifications. Taking into account the special nature of the various family benefits of the Member States, two types of family benefits should be distinguished as being of different kinds based on their main purpose, objectives and the basis on which they are granted.

Recital 35a (new)

Family benefits in cash which are primarily intended to replace income not earned, whether in part or in full, or income that the person cannot earn, due to child-raising, can be distinguished from other family benefits intended to meet family expenses. As such benefits could be considered as individual rights which are personal to the parent subject to the legislation of the competent Member State it should be possible to exclusively reserve them to the parent concerned. Such individual benefits should be listed in Part I of Annex XIII to this Regulation. The Member State with secondary competence may elect that the rules of priority in the case of overlapping of rights to family benefits under the legislation of the competent Member State and under the legislation of the Member State of residence of members of the family should not apply to such benefits. Where a Member State chooses to disapply the priority rules it must do so consistently in respect of all entitled persons in an analogous situation and be listed in Part II of Annex XIII.

Article 68

Priority rules in the event of overlapping

2. In the case of overlapping entitlements, family benefits shall be provided in accordance with the legislation designated as having priority in accordance with paragraph 1. Entitlements to family benefits by virtue of other conflicting legislation or legislations shall be suspended up to the amount provided for by the first legislation for benefits of the same kind and a differential supplement shall be provided, if necessary, for the sum which exceeds this amount. However, such a differential supplement does not need to be provided for children residing in another Member State when entitlement to the benefit in question is based on residence only.
- 2a. For the purposes of calculating the differential supplement for family benefits under paragraph 2 of this Article there shall be two categories of benefits of the same kind:
 - a) family benefits in cash primarily intended to replace parts or the whole income not earned, or income that the person cannot earn, due to child-raising; and
 - b) all other family benefits.

Article 68b (new)

Special provision for family benefits in cash intended to replace income during the period of child raising

1. Family benefits referred to in paragraph 2a (a) of Article 68 which are listed in Part I of Annex XIII shall be awarded under the legislation of the competent Member State solely to the person subject to that legislation. There shall be no derived right to such benefits. Article 68a of this Regulation shall not apply to such benefits nor shall the competent institution be required to take into account a claim submitted by the other parent, a person treated as a parent or institution acting as guardian of the child or children pursuant to Article 60(1) of the Implementing Regulation.

2. By way of derogation from Article 68(2), in cases of overlapping entitlements under conflicting legislation or legislations, a Member State may award a family benefit referred to in paragraph 1 in full to a beneficiary regardless of the amount provided for by the first legislation. Member States that elect to apply such a derogation shall be listed in Part II of Annex XIII by reference to the family benefit to which the derogation applies.

ANNEX XIII (new)

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-raising²

(Article 68b(1))

AUSTRIA

- (a) Flat-rate Childcare Allowance (Childcare Allowance Act, 2001/103)
- (b) Childcare Allowance as replacement of gainful income (Childcare Allowance Act, 2001/103)
- (c) Partner bonus (Childcare Allowance Act, 2001/103)

BELGIUM

Right to parental leave in the framework of professional career break (Royal Decree of 29/10/1997 concerning the introduction of a parental leave in the framework of a professional career break)

² Cyprus, Greece, Malta, Ireland, Netherlands and United Kingdom indicated that they do not consider any of their family benefits to qualify as family benefits in cash intended to replace income during periods of child raising (*please note that this footnote is inserted only for information purposes and that it will not be included in the final text when published in the OJ*).

BULGARIA

- (a) Pregnancy and child birth benefit (Social Insurance Code, promulgated SG No. 110 from 17.12.1999, in force since 1 January 2000) starting from the 6th month of age of the child
- (b) Benefit upon Adoption of a Child between 2 and 5 Years of Age (Social Insurance Code, promulgated SG No. 110 from 17.12.1999, in force since 1 January 2000)
- (c) Benefit for raising a small child (Social Insurance Code, promulgated SG No. 110 from 17.12.1999, in force since 1 January 2000)

CZECH REPUBLIC

Parental Allowance (State Social Support Act no. 117/1995 Coll., as amended)

DENMARK

- (a) Pay Refund (Act on Maternity Equalization Scheme for the private sector) starting from the 15th week after the birth
- (b) Maternity and Paternity Benefits in cash (Consolidation Act on Entitlement to leave and Benefits in the Event of Childbirth) starting from the 15th week after the birth

ESTONIA

Parental Benefit (Family Benefits Act of 15 June 2016)

FINLAND

Parental Allowance (Sickness Insurance Act, 1224/2004)

FRANCE

- (a) The complement of free choice of activity applicable (children born/adopted before 1st January 2015) (Article 60-II of Social Security Financing Act for 2004)

- (b) The shared child-rearing benefit (PREPARE) (children born on the 1st January 2015 or after) (Article 8-I-7^o - Act No. 2014-873 of 4 August 2014 for real equality between women and men)

GERMANY

Parental Allowance (Parental Allowance and Parental Leave Act)

HUNGARY

Child care fee (Act LXXXIII of 1997 on the Services of the Compulsory Health Insurance System)

ITALY

Allowance for parental leave (Legislative Decree of 26 March 2001, n. 151)

LATVIA

Parents' benefit (Law On Maternity and Sickness Insurance of 06.11.1995)

LITHUANIA

Childcare benefit (Law of the Republic of Lithuania of 21 December 2000 on Sickness and Maternity Social Insurance No IX-110; as amended)

LUXEMBOURG

Parental Leave Replacement Income (Law of 3rd November 2016 reforming parental leave)

POLAND

- (a) A supplement to the family allowance for child care in the period of parental leave (Act Of 28 November 2003 on Family Benefits)
- (b) Parental Benefit (Act of 28 November 2003 on family benefits)

PORTUGAL

- (a) Parental allowance (Decree-Laws No 89/2009 of 9 April 2009, and No 91/2009 of 9 April 2009) starting from 7th week after the childbirth
- (b) Extended parental allowance (Decree-Laws No 89/2009 of 9 April 2009, and No 91/2009 of 9 April 2009)
- (c) Adoption allowance (Decree-Laws No 89/2009 of 9 April 2009, and No 91/2009 of 9 April 2009)

ROMANIA

Monthly Child Raising Indemnity (Government Emergency Ordinance no. 111 of 8 December 2010 regarding the parental leave and the monthly child raising indemnity, with the subsequent amendments and additions)

SLOVAKIA

Parental Allowance (Parental Allowance Act No. 571/2009, as amended)

SLOVENIA

- (a) Parental Compensation (Parental Protection and Family Benefits Act, Official gazette No. 26/14 and 15/90, ZSDP-1)
- (b) Parental Allowance (Parental Protection and Family Benefits Act, Official gazette No. 26/14 and 15/90, ZSDP-1)

SWEDEN

Parental benefit (Social Insurance Act)

Part II Member States, which award family benefits referred in Article 68b in full

(Article 68b (2))

ESTONIA

FINLAND

LITHUANIA

LUXEMBOURG

SWEDEN
