



Brussels, 14 March 2019
(OR. en)

7151/19

Interinstitutional File:
2019/0019(COD)

CODEC 600
SOC 191
EMPL 148
PREP-BXT 91
PE 65

INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on establishing contingency measures in the field of social security coordination following the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union - Outcome of the European Parliament's first reading, (Strasbourg, 11 to 14 March 2019)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

¹ OJ C 145, 30.6.2007, p.5

In this context, the co-rapporteurs, Marian HARKIN (ALDE, IE) and Jean LAMBERT (Greens/EFA, UK) presented compromise amendments 1 to 11 to the proposal for a Regulation on behalf of the Committee on Employment and Social Affairs. These amendments had been agreed during the informal contacts referred to above.

In addition, an amendment 12 was tabled by the co-rapporteurs on behalf of the said committee and attached to the legislative resolution (a Commission statement).

II. VOTE

When it voted on 13 March 2019, the plenary adopted the compromise amendments (amendments numbered 1 to 11) to the proposal for a Regulation. Amendment 12 was also adopted.

The Commission's proposal as thus amended (amendments numbered 1 to 11) constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto².

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

Establishing contingency measures in the field of social security coordination following the UK's withdrawal from the EU *I**

European Parliament legislative resolution of 13 March 2019 on the proposal for a regulation of the European Parliament and of the Council on establishing contingency measures in the field of social security coordination following the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union (COM(2019)0053 – C8-0039/2019 – 2019/0019(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2019)0053),
 - having regard to Article 294(2) and Article 48 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0039/2019),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the undertaking given by the Council representative by letter of 25 February 2019 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Employment and Social Affairs (A8-0161/2019),
1. Adopts its position at first reading hereinafter set out;
 2. Takes note of the Commission statement annexed to this resolution, which will be published in the C series of the Official Journal of the European Union;
 3. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 4. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Position of the European Parliament adopted at first reading on 13 March 2019 with a view to the adoption of Regulation (EU) 2019/... of the European Parliament and of the Council establishing contingency measures in the field of social security coordination following the withdrawal of the United Kingdom from the Union

(Text with relevance to the EEA and Switzerland)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 48 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure³,

³ Position of the European Parliament of 13 March 2019.

Whereas:

- (1) On 29 March 2017, the United Kingdom submitted the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union (TEU). The Treaties will cease to apply to the United Kingdom from the date of entry into force of a withdrawal agreement or failing that, two years after that notification, namely from 30 March 2019, unless the European Council, in agreement with the United Kingdom, unanimously decides to extend that period.
- (2) In the absence of a withdrawal agreement or of an extension of the two-year period after the United Kingdom's notification of its intention to withdraw from the Union, the Union rules on social security coordination provided for in Regulations (EC) No 883/2004⁴ and (EC) No 987/2009⁵ of the European Parliament and of the Council will cease to apply to and in the United Kingdom from 30 March 2019.

⁴ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).

⁵ Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ L 284, 30.10.2009, p. 1).

- (3) As a result, persons who, in their capacity as Union citizens, have legitimately exercised the right to freedom of movement or freedom of establishment enshrined in Articles 45 and 49 of the Treaty on the Functioning of the European Union (TFEU) prior to the date of the United Kingdom's withdrawal from the Union, as well as members of their families and survivors, are no longer able to rely on the Union rules on social security coordination as regards their social security entitlements on the basis of facts and events that occurred and periods of insurance, employment, self-employment or residence that were completed before the withdrawal date, and that involved the United Kingdom. Stateless persons and refugees who are or have been subject to the legislation of one or more Member States and who are or have been in situations involving the United Kingdom, as well as members of their families and survivors, will equally be affected.
- (4) To achieve the aim of safeguarding social security entitlements for the persons concerned, Member States should continue applying the Union principles of equality of treatment, assimilation and aggregation as laid down by Regulations (EC) No 883/2004 and (EC) No 987/2009, as well as the rules of those Regulations that are necessary to give effect to those principles, as regards persons covered, facts or events that occurred, and periods that were completed prior to the withdrawal of the United Kingdom from the Union.

- (5) *This Regulation does not affect existing social security conventions and agreements between the United Kingdom and one or more Member States which are in compliance with Article 8 of Regulation (EC) No 883/2004 and Article 9 of Regulation (EC) No 987/2009. This Regulation is without prejudice to the possibility for the Union or the Member States to take measures addressing administrative cooperation and the exchange of information with the competent institutions in the United Kingdom for the purpose of giving effect to the principles of this Regulation. Furthermore, this Regulation does not affect any competence of either the Union or the Member States to conclude social security conventions and agreements with third countries or with the United Kingdom that cover the period after the day on which the Treaties cease to apply to the United Kingdom.*
- (6) *This Regulation does not affect any rights that were acquired or were in the process of being acquired in accordance with the legislation of a Member State during the period before the date of application of this Regulation. Good cooperation is necessary for such rights to be protected and upheld. It is important to ensure that appropriate and timely information is available to the persons concerned.*

- (7) *Since the objective of this Regulation, namely to achieve the uniform unilateral application of the social security principles of equality of treatment, assimilation and aggregation, cannot be sufficiently achieved by the Member States but can rather, by reason of coordinating their response, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.*
- (8) *In view of the fact that, in the absence of a withdrawal agreement or of an extension of the two-year period after the United Kingdom's notification of its intention to withdraw from the Union, the Treaties will cease to apply to the United Kingdom from 30 March 2019, and in view of the need to provide legal certainty, it was considered appropriate to provide for an exception to the eight-week period referred to in Article 4 of Protocol No 1 on the role of national Parliaments in the European Union, annexed to the TEU, to the TFEU and to the Treaty establishing the European Atomic Energy Community.*

- (9) This Regulation should *enter into force as a matter of urgency on the day following that of its publication in the Official Journal of the European Union and should* apply from the day following that on which the Treaties cease to apply to the United Kingdom, unless a withdrawal agreement concluded with the United Kingdom has entered into force by that date,

HAVE ADOPTED THIS REGULATION:

Article 1
Definitions

For the purposes of this Regulation, the definitions laid down in Article 1 of Regulation (EC) No 883/2004 and Article 1 of Regulation (EC) No 987/2009 apply.

Article 2
Persons covered

This Regulation applies to the following persons:

- (a) nationals of a Member State, stateless persons and refugees who are or have been subject to the legislation of one or more Member States and who are or have been in a situation involving the United Kingdom before *the date of application of this Regulation*, as well as members of their families and survivors;
- (b) nationals of the United Kingdom who are or have been subject to the legislation of one or more Member States before *the date of application of this Regulation*, as well as members of their families and survivors.

Article 3
Matters covered

This Regulation applies to all branches of social security provided for in Article 3 of Regulation (EC) No 883/2004.

Article 4
Equality of treatment

The principle of equality of treatment as laid down in Article 4 of Regulation (EC) No 883/2004 shall apply to the persons referred to in Article 2 of this Regulation as regards **any situation** that **has** occurred **■** before ***the date of application of this Regulation***.

Article 5
Assimilation and aggregation

1. The principle of assimilation as laid down in Article 5 of Regulation (EC) No 883/2004 shall apply as regards benefits or income acquired and facts or events that have occurred in the United Kingdom before ***the date of application of this Regulation***.

2. The principle of aggregation as laid down in Article 6 of Regulation (EC) No 883/2004 shall apply as regards periods of insurance, employment, self-employment or residence in the United Kingdom that were completed before *the date of application of this Regulation*.
3. Any other provisions of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 necessary to give effect to the principles laid down under paragraphs 1 and 2 of this Article shall apply.

Article 6

Relations with other coordination instruments

1. *This Regulation shall be without prejudice to the existing social security conventions and agreements between the United Kingdom and one or more Member States which are in compliance with Article 8 of Regulation (EC) No 883/2004 and Article 9 of Regulation (EC) No 987/2009.*
2. *This Regulation shall be without prejudice to social security conventions and agreements between the United Kingdom and one or more Member States concluded after the day on which the Treaties cease to apply to the United Kingdom pursuant to Article 50(3) TEU and that cover the period before the date of application of this Regulation, provided that those conventions and agreements give effect to the principles laid down in Article 5(1) and (2) of this Regulation, apply the provisions referred to in Article 5(3) of this Regulation, are based on the principles of Regulation (EC) No 883/2004, and are in keeping with the spirit thereof.*

Article 7

Report

One year after the date of application of this Regulation, the Commission shall submit a report to the European Parliament and to the Council on the implementation of this Regulation. That report shall address, in particular, practical problems arising for the persons concerned, including those arising from the lack of continuity of the coordination of social security systems.

Article 8

Entry into force and application

This Regulation shall enter into force on the █ day following that of its publication in the *Official Journal of the European Union*.

It shall apply from the day following that on which the Treaties cease to apply to the United Kingdom pursuant to Article 50(3) TEU.

However, this Regulation shall not apply if a withdrawal agreement concluded with the United Kingdom in accordance with Article 50(2) TEU has entered into force by the date of application of this Regulation.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ...,

For the European Parliament

For the Council

The President

The President

Commission Statement

The Regulation on establishing contingency measures in the field of social security coordination following the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union is based on Article 48 of the Treaty on the Functioning of the European Union (TFEU) as it concerns measures in the field of social security coordination. An extension of this Regulation to third-country nationals in the same legal act is not possible due to the incompatibility of the legal bases, as such an extension would need to be based on Article 79(2)(b) TFEU.

The Commission considers that third-country nationals covered by Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 should continue to benefit from the basic principles of social security coordination intended to be codified in the Regulation on establishing contingency measures in the field of social security coordination, based on the provisions of Regulation (EU) No 1231/2010 and of Regulations (EC) No 883/2004 and 987/2009, which remain in force.

The Commission will consider, however, if it becomes necessary at a later stage, to have the principles set out in this Regulation extended to third country nationals legally resident in a Member State who, pursuant to Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010, are or have been covered by the EU legislation on coordination of social security systems to confirm their entitlements in relation to the period when the United Kingdom was a Member State.