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From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

No. Cion doc.: COM(2019) 186 final ANNEXES 1 to 2

Subject: ANNEXES to the COMMUNICATION FROM THE COMMISSION TO THE
EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL, THE COUNCIL,
THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE
COMMITTEE OF THE REGIONS More efficient decision-making in social
policy: Identification of areas for an enhanced move to qualified majority
voting

Delegations will find attached document **COM(2019) 186 final ANNEXES 1 to 2**.

Encl.: **COM(2019) 186 final ANNEXES 1 to 2**



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ANNEXES 1 to 2

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to the

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE EUROPEAN COUNCIL, THE COUNCIL, THE EUROPEAN
ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE
REGIONS**

More efficient decision-making in social policy:

Identification of areas for an enhanced move to qualified majority voting

Annex 1: Historical overview

The EU Treaties bestow a social mission on the EU. This has been the case from the very beginning, though the development of specific EU legislation has been gradual: social policy in the broad sense began as a means of securing market integration and has developed into a way of delivering social outcomes as ends in themselves. In the 60 years of European integration, social policy has become increasingly central for the EU, as reflected in every Treaty revision.

Under the **Treaty of Rome** (1957), the bulk of social policy powers remained outside the scope of Community action, which was limited to promoting close cooperation between Member States with support from the European Social Fund. The Commission could issue opinions on health and safety in the workplace. The Treaty established the freedom of movement of workers and an obligation to adopt measures for the coordination of social security. In these fields, decisions were taken by unanimity in the Council, with no role for the Parliament.

Social policy developed with the **Single European Act** in 1986, through the creation of the possibility to adopt minimum requirements on the health and safety of workers, with the Council acting by qualified majority, in cooperation with the Parliament.

The areas for EU action in social policy were expanded in the 1992 **Maastricht Treaty's** Social Protocol and have remained substantially the same ever since. The Social Protocol provided for **qualified majority voting** on:

- working conditions;
- information and consultation of workers;
- equal opportunities for men and women; and
- the integration of people excluded from the labour market.

It provided for the Council to vote by **unanimity** on issues regarding:

- social security and social protection of workers;
- dismissals;
- representation and collective defence of the interests of workers and employers, including co-determination; and
- conditions of employment of third-country nationals legally residing in the EU.

In the latter areas, the Parliament was to be consulted (this is now the special legislative procedure). It specifically **excluded**:

- pay;
- the right of association;
- the right to strike; and
- the right to impose lock-outs.

The Protocol was integrated into the **Amsterdam Treaty** in 1997, rendering the provisions applicable to all Member States and forming the basis for the current Title X of the TFEU.

This created a new legal base to combat discrimination, which remains unchanged today: Article 13 of the Treaty Establishing the European Community (current Article 19(1) TFEU) provided that the Council, acting unanimously on a proposal from the Commission and after consulting the Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability or sexual orientation.

The **Treaty of Nice** in 2001 inserted two new areas of cooperation in its Article 137 (now in points (j) and (k) in Article 153(1) TFEU), granting the Union power to support and complement the Member States' activities in the fields of:

- combating social exclusion; and
- the modernisation of social protection systems.

It did not provide for the power to adopt directives setting minimum standards in these fields.¹ Also, the Treaty did not change any of the existing unanimity requirements in the social policy field, but introduced the **specific passerelle clause** (now in Article 153(2) TFEU).

The **Lisbon Treaty** (which entered into force on 1 December 2009) made it an aim of the Union to achieve a highly competitive social market economy. The adoption of measures on **social security coordination in the context of the free movement of workers** (Article 48 TFEU) became subject to qualified majority voting and the ordinary legislative procedure, rather than unanimity.

The requirements for unanimity and the consultation of the Parliament were retained in the following areas (now covered in Article 153(1)(c), (d), (f) and (g) and Article 19 TFEU):

- social security and social protection of workers (outside cross-border situations);
- dismissals;
- representation and collective defence of the interests of workers and employers, including co-determination;
- conditions of employment for third-country nationals legally residing in the EU; and
- measures to combat discrimination.

At the same time, the **general passerelle clause** was introduced in Article 48(7) TEU creating the possibility of moving from unanimity to qualified majority or from the special to the ordinary legislative procedure in areas not subject to the specific *passerelle* clause such as non-discrimination, and social security and social protection of workers.

¹ The field of social security and social protection of workers (Article 153(1)(c) TFEU) overlaps with the field of the modernisation of social protection systems (Article 153(1)(k) TFEU). In such cases, point (k) provides for a priority rule that it is without prejudice to point (c).

Annex 2: Legal acts proposed in the social field, 2014-2019

This Commission has made 27 legal proposals for modernising the EU's social market economy and achieving a 'social triple A' for Europe. Agreement has been reached on 24 of these and the other three are under discussion.

No.	Short title	Publication
1	Regulation (EU) 2015/779 amending Regulation (EU) No 1304/2013 as regards an additional initial prefinancing amount paid to operational programmes supported by the Youth Employment Initiative	OJ L 126, 21.5.2015, p. 1
2	Council Recommendation on the integration of the long-term unemployed into the labour market	OJ C 67, 20.2.2016, p. 1
3	Council Decision (EU) 2015/1848 on guidelines for the employment policies of the Member States for 2015	OJ L 268, 15.10.2015, p. 28
4	Council Decision (EU) 2016/1838 on guidelines for the employment policies of the Member States for 2016	OJ L 280, 18.10.2016, p. 30
5	Directive (EU) 2017/2398 amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work	OJ L 345, 27.12.2017, p. 87
6	Council Recommendation on the European Qualifications Framework for lifelong learning and repealing the Recommendation of the European Parliament and of the Council of 23 April 2008 on the establishment of the European Qualifications Framework for lifelong learning	OJ C 189, 15.6.2017, p. 15
7	Council Recommendation on Upskilling Pathways: New Opportunities for Adults	OJ C 484, 24.12.2016, p. 1
8	Directive (EU) 2017/159 implementing the Agreement concerning the implementation of the Work in Fishing Convention, 2007 of the International Labour Organisation, concluded on 21 May 2012 between the General Confederation of Agricultural Cooperatives in the European Union (Cogeca), the European Transport Workers' Federation (ETF) and the Association of National Organisations of Fishing Enterprises in the European Union (Europêche)	OJ L 25, 31.1.2017, p. 12
9	Directive (EU) 2018/957 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services	OJ L 173, 9.7.2018, p. 16
10	Regulation (EU) 2017/2305 amending Regulation (EU) No 1303/2013 as regards the changes to the resources for economic, social and territorial cohesion and to the resources for the investment for growth and jobs goal and for the European territorial cooperation goal	OJ L 335, 15.12.2017, p. 1
11	Directive (EU) 2018/131 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) to amend Directive 2009/13/EC in accordance with the amendments of 2014 to the Maritime Labour Convention, 2006 as approved by the International Labour Conference on 11 June 2014	OJ L 22, 26.1.2018, p. 28
12	Council Recommendation on a European Framework for Quality and Effective Apprenticeships	OJ C 153, 2.5.2018, p. 1
13	Decision (EU) 2018/646 on a common framework for the provision of better services for skills and qualifications (Europass) and repealing Decision No 2241/2004/EC	OJ L 112, 2.5.2018, p. 42

14	Council Decision (EU) 2018/1215 on guidelines for the employment policies of the Member States	OJ L 224, 5.9.2018, p. 4
15	Regulation (EU) 2019/128 establishing a European Centre for the Development of Vocational Training (Cedefop) and repealing Regulation (EEC) No 337/75	OJ L 30, 31.1.2019, p. 90
16	Regulation (EU) 2019/127 establishing the European Foundation for the improvement of living and working conditions (Eurofound), and repealing Council Regulation (EEC) No 1365/75	OJ L 30, 31.1.2019, p. 74
17	Regulation (EU) 2019/126 establishing the European Agency for Safety and Health at Work (EU-OSHA), and repealing Council Regulation (EC) No 2062/94	OJ L 30, 31.1.2019, p. 58
18	Directive (EU) 2019/130 amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work (Batch II)	OJ L 30, 31.1.2019, p. 112
19	Proposal for a Directive on the approximation of the laws, regulations and administrative provisions of the Member States as regards the accessibility requirements for products and services	COM (2015) 615
20	Proposal for a Regulation 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	COM (2016) 815
21	Proposal for a Directive on work-life balance for parents and carers and repealing Council Directive 2010/18/EU	COM (2017) 253
22	Proposal for a Directive of the European Parliament and of the Council on transparent and predictable working conditions in the European Union	COM(2017) 797
23	Proposal for a Regulation of the European Parliament and of the Council establishing a European Labour Authority	COM (2018) 131
24	Proposal for a Recommendation on access to social protection for workers and the self-employed	COM (2018) 132
25	Proposal for a Directive amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work (Batch III)	COM (2018) 171
26	Proposal for a Regulation on the European Globalisation Adjustment Fund (EGF)	COM (2018) 380
27	Proposal for a Regulation on the European Social Fund Plus (ESF+)	COM (2018) 382