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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

(Text with relevance to the EEA and Switzerland)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The United Kingdom submitted on 29 March 2017 the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. This means that, if the Withdrawal Agreement is not ratified, the Union's primary and secondary law will cease to apply to the United Kingdom from 30 March 2019 ('the withdrawal date'). The United Kingdom will then become a third country.

A Withdrawal Agreement[1] has been agreed between the Union and the United Kingdom and endorsed by the European Council (Article 50) on 25 November 2018. However, its ratification in the United Kingdom is uncertain.

In its Communication of 13 November 2018 "Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: a Contingency Action Plan"[2] ("the Communication on a Contingency Action Plan"), the European Commission underlined that the Withdrawal Agreement was the best option for the orderly withdrawal of the United Kingdom from the Union. However, in the absence of a Withdrawal Agreement, the Union will act to protect its interests, and should display a united and coordinated approach in all areas. In that same Communication, the Commission presented the six general principles which contingency measures at all levels should comply with. These include the principles that measures should not replicate the benefits of membership of the Union, nor the terms of any transition period, as provided for in the Withdrawal Agreement; they must be temporary in nature and should in principle not go beyond the end of 2019; and they must be unilateral actions of the European Union in pursuit of its interests, and therefore in principle the Union can revoke them at any time.

As of the withdrawal date, in the event there is no Withdrawal Agreement concluded between the Union and the United Kingdom, Union law on social security coordination will no longer apply in the relations between the Union and the United Kingdom. This means that social security entitlements will not be guaranteed for Union citizens who are, or have been subject to the legislation of one or more Member States and in situations involving the United Kingdom (e.g. they worked or resided there while the United Kingdom was a Member State of the Union) and also of the United Kingdom nationals who are or have been subject to the legislation of one or more Member States.

Irrespective of scenario, the Commission has consistently made clear that protecting Union citizens in the United Kingdom, as well as United Kingdom nationals in the European Union is a priority. This will require Member States to take a generous approach to the United Kingdom nationals who are already resident in their territory. The expectation is that the United Kingdom acts in the same manner. With that in mind, the objective of this proposal is

[1] https://ec.europa.eu/commission/sites/beta-political/files/draft_withdrawal_agreement_0.pdf

[2] Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: a Contingency Action Plan (COM/2018/880 final).

to mitigate some of the negative effects of the United Kingdom's withdrawal from the Union in the absence of any solutions agreed with the United Kingdom.

There is indeed a need to ensure that those persons who exercised, as citizens of the Union, their right to free movement within the Union before the withdrawal date, maintain their social security entitlements based on facts and events that occurred and periods of insurance, (self) employment or residence that were completed before the withdrawal date, when the United Kingdom was a Member State of the Union. Certain core principles of social security coordination as enshrined in Regulation (EC) No 883/2004 on the coordination of social security systems (assimilation, aggregation, equality of treatment), as well as rules of this Regulation which give practical effect to the implementation of those principles (such as the pro-rata calculation of an old-age pension), should continue to apply in respect of those persons, as regards facts or events that occurred and periods completed before the withdrawal date. The same need arises as regards social security entitlements of stateless persons and refugees who are or have been subject to the legislation of one or more Member States and in situations involving the United Kingdom. For all the categories above-mentioned, family members and survivors are included.[3]

Due to the fact that the United Kingdom will become a third country, other principles and rules of social security coordination will not continue to apply as of the withdrawal date, such as the exportability of cash benefits, the continuous provision of sickness benefits in kind and the rules on applicable legislation.

Under the Treaty provisions on free movement, the Union has fully exercised its competence with regard to the coordination of social security systems between the United Kingdom and other Member States related to any exercise of the right to free movement that occurred when the United Kingdom was a Member State of the Union. It is therefore not possible for Member States to conclude and apply bilateral conventions covering the situations falling under this Regulation.

- **Consistency with existing policy provisions in the policy area and other Union policies**

This proposal is part of the Union preparedness and contingency plan to mitigate the negative effects of the withdrawal of the United Kingdom from the Union without a Withdrawal Agreement. The proposal follows the general principles set out in the Communication on a Contingency Action Plan. In particular, as the proposal does not replicate the benefits of membership of the Union, nor the terms of any transition period as the Withdrawal Agreement would have provided for, it is unilateral and temporary.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

This proposal 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.

[3] The Commission will consider at a later stage to have the principles set out in this proposal 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 covered by the EU legislation on coordination of social security systems.

- **Subsidiarity (for non-exclusive competence)**

The subsidiarity principle applies as the proposal does not fall under the exclusive competence of the Union. The objectives of the proposal cannot be sufficiently achieved by the Member States at national, regional or local level. A coordinated approach at Union level for the protection of social security entitlements acquired following the exercise of the right to freedom of movement by the persons concerned, as Union citizens, is necessary. This will allow avoiding fragmentation among Member States in the application of Union law as regards social security entitlements that concern facts or events that occurred and periods completed before the withdrawal date, and inequality of treatment as regards the persons concerned.

- **Proportionality**

The proposed Regulation does not go beyond what is necessary to achieve the objectives of the Commission's contingency plan, since it ensures the minimum protection of social security entitlements of persons who exercised their right to free movement prior to the withdrawal date.

- **Choice of the instrument**

The proposed instrument is a regulation. Other means (e.g. a Communication or other non-legally-binding instruments) would not achieve the required level of legal certainty.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

This proposal is adopted in the context of contingency measures that need to mitigate the risks related to the withdrawal of the United Kingdom from the Union without a Withdrawal Agreement.

In the absence of such an agreement, the European Commission analysed the consequences thereof. After initially inviting the Member States to act, it eventually concluded that this proposal is necessary in order to protect the social security entitlements of persons concerned as regards facts or events that occurred and periods completed before the withdrawal date.

The Commission has discussed the necessity of contingency measures with the Member States and the sectorial, legal and administrative preparedness steps in such a scenario. To that end, meetings of the Council Working Party on Article 50 took place on 27 November and 12 December 2018, on 16 January 2019 and a dedicated technical expert seminar on social security coordination was organised on 20 December 2018.

4. BUDGETARY IMPLICATIONS

The proposal has no implications for the Union budget. It aims at protecting the social security entitlements of persons concerned, including their income derived from social security entitlements and the finances of the Member States.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

N/A

- **Detailed explanation of the specific provisions of the proposal**

The proposal aims at ensuring that persons who have exercised, as Union citizens, their right to freedom of movement before the withdrawal date maintain their social security entitlements related to facts or events that occurred and periods completed before the withdrawal date. Other relevant persons in situations involving the United Kingdom before the withdrawal date, who would otherwise be covered by Regulations (EC) Nos 883/2004 and 987/2009, should also maintain those entitlements: stateless persons, refugees, as well as family members and survivors of all the previous categories.

Article 1 clarifies that the definitions applicable to this Regulation are those provided for in Article 1 of Regulation (EC) No 883/2004 and Article 1 of Regulation (EC) No 987/2009.

Article 2 defines the personal scope of the proposed Regulation. It covers: persons (nationals of the Union or of the United Kingdom, stateless persons and refugees) who are or have been subject to Union social security coordination rules and in situations involving the United Kingdom while it was a Member State of the Union, together with their family members and survivors.

Article 3 defines the material scope of the proposed Regulation, specifying that it will cover all branches of social security as listed in Article 3 of Regulation (EC) No 883/2004.

Article 4 provides for equality of treatment of the persons covered by the proposed Regulation.

Article 5 sets out that the principles of assimilation and aggregation provided for in Regulation (EC) No 883/2004 will continue to apply in the Union as regards any claims that relate to facts and events that occurred and periods completed before the withdrawal date.

Article 6 sets out the entry into force and the entry into application of the proposed Regulation.

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(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 procedure,

Whereas:

(1) On 29 March 2017, the United Kingdom of Great Britain and Northern Ireland (the 'United Kingdom') submitted the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. 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, that is to say 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, on 30 March 2019, the Union rules on social security coordination provided in Regulation (EC) No 883/2004 on the coordination of social security systems[4] and Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004[5] will also cease to apply to and in the United Kingdom.

(3) As a result, persons who, in their capacity of Union citizens, have legitimately exercised the right to freedom of movement enshrined in Articles 45 and 49 of the Treaty prior to the date of the United Kingdom's withdrawal from the Union, can no longer rely on those rules as regards their social security entitlements based on facts and events that occurred and periods of insurance, (self) employment or residence that

[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).

were completed before the withdrawal date, and which involved the United Kingdom. Stateless persons and refugees who are or have been subject to the legislation of one or more Member States and in situations involving the United Kingdom, as well as members of the family and survivors of all these categories 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's principles of equality of treatment, of assimilation and of aggregation laid down by Regulations (EC) No 883/2004 and 987/2009 as well as the rules of these Regulations necessary to give effect to the said principles, as regards persons covered, facts or events that occurred and periods completed prior to the withdrawal of the United Kingdom from the Union.

(5) To achieve a uniform unilateral application of the social security principles of equality of treatment, of assimilation and of aggregation, it is necessary to introduce this contingency Regulation.

(6) This Regulation should apply as from the day following that on which the Treaties cease to apply to and in 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 provided for in Article 1 of Regulation (EC) No 883/2004 and Article 1 of Regulation (EC) No 987/2009 shall apply.

Article 2

Persons covered

This Regulation shall apply 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 of Great Britain and Northern Ireland (the 'United Kingdom') before 30 March 2019, as well as their family members and survivors;

(b) nationals of the United Kingdom who are or have been subject to the legislation of one or more Member States before 30 March 2019, as well as their family members and survivors.

Article 3

Matters covered

This Regulation shall apply 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 facts or events that have occurred in the United Kingdom before 30 March 2019.

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 30 March 2019.

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 before 30 March 2019.

3. Any other provisions of the 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

Entry into force

This Regulation shall enter into force on the twentieth 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 and in the United Kingdom pursuant to Article 50(3) of the Treaty on European Union.

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

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

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*