



EUROPEAN COMMISSION

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Dear Chairs

The Commission would like to thank the Folketing for its Opinion on the 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 {COM(2016) 815 final}.

The Commission welcomes the Folketing's broad support for the proposed changes in relation to access to social benefits for economically inactive mobile citizens and the proposed clarification of the rules concerning aggregation for the purposes of assessing entitlement to unemployment benefits. The Commission also notes the Folketing's reservations relating to the suggested changes to the provisions on the coordination of unemployment benefits (the export of benefits and frontier workers), family benefits, long-term care benefits and the relationship between the European Union coordination rules and the Posting of Workers Directive 96/71/EC.

The Commission believes there is a need to amend the Regulation on the coordination of social security systems in order to update the measures applied and facilitate the exercise of citizens' rights while promoting greater administrative simplicity for both citizens and national authorities. The proposal reflects the Commission's ambition to modernise the current rules to ensure that they are fair, clear and easier to enforce.

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The Commission recalls that free movement is a fundamental right of the Union cherished by its citizens. It brings benefits to workers, employers and the economy at large, helping to tackle labour shortages and skills gaps. The proposal reflects this Commission's political commitment to a fair and truly pan-European labour market. Europe needs labour mobility to make the Single Market prosper, and help restore economic growth and competitiveness. Nevertheless, the Commission believes that mobility needs to be based on clear, fair and enforceable rules. This proposal has been identified as a legislative priority under the Joint Declaration by the European Parliament, the Council and the Commission under the priority addressing the social dimension of Europe. It facilitates free movement of workers and protects their rights while at the same time reinforcing the tools for national authorities to fight abuse or fraud. The proposal also ensures a closer link between the place where contributions are paid and where benefits are claimed, ensuring a fair and equitable distribution of the financial burden between the Member States.

In response to the more specific concerns raised in the Folketing's opinion the Commission would like to refer the Folketing to the attached annex.

The points made in this reply are based on the initial proposal presented by the Commission which is currently in the legislative process involving both the European Parliament and the Council.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Folketing and looks forward to continuing the political dialogue in the future.

Yours faithfully,

*Julian King
Member of the Commission*

ANNEX

The Commission has carefully considered each of the issues raised by the Folketing in its opinion and is pleased to offer the following clarifications.

Aggregation of periods of employment and insurance in claims for unemployment benefits

The Commission welcomes the Folketing's support for the suggestion to amend the Regulation concerning aggregation. The proposal makes clear that where national legislation makes the acquisition, retention, recovery or duration of a right to unemployment benefits conditional upon the completion of either periods of insurance, employment or self-employment, a host Member State would only have to take into account such previous periods in another Member State after the person concerned has worked in the host Member State for at least three months. Whether this requirement relates to insurance, employment or self-employment will depend on the national legislation of the host Member State.

One of the guiding principles behind this proposal is to establish a better link between where contributions are paid and where benefits can be claimed. The current rules on aggregation do not specify a minimum period of prior employment in the new Member State before a mobile citizen can ask that Member State to take into account periods of insurance in other Member States for the purpose of assessing entitlement to unemployment benefits. This lack of precision leaves it to the Member States to apply divergent approaches in a manner which is incompatible with the principles of coordination, which require all Member States to treat cross-border claims for social security benefits in a uniform manner.

The introduction of a minimum threshold of three months of insured work before a mobile worker is entitled to aggregate periods of insurance from other Member States would also ensure that workers cannot claim unemployment benefits from a Member State in which they have only worked for a very short period. At the same time, mobile workers are protected as those who do not meet the qualifying period of three months would be able to seek unemployment benefits from the Member State of previous employment.

Export of unemployment benefits

The Commission takes note of the Folketing's concerns with regard to the suggestion to extend the minimum duration of entitlement to export unemployment benefits from three to six months with the possibility of further extension for the remaining period of entitlement.

There are currently one million jobseekers in the Union looking for employment in Member States other than their own, but only a small proportion of this group is taking advantage of the current rules to export unemployment benefits. This shows very clearly that the rules are not achieving their full potential. Research undertaken by the Commission reveals a significant discrepancy between the average duration of an award of unemployment benefits and the minimum period of export under the current rules. This indicates that the current period of three months is too short to provide a realistic opportunity to find work in a new

Member State or to find work that is commensurate with a jobseeker's skills and experience contributing to the phenomenon of underutilization, overqualification and skill mismatches. The proposed change thereby supports mobile jobseekers and the internal market as a whole.

In addition, the proposed change is considered budget neutral as the unemployment benefit remains unchanged and the period of export would only be increased in circumstances where there is an underlying entitlement during the extended period. The change also contributes to a fair distribution of financial burden between Member States as the export of unemployment benefit would allow a citizen to search for work in another Member State without becoming a burden on the social security system of that State. Instead, he or she would continue to receive benefits to which he or she contributed in the 'home' Member State. The measure would be combined with stronger cooperation between Member States to ensure compliance with the conditions for the receipt of unemployment benefits (namely participation in labour activation measures and being actually available for work): the host country must send a monthly report to the home country.

Coordination of unemployment benefits for frontier workers

The Commission notes the concerns expressed by the Folketing with regard to the suggestion to change the rules on the coordination of unemployment benefits for frontier workers.

As already emphasised, it has been an underlying principle of the current review to ensure that there is a sufficient link between a mobile citizen and the Member State responsible for his or her social security. A frontier worker pays taxes and social security contributions in the country where he or she works. This is why the proposal seeks to amend the rules to ensure that it is the Member State of the most recent employment, rather than the Member State of residence, which is responsible for paying unemployment benefits to an unemployed frontier worker provided that person has been employed in that Member State for at least 12 months. In other cases the Member State of residence would remain responsible for paying unemployment benefits to the worker. This ensures that frontier workers are treated equally with other cross-border workers and ensures they have access to the labour market with which they have the closest links and therefore the best chances of finding new work. This change is also likely to increase administrative efficiency by abolishing the current reimbursement procedure, which was inefficient and administratively burdensome to implement.

It should be noted that under the proposal unemployed frontier workers, who have been employed for at least 12 months, would normally be required to register with the employment services of their place of former employment – i.e. they would be subject to exactly the same controls and checks as other unemployed persons who reside in that State.

While the proposal would also permit a frontier worker to register with the employment services of another Member State, except in cases of export of unemployment benefits, the requirements of the competent Member State's employment services have priority.

Export of family benefits

The Commission takes note of the Folketing's strong position on the question of indexation of child benefits under the EU Social Security Coordination rules for children who live in a Member State other than that in which the entitled parent is insured. The Commission recalls that free movement of workers is an essential and inherent part of the internal market. In order to safeguard a fair internal market, workers' mobility should be organised in a fair way. The question of fairness underpins the legislative proposal. In line with the Commission proposal on the review of the Directive on posting of workers¹, which provides that posted workers should have the same pay for the same job in the same place, the Commission believes that there should be a clear link between contributions paid and benefits received. If a mobile citizen pays the same contributions into a system as a national, he or she should also be able to receive the same benefits from this system, regardless of his or her nationality or where his or her children reside. On that basis, the Commission finds that an indexation of child benefits would be contrary to basic principles underpinning the Single Market.

Access of economically inactive persons to social benefits

The Commission recalls that equal treatment or non-discrimination are fundamental principles of EU law which the Commission is committed to defend. It is, however, equally important to provide legal clarity and transparency for European citizens not only in respect of their rights but also their obligations under EU law. The Commission agrees with the Folketing that the codification of the recent case-law of the Court of Justice on the conditions for access to welfare benefits by economically inactive mobile citizens would contribute to greater clarity and legal certainty on the relationship between Article 4 of Regulation (EC) No 883/2004 and the provisions of Directive 2004/38/EC. The Commission has consistently underlined that the fundamental right to freedom of movement does not entail automatic right to free access to the social security benefits of a host Member State. The Commission believes that the codification of this case-law would increase public awareness of the existing safeguards within EU law to combat the perceived risk of welfare tourism to ensure continued public trust in the rules and support for the fundamental freedoms that form the cornerstone of the European project.

Long-term care benefits

The Commission would like to reassure the Folketing that the proposal does not aim to extend the scope of long-term care benefits compared to the current coordination system. In line with core principles of social security coordination, the proposal intends to ensure that benefits of the same kind are coordinated in the same manner in every Member State, in the interests of citizens and national administrations. In that regard, the proposal includes a

¹ Proposal for a Directive of the European Parliament and of the Council amending Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services - COM(2016)128.

separate chapter with a common definition of long-term care benefits and criteria to identify them based on the existing case-law of the Court of Justice.

The same coordination rules would continue to apply: long-term care would be coordinated on the same logic as the current sickness rules. This means that the Member State of insurance would provide long-term care benefits in cash and reimburse the cost of benefits in kind provided by the Member State of residence.

Applicable legislation

The Commission takes note of the Folketing's reservations concerning the proposed alignment of terminology between the Posting of Workers Directive and the European Union Social Security Coordination rules. The Commission would like to reassure the Folketing that it has no intention of introducing fundamental changes to the current rules on social security coordination for posted workers or persons working in more than one Member State. However, the Commission finds that it would only increase efficiency for employers to have a single clear frame of reference for addressing labour law and social security issues. This would also promote legal compliance by making it more transparent for employers and employees when a worker carrying out a temporary assignment in another Member State is subject to the Posting of Workers Directive and when such activity falls outside the scope of these rules. The proposed alignment of terminology under both legal instruments together with the accompanying strengthened coordination between social security bodies and labour inspectorates should facilitate employers' and workers' dealings with public authorities. Moreover, a clearer framework would also enhance the accuracy of statistical data on posted workers.