



## EUROPEAN COMMISSION

*Brussels, 25.7.2017  
C(2017) 4279 final*

*Dear President*

*The Commission would like to thank the Bundesrat 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 Bundesrat's broad support for the aims of the proposal and notes its doubts relating to the suggested changes to the provisions on access to welfare benefits for economically inactive persons and family benefits and its desire for greater simplification of the EU coordination rules.*

*The Commission generally agrees with the Bundesrat on the need to amend the regulations 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.*

*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 tackling labour shortages and skills gaps. The proposal reflects the political commitment made by this Commission to a fair and truly pan-European labour market. 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 financial distribution of burden between Member States.*

*In response to the more specific questions in the Opinion, the Commission would like to refer the Bundesrat to the attached annex.*

*Ms Malu Dreyer  
President of the Bundesrat  
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*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 Bundesrat and looks forward to continuing our political dialogue in the future.*

*Yours faithfully,*

*Frans Timmermans  
First Vice-President*

*Marianne Thyssen  
Member of the Commission*

## ANNEX

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

*The Commission agrees with the Bundesrat that the codification of the recent case-law of the Court of Justice of the European Union 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 takes notes of the Bundesrat's concern as regards the failure to incorporate all case-law of the Court of Justice, in particular as concerns the cases Alimanovic and Garcia-Nieto<sup>1</sup>. In the process of codification, the Commission has been required to carry out a careful assessment of which elements of the case-law it considers to be stable and which elements are still evolving.*

*Based on case-law of the Court of Justice, the proposal clarifies that Member States may decide not to grant social benefits (both social assistance and social security) to mobile citizens who are economically inactive citizens – this means those who are not working nor actively looking for a job, and do not have a legal right of residence on their territory. This arises from the judgment of the Court of Justice in the Case Commission v the United Kingdom<sup>2</sup>.*

*However, in the Commission's view, the situation is different in respect of active jobseekers: their right of residence in another Member State is conferred directly by Article 45 of the Treaty on the Functioning of the European Union. Active jobseekers must be registered with the local public employment service and must have a chance of finding a job in a reasonable time frame. According to the case-law, job seekers can be denied access to social assistance benefits including special non-contributory benefits (see the Alimanovic case) but the Court has not yet ruled on "traditional" social security benefits, such as family benefits.*

*The Commission has chosen not to codify the recent case-law regarding jobseekers, as this in the Commission's view appears to be an area where there are questions that still remain to be settled. However, the Commission does not seek to reverse the current case-law, and in any event the case-law of the Court concerning social assistance is directly applicable. This understanding is made clear in the explanatory memorandum that accompanies the legislative proposal which explicitly distinguishes between social assistance and social security when describing the special status of jobseekers.*

*The Commission takes note of the Bundesrat's views 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*

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<sup>1</sup> Judgment of 15 September 2015, Alimanovic, Case C-67/14 and judgment of 25 February 2016, García-Nieto and Others, Case C-299/14.

<sup>2</sup> Judgment of 14 June 2016, Case C-308/14, Commission v United Kingdom.

*free movement of workers is a fundamental freedom guaranteed by the Treaty and 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 workers<sup>3</sup>, 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.*

*As the Bundesrat rightly notes in its opinion, there is a need to combat improper use of the Portable Document A1. This is why the proposal seeks to confer new powers for the Commission to adopt implementing acts in order to ensure uniform conditions for the application of the special rules for posted or sent workers and self-employed persons and for persons who pursue an activity in two or more Member States. These powers are limited to establishing standard procedures for the issuance, contestation and withdrawal of the Portable Document A1 certifying the legislation which applies to persons in the situations referred to above and will not go further than necessary to ensure the coordination rules operate effectively. They are intended to complement the valuable work of the Administrative Commission on Social Security Coordination promoting uniformity and full cooperation in a field where this is vital to ensure protection of workers and public confidence and trust in the rules. The powers would be exercised in full compliance with the requirements of Regulation (EU) No 182/2011 and would be subject to the examination procedure involving the European Parliament, the Council as well as national experts from the Member States.*

*The Commission fully agrees with the Bundesrat on the importance of the Better Regulation agenda and would like to reassure the Bundesrat that in accordance with the Inter-institutional agreement on Better Law-Making of 13 April 2016,<sup>4</sup> the proposal was based on an impact assessment, which analysed the potential effects of different policy options against a range of criteria, including clarity, simplification and administrative burden. The resulting impact assessment report prepared received a positive opinion from the Regulatory Scrutiny Board, which has been published on the Commission's Transparency Register.<sup>5</sup>*

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<sup>3</sup> 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.

<sup>4</sup> OJ L 123, 12.05.2016.

<sup>5</sup> SEC(2016) 539.