



*Brussels, 8.6.2017
C(2017) 3797 final*

Dear Chair,

The Commission would like to thank the Senat 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 Senat's broad support for the aims of the proposal and notes its concerns relating to the suggested changes to the provisions on posting and applicable legislation and on equal treatment.

The Commission generally agrees with the Senat 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 ensuring a fair distribution of the burden among the Member States. The Commission proposal reflects its 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 to tackle labour shortages and skills gaps. The proposal reflects this Commission's political commitment 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 specific issues in the Senat's opinion, the Commission would like to refer to the attached annex.

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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 Senat and looks forward to continuing the 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 Senat in its opinion and is pleased to offer the following clarifications.

The Commission takes note of Senat's concern as regards the use of the terms “posted worker” and “sent worker” and the extension of the term “replacement” in the proposal. The Commission would like to reassure the Senat that it has no intention of introducing fundamental changes to the current rules on social security coordination for posted workers or persons who work in more than one Member State. However, it is the Commission's view 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, would facilitate employers and workers dealings with public authorities. Moreover, such a clearer framework would also enhance the accuracy of statistical data on posted workers.

The Commission recalls that equal treatment and non-discrimination are fundamental principles of EU law which the Commission is committed to defend. However, it is equally important to provide legal clarity and transparency for EU citizens not only in respect of their rights but also their obligations under EU law. Based on the case law of the Court of Justice of the European Union, the Commission proposal would clarify that Member States may decide not to grant social benefits to mobile citizens who are economically inactive citizens – this means those who are neither working nor actively looking for a job, and do not have the legal right of residence on their territory. Economically inactive citizens have a legal right of residence only when they have sufficient means of subsistence and comprehensive health coverage. In setting out this principle, it is the Commission's intention to codify the most recent jurisprudence of the Court of Justice – no more and no less – in order to ensure that the Union's social security rules clearly and transparently reflect the current legal acquis.

The Commission notes the Senat's concerns about the proposal to introduce the criterion of “centre of interest of activities of the undertaking” for the purpose of establishing the registered office or place of business. As stated above, it is not the Commission's intention to introduce significant changes in the current rules for persons who work in two or more Member States. As is currently the case, different rules apply to these persons than to posted workers. However, the Commission finds that there is currently a grey zone in the case of a worker who is regularly working in two or more Member States. The rules for this category of workers do not specify as clearly as the rules for posted workers that a sending undertaking needs to perform a significant activity in the country where the worker continues or might become insured. The Commission proposal aims at preventing ‘creative’ business models which in the end amount to a circumvention of the rules on the applicable legislation by making the worker subject to the legislation of a country with which neither the employer nor the employee has any substantial link. The basic rule that a person working in two or more Member States is insured in the country of residence, if she/he works at least 25% in that country, remains unchanged. This new clarification is only relevant in case the person is working less than 25% in her/his country of residence.