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2020/0344 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Joint Committee established by the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community as regards the date from which the provisions of Title III of Part Two of the Agreement shall apply to the nationals of Iceland, the Principality of Liechtenstein, the Kingdom of Norway, and the Swiss Confederation

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

The Commission proposes that the Council establishes the position to be taken on the Union's behalf in the Joint Committee established by the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ('the Withdrawal Agreement') on the date from which the provisions of Title III of Part Two of the Agreement shall apply to the nationals of Iceland, the Principality of Liechtenstein, the Kingdom of Norway, and the Swiss Confederation.

2. CONTEXT OF THE PROPOSAL

2.1. The Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community

The Withdrawal Agreement sets out the arrangements for the orderly withdrawal of the United Kingdom of Great Britain and Northern Ireland ('United Kingdom') from the European Union ('Union') and the European Atomic Energy Community. This Agreement entered into force on 1 February 2020.

2.2. The "triangulation"

In Article 33(1) of the Withdrawal Agreement, the Union and the United Kingdom have committed to apply the reciprocal protection of social security rights (according to Title III of Part Two of the Withdrawal Agreement) to nationals of the countries which are members of the European Economic Area ('EEA') and, at the same time, of the European Free Trade Association ('EEA-EFTA States') and to Swiss nationals upon condition that corresponding agreements would be concluded, on the one hand, between the Union and the EEA-EFTA States, and between the Union and the Swiss Confederation, which would apply to United Kingdom nationals, and, on the other hand, between the United Kingdom and the EEA-EFTA States as well as between the United Kingdom and the Swiss Confederation, which would apply to Union citizens.

This system, which involves three parties, namely the Union, the EEA-EFTA States/the Swiss Confederation and the United Kingdom is referred to as "triangulation". The aim of this triangulation is to ensure the protection of the reciprocal social security rights of nationals of these States, stateless persons and refugees, as well as their family members and survivors, who, by the end of the transition period defined in Article 126 of the Withdrawal Agreement, are or have been in a cross-border situation involving the three parties.

The United Kingdom has already concluded such agreements with the EEA-EFTA States¹ and the Swiss Confederation respectively². The Union is about to conclude such agreements with the EEA-EFTA States and the Swiss Confederation by, respectively, a Decision of the EEA Joint Committee amending Annex VI (Social Security) to the EEA Agreement and a Decision

¹ Agreement on arrangements between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland following the withdrawal of the United Kingdom from the European Union, the EEA Agreement and other agreements applicable between the United Kingdom and the EEA EFTA States by virtue of the United Kingdom's membership of the European Union signed in London on 28 January 2020.

² Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on Citizens' Rights following the Withdrawal of the United Kingdom from the European Union and the Free Movement of Persons Agreement signed in Bern on 25 February 2019.

of the Joint Committee established under the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons amending Annex II to that Agreement on the coordination of social security schemes.

As provided for in Article 33(2) of the Withdrawal Agreement, the Union and the United Kingdom shall notify the Joint Committee of the date of entry into force of their respective agreements with the EEA-EFTA States and the Swiss Confederation.

Only then the Joint Committee shall adopt a Decision setting the date, from which the provisions of the social security coordination shall apply to the nationals of the EEA-EFTA States and to Swiss nationals. It is only as of this date that the implementation of Article 33 will be completed, thereby ensuring the protection of social security entitlements of Union citizens, United Kingdom nationals, EEA-EFTA nationals and Swiss nationals in triangular situations.

2.3. The envisaged decision of the Joint Committee

Pursuant to Article 33(1) of the Withdrawal Agreement, the provisions of Title III of Part Two of the Agreement on the coordination of the social security systems, applicable to Union citizens, shall apply to nationals of Iceland, the Principality of Liechtenstein, the Kingdom of Norway, and the Swiss Confederation provided that these states have concluded and apply corresponding agreements, on the one hand, with the United Kingdom which apply to Union citizens and, on the other hand, with the Union which apply to United Kingdom nationals.

Pursuant to Article 33(2) of the Withdrawal Agreement, upon notification from the United Kingdom and from the Union of the date of entry into force of these agreements, the Joint Committee shall set the date from which the provisions of Title III of Part Two of the Agreement shall apply to the nationals of Iceland, the Principality of Liechtenstein, the Kingdom of Norway, and the Swiss Confederation, as applicable.

The purpose of the envisaged Joint Committee's decision for which the Union's position should be established, is to set such a date.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

In view of the date of entry into force of the corresponding agreements referred to in point 2.2 and in order to avoid any gap in the protection of the nationals concerned after the end of the transition period as defined in Article 126 of the Withdrawal Agreement, the date from which the provisions of Title III of Part Two of the Agreement shall apply to the nationals of Iceland, the Principality of Liechtenstein, the Kingdom of Norway, and the Swiss Confederation, should be 1 January 2021.

The position of the Union should therefore be to support the adoption of a decision by the Joint Committee pursuant to Article 33(2) the Withdrawal Agreement setting such a date, in line with the draft decision attached to this proposal.

4. LEGAL BASIS

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for Council decisions establishing *'the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.'*

The decision, which the Joint Committee is called upon to adopt, constitutes an act having legal effects.

The envisaged act does not supplement or amend the institutional framework of the Withdrawal Agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

The sole objective and content of the envisaged act relates to establishing the Union's position on the date from which the provisions of Title III of Part Two of the Agreement shall apply to the nationals of Iceland, the Principality of Liechtenstein, the Kingdom of Norway, and the Swiss Confederation. The conclusion of the Agreement was based on Article 50(2) of the Treaty on European Union.

The legal basis of the proposed decision should therefore be Article 50(2) of the Treaty on European Union, in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE ENVISAGED ACT

As the purpose of the decision of the Joint Committee is to set the date from which the provisions of Title III of Part Two of the Withdrawal Agreement shall apply to the nationals of Iceland, the Principality of Liechtenstein, the Kingdom of Norway, and the Swiss Confederation, it is appropriate to publish the decision of the Joint Committee in the Official Journal of the European Union after its adoption.

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(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 50(2) thereof,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (the ‘Withdrawal Agreement’) was concluded by Council Decision (EU) 2020/135³ and entered into force on 1 February 2020.
- (2) Pursuant to Article 33(1) of the Withdrawal Agreement, the provisions of Title III of Part Two of the Agreement, on the coordination of the social security systems, applicable to Union citizens, shall apply to nationals of Iceland, the Principality of Liechtenstein, the Kingdom of Norway, and the Swiss Confederation provided that these states have concluded and apply corresponding agreements, on the one hand, with the United Kingdom which apply to Union citizens and, on the other hand, with the Union which apply to United Kingdom nationals.
- (3) Pursuant to Article 33(2) of the Withdrawal Agreement, upon notification from the United Kingdom and from the Union of the date of entry into force of those agreements, the Joint Committee established under Article 164(1) thereof (the ‘Joint Committee’) shall set the date from which the provisions of Title III of Part Two of the Agreement shall apply to the nationals of Iceland, the Principality of Liechtenstein, the Kingdom of Norway, and the Swiss Confederation, as applicable.

³ Council Decision (EU) 2020/135 of 30 January 2020 on the conclusion of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ L 29, 31.1.2020, p.1).

- (4) The Union has concluded corresponding agreements with Iceland, the Principality of Liechtenstein and the Kingdom of Norway⁴ and with the Swiss Confederation⁵ which apply to United Kingdom nationals. The United Kingdom has concluded corresponding agreements with Iceland, the Principality of Liechtenstein and the Kingdom of Norway⁶ and with the Swiss Confederation⁷ which apply to Union citizens.
- (5) In view of the envisaged date of entry into force of those agreements and in order to avoid any gap in the protection of the nationals concerned after the end of the transition period as defined in Article 126 of the Withdrawal Agreement, the date from which the provisions of Title III of Part Two of the Agreement shall apply to the nationals of Iceland, the Principality of Liechtenstein, the Kingdom of Norway, and the Swiss Confederation, should be 1 January 2021.
- (6) It is therefore appropriate to establish the position to be taken on the Union's behalf in the Joint Committee, upon notification from the United Kingdom and from the Union of the date of entry into force of the agreements they each concluded with Iceland, the Principality of Liechtenstein and the Kingdom of Norway and with the Swiss Confederation.
- (7) In order to allow for the prompt application of the measures provided for in this Decision, this Decision should enter into force on the date of its adoption,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted on the Union's behalf in the Joint Committee established by Article 164(1) of the Withdrawal Agreement, on a decision to be taken in accordance with Article 33(2) thereof, shall be based on the draft decision of the Joint Committee attached to this Decision.

Article 2

The decision of the Joint Committee shall be published in the *Official Journal of the European Union*.

⁴ Decision No [...] of [...] of the EEA Joint Committee amending Annex VI (Social Security) to the EEA Agreement.

⁵ Decision No .../... of the Joint Committee established under the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons of [...] amending Annex II to that Agreement on the coordination of social security schemes.

⁶ Agreement on arrangements between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland following the withdrawal of the United Kingdom from the European Union, the EEA Agreement and other agreements applicable between the United Kingdom and the EEA EFTA States by virtue of the United Kingdom's membership of the European Union signed in London on 28 January 2020.

⁷ Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on Citizens' Rights following the Withdrawal of the United Kingdom from the European Union and the Free Movement of Persons Agreement signed in Bern on 25 February 2019.

Article 3

This Decision shall enter into force on the date of its adoption.

Done at Brussels,

*For the Council
The President*