



Brussels, 2.12.2022
COM(2022) 683 final

2022/0397 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Specialised Committee on Social Security Coordination established by the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, as regards the use of the Electronic Exchange of Social Security Information for the transmission of data between institutions or liaison bodies

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the Specialised Committee on Social Security Coordination established by the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part ('the Trade and Cooperation Agreement')¹ in connection with the envisaged adoption of a decision concerning the use of the Electronic Exchange of Social Security Information for the transmission of data between institutions and liaison bodies for the purposes of implementing the Protocol on Social Security Coordination to the Trade and Cooperation Agreement.

2. CONTEXT OF THE PROPOSAL

2.1. The Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part

The Trade and Cooperation Agreement establishes the basis for a broad relationship between the European Union and the United Kingdom and includes provisions on the coordination of social security systems between the European Union and the United Kingdom. It entered into force on 1 May 2021, having been provisionally applied since 1 January 2021.

2.2. The Specialised Committee on Social Security Coordination

The Specialised Committee on Social Security Coordination ('the Specialised Committee') is established under Article 8(1)(p) of the Trade and Cooperation Agreement.

The tasks of the Specialised Committee are laid down in Article 8(4) of the Trade and Cooperation Agreement and include:

- Monitoring and reviewing the implementation and ensuring the proper functioning of the agreement,
- Adopting decisions, including amendments, and recommendations in respect of all matters where the agreement so provides,
- Discussing technical issues arising from the implementation of the agreement.

In accordance with Article 8(5) of the Trade and Cooperation Agreement, the Specialised Committee comprises representatives of the Union and of the United Kingdom. Pursuant to Article 10(2) of the Trade and Cooperation Agreement it adopts decisions and makes recommendations by mutual consent. Annex 1 to the Trade and Cooperation Agreement lays down the rules of procedure of the Specialised Committees.

2.3. The envisaged act of the Specialised Committee on Social Security Coordination

The Specialised Committee is to adopt a decision regarding the Electronic Exchange of Social Security Information ('the envisaged act').

The purpose of the envisaged act is to approve the use of the Electronic Exchange of Social Security Information for the transmission of data between institutions and liaison bodies for

¹ OJ L 149, 30.4.2021, p. 10.

the purposes of implementing the Protocol on Social Security Coordination to the Trade and Cooperation Agreement, as envisaged by Article SSCI.4(2) of the Protocol.

The envisaged decision will become binding on the parties in accordance with Article 10(1) of the Trade and Cooperation Agreement. In accordance with Rule 9(3) of Annex 1 to the Trade and Cooperation Agreement, decisions adopted by the Specialised Committee will specify the date on which they take effect.

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

The Electronic Exchange of Social Security Information ('EESSI') is an IT system that helps social security institutions across the EU to exchange information related to the different branches of social security covered by Regulation (EC) No 883/2004². The use of EESSI has various benefits. For instance, it enables faster and more efficient exchanges between social security institutions, which allows them to handle individual cases more quickly, improves the accuracy of such data exchanges owing to the use of standardised electronic documents and procedures, encompasses safeguards against fraud and error, and ensures the secure handling of personal data through a common secure infrastructure.

The United Kingdom participated in EESSI while it was a Member State of the Union. Moreover, Article 34(2) 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 ('the Withdrawal Agreement')³ provides that the United Kingdom must take part in EESSI and bear the related costs for the purposes of implementing the latter Agreement.

Like Regulation (EC) No 883/2004 as well as the Withdrawal Agreement, the implementation of the Protocol on Social Security Coordination to the Trade and Cooperation Agreement requires an exchange of social security information between national institutions in the Member States and the United Kingdom. Article SSCI.71(4) of the Protocol provides that, for the purposes of implementing the Protocol, the United Kingdom may take part in EESSI and bear the related costs. Pursuant to Article SSCI.4(2) of the Protocol, the transmission of data between the institutions or liaison bodies of the Member States and the United Kingdom via EESSI is however subject to the approval of the Specialised Committee. Furthermore, Article SSCI.4(2) of the Protocol provides that to the extent that forms and documents are exchanged via EESSI, they must respect the rules applicable to the EESSI system.

Using EESSI would allow the competent national authorities of the Member States and the United Kingdom, as well as persons who are moving between the EU and the United Kingdom to benefit from the same advantages as outlined above. Therefore, the Union supports the use of EESSI for the purposes of the implementation of the Protocol.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for the adoption of 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,*

² 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.

³ OJ L 29, 31.1.2020, p. 7.

with the exception of acts supplementing or amending the institutional framework of the agreement.'

The concept of '*acts having legal effects*' includes acts that have legal effects by virtue of the rules of international law governing the body in question.

4.1.2. Application to the present case

The Specialised Committee is a body set up by an agreement, namely the Trade and Cooperation Agreement.

The decision, which the Specialised Committee is called upon to adopt, constitutes an act having legal effects. The envisaged act will be binding on the Union and the United Kingdom under international law, in accordance with Article 10 of the Trade and Cooperation Agreement.

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

The sole objective and content of the envisaged act relate to the approval of the use of the EESSI for the purposes of implementing the Protocol on Social Security Coordination to the Trade and Cooperation Agreement.

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

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf.

4.2.2. Application to the present case

The main objective and content of the envisaged act relate to social security coordination.

Therefore, the substantive legal basis of the proposed decision is Article 48 TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 48 TFEU, in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE ENVISAGED ACT

As the decision of the Specialised Committee will make the use of the Electronic Exchange of Social Security Information in principle mandatory for the transmission of data between institutions and liaison bodies for the purposes of implementing the Protocol on Social Security Coordination to the Trade and Cooperation Agreement, and hence modify the rights and obligations of the Parties under that Protocol, it is appropriate to publish it in the Official Journal of the European Union after its adoption.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 48, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part ('the Trade and Cooperation Agreement'), was concluded by the Union by Council Decision (EU) 2021/689⁴ of 29 April 2021 and entered into force on 1 May 2021, having been provisionally applied since 1 January 2021.
- (2) Pursuant to Article 778(1) of the Trade and Cooperation Agreement, the Protocols and Annexes to that agreement form an integral part thereof. In accordance with Article 783(3) of the Trade and Cooperation Agreement, as from the date from which the Agreement is provisionally applied, references to the date of its entry into force are to be understood as references to the date from which it is provisionally applied.
- (3) Article 8(4)(c) of the Trade and Cooperation Agreement empowers the Specialised Committee on Social Security Coordination to adopt decisions, including amendments, and recommendations in respect of all matters where that Agreement so provides. In accordance with Article 10 thereof, the decisions adopted by a committee are binding on the Parties.
- (4) Pursuant to Article SSCI.71(4) of the Protocol on Social Security Coordination to the Trade and Cooperation Agreement, for the purposes of implementing that Protocol, the United Kingdom may take part in the Electronic Exchange of Social Security Information and bear the related costs.
- (5) Pursuant to Article SSCI.4(2) of the Protocol on Social Security Coordination, the transmission of data between the institutions or the liaison bodies of the Member States and the United Kingdom may, subject to the approval of the Specialised Committee on Social Security Coordination, be carried out via the Electronic Exchange of Social Security Information. To the extent forms and documents are

⁴ OJ L 149, 30.4.2021, p. 2.

exchanged via the Electronic Exchange of Social Security Information, they are to respect the rules applicable to the Electronic Exchange of Social Security Information.

- (6) The use of the Electronic Exchange of Social Security Information for the purposes of implementing the Protocol on Social Security Coordination would be beneficial for the Member States and the United Kingdom, social security institutions and persons moving between the EU and the United Kingdom, as it would ensure a more rapid, accurate and secure exchange of social security information under the Protocol on Social Security Coordination. The Specialised Committee on Social Security Coordination should therefore adopt a decision to approve the transmission of data via the Electronic Exchange of Social Security Information.
- (7) It is appropriate to establish the position to be taken on the Union's behalf in the Specialised Committee on Social Security Coordination, as the envisaged Specialised Committee Decision will be binding on the Union.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the Specialised Committee on Social Security Coordination established by Article 8(1)(p) of the Trade and Cooperation Agreement shall be in accordance with the decision of the Specialised Committee attached to this Decision.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*