

# **EXPLANATORY MEMORANDUM ON A DECISION OF THE COUNCIL ESTABLISHING AN EU POSITION AHEAD OF A WITHDRAWAL AGREEMENT OR TRADE AND COOPERATION AGREEMENT GOVERNANCE COMMITTEE**

**9013/23 + add 1**

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 designation of the financial institution to serve as reference to determine the interest rate for late payments and the exchange rate for currency conversions as well as the date to be taken into consideration for determining the rates of currency conversion

Submitted by the Department for Work and Pensions on 15 June 2023

## **SUBJECT MATTER**

1. Before the UK left the European Union (EU), His Majesty's Revenue and Customs (HMRC) and the Department for Work and Pensions (DWP) used the European Central Bank (ECB) exchange rates to implement the Social Security Coordination (SSC) Regulations (EC) 883/2004 and 987/20029. DWP and HMRC continue to use the ECB rates to implement the SSC Regulations under the Withdrawal Agreement (WA) and associated EEA-EFTA and Swiss agreements.
2. The Trade and Cooperation Agreement (TCA) does not specify which institution's rate to use. The TCA requires the Specialised Committee (SC) on SSC, established under the TCA, to recommend and agree the reference rates of a suitable financial institution. The financial provisions within the TCA relating to the UK's participation in EU programmes and activities also confirm use of the ECB.
3. SSC is the only area where such a decision is needed to be made.
4. The UK Government agrees with the recommendation to use the ECB rates and intends to adopt this decision at the third meeting of the Specialised Committee on SSC which will take place 28 June 2023. This decision ensures a consistent approach to the handling of WA and TCA cases, minimising administrative costs and the risk of error by Government departments and individuals.

## **SCRUTINY HISTORY**

5. The most recent scrutiny of SSC looked at the decision to use the Electronic Exchange of Social Security Information for the transmission of data between institutions or liaison bodies for activity under the TCA which was submitted as EU document COM(22)683 on which DWP submitted an EM dated 20 December 2022. The House of Commons European Scrutiny Committee reported that the document raised issues of political importance and completed scrutiny on 25 January 2023 in Report 13, 22/23. The House of Lords European Affairs Committee did not have any questions arising from the document and completed scrutiny at the Chair's

sift No.28 on 6 January 2023. That Decision was adopted between the UK and the EU via written procedure on 10 March 2023.

## MINISTERIAL RESPONSIBILITY

6. Minister for Employment

## INTEREST OF THE DEVOLVED ADMINISTRATIONS

7. The devolved governments and devolved administrations attend the SC on SSC. The second SC on SSC, in June 2022, discussed the potential use of ECB exchange and interest rates. We have also shared the draft Explanatory Memorandum with devolved governments and devolved administrations where appropriate. No comments were received.

## LEGAL AND PROCEDURAL ISSUES

8. **i. Legal Base:** Article 48 in conjunction with Article 218(9) of the Treaty on the Functioning of the European Union. Article 218(9) states that “The Council, on a proposal from the Commission or the High Representative of the Union for Foreign Affairs and Security Policy, shall adopt a decision suspending application of an agreement and 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.”
- ii. Voting Procedure:** The Council shall act by a qualified majority throughout the procedure.
- iii. Timetable for adoption and implementation:** The decision was formally adopted by the Council on 25 May 2023.
- iv.** The decision text can be found here. [EUR-Lex - 32023D1059 - EN - EUR-Lex \(europa.eu\)](https://eur-lex.europa.eu/lexuri/ui.do?uri=CELEX:32023D1059:EN:EUR-Lex)

## POLICY AND OPERATIONAL IMPLICATIONS

10. Acknowledging that the rules for the WA are legally separate from those in the TCA, it is preferable to use the same financial institution's exchange rate for both agreements, as well using as the same fixed date when determining the exchange rate. This will avoid complications for DWP and HMRC when working with EU social security institutions and individuals to implement the WA and TCA and will mitigate the risk of errors.

## CONSULTATION

11. There is no consultation required.

## FINANCIAL IMPLICATIONS

12. There are no financial implications to Government, but this decision will determine the rate at which individuals' debts are calculated.

**MINISTERIAL NAME AND SIGNATURE**

A handwritten signature in blue ink, appearing to read 'Guy Opperman', with a large, sweeping flourish underneath.

Guy Opperman MP

Minister for Employment

Department for Work and Pensions