

EXPLANATORY MEMORANDUM ON A UK/EU WITHDRAWAL AGREEMENT OR TRADE AND COOPERATION AGREEMENT GOVERNANCE DOCUMENT

EU Council document 9869/24

1. Council Decision on the position to be taken on behalf of the European Union (EU) 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 a recommendation providing further guidance on the implementation of the Protocol on Social Security Coordination to the Trade and Cooperation Agreement (the SSC Protocol) on the legislation applicable to detached workers and self-employed persons working temporarily outside the competent State
2. Submitted by Department for Work and Pensions 24/10/2024

SUBJECT MATTER

3. Before the UK left the European Union (EU), His Majesty's Revenue and Customs (HMRC), employed persons, self-employed persons, employers, and EU social security institutions used the guidance set out in Decision A2, of the 12 June 2009 of the EU Administrative Commission for the coordination of social security systems to implement the Social Security Coordination (SSC) Regulations (EC) 883/2004 and 987/2009. HMRC, employed persons, self-employed persons, employers, and EU social security institutions continue to use Decision A2 to implement the SSC Regulations under the Withdrawal Agreement (WA) and associated EEA-EFTA and Swiss agreements.
4. The SSC Protocol to the Trade and Cooperation Agreement (TCA) requires that an employed or self-employed person is subject to the legislation of only one State at a time. The general rule for determining which State's legislation the employed or self-employed person should be subject to is where their work activity takes place. There are a number of exceptions to this general rule. One relates to detached workers and self-employed persons working temporarily working outside the competent State.
5. As the detached worker rules in the SSC Protocol to the TCA work in the same way as the SSC Regulations (EC) 883/2004 and 987/2009, the UK agrees with the recommendation to provide further guidance in the form of a Recommendation of the SSC Specialised Committee (SC). This ensures a consistent approach to the handling of WA and TCA cases, minimising administrative costs and the risk of error by HMRC, employed persons, self-employed persons, employers, and EU social security institutions.

SCRUTINY HISTORY

6. Previous Council decisions establishing EU positions ahead of the Specialised Committee on Social Security Coordination were examined by the EU Select Committees through EM 9013/23 (designation of the financial institution to serve as reference to determine the interest rate for late payments and the exchange rate for currency conversions) dated 15 May 2023 and EM COM(22)683 (use of the Electronic Exchange of Social Security Information for the transmission of data between institutions or liaison bodies) dated 20 December 2022. The House of Lords European Affairs Committee had no questions arising from either EM. The House of Commons had no questions arising from EM 9013/23 but reported to the House on EM COM(22)683 in Report 13, 22/23 as raising issues of political importance.

MINISTERIAL RESPONSIBILITY

7. The Secretary of State for Work and Pensions has overall responsibility for the Social Security Coordination Specialised Committee. The Secretary of State for Health and Social Care, alongside His Majesty's Revenue and Customs have policy interest.
8. The Paymaster General and Minister for the Cabinet Office (Minister for the Constitution and European Union Relations) has overall responsibility for UK policy relating to the UK's relations with the EU.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

9. The devolved governments and devolved administrations attend the SSC SC. At the fourth SSC SC, in June 2024, the SC co-chairs signed this recommendation. We shared the draft Explanatory Memorandum with devolved governments and devolved administrations where appropriate. No comments were received.

LEGAL AND PROCEDURAL ISSUES

10. 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."

Voting Procedure:

11. The Council shall act by a qualified majority throughout the procedure.

Timetable for adoption and implementation:

12. The decision was formally adopted by the Council on the 5th of June 2024.

POLICY AND OPERATIONAL IMPLICATIONS

13. The further guidance put forward as a Recommendation to the Specialised Committee will ensure a consistent approach to the handling of WA and TCA cases, minimising administrative costs and the risk of error. This will make it easier for operational staff to handle EU cases regardless of what agreement the person falls under. The policy primarily impacts His Majesty's Revenue and Customs and has minimal and positive effects on customers.

CONSULTATION

14. There is no consultation required.

FINANCIAL IMPLICATIONS

15. There are no financial implications to Government.

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