

DECISIONS

COUNCIL DECISION (EU) 2023/1059

of 25 May 2023

on the position to be adopted on behalf of the European Union within 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

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 means of Council Decision (EU) 2021/689 ⁽¹⁾ 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 that agreement was provisionally applied, references to the date of its entry into force are to be understood as references to the date from which it was provisionally applied.
- (3) Article 8(4)(c) of the Trade and Cooperation Agreement empowers the Specialised Committee on Social Security Coordination (the 'Specialised Committee') to adopt decisions, including amendments, and recommendations in respect of all matters where that agreement so provides. In accordance with Article 10(1) of the Trade and Cooperation Agreement, the decisions adopted by a committee are binding on the Parties.
- (4) Pursuant to Article SSCI.53(2) of the Protocol on Social Security Coordination to the Trade and Cooperation Agreement (the 'Protocol'), the interest for late payments is to be calculated on the basis of the reference rate applied by the financial institution designated for this purpose by the Specialised Committee to its main refinancing operations.
- (5) Many provisions, such as Articles SSC.6(a), SSC.19(1), SSC.26, SSC.47 and SSC.64, SSCI.22(4) and (5), SSCI.23(7), SSCI.56, SSCI.57, SSCL.62 and SSCI.64 of the Protocol, contain situations where, for the purposes of the payment, calculation or recalculation of a benefit or contribution, a reimbursement, or for the purposes of offsetting and the recovery procedures, the exchange rate needs to be determined.

⁽¹⁾ Council Decision (EU) 2021/689 of 29 April 2021 on the conclusion, on behalf of the Union, of 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, and of the Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information (OJ L 149, 30.4.2021, p. 2).

- (6) Pursuant to Article SSCL.73 of the Protocol, for the purposes of the Protocol and its Annex SSC-7, the exchange rate between two currencies is to be the reference rate published by the financial institution designated for this purpose by the Specialised Committee. The date to be taken into account for determining the exchange rate is to be fixed by the Specialised Committee.
- (7) The Specialised Committee notes that, while the rules on social security coordination laid down in 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 ⁽²⁾, concluded by the Union by means of Council Decision (EU) 2020/135 ⁽³⁾, are legally separate from those laid down in the Trade and Cooperation Agreement, using the same financial institution for both agreements, as well as the same fixed date to be taken into account for determining the exchange rate, would be preferable, as it would avoid complications for the social security institutions implementing those agreements and mitigate the risk of errors.
- (8) It is appropriate to establish the position to be adopted on the Union's behalf in the Specialised Committee 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, as the envisaged decision will be binding on the Union,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted on behalf of the European Union within the Specialised Committee on Social Security Coordination established by Article 8(1)(p) of the Trade and Cooperation Agreement 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, is set out in the draft Decision of the Specialised Committee attached to this Decision.

Article 2

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

Done at Brussels, 25 May 2023.

For the Council
The President
J. FORSELL

⁽²⁾ OJ L 29, 31.1.2020, p. 7.

⁽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).

DRAFT**DECISION No .../2023 OF THE SPECIALISED COMMITTEE ON SOCIAL SECURITY COORDINATION ESTABLISHED BY ARTICLE 8(1)(p) OF 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,****of ...****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**

THE SPECIALISED COMMITTEE ON SOCIAL SECURITY COORDINATION,

Having regard to 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 ⁽¹⁾, and in particular Articles SSCI.53(2) and SSCI.73 of its Protocol on Social Security Coordination,

Whereas:

- (1) Pursuant to Article SSCI.53(2) of the Protocol on Social Security Coordination (the 'Protocol') to 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'), the interest for late payments is to be calculated on the basis of the reference rate applied by the financial institution designated for this purpose by the Specialised Committee on Social Security Coordination (the 'Specialised Committee') to its main refinancing operations.
- (2) Many provisions, such as Articles SSC.6(a), SSC.19(1), SSC.26, SSC.47 and SSC.64, SSCI.22(4) and (5), SSCI.23(7), SSCI.56, SSCI.57, SSCI.62 and SSCI.64 of the Protocol, contain situations where, for the purposes of the payment, calculation or recalculation of a benefit or contribution, a reimbursement, or for the purposes of offsetting and the recovery procedures, the exchange rate needs to be determined.
- (3) Pursuant to Article SSCI.73 of the Protocol, for the purposes of the Protocol and its Annex SSC-7, the exchange rate between two currencies is to be the reference rate published by the financial institution designated for this purpose by the Specialised Committee. The date to be taken into account for determining the exchange rate is to be fixed by the Specialised Committee.
- (4) The Specialised Committee notes that, while the rules on social security coordination laid down in 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 ⁽²⁾ are legally separate from those laid down in the Trade and Cooperation Agreement, using the same financial institution for both agreements, as well as the same fixed date to be taken into account for determining the exchange rate, would be preferable, as it would avoid complications for the social security institutions implementing those agreements and mitigate the risk of errors,

HAS ADOPTED THIS DECISION:

Article 1

The European Central Bank shall be the financial institution designated for the purposes of Articles SSCI.53(2) and SSCI.73.

⁽¹⁾ OJ EU L 149, 30.4.2021, p. 10.

⁽²⁾ OJ EU L 29, 31.1.2020, p. 7.

Article 2

For the purpose of this Decision, the rate of conversion shall be understood as a daily conversion rate published by the European Central Bank.

Article 3

If not otherwise stated in this Decision, the rate of conversion shall be the rate published on the day when the operation is performed.

Article 4

An institution of a State, which for the purpose of the establishment of an entitlement, and for the first calculation of the benefit, has to convert an amount, shall use:

- (a) when, according to national legislation or the Protocol, an institution takes into account amounts, such as earnings or benefits, during a certain period before the date for which the benefit is calculated, the rate of conversion published on the last day of that period;
- (b) when, according to national legislation or the Protocol, for the purpose of calculation of the benefit an institution takes into account one amount, the rate of conversion published on the first day of the month immediately preceding the month when the provision must be applied.

Article 5

Article 4 shall apply *mutatis mutandis* when an institution of a State for the recalculation of the benefit due to changes in the factual or legal situation of the person concerned, has to convert an amount.

Article 6

An institution of a State which pays a benefit that is regularly indexed in accordance with the national legislation, and where the amounts in other currency have an impact on that benefit, shall, when recalculating it, use the rate of conversion published on the first day of the month preceding the month when the indexation is due, unless provided for differently in the national legislation.

Article 7

For the purposes of Article SSCI.73 of the Protocol, the date to be taken into account for determining the applicable exchange rate between two currencies shall be:

- (a) in the case of a request for offsetting from arrears/ongoing payments, the working day immediately preceding the day on which the applicant party sent the final request for offsetting from arrears/ongoing payments; or
- (b) in the case of a request for recovery, the working day immediately preceding the day on which the applicant party sent the first request for recovery.

For the purposes of this Article, working day shall refer to a working day of the European Central Bank on which it publishes a daily reference rate for currency exchange.

Article 8

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

Done at [...], on [...]

*For the Specialised Committee on Social Security
Coordination
The Co-chairs*
