



REMINDER

ROLE OF EUROPEAN MOBILITY AND ITS IMPACTS
IN NARRATIVES, DEBATES AND EU REFORMS

Rethinking social security coordination: From tinkering to radical reform

POLICY ANALYSIS

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Published: June 2018



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Rethinking social security coordination: From tinkering to radical reform

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Submitted: December, 2017

Paper prepared as part of the REMINDER project

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This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 727072

Introduction

Free movement of people has been part of the history of European integration for over fifty years, but its scope has evolved and expanded over time. From a framework that largely served economic considerations and workers, free movement has become a fundamental right for all nationals of an European Union (EU) Member State, enshrined in the notion of EU citizenship. Since retirees, students and other economically inactive people now have the right to move (subject to various conditions), free movement depends heavily on a system of coordinating social security systems: the ‘oil in the mechanism’ of intra-EU mobility.¹ This system helps the movement of people run more smoothly, and ensures that people keep their rights and entitlements when they move from one country to the other.

The rules of social security coordination—which apply to a wide range of social benefits, including sickness and disability, maternity/paternity, old-age, unemployment, and family benefits—are highly complex and have attracted considerable political controversy and public anxiety.² To work around diverse national welfare systems with particular histories and logics, the system coordinates, rather than harmonises, the rules. The provisions in place do not therefore remove differences in national systems and standards of protection, but rather aim at building bridges between them.

The framework is marked by several grey areas. These have stoked fears, in some quarters, that mobile individuals may take advantage of loopholes and game the system; and, in others, that the framework creates gaps in coverage, leaving some groups vulnerable. In particular, critics argued that the process of EU Eastern enlargement created a ‘welfare magnet’ (incentives to move to exploit generous welfare systems), by combining variability in how the coordination framework was realised at national level with new Member States with lower levels of GDP per capita.³ Subsequent events such as the financial crisis, the Brexit referendum, and the migration crisis have deepened public anxiety over welfare tourism and further politicised social security coordination.

In response to these concerns—alongside inconsistencies in how the system is transposed into law and implemented nationally—in 2016 the European Commission proposed a comprehensive package of social security reforms, which the European Parliament and the Council are currently debating. It also launched the “European Pillar of Social Rights” in 2017: 20 principles and rights ranging from equal access to the labour market to fair working conditions and social protection, which aim to encourage cooperation and promote

¹ Meghan Benton, “Reaping the Benefits? Social Security Coordination for Mobile EU Citizens” (Brussels: MPI Europe, 2013), <https://www.migrationpolicy.org/research/reaping-benefits-social-security-coordination-mobile-eu-citizens>.

² Martin Seeleib-Kaiser and Frans Pennings, “WP6 Social Rights,” BEUCitizen.EU, accessed December 22, 2017, <http://beucitizen.eu/workpackage-6/>.

³ Tito Boeri and Herbert Brücker, “A European Mobility Assistance Scheme,” *VOX, CEPR’s Policy Portal* (blog), April 22, 2014, <http://voxeu.org/article/european-mobility-assistance-scheme>.



harmonised standards among Member States. This paper assesses the proposed reforms against the social security system more broadly. It first outlines how the system works, then analyses the main challenges and tensions at the heart of the social security system, then finally evaluates the proposed reforms against other possible options. The paper concludes with a set of recommendations.

How the system works

The social security coordination framework is based on five main principles:⁴

- **Non-duplication:** individuals exerting free movement rights (“mobile EU nationals”) pay contributions to only one country at a time.
- **Equal treatment or non-discrimination:** mobile EU nationals have the same rights and obligations as the nationals in the country they live and/or work in.
- **Aggregation:** in determining the benefits to which the person is entitled, periods of insurance, work or residence in other countries are counted.
- **Exportability:** mobile EU nationals entitled to a cash benefit from a country may receive it even while they live in a different EU Member State.
- **Good administration:** Member States must cooperate and assist each other for the benefit of EU citizens.

As of January 2016, 16 million EU nationals lived in another Member State, or around 3.1 per cent of the population of the European Union.⁵ The number of mobile persons who are economically active (employed or looking for work) in the EU is approximately 8.5 million, of whom 1.3 million are frontier workers (who live in one country, work in another country and go home at least once a week). The number of posted workers (who are sent by their employers to carry out a service in another Member State on a temporary basis) is estimated at 2 million.⁶ Although posting is formally considered free movement of services rather than of labour, posted workers are also mobile citizens and therefore covered by the social security rules.

Generally, economically active people are covered by their country of (last) employment while economically inactive people are covered by their country of residence. The coordination rules cover social security benefits (e.g. unemployment benefits, family benefits, old-age pensions, maternity/paternity benefits) but not social assistance, the

⁴ European Parliament Directorate-General for Internal Policies of the Union, “Coordination of Social Security Systems in Europe” (Brussels: European Parliament), accessed December 8, 2017, <http://im.ft-static.com/content/images/8caa41b8-383e-11e3-8668-00144feab7de.pdf>. The rules have evolved constantly over the years and are currently codified in two regulations: Regulation (EC) No 883/2004 (the ‘Basic Regulation’) lays down the rules for the coordination for social security systems, while Regulation (EC) No 987/2009 sets out the procedure to implement the Basic Regulation. The coordination rules also apply to countries in the European Economic Area (Iceland, Liechtenstein, and Norway) as well as Switzerland.



minimum level of subsistence many countries offer as a final buffer against poverty. The distinction between the two, however, is difficult to clearly define. For example, Austria and Germany have benefits that incorporate both elements: they are designed to both help jobseekers find work, following the logic of social security, and guarantee minimum living standards, acting as social assistance.⁷ To further complicate matters, the Council introduced a hybrid category in 1992: special non-contributory cash benefits—such as jobseeker’s allowances or social pensions.⁸ These are similar to social assistance (not based on paid contributions but on applicants’ needs, guaranteeing minimum subsistence), but fall within the scope of coordination.⁹

Controversies and barriers

Over the years, social security coordination has attracted numerous challenges and disputes. Underlying these are two broad problems. First, some national welfare systems are financed on contributory basis, while others are based on general taxation. In the latter, non-contributory-type systems (the UK and Ireland, for example), migration of low-skilled workers or of economically inactive migrants can—at least in the short run and all other factors being equal—put public budgets under greater strain, because these systems are generous towards newcomers. These systems may be more likely to fuel public anxiety than contributory systems, due to the perception that newcomers may more easily tap into the ‘general pot’ of social support without actually contributing to it.¹⁰ The second tension reflects the fact that welfare states tend to be associated with a closed national community. The project of European integration and free movement, however, seeks to challenge these

⁷ This is the case with *Hartz IV* in Germany or the *Mindestsicherung* in Austria, which were eventually classified as social assistance despite their hybrid character. Anita Heindlmaier and Michael Blauburger, “Enter at Your Own Risk: Free Movement of EU Citizens in Practice,” *West European Politics* 40, no. 6 (November 2, 2017): 1198–1217, <https://doi.org/10.1080/01402382.2017.1294383>.

⁸ According to Regulation 883, these benefits must comply with three requirements, namely: (a) being fully funded by general taxation; (b) providing supplementary coverage for risks covered by Regulation 883 with a view to guaranteeing a minimum subsistence income or specific protection for people with disabilities, closely linked to the person’s social environment in the State concerned; and (c) being listed in Annex X. European Parliament Directorate-General for Internal Policies of the Union, “Coordination of Social Security Systems in Europe.” A list of special non-contributory benefits can be found at in Annex 1 of the following study: ICF GHK in association with Milieu Ltd, “A Fact Finding Analysis on the Impact on the Member States’ Social Security Systems of the Entitlements of Non-Active Intra-EU Migrants to Special Non-Contributory Cash Benefits and Healthcare Granted on the Basis of Residence” (DG Employment, Social Affairs and Inclusion, December 10, 2013), <https://publications.europa.eu/en/publication-detail/-/publication/c6de1d0a-2a5b-4e03-9efb-ed522e6a27f5>.

⁹ Benefits which are hard to classify became known as special non-contributory benefits of a mixed kind (SNCBs) for falling between social assistance and social security. In some cases, states have attempted to benefit from the lack of clarity, prompting Infringement proceedings by the European Commission. For example, the UK tried to classify benefits to reduce the number of EU migrants eligible to claim such benefits. See Eleanor Sibley et al., “Welfare Benefits for Marginalised EU Migrants: Special Non-Contributory Benefits in the UK, the Republic of Ireland & the Netherlands” (London: The AIRE Centre), accessed December 22, 2017, http://www.airecentre.org/data/files/AIRE_ECSS_FINAL_REPORT.pdf.

¹⁰ Martin Ruhs, “National institutions vs common EU Policies? The case of ‘free movement’ in the European Union,” in *Europa und Demokratien im Wandel*, ed. Gudrun Biffel and Dorothea Stepan (Krems an der Donau: Danube University Krems, 2016).



points of national closure.¹¹

These two tensions at the heart of free movement were cast into sharp relief by events of recent years:

- **The economic and financial crisis.** Disputes about how scarce resources were allocated in the aftermath of the economic crisis exacerbated concerns about ‘welfare tourism’ and ‘poverty migration’. At the same time, poor economic conditions dampened confidence in the EU’s power to support economic growth across all Member States and triggered austerity measures.¹² These concerns came to a head in 2013, when four countries (Austria, Germany, the Netherlands and the United Kingdom) called for new restrictive measures against welfare abuse and a review of unpopular policies such as extending benefits to newcomers who have never been employed or paid taxes in the host state.¹³ These claims gradually subsided, partly because the European Commission demonstrated what Member States could already do to protect their national social systems from abuses of free movement rights (such as marriages of convenience between EU citizens and non-EU nationals).¹⁴ At the same time, the European Court of Justice (ECJ) clarified rules on economically inactive claiming benefits, thus placating concerns around “benefit tourism”.¹⁵ Nonetheless, the language of ‘desirable’ and ‘undesirable’ movers had, by then, entered the mainstream of public discourse.¹⁶

¹¹ Maurizio Ferrera, “The JCMS Annual Lecture: National Welfare States and European Integration: In Search of a ‘Virtuous Nesting’*,” *JCMS: Journal of Common Market Studies* 47, no. 2 (March 1, 2009): 219–33, <https://doi.org/10.1111/j.1468-5965.2009.00802.x>. In what has been termed the “social trilemma”, generous social protection and deep economic integration and labour mobility (or an EU social policy that aims for harmonisation) may be incompatible with national states with diverse welfare states and labour market regulations. If alternatively Member States retained their heterogeneity and worked towards economic integration, ‘social dumping’, or the undercutting of local wages local service providers by foreign counter-parts would occur and a ‘race the bottom’ in terms of social benefits. However, with greater economic convergence of Member States, the social ‘trilemma’ should diminish. Mikkel Barslund and Matthias Busse, *Labour Mobility in the EU: Addressing Challenges and Ensuring “Fair Mobility”* (Brussels: Centre for European Policy Studies, 2016), https://www.ceps.eu/system/files/SR139_MB_and_MB_LabourMobility.pdf.

¹² Meghan Benton and Milica Petrovic, “How Free Is Free Movement? Dynamics and Drivers of Mobility within the European Union” (Brussels: Migration Policy Institute Europe, 2013), <https://www.migrationpolicy.org/research/how-free-free-movement-dynamics-and-drivers-mobility-within-european-union>.

¹³ “Letter to the Irish Presidency of the Council of the European Union, Addressed to Alan Shatter, Minister for Justice and Equality and President of the European Council for Justice and Home Affairs; from Johanna Mikl-Leitner, Federal Minister of the Interior, Austria; Hans Peter Friedrich, Federal Minister of the Interior, Germany; Fred Teevan, Minister for Immigration, the Netherlands; and Theresa May, Secretary of State for the Home Department,” accessed December 22, 2017, http://docs.dpaq.de/3604-130415_letter_to_presidency_final_1_2.pdf.

¹⁴ European Commission, “Handbook on Addressing the Issue of Alleged Marriages of Convenience between EU Citizens and Non-EU Nationals in the Context of EU Law on Free Movement of EU Citizens,” Commission Staff Working Document (Brussels: European Commission), accessed December 22, 2017, http://ec.europa.eu/justice/citizen/files/swd_2014_284_en.pdf.

¹⁵ In recent years, a number of flagship rulings have recognised states’ rights to deny access to benefits to economically inactive residents who are not self-sufficient or jobseekers not actively seeking work. Recent ECJ case law has recognised member states’ right to restrict access to social assistance as well as to certain (especially non-contributory) social benefits—such as jobseeker’s allowance—to EU citizens that are not working nor looking for work and do not satisfy the conditions for lawful residence. Landmark ECJ rulings like *Brey* (2013), *Dano* (2014), and *Alimanovic* (2015) have made it de facto very difficult, if not impossible, for economically inactive (poor) EU migrant citizens to access minimum subsistence



- **The refugee and migration crisis**, while partly shifting the focus of public and political debate away from intra-EU mobility, also worsened fears of a loss of control on migration. Since public concerns about pressures on public services due to rapid inflows did not distinguish between different types of migration, the challenges caused by large-scale mixed flows of asylum seekers and other migrants (including EU migrants) were often collapsed together in the eyes of the public.¹⁷ Moreover, deadlock over the issue of refugee burden-sharing may have helped fuel nationalist sentiments and undermined trust in European solidarity.
- **The Brexit referendum** further highlighted how anxieties around free movement and access of non-nationals to social benefits (compounded in the idea of ‘benefits tourism’) can have political consequences. Prior to the referendum, the UK government agreed to a deal on benefits—this time focusing on delaying access to in-work benefits and indexing exported child benefits (i.e. adjusting them to the cost of living in the country where the child lives). Some of these issues resonated with other European governments and may influence discussions around social security coordination in the future. Ireland, Germany, Denmark and Austria, for example, continue to push for a reform that would allow them to slash benefits for children in other Member States.¹⁸

Most of the obstacles and barriers that EU citizens encounter when exercising their free movement rights pertain to social security.¹⁹ Problems often arise from the rules’ intricacy, lack of information and training (both of citizens and authorities), and poor coordination between Member States, which sometimes makes it hard to establish which rules apply and which country is competent.²⁰ While this complexity can cause confusion, it also enables Member States to exploit grey areas for the purposes of restricting access to benefits.²¹

benefits during the first five years of residence. See Cecilia Bruzelius, Constantin Reinprecht, and Martin Seeleib-Kaiser, “Stratified Social Rights Limiting EU Citizenship,” *JCMS: Journal of Common Market Studies* 55, no. 6 (November 1, 2017): 1239–53, <https://doi.org/10.1111/jcms.12555>. This represented a significant turn away from previous years of the ECJ’s previous more generous approach—also termed ‘social citizenship jurisprudence’.

¹⁶ Jean-Michel Lafleur and Mikolaj Stanek, “Lessons from the South-North Migration of EU Citizens in Times of Crisis,” in *South-North Migration of EU Citizens in Times of Crisis*, 2017, 215–24, https://link.springer.com/chapter/10.1007/978-3-319-39763-4_12.

¹⁷ Meghan Benton and Liam Patuzzi, “Free Movement in the European Union: An Audit,” Working Paper Prepared for REMINDER, October 2017.

¹⁸ Catherine Stupp, “Four Countries Push for EU Law to Slash Childcare Benefits,” *EURACTIV.com*, March 3, 2017, <https://www.euractiv.com/section/economy-jobs/news/vocal-member-states-push-for-legal-change-to-slash-childcare-benefits/>.

¹⁹ European Citizen Action Service, “Your Europe Advice Annual Trends” (Brussels: European Citizen Action Service, 2016), <http://ecas.org/wp-content/uploads/2017/04/YEA-annual-trends-2016.pdf>. Many cases regard old-age pensions (specifically, problems of aggregating periods of insurance in different Member States), but there exporting family benefits, in accessing non-contributory benefits or unemployment benefits. European Parliament Directorate-General for Internal Policies of the Union, “Coordination of Social Security Systems in Europe.”

²⁰ European Citizen Action Service, “Your Europe Advice Annual Trends.” European Parliament Directorate-General for Internal Policies of the Union, “Coordination of Social Security Systems in Europe.”

²¹ For example, a 2016 study commissioned by the European Parliament analysing obstacles to free movement in Poland highlighted that a surprisingly small number of unemployment benefits were transferred to Poland from the UK, in spite of a large number of returnees. This discrepancy seems to derive from incorrect information provided by the UK competent authorities to Polish citizens, telling them they would qualify for Polish unemployment benefits upon returning in their



Policy options

In December 2016, the European Commission proposed revising the social security coordination rules. The main goals of this reform were to i) help national authorities fight abuse or fraud, and ii) allocate financial burdens more fairly, by more closely tying responsibility for paying benefits to the country where mobile citizens pay into.

The main changes proposed are the following:

- **Economically inactive citizens.** Clarifying when Member States can limit access to social security benefits for economically inactive citizens, in line with recent ECJ case law. This change explains that access to social benefits is dependent on these movers being self-sufficient and holding comprehensive health insurance.
- **Jobseekers.** Enabling mobile jobseekers to export their unemployment benefits from the current minimum period of three months to a minimum of six months, to make it easier for people to move without a job lined up. The package also requires mobile EU citizens applying for unemployment benefits to have worked for at least three months in a Member State to qualify for the aggregation of insurance or employment periods (i.e. for previous work experience or contributions in other Member States to factor into calculations of unemployment benefits). This provision is meant to correct a provision that some national governments—mainly receivers of EU migration—perceive as an unfair: in theory, mobile workers can currently claim unemployment benefits in a Member State even after only one day of employment there, and that Member State is not reimbursed in any way by the previous EU country of insurance.
- **Frontier and posted workers.** Shifting the competence for paying unemployment benefits to cross-border workers (mobile workers who live in one EU Member State, work in another one, and go home at least once a week) from the Member State of residence to the Member State of work, provided they have worked there for at least 12 months. The reform also aims to clarify how the social security rules apply to posted workers and reinforce tools to fight instances of fraud on posting rules.²²

home country (instead of receiving such benefits from the Member state of last employment, as would normally be the case), European Parliament Directorate-General for Internal Policies of the Union, “Obstacles to the Right of Free Movement and Residence for EU Citizens and Their Families: Country Report for Poland” (Brussels: European Parliament), accessed December 22, 2017, http://www.europarl.europa.eu/cmsdata/109222/pe_556_954_en_All_Online_Poland.pdf.

²² The Commission’s proposal seeks to align the definition of posted workers with the of the Posting of Workers Directive (96/71/EC), which is the main legislative document covering terms and conditions of employment of posted workers. Moreover, the proposal would also strengthen administrative cooperation and information-sharing to ascertain which national legislation applies to a posted worker. Recently, posting of workers has risen the top of the EU reform agenda. The numerous grey areas in the framework regulating this type of cross-border provision of services have created opportunities for some employers to circumvent national regulations and undercut labour standards. In response to this, the Posting of Workers Directive was updated in 2017, after intense—and often bitter—political discussions pitting mainly Western



- **Administrative changes and cooperation.** Clarifying the coordination rules for long-term care benefits, responding to the needs of Europe’s growing ageing population, people with disabilities, and family carers.²³ The reform also fine-tunes existing (and mostly technical) rules on administrative cooperation between Member States.

The proposed update of the rules is still being discussed in the European Parliament and in the Council of the EU. Initial reactions have been broadly positive. Representatives of civil society and workers welcomed extending the exportability of unemployment benefits, improved tools for posted workers, and clearer rules about long-term care benefits.²⁴ Slightly more sceptical comments have come from some employer organisations and business lobby groups: while they generally welcome the goal of stimulating more mobility of workers, which can provide companies with a wider pool of workers, they view some elements of the reform—particularly those that expand the entitlements of jobseekers— as limiting the flexibility of Member States to take account of national labour market realities.²⁵ And according to the European Parliament’s Committee for Employment and Social Affairs (EMPL) reforms to facilitate the mobility of jobseekers do not go far enough.²⁶

Overall, the Commission’s document proposes valuable updates to the rules and is a relatively ambitious undertaking for social security law.²⁷ However, with its mix of expansive and restrictive elements, it may ultimately fail to fulfil all of its declared goals: fostering intra-EU labour mobility; assuaging Member States’ worries about abuse; and protecting the social security rights of mobile EU citizens.

European countries (receivers of posted workers worried about social dumping) against Eastern European ones (senders of posted workers, protesting about what they perceive as ‘protectionism’ by high-income Member States).

²³ These are benefits paid for and to a carer for services provided to a person who needs considerable assistance in essential daily activities, on account of old-age, disability, illness or impairment. European Commission, “Social Security Coordination: Long-Term Care Benefits” (Brussels: European Commission), accessed December 22, 2017, ec.europa.eu/social/BlobServlet?docId=16772&langId=en.

²⁴ However, a recent study expressed strong reservations on the new rules on long-term care benefits, arguing that the separation between sickness benefits and long-term care benefits may paradoxically exclude certain situations which are covered by current rules on sickness benefits, resulting in a loss of rights and entitlements and creating further obstacles to the free movement of persons. European Parliament Directorate-General for Internal Policies of the Union, “Coordination of Social Security Systems in Europe.”

²⁵ The lobby group Business Europe, for example, expressed its disappointment at the fact that the proposal does not include the indexation of child benefits and that it extends the minimum period to export unemployment benefits from three to six months. It also criticises some of the proposed reforms in the area of posted workers, which it claims would “introduce legal uncertainty for companies posting workers”. Business Europe, “Revision of Social Security Coordination Regulation” (Brussels: Business Europe, June 6, 2017), https://www.bussinesseurope.eu/sites/buseur/files/media/position_papers/social/2017-06-06_social_security_coordination.pdf.

²⁶ The report proposes to extend the exportability of unemployment benefits beyond the suggested six months and reducing of the minimum period of work in a new country before benefits can be aggregated. European Parliament Committee on Employment and Social Affairs, “Draft Report on the Proposal for a Regulation of the European Parliament and of the Council Amending Regulation (EC) No 883/2004 on the Coordination of Social Security Systems and Regulation (EC) No 987/2009 Laying down the Procedure for Implementing Regulation (EC) No 883/2004 (COM(2016)0815 – C8-0521/2016 – 2016/0397(COD))” (Brussels: European Parliament), accessed December 22, 2017, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML+COMPARL+PE-612.058+02+DOC+PDF+V0%2f%2fEN>.

²⁷ European Parliament Committee on Employment and Social Affairs.



Increasing the exportability of unemployment benefits from three to six months, for example, seems unlikely to give a major boost to intra-EU labour mobility and to drastically improve the employment prospects of mobile jobseekers, as these depend primarily on macroeconomic factors and labour market conditions. At the same time, the ‘restrictive’ provisions set forth in the proposal—primarily with regard to economically inactive movers—will probably not provide lasting reassurance to Member States, as the discussion on abuse and unfairness has already moved on to other issues (such as in-work benefits and the export of family benefits). Although the Commission mainly aims at codifying recent ECJ case law that limits the access of economically inactive to some benefits, this message of ‘toughness’ could allow national governments to allay some public anxieties actually doing much reform. On the other hand, inscribing this exception to the principle of equal treatment into an actual regulation may, at a symbolic level, legitimise the way vulnerable groups are stigmatised in discourse around free movement. Moreover, the Commission’s broad wording seems to leave enough room for excluding inactive citizens not only from social assistance and special non-contributory benefits, but also from other types of support.²⁸ Thus, it risks paving the way for more restrictions, or at least for more opacity and further disputes in the future.

Several other policy options, not included in the revision proposal, could more dramatically update the system. These fall into a number of different categories: addressing instances of unfair practices; introducing a supranational system of social protection; and improving protection for vulnerable and deprived mobile citizens.

Addressing perceived imbalances and unfair practices

- ***Indexing exported family benefits.*** The main point of criticism of some Member States is that family benefits granted for children residing outside the competent Member State can be exported without any limitation, irrespective of the economic situation in these children’s country of residence. Member States with relatively high levels of child benefit argue that this unlimited export is unfair, since it provides families residing abroad with more money (in relation to the country’s economic context) than local families. Adjusting these benefits to the cost of living in the country where the child lives (“indexing” them) may help wealthier EU Member States at the receiving end of EU labour migration, such as Austria, Denmark or Germany, save some money, as well as addressing a sense of unfairness in some quarters. However, it would come at the cost of setting up an intricate administrative system. In view of the low number of exported child benefits in the European Union,²⁹ this solution appears hardly justified from a budgetary point of

²⁸ European Parliament Directorate-General for Internal Policies of the Union, “Coordination of Social Security Systems in Europe.”

²⁹ According to the European Commission, the scale of the phenomenon is marginal: less than 1% of child benefits in the EU are paid to children residing in another Member State than where their parent work. European Commission, “Questions



view. Arguments of principle are not very convincing, either: since family benefits are based on the contributions workers pay, there is an argument they should be proportionate to that contribution, irrespective of where they are exported.³⁰ Nonetheless, the fact that the option to index child benefits was included in the UK-EU settlement agreement from February 2016 increases pressure on the Commission to act.³¹

- **Emergency brake on benefits.** The so-called ‘emergency brake’ (officially referred to as an ‘alert and safeguard mechanism’) advanced by David Cameron in his attempt to renegotiate the EU membership of the UK in early 2016, would delay new EU immigrants’ access to in-work benefits for a certain period of time (in the UK’s proposal, four years) after entering a new Member State.³² In-work benefits are intended to supplement the salary of low-wage earners, often in the form of tax credits. While they are more typical of the UK’s social system than that of other European countries (and thus Brexit may to some extent “shelve” these concerns), the broader principle that Member States should be able to restrict workers benefits in the case of inflows of “exceptional magnitude” may endure. An emergency brake would allow receiving Member States to respond more flexibly to pressures, and it might reduce perverse incentives for low-skilled migration. On the other hand, the potential risks are considerable. In theory, by increasing the cost of moving, an emergency brake may further curb the volume of workers’ mobility, but the dearth of evidence on the ‘welfare magnet’ suggests that it will make little difference in practice.³³ Perhaps more importantly, it could stigmatise mobile low-skilled workers, especially against a backdrop of heated debate over posted workers and social

and Answers on the revision of social security coordination rules”, European Commission Fact Sheet, (Brussels: European Commission, 2016), accessed December 22, 2017, europa.eu/rapid/press-release_MEMO-16-4302_en.pdf.

³⁰ If mobile workers end up paying more into the pot of high-income countries than they are allowed to take out, this could indeed lend some weight to the claim that they subsidise the welfare systems of these countries, as some Eastern European government representatives have claimed.

³¹ Although the European Commission did not include indexation in its proposal, the notion is still very present in the debate around the reform. To settle the controversies around the unlimited export of family benefits, other policy options have been explored apart from indexation. A 2015 analytical report published by the European Commission concluded that making the Member State of residence of the child responsible for paying the family benefit would have several technical benefits in terms of clarification of competence, decreasing the administrative burden, and avoiding fraud. However, the experts acknowledged that this shift in the burden between Member States would create a considerable political resistance. European Commission, “Initiative to Partially Revise Regulation (EC) No 883/2004 of the European Parliament and of the Council on the Coordination of Social Security Systems and Its Implementing Regulation (EC) No 987/2009,” Commission Staff Working Document (Brussels: European Commission), accessed December 22, 2017, http://eur-lex.europa.eu/resource.html?uri=cellar:3aa0bc5e-c1e6-11e6-a6db-01aa75ed71a1.0001.02/DOC_1&format=PDF.

³² This was a compromise solution, softening the original notion of an emergency brake as a cap on the numbers of EU migration to the UK. The restrictions on accessing in-work benefits were eventually included in the agreement between the UK and the EU in February 2016, which became obsolete after the Brexit referendum. Although the deal became redundant after the Brexit referendum, it did give other European governments a taste of how far the EU institutions are willing to make concessions to tighten free movement rules.

³³ This was also the conclusion of the LSE Commission on the Future of Britain in Europe. Experts agreed that the efficacy of an emergency brake in bringing down EU migration to the UK was likely to be minimal, but that the measure might have important symbolic effects in addressing public concerns around ‘welfare tourism’. Eiko R. Thielemann and Daniel Schade, “Free Movement of Persons and Migration: Report of the Hearing Held on 21st January, 2016” (London: LSE Commission on the Future of Britain in Europe, 2016).



dumping. Moreover, if an emergency brake was activated only by movements of “exceptional magnitude” (as originally planned), there would need to be debate over desirable vs. undesirable levels of EU mobility—which could open up a can of worms.

Improving social protection for vulnerable and deprived EU mobile citizens

- ***A cost-compensation mechanism for social assistance:*** It is currently very complicated for mobile non-workers to receive social assistance, which may leave some in situations of extreme poverty and deprivation. A cost compensation mechanism could make access to minimum subsistence benefits easier for economically inactive citizens while distributing the burden more fairly between different Member States.³⁴ The former Member State of residence would reimburse the new country of residence for the social minimum benefits the latter pays for a certain amount of time, e.g. one year, after which the host state would take over the responsibility. A similar mechanism already exists in terms of coordinating medical care and health insurance.³⁵ However, an EU wide-system for cost compensation would be politically difficult at a time when increasing restrictions are placed on access to social benefits. It would also require greater collaboration and coordination, although this could be achieved by building on pre-existing mechanisms such as those used for the medical reimbursements.
- ***National minimum income schemes:*** The 2017 Commission’s recommendation establishing the European Pillar of Social Rights,³⁶ which was welcomed by the European Parliament, the Council and the Commission in November 2017, calls for national minimum income schemes to be introduced in all EU Member States. The primary goal of these schemes would be to enable people and families with insufficient means of subsistence and unable to earn a living to conduct “a life in dignity in all stages of life”.³⁷ As of yet, this is only a vague declaration of intent. But if it leads to national legislation, it may have some implications on the coordination of social security and therefore on free movement, possibly helping to prevent poverty among some groups of mobile citizens.³⁸ While small-scale trials of minimum income have been carried out in

³⁴ Herwig Verschueren, “Free Movement of EU Citizens: Including for the Poor?” (ISLSSL 21st World Congress, Cape Town, 2015).

³⁵ Article 35 of Regulation 883/2004 lays out the terms that the costs of medical care can be reimbursed between the state of insurance and the Member State where medical care took place. In terms of frontier workers, Article 65(6)-(8) of Regulation 883/2004 introduces the limited reimbursement system.

³⁶ European Commission, “Commission Recommendation of 26.4.2017 on the European Pillar of Social Rights” (Brussels: European Commission, April 26, 2017).

³⁷ European Commission.

³⁸ However, even if the Pillar triggers the introduction of national measures for the social protection of deprived groups—such as minimum income schemes—mobile EU citizens might be unable to profit from them, as they are currently excluded from accessing social assistance in destination countries. Thus, the impact of a minimum income scheme on social security coordination, would depend on whether it is classified as special non-contributory cash benefit, which falls



Utrecht and Finland, results are as yet inconclusive.³⁹ It is also likely that some Member States would be more amenable than others. The main challenge inherent in this policy option lies in the tension between harmonisation and the inequality between national economies. On the one hand, if some states introduce minimum income schemes and others do not, this could provide incentives for ‘benefits tourism’. On the other hand, unequal economies mean that minimum income schemes will de facto vary across states even if implemented in a blanket rollout. Only complete harmonisation would ensure abuse of national social security systems does not occur.

Conclusions and recommendations

Overall, the proposed revision of social security coordination contains several improvements in areas that urgently needed an update, such as frontier workers, posted workers, and administrative cooperation. However, due to its ‘compromise’ nature, it may fail to truly fulfil all its declared goals: fostering intra-EU labour mobility; assuaging Member States’ worries of abuse; and protecting the social security rights of mobile EU citizens.

What the final regulation will look like is still unclear. During the pre-Brexit negotiations on the UK membership in the Union, Member States developed a sense of how much they can push for further restrictions and how far Brussels is ready to give in when put under pressure. It is unlikely that they will forget this lesson as the discussions around the Commission’s reform package progress.

In the short term, indexing family benefits to the economic condition of the country to which they are exported may have a useful political function, in high-income Member States, as it symbolises a tough stance to ensure ‘fairness’. All told, however, its costs are unlikely to outweigh its benefits, since it would result only in minor savings for granting countries and introduce considerable additional complexity, while reinforcing the division between Western and Eastern Member States.

To lower barriers to jobseekers’ mobility, a valid option would be to further expand the period mobile citizens can export unemployment benefits to another Member State. Ideally, this period could be the same to which the EU citizen would be entitled if instead of moving he/she stayed in the country of work. This would bring more neutrality of treatment between non-movers and movers. In the mid- to long-term, more ambitious action will be

into the scope of the regulations and is therefore accessible to mobile EU citizens, or as social assistance, a category that is in principle excluded from social security coordination rules. European Parliament Directorate-General for Internal Policies of the Union, “Coordination of Social Security Systems in Europe.”

³⁹ Antti Jauhiainen and Joona-Hermanni Mäkinen, “Why Finland’s Basic Income Experiment Isn’t Working,” *New York Times*, July 20, 2017, <https://www.nytimes.com/2017/07/20/opinion/finland-universal-basic-income.html>.



required to keep pace with societal challenges. The growing complexity in the world of work, with the surge of non-standard and ‘gig’ employment, is calling into question traditional ways to think about social security and makes coordination questions more complicated than ever. Over time, this might eventually create enough pressure to more significantly simplify the system.⁴⁰

At the same time, to maintain credibility in the EU project, additional interventions to protect citizens at a risk of poverty may be needed. The European Pillar of Social Rights is a positive step, but is currently at the level of aspiration: more thought is needed on how the proposed priorities can be tailored to individual Member States and the needs of different groups of mobile EU citizens. For instance, greater experimentation in the form of social security tools at EU level—such as a European cash benefit—could explore ways to simplify the system, remove persisting barriers to mobility, and add a stronger social dimension to the idea of EU citizenship. Meanwhile, extending the coordination system to cover minimum subsistence benefits (social assistance) could help reduce poverty among mobile citizens: a cost-compensation mechanism inspired by that in place for medical reimbursements could make this politically viable, ensuring that receiving Member States do not have to bear the entire burden on their own. For the time being, however, these rather ambitious ideas are best kept on a back burner, at least until this current wave of Euroscepticism fades.

As long as social security is based on coordination—and this is unlikely to change anytime soon—improving the framework will remain a detail-oriented exercise of patience and perseverance. Though not particularly courageous, then, the latest proposal might be what the European Union currently needs: incremental change rather than revolution, but signalling ambition and a clear direction of travel.

⁴⁰ The European Commission is aware of the challenges the rise of non-standard employment could pose for the social protection of certain categories of workers. The need to protect non-standard workers and self-employed was clearly stated in the 2017 Communication ‘Establishing a European Pillar of Social Rights’, which proposes the introduction of a ‘replacement income’ for these categories. The Commission has also expressed interest in a universal basic income scheme as a possible approach to innovate social security in the face of epochal transformations in the world of work: Jorge Valero, “Universal Basic Income Debate Gains Traction in the EU,” *EURACTIV.com*, September 21, 2016, <https://www.euractiv.com/section/social-europe-jobs/news/the-debate-on-universal-basic-income-gains-traction-in-the-eu/>. Thus, it is not unrealistic that, over time, precisely the digitalisation of work and the increasing fluidity of employment relationships will pave the way for growing harmonisation.





REMINDER

ROLE OF EUROPEAN MOBILITY AND ITS IMPACTS
IN NARRATIVES, DEBATES AND EU REFORMS

The REMINDER project is exploring the economic, social, institutional and policy factors that have shaped the impacts of free movement in the EU and public debates about it.

The project is coordinated from COMPAS and includes participation from 14 consortium partners in 9 countries across Europe



This project has received funding from the European Union's Horizon 2020 research & innovation programme under grant agreement no 727072

