# Briefing

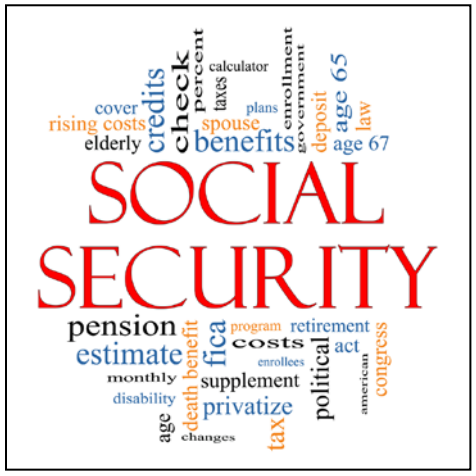
Study in focus

European Parliament

## EMPLOYMENT AND SOCIAL AFFAIRS

# Coordination of Social Security Systems in Europe

## BACKGROUND




Social security coordination law has been a fundamental pillar of the free movement of persons since the inception of the European integration process. The coordination of social security systems within the EU aims at ensuring that each EU citizen and third country national residing in the EU has fair access to social security regardless of the country where he or she stays. Each Member State remains free to design its social security system independently – the coordination rules only determine under which country's system an EU citizen is insured if two or more countries are involved. Coordination rules thus do not remove substantive differences between national systems, including the possible negative effects of crossing borders due to different levels and standards of social protection in each country, nor do they compensate for such effects. The coordination rules rely on **four main principles**: workers and self-employed from other Member States have the same rights and obligations as the host state's own nationals (**equal treatment**); previous periods of insurance, work or residence in other countries will be taken into account in the calculation of benefits of workers (**aggregation**); each beneficiary is covered by the legislation of one country only and only pays contributions there (**principle of single applicable law**); and social security benefits can be paid throughout the Union and most of them can be exported (**exportability**).

In a view to modernise and simplify existing rules, as well as guarantee a fair burden sharing of social security costs between Member States, the European Commission presented a proposal of revision to the coordination rules in December 2016 (COM (2016) 815 final). The main changes proposed by the Commission cover: 1) the limits of application of the equal treatment principle for non-economically-active EU citizens: economically inactive citizens moving from one Member State to another should only have access to social security benefits on a par with the nationals of the host State if they satisfy the condition of legal residence as defined in Directive 2004/38/EC; 2) the rules on exporting unemployment benefits (should be possible for 6 months instead of 3 months, while aggregation only happens once a person has worked in the host Member State for 3 months) and on unemployment protection for cross-border workers (the Member State of former employment should be responsible for paying unemployment benefit if the cross-border worker has worked there at least for 12 months); 3) the introduction of a new chapter on long-term-care benefits; 4) the partial revision of the rules on family benefits with a new provision on child raising allowances; 5) the definition of posted workers for the purpose of social security coordination and the strengthening of related administrative tools; 6) the fine-tuning of existing (and mostly technical) rules on administrative cooperation between Member States.

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## FOCUS OF THE STUDY


Against this background, the **Employment and Social Affairs Committee** in 2016 requested an overview of the social security coordination system in connection with a discussion of the Commission's proposal.

The study provides a thorough analysis of the limits and challenges of the current coordination system and of the proposed changes by the Commission, covering each of the areas addressed by the European Commission's proposal. The introduction provides background information on the functioning of the coordination rules, and addresses possible forthcoming challenges arising from the enlargement of social security rights pursued by the Social Pillar, and from the exit of the United Kingdom from the EU. In each chapter, conclusions and recommendations for the reform at stake are included.

## KEY FINDINGS

### Economically Inactive Citizens

**Codifying the case law on economically inactive citizens of the Court of Justice is akin to authorising Member States to establish rigid conditions of residence, and thus entrapping economically inactive citizen, in a state of limbo: in the host state they do not have sufficient resources and thus no residence right, but they are prevented from exporting their benefits from their home state, so they are de facto obliged to leave the host state.**

Citizens having lost their job without having completed at least one year of employment in a Member State as well as inactive family members residing in the country for less than five years who lose their affiliation with the workers run the greatest risk of exclusion from access to 'social assistance' in the host Member State. This CJEU case law is also not in keeping with the original intent of the benefits called 'special non-contributory cash benefits' (such as minimum subsistence income, financed by general taxation), which Member States are free to define as such, and which mobile citizens should be able to access in the country of residence, while their export is not permitted. The overall coherence of this special coordination framework would be undermined by the proposed new rules. Furthermore, the Commission decision to make a general reference to limitations 'on social benefits' instead of to specific categories of benefits leaves room for dynamic shaping of this concept by the Court's future rulings, which could potentially go beyond the current reach of the Court's case law.

### Unemployment Benefits

**The Commission's proposal on unemployment benefits, introducing a qualifying period of 3 months before insurance or employment periods completed in other Member States can be aggregated, is in fact a restriction as compared to the current rules on aggregation of periods of insurance and would especially hit highly mobile workers and workers moving from 'low-wage' to 'high-wage' Member States.**

Highly mobile workers in a sequence of short assignment across Europe are likely to be affected negatively, and workers moving from 'low-wage' to 'high-wage' Member States are likely to incur significant drops in the amount of unemployment benefit.

While ensuring consistency across Member States concerning the aggregation of periods, it would also increase the need for administrative cooperation.

## Unemployment Benefits of cross-border workers

**While the proposed new rules for unemployment benefits of cross-border workers simplifies current rules and finds a middle-ground between the state of employment principle and the need to ensure a 'genuine link' with the State of employment, it is not clear whether the 12 months have to be completed uninterruptedly or if several fixed-term contracts would also qualify.**

The proposed changes indeed provide for a closer link between the State of insurance and the one in charge of paying the benefit and appear more balanced for achieving fair burden-sharing, while also reducing administrative burden, at least for periods of employment longer than 12 months. Still, the rather long period of 12 months significantly weakens the impact of the reform in terms of fair financial burden-sharing among Member States, as no more reimbursement between Member States would take place.

## Long Term care benefits

**The separation between sickness and long-term care benefits would exclude certain situations covered by the current rules on sickness benefits, and could paradoxically lead to a loss of entitlements, creating new obstacles to the free movement of persons within the EU.**

While the new rules in principle bring clarity and introduce a stable regime of coordination, separating long-term care benefits from sickness benefits, it might happen that only insurance periods specifically related to the risk of long-term care would be taken into account for coordination, although the majority of Member States don't have specific long-term care benefits. Also, insured persons would need two different kinds of documents, leading to increased administrative burden.

## Indexation of child benefits

**The European Commission's decision not to provide for indexation of child benefits is in line with the fundamental principle of equal treatment under CJEU case law.**

Thus, problems like major administrative hurdles in calculating child benefit, especially in cross-border situations and unpredictability of costs (given that the competent State would also have to increase child benefit for children living in countries with higher living-standard) are avoided.

## Posted workers

**While strengthening the administrative tools related to social security coordination of posted workers have received an overall positive evaluation, the amendment and alignment of the definition of 'posted workers' with that of Directive 96/71/EC is questionable, as the two pieces of legislation have different purposes.**

As yet, it remains unsolved what the additional application of the rules on posted workers also to 'sent' abroad would mean. On the other hand, the changes introduced to make information certified by the A1 form more reliable (proper assessment of facts before posting, form only binding if all compulsory sections have duly been filled in, dialogue procedures in case of doubt 'sped up') are welcomed by stakeholders, even if there are concerns as to the feasibility of such measures.

## RECOMMENDATIONS

- **Future policy action on economically inactive citizens** should be in line with EU citizenship rights, the rights under the Charter of Fundamental Rights, and the basic principle of equal treatment under Art. 48 TFEU, in order to allow also economically inactive citizens to exercise their free movement rights. This could be achieved by making any derogation from the principle of equal treatment duly qualified by the respect of fundamental rights.
- The **long qualifying period of 12 months for cross-border workers** significantly weakens the impact of the proposed reform in terms of fair financial burden-sharing. Besides, **the introduction of a 3 month period before allowing aggregation of insurance or employment periods fulfilled in other Member States** constitutes a restriction of the aggregation principle deriving from Art. 48 TFEU. Thus, shortening these periods should be considered.
- **The advisability of introducing a new chapter on long-term care benefits** has to be assessed carefully - instead, the definition of long-term care benefits could be inserted into the chapter on sickness benefits.
- It should be considered to **remove the reference to the significantly different notion of 'posted worker' within the meaning of Directive 96/71/EC** to ensure legal clarity.



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