

KEY ISSUES

Objective of the Regulation: The obligations of social insurance systems to pay benefits to EU citizens living in another EU country will be changed.

Affected parties: EU citizens, national social security systems.



Pro: (1) Linking social benefits for economically inactive citizens and job seekers, from other EU countries, to a right of residence, is justified because these benefits are financed by taxes and contributions made by the economic operators working in the respective Member State.

(2) Extending the “exportability” of unemployment benefits to at least six months means the unemployed can spend longer looking for work in another EU country. Mismatches between the supply of and demand for labour can be reduced more easily.

(3) The fact that frontier workers no longer receive unemployment benefit from their home Member State but from the Member State in which they have been working is justified because it reflects the fact that the unemployed person last paid contributions in this Member State.

CONTENT

Title

Proposal COM(2016) 815 of 13 December 2016 for a **Regulation** of the European Parliament and of the Council amending Regulation (EC) No. 883/2004 and Regulation (EC) No 987/2009 **on the coordination of social security systems**

Brief Summary

► Background

- Defining social policy is a matter for the Member States. They decide which benefits citizens will receive and under what conditions.
 - EU rules on coordinating the social security systems have existed since 1959. They specify which national provisions apply to citizens residing in different Member States.
 - The rules aim to ensure that every “mobile” citizen enjoys the protection of a social security system. Rights acquired in various different Member States can, in some circumstances, be aggregated and “exported” to another Member State.
 - The current rules include
 - the Basic Regulation on the coordination of social security systems [(EC) No. 883/2004], hereinafter: Basic Regulation, and
 - the related Regulation specifying how the Basic Regulation is to be implemented [(EC) No. 987/2009], hereinafter: Implementing Regulation.
- Both have been in force since 2010. They are to be amended by way of the present Regulation.

► Scope of the Basic Regulation

- The Basic Regulation applies, as before, to the following social security benefits (Art. 3 (1) Basic Regulation):
 - non-contributory cash benefits, such as social assistance,
 - unemployment benefits,
 - sickness, long-term care, maternity and equivalent paternity benefits,
 - old-age, pre-retirement and invalidity benefits,
 - survivors’ benefits, death grants and family benefits such as family allowance and
 - benefits in respect of accidents at work and occupational diseases.
- The rules on coordinating the social security systems apply, as before, to EU citizens residing in a Member State and their family members and survivors (Art. 2 Basic Regulation). Those particularly affected are “mobile” EU citizens who
 - move to another EU country in order to reside there permanently,
 - work or study temporarily in another EU country,
 - are frontier workers, i.e. who live in one EU country and work in another and return to the Member State where they live at least once a week, or
 - spend their holiday in another EU country.

► **Group affected by the coordination rules**

- In 2015, about 11.3 million EU citizens of working age (aged 20 - 64) were living in another EU country which corresponds to 3.7% of the entire workforce. Of those, 8.5 million were in an employment relationship or looking for work. In addition, there were 1.3 million frontier workers EU wide.
- In 2014, there were 3.7 million economically inactive mobile citizens - such as children, spouses or pensioners. 80% of these citizens derive a right to claim benefits from the social security systems because they have an economically active family member.

► **Need for Reform and its Objectives**

- The Commission wants to change both the Basic Regulation and the Implementing Regulation in view of
 - social changes, for example because fathers are claiming family benefits more often, and
 - the latest case law of the CJEU (Judgement of 19 September 2013, Brey, C-140/12, EU:C:2013:565 and Judgement of 11 November 2014, Dano, C-333/13, EU:C:2014:2358) which is to be codified.
- The Commission wants to promote the mobility of citizens by
 - making it easier for citizens to exercise their rights,
 - ensuring legal clarity,
 - providing for a fair and equitable distribution of the financial burden among the Member States and
 - ensuring administrative simplicity and enforceability of the rules.

► **Social security benefits**

- In future, Member States can make social benefits for economically inactive people or job seekers, from other EU countries, dependent on an existing right of residence pursuant to the Freedom of Movement Directive [2004/38/EC] (new Recital 5 and 5a and amended Art. 4 (2) Basic Regulation). Thus CJEU case law (CJEU, Dano, EU:C:2014:2358 and Brey, EU:C:2013:565) will now be codified in the Basic Regulation.
 - For economically inactive people from other EU countries, the right of residence – and thus the right to claim social benefits – is determined by the length of stay. Under three months, only the possession of valid identity documents is required (Art. 6 Directive 2004/38). Member States are not obliged to grant social assistance (Art. 24 (2) Directive 2004/38).
 - In the case of residence for longer than three months and less than five years, people must show sufficient subsistence resources and comprehensive health insurance cover (Art. 7 (1) (b) and Art. 14 (2) Directive 2004/38).
 - After five years of lawful, uninterrupted residency, the right of residence is not subject to any further requirements (Art. 16 (1) Directive 2004/38).
- For job seekers from other EU countries, the right of residence - and thus the right to claim social benefits exists in the following cases:
 - where the job seeker has been employed for more than one year and has registered with the relevant employment office (Art. 7 (3) (b) Directive 2004/38),
 - for at least six months where the job seeker has been employed for less than twelve months in the host Member State and has registered with the relevant employment office (Art. 7 (3) (c) Directive 2004/38).
 People who enter a Member State in order to seek employment are treated as economically inactive citizens from another EU country staying for under three months. Member States are not obliged to grant social assistance (Art. 24 (2) in conjunction with Art. 14 (4) (b) Directive 2004/38).

► **Unemployment benefits**

- In future, unemployed persons who move to another Member State to seek work, will be able to continue to receive (“export”) unemployment benefits from their home country for at least six months – previously limited to a minimum of three and a maximum of six months. Member States can extend this period to the end of the unemployed person’s period of entitlement (new Art. 64 (1) (c) and (3) Basic Regulation).
- In future, frontier workers will no longer receive their unemployment benefits from their Member State of residence but from the Member State where they were last employed provided the employment lasted at least twelve months (new Art. 65 (1) and (2) Basic Regulation).
- Where unemployment benefit is dependent on the length of completed periods of insurance, a Member State must, as before, take account of the insurance periods completed in another EU country. In future, however, this will be conditional on the unemployed person having worked for at least three months in the Member State in which they are applying for the benefits (new Art. 61 (1) and (2) Basic Regulation).

► **Long-term care benefits**

- Long-term care benefits are defined for the first time under EU law.
- They are defined as “any benefit in kind, cash or a combination of both for persons who, over an extended period of time, on account of old-age, disability, illness or impairment, require considerable assistance [...]” (new Art. 1vb Basic Regulation).
- Where an insured person claims long-term care benefits in kind in another EU country, the insurer in the insuring Member State generally reimburses the provider of these benefits in full. Equally, the insurer reduces any long-term care benefits payable to the insured person by the amount of the benefits in kind (new Art. 35b (1) and new Art. 35c Basic Regulation).

► Parental-leave allowance as individual family benefit for the parent concerned

Until now, the allowance paid during parental leave was treated as a benefit for the whole family and could only be granted by one Member State. In future, it will be treated as an individual right of the parent concerned (Art. 68b Basic Regulation). Thus, where parents work in different Member States, they can also receive the parental-leave allowance from two different Member States at the same time.

► Cooperation between national authorities

- Social insurance institutions issuing an attestation under social insurance law - e.g. for posted employees - must examine and guarantee the accuracy of their information (new Art. 19 (3) Implementing Regulation).
- In addition, the cross-border exchange of information between authorities is made easier (new Art. 19 (4) Implementing Regulation). This promotes compliance with the statutory obligations and avoids misuse.

Statement on subsidiarity by the Commission

According to the Commission, due to the cross-border nature of the cases governed by the Regulation, EU action is necessary to safeguard the right to freedom of movement.

Policy Context

Revision of the EU legislation on the coordination of national social systems is part of the “Labour Mobility Package”. It is to take priority in 2017. The Commission has not included in its reform proposal the request of some Member States for the index-linking of family allowance - i.e. aligning benefits with the cost of living of the Member State in which the children reside.

Legislative Procedure

13 December 2016	Adoption by the Commission
3 March 2017	Debated by the Council
Open	Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force

Options for Influencing the Political Process

Directorates General:	DG Employment and Social Affairs (leading)
Committees of the European Parliament:	Employment (leading), Rapporteur Guillaume Balas (S&D Group, F)
Federal Ministries:	Federal Ministry for Employment and Social Affairs (leading)
Committees of the German Bundestag:	Employment and Social Affairs (leading);
Decision-making mode in the Council:	Qualified majority (acceptance by 55% of Member States which make up 65% of the EU population). Every Member State can, however, refer the matter to the European Council where “important aspects” of the social security system are affected. Thereafter, the proposal can only be referred back to the Council of Ministers on a unanimous vote by the Member States (de facto right of veto).

Formalities:

Competence:	Art. 48 TFEU (Coordination of social security)
Form of legislative competence:	Shared competence (Art. 4 (2) TFEU)
Procedure:	Art. 294 TFEU (ordinary legislative procedure)

ASSESSMENT

Economic Impact Assessment

Ordoliberal Assessment

The possibility of **linking social benefits for economically inactive people and job seekers, from other EU countries, to a right of residence is justified**. People from another EU country generally only have a right to claim social benefits after they have been employed and subject to social insurance contributions for a lengthy period, and have thereby acquired rights. That is justifiable **because these benefits are financed by deducting taxes and contributions from the active economic operators in the respective Member State**. **Extending the “exportability” of unemployment benefits to at least six months means the unemployed can spend longer looking for work in another EU country**. This may increase overall economic efficiency because as a result unemployed people can also look for jobs in Member States where the chances of success are greater. **Mismatches between the supply of and -demand for labour can be reduced more easily** in the labour markets of the Member States.

The standard restriction on exportability to six months is justifiable. National recruitment services cannot always control the efficiency of recruitment in other EU countries. This is relevant because unemployed people who do not find a job in another EU country can claim social benefits - e.g. social assistance - from their home country when unemployment benefits come to an end.

The fact that frontier workers no longer receive unemployment benefit from their home Member State but from the Member State in which they have been working is justified because it reflects the fact that the unemployed person last paid contributions in this Member State. Nevertheless: If the unemployed person was previously employed for a lengthy period in another Member State, the social system of the Member State where they were most recently employed bears the burden unilaterally. Redistribution mechanisms between Member States could solve this problem but involve a great deal of red tape.

The first definition of long-term care benefits under the Regulation increases legal certainty. This increases the incentive to claim long-term care benefits in kind in other EU countries. For care systems that provide the insured with benefits in kind rather than cash payments, this may represent a relief or a burden: Insurers in Member States with high wage levels will gain if patients are looked after in cheaper countries; insurers in Member States with low wage levels will bear a heavier burden.

Legal Assessment

Legislative Competency

The Directive can be based without difficulty on the EU competence to coordinate social security systems (Art. 48 TFEU). This allows the EU to pass measures in the field of social security in order to secure claims and benefits. The competence regarding social security and social protection of workers (Art. 153 (1) (c) TFEU) does not apply because this does not involve the design of the content of social security benefits.

Subsidiarity

Unproblematic. Member States cannot act alone to coordinate social security in cross-border situations. Only an EU-wide standard provision allows the right to freedom of movement to be exercised in full.

Proportionality with Respect to Member States

Unproblematic. The amendment proposals do not exceed, either in form or content, that which is required for effective coordination of the social security systems. In particular, the proposal does not affect the structure or content of the systems in the Member States.

Compatibility with EU Law in other Respects

The right to equal treatment with respect to non-contributory cash benefits, such as social assistance, does not exist where there is no right of residence under the Freedom of Movement Directive [2004/38/EC] (CJEU, Dano, EU:C:2014:2358 and CJEU, Brey, EU:C:2013:565). The limited access to social security benefits for economically inactive people from other EU countries is not in breach of the right to social security under Art. 34 CFR or the principle of equal treatment (Art. 4 Basic Regulation, Art. 24 (1) Freedom of Movement Directive [2004/38/EC], Art. 45 and 18 TFEU). Art. 34 CFR only applies “in accordance with the rules laid down by Community law” and does not therefore go beyond the content of Art. 48 TFEU. The principle of equal treatment is defined in more detail in Art. 24 (2) of the Freedom of Movement Directive [2004/38/EC] and is also restricted in order to avoid unreasonable claims for social assistance benefits. Thus, economically inactive people and job seekers, from other EU countries, can be excluded from social assistance benefits despite a right of residence (CJEU, Judgement of 15 September 2015, Alimanovic, C-67/14, EU:C:2015:597 and CJEU, Judgement of 25 February 2016, C-299/14, Garcia-Nieto, EU:C:2016:114). According to settled CJEU case law, limiting the continued receipt of unemployment benefit to six months does not breach the principle of freedom of movement under Art. 45 TFEU (CJEU Judgement of 16 May 1991, van Noorden, C-272/90, EU:C:1991:2019 and CJEU Judgement of 8 April 1992, Gray, C-62/91, EU:C:1992:177).

Impact on German Law

The coordination provisions only clarify when and which national social system applies. Since Regulations have direct application, no significant impact on German law is expected. The exclusion of social assistance benefits for economically inactive people from other EU countries is already codified in the Social Code II and XII in conjunction with the law on the general freedom of movement of EU citizens.

Conclusion

Linking social benefits for economically inactive citizens and job seekers, from other EU countries, to a right of residence, is justified because these benefits are financed by the deduction of taxes and contributions from economic operators working in the respective Member State. Extending the “exportability” of unemployment benefits to at least six months means the unemployed can spend longer looking for work in another EU country; mismatches between the supply of and demand for labour can be reduced more easily. The fact that frontier workers no longer receive unemployment benefit from their home Member State but from the Member State in which they have been working is justified because it reflects the fact that the unemployed person last paid contributions in this Member State.