

CONTENTS

Background

- Introduction
- Existing situation
- Parliament's starting position

Proposal

- Preparation of the proposal
- The changes the proposal would bring

Views

- Advisory committees
- National parliaments
- Stakeholders' views

Legislative process

References

- EP supporting analysis
- Other sources

Amending social security coordination

Approximately 14 million EU residents (mobile workers, unemployed and economically inactive citizens) are not living in their home country. In order to grant them the social and health benefits to which they are entitled, coordination between the social security systems of the Member States is necessary. However, the current Regulations (EC) No 883/2004 and (EC) No 987/2009 no longer reflect the changing national social security systems and the case law of the European Court of Justice.

The European Commission's December 2016 proposal aims to establish a coherent regime for the coordination of long-term care benefits, and to clarify the access of economically inactive citizens to social benefits. It proposes new arrangements for the coordination of unemployment benefits in order to enhance job-seeking, and provisions for the coordination of family benefits, such as parental leave allowances. The proposal also seeks to strengthen administrative rules on social security coordination for posted workers. However, it does not intend to change existing rules on the export of child benefits, despite demands from several stakeholders.

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) 815, 13.12.2016, 2016/0397(COD), Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')

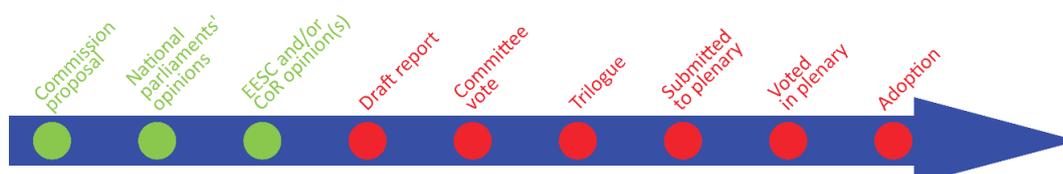
Committee responsible: Employment and Social Affairs (EMPL)

Rapporteur: Guillaume Balas (S&D, France)

Shadow rapporteur:

- Sven Schulze (EPP, Germany)
- Helga Stevens (ECR, Belgium)
- Marian Harkin (ALDE, Ireland)
- Gabriele Zimmer (GUE/NGL, Germany)
- Jean Lambert (Greens/EFA, UK)
- Laura Agea (EFDD, Italy)
- Joëlle Mélin (ENF, France)

Next steps expected: Publication of draft report



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Second edition
The 'EU Legislation in Progress' briefings are updated at key stages throughout the legislative procedure. Please note this document has been designed for on-line viewing.



[Introduction](#)[Existing situation](#)[Parliament's starting position](#)

Introduction

On 13 December 2016, the European Commission adopted a [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. This proposal is part of the 2016 Commission work programme and of the labour mobility package, as are the [targeted revisions](#) of the Posting of Workers Directive and the development of the [EURES network](#). The aim of the proposal is to ensure that the rules on social security coordination respond to recent social, economic and political developments in EU Member States. The proposal focuses in particular on a number of areas which to date have not been satisfactorily covered and where improvements are required: access to social benefits by economically inactive citizens, long-term care benefits, unemployment benefits and family benefits.

Existing situation

According to recent [statistics](#), there are 14 million EU residents aged 15 to 64, who are not living in their Member State of birth. A recent [article](#) published by the Bruegel think-tank places the number of mobile workers in the EU at approximately [9.3 million](#): 7 million are migrant workers (those permanently working and residing in another Member State) and 2.3 million are non-migrant workers, of whom 1.1 million are frontier workers (who live in one country, work in another country and go home at least once a week) and 1.2 million are posted workers (sent by a company). Their social and health benefits result from an interaction between the social security systems of their host and home country.

Social security systems can differ significantly from one Member State to another. Member States are free to determine the features of their own social security systems (such as benefits provided, conditions for eligibility, calculation of benefits, contributions to be paid). These systems are currently governed by [Regulation \(EC\) No 883/2004](#) (the 'Basic Regulation'), which lays down the rules for their coordination, and [Regulation \(EC\) No 987/2009](#) (the 'Implementing Regulation'), which establishes the procedure for implementing the Basic Regulation. Due to the substantial changes they introduced to the existing acts (which date back to the 1970s), they were dubbed the 'modernised EU social security coordination rules'. These regulations are also of relevance for the European Economic Area (EEA) countries (Iceland, Liechtenstein and Norway) and Switzerland. Furthermore, they apply to stateless persons and refugees residing in the territory of a Member State as well as to the members of their families.

Regulation (EC) No 883/2004 establishes common rules and principles aimed at coordinating social security rights acquired in different countries; however, it does not harmonise Member States' legislation. Its scope includes traditional forms of social security: sickness benefits, maternity and equivalent paternity benefits, benefits for accidents at work and occupational diseases, invalidity benefits, family benefits, death grants, old-age and survivors' benefits, statutory pre-retirement schemes and unemployment benefits. It provides rules to protect the rights of persons moving within the EU, in order to ensure that they do not lose their social security protection when moving to another Member State. The basic principles laid out in the Basic Regulation are as follows:



Introduction

Existing situation

Parliament's starting position

- > **application of one legislation**, or the prevention of overlapping benefits (citizens are covered by the legislation of one country at any given time and only pay contributions in that country. The decision as to which country's legislation applies to them is made by the social security institutions);
- > **equal treatment or non-discrimination** (foreign citizens have the same rights and obligations as the nationals of the country where they are covered);
- > **aggregation** (when a citizen claims a benefit, previous periods of insurance, work or residence in other countries are taken into account, if necessary);
- > **exportability** (should a citizen be entitled to a cash benefit from one country, this benefit is generally granted even if the citizen is living in a different country).

Regulation (EC) No 987/2009 establishes procedures ensuring that benefits are granted quickly and efficiently; introduces specific rules on electronic communication; and ensures the provisional application of legislation and provisional calculation and granting of benefits. To this end, a special system – the [Electronic Exchange of Social Security Information](#) (EESSI) – was established, allowing for a secure exchange of data between national institutions. It concerns persons covered by social security coordination rules and improves the management of claims and the calculation and payment of benefits. The system currently does not have EU-wide coverage and various administrative exchanges are still paper-based. Its full implementation is due by mid-2019.

Parliament's starting position

The European Parliament has, on several occasions, emphasised the persistence of obstacles to full freedom of movement. It has called on the Council of the EU to adopt pending proposals, such as those intended to bring early retirement pensions within the scope of Regulation (EEC) No 1408/71, whereby unemployed persons would be entitled to receiving unemployment benefits in another Member State and the scope of the legislation would widen to include all insured persons. Some of these demands were met when the modernised Regulation (EC) No 883/2004 was finally adopted.

In its [resolution](#) of 14 January 2014 on social protection for all, including self-employed workers, the Parliament called on the Commission to review legislation and monitor the implementation and coordination of social security systems so as to safeguard EU migrant workers' entitlements to benefits.



Proposal

Preparation of the proposal

In 2010, the Commission adopted a [proposal](#) for a regulation amending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009. Its aim was to update the above-mentioned regulations, in order to take into account the frequent shifts in the national regulations (for instance, concerning self-employed frontier workers) and the Court of Justice of the European Union (CJEU) case law. The changes were also meant to simplify the rules in order to facilitate interpretation and reduce the scope for conflicting views. The [regulation](#) was adopted by the European Parliament and the Council on 23 April 2012.

In response to some Member States' concerns about the impact of free movement on national social systems after the economic and financial crisis, in 2013 the Commission published a [communication](#) on 'the free movement of EU citizens and their families: Five actions to make a difference'. It stated that mobile EU citizens are generally more likely to be in employment than host country nationals, and that, in most Member States, mobile EU citizens are important contributors to the host country's welfare system, often paying more in tax and social security contributions than they receive in benefits.

From 15 July 2015 to 7 October 2015, a [public consultation](#) was held to gather views on the functioning of the current coordination rules in a number of cross-border situations. The main topics covered were the coordination of family and unemployment benefits and the social security coordination rules for posted employed and self-employed persons. The consultation followed on from a December 2012 [public exercise](#) on long-term care benefits and the coordination of unemployment benefits. During the consultation, citizens were able to comment on cross-border coordination and payment of social security benefits, as well as to make proposals for future consultations.

The consultation received 310 online replies from 25 EU and EEA/EFTA states in total. Of the replies, 64.52 % were from individuals and 35.48 % on behalf of an organisation. Suggestions submitted included: assigning the competence for providing family benefits to the Member State in which the child resides; making information more accessible for workers; improving communication between competent national authorities; rendering legal provisions more transparent; introducing a single European social security number backed by a solid database; and making special provisions for single parents or parents of children with special needs. The suggestion concerning unemployment benefits was for the introduction of a minimum qualifying period (spent in the host country), with the suggested duration ranging between three months and five years. Other suggestions included setting mandatory deadlines and strengthening fraud prevention.

In line with its better regulation policy, the Commission also carried out an [impact assessment](#) of potential policy options, evaluating their economic, social, regulatory and general efficiency, as well as their coherence with wider EU objectives. The draft report produced on the basis of the assessment was reviewed by the Commission's Regulatory Scrutiny Board, which issued a positive opinion on 21 January 2016.

For **long-term care benefits**, the impact assessment identified three problems: lack of clarity for citizens and institutions, lack of clarity in the legal framework and a risk of losing benefits or of making double payments. It considered two legislative policy options: in the first, the competent Member State provides



long-term care benefits and reimburses the benefits provided by the Member State of residence; in the second, the Member State of residence provides all long-term care benefits with reimbursement by the competent Member State. The preferred option was to establish a coherent system by introducing a separate chapter on the coordination of these benefits, which should be aligned with existing provisions on sickness benefits, and by including a definition of long-term care benefits and providing a list of national benefits.

For **unemployment benefits**, the following problems were identified: divergent application of aggregation rules by Member States; inconsistent treatment of unemployed persons who reside in a state different from their former State of work (for instance frontier workers); and unsatisfactory reimbursement rules. The consequences identified included: inefficient processing of unemployment benefits; uneven distribution of the financial burden; and potential barriers to the reintegration of unemployed people into the labour market. Several legislative policy options were considered: aggregation after only one day of employment; aggregation after a period of employment, using the reference earnings received in the Member State of previous employment for the calculation of unemployment benefits; and a horizontal option involving the recognition of insurance periods for aggregation (the preferred option being a combination of the above three). Regarding the extension of the minimum period for exporting unemployment benefits, the two options considered were either extending this period from three to six months, or extending it to the whole period of entitlement, the first being the preferred option. Concerning frontier workers, the preferred option was to make the state of last activity pay the unemployment benefits when the frontier worker worked there for at least 12 months, attributing otherwise the responsibility to the Member State of residence.

For **social benefits**, the fact that recent case law from the Court of Justice of the EU (ECJ) has not been reflected in the Basic Regulation leads to a lack of transparency. Economically inactive mobile EU citizens generally derive rights to residence and benefits from economically active family members and are therefore entitled to equal treatment with the family members of national workers. It is proposed to amend the current equal treatment provisions of the Basic Regulation, in order to make a reference to the limitations on the right of EU citizens and their family members to move and reside freely within the territory of the Member States, as provided for in Directive 2004/38/EC of the European Parliament and of the Council, and to take into account ECJ case law.

As regards the **export of family benefits**, the problems identified were: inequality in the comparative purchasing power of exported family benefits; the risk that the rules do not encourage parents to work and share child-raising responsibilities; and administrative difficulties in granting certain types of benefits. This can cause problems for families where one or both parents work in a different Member State to the state where their child resides. The options considered were the indexation of the exported family benefits, versus the primary competence of the state of residence to pay them. Concerning the coordination of child-raising allowances intended to compensate parents for loss of income during child-raising periods, the preferred option was to change the current coordination provisions so that child-raising allowances are considered individual and personal rights, and to permit an optional right for the secondary competent Member State to pay the benefit in full. The proposal has no implications for the EU budget.



The changes the proposal would bring

The proposal intends to update the current regulations in the following areas:

- > **long-term care benefits:** the proposal aims to establish a coherent regime for the coordination of long-term care benefits (currently dealt with under the sickness chapter), by introducing a separate chapter for their coordination and by including a definition for and providing a list of those benefits;
- > **access of economically inactive citizens to social benefits:** the proposal aims to clarify, on the basis of ECJ case law, that Member States have the right to refuse to grant social benefits to economically inactive EU mobile citizens (citizens who are not working or actively looking for a job, and who do not have the legal right of residence on the Member State's territory except for when they have means of subsistence and comprehensive health coverage);
- > **unemployment benefits:** the proposal introduces new arrangements for the coordination of unemployment benefits for frontier workers. Accordingly, the Member State where they worked for the last 12 months would become responsible for paying unemployment benefits, reflecting the principle that the Member State which has received contributions should pay the benefits. Jobseekers would be able to export their unemployment benefits for a period of at least six months (the current minimum period being three months). This would give them a better chance of finding work, and would help resolve EU-wide unemployment and skill mismatches. Furthermore, a Member State could require a working period of at least three months on its territory before granting unemployment benefits;
- > **family benefits:** the proposal seeks to establish new provisions for the coordination of family benefits intended to replace income during child-raising periods. It updates the rules on parental leave allowances, which are currently considered as benefits for the entire family and subject to anti-overlapping rules. With the proposal, parental leave allowances will become a parent's individual right and Member States will have the possibility to pay them to both working parents. In this way, Member States encouraging the sharing of parental responsibilities will be able to eliminate potential financial hindrances for parents who both take parental leave during the same period;
- > **posted workers:** the proposal intends to strengthen the administrative rules on social security coordination for posted workers. It also aims to ensure that national authorities have the right tools to verify the social security status of such workers, and to establish clearer procedures for cooperation between Member State authorities to address potentially unfair practices or abuse.

The proposal does not intend to change the existing rules on the export of child benefits. No provision is made for indexation of child benefits; the country of work of the parent(s) remains responsible for paying the child allowances, and the amount will not be adjusted should the child reside elsewhere.

The proposal also includes a number of technical amendments concerning sickness benefits, as well as periodic technical updates to reflect developments in national legislation that affect the application of the EU rules. It also grants new powers to the Commission to adopt delegated acts in accordance with Article 290 TFEU to facilitate and expedite the legislative procedure for amending the country-specific annexes to Regulation (EC) No 883/2004.



Preparation of the proposal

The changes the proposal would bring

The [intention](#) of the European Commission was to put forward a balanced proposal, facilitating free movement of workers and protecting their rights on the one hand, and reinforcing the tools for national authorities to fight abuse or fraud, on the other. It has strived to create a closer link between the place where contributions are paid and the one where benefits are claimed, ensuring a fair financial distribution of burden between Member States. That way, the proposal would contribute to greater transparency, legal certainty and fairness, and would be line with the Parliament's demand for removing barriers to the full freedom of movement and its resolution on more social protection for all.

[Advisory committees](#)[National parliaments](#)[Stakeholders' views](#)

Views

Advisory committees

The European Economic and Social Committee (EESC) adopted its [opinion](#) on 5 July 2017. The EESC points out that the proposed new rules do not establish a new entitlement to long-term care in every Member State, as this depends on the existence of such services in the host country. The EESC also notes that the proposed requirement to work at least three months in the host Member State before a worker can qualify for unemployment benefits will delay the 'aggregation of periods' giving the right to benefits. In its view, it is also unclear how an extended period, from the current three to at least six months, for 'exporting' unemployment benefits can effectively provide employment opportunities for jobseekers, as this will depend on the labour market situation, which differs from one country to another.

The Committee of the Regions (CoR) adopted its [opinion](#) on 12 July 2017. The CoR outlines that the time limit beyond which the law of the host country applies in full to employment relationships in posting situations should be 12 months. In the CoR's opinion, the planned extension of the possibility to export unemployment benefits from three to six months is to be welcomed. It should be, however, coupled with appropriate active labour market policies. The CoR also points out that the ban on overlapping of sickness and long-term care benefits is likely to be difficult to implement.

National parliaments

A number of [national chambers](#) have considered the proposal. The Polish Senate made several comments on 22 February. The French Senate submitted a [reasoned opinion](#) on 20 March 2017. In its opinion, the French Senate considered that the intended use of implementing acts, not forwarded to the national parliaments, does not comply with the principle of subsidiarity.

Stakeholders' views

From the employees' perspective, the [European Trade Union Confederation](#) (ETUC) stated that, although the proposal offers some improvements, it does not deal with all disadvantages faced by mobile workers. It welcomed the extension from three to six months of the period during which workers can claim unemployment benefits from the country in which they are entitled while looking for work in another country. ETUC agreed with making the country of employment (and social security contributions) responsible for paying unemployment benefits to those who work in one country and live in another (cross-border workers), although it found the 12-month waiting period excessive. It further welcomed the fact that the Commission takes long-term care on-board with regard to the coordination of social security benefits and payments.

As for employer organisations, the Council of European Employers of the Metal, Engineering and Technology-based industries ([CEEMET](#)) approves the fact that labour mobility should be encouraged further, while barriers are identified and overcome. However, it states that social security systems, distribution and associated reforms are a competence of the Member States and have to remain at that level. During



Advisory committees

National parliaments

Stakeholders' views

the consultation period, business lobby group [Business Europe](#) had already voiced its support for the indexation of child benefits depending on the standard of living in the country where the child resides. Concerning unemployment benefits, the organisation believes that authorities should be able to take into account employment and earnings received in other Member States, as well as to reduce or extend the four-week waiting period in the current legislation. It disagrees with the extension of the export period for unemployment benefits from three to six months.

Academic views

In 2013, a [think-tank report](#), prepared by several research organisations at the request of the European Commission, outlined the key challenges for the social security coordination regulations in the perspective of 2020. The report distinguishes endogenous and exogenous developments (at Member State or at EU level) posing challenges and making the modification of the social security coordination necessary. Proposed solutions include: the revision of the principle of priority between derived and own rights; a further strengthening of individual rights (especially for child care benefits); introduction of the elements of case law into the regulations; and introduction of a European solidarity mechanism into coordination. According to a [study](#) by think-tank [CEPS](#), the Commission proposal takes into account the two main principles governing mobile workers: exportability (the right to export social security benefits in a Member State different from the host country) and aggregation (a worker's rights to social security benefits should be based on all periods during which the worker was eligible, in both the home and the host countries). The study agrees with the fact that the proposal does not provide for the indexation of child benefits, as this would lead to a high administrative workload and raise further problems. It states that the proposal is well-measured and addresses some of the concerns expressed before the European Parliament elections. Furthermore, it leaves labour mobility in the EU mostly unaffected.



Legislative process

In the European Parliament, the file has been assigned to the Committee on Employment and Social Affairs (EMPL). The rapporteur, Guillaume Balas (S&D, France) was appointed in March 2017.

In the Council the proposal was discussed by the Social Questions Working Party on 6 June 2017. The main issues raised were the derogation from the fundamental principle of equal treatment on social benefits as regards economically inactive mobile citizens, as well as the codification of existing case law. A number of delegations supported the option that the codification of case law should cover all non-contributory social security benefits, and not just family benefits. It has also been clarified that the limitations should also apply to persons other than EU citizens, namely stateless persons and refugees as well as their family members and their survivors who do not fulfil the conditions of legal residence in accordance with other relevant Union law provisions.



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