



SOCIAL SECURITY COVER IN OTHER EU MEMBER STATES

The coordination of social security systems is necessary to support the free movement of people within the territory of the EU. A fundamental reform modernising the whole legislative system has been in force since May 2010 replacing legislation from the 1970s, and further legal acts have improved the protection of workers' rights when they avail themselves of their free movement rights. As of the end of 2016 it is proposed to revise the system in order to adapt it to modern economic and social realities in the EU.

LEGAL BASIS

Articles 48 and 352 of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES

The basic principle enshrined in the Treaty of Rome is the removal of obstacles to the free movement of persons between the Member States ([2.1.3](#); [3.1.3](#)). To achieve this, it is necessary to adopt social security measures which prevent EU citizens who are working and residing in a Member State other than their own from losing some or all of their social security rights.

ACHIEVEMENTS

In 1958, the Council issued two regulations on social security for migrant workers, which were subsequently superseded by Regulation (EEC) No 1408/71, supplemented by an implementing regulation (Council Regulation (EEC) No 574/72). Nationals of Iceland, Liechtenstein and Norway are also covered, by the European Economic Area (EEA) agreement, and Switzerland by the EU–Swiss agreement. In 2004, Regulation (EC) No 883/2004 (the coordination regulation) was adopted to replace and extend Regulation (EEC) No 1408/71. It was amended by Regulation (EC) No 988/2009, and supplemented by Regulation (EC) No 987/2009 (the implementing regulation), which was intended to clarify the rights and obligations of the various stakeholders, as it defines the measures necessary for the persons covered to travel to, stay in or reside in another Member State without losing their social security entitlements. The 'modernisation coordination package' is the legislative package that has been in force since May 2010.

A. The four main principles of Regulation (EEC) No 1408/71

Given that each Member State remains free to design its social security system independently, the coordination regulation serves to determine under which country's system an EU citizen should be insured where two or more countries are involved. Generally speaking, social security cover is to be provided by the country of employment or, in the absence of employment, by the country of residence. The coordination regulation thus replaced all pre-existing social security

agreements between Member States covering the same scope. It relies on four main principles, as follows (articles cited refer to the coordination regulation):

1. Equal treatment (Articles 4, 5)

Workers and self-employed persons from other Member States have the same rights and obligations as the host state's own nationals. The right to equal treatment applies unconditionally to any worker or self-employed person from another Member State who has resided in the host state for a certain period of time. Additionally, if in a Member State legal effects are attributed to the occurrence of certain facts (e.g. being married) or events (e.g. having had an accident) or to the receipt of social security benefits (e.g. people drawing unemployment benefits are also entitled to a tax break), that Member State has to take account of like facts or events, or receipt of equivalent benefits, occurring in another Member State as though they had taken place in its own territory.

2. Aggregation (Article 6)

This principle guarantees that previous periods of insurance, work or residence in other countries will be taken into account in the calculation of benefits of workers. It applies where, for example, national legislation requires a worker to have been insured or employed for a certain period of time before he or she is entitled to certain benefits. The aggregation principle means that the competent Member State must take account of periods of insurance and employment completed under another Member State's legislation in deciding whether a worker satisfies the requirements regarding the duration of the period of insurance or employment.

3. Principle of single applicable law

This principle is intended to prevent anyone from obtaining undue advantages from the right to freedom of movement. Each beneficiary is covered by the legislation of one country only and pays contributions in that country only (Article 11(1)). Contributing to compulsory social security systems in two or more Member States during the same period of insurance does not confer the right to several benefits of the same kind (Article 10).

4. Exportability (Article 7)

This principle means that social security benefits can be paid throughout the Union, and prohibits Member States from reserving the payment of benefits to people resident in the country, but it does not apply to all social security benefits. Special rules apply, for instance, to unemployment benefits.

B. Persons covered

Originally, Regulation (EEC) No 1408/71 only covered workers, but, with effect from 1 July 1982, its scope was extended to cover the self-employed too. This regulation also covered members of workers' and self-employed persons' families and their dependants, as well as stateless persons and refugees. Through Council Regulation (EC) No 1606/98 of 29 June 1998, the Council extended the scope of Regulation (EEC) No 1408/71 in order to set civil servants on an equal footing with the rest of the population as regards the general statutory pension rights provided for in the Member States. Council Regulation (EC) No 307/1999 of 8 February 1999 further extended its scope to include all insured persons, particularly students and persons not in gainful employment. Council Regulation (EC) No 859/2003 of 14 May 2003 again extended the scope of Regulation (EEC) No 1408/71 to cover nationals from third countries, provided they are legally resident on EU territory.

The most recent legal act, Regulation (EU) No 1231/2010, which has been in force since January 2011, extended these modernised EU social security coordination rules to third-country

nationals legally resident in the EU and in a cross-border situation (who were not already covered by these rules solely on the grounds of their nationality). The cover now also applies to their family members and survivors if they are in the EU.

Frontier workers, who work as employed or self-employed persons in a Member State and reside in another Member State to which they return as a rule daily or at least once a week, are also covered through the legislation in force.

Posted workers are an exceptional case as they do not integrate into the receiving Member State's labour market but are sent there by a company for a temporary assignment. They remain insured for social security reasons in their home Member State for a maximum duration of 24 months. Only healthcare benefits in kind can be drawn in the Member State of residence.

C. Benefits covered

Article 3 of Regulation (EC) No 883/2004 lists the social security benefits covered by the regulation:

- sickness, maternity and equivalent paternity benefits; however, means-tested social and medical assistance is not covered, as it is not dependent on previous contributions to the social security system;
- old-age, survivors' and invalidity benefits;
- benefits in respect of accidents at work and occupational diseases;
- death grants;
- pre-retirement benefits;
- unemployment benefits;
- family benefits;
- special non-contributory cash benefits, which are not exportable under Article 70 of the coordinating regulation.

D. The modernisation of the system

Since 1971, Regulation (EEC) No 1408/71 has been amended on numerous occasions in order to take account of developments at EU level, changes in legislation at national level and the case law of the Court of Justice.

1. Towards better coordination of social security systems

In April 2004, the European Parliament and the Council approved Regulation (EC) No 883/2004, replacing Regulation (EEC) No 1408/71. The new coordination regulation is based on the same four principles of Regulation (EEC) No 1408/71, but its aim is to simplify the existing EU rules for the coordination of Member States' social security systems by strengthening cooperation between social security institutions and improving the methods of data exchange between them.

The following main aspects are covered by Regulation (EC) No 883/2004 and its implementing regulation:

- improving the rights of insured persons through the extension of cover in respect of persons and of scope within the social security areas covered;
- expanding the social security fields covered by the regulation to include statutory pre-retirement schemes;

- strengthening the general principle of equal treatment and the principle of exportability of benefits;
- introducing the principle of good administration: Member State institutions are obliged to cooperate with one another and to provide mutual assistance for the benefit of citizens;
- setting up a special system (Electronic Exchange of Social Security Information — EESSI) to allow the secure exchange of data between national institutions, which is to be fully implemented by mid-2019.

2. European health insurance card

European citizens travelling within the EEA may henceforth use the European health insurance card, issued by the health insurance services in the country of the insured person. This card facilitates access to medical care in the event of unanticipated health needs during a visit to another EEA country for personal or professional reasons, on the same terms and at the same cost as people insured in that country; the purpose of the visit may not be seeking health services. The costs are then reimbursed by the social security system of the country of the insured person.

3. Supplementary pension rights

On 16 April 2014, after years of negotiations, Directive 2014/50/EU on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights was signed. It only applies to labour market pension schemes, and thus neither to voluntary contributions to individual pension schemes nor to state pensions, which are covered under the coordination regulation. The directive stipulates that vesting or waiting periods should not exceed three years and that the vested pension rights of outgoing workers can remain in the scheme in which they vested ('dormant pension rights') or be paid out to the worker as a capital sum. Dormant pension rights must be treated in line with the value of the rights of active scheme members or benefits currently being paid out. Where an outgoing worker has not yet acquired vested pension rights when the employment relationship is terminated, the supplementary pension scheme shall reimburse the contributions paid by the outgoing worker.

4. Prospects for reform

The Commission funds a network of independent experts on European social security (known as trESS from 2004 to 2013, and FreSsco since 2014), which has produced a range of useful reports on the subject.

After a specific consultation on the coordination of long-term care benefits and unemployment benefits in 2013 and a general consultation on EU social security coordination in 2015, the Commission proposed in December 2016, as part of its Labour Mobility package, a revision of Regulation 883/2004 and implementing Regulation 987/2009 in order to respond to the new social and economic reality in Member States. The revision is focused on more closely linking the payment of benefits to the Member State which collected the social security contributions, thus making the system fairer and more equitable.

The proposal, besides offering national authorities better tools to verify the social security status of posted workers in order to better address potentially unfair practices and abuse, focuses on:

- unemployment benefits: beside a new three-month rule for aggregation of unemployment benefits, workers should now be able to export them for six months instead of three in order to look for work in another Member State. After working for one year in a Member State, frontier workers can claim unemployment benefit in their working state instead of their residence state;

- long-term care benefits: the proposal defines long-term care benefits and the cases where mobile citizens can claim such benefits;
- family benefits intended to replace income during child-raising periods: family benefits are proposed as individual and personal rights, thereby permitting a secondary competent Member State the right to pay the benefit in full to the second parent. This avoids overlapping as under the current rules, and removes potential financial disincentives for parents to take family leave at the same time.

The proposal also aligns the legal rules in force with the Court of Justice's recent jurisprudence on access to social benefits for economically inactive citizens ([3.1.3](#)).

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has always shown a keen interest in the problems encountered by migrant workers, border workers, the self-employed, and third-country nationals working in Member States other than the one that admitted them, and has adopted various resolutions with a view to improving their lot. Parliament has, on several occasions, deplored the persistence of obstacles to full freedom of movement and has called on the Council to adopt pending proposals, such as those intended to bring early retirement pensions within the scope of Regulation (EEC) No 1408/71, to extend the right of unemployed persons to receive unemployment benefit in another Member State, and to widen the scope of legislation to include all insured persons. Some of these demands were met by the final adoption of the modernised Regulation (EC) No 883/2004.

Since the entry into force of the Lisbon Treaty, the ordinary legislative procedure has applied and social security rights for workers have been subject to qualified majority voting in Council (Article 48). However, a Member State can ask for a draft legislative act to be referred to the European Council if it 'declares that the draft legislative act would affect important aspects of its social security system, including its scope, cost or financial structure, or would affect the financial balance of that system'.

In its resolution of 14 January 2014 on social protection for all, including self-employed workers, Parliament called on the Commission to review legislation and monitor the implementation and coordination of social security systems especially as regards providing adequate cover for those in transition or employment under part-time or temporary contracts.

In its resolution of 14 September 2016 on social dumping, Parliament highlighted the changes brought about by the digital and sharing economy and requested that European legislation be adapted to ensure fair competition and the protection of workers' rights.

[Marion Schmid-Drüner](#)
[06/2017](#)