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PART 1/6

COMMISSION STAFF WORKING DOCUMENT

IMPACT ASSESSMENT

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

Accompanying the document

Proposal for a regulation of the European Parliament and of the Council

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COMMISSION STAFF WORKING DOCUMENT

IMPACT ASSESSMENT

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

1. Introduction and background

1.1. EU rules on social security coordination

The right of EU citizens to freely move to and live in any EU country, along with their family members, is one of the four fundamental freedoms enshrined in EU law and a cornerstone of EU integration.

Free movement would not be possible without the guarantee that citizens do not lose their social security protection when moving to another Member State. A system of social security coordination is essential if freedom of movement is to work in practice. It is for this reason that Article 48 of the Treaty on the Functioning of the European Union (TFEU) has assigned to the legislator the competence to make arrangements to secure the right to benefits and the payment of the benefits to persons resident in another EU Member State. EU rules on social security coordination have existed since the 1950s for this purpose. They may be considered the "oil" that eases the wheels of free movement, facilitating the process of mobility but not compelling or incentivising mobility itself. [1]

The essence of social security coordination is about 'linking' a person to a social security system, determining where he or she needs to pay social security contributions and where to claim for social security benefits, if required. It also ensures that previous periods of insurance, work or residence in other countries are taken into account when a person claims benefits.

The rules coordinate rather than harmonise: they do not address the national conditions for affiliation or entitlement, nor do they envisage introducing a minimum level of protection, or oblige Member States to introduce new benefits in their social security systems. Member States therefore retain the autonomy to design their social security systems to meet national requirements. There remain significant differences in both the range and level of social protection provided in different EU Member States, which can be a source of political tension and public debate. The coordination rules offer no guarantee that transferring one's residence or professional activities to another Member State is neutral as regards social security. Given the disparities in social security legislation, such transfer may work to one's advantage or not, depending on the circumstances.

The rules on the coordination of social security have been adapted several times to ensure that they reflect legal and societal changes in Europe.[2]

The current rules, Regulation (EC) No 883/2004 and the Implementing Regulation (EC) No 987/2009, came into force on 1 May 2010 and now apply to both workers (and their family members) and

[1] Benton, M., *Reaping the benefits? Social security coordination for mobile EU citizens*, MPI Policy Brief. Series, November 2013, http://www.migrationpolicy.org/pubs/MPIEurope-SocialSecurity-MobileCitizens.pdf.

[2] The current rules can be found in Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, OJ L 166, 30.4.2004, p. 1; Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, OJ L 284.

citizens who are, or have been, covered by the social security legislation of a Member State and who are in a cross border situation.

EU law, in particular Regulation (EC) No 883/2004, establishes four key principles which subject to limited exceptions must be observed by all national authorities when applying national social security legislation:

a) non-discrimination on grounds of nationality;

b) the aggregation of periods of insurance, employment or residence;

c) the waiving of residence rules meaning that benefits in cash can be exported to another Member State; and

d) the application of a single legislation in terms in respect of liability to contribute and entitlement to benefits.

The material scope of the Regulation (EC) No 883/2004 extends to all legislation concerning the following branches of social security: sickness (including long-term care benefits); maternity and equivalent paternity benefits; invalidity pensions; old-age pensions; survivors' benefits; benefits in respect of accidents at work and occupational diseases; death grants; unemployment benefits; pre-retirement benefits; and family benefits. This list is exhaustive. Consequently, a branch of social security which is not mentioned is in principle outside the scope of the regulation. This is the case, for instance, for housing allowances or social assistance.

Over and above these social security benefits, the coordination regulation also applies to special non-contributory cash benefits listed in an annex (Annex X to Regulation (EC) No 883/2004).

It should also be noted that since 1 June 2003, citizens from third countries who are legally residing in an EU Member State and whose situation is not confined within a single Member State also have rights under the EU social security coordination rules.[3]

1.2. Social and economic context

With 11 million EU citizens of working age (over 14 million[4] for all ages) resident in another Member State, free movement – or the ability to live, work and study anywhere in the Union – is the EU right most cherished by Europeans.[5] The main motivation for EU citizens to make use of free movement is work-related, followed by family reasons.

Today, 8.3 million EU citizens of working age are economically active[6] and live in another EU country, representing 3.4% of the total EU labour force[7]. Furthermore, 1.6 million frontier workers

[3] Regulation (EU) No 1231/10 extends the effect of Regulation (EC) No 883/2004 on the coordination of social security systems to third country nationals in a cross-border situation who would not otherwise be covered by these rules. This instrument replaced Regulation (EC) No 859/2003 which extended the earlier Regulation (EC) No 1408/71 on social security coordination to third country nationals.
[4] 14.3 million, EU LFS data 2014.
[5] On 1 January 2014, 17.9 million citizens were living in a Member State other than their own. In Eurobarometer surveys, more than two thirds of Europeans consider that free movement of people within the EU has economic benefits for their country (67%).
[6] Economically active: working or looking for work.
[7] There are 8.3 million active EU28 nationals living in another EU Member State, while 9.3 million active EU28 nationals live in another EU/EFTA Member State. There are 8.4 million active EU28/EFTA nationals living in another EU Member State, while 9.4 million active EU28/EFTA nationals living in another EU/EFTA Member State (EUROSTAT, EU LFS 2015)

and other cross-border workers[8,9] work in a Member State other than the one in which they reside, and some 1.45 million workers are posted[10,11]. Third-country nationals who live and work in more than one Member State are also part of the intra-EU mobile labour force and therefore participate to the much needed mobility of workforce across EU countries[12,13].

1.2.1 Free movement of workers

Recent trends in free movement of workers[14]

Of the 8.3 million active EU movers, around 4.3 million have moved to their current country of residence in 2004 or later ('recent movers'): over one third of these recent movers reside in the United Kingdom and around one fifth in Germany, and other important countries of recent active movers are Spain and Italy[15].

While still significantly below the level of the US, intra-EU labour mobility further increased between 2012 and 2014. Flows from East to West continue to account for the bulk of movements, to a great extent driven by differences in GDP per capita and wages[16]: in 2013, about two-thirds of the intra-EU mobility flows were from Eastern Member States to the West[17]. Labour mobility has attenuated disparities in unemployment, and was reflected in the increasing importance of South to North mobility, from countries more affected by the financial and economic crisis to countries that were less affected: while in 2008 about 8% of the EU mobility flows to the main destination countries originated in the South, by 2013 this doubled to 17%[18]. Spain, Italy, and France, where large numbers of 'older' waves of EU movers still reside, have become less important as destination countries. In terms of total inflows, as it has been the case for the past 10 years, the United Kingdom remains the most important destination country, followed by Germany.

Figures from 2012 and 2014 confirm a slight decrease in mobility of young people compared to older ones, most likely due to high rates of youth unemployment also in important destination countries due to the economic crisis. Between 2008 and 2012, following the onset of the economic crisis, there has been a large increase in the share of highly educated people moving to another country (among all EU-28/EFTA movers). This share has not increased further between 2012 and 2014.

Characteristics of mobile EU citizens

Mobile EU citizens[19] are more likely to be of working age (15-64) than nationals of host countries (78.0% vs. 65.7%); those of working age are more likely to be in employment (69.2%) than nationals

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[8] Cross-border workers are those who work in a country different than the one in which they reside; frontier workers are cross-border workers who return to their place of residence at least once a week.
[9] 1.2 million towards EU countries and 0.4 million towards EFTA countries.
[10] Posted workers are those who have their employment contract in the home country, but work temporarily in another country, in the framework of a cross-border service provision.
[11] Data based on Portable Documents A1 (PD A1) issued for posting workers to other Member States in 2014, collected through the Administration Commission for the Coordination of Social Security Systems and analysed in European Commission, *Report on A1 portable documents issued in 2014* (2015).
[12] Though there is a lack of reliable statistical data, as shown in the EMN study (2013), *Intra-EU mobility of third-country nationals* http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/intra-eu-mobility/emn-synthesis_report_intra_eu_mobility_final_13th_august_2013.pdf
[13] Highly mobile workers represent a specific group of workers; they may belong to different categories (e.g. posted workers, workers working in more than one Member State…) and may be particularly present in certain sectors. For instance, around 2 million workers are engaged in international road transport operations and carry out work on the territory of different Member States, often only for brief periods of time (Commission estimate based on the number of Community licences) .
[14] For more information, see *2015 Annual Report on Labour Mobility,* European Commission (2015).
[15] See Figure 1 in Annex I.
[16] For the importance of GDP in explaining flows, see European Commission (2015), *Labour Market and Wage Developments in Europe.*
[17] Calculations based on *2015 Annual Report on Labour Mobility*, cit. above.
[18] Calculations based on *2015 Annual Report on Labour Mobility*, cit. above.
[19] A total of 11 million EU/EFTA citizens of working age live in another EU Member State than their country of citizenship (which comprises the 8.4 million living and economically active).

(65.2%) and third country nationals (53.2%); EU mobile citizens have a significantly higher activity rate than nationals (78.3% versus 72.3%), although in some prominent countries of residence, like Germany, France and Spain, employment among recent mobile EU citizens is lower than among nationals, while in some other prominent destinations like the United Kingdom and Italy the employment rate of recent EU mobile is actually considerably higher than that of nationals[20]. Mobile EU citizens also have a slightly higher unemployment rate (11.7% versus 9.9%), and more recent mobile EU workers even higher: this is likely to be linked to the fact that mobile EU workers, and immigrants in general, tend to be more vulnerable to business-cycle fluctuations than natives, and more recently arrived mobile EU workers more than long-established ones.[21]

Cross-border workers

In addition to the 8.3 mobile EU workers, who work and live in another country, cross-border (or frontier) workers are EU citizens who live in an EU country and work in another one. In 2014, there were about 1.6 million people who worked in a different EU or EFTA country from the one in which they resided: about 1.2 million worked in another EU country (accounting for 0.6% of the employed EU population), and 382.000 worked in an EFTA country (making up 5.4% of the EFTA employed population).

The analysis above has been prepared with reference to data from 2014. As this report had been approved by the Regulatory Scrutiny Board prior to the publication of the Annual Report on Labour Mobility 2016, the authors have not substantially revised the data described above to include the latest statistics available in relation to the reference year 2015. However, it should be noted that in 2015 there was a slight increase in the numbers of working-age EU-28 citizens who are working or seeking work in one of the 28 EU Member States other than their country of citizenship to 8.5 million. This variation is not anticipated to have a material impact upon the analysis contained in this report.

1.3. **Policy context**

Evidence points strongly to the economic benefits of labour mobility:[22] the single market provides broader economic opportunities than the sum of segmented markets, and labour mobility helps correct imbalances between high and low unemployment regions by matching labour supply with demand. This contributes to job creation, promoting economic growth,[23] competitiveness and innovation.[24] Labour mobility also helps to address skills mismatches across borders (skills gaps). This has been particularly important in the context of the current economic and unemployment crisis where some countries are facing higher unemployment (in particular amongst young highly qualified people), while others face a shortage of skilled workers due to demographic trends within their own population. Within the European Monetary Union, mobility may serve to mitigate cyclical adjustment measures in response to asymmetric shocks[25]. Intra-EU labour mobility may have prevented even stronger spikes in unemployment during the crisis[26], and empirical analysis also suggests that intra-EU labour mobility has played a significant equilibrating role during the crisis notwithstanding the low levels of labour mobility.[27] Available estimates suggest that up to a quarter of the asymmetric labour market shock could be absorbed by migration within a year[28].

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[20] See *2015 Annual Report on Labour Mobility,* cited above.
[21] EUROSTAT/LFS (2013-2014); *2015 Annual Report on Labour Mobility,* cit. above.
[22] See review of studies in European Commission, ESDE 2011 (chapter 6); EPC (2013);
[23] Baas and Brücker, *The macroeconomic consequences of migration diversion: evidence for Germany and the UK*, 2012, NORFACE ERA-NET (TEMPO).
[24] European Commission, *Mobile researchers lead to higher research impacts and more innovation*, 2015 https://ec.europa.eu/commission/content/mobile-researchers-lead-higher-research-impacts-and-more-innovation_en.
[25] Labour Market and Wage Developments in Europe 2015, European Commission.
[26] ESDE 2015.
[27] Chaloff, Jonathan, *et al.* (2012), "Free labour mobility and economic shocks: the experience of the crisis", in OECD, *Free Movement of Workers and Labour Market Adjustment: Recent Experiences from OECD Countries and the European Union*, OECD Publishing. The

Between 2004 and 2009, the GDP of EU-15 has increased by around 1%[29] in the long-run as a result of mobility[30] and even more in major destination countries, such as Ireland, the United Kingdom, Spain or Italy. The effect of mobility since 2004 on the unemployment rate and wages in the destination countries has been estimated to be marginal, at least in the long-run[31]. The impact tends to be short-term, moderate and concentrated on specific groups, in particular the low-skilled workers, whilst it could also lead to reductions in the price of services and to consumer surpluses.[32]

Finally, to EU citizens, the wider freedom of movement is the right most closely associated with EU citizenship[33]; 56% of European citizens see it as the most positive achievement of the EU[34]; 67% of EU citizens think that free movement brings economic benefits for their country's economy[35].

Notwithstanding its overall economic benefits, the impact of labour mobility on the ground is subject to debate both in countries of destination and countries of origin. Concerns have been raised, notably in some countries of destination, in relation to potential negative effects of free movement of workers and posting of workers such as the exploitation of mobile EU workers[36] with adverse effects on local jobs and wages, pressure on local services, socio-economic inclusion, and poverty migration (mobility of unskilled workers who are at risk of losing their job and representing a welfare burden). Also, in spite of evidence to the contrary[37], concerns have sometimes been raised about the risk of *benefit tourism,* i.e. the idea that mobility is driven by differences in welfare benefits, or by fraudulent behaviour.

Specific concerns have also been raised in some countries of origin, in relation to the adverse long-term effects on economic development and consequences for access to essential services such as healthcare, represented by the sudden outflow of workers, and particularly young workers (youth drain), and highly educated workers (brain drain), including health workers[38]. This is only partially compensated by return migration (which made up 20% of migration flows in 2013) or remittances.

A general challenge, as highlighted above, is the fact that these popular concerns are difficult to substantiate with hard facts and data, and often appear to be based on negative perceptions and anecdotal accounts rather than well-founded on evidence. They also do not always acknowledge the distinction between requirements imposed by EU law and the responsibility of Member States to exercise national competencies to enforce the correct application of the rules and invest in detection and prevention of abusive behaviour.

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impacts of labour mobility on unemployment in the EU27/EFTA area may have been reduced by about 6% at the maximum during the crisis, yet this has to be compared with the low share of mobile workers.

[28] OECD (2014), *Matching Economic Migration with Labour Market Needs*, OECD Publishing, Paris.

[29] "*The level of output in the EU-15 may have risen by about 0.7 per cent over the six year period to 2009 as a result of the population movements, adding about 0.1 percentage points to GDP growth per annum on average*" NIESR 2011, *Labour mobility within the EU - The impact of enlargement and the functioning of the transitional arrangements.*

[30] On the positive effects of intra-EU labour mobility following recent enlargements, see, for instance, European Commission, *Report from the Commission to the Council on the Functioning of the Transitional Arrangements on Free Movement of Workers from Croatia* (2015)

[31] NIESR 2011

[32] European Commission, ESDE 2011, chapter 6, pp.275-276; Constant A.F., *Do migrants take the jobs of native workers?* IZA (2014); Perini G, *Do immigrant workers depress the wages of native workers?* IZA (2014); M. Foged and G. Peri, *Immigrants' Effect on Native Workers: New Analysis on Longitudinal Data*,* IZA Discussion Paper No. 8961 (March 2015), arguing that immigration had positive effects on native unskilled wages, employment and occupational mobility; and Dustmann, C., Frattini, T. and Preston, I. (2013), "The Effect of Immigration along the Distribution of Wages", *Review of Economic Studies*, 80 (1), 145–173, arguing that although immigration depresses native wages below the 20th percentile of the wage distribution, it leads to slight wage increases in the upper part of the wage distribution, and has an overall positive wage effect. Bratsberg and Raaum, *Immigration and Wages: Evidence from Construction,* 2011, NORFACE ERA-NET (MI3).

[33] Flash Eurobarometer (EB) 365, February 2013 http://ec.europa.eu/public_opinion/flash/fl_365_en.pdf.

[34] Standard EB 79, May 2013 http://ec.europa.eu/public_opinion/archives/eb/eb79/eb79_en.htm.

[35] Flash Eurobarometer 365 (2013).

[36] See European Union Agency for Fundamental Rights (2015), *Severe labour exploitation: workers moving within or into the European Union.*

[37] Giulietti, C., *The welfare magnet hypothesis and the welfare take-up of migrants*, IZA (2014).

[38] Health professionals rank first on the number of decisions taken on recognition of professional qualifications for the purpose of permanent establishment within the EU Member States, EEA countries and Switzerland (http://ec.europa.eu/internal_market/qualifications/regprof/index.cfm?action=stat_ranking&b_services=false).

Commission President Juncker, in his Political Guidelines, has underlined that "free movement of workers is one of the pillars of the internal market", a fundamental right enshrined in the Treaty. However, at the same time he also underlined that the internal market must be fair and that there is no place for abuse and fraud in the EU[39].

One of the Commission's priorities is work towards a deeper and fairer Internal Market. In the 2015 Work Programme, it has been underlined that "It will be important to support labour mobility, especially in cases of persistent vacancies and skills mismatches, including across borders, while supporting the role of national authorities in fighting abuse or fraudulent claims."

A balanced approach to mobility is therefore needed both in order to maximise the benefits, while minimising possible unwanted consequences: measures should be taken to facilitate mobility, but efforts should also focus on supporting national authorities to prevent fraud, abuse and error and renewing efforts to ensure rules are clear, fair and enforceable. The Commission has indicated that it will help public authorities to better implement and enforce existing rules and that it will revise the rules where necessary to adapt them to the economic and social challenges raised by today's mobility.

Achieving a modernised system of social security coordination that responds to the social and economic reality in Member States has been one of the central drivers for the Commission to continue the modernisation process of social security coordination that started more than a decade ago. Achieving greater clarity over the social security coordination system is an important step to face the challenges and controversies that exist over intra-EU mobility and to address demographic challenges ahead of us.

Coherence with other EU policies

This initiative may be seen to complement a number of existing, recent and planned initiatives in this policy field including:

- Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and of their family members to move and reside freely within the territory of the Member States;[40]

- the Communication on Free movement of EU Citizens and their families: five actions to make a difference (COM(2013)837final);

- the 2013 citizenship report (COM(2013)269);

- the Directive 2014/54/EU on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers;

- the proposal (COM/2014/06final) for a regulation on a European network of Employment Services, workers' access to mobility services and the further integration of labour markets, which aims to enhance access of workers to intra-EU labour mobility support services, thus supporting fair mobility and increasing access to employment opportunities throughout the Union;

- the Decision (EU) 2016/344 of the European Parliament and of the Council of 9 March 2016 on establishing a European Platform to enhance cooperation in tackling undeclared work , which will

[39] http://ec.europa.eu/commission/2014-2019/president_en.
[40] Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and of their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC.

bring together different national enforcement authorities of the EU Member States to exchange best practices, develop expertise and analysis and support cross-border operational actions;

- the proposal for a Directive of the European Parliament and of the Council (COM(2016) 128 final) amending Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services

- The EU policy framework for legal migration, including the EU Blue Card Directive[41] and Single Permit Directive,[42] measures for seasonal workers,[43] intra-corporate transferees,[44] for students and researchers[45], measures for family reunification[46] and long term residents;[47]

- the ongoing work on a comprehensive European Agenda on Migration, which is aimed at building up a coherent and comprehensive approach to reap the benefits and address the challenges deriving from migration, including make Europe an attractive destination for the talent and entrepreneurship of students, researchers and workers;

- ongoing work on the European Network of Employment Services strengthening the European job mobility portal (EURES) and the cooperation between employment services;

- ongoing work on the Investment Plan for Europe;

- The planned Internal Market Strategy for Goods and Services.

- Ongoing work to implement the Electronic Exchange of Social Security Information (EESSI): an IT system that will help social security bodies across the EU exchange information more rapidly and securely – as required by Regulation (EC) No 883/2004 and its Implementing Regulation;

- The planned initiative for a Fresh Start to address the challenges of work-life balance faced by working families;

- The planned review of the disability strategy 2010-2020 assessing progress to ensure the effective implementation of the UN Convention on the Rights of Disabled Persons across the EU.

In addition, work on this initiative may be seen in the context of the deepening of EMU, and policies addressing demographic ageing and structural reform in labour markets while promoting a social agenda to support the economic recovery ensuring a Triple A social rating for Europe.

Furthermore, work has been conducted with regard to the European Parliament resolution of 16 January 2014 calling for the respect for the fundamental right of free movement in the EU.

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[41] Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment.

[42] Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.

[43] Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers.

[44] Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer.

[45] Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service. In March 2013, the Commission made a proposal to further improve current rules, including by setting clearer time limits for national authorities to decide on applications, providing for increased access to the jobseeking markets, and facilitating intra-EU movement.

[46] Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

[47] Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents

2. OBJECTIVES & SCOPE OF THE INITIATIVE

2.1. Objectives of the review

The **key policy objective** of this initiative is to continue the modernisation of the EU Social Security Coordination Rules by further facilitating the exercise of citizens' rights while at the same time ensuring legal clarity, a fair and equitable distribution of the financial burden among the institutions of the Member States involved and administrative simplicity and enforceability of the rules. It does not envisage granting new rights to EU citizens but on the contrary clarifying the current methods of coordination.

This initiative serves to facilitate the exercise of the right to free movement by ensuring social security coordination is efficient and effective and does not act as a deterrent to free movement. It is in the interests of all parties to design co-ordination rules that allow full exercise of rights of citizens whilst ensuring coordination requirements for both citizens and Member States are clear and transparent and thereby easy to apply and enforce. It is also important the rules are fair (in particular in relation to the relative balance of responsibility between Member States who receive or have received social security contributions and the obligation to pay benefits) and that perceptions of unfairness are properly investigated and addressed when they arise. Further, the rules should be efficient in terms of cost, administrative burden and risk of fraud or administrative error. Finally the rules should be effective in relation to meeting the overall goals of coordination in particular safeguarding the continuity of social security protection as citizens move from from one Member State to another.

This overarching policy objective underpins and informs all elements of this partial review, however, more specific objectives are included in each distinct area under consideration.

2.2. Scope of the review

To achieve this overall objective, this impact assessment report considers the impact of possible improvements to the rules in four distinct areas:

- Long-term care benefits,
- Unemployment benefits,
- Access to social benefits for economically inactive mobile EU citizens,
- Family benefits.

These areas have been identified following the Commission's services assessemment of the extent to which the current legal framework still ensures the effective coordination of social security rights.

Regulation (EC) No 883/2004 and the Implementing Regulation (EC) No 987/2009 came into force on 1 May 2010. They contain formal review obligations which have obliged the Administrative Commission for Social Security Coordination ('Administrative Commission')[48] and the Commission

[48] The Administrative Commission is comprised of Member States' representatives. Norway, Iceland, Lichtenstein and Switzerland participate as observers. The committee is responsible for dealing with administrative matters, questions of interpretation arising from the provisions of regulations on social security coordination, and for promoting and developing collaboration between EU countries. The European Commission also participates in the meetings and provides its Secretariat.

Services to review and assess the implementation and effectiveness of particular provisions contained within the EU Social Security Rules and obligations undertaken by declaration.

In addition to these formal review obligations, the Commission's work has been informed by ongoing dialogue with the Member States within the framework of the Administrative Commission and of course feedback and complaints from citizens, social partners and other stakeholders, which identify on the one hand where the rules are effective and on the other hand where problems arise. In April 2011, one year after the adoption of Regulations (EC) nos 883/2004 and 987/2009, Member States took part in an informal evaluation exercise in Budapest. This discussion concluded that while the rules were functioning well, there were some areas where improvements were necessary, in particular in the field of long-term care benefits, where the lack of a bespoke legislative framework for coordination was causing difficulties in practice.

In the field of unemployment benefits, the Council took the decision in December 2011 to review the effect of adding a new provision on unemployment benefits for self-employed frontier workers within a period of two years after its application. At this meeting and at the request of a majority of Member States, the Commission issued a declaration that the review would be an occasion to open up a broader discussion on the current coordination provisions in the field of unemployment benefits and to assess the need for a review of its principles.

In addition, in relation to the views of stakeholders, the Commission's work has been informed by reports from expert networks, such as TreSS and FreSsco, in particular the 2013 Think Tank Report *Key challenges for the social security regulations in the perspective of 2020*.[49]

In light of the difficulties relating to long-term care benefits and unemployment benefits (the competence for paying unemployment benefits to frontier workers and export of unemployment benefits), a first analysis already took place in 2013/2014 on the coordination of these benefits. The Impact Assessment Board gave a positive opinion on the Impact Assessment Report on 21 January 2014. In view of the finishing mandate of the Barroso II Commission, the adoption of any legislative measures was not pursued in 2014.

Meanwhile, following developments in the Court's case law and in the socio-economic reality the scope of the partial review was expanded to also respond to challenges in the field of family benefits and access of economically inactive EU citizens to social benefits.

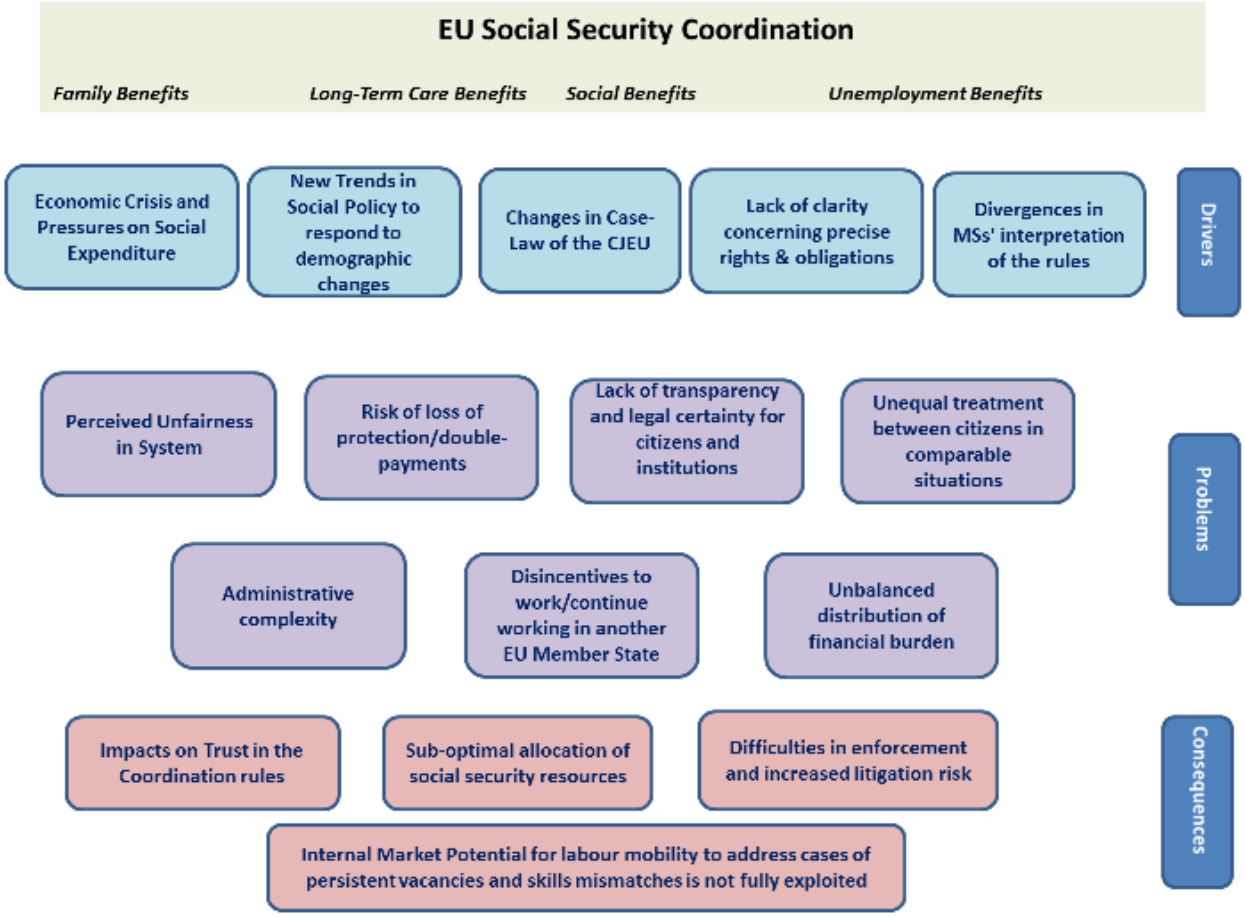
A Problem Tree showing the inter-relationship between the problems and drivers across the four strands of this revision exercise is set out below together with a option tree summarising the options that have been considered for each strand and how they relate to the general and specific policy objectives.

For coherency reasons, the assessment of the '2014' and '2015' policy options has been combined in this Impact Assessment report, with the underlying data for the '2014' analysis updated where appropriate.

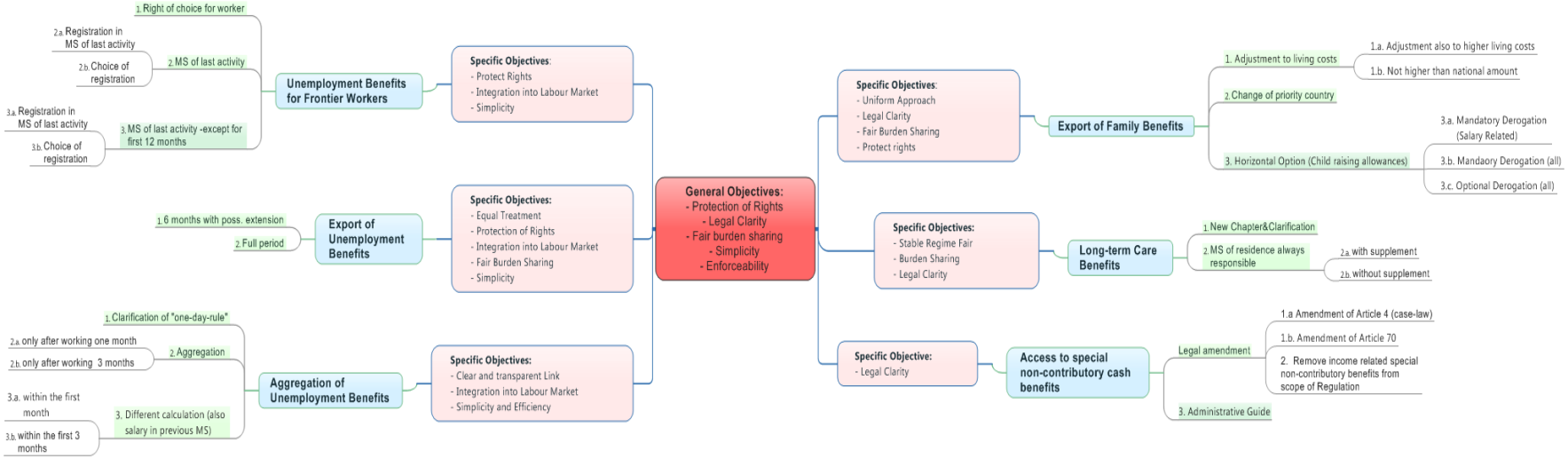
Finally, the revision will also include a number of proposals for technical amendments to the coordination rules. The amendments will clarify the rules, but will not substantially revise them and are not subject to a formal Impact Assessment. For further details of these proposals please see Annex XX of this report.

[49] The report may be consulted at:
http://www.tress-network.org/TRESS/EUROPEAN%20RESOURCES/EUROPEANREPORT/trESSIII_ThinkTank%20Report%202013.pdf

Combined problem tree on the partial review of 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



Option Tree and Objectives for Revision of Regulations (EC) Nos 883/2004 and 987/2009



2.3. Methodology used for the purpose of the impact assessment

For the purpose of this report, each section will summarise the economic,[50] social and regulatory impacts[51], of each policy option under consideration compared to the baseline scenario. In addition, the analysis assesses other impacts which have been identified as relevant before making an overall assessment of the effectiveness in achieving the specific objectives of the initiative, their efficiency (cost-effectiveness/even burden sharing) and coherence with the general objectives of the EU.

In relation to **social rights**, the impact assessessment primarily examines the impact of an option in relation to clarity, simplification and protection of rights.[52] When assessing possible limitations in the access of mobile EU citizens to certain benefits, the assessment refers to the maximum potential impact, since Member States are always allowed to be more generous than what is prescribed in EU law when granting benefits to mobile EU citizens. The impact on rights recognised under the EU Charter of Fundamental Rights has also been assessed. [53]

As regards **economic impacts**, the report focuses upon the direct costs for Member States for providing social security benefits and the relative distribution financial costs between Member States. In line with the legal basis for the EU Social Security Coordination rules the scope of the initiative is to coordinate not harmonise social security legislation between Member States. Therefore, while the impact of EU measures is assessed, this is distinguished from impact that already stems from differences between Member State social security schemes. This means the options do not assess the payment of 'contributions' by insured persons or employers (levies earmarked for social security purposes) into national social security schemes before the contingency occurs.[54] The impact on taxation is also left aside, as under Regulation (EC) No 883/2004 only contributions are coordinated, while general taxation is not. When assessing the economic impact of possible limitations in the access of mobile EU citizens to certain benefits, the methodology assumes the maximum potential impact were Member States to rely upon derogations which are permitted (but not required) by EU law.

In addition, an assessment has been made of the **other impacts** associated with each option specifically regulatory costs, the impact on the risk of fraud and abuse) and fair burden sharing

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[50] Quantified to the extent possible on the basis of the information in Annexes V, IX, X, XIII, XIV.

[51] In line with the new better regulation guidelines it is essential that social aspects are considered on equal footing by the Commission services and the Regulatory Scrutiny Board. In assessing social impacts, simplification and clarification of the coordination rules in Regulation (EC) No 883/2004 and protection of rights of mobile EU workers have been assessed. This also includes possible effects with regard to the risk of fraud and abuse. For the options concerning the competence for paying unemployment benefits to frontier and cross-border workers, the re-integration into the labour market is also assessed.

[52] Relating to policy domain v in the Impact Assessment Guidelines under the social pillar: Social protection, health, coordination of social security and educational systems.

[53] The rights deriving from the Charter of Fundamental Rights of the European Union against which the options are assessed are the following:

- the protection of personal data (Article 8),
- freedom to choose an occupation and the right to engage in work in another Member State (Article 15);
- right to property (Article 17);
- non-discrimination (Article 21);
- best interests of the child (Article 24)
- the rights of the elderly (Article 25),
- integration of persons with disabilities (Article 26),
- the right to family and professional life (Article 33)
- social security and social assistance (Article 34);
- health care (Article 35);
- freedom of movement and residence (Article 45).

[54] For instance, under the current situation as well as under each of the proposed options, a worker will continue to pay contributions in the State in which he/she is insured. It should be noted the level of benefits paid and contributions imposed is a matter of competence for the Member States and outside the scope of the EU social security rules.

between Member States. In relation to secondary impacts, some cautious estimates of the impact upon mobility flows have been done on the basis of studies in a selected number of States: however, also in light of the very low numbers of people who would be affected, such secondary impacts are estimated to be marginal.[55]

Furthermore the report seeks to examine the **overall impact** of each option with reference to coherence of each option with the general, specific objectives as set out in section 2.1 and depicted in the option tree on page 12 of this report. Where relevant, this assessment also considers overall coherence with the other EU policy initiatives and objectives referred to in section 1.3 of this report. [56]

Each chapter of this report provides a summary and more detailed table of results of the impact of a policy option. The degree to which options are relevant, effective and efficient are indicated on a scale from one to three : ++ for a highly positive assessment, + for a moderate positive assessment, - for a negative assessment. Where a option has both a negative and a postive aspect, a +/- is indicated, highlighting the mixed impact. The sign 0 is used to indicate that the option is considered to be neutral in comparison to the baseline scenario.

The combined effect of this analysis has been used to make an assessment of overall effectiveness and overall efficiency. Effectiveness has been measured by a qualitive assessment of the effectiveness of an option in achieving the the general and specific objectives and its score in respect of the social, economic and other impacts referred to above. By contrast overall efficiency has been assessed by reference to the overall effectiveness of each option compared to its financial impact (economic and regulatory costs). The rationale used to underpin these overall assessments is explained in the conclusions to each section of the report.

No impact on the competitiveness of specific sectors is foreseen by any of the options, as the subject matter does not concern commercial activities of enterprises.[57]

The coordination rules are directly addressed to Member States and their institutions and only concern the services provided under the public social security system. Small and medium size enterprises (SMEs) are not directly affected. They will provide their services under the conditions set by the national legislation. In the public online consultation, private organisations and public and private employers had the opportunity to react.

Whilst it is true that mobility in itself entails movements between Member States and that these movements are accompanied by vehicle emissions, no significant environmental impact[58] is expected from the options under consideration because of the marginal secondary impacts on mobility in comparison to general mobility flows.

Several studies, using different analytical models and methodologies, have been used to prepare the impact assessments.[59] In general, the studies rely on a combination of data sourced through EU-wide surveys such as the Labour Force Survey or data published by Eurostat. This has been complimented by data collected from national competent authorities within the framework of the Administrative Commission, in particular with reference to the payment of social security benefits within the

[55] For more information on who is affected and on the methodology, please refer to Annexes III and IV.
[56] Secondary impacts are not considered in the final comparison in recognition of the limitations of the data available to conduct this assessment
[57] In case C-218/00, *CISA*L, EU:C:2002:36, the Court decided that public social security institutions cannot be regarded as economic undertakings within the meaning of Articles 102 and 102 TFEU.

[58] Impact on the climate, air quality, water quality and resources, biodiversity, soil quality and resources and waste production and recycling.
[59] For a detailed description of the analytical models and the methodologies used in each studies, please refer to Annexes V-XIX, and XXVI.

framework of the EU Social Security Rules or the issuance of portable documents attesting to rights acquired under the Regulations on the basis of the sources identified in Annex IV. Since options on the coordination of long-term care benefits, coordination of unemployment benefits for frontier workers and export of unemployment benefits had been assessed in 2013-2014, an update with more recent and newly available data has been conducted in 2015.[60]

It should be noted that some statistical analysis is based on citizenship (Labour force survey) and therefore identify EU mobile citizens/workers (those living/working in another country than their country of citizenship) – while other data (administrative data collection) are based on headcounts of case where citizenship is not collected and that therefore constitutes a broader definition of mobility, i.e. includes not only EU mobile citizens/workers but also nationals returning to their country of citizenship as well as third-country nationals moving between EU Member States. In light of this, the Impact assessment adopts a broad definition of mobility which takes into account that in addition to EU mobile citizens other groups also benefit from coordination. In addition, as there is no precise statistical data on the number of frontier workers within the legal meaning of the coordination Regulations, it has been assumed for statistical purposes that all cross-border workers residing in a neighbouring country are frontier workers.

Since quantitative analyses have been mainly based on administrative data provided by Member States, it has to be underlined that not all Member States were able to provide data on the different benefits, nor was all data complete.

When reliable quantitative information on the total impact of the proposed initiative was not available, the analysis has been based on a qualitative assessment and structured interviews conducted with officials in representative Member States. Any limitations to this data are highlighted in the relevant chapter.

An overview of the analytical models used for the impact assessment is provided in Annex IV.

2.4. Stakeholder feedback

As the preparatory work for the "Revision of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2010" began in 2009, stakeholders were consulted on several occasions on the different elements which were considered in the impact assessment:

1. Member States were consulted on coordination of long-term care benefits, export of unemployment benefits, aggregation of unemployment benefits, coordination of unemployment benefits for frontier workers, export of family benefits and access to special non-contributory cash benefits for economically inactive persons, within the framework of the Administrative Commission.
2. National administrations were also consulted via a specialised online survey on the coordination of long-term care benefits, export of unemployment benefits and coordination of unemployment benefits for frontier workers. Also, a group of national organisation in charge of the payment of family benefits sent a position paper.
3. Social partners were consulted on the coordination of long-term care benefits, coordination of unemployment benefits for frontier workers and export of unemployment benefits in the framework of the Advisory Committee for the Coordination of Social Security Systems, and on the coordination of family benefits, long-term care benefits, and unemployment benefits during a dedicated hearing.

[60] Annex XXVI.

4. NGOs were consulted on the coordination of family benefits, long-term care benefits, and unemployment benefits during an ad-hoc consultation workshop.
5. Two online consultations were also launched, one on the coordination of long-term care benefits, export of unemployment benefits and coordination of unemployment benefits for frontier workers which took place between December 2012 and February 2013; the other one on the coordination of unemployment benefits and the coordination of family benefits which took place between July and October 2015.

It has to be noted that the different consultations presented different degrees of specifity in relation to the options assessed, and due to the high level of complexity of some topics, and the late definition of some options, some consultations have been kept very wide (e.g. the public consultation on aggregation of unemployment benefits; export of family benefits and social security coordination rules on the posting of employed and self-employed persons). The views of different stakeholders are presented in the assessment of each option, a more detailed description of the consultation process is included in Annex II.

2.5. **Definitions**

Throughout the report, reference is made to the "competent Member State", "Member State of residence", "Member State of last activity", "insured persons", "frontier workers", "cross-border workers", "mobile EU workers" meaning the following within the framework of Regulation (EC) No 883/2004[61]:

- "Member State" – Regulations (EC) Nos 883/2004 and 987/2009 apply to all countries within the EEA and Switzerland. Within this report, the term "Member State" is sometimes used to refer not only apply to EU-28 States but also Iceland, Liechtenstein, Norway and Switzerland.

- "competent Member State": Member State in which the institution with which the person is insured is located, or the institution paying the social security benefit;

- "Member State of residence": Member State where the institution which is competent to provide benefits in the place where the person resides is located;

- "Member State of last activity": Member State where an unemployed person was most recently working before becoming unemployed

- "insured person" any person satisfying the national legal conditions to have the right to benefits, taking into account the provisions of this Regulation;

- "cross-border worker": a person who resides in another Member State than the State of activity as an employed or self-employed person. This can be divided into two subsets:

    - (i) "frontier worker": any person pursuing an activity as an employed or self-employed person in a Member State and who resides in another Member State to which he/she returns as a rule on a daily or weekly basis. These States need not be neighbouring countries. A person working in Finland who returns every week on Friday evening to his/her home in Portugal is a frontier worker. Distance is irrelevant;

[61] See Annex XIII for the full glossary of terms.

- (ii)“other cross-border worker”: a cross-border worker who is not a frontier worker in the legal sense because he/she does not return to the Member State of residence on a daily or weekly basis;

- "Mobile EU worker": a worker who has moved his work or place of residence to another Member State.”

3. Why should the EU act?

Social security coordination concerns cross-border situations where no Member State can act alone. Coordination measures at EU level in the field of social security are required by Article 48 TFEU and necessary to guarantee that the right to free movement can be exercised. Without such coordination, free movement may be hindered, since people would be less likely to move if it meant losing social security rights acquired in another Member State.

The EU coordinating legislation replaces the numerous pre-existing bilateral agreements. The creation of an EU framework in this field ensures a uniform interpretation and protection of rights of mobile EU citizens and their family members that could not be achieved by the Member States alone at national level since this could potentially conflict with the Regulations.

This not only simplifies social security coordination for Member States, but also ensures equal treatment of EU citizens who are insured in accordance with national social security legislation.An effective and efficient coordination system at EU level requires that it takes account of changes in Member States' national social security legislation and keeps track with changes in social reality that affect the coordination of social security systems to achieve a fair and just distribution of financial burden between Member States. Taking action at EU level aims to ensure a uniform interpretation and creates a common basis that applies to all Member States. Conversely, without such an update of the Regulations the financial and administrative burdens would be likely to be greater, as the provisions would not meet changing needs of the Member States.

4. Long-term care benefits

4.1. Current Coordination Rules for Long-term Care Benefits

According to the OECD definition, long-term care benefits are a holistic type of benefits that bring together a range of services for persons who are dependent on help with basic activities of daily living over an extended period of time. Such benefits can be provided in kind or in cash. Examples include allowances (of a fixed or differential amount) to compensate for the additional expenditure resulting from the recipients’ condition of reliance on care (cash benefits) or the provision, direct payment or reimbursement of the costs of home care services, specialised home adaptations or equipment (benefits in kind).

Under the EU coordination rules, long-term care benefits are mentioned by Regulation (EC) No 883/2004 at several occasions. However, these benefits have so far not been expressly defined, nor coordinated within the scope of Regulation (EC) No 883/2004 (leaving aside the clarification in Art. 1 (va) that also long-term care benefits in kind have to be regarded as benefits in kind for the application of the sickness chapter).

The Court of Justice considered that long-term care benefits for the purposes of Regulation (EC) No 883/2004 are benefits intended to improve the state of health and quality of life of persons reliant on care and as such, are intended to supplement sickness insurance benefits (irrespective of classification under national law). If these benefits are granted on the basis of an objective and legally defined

position (i.e. in a non-discretionary way), they are covered by the Regulation. As a rule, long-term care benefits are designed to promote the independence of persons reliant on care, in particular from the financial point of view. Typically, they promote home care in preference to care provided in hospital but also consist of grants, aids or subsidies for people staying in residential care facilities.

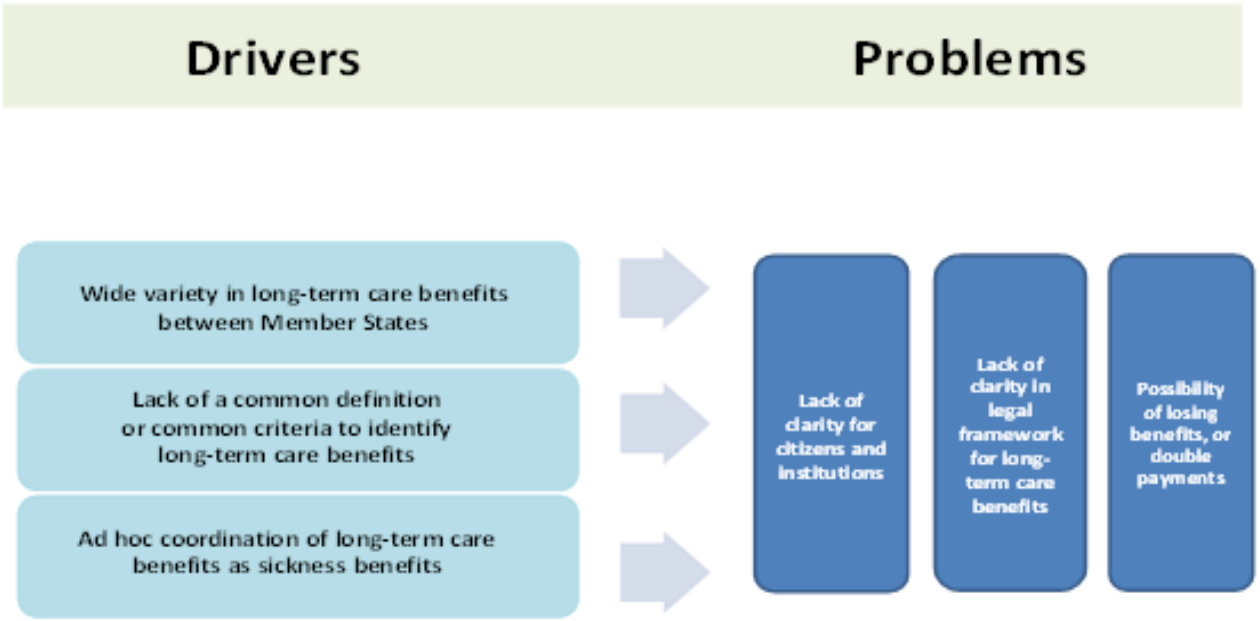
The conditions for the grant of the benefit or the underlying method of financing do not affect the classification of a benefit. The fact that a benefit is non-contributory or that its grant is not linked to payment of a sickness insurance benefit, is according to the Court, of irrelevant to its classification as a long-term care benefit.

In the absence of a comprehensive and coherent coordination regime well suited to the particularities of long-term care benefits, the Court has consequently decided that long-term care benefits should be coordinated in line with the coordination rules applicable to sickness benefits.[62] According to these rules, long-term care benefits in kind are to be provided by the Member State of residence and reimbursed by the competent Member State. Long-term care benefits in cash are to be provided and paid by the competent Member State, including export to entitled persons residing in another Member State. Residence for social security purposes, according coordination Regulations, means the place where the person habitually resides. Competence of a Member State is established according to the conflict rules laid down in these Regulations. In line with these rules, the Member State where a person works is responsible for sickness benefits even if the person resides in another Member State. For pensioners, it is the State primarily responsible for their pension that is competent for sickness benefits, even if they reside in another Member State. Family members of these categories of persons are also covered by the said rules.

Regulation (EC) No 883/2004 also contains an anti-overlapping provision[63] which applies in situations where a person receives long-term care benefits in kind from the State of residence and long-term care benefits in cash from competent Member State and both benefits are intended for the same purpose. The benefits in cash have priority over the benefits in kind and the competent Member State will deduct from the benefits in cash the amount for which it reimburses the State of residence for the long-term care benefits in kind.

[62] Such clarifications are made by the Court on a case-by-case basis. At least 11 such cases were dealt with by the Court since the first time in 1998, most of them concerning Germany, Austria and the United Kingdom, whose legislation provided for benefits having features of long-term care benefits.
[63] Article 34 of Regulation (EC) No 883/2004.

4.2. Problems with the coordination of long-term care benefits



Lack of clarity for citizens and institutions

There is a low level of understanding of the coordination rules for the recipients of long term care benefits leading to confusion for both citizens and competent institutions.

Slightly more than 80% of the individual respondents to the EU Public Consultation claimed either not to know (44%) or to have only a vague idea (38%) about the current rules on care benefits for elderly and/or disabled persons when moving within the EU. These figures contrast with the 18% of individuals who claimed to know the current rules. In addition, almost 57% of the participants declared that they did not know in which country they could apply for long-term care benefits if they or their family members would be in need of them. 16% of the individuals were not even aware of the possibility to apply for long-term care benefits while living outside the Member State in which one is insured. Moreover, 24% of the respondents replying on behalf of organisations (national administrations, social partners and trade unions, civil society and NGOs and private companies) were of the view that intra-EU migrants are not sufficiently aware of their rights.

A driver behind this problem is a lack of common definition or criteria to identify long-term care benefits as a relatively new strand of social security rights. During the final years of the twentieth century Member States have invested in the design of special schemes for persons in need of care. The main purpose of these new schemes was to help the ageing population for which traditional assistance from other family members was no longer readily available.

An additional driver is that at the national level, long-term care benefits are very diverse, either based on insurance legislation (Belgium, France, Austria, Germany, the Netherlands, Luxembourg, Spain, Portugal, Italy, Greece) or on residence legislation (Sweden, Denmark, Finland, United Kingdom, Ireland), some being universal (Nordic countries, the United Kingdom), while others are not (Estonia, Latvia, Lithuania, Poland, Czech Republic, Hungary, Slovakia, Romania, Bulgaria, Croatia)[64].

[64] For an overview of the welfare systems, see page 18 of Annex V.

Benefits having characteristics of the long-term care benefits can be divided over several branches of social security in some Member States, whereas in others separate legislation specific to long-term care exists. This may lead to difficulties when more than one country is involved[65].

This lack of clarity has direct consequences for EU citizens who have or wish to exercise their right to free movement, especially those who are vulnerable in light of their need for long-term care.

Lack of clarity in legal framework for long-term care benefits

While it is clear that sickness benefits are traditionally intended to improve the state of health and invalidity schemes are traditionally intended to compensate for the loss of income due to invalidity, there is not one and the same principle that applies to long-term care benefits. Although coordinated as sickness benefits, long-term care benefits still have a number of distinctive features which differentiate them from traditional sickness benefits. In particular, they are typically awarded for a longer period of time than sickness benefits and may also have the purpose of compensating for loss of income or other social risks faced by the claimant. This leads to lack of a common understanding at EU level of what long-term care benefits are and how they should be coordinated, which can lead to different outcomes for citizens and competent institutions. In the past three years (mid-2012 – mid-2015), the Commission services received around 450 complaints or queries related to problems linked to coordination of sickness and long-term care benefits. This shows that the current ad-hoc system of coordination is an ongoing source of uncertainty.

Drivers behind this problem may be identified as the lack of a common definition or common criteria to identify long-term care benefits, which, when recognizing the wide variety of different models of long-term care provision between the Member States, results in a disparate approach. Not all the benefits that correspond to the identified common characteristics at EU level are recognised as long-term care benefits by the Member States. For instance, Greece, Italy, Portugal, Romania and Slovakia have indicated that they do not have any long-term care benefits which fall in the scope of Regulation (EC) No 883/2004, while information available shows that such benefits exist in these countries. Also, Member States apply differing definitions in their national legislation, if they have a definition at all. Bulgaria, Greece, Malta, Norway, Romania, Slovakia and the United Kingdom do not have in their national law a definition of long-term care benefits. This does not mean that no long-term care benefits exist, but that the benefits might be related to other social insurance risks, such as invalidity or old age. [66]

A further driver may be regarded as the "ad-hoc" system of coordination of long-term care benefits, which is not always applied consistently either by national authorities or the Court. In its recent case-law[67], the Court acknowledged that long-term care benefits may have characteristics of invalidity benefits and old-age pensions. The Court may continue connecting long-term care benefits to other social security risks than sickness, depending on the individual characteristics of the benefits. Such an ad-hoc coordination system contributes to legal uncertainty, inconsistent approaches by national institutions and unpredictable outcomes for citizens.

In a survey of stakeholders, the lack of a uniform application and understanding of EU law by Member States and the lack of awareness among mobile citizens were identified as significant

[65] For example, some Member States, like Spain, consider a specific financial guarantee for persons in need of nursing care as independent long-term care benefit, whereas in France it is paid as a supplement to the pension.

[66] Austria, France, Finland, Hungary, Italy, Latvia, Lithuania, Poland, Slovenia, Slovakia, Sweden referred to the relationship with other branches of social security in the questionnaire on long-term care benefits carried out by the trESS Network for the purpose of Analytical Study 2012.

[67] Case 388/09, *Da Silva Martins*, EU:C:2011:439, p. 48, Case C-503/09, *Lucy Stewart,* EU:C:2011:500.

problems[68]. The authorities[69] confirmed that poor coordination and disputes follow from the lack of consensus concerning the treatment of long-term care benefits across the Member States. The general view shared by these authorities is that the system is unclear, administratively burdensome and unstable.

The lack of legal clarity over classification of these benefits and their coordination increases the likelihood of infringement proceedings and leaves it up to the Court to decide on a case-by-case, and fragmented, basis which national benefits are to be considered a long-term care benefit. Moreover, the Court only has the option of applying the existing coordination principles when categorising new benefits and thus categorising them with the benefits which they seem to resemble most closely. In these circumstances, the Court has determined in its case law a distinction between long-term care benefits in cash and sickness benefits within the strict sense[70]. It is likely that the Court will continue its reasoning on that basis, and by connecting the long-term care benefits to other social security risks on a case-by-case basis, which will not be helpful to come to a common understanding of long-term care benefits.

This can have a number of adverse consequences for the potential users of these benefits. For example, there may be difficulties in applying some of the traditional coordination mechanisms, such as the aggregation of periods[71], the prevention of overlapping[72], the priority rules in case there is a concurrent right from two Member States[73] or the rules to provide supplements if a person would have been entitled to a higher benefit from the State of insurance.[74]

While successful infringement procedures may lead to a change in the legislation or national general practices, such successes are on a case by case basis and the advantages for individual citizens are limited, as the specific effects for them have to be established by national courts. Furthermore, infringement procedures may take a long time. In case of non-compliance, the case will be referred to the Court and the rights of EU citizens will still be on hold.

Possibility of losing benefits, or double payments

There is a risk that a person may lose out on long-term care benefits if they are not properly classified and coordinated. Another, more far-reaching situation is the one in which a person receives neither benefits in cash or kind, as he or she moved from a State that only has benefits in kind (= non exportable), to a State which only has benefits in cash to the detriment of the fundamental rights of the person concerned.

As with the problem above, the drivers behind this problem are the lack of a common definition or common criteria to identify long-term care benefits, which when recognizing the wide variety of

[68] Online consultation carried out among public authorities by Deloitte Consulting in 2012.

[69] Twenty-two replies were received from public authorities in Belgium, Bulgaria, Cyprus, Denmark, Finland, France, Greece, Hungary, Iceland, Ireland, Liechtenstein, Norway, Portugal, Romania, Switzerland and United Kingdom. See Annex II.

[70] Case C-388/09 *da Silva Martins*, EU:C:2011:439.

[71] If the entitlement to long-term care benefits is dependent on the completion of periods, equivalent periods fulfilled in another Member State should be taken into account if necessary for the opening of the right to long-term care benefits.

[72] Long-term care benefits differ from country to country. They could be paid in the form of a monthly allowance to persons, or take the form of benefits in kind. In cross-border situations, there is a risk of accumulating benefits in cash and in kind from different Member States. If a person is entitled to benefits in cash from the competent Member State and at the same time can claim benefits in kind intended for the same purpose from the Member State of residence or stay that will have to be reimbursed by the competent Member State, the amount of the benefits in cash shall be reduced by the amount of the benefit in kind which could be claimed from the competent Member State.

[73] Family members of insured persons can have a derived right to sickness benefits from the family member, or an independent right in the Member State of residence, e.g. on the basis of their residence there. It is laid down in Article 32 of Regulation (EC) No 883/2004 that an independent right shall take priority over a derivative rights, except where the independent right in the Member State of residence exists directly and solely on the basis of the residence in that State.

[74] In cases where the reimbursement of costs incurred on the benefits in kind provided in the State of stay, calculated under the rules in force in that State, is less than the amount which application of the legislation in force in the State of affiliation would afford, the competent institution, upon the request of the person concerned, will reimburse him/her the difference, within the limits of the costs actually incurred.

different models of long-term care provision between the Member States results in a disparate approach. To distinguish between the benefits in kind and in cash, the Administrative Commission prepared a simple 'yes/no' list without any further description of these benefits[75]. In such a list for long-term care benefits, 11 Member States have declared that they do not have cash benefits. Another 10 Member States have said that they do not have benefits in kind. These declarations appear inconsistent with the Commission's own research.

The current "yes/no" list for long-term care benefits has proved to be inadequate. The user percentage of long-term care benefits in cash is only equal to zero in Belgium, Bulgaria, Ireland, Hungary and the Netherlands[76]. Also, all Member States have benefits in kind and in cash that can qualify as 'long-term care benefits'[77].

Solely listing benefits by means of a yes/no list may have the consequence that a mobile citizen may either lose rights or alternatively lead to a duplication of rights leading to inefficient allocation of welfare budgets between Member States. The current anti-overlapping provision in Regulation (EC) No 883/2004 deals with the situation where a person receives long-term care benefits in kind from the State of residence and long-term care benefits in cash from competent Member State and both benefits are 'intended for the same purpose'. However, the current system makes it difficult for Member States to be clear over whether two benefits are 'provided for the same purpose'. In particular, a competent Member State providing long-term care benefits in cash is unable to verify whether or not the person in receipt of sickness benefits in kind from the State of residence for the same purpose and the same time period; this would only reveal itself when the competent Member States receives a claim for reimbursement from the Member State of residence which normally happens only annually. In cases of overlap, the competent Member State is effectively taking on extra information obligations to process claims for something that a person is already receiving.

Example illustrating the risk of double payments: an Austrian pensioner with long-term care needs moves to Germany after his retirement. He receives a full Austrian pension (and has no pension entitlement from Germany or any other Member State). In accordance with the rules of Regulation (EC) No 883/2004, Austria is the 'competent Member State' for providing long-term care benefits in cash. Consequently, Austria has to export care allowances in cash, for example, a cash benefit intended to cover the costs of a home carer. The German system also provides care benefits in kind which can be claimed by the pensioner, such as trained carers who visit elderly persons to provide assistance their home.

Austria will reimburse the costs for the benefits in kind provided by Germany. The Austrian care allowance might no longer be necessary as the person already receives home care in Germany. It is therefore necessary for the Member State to compare, in line with the anti-overlapping rule, the two benefits to determine if they are intended for the same purpose and are paid for the same period of time in order to prevent double-payments.

For instance, in 2012, 2570 persons exported *Pflegegeld* from Austria to another Member State (Table 75 in Annex V), of which 70% of this long-term care benefit in cash was exported to Germany. This is an important share, which makes the comparison with the benefits in kind in Germany even more relevant.

It is noticed that the existing anti-accumulation rules at Article 34 are not working effectively in

[75] See 'list of cash benefits and benefits in kind as referred to in Article 34 of Regulation (EC) No. 883/2004.' (http://ec.europa.eu/social/main.jsp?catId=868&langId=en), state of play for EU-27 in May 2010, and the MISSOC tables.
[76] See the 2015 Ageing Report. Table 25 in Annex XXVI. Moreover, based on the 2012 Ageing Report none of the countries showed a user percentage equal to zero.
[77] See the mapping of systems of long-term care benefits in Annex XXI.

4.3. Baseline scenario

In total, there are 1.8 million persons covered by the Regulation who live in another Member State than the one in which they are insured against sickness. Out of them, 45.000 mobile citizens use long-term care benefits in kind and 35.000 mobile citizens use cash long-term care benefits[78].

The demographic changes in the EU (ageing population) and national legislative developments (new types of benefits) are drivers for Member States to continue developing special schemes for persons in need of care. On the basis of the demographic projections[79], the effect of ageing itself is expected to result in an increase of need for long-term care and of public spending on long-term care benefits from 1.6% of GDP in 2013 to 1.8 % of GDP in 2020 and 2.0% of GDP in 2030. The budgetary impact of the baseline scenario in 2013 is of 792.796.846 EUR[80].

The differences in the concept of long-term care benefits and their treatment across Member States can undermine the effective functioning of the reimbursement and mechanism of deduction for the avoidance of double payments. In order to avoid the competent Member State reimbursing costs for benefits in kind that overlap with the benefits in cash that it provides directly to the person concerned, it is necessary to have a clear overview of benefits that are provided for the same purpose.The number of cross-border users of long-term care benefits, who are today 80.000 (45.000 receiving long-term care benefits in kind and 35.000 long-term care in cash) might increase by 11% in 2020 in comparison to 2013and by 28% in 2030[81].

A lack of clear classification also limits the efficiency gains that might otherwise be foreseen by the launch of the Electronic Exchange for Social Security Information (EESSI) scheduled for launch by the end of 2016 with a deadline for full implementation in all Member State by the end of 2018 which will introduce common structured electronic documents and a uniform procedure for all national authorities to follow when processing claims social security benefits.[82] In the absence of clear classification, EESSI will have limited potential to support national institutions to process long-term care benefits in a consistent and efficient manner.

Furthermore, non-action increases the risk of loss of confidence in the EU rules for citizens and institutions. Keeping the current framework can also have knock-on effects on the administrative costs for the Member States. Finally, it might also imply costs for citizens seeking to enforce their rights in a legally uncertain environment.

4.4. Objectives for coordination of long-term care benefits coordination rules

As with all elements of this review exercise, the **general policy objective** of this initiative is to continue the modernisation of the EU Social Security Coordination Rules by further facilitating the exercise of citizens' rights while at the same time ensuring legal clarity, a fair and equitable distribution of the financial burden among the institutions of the Member States involved and administrative simplicity and enforceability of the rules.

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[78] See the synoptic overview in Annex III and table 2.18 in Annex XXVI.

[79] The total fertility rate (TFR) is projected to rise from 1.59 in 2013 to 1.68 by 2030 and further to 1.76 by 2060 for the EU as a whole. However, during the same period, the proportion of young people (aged 0-19) is projected to remain fairly constant by 2060, while the total age-dependency ratio (people aged below 20 and aged 65 and above over the population aged 20-64) is projected to rise from 64.9% to 94.5%. European Commission: The 2015 Ageing Report: Economic and Budgetary Projections for the 28 EU Member States (2013-2060): Graph I.1.2.

[80] Estimate based on data LFS and 2015 Ageing Report.

[81] As follows from Table 27 in Annex XXVI.

[82] Annex VI, p17.

In relation to long-term care in particular, this is reflected in the need to ensure coherence and clarity in the rules applied to long-term care benefits and lay down a stable coordination system, while recognising that the current inconsistent approach by Member States creates legal uncertainty for citizens and national institutions and consequent difficulties in uniform application of these rules.

In addition to the general objective, the **specific objectives** in the field of long-term care benefits are:

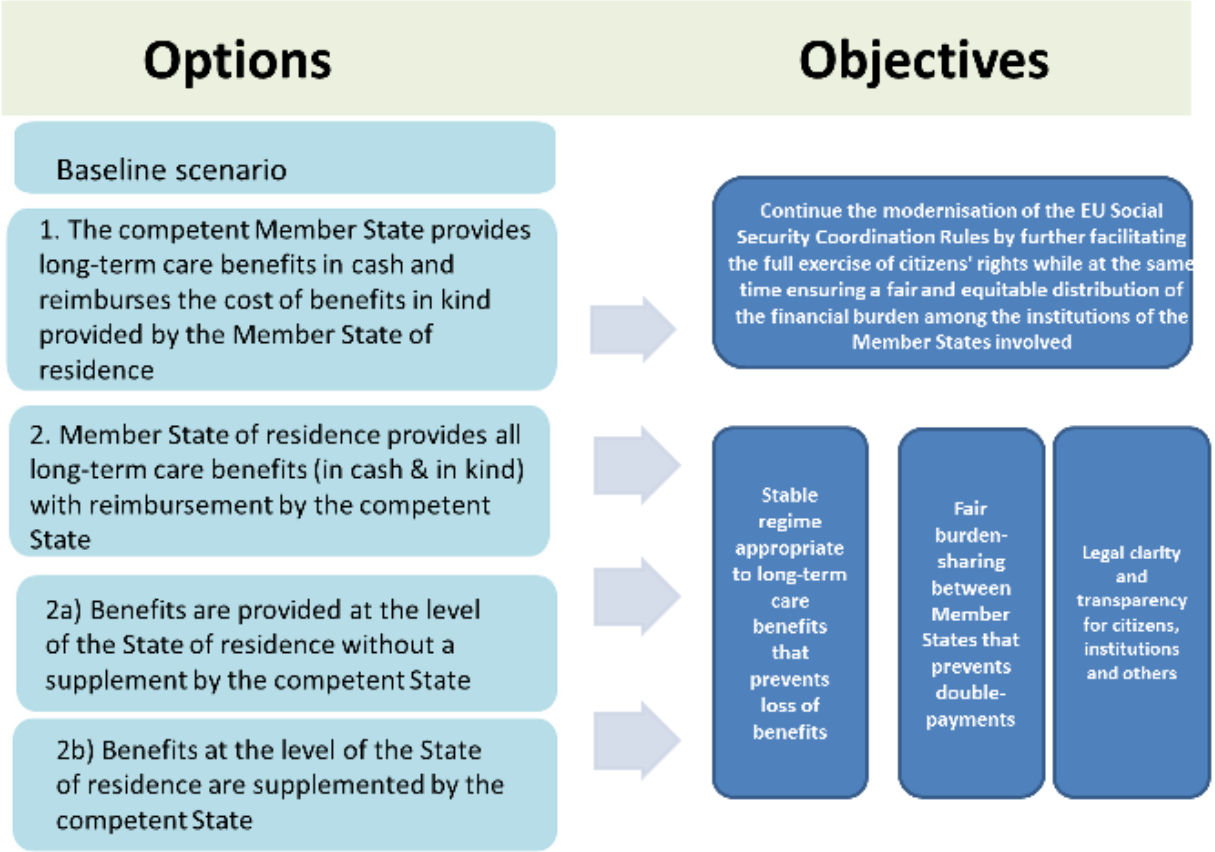
- To establish **a stable regime appropriate to long-term care benefits** which prevents loss of benefits and lays a basis for effective and efficient coordination;

- To ensure a **fair and equitable sharing of the financial burden between Member States:** to prevent double payment of sickness benefits in cash and ensure that the financial burden for paying long-term care benefits to persons who are insured in the competent Member State are shared proportionally between that Member State and the State of residence.

- To bring **legal clarity and transparency for citizens, institutions and other stakeholders** on coordination rules applicable to them so that they are ensured what the citizens' rights to long-term care are when exercising their right to freedom of movement.

4.5. What are the various options to achieve the objectives concerning long-term care benefits?

A number of policy options have been identified to meet the objectives set out in Section 1.4.



4.5.1 Option 0: Baseline scenario

No explicit legal framework is laid down in the coordination Regulations for long-term care. Following the interpretation given by the Court, the existing rules on sickness benefits apply to long-term care benefits.

The Member States in their national legislations, or in case of disagreements, the Court, decide on a case-by-case basis which national benefits are to be considered as long-term care benefits.

4.5.2 Option 1: The competent Member State provides long-term care benefits in cash and reimburses the cost of benefits in kind provided by the Member State of residence

This option applies the existing rules on sickness benefits to long-term care benefits and complements them with some specific rules that take account of the characteristics of long-term care benefits.

Similarly to sickness benefits, long-term care benefits in kind are to be provided by the Member State of residence in accordance with its legislation and reimbursed in full by the competent Member State. This can be done at the actual or at fixed level of expenses, depending on the national system, as shown in the accounts of the Member State of residence[83].

[83] See Articles 17 and 35 of Regulation (EC) No 883/2004.

Long-term care benefits in cash are to be provided and paid by the competent Member State in accordance with its legislation, including to the entitled persons residing in another Member State. By agreement between the Member States, benefits in cash may, however, be provided by the Member State of residence at the expense of the competent State and in accordance with the legislation of the latter[84].

The following clarifications distinguishing the long-term care area from the sickness rules on coordination are also proposed:

1) Inserting a new definition of long-term care benefits in Article 1 of Regulation (EC) No 883/2004 that takes into account the characteristics of long-term care benefits and facilitates their distinction from sickness benefits in a strict sense. Specifically, this could be accomplished by introducing a new chapter in the Regulation for long-term care benefits, based on the same principles as the sickness chapter but allowing for the key distinctions between these two types of benefits.

2) Defining the risk of 'long-term care' in Article 3(1) of Regulation (EC) No 883/2004 so it clearly falls as a distinct field of social security falling within the material scope of the EU rules;

3) Drawing up a list of long-term care benefits per Member State that covers all benefits that are included or excluded for the purposes preventing double payment of long-term care benefits by the institutions. This should be possible on the basis of the common elements in the definition and the existing analysis of national systems.[85]

4.5.3 Option 2: The Member State of residence provides all long-term care benefits with reimbursement by the competent Member State

Under this option the State of residence grants long-term care benefits in cash and in kind as they exist under its national system. This is different from the baseline scenario, under which the competent Member State pays the long-term care cash benefits directly to the insured person. By making only one Member State responsible for providing long-term care benefits in cash and in kind, the risk of overlapping or a total loss of benefits in kind is reduced.

Similarly to sickness benefits, the competent Member State shall reimburse expenses for long-term care benefits in kind. This can be done at the actual or at fixed level of expenses, depending on the national system, as shown in the accounts of the Member State of residence. An additional reimbursement procedure for long-term care benefits in cash would however need to be introduced between the Member States.

The situation can occur where the level of the long-term care benefits in the State of residence is lower than in the competent Member State. The two sub-options described below explore the possibilities for offering more favourable treatment of the persons concerned, in particular by giving the best benefits from two countries. The sub-options are partly inspired by the coordination system that applies to family benefits in Regulation (EC) No 883/2004. In the field of family benefits, if two rights coincide, the person is entitled to the highest amount that he/she is entitled to under either of the two systems (for more information see Chapter 7.1).

4.5.3.1. Sub-option 2a) The benefits are provided at the level of the Member State of residence without a supplement by the competent Member State

Under this sub-option, all long-term care benefits are provided by the Member State of residence at the level as determined by its legislation, irrespective of where the person is insured. The person

[84] See Article 21(1) of Regulation (EC) No 883/2004.
[85] Annex XXI.

concerned will not receive a 'top-up' from the competent Member State; even its benefits are higher than those in the Member State of residence.

4.5.3.2. Sub-option 2b) The benefits at the level of the Member State of residence are supplemented by the competent Member State

Under sub-option 2b, the person receives a supplement from the competent Member State in the event that the benefits in the Member State of residence, or the amount of reimbursement, are at a lower level than in the competent Member State. The 'top up' will be paid to the amount to which the person would have been entitled in the competent Member State and will be paid directly to the person concerned.

A person is insured in Member State A and resides in Member State B, where he applies for home care. The home care services costs EUR 5.100 including a service user charge of EUR 1.100 paid for by the insured person. The amount corresponding to the level of cover provided by the insurance system of Member State B is EUR 4.000. This amount is paid by the institution of Member State B and is to be refunded by the institution of Member State A.

But if the level of cover under the system of Member State A is higher, e.g. EUR 6.000, the person will also be able to receive the actual costs incurred in terms of the service user charge of EUR 1.100 from Member State A.

4.5.4 Discarded options

Three options were considered but discarded from assessment:

a) The introduction of a safeguarding provision

The competent Member State would award the long-term care benefits in cash for persons who reside outside that Member State. In a situation where the legislation of the competent Member States does not provide for long-term care benefits in cash and at the same time benefits in kind are non-existent in the Member State of residence, the Member State of residence should grant the long-term care benefits in cash existing under its legislation to avoid that a person is left with nothing. The competent Member State would then reimburse the benefits in cash provided by the Member State of residence.

This option would be less clear than the baseline scenario and would give rise to a lot of uncertainties for the Member State of residence about when benefits are or are not available in the competent Member State[86]. Although the right to a benefit for the person concerned would be guaranteed, this option does not provide legal certainty about when the Member State of residence would provide benefits, what benefits would be concerned and what amount.

b) Make the Member State of residence responsible for providing all long-term care benefits without reimbursement by the competent Member State

The Member State of residence would be competent for providing all the long-term care benefits, in cash and in kind, on the basis of its own legislation, thereby applying its own conditions for

[86] The following sources supported the analysis: trESS Analytical Study 2012, *Legal impact assessment for the revision of Regulation (EC) No 883/2004 with regard to the coordination of long-term care benefits*, to be consulted at: .http://www.tress-network.org/tress2012/EUROPEAN%20RESOURCES/EUROPEANREPORT/trESS_Analytical%20Study%202012.pdf, p. 37-40 and Deloitte, *Consulting Study for the impact assessment for revision of Regulations (EC) Nos 883/2004 and 987/2009*, 6 December 2013, pages. 130-13, Tables 53 and 54. The study can be found in Annex V to this report.

entitlement and granting benefits at the level set in that Member State. The long-term care benefits would remain fully at the expense of the Member State of residence.

Only one Member State is involved in providing long-term care benefits and this will make the system administratively easier to handle. However, the Member State of residence will be faced with an increase in applications for long-term care benefits, both from persons who are not insured against sickness benefits in that Member State and who have not contributed to financing the system of long-term care benefits (e.g. pensioners who are covered for health care in the country from which they receive a pension) without recourse to any reimbursement. Moreover, the system could provide an incentive to move to a country with more 'generous' long-term care benefits. This option would therefore put too great a burden on the administrative and financial organisation of the system of long-term care benefits in the Member State of residence.

c) *Make the competent Member State responsible for providing all long-term care benefits to insured persons residing abroad (export*).

Under this option the competent Member State would become responsible for providing all long-term care benefits to insured persons who are residing abroad. Where benefits are only available in the form of services, the competent Member State would reimburse the relevant services provided for in the Member State of residence according to the rates applicable in the Member State of residence.

This option would introduce a slight improvement in the protection of rights of the person concerned, as all persons in need of long-term care will be treated equally in the competent Member State (=Member State of insurance) and will not have their benefits reduced when they move to another Member State. However, this option would have significant practical challenges, including the necessity of increased information exchange between Member States. The benefits in kind available in both countries would need to be compared to assess if the benefits in kind in the Member State of residence could be provided under the same conditions as the competent Member State. If no benefits in kind are available in the Member State of residence the competent Member State would have to 'value' these benefits in cash. In all, this option would not contribute to an even financial burden sharing between Member States, and would make the system harder to administer for the competent Member State.

4.6. **Stakeholder Support**

4.6.1 *Baseline Scenario*

In discussions in the Administrative Commission[87], the baseline scenario received support from 10 delegations[88]; two delegations explicitly opposed the option[89]. In the stakeholders' EU public consultation[90] this option received support corresponding to replies from 18% of individuals[91], 17% of social partners[92] and 12% of NGOs[93].

[87] Discussions took place in meetings of the Administrative Commission in the period 2009 to 2013. A Working Party dedicated to the revision of the provisions on the coordination of long-term care benefits was held on 10 October 2013. The consultation within the Administrative Commission concerns a consultation at expert level. The views expressed at the level of the Administrative Commission do not necessarily represent the Government's view.
[88] Belgium, Greece, Spain, Hungary, Malta, Poland, Sweden, Estonia as well as the United Kingdom and France without declaring their definite position.
[89] Italy, Luxembourg.
[90] A public consultation between December 2012 and February 2013 invited citizens and organisations to provide their views on the main problems linked to the coordination of long-term care benefits.
[91] Out of 127 requested records relating to 6 different options considered.
[92] Out of 12 social partners providing responses relating to 6 options considered.
[93] Out of 8 NGOs providing responses relating to 6 options considered.

4.6.2 *Option 1: The competent Member State provides long-term care benefits in cash and reimburses the cost of benefits in kind provided by the Member State of residence*

Option 1 gained the most support from the delegations in the Administrative Commission, whereby 12 delegations explicitly supported this option, seven other Member States did not object its elements without taking definite position and none of the Member States declared to be against[94]. Although the opinions differed as regards their exact design, all delegations recognised the importance and the need to have a definition and a list of long-term care benefits. The outcome of the public consultation provided for the same result as the baseline scenario as the consultation did not make distinction between it and option 1.

4.6.3 *Option 2: The Member State of residence provides all long-term care benefits with reimbursement by the competent Member State*

Option 2 did not receive explicit support from any delegation in the Administrative Commission, four Member States being against[95]. The complexity and the administrative burden of supplement system is generally the main reason for the low support for this option among national public authorities. One of the comments was that when the system of providing long-term care benefits is decentralised and local municipalities are responsible for providing long-term care benefits, this option will be difficult to implement[96]. In the stakeholders' consultation option 2a) received support corresponding to replies from 19% of individuals, 17% of social partners and 50% of NGOs, while option 2b) was supported by 6% of individuals, 25% of social partners and none of the NGOs.

4.6.4 *Discarded options*

Although delegations in the Administrative Commission were not explicitly consulted on the discarded options, the discussion was not limited to the selected options and possibility was given to present any additional ideas. None of the delegations supported any of the discarded options.

In the public consultation[97], option a) received support from 14% of individuals, 8% of social partners and 12% of NGOs, option b) was supported by 19% of individuals, 17% of social partners and 50% of NGOs[98] and option c) received support from 38% of individuals, 33% of social partners and 25% of NGOs.

4.7. **What are the Impacts of the Different Options?**

For all of the options assessed, the potentially affected groups are the same. The options are specifically targeted at cross-border workers, retired former cross-border workers, other mobile pensioners and the family members of the said categories of entitled persons.

The fact there is no specific coordination regime and a common definition, made it difficult to collect data on long-term care benefits as limited data exists at national level. Administrative data on long-term care benefits are only available in specific forms dealing with the coordination rules of the sickness chapter.

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[94] Luxembourg, Spain, Italy, Portugal, Lithuania, Poland, Belgium, Malta, Sweden, Czech Republic, Hungary and Latvia explicitly supported the option, whilst Austria, Germany, France, Ireland, Slovenia, Slovakia and Greece, without taking definite position, supported some elements of this option or did not object it.

[95] Belgium, Germany, France and Sweden.

[96] In Sweden for example, 290 municipalities in the future would also need to provide long-term care benefits in cash and set up a reimbursement mechanism.

[97] A public consultation between December 2012 and February 2013 invited citizens and organisations to provide their views on the main problems linked to the coordination of long-term care benefits.

[98] The results are identical to those for option 2a, as no distinction was made in the public consultation as to responsibility for reimbursement of the cost of the benefits provided by the Member State of residence.

For the purposes of assessing the impact, two types of data sources were used: secondary data (available literature and reports at EU and Member States' level, particularly the trESS network reports; replies to the online public EU Consultation on the need to revise of the current rules; available statistical data with regard to mobility patterns and the use of long-term care benefits in cross-border cases) and primary data, collected through interviews and a consultation of the stakeholders (findings from strategic interviews with Commission officials; findings from interviews with stakeholders at EU level, e.g. European umbrella organisations; findings form interviews with key stakeholders at national level (health insurers, healthcare providers); replies to the EU-wide web-based survey among responsible public authorities; new, generated statistical data with regard to mobility patterns and the use of long-term care benefits in cross-border cases; findings from the 13 workshops/group interviews and 8 phone interviews on the administrative costs and administrative burden related to the policy options).

For further information about the methodology see section 2.3 and Annex IV.

The Table below illustrates a summary of impacts of the different options:

Type of impact	Clarification	Simplification	Protection of rights	Fundamental rights	Economic impacts	Regulatory costs	Risk of fraud and abuse	Equitable burden sharing Member State	Coherence with EU objectives	Overall Effectiveness	Overall Efficiency (cost vs effectiveness)
Baseline Scenario	0	0	0	0	0[99]	0	0	0	0	0	0
Option 1	++	+	+	+	0	0	+	0	+	++	+
Option 2a	++	+	+/-	+/-	+	-	-	+/-	+	+	+
Option 2b	+	--	++	+	--	--	-	+/-	+	-	-

[99] The budgetary impact of the baseline scenario in 2013 has been estimated at 792.79 million euros. This is an estimate based on LFS data and the 2015 Ageing Report.

The following Tables demonstrate specific impacts for each of the considered policy options:

Policy Option 1: The competent Member State provides long-term care benefits in cash and reimburses the cost of benefits in kind provided by the Member State of residence		
Social impacts		
Clarification	++	This option will coordinate long-term care benefits under a separate umbrella, taking into account their specific characteristics. The creation of a common EU definition of long-term care benefits and a concrete list of the benefits is an important step towards more clarity and a uniform approach will lead to greater clarity and a uniform approach, while preserving the method currently applied to sickness benefits.
Simplification	+	This option will not fundamentally change the principles of the baseline as regards the differences between benefits in kind and in cash. However, the proposed option will make it easier for Member States and citizens to understand and apply the coordination provisions on national long-term care benefits. The option also offers a greater stability as it maintains the main principles currently applied under the baseline scenario.
Protection of rights	+	This option will contribute to expediting the process by which persons that require care receive the benefits by removing much of the uncertainty over the status of the various long-term care benefits. There will be no doubt about which benefits can be claimed in a cross-border situation. Nevertheless, the actual receipt of the benefits remains dependent on the distinction between benefits in cash and in kind and the limitation that benefits in kind cannot be exported. Theoretically, an insured person could still be excluded from their benefits, for example, when the competent Member State only grants long-term care benefits in kind and the State of residence only has benefits in cash.
Financial impact	0	This option would involve no economic impact in comparison to the baseline scenario, as Member States will continue to pay the long-term care benefits under the same coordination rules as before. The impact would only manifest itself if benefits that are currently outside the scope of the existing rules would be included in the list. For detailed budgetary impact for individual Member States see Tables 2.19-2.23 in Annex XXVI.
Impacts on fundamental rights	+	This option will contribute to a smoother application of the coordination provisions for long-term care benefits and hence to freedom of movement and residence (Article 45), and facilitate the access to social security and social assistance (Article 34). It would ensure that citizens, despite any vulnerability or care-need they might have, are not disadvantaged in exercising their right to free movement within the EU in accordance with the rights of the elderly (Article 25) and the integration of persons with disabilities (Article 26). There is no impact on the right of property, as rights acquired under the national legislation of the competent Member State and the State of residence are maintained on the same footing.
Other impacts		

Regulatory Costs	0	The information obligations for institutions and citizens under this option will remain the same as under the baseline scenario as no new obligations will be introduced. The option facilitates the comparison of benefits in kind and in cash and could lead to fewer disputes between institutions. In an initial phase the new legal definition may increase the administrative burden for Member States and impact the exchange of information between Member States. In the long term the clarification would save time and money for Member States, especially in light of increasing demand for long-term care benefits.
Risk of fraud and abuse	+	In general, additional clarifications will always make the legal situation clearer for the persons concerned and the institutions Specifying the national benefits concerned will reduce the risk of overlapping payments.
Fair burden sharing between Member States	0	There are no fundamental changes in comparison to the current situation. Depending on the definition of long-term care benefits and the benefits to be included in the list, some benefits which would currently not be coordinated under the Sickness Chapter could be more or less beneficial for a Member State.
Coherence with General, Specific and wider EU Objectives: Continue the modernisation of the EU Social Security Coordination Rules by further facilitating the exercise of citizens' rights while at the same time ensuring legal clarity, a fair and equitable distribution of the financial burden among the institutions of the Member States involved and administrative simplicity and enforceability of the rules. • Establish a stable regime appropriate to long-term care benefits; • Ensure a fair and equitable sharing of the financial burden between Member States; • Bring legal clarity and transparency for citizens, institutions and other stakeholders on coordination rules applicable to them.	+	This option, by introducing a legal basis for the already applicable rules, leads to stability of the already applied regime appropriate to long-term care benefits, while remaining compatible with the system currently applied under the baseline scenario. In parallel, it achieves legal clarity and transparency on the rules applicable both for citizens and institutions as well as other stakeholders. Although benefits in kind are provided by the residence State, costs of all cash and in kind benefits provided are at the expense of the competent Member State which ensures a fair distribution of the financial burden. This option however will not solve existing mismatches in case the competent Member State has no benefits in cash and the State of residence has no benefits in kind.

Policy Option 2a: The benefits are provided by the Member State of residence without a supplement by the competent Member State even if the benefits in the Member State of residence, or the amount of reimbursement, are at a lower level than in the competent Member State		
Social impacts		
Clarification	++	Under this option, the same clarifying measures will be provided as under option 1 so that the person will always know that he or she needs to claim the benefits under the legislation of the Member

		State of residence. There will be no doubts even if it is not clear under the relevant legislation whether a certain benefit is a benefit in cash or in kind.
Simplification	+	Only one Member State is exclusively competent to provide long-term care benefits to the person concerned. Priority rules against overlapping will be superfluous, which will simplify the procedure for mixed-type systems but there will need to be an additional reimbursement procedure for cash benefits.
Protection of rights	+/-	This option would ensure that the persons concerned are always protected at the same level as all other persons in the Member State of residence. Affiliation to the system of the State of residence needs to be assimilated in cases where a person is not covered by the legislation of the State of residence. This in itself can be seen as positive in comparison to the baseline scenario. However, depending on the system or level of long-term care benefits in the Member State of residence, a person might be better or worse of in comparison to the level of benefits in the competent Member State as the level of protection will depend solely on the level of benefits in the residence State.
Financial impact	+	Long-term care benefits in cash shall be provided by the State of residence and no longer by the competent Member State. This implies a considerable decrease of the budget which is needed to finance the cross-border use of long-term care benefits in cash (from € 203 Million to € 111 Million or a decrease of 45% (Annex XXVI– Tables 2.19 and 2.20)). The details of the estimates reveal that whereas more persons are using long-term care benefits in cash, the average amount is much lower. The total budgetary impact is estimated at € 701 million, which corresponds to a decrease of 12% in comparison to the baseline scenario (Annex XXVI – Tables 2.19 and 2.20). On the level of Member States an especially positive impact (less spending) is observed for Austria (decrease of 61% of expenditure on long-term care benefits in comparison to now), Italy (-53%) and Czech Republic (-41%) (Annex XXVI – Table 2.20). Primarily, a negative impact (more spending) in comparison to the other options is observed for the Slovak Republic (increase of 75% of expenditure on long-term care benefits in comparison to the baseline scenario), Croatia (+66%) and Hungary (+50%). These countries have a rather low level of sickness benefits in cash. They also have a rather low user rate of long-term care benefits in their country. Under this option, Member States will have to reimburse benefits in kind and in cash provided to persons who are insured under their social security systems, but who reside in another Member State where the level of long-term care benefits is higher. This could entail paying more than permitted under national legislation. Member States in which no crucial negative or positive financial impact is observed are: Estonia, Luxembourg, Sweden, Denmark, Cyprus and France. For detailed budgetary impact for individual Member States see Tables 2.19-2.23 in Annex XXVI.

Impacts on fundamental rights	+/-	The impact is the same as for option 1 however; the impact on the right of property will vary as depending on the system or level of long-term care benefits in the Member State of residence, a person might be better or worse of in comparison to the level of benefits in the competent Member State.
Other impacts		
Regulatory Costs	-	As only one Member State is competent for providing long-term care benefits, this option does not require further implementing arrangements or priority rules to avoid overlapping. The competent Member State and the State of residence will however need to set up a new reimbursement mechanism for benefits in cash. This option may be difficult to implement in Member States where the system providing long-term care benefits is decentralised. The State of residence will have to assume entitlement for benefits in cash for a person who is insured in another Member State and will be confronted with an increase in cases (from 45.000 to 80.000 per year, based on current estimations of recipients of cross-border long-term care - table 2.18 - Annex XXVI). The administrative costs for long-term care are expected to diminish in comparison to the baseline scenario, but the relative share of the regulatory costs in the total budget for long-term care could increase slightly (combined impact for both benefits in cash and in kind - table 55 - Annex V).
Risk of fraud and abuse	-	The risk of fraud and abuse is slightly higher than in the baseline scenario. Member States with more generous long-term care benefits warned that this option could lead persons to move to a Member with a higher level of benefits and claim long-term care benefits there. This in itself is not fraud or abuse, but it can contribute to the perception of so-called 'opportunistic behaviour'.
Fair burden sharing between Member States	+/-	Both the competent Member State and the Member State of residence contribute to the costs of granting the benefit to the person concerned. The competent Member State will have to reimburse the costs made in the Member State of residence, according to the level of the State of residence – even if this is higher or the Member State of residence would anyhow provide the benefits on the basis of its national legislation. This may entail a higher or lower share of burden depending on the respective level of benefits in the Member States concerned.
Coherence with General, Specific and wider EU Objectives: Continue the modernisation of the EU Social Security Coordination Rules by further facilitating the exercise of citizens' rights while at the same time ensuring legal clarity, a fair and equitable distribution of the financial burden among the institutions of the Member States involved and administrative simplicity and enforceability of the rules. • Establish a stable regime appropriate to long-term care benefits; • Ensure a fair and equitable	+	This option introduces a stable regime appropriate to long-term care benefits. The regime however differs from the currently applied rules and thus will require adaptation before full stability is achieved. In parallel, the option brings legal clarity and transparency on the rules applicable both for citizens and institutions as well as other stakeholders. Although the overall costs for the spending on long-term care benefits in cash is decreased, this option might be less effective at achieving the objective of a fair and equitable distribution of financial burden between Member States as the costs are always reimbursed at the level of the residence State. Also, introducing a separate reimbursement procedure for long-term care benefits in cash which will require setting up of a new system for the exchange of information between Member States will entail additional regulatory costs compared to the baseline scenario.

sharing of the financial burden between Member States; • Bring legal clarity and transparency for citizens, institutions and other stakeholders on coordination rules applicable to them.		

Policy Option 2b: The competent Member State provides a supplement to the beneficiary in the event that the benefits in the Member State of residence, or the amount of reimbursement, are at a lower level than in the competent Member State		
Social impacts		
Clarification	+	Under this option, the person will always know that he/she needs to claim the benefits under the legislation of the Member State of residence. However, the person may also need to introduce a claim for paying the supplement in the competent Member State, which can only be done after the initial claim has been paid by the Member State of residence.
Simplification	--	This option is more complex than the baseline scenario as it opens simultaneous entitlements under the legislation of several Member States. Priority rules will have to be drawn up and a procedure will need to be developed for the calculation of the supplement and how the supplements shall be settled.[100] Moreover, the option deviates from currently applied sickness logic which is consistent with the Court's case-law.
Protection of rights	++	The social impact is the same as for option 1 and in addition the insured person will always receive the highest benefit to which he/she would have been entitled to in the competent Member State.
Financial impact	--	It is estimated that the total expenditure for long-term care benefits would increase to € 1.4 billion, of which € 1.15 billion is for benefits in kind (an increase of 95% in comparison to the baseline scenario) and € 253 million for benefits in cash (an increase of 25%) (Annex XXVI – Table 2.24). The differences are caused by the supplement, which is estimated at € 560 million for long-term care benefits in kind and € 142 million for long-term care benefits in cash which come from the account of the competent Member State. This option has no positive budgetary impact on any of the Member States. The highest increase in comparison to the current scenario is estimated to take place in Sweden (+318%), the Netherlands (+297%) and Finland (+ 248%).

[100] It may not be possible to directly replicate the existing system for calculation of a differential supplement in the field of family benefits and still respond to the specifics of long-term care..

		For detailed budgetary impact for individual Member States see Tables 2.19-2.23 in Annex XXVI.
Impacts on fundamental rights	+	The impact is the same as for option 1 and in addition the insured person will always receive the highest benefit to which he/she would have been entitled to in the competent Member State.
Other impacts		
Regulatory Costs	--	This option is more complex than the baseline scenario as it opens simultaneous entitlements under the legislation of two Member States: one to be provided with the actual benefit and the other for receiving the supplement. A procedure to compare the level of benefits between the competent Member State and the State of residence needs to be set up, as well as a procedure to settle the payment of the supplement. It will necessitate an additional exchange of information between the Member State of residence and the Member State competent for paying the supplement.
Risk of fraud and abuse	-	The risk of fraud and abuse is slightly higher than in the baseline scenario. Member States with more generous long-term care benefits warned that this option could lead persons to move to a Member with a higher level of benefits and claim long-term care benefits there. This in itself is not fraud or abuse, but it can contribute to a perception of so-called 'opportunistic behaviour'.
Fair burden sharing between Member States	+/-	As the supplement is paid directly to the person concerned, it will not contribute to even burden sharing between Member States, but will only increase the total costs of the benefits provided by these Member States. Both the competent Member State and the Member State of residence have their share in granting the benefit to the person concerned. The competent Member State will have to reimburse the costs made in the Member State of residence, according to the level of the State of residence –even in this is higher or the Member State of residence would anyhow provide the benefits on the basis of its national legislation. If the level of benefits in the State of residence is lower, the competent Member State will also have to 'top up' the benefits to the level applicable under its own legislation.

Coherence with General, Specific and wider EU Objectives: Continue the modernisation of the EU Social Security Coordination Rules by further facilitating the exercise of citizens' rights while at the same time ensuring legal clarity, a fair and equitable distribution of the financial burden among the institutions of the Member States involved and administrative simplicity and enforceability of the rules. • Establish a stable regime appropriate to long-term care benefits; • Ensure a fair and equitable sharing of the financial burden between Member States; • Bring legal clarity and transparency for citizens, institutions and other stakeholders on coordination rules applicable to them.	+	This option introduces a stable regime appropriate to long-term care benefits and offers the maximum level of protection to the person. The regime however differs from the currently applied rules and thus will require adaptation before full stability is achieved. In parallel, the option brings legal clarity and transparency on the rules applicable both for citizens and institutions as well as other stakeholders. The payment of the supplement for benefits provided in residence State increases the costs for the competent Member State. This option is thus less effective at achieving the objective of a fair and equitable distribution of financial burden between Member States. Furthermore, the priority rules and calculation rules for the reimbursement of the benefits and provision of the supplement need to be introduced as well as an administrative procedure for settling supplements.

Based on the above tables, some preliminary conclusions can be drawn on the strengths and weaknesses of the different options and their overall effectiveness, efficiency and relevance in achieving the various objectives while avoiding excessive costs.

Option 1 which introduces the legal basis for the already applicable rules, contributes positively to bringing legal certainty, transparency and stability of the already applied regime appropriate to long-term care benefits, while remaining compatible with similar system applicable to sickness benefits. These effects are maximised by the inclusion of clarifications under a separate Chapter categorising the rules for long-term care benefits separately and offering a clear distinction with the provisions on sickness benefits and social assistance. Citizens and institutions will benefit from the clarification of these rules. This option however will not solve existing mismatches in case the competent Member State has no benefits in cash and the State of residence has no benefits in kind. This option will have low implementation costs as it brings clarification without drastically changing the system of coordination and the information obligations following from that system. In light of the effectiveness at achieving the objectives this option is considered the most cost efficient[101]. It is also coherent with wider EU Policy objectives, in particular, the planned review of the disability strategy 2010-2020 assessing progress to ensure the effective implementation of the UN Convention on the Rights of Disabled Persons across the EU and the ongoing work to promote a social agenda to support the economic recovery ensuring a Triple A social rating for Europe, which advocates greater efficiency in allocation of social protection to challenge examples of multiple benefits overlapping, poorly targeted cash or in-kind benefits (services). The option was supported by a significant majority of experts from Member States.

Sub-option 2a ensures a common understanding and increased transparency for citizens and institutions and introduces a stable regime appropriate to long-term care benefits. The regime however differs from the currently applied rules which are consistent with the logic applied to sickness benefits and the Court's case-law and thus, will require adaptation before full stability is achieved. The overall costs for the spending on long-term care benefits in cash will decrease, caused by a lower level of benefits in the State of residence, however this cost saving needs to be counter-balanced against the

[101] Table 2.21 in Annex XXVI.

fact this option is less effective at achieving the objective of a fair and equitable distribution of financial burden between Member States. It should be also noted that while the costs will indeed decrease in some Member States, a negative impact (more spending) may also be observed for other Member States in comparison to the baseline scenario and some Member States of residence may be required to pay more than permitted under their national legislation to reimburse costs spent by the Member State of residence. In the alternative, the option may result in less beneficial result for persons insured under the competent State's system compared to those insured persons who remained resident in that State. Introducing a separate reimbursement procedure for long-term care benefits in cash will require setting up a new system for the exchange of information between Member States and information obligations for the person concerned who has no 'insurance link' with the State of residence. This will entail additional regulatory costs compared to the baseline scenario. The option may be difficult to implement in decentralised systems providing long-term care benefits. The option is, however, coherent with wider EU Policy objectives for the same reasons as set out in relation to option 1. Option 2 did not receive explicit support from any delegation in the Administrative Commission mainly on grounds of the perceived administrative burden.

Sub-option 2b ensures a common understanding and increased transparency for citizens and institutions and introduces a stable regime appropriate to long-term care benefits. It offers the maximum level of protection to the person, albeit this not being the aim of the Regulations. The person concerned will open simultaneous entitlements under the legislations of more than one Member State. Similarly to sub-option 2a, the regime differs from the currently applied rules and thus, will require adaptation before full stability is achieved. Priority rules and calculation rules for the reimbursement of the benefits and provision of the supplement need to be introduced as well as an administrative procedure for settling supplements. This option is therefore less efficient than the current situation. The payment of the supplement will increase the costs especially for the competent Member State, which has to reimburse the costs of all long-term care benefits provided by the State of residence and pay the supplement up to the level in its national legislation directly to the person concerned meaning it is less efficient than the other options. The coherence of the option with the wider EU Policy Agenda is the same as for option 1. Option 2 did not receive explicit support from any delegation in the Administrative Commission.

5. Unemployment Benefits

5.1. Current Coordination Rules for Unemployment Benefits

'Unemployment benefits' are benefits granted if the risk of loss of employment materialises.[102] Typically an unemployed person is required to register as a person seeking for employment with the employment service which is providing the benefit. Unemployed persons are usually required to be fit for work, available for work and actively seeking work.

The coordination rules for unemployment benefits deal with three different areas and concern three different scenarios, namely:

a) the aggregation of periods of insurance completed by mobile workers in different member States,

b) the export of unemployment benefits for unemployed persons who want to move to another Member State for the purpose of seeking employment there,

c) the determination of the Member State which is competent for providing unemployment benefits for frontier and other cross-border workers.

[102] Case C-228/07, *Petersen*, paragraph 28; Case C-404/04, *De Cuyper*, paragraph 27.

The rules of coordination in respect of these three areas are briefly summarised below:

5.1.1 *Rules as regards the principle of aggregation*

The principle of aggregation of periods of social security protection is a basic principle of the coordination rules, which ensures previous periods completed in another Member State are recognized for the purposes of establishing entitlement. In respect of unemployment, the rules require that only periods of insurance, employment and self-employment completed in different Member States have to be aggregated. This can be explained by the fact that national unemployment schemes are not based on periods of residence but rather periods of insured employment. The qualifying period varies from at least 4 months in France to 24 months in the Slovak Republic. Most Member States apply a qualifying period of some 12 months[103].

The Court has determined that the recognition of those periods,depends on the rules applicable in the competent Member State. [104] This means that even periods of employment which did not qualify as an insurance period in the country where they have been completed must be taken into account for the purpose of aggregation, if such periods would be covered by the unemployment insurance in the State providing the benefit.

Example: **Denmark** provides coverage in case of unemployment on a voluntary basis. According to the interpretation of the Court, it is therefore possible that a mobile worker who elected not to be covered by the unemployment insurance during a period of employment in Denmark would nevertheless receive unemployment benefits from another Member State where they subsequently become insured on the basis of the Danish periods of employment if those periods would qualify as insured periods against the risk of unemployment in that Member State.

Moreover, the current rules require an aggregation of periods only subject to the condition that the person concerned has most recently completed periods of insurance, employment or self-employment in the Member State concerned. This particular condition applies only to mobile workers who move to another country, i.e. who change their residence and claim unemployment benefits under the legislation of their new country of residence. It does not apply to cross-border workers, who by definition, already have their residence in another State.

This provision is based on the general principle that the Member State which has received the contributions shall also bear the burden of the unemployment benefits. This requirement of 'most recent' insurance also encourages the search for work in that Member State. As a result, it is not possible for an unemployed person to simply move to another Member State or to return to his or her State of origin and claim unemployment benefits in that State based on the principle of aggregation of periods completed in another Member State without having first been employed and insured in that Member State.

Example: Michael loses his job in Member State A and moves or returns to Member State B without having registered as unemployed person in Member State A. In this case, Michael will only be entitled to receive unemployment benefits from Member State B when he has most recently been insured

[103] Figure 2 in PACOLET, J. and DE WISPELAERE, F., *Aggregation of periods for unemployment, Network Statistics FMSSFE, European Commission,* June 2015, Annex XXI.
[104] Case 388/87, *Warmerdam-Steggerda*, EU:C:1989:196.

there, i.e. if he obtains employment in Member State B after his return but once again becomes involuntarily unemployed.

The calculation of unemployment benefits in the event that a person had completed periods of employment in more than one Member State are based on the principle that unemployed persons should receive their unemployment benefit from the Member State of last activity in accordance with the legislation applicable in that State.[105] Consequently, the competent institution needs to take into account exclusively the salary or professional income received in respect of the last activity as an employed or self-employed person[106].

This rule does not affect Member States where unemployment benefits are paid on a flat-rate basis[107], or those Member States which base the calculation of their benefits on the salary earned at the moment when the person became unemployed[108]. Most Member States, however, base their calculation on average salaries earned during a reference period of 3,[109] 6,[110] 12[111] or even 24 months[112].

5.1.2 *The principle of export of unemployment benefits*

One of the basic principles of social security coordination is the requirement that cash benefits shall be paid irrespective of the place of residence of the beneficiary. In the area of unemployment benefits, however, export is only possible subject to the specific conditions set out below and only for a limited period of time.

An unemployed person who goes to another Member State in order to seek work must

- have been registered with the employment service of the competent Member State for a period of at least four weeks,[113]

- register with the unemployment service of the Member State where he/she is looking for work within seven days after departing,

- comply with the control procedures organized by the unemployment service of that Member State.

Jobseekers who intend to look for work in another country shall request a certificate, namely the Portable Document U2 (PD U2 – *Retention of unemployment benefits*) before departure which certifies their right to continue to draw unemployment benefit. They should take care to return before expiry of the maximum period, because if they return later, without the explicit permission of the employment service of the state which is paying the benefits, they risk losing all remaining entitlement to benefits.[114]

In the new country of stay, the jobseeker will be treated by the employment service exactly the same way as any other jobseeker in this country. If the institution of this country becomes aware of any circumstance which might affect entitlement to benefits, it will immediately inform the competent

[105] This principle does to cross-border workers who resided during their economic activity in another Member State than the Member State where the activity was performed.
[106] Article 62(1) of Regulation (EC) No 883/2004.
[107] Ireland, Malta, Poland, United Kingdom.
[108] Table 9 in Annex VII: The Netherlands take the daily wage into account. Belgium refers to the average salary earned in the last position.
[109] Croatia, Czech Republic, Denmark, Luxembourg.
[110] Iceland, Spain, Switzerland.
[111] Austria, Cyprus, France, Germany, Hungary, Latvia, Norway, Portugal, Romania, Sweden.
[112] Bulgaria, Italy, Slovak Republic.
[113] The underlying idea of this precondition is that an unemployed person should at first exhaust all possibilities of finding a new job in his former country of employment before extending the search for employment to other countries. This period can be shortened, however, by the institution concerned.
[114] Unless otherwise provided for under the legislation of the competent Member State.

institution and the jobseeker by issuing the document U3. This document informs the unemployed person of the situation and advises him of his right of appeal to the competent institution if he/she does not agree in order to ensure the continuation of the benefit payment.

The periods for which an unemployment benefit can be exported are limited. The original maximum period of three months under Regulation 1408/71 was extended by Regulation No 883/2004 to a minimum period of three months and a maximum period of six months.

5.1.3 *Coordination of unemployment benefits as regards frontier and other cross-border workers*

Cross-border workers are workers who reside in another Member State than the State of activity. The current rules differentiate between which Member State is competent for providing unemployment benefits as regards to frontier works and other cross-border workers and between the situations, that a cross-border worker is wholly, partially or intermittently unemployed. They provide that:

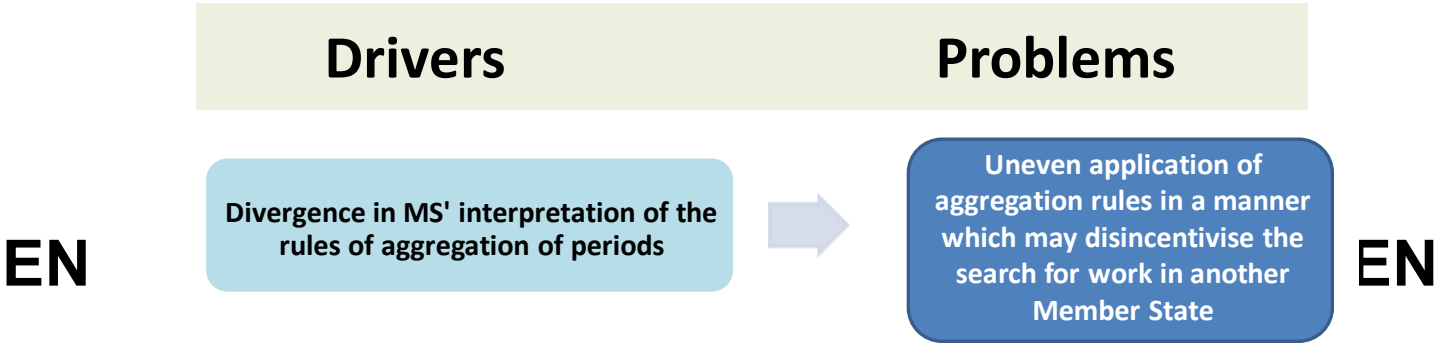
- Frontier workers shall receive their unemployment benefits from the competent institution in their Member State of residence if they are wholly unemployed, and
- from the institution of the Member State of activity if they are only partially or intermittently unemployed.
- The same applies to other cross-border workers if they are only partially or intermittently unemployed.
- If they are wholly unemployed, they have a right of choice, i.e. they can return to their country of residence and claim unemployment benefits from the institution of that State or remain in the country of previous activity and claim benefits there.

To compensate the institution of the Member State for the fact that they are obliged to provide benefits without having received contributions, the rules provide for a reimbursement of benefits paid for the first three months or five months. The five-month reimbursement applies when the beneficiary had been insured in the Member State of previous activity for at least 12 months within the last 24 months.

There are specific rules for frontier workers who were formerly self-employed. If they reside in a country where there is no unemployment insurance for self-employed persons, they shall be entitled to receive unemployment benefit from the institution in the country of last activity to which they had been affiliated.

5.2. **Aggregation of periods for unemployment benefits**

5.2.1 *Problems with the aggregation of periods for unemployment benefits and the drivers behind them*



5.2.1.1 *Uneven application of the rules on aggregation of periods in a manner which leave workers without protection and may disincentivise the search for work in another Member State*

Although the Court considered that a uniform interpretation of the principle of aggregation is a prerequisite for its application[115], the condition[116] that periods have to be aggregated by the institution as soon as the unemployed person has 'most recently' completed periods of insurance, employment or self-employment is not uniformly applied. This is due to the fact that the length of the required period of 'most recent insurance' or (self-) employment is not specified in EU law. Most Member States take the view that 'any' period of insurance or (self-)employment (even one day) will suffice in order to

[115] Case C-12/93 *Drake* EU :C:1994:336, paragraph 26; case 69/79, *Jordens-Vosters,* EU:C:1980:7, paragraphs 6 and 11.

[116] This specific conditions has been justified by the Court in the case C-12/93 *Drake* EU :C:1994:336, paragraph 26:: *"Article 51 of the Treaty and Regulation 1408/71 provide only for the aggregation of insurance periods completed in different Member States and do not regulate the conditions under which those insurance periods are constituted."* In the case 69/79, *Jordens-Vosters,* EU:C:1980:7, paragraphs 6 and 11, the Court stated: '*It is well established that the requirement that Community law be applied uniformly within the Community implies that the concepts to which that law refers should not vary according to the particular features of each system of national law but rest upon objective criteria defined in a Community context.' 'The essential object of Regulation No 1408/71 adopted under Article 51 of the Treaty is to ensure that social security schemes governing workers in each Member State moving within the Community are applied in accordance with uniform Community criteria. To this end it lays down a whole set of rules founded in particular upon the prohibition of discrimination on grounds of nationality or residence and upon the maintenance by a worker of his rights acquired by virtue of one or more social security schemes which are or have been applicable to him.'*

trigger the application of the principle of aggregation. Some Member States[117], however, have specifically defined periods for the application of the aggregation principle in their national law, for example because periods of insurance or (self-) employment are expressed in weeks and not in days, or as they understand a 'period' to comprise a longer period of time and that mere insurance or (self-) employment is not sufficient.

In **Finland**, section 9 of Chapter 5 of the Unemployment Security Act (1290/2002) requires that periods of insurance or employment completed in another State shall only be taken into account if the person concerned has pursued an activity as an employed person in Finland for at least four weeks or as a self-employed person for at least four months immediately before becoming unemployed.

In **Denmark**, section 2 of the Danish Ordinance No 490 stipulates that a person who has not been a member of a Danish unemployment insurance fund within the last five years but has been insured in another Member State will have his or her periods of insurance completed in another Member State taken into account subject to, among other conditions, that the person must have worked continuously in Denmark for at least 296 working hours in the past 12 weeks or three months, or for partially employed persons 148 working hours in the past 12 weeks or three months. In case of self-employment, the equivalent condition is eight full weeks within a period of 12 weeks or three months prior to the unemployment.

A further difficulty is that there is no uniform application of the jurisprudence regarding the recognition of periods completed in another Member State for the purpose of aggregation. The case-law of the Court[118] in this respect is not consistently applied. This leads to the situation that some Member States also aggregate periods of employment or self-employment for which no contributions have been paid, while others do not. According to an internal survey carried out by Poland as a follow-up to the debate in the Administrative Commission, 18 Member States do not aggregate periods of non-insured (self-) employment completed in another Member State whose legislation does not provide for unemployment insurance coverage. This number is even higher (24) if the person voluntarily decides not to insure him/herself in the State of activity and afterwards claims that he/she has fulfilled periods of employment there.

Moreover, a debate was launched on this issue in 2011 in the Administrative Commission showed that many Member States take the view that the wide interpretation of the Court leads to unjustified results. There was support from seven delegations to change the rules on aggregation[119].

The driver behind these related problems is that Member States do not have the same understanding as regards the recognition of periods to be aggregated or the condition of most-recent insurance. This applies in particular with respect to the practice described above whereby some Member States require under national law a specific period of insurance before applying the aggregation rules.

The consequence of this uneven application of the rules is legal uncertainty which may result in the situation that an unemployed person who has not been insured for long enough in the competent Member State is neither entitled to unemployment benefits in the State of last activity nor in the former State where they previously worked.

[117] For example Finland and Denmark.
[118] Case 388/87, *Warmerdam-Steggerda*, EU:C:1989:196
[119] Czech Republic, Germany, Austria, the Netherlands, Spain, Denmark.

Example: Dorothea has worked for five years in Sweden and then decides to move to Denmark to take up a new position there. Unfortunately, she is dismissed after a probation period of two months. As she does not fulfil the conditions set out in the Danish law (three months of insurance), she cannot aggregate her insurance periods to claim unemployment benefits in Denmark. At the same time, she will be refused unemployment benefits in Sweden, as she is no longer insured there.

Had Dorothea spent her working life in Denmark (including the five years in Sweden), then she would have been entitled to unemployment benefits in Denmark.

It may also have the unwanted effect of dis-incentivising the search for work in another Member State. The fear that taking up a position in another Member State could lead to a loss of social protection, might discourage mobile EU workers from exercising their right to freedom of movement thereby constituting an obstacle to that freedom. This would run counter to the objectives of the Treaty. The Court has repeatedly held that the aim of Articles 45 TFEU and 48 TFEU would not be achieved if, as a consequence of the exercise of their right to freedom of movement, mobile workers were to lose the social security advantages afforded them by the legislation of one Member State, especially where those advantages correspond to contributions which they have paid.[120]

5.2.1.2 *Access to unemployment benefits in another Member State after short periods of employment in that State with the help of the aggregation rules may lead to unintended gains*

The most-recent-insurance requirement is intended to prevent unemployed persons from moving to a new Member State and immediately claiming unemployment benefits without first having contributed to that scheme.

In light of this aim it is doubtful whether it was the legislator's intent that unemployment benefits should be paid by a new Member State in situations where a worker had been employed only for an extremely short period, e.g. for only one day. A number of Member States[121] argue that it is not appropriate that simply taking up insurance in a Member State already suffices for making this Member State responsible for providing unemployment benefits, when the entitlement to those benefits is to a large extent based on periods of insurance completed in another Member State. They argue that their respective schemes should be protected from claims of mobile workers who have not in any substantial way contributed to the financing of their scheme[122].

This reasoning also plays a role in the case law concerning the rights of jobseekers to 'social advantages[123]' under Regulation (EU) No 492/2011. For instance, in joined cases C-22/08 and C-23/08, *Vatsouras and Koupatanze*[124], the Court has concluded that jobseekers enjoy the right to equal treatment under Article 45 TFEU and hence are entitled to receive jobseekers allowance on the same footing as nationals of the Member State in which they are looking for work. However, a Member

[120] See case C-548/11, *Mulders*, EU.C:2013:249, paragraph 47 and the case law cited therein
[121] For instance: Denmark, Finland, Austria, France, Greece, Ireland and Romania.
[122] See for example Barslund, M, Busse, M. and Schwarzwälder,J., *Labour Mobility in Europe: An untapped resource?*, CEPS Policy Brief No. 327, March 2015, Brussels, p. 4.
[123] The Court has held that social advantages means all the advantages which, whether or not linked to a contract, are generally granted to national workers primarily because of their objective status as workers or by virtue of the mere fact of their residence on the national territory and whose extension to workers who are nationals of other Member States therefore seems likely to facilitate the mobility of such workers within the Community. This has been held to cover, for example, public transport fare reductions for large families, child raising allowances, funeral payments, minimum subsistence payments, study grants. See, for instance Case C-85/96, *Martinez Sala*, EU:C:1998:217.
[124]Joined cases C-22/08 and C-23/08, *Vatsouras and Koupatanze* ECLI:EU:C:2009:344, paragraphs 36-38.

State may decide to grant such an allowance only after it has been possible to establish a 'real link' between the jobseeker and the labour market of that State[125].

The available statistics for 23 Member States who were in a position to provide quantitative data in this respect for 2013[126] show that in 42% of the approximately 25.000 cases, aggregation was applied before 3 months of periods of insurance or (self-)employment had been completed[127]. When looking at the Member States of 'destination' (United Kingdom, Belgium, Spain, France) relatively more requests for aggregation were received within a period of 30 days, whereas in the Member States of 'origin' (Hungary, Romania, Bulgaria, Poland, Slovakia), the majority of requests for aggregation of periods were received after a period of three months. This could indicate that mobile EU workers are more likely to stay in or return to the 'higher wage' Member States directly after they have become unemployed. It is likely that this trend will continue due to a greater availability and use of temporary or precarious working arrangements and the willingness of people to adjust their quantity of work (part-time, on call, informal work, etc.) before returning home[128].

5.2.1.3 *Calculation of unemployment benefits in the Member State of last activity only on the basis of the reference income earned therein may lead to unintended results after a short period of insurance or (self-)employment*

Under the current rules, Member States cannot take into account salaries or professional income earned during the reference period in different Member States, as they are only allowed to base the calculation on salaries or professional income earned in their own territory. Although being administratively easier to apply, this can also lead to situations where the calculation of the unemployment benefit is based on salaries or professional income earned during a period which is much shorter than the reference period fixed under national law. It cannot always be assumed that the salary or professional income received during such a short period in one Member State is equal or at least comparable to the salary or professional income received during the reference period in another Member State. As a consequence, the current rules concerning the calculation of unemployment benefits may lead to unintended results.

Example: Under **Austrian** law, the basic amount of earnings-related unemployment benefit amounts to 55% of the average insured net earnings of the last calendar year. If a person has previously worked in Germany and has worked in Austria for only four weeks before becoming unemployed again, he/she would receive unemployment benefit in Austria only on the basis of the average salary earned within the four weeks when he or she was employed there. The lower or higher average salary earned in Germany during the reference period of one year would have no bearing on the amount of his or her unemployment benefit in Austria.

In the situation above, it can be questioned to what extent the salary earned during four weeks in Austria properly reflects the ‘reference earnings’ of the worker concerned[129].

Some Member States also fear that this may provide a 'pull factor' for opportunistic behaviour and undermine the sense of the unemployment benefits coordination provisions. Such a concern has been

[125] See also Cases C-224/98, *D'Hoop,* EU:C:2002:432*,* paragraph 28 and C-258/04, *Ioannidis,* EU:C:2005:559, paragraph 31.
[126] Table 6 in Annex VII. (Annex XII)
[127] Table 2 in Annex XII.
[128] European Commission, *Economic and Social Developments in Europe,* December 2014, p.48 and OECD Employment Outlook 2015,table 1.7, p.30.
[129] This aspect is also highlighted by FUCHS, B. (ed.), GARCIA DE CORTAZAR, C., BETTINA, K. and PÖLTL, M., *Assessment of the Impact of amendments to the EU socials security coordination rules on aggregation of periods or salaries for unemployment benefits*, Analytical report 2015, FreSsco, European Commission, June 2015 (Annex VII).

articulated by six delegations of the Administrative Commission[130] and also by the legal experts FreSsco.[131]

The problem is exacerbated by the large differences between remuneration levels and the calculation method of unemployment benefits. On the other hand, it is mitigated by the fact that 11 Member States[132] apply a maximum ceiling to earnings that can be taken into account. For example, in the case of Belgium the lowest amount of benefits to be paid per day amounts to €36.66 and the highest amount to € 61.66 regardless of actual earnings.

5.2.2 *Baseline scenario*

In the 23 Member States for which data are available for the year in 2013, 24.821 cases of aggregation of periods for unemployment were reported. In relation to the total annual inflow of migrants of working age in those States, this represents 2.1%. Given, however, that some large EU-15 Member States (e.g. Germany and Italy) did not provide data and thus are not included in the above figures, the total number of aggregation cases is likely to be higher.

On average, 0.11% of total unemployment spending by the reporting Member States could be related to aggregation of periods.[133] The total expenditure for unemployed benefits reported by 23 Member States for the 24.821 cases of mobile EU workers who had to rely on periods of aggregation was around € 100 million, of which € 36 (36%) million for workers who had worked for less than 30 days, € 15 million (15%) for workers who had worked between 1 and 3 months, and € 46 million (46%) for workers who had worked 3 months or more.[134] In absolute terms, France (€ 53 million) and Belgium (€ 20.5 million) are the main spending Member States, which can be explained by the higher number of aggregation cases and the higher average spending per unemployed persons in comparison to other Member States. Romania (€ 2157), Cyprus (€ 3890) and Latvia (€ 4908) can be found on the lower end, influenced by the low number of cases for aggregation and the lower annual average expenditure per unemployed person.

As the Member State of last activity has to assume the costs for providing unemployment benefits, it is also this State which is affected by the provisions on the calculation of those benefits. The current rules stipulate that the calculation of unemployment benefits shall only be based on the earnings received in the Member State of last activity. This leads to higher expenditure in all cases where the reference earnings in the Member State of last activity are higher than in the Member State of previous activity. In the reverse situation, this provision results in savings.[135]

The evolution of those numbers in the future will depend to a large extend on the evolution of the number of new intra-EU movers, their risk of becoming unemployed and the qualifying period. Moreover, the budgetary impact will also be influenced by the evolution of the unemployment benefit and the average duration of unemployment.

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[130] Austria, the Netherlands, Finland, Germany, Ireland, Norway, Denmark.

[131] The same view has been taken by the authors of the FreSsco report FUCHS, B. (ed.), GARCIA DE CORTAZAR, C., BETTINA, K. and PÖLTL, M., *Assessment of the impact of amendments to the EU socials security coordination rules on aggregation of periods or salaries for unemployment benefits*, Analytical report 2015, FreSsco, European Commission, June 2015. On the other hand, whereas sometimes mobility can be at the advantage of a worker, in other situations this could not be the case. The coordination rules do not always offer more 'advantageous' benefits to mobile workers. For instance, the current rules also have as an effect those in cases of 'return migration' a person could be faced with a lower level of benefits. For instance, a Portuguese worker who has worked in the Netherlands for one year and decides to return to Portugal, where he falls unemployed after two months, will receive unemployment benefits based on the salary received in Portugal, without taking account of the potentially higher earnings in the Netherlands.

[132] Belgium, Bulgaria, Germany, Spain, Croatia, France, Italy, Cyprus, Netherlands, Austria and Sweden.

[133] Annex XIV, Table 10.

[134] Annex XIV, Table 10.

[135] Annex XIV, Table 2.

If we assume that working age mobility flows will grow between 2015 and 2020 at the same rate as they have grown for the overall flows year on year between 2010 and 2013 (5.6%),[136] and if we assume that 2.1% of the total annual inflow of migrants of working age will continue to rely on aggregation, then we could estimate that in 2020 there would be some 33.000 cases of aggregation in the 28 Member States.

If, alternatively, we assume that working age mobility flows will grow between 2015 and 2020 by the same absolute amount per year as the overall flows year on year have grown between 2010 and 2013 (66.000),[137] and if we still assume that 2.1% of the total annual inflow of migrants of working age will continue to rely on aggregation, then we could estimate that in 2020 there would be some 32.000 cases of aggregation in the 28 Member States.

Not undertaking action in the field of aggregation could lead to increased public disenchantment and exacerbate criticism of, and anxiety about the consequences of free movement. It could lead to the situation that (more) Member States apply their own interpretation of the current rules in a restrictive way thus reducing legal certainty and risking that mobile EU workers will lose out on rights. If Member States were free to apply the EU legal provisions on the coordination of unemployment benefits at their discretion, the intended uniform application of these provisions could no longer be guaranteed.

5.2.3 *Objectives for review of the coordination rules on aggregation of periods*

The **general policy objective** of this initiative is to continue the modernisation of the EU Social Security Coordination Rules by further enabling the citizens to exercise their rights while at the same time ensuring legal clarity and a fair and equitable distribution of the financial burden among the institutions of the Member States involved and administrative simplicity and enforceability of the rules.

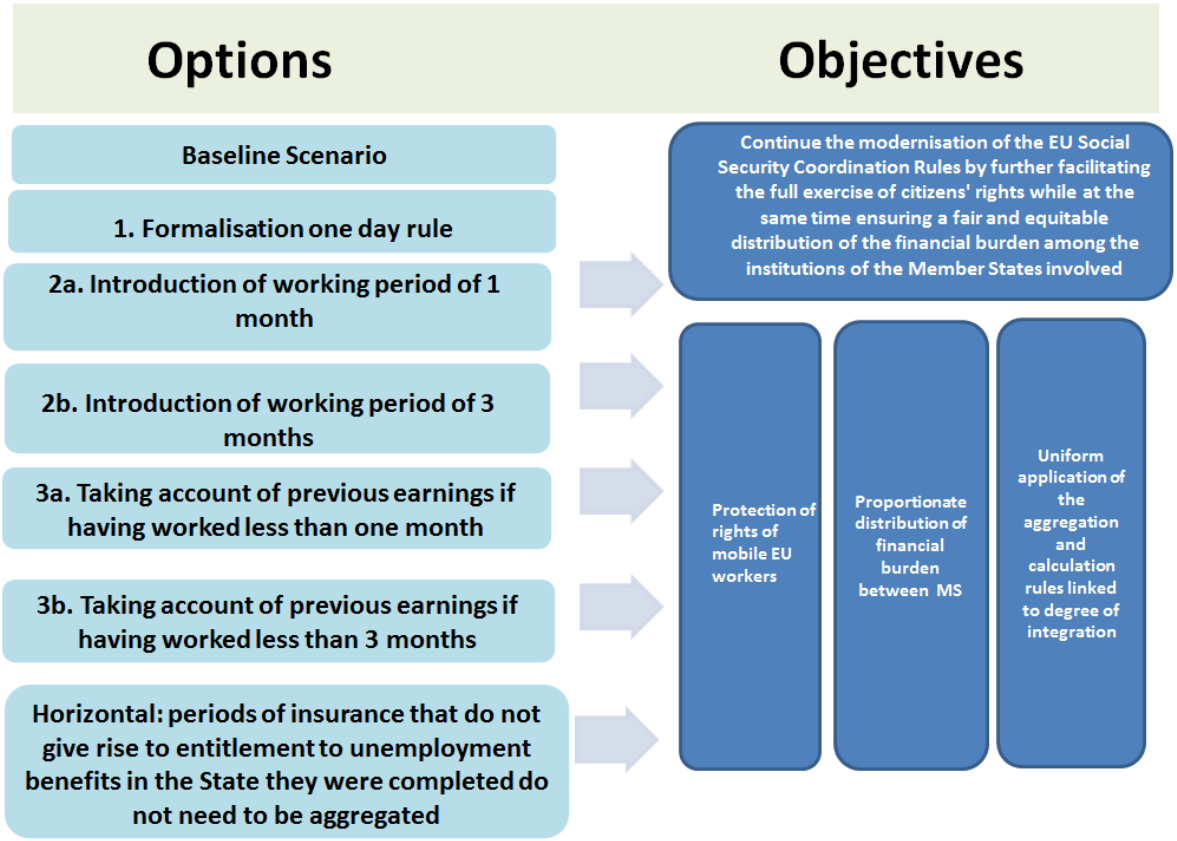
In relation to the rules on aggregation of periods for the purpose of fulfilling qualifying periods set up under national law for entitlement to unemployment benefits, this means in particular to provide clarity in order to avoid divergent interpretations and to ensure a uniform application of the rules by all Member States. At the same time, there is also a need to consider the underlying reasons for the current discrepancies and to see how they can be taken into account without depriving mobile citizens of the rights in case of unemployment which they may have acquired in different Member States.

In view of this general objective, the **specific objective** in this field can be defined as follows:

- Ensure a **uniform and consistent** application of the **aggregation and calculation rule**s in a way that also reflects the degree of integration of a worker in the insurance system of a Member State.
- Ensure mobile EU workers benefit from **protection of rights** when they move to another Member State to take up employment there.
- Ensure a proportionate distribution of financial burden between Member States.

5.2.4 *What are the various options to achieve the objectives concerning the aggregation of periods of unemployment benefits?*

[136] Rate is based on average of year on year absolute growth of population all ages based on Eurostat Migration flows data migr_imm1ctz.
[137] Average of year on year absolute growth of population all ages based on Eurostat Migration flows data migr_imm1ctz.



5.2.4.1 Option 0 : baseline scenario

If the status quo were to be maintained, aggregation can only be applied from the moment when an unemployed mobile person, has 'most recently' completed a period of insurance or (self-)employment under the national unemployment insurance scheme, regardless of the duration of that employment. Where the amount of the unemployment benefit is determined as a proportion of previous salary of professional earnings, only the wages or incomes earned in the competent Member State are taken into account.

5.2.4.2 Option 1: Formalization of the "one day rule"

A uniform interpretation of the requirement of 'most-recent insurance can be achieved by introducing a minimum period of prior employment in the text of Regulation (EC) No 883/2004. Option 1 entails that the principle of aggregation can be invoked after one day of insurance or (self-employment) under their system. This is shortest minimum insurance or employment requirement that can be applied. The unemployment benefit shall be calculated on the basis of the salary earned or professional income in the State of last activity.

Example: **David moves from Member State A to Member State B and works there for two weeks before becoming unemployed**. Under this option, he could claim unemployment benefit immediately in A based on his (aggregated) periods of insurance completed in B. The amount of the benefit will be calculated on the basis of the wage earned during the two weeks of work in A.

5.2.4.3 Option 2: Introduction of a minimum period of insurance or (self-)employment of one or three months

Instead of interpreting a period of insurance or (self-) employment as one day, reference to a longer period of time can be considered as well. About half of the EU Member States use qualifying periods of 50 or 52 weeks. Lithuania and Slovakia have qualifying periods of 64 weeks or longer. If the employment history of the mobile worker in the Member State which has to aggregate should sufficiently represent the link to the labour market in that State, introducing a minimum period of insurance or work of:

a) at least one month **(option 2a)**, or

b) at least three months (**option 2b**)

has been completed in the Member State of last activity.[138]

The periods are chosen with a view to enable the persons concerned to establish a 'sufficient link' to the social security system of the competent Member State without depriving them of their rights. This would also allow continuing applying the rule that unemployment benefits are only calculated on the basis of the salary or professional income earned in the territory of the competent Member State as the previously competent Member State would calculate the level of unemployment benefits on the basis of the calculation rules applicable there.

Example: **David moves from Member State A to Member State B and works there for four months before becoming unemployed**. David becomes entitled to unemployment benefits in B based on his insurance periods in A because by working for four months he has completed in excess of one month (option 2a) or three months (option 2b) of insurance or (self-)employment in Member State B. The amount of the benefit would be calculated on the basis of the wage earned during the four month period of work in B.

When discussing this option in the Administrative Commission, a number of Member States clearly pointed out that a person should not lose out on rights when he/she is not able to make a claim for aggregation and that a solution should be found for these situations[139]. In general, other stakeholders emphasized the need to respect the right of equal treatment.

It is obvious that the condition of one month of previous employment (option 2a) is easier to fulfil than the condition of three months of employment (option 2b)[140]. However, the urgency to satisfy this condition is greatly reduced if the mobile worker can benefit from unemployment benefits paid by the Member State of previous activity in such a case.

A gap in protection could indeed occur if a mobile worker like David would become unemployed after a period of employment of for instance two weeks. In this case, he may not be able to claim unemployment benefits in the Member State of previous activity due to the fact that he was not 'most recently' insured in that State.

To overcome this situation, i.e. to allow the unemployed person to stay in the State of last activity to search for new work there, both options should be combined with a provision that the previous Member State of activity should export the unemployment benefit in accordance with its national

[138] The length of these periods coincides with the current practice in some Member States (Denmark and Finland).
[139] Portugal, Poland, Germany, Hungary, Austria, France, Greece, Ireland and Romania.
[140] The three months also correspond to the current right to claim an export of unemployment benefits for at least such a period and to the rule contained in Articles 6 and 24(2) of the Free Movement Directive 2004/38, according to which an inactive person may move to another Member State without any further requirement regarding his income, but at the same time also without a right to social assistance benefits in the host Member State.

legislation. [141] This means that the previously competent Member State will have to apply its rules as if the unemployed person were still insured there, irrespective of the fact that the unemployment occurred in the Member State of last activity and that the unemployed person resides in that State[142]. To this end, it shall suffice that the unemployed person registers and makes him/herself available to the employment services in the Member State of last activity and that he/she adheres to the obligations applied to jobseekers in that Member State.

This means that an unemployed person shall not be forced to return to the previously competent Member State to register with the employment services there.

Example: If David had been in employment for only two weeks in Member State B in the example above, he cannot claim unemployment benefits in Member State B as he does not satisfy the condition of at least one or three months of employment there.

However, by using the export provision, he will nevertheless be able to receive unemployment benefits from Member State A on the basis of his earnings and his periods of insurance there. He will have to register with the employment services in Member State B, which will follow-up on his job searching activities on behalf of the employment service in Member State A and which will report back to Member State A.

Option 2a and 2b only apply to the specific situation where a person has moved his or her residence to another State and then becomes unemployed after having completed less than one or three months of insurance or (self-)employment. These options hence do not affect frontier and other cross-border workers, that is to say those workers whose place of residence already was, and remains, in another Member State than the Member State of last activity during their unemployment.

5.2.4.4 Option 3: Taking into account previous earnings received in another Member State if a person has worked less than one or three months in the competent Member State

This option aims to establish a stronger link with the level of the previously earned salary or professional income ('reference earnings').

Option 3 reflects this idea, but only in case where the person concerned has worked for a period shorter than:

- one month (**option 3a**), or

- three months **(option 3b**) in the competent Member State.

These two sub-options allow Member States that calculate their unemployment benefit by reference to previous average earnings to take into account also reference earnings that have been received in the territory of another Member State.

Example: **David moves from Member State A to Member State B and works there for two weeks before becoming unemployed**. Under this option, he could claim unemployment benefit immediately in Member State B based on his (aggregated) periods of insurance completed in Member State A. However, his unemployment benefit will be calculated on the basis of an average of the salaries in Member States A and B.

[141] The options with regard to the export of unemployment benefits are discussed in paragraph 5.3.4.
[142] According to the case-law of the Court (Case C-308/84, *Naruschawicus,* EU:C:1996:28, paragraph 26), the requirement of 'availability' cannot have as a direct or indirect effect that a person should be required to change his or her residence.

Imagine that the reference period for calculating unemployment benefits in Member State B is 12 months. Imagine David has worked for 12 months in Member State A and 2 weeks in Member State B. David has earned a monthly salary of € 1000 in Member State A and € 500 in Member State B. The unemployment benefit in Member State B will be calculated on the basis of the following salary: (2/52* € 500) + (50/52 *1000) = € 19.23 + € 961.53 = € 980.76.

Option 3 is an alternative to option 2. Both options lead to the result that in case of short employment in the new Member State of less than one or three months, the calculation of the unemployment benefit is (also) based on earnings received in the Member State of previous activity. However, under option 2, the benefit is paid by and at the expense of the institution of the Member State of previous activity, whereas under option 3, benefits are paid by the Member State of last activity.

5.2.4.5 Horizontal option: clarification of the conditions for the recognition of periods to be aggregated

This option can be combined with each of the previous options, as its aim is to clarify the conditions under which a person has a right to base his or her claim or unemployment benefits on periods completed in another Member State.

The current Article 61 is the source of much controversy between Member States, as is shown by the results of the survey carried out within the Administrative Commission under the Polish Presidency in 2011. This holds especially true when it comes to the question of whether periods of employment always provide for coverage in the Member State in which they were fulfilled. In order to ensure a uniform interpretation of Article 61 (1) of Regulation (EC) No 883/2004, it is important the legal text be as clear and unequivocal as possible. This could either be done by introducing this clarification in Article 61, or by applying the general rule on the aggregation of periods in Article 6 of Regulation (EC) No 883/2004.

A uniform aggregation rule can accommodate Member States' desires that periods that do not give entitlement to unemployment benefits in the Member State where they were completed are not taken into account for the purposes of aggregation.

5.2.4.6 Discarded Option

The idea to introduce a reimbursement mechanism between the Member State of most recent Employment and Member State of previous employment as an alternative to Option 2a and b was considered but has been discarded, as the current problems with the reimbursement mechanism for unemployed frontier workers show that such a mechanism is likely to create disputes and delays between the institutions involved.

5.2.5 *Stakeholders' views on the different options*

5.2.5.1 Option 0 : baseline scenario

In consultations with stakeholders, maintaining the status quo was supported by ten delegations in the Administrative Commission[143] Further in the public consultation only 40% of organisations and 33% of individuals indicated support that the current rules should be changed.[144] However, some of the

[143] The Bulgarian, Czech, Estonian, German, Croatian, Italian, Polish, Portuguese, Slovakian, and Slovenian delegations supported this option.

[144] A public consultation between July and October 2015 invited citizens and organisations to provide their views on the main problems linked to the coordination of unemployment benefits, family benefits and posting of workers.

social partners and NGO representatives[145] took the view that they could accept a change of the rules if the rights of mobile citizens continue to be safeguarded.

5.2.5.2 Option 1: Formalization of the "one day rule"

Ten delegations supported this option[146]. In addition, in the public consultation only 40% of organisations and 33% of individuals indicated support for moving from the prevailing practice that one day of insurance suffices, however, amongst the comments from respondents there was support for consistent practices among Member States.

Eight delegations[147] indicated that they could accept option 1 if in return the calculation rule would be amended, or vice versa, as either one of the rules is needed to establish a 'genuine link' with the unemployment insurance system.

5.2.5.3 Option 2: Introduction of a minimum period of insurance or (self-)employment of at least one month (option 2a) or three months (Option 2b)

Option 2a was supported by three delegations in the Administrative Commission[148]. Option 2b gained support from 10 delegations[149] of which 5[150] made an explicit written request to introduce a minimum period of insurance or (self-) employment in Article 61. There is also support from an employer association[151]. Less than half of the respondents to the public consultation commented on the principle of aggregation, but amongst that group there was general support for the idea of consistent practices between Member States. In addition there was general support of introducing a minimum employment/ contribution period at EU level. At the same time, many argued that the Member State where the contributions are paid – namely the Member State of (the last) employment – should provide the unemployment benefits. Among organisations responding to the consultation, the proposed period was at least one month, while among individuals there was greater support for a minimum qualifying period of insurance of at least three months (or longer).

5.2.5.4 Option 3: Taking into account previous earnings received in another Member State if a person has worked less than one month (option 3a) or three months (option 3b) in the competent Member State

This issue has been raised by six delegations[152] in the Administrative Commission, where they have proposed to introduce a stronger link between the salary or professional income earned and the amount of the unemployment benefit awarded. Although only a minority of respondents to the public consultation commented on the issue of "reference earnings", among those that did there was general support for the principle that unemployment benefits should be calculated by reference to earnings for the entire reference period including those earned in another Member State.

[145] A global consultation with social partners and NGOs took place.
[146] The Bulgarian, Czech, Estonian, German, Croatian, Italian, Polish, Portuguese, Slovakian, and Slovenian delegations supported this option.
[147] The Bulgarian, Italian, Portuguese, Belgian, Estonian, Irish, Polish and Swedish delegations
[148] The Finnish, Luxembourgish and Hungarian delegations.
[149] The Austrian, Danish, Greek, French, Irish, Latvian, Lithuanian, Maltese, Romanian and United Kingdom delegations.
[150] Austria, France, Greece, Ireland and Romania.
[151] UEAPME.
[152] Austria, the Netherlands, Finland, Germany, Ireland and Norway.

5.2.6 *What are the Impacts of the Different Options on aggregation of periods of insurance or (self-)employment*

5.2.6.1 Introduction

For all of the options assessed, the potentially affected groups are the same. The options are specifically targeted at mobile EU workers, that is to say: workers who have moved their residence to the new State of activity. Hence, they do not concern frontier workers or other cross-border workers. National governments will have to administer the rules in the framework of their national legal systems and allocate resources to the national, regional of local institutions to apply the principle of aggregation. At the executive level, national, regional or even local institutions providing unemployment benefits to workers will have to deal with claims for aggregation of periods of insurance or (self-)employment.

In relation to fundamental rights all options aim to facilitate the exercise of the right to engage in work in another Member State (Article 15) by clarifying the provisions on aggregation of unemployment benefits. They also respect the right to social security benefits (Article 34). In terms of respecting equal treatment and the right to free movement under Article 45 of the Charter as well as Article 45 TFEU, the Court has held that the legislator can attach conditions to the rights granted by Article 45 TFEU[153], as long as mobile workers are not put at an unjustified disadvantage in comparison to national workers, for example where they will have to pay social security contributions in which there is no return[154]. Although the options are directly targeted at mobile EU workers, a difference in treatment can be justified only if it is based on objective considerations distinct from the nationality of the persons concerned and is proportionate to the legitimate aim pursued under national law.

In relation to the economic impact, it has to be pointed out that the aggregation of periods is a mechanism to open, retain or recover a right to unemployment benefits. The principle as such does not have a direct budgetary impact, whereas the direct consequence of applying that principle, namely the payment of unemployment benefits, has. A detailed overview is provided in Annex XXII. It has to be noted that a total of 23 Member States[155] (Belgium, Bulgaria, Denmark, Estonia, Spain, France, Croatia, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, the Netherlands, Poland, Romania, Slovakia, Finland, Sweden, United Kingdom, Liechtenstein, Norway, Switzerland) provided quantitative data, of which three Member States (France, Spain and Estonia) were not able to provide a breakdown by Member State of origin. The missing data for a number of large Member States, in particular EU-15 Member States, have entailed some limitations in the assessment of some of the options[156]. The full study is attached in Annex XIV.[157]

Based on the data from the administrative questionnaire on the aggregation of periods for unemployment the budgetary impact of the current rules and the different alternative options could be calculated. Member States had to provide a breakdown by Member State of origin and a breakdown by length of insurance. The reported cases have been multiplied by the annual average expenditure per unemployed person (also by taking into account the annual average duration of the payment of the unemployment benefit) in order to estimate the public unemployment spending. Option 3 (change of the calculation method) required more detailed information about the unemployed recent migrant worker's salary. No information on the salary earned in the competent Member State as well as in the

[153] Case C-62/91, *Gray,* EU: C:1992:177, paragraph 11.
[154] See, to that effect, Cases C-393/99 and C-394/99, EU:C:2002:182, paragraph 51, C-493/04, *Piatkowski,* EU:C:2006:167, paragraph 34, C-345/09, *Van Delft,* EU:C:2011:57, paragraphs 100 and 101; C-388/09, *da Silva Martins,* EU:C:2011:439, paragraph 72 and 73.
[155] For the purpose of Social security coordination rules, the term Member State refers to the EU-28 + Switzerland, Norway, Liechtenstein and Iceland.
[156] For a detailed reporting on the questionnaire on the aggregation of periods for unemployment, see Annex XII.
[157] Pacolet, J. & De Wispelaere, F, *Aggregation of periods or salaries for unemployment benefits - Analysis of the economic impact of the options,* 2015 (Annex XIV).

Member State of origin was collected via the administrative questionnaire. Therefore, wage data published by Eurostat has been used.

The analysis solely focuses upon the cost to the competent Member State for the provision of unemployment benefits. It is recognised that in relation to option 1 and 2 there could be a shift in the competence for other social security benefits (in particular for family and sickness benefits) for the cases where a person has worked for an insufficient period in the Member State of last employment to qualify for aggregation of unemployment benefits meaning that competence shifts to the Member State of previous employment. However, insufficient data is available to quantify the economic impact resulting therefrom.

When looking in particular at economic impact, regulatory costs and secondary impact for option 2, as already explained above[158], this option has evolved during the impact assessment, notably by making the Member State of previous employment responsible for exporting unemployment benefits for those workers who have not completed a period of insurance of one or three months in the Member State of last employment. For this reason, a quantitative assessment has only been made for the first version of the option, whereas a qualitative assessment could be made for the final version of the option.

There are large differences between the salaries across the 23 Member States surveyed[159], and it should be borne in mind that data limitations are even more significant than for the other options as the economic impact for this option could only be estimated for some 14 Member States. The estimated budgetary impacts do not take into account the 'flattening' of the level of unemployment benefits due to a ceiling of earnings applicable in some Member States or minimum or maximum amount of benefits. The negative impact thus can be mitigated by such a ceiling.

The regulatory costs for both public administrations and citizens were assessed through a number of interviews with public officials working for administrations dealing with the aggregation of unemployment benefits (both as Member States of last employment and of previous employment) in six Member States (Germany, Denmark, the Netherlands, Poland, Romania, the United Kingdom). The full study is attached to this report in Annex XVII.[160]

The proposed policy options can also have an incidence on mobility decision and mobility patterns of mobile EU workers. The secondary impacts of the options in terms of inflows and outflows of EU citizens were estimated on the basis of case studies in eight Member States (Germany, Denmark, France, the Netherlands, Italy, Poland, Romania, and the United Kingdom). They provide an indication on the direction and the general magnitude of the variation generated by the implementation of the policy options. The full study is attached to this report in Annex XIX.[161]

Finally, the options have been compared to the baseline scenario and with regard to their effectiveness in achieving the general and specific objectives of the initiative, their efficiency (cost-effectiveness/even burden sharing), coherence with the general objectives of the EU and their impacts as assessed below.[162]

[158] See above, chapter 4.3 (Option 2 – Introduction of a minimum period of insurance or (self-)employment of one or three months).
[159] Table 17, Annex XIV.
[160] Katrine Julie Abrahamsen, Monica Lind, Peter G. Madsen , *Administrative costs of handling aggregation of periods or salaries for unemployment benefits,* 2015 (Annex XVII).
[161] Michele Raitano, Matteo Luppi, Riccardo Conti, Diego Teloni, *Secondary effects following a change of regulations on the aggregation of periods or salaries for unemployment benefits*, 2015 (Annex XIX).
[162] Secondary impacts are not considered in the final comparison in recognition of the limitations of the data available to conduct this assessment.

5.2.6.2 Summary of the impact of different options concerning the aggregation of periods for entitlement to unemployment benefits

Type of impact	Clarification	Simplification	Protection of rights	Fundamental rights	Economic impacts	Regulatory costs	Risk of fraud and abuse	Equitable burden sharing Member State	Coherence with General, Specific and EU objectives	Overall Effectiveness	Overall Efficiency (cost vs effectiveness
Baseline Scenario	0	0	0	0	0[163]	0[164]	0	0	0	0	0
Option 1	+	+	+	+	0	+/-	-	-	-	++	++
Option 2a	+	+	+	+	+/-[165]	+/-	+	+	+	0	+
Option 2b	+	+/-	+	+	+/-	+/-	+	++	0	0	++
Option 3a	+/-	+/-	+/-	+	-[166]	-[167]	+	-	0	+	-
Option 3b	+/-	-	+	+	-[168]	+/-[169]	+	-	+	+	-

[163] € 100 m is the budget devoted to aggregation of UB in 23 reporting Member States, equating to on average, 0.11% of total unemployment spending by the reporting Member States - Annex XIV, Table 10.
[164] Costs for handling aggregation of UB varies between € 100 – 40,000 in selected Member States.
[165] Decrease of €21 million (-22%) for Member State of last employment (= Member State of residence), but corresponding increase for Member State of previous employment.
[166] Small decrease (-3.2%).
[167] Increase by 28% .
[168] Small decrease (-4.1%).
[169] Increase by 29%.

Horizontal Option	+	+	+/-	0	0	+	+	+	+	+	+

5.2.6.3 Impacts of Policy Option 1: Formalisation of the "one day rule"

Policy Option 1: Formalisation of the "one-day-rule"		
Social impacts		
Clarification	+	Clarity of the legal rule on aggregation will be improved by eliminating the divergent interpretations on the application of the aggregation rule, thereby increasing legal certainty.
Simplification	+	A uniform interpretation of the rules on aggregation will contribute to simplifying the aggregation procedure for the institutions concerned as they will all apply it as from the same moment. A limited number of Member States (Denmark, Finland) would have to change their national legislation.
Protection of rights	+	Uniform application of the principle, that aggregation takes place after one day of insurance, employment or self-employment in the competent Member State will faciltate access for mobile EU citizens to their rights to unemployment benefits, as Member States will apply a consistent approach to aggregation of periods completed in another Member State.
Economic impacts		
Financial impact	0	On average, 0.11% of the total unemployment spending (around € 100m) by the reporting Member States is related to aggregation of periods. This option is likely to entail a slight increase of expenditure for those Member States[170] which currently require in a longer period of insurance or(self-)employment before aggregation is applied in accordance with their national legislation. However, as 26 Member States currently apply the one day rule as the 'standard' period for triggering aggregation the overall impact is expected to be negligible.[171]
Impact on fundamental rights	+	This option aims to facilitate the exercise of to the right to engage in work in another Member State (Article 15 of the Charter), as well as to a better protection of rights for workers who have made use of their right to free movement (Article 45 of the Charter). The right to property (Article 17 of the Charter) will be respected as well, as periods acquired in a previous Member State can be added to periods of insurance or (self-)employment as of the first day of insurance or (self-) employment in the host Member State and no 'gap' in the protection of the worker can occur. The principle of equal treatment (Article 21 of the Charter) is also respected as nationals and non-

[170] Denmark and Finland.

[171] There may be an increase could be expected in the number of workers being able to claim unemployment benefits in those Member States that today require a longer period of work than one day before aggregation can take place, for instance Denmark (now applying a three-month period for those who have not yet been a member of an unemployment insurance fund for at least five years) and Finland (now applying a one-month period).

		nationals are subject to the same conditions as regards their rights to unemployment benefits.
Other impacts		
Regulatory Costs	+/-	This option will not have a significant effect on the administrative burden of institutions as it will reflect existing practice in 26 of the 28 Member States. A marginal increase of aggregation cases and the corresponding regulatory costs may occur in those Member States that today require a longer period of work than one day before aggregation of previous periods of employment can take place (Denmark and Finland).
Risk of fraud and abuse	-	In principle, the requirement of one day of employment may be used by some mobile workers or employers to engage in bogus employment, although there is no evidence in this respect.
Fair burden sharing between Member States	-	This option does not contribute to a fairer sharing of burden between Member States as a Member State may become responsible for providing unemployment benefits even in cases where they have received a relatively (very) small part of the social security contributions.
Mobility	0	In terms of mobility flows, it is estimated that a formalisation of the "one day rule" could result in a negligible increase in workers and jobseekers movements towards those countries that today require a longer period of work than one day before aggregation of previous periods of unemployment can take place. Considering the low number of aggregation cases even in countries that apply the one day rule, the increase in flows is expected to be very limited.[172]
Coherence with General, Specific and wider EU Objectives: Continue the modernisation of the EU Social Security Coordination Rules by further facilitating the exercise of citizens' rights while at the same time ensuring legal clarity, a fair and equitable distribution of the financial burden among the institutions of the Member States involved and administrative simplicity and enforceability of the rules. • Ensure a **uniform and consistent** application of the **aggregation and calculation rule**s reflecting the degree of integration in the Member State. • Ensure mobile EU workers benefit from **protection of rights** • Ensure a proportionate	-	This option introduces legal clarity and simplicity for unemployed persons and is easy to implement from an administrative point of view for the majority of Member States. It also has negligible budgetary impact On the other hand; it fails to require a genuine link with the unemployment insurance system in the State of last activity. This option in itself is therefore not the most effective option to strike a balance between the aims of protecting mobile workers and requiring a certain degree of integration in the labour market and insurance system of the State of last activity, before it becomes responsible for the payment of benefits. It is neutral in relation to coherence with wider EU policy objectives.

[172] See table 3.1.1, Annex XIX.

distribution of financial burden between Member States		

5.2.6.4 Impacts of Policy Option 2: Introduction of a minimum period of insurance or (self)-employment of one month (sub option2a) or three months (sub option 2b)

Policy Option 2: Introduction of a minimum period of insurance or (self-)employment of one month (sub option 2a) or three months (sub option 2b)		
Social impacts		
Clarification	+	Clarity of the legal rule on aggregation will be improved by elminating the divergent interpretations.
Simplification	+	A uniform interpretation of the rules on aggregation will contribute to simplifying the aggregation procedure for the institutions concerned as they will all apply it as from the same moment. A limited number of Member States (Denmark, Finland) would have to change their national legislation. A small number of citizens, who do not have the requisite minimum period of insurance may experience a change in the competent Member State responsible for their unemployment benefits as competence would revert to the Member State of previous activity. However, such administrative arrangements would be largely dealt with by the competent institutions.
Protection of rights	+	Uniform application of the principle, that aggregation takes place after one month (option 2a) or three months (option 2b) of insurance, employment or self-employment in the competent Member State can affect those mobile EU citizens who claim their right to unemployment benefits within a period of one (option 2a) or three (option 2b) months. As a consequence, a group of 6.742 (1month) or 10.082 (3 months) mobile EU workers concerned would not be entitled to unemployment benefits in the last State of activity as long as they have not fulfilled this minimum period meaning they would have no right to unemployment benefits from the competent State. This would negatively affect their right to free movement. However, this disadvantage will to a large extent be compensated by an export of unemployment benefits from the Member State of previous activity.
Economic impacts		
Financial impact	+/-	This option is likely to entail a slight increase of expenditure for the Member States of previous emploment (to a larger extent under sub option 2b than under sub option 2a), but a corresponding decrease of expenditure for the Member States of last activity (37% for option 2a vs 51% for option 2b). Overall, there will be a positive impact with a decrease of the expenditure of €21 million (22%) for 2a) and of

		approximately € 29 million (42%) for 2b)[173] The most significant reductions will occur in Belgium (€ 6.8 million for 2a and €12.8million for 2b), Spain (€ 3.1 million for 2a and €4.5million for 2b) and France (€ 25 million for 2a and €33 million for 2b)[174], being the Member States with currently the highest number of aggregation cases. While increases in public employment expenditure in the Member States of previous employment: of € 3.4 million in respect of option 2a and €6.5 million in respect of option 2b (both calculations assuming an entitlement for 3 months), with the Netherlands (€ 1 million in respect of option 2a and €2million in respect of 2b) and France (€ 0.4 million in respect of 2a and €0.6 million in respect of 2b) being the most affected countries[175]. Furthermore, there could be a shift in the competence for other social security benefits (in particular for family and sickness benefits) for the 6,471 (one month) or 10,082 (3 months) cases from the Member State of last employment to the Member State of previous employment. However, insufficient data is available to quantify the economic impact resulting therefrom.
Impact on fundamental rights	+	Under option 2, the rights of mobile EU workers will be protected through securing export from the previously competent Member State. Limiting the time for the export of unemployment benefits is one of the conditions which are permitted[176]. In terms of respecting the principle of proportionality, the introduction of a minimum period of work and (self-) employment the objective of establishing a sufficient link to the social security system of the host Member State[177] is balanced with safeguards to ensure continuity of protection for the worker.[178] The right to property (Article 17) is respected by ensuring that the person can receive unemployment benefits from the previously competent Member State, at least during the period of export.
Other impacts		
Regulatory Costs	+/-	This sub option does not impose new information obligations on unemployed persons or require new implementing arrangements for the institutions. It does however result in shifting the responsibility between Member States. Where previously an unemployed mobile EU worker could apply for aggregation in the State of last activity to claim unemployment benefits there, he/she now needs to apply for an export of unemployment benefits from the previously competent Member State. To that end there may be additional administrative tasks for the respective Member States of most recent employment

[173] This is based on a calculation of €51 million (€36 million for workers with less than 30 days of insured work + €15 million workers with less than 3 months who will not fulfil the minimum period for aggregation minus €22 million (amount to be paid by the previous Member State responsible for unemployment benefits considering a 3 month entitlement (see Annex XIV Table 16).
[174] Tables 10, 11 and 14 Annex XIV.
[175] Tables 12 and 15 Annex XIV.
[176] Joined cases 41/79, 121/79 and 796/79, *Testa,* EU:C:1980,163, paragraph 14.
[177] Case C-62/91, *Gray*, EU: C:1992:177, paragraph 12.
[178] In terms of respecting equal treatment and the right to free movement under Article 45 of the Charter as well as Article 45 TFEU, the Court of Justice has held that the legislator can attach conditions to the rights granted by Article 45 , as long as mobile workers are not put at an unjustified disadvantage in comparison to national workers, for example where they will have to pay social security contributions in which there is no return..

		and previous employment. On the basis of the interviews conducted with national administrations, it is estimated that the administrative tasks for the institutions of the Member State of last employment would remain almost unchanged. Interviewees from Germany, Denmark, Netherlands and United Kingdom expect a reduction in the number of cases – see also *mobility* below – which would translate into a marginal reduction of the total regulatory costs in Germany (€300 for option 2a and €400 for 2b), Denmark (€200 for 2a and 2b) and Poland (€350 for 2a and €2700 for 2b)[179]. In the Member States of previous employment, a corresponding increase is to be expected, though it was not possible to quantify it[180].
Risk of fraud and abuse	+	In particular option 2b ensures a clearer link between the State responsible for awarding benefits and where contributions have been paid, but could also provide for an incentive to accept part-time or low-paid employment in the Member State of last activity just for the purpose of being able to claim unemployment benefits.
Fair burden sharing between Member States	++	This option – in particular sub option 2b - contributes to a fairer sharing of burden between Member States as their institutions become responsible for providing unemployment benefits only to those mobile workers who had been a member of the scheme and who had therefore contributed to the financing of the schme for a substantial period. In comparison to the baseline scenario, a reduction of approximately € 3.6 million (37%) in the expenditure for unemployed benefits for people needing aggregation for 23 reporting Member States can be estimated.
Mobility	0	An estimation (on the basis of the case studies aimed at measuring the effects generated by this option in terms of intra-EU mobility) [181], which did not take into account the fact of making the Member State of previous employment competent, concluded that a reduction in the mobility flows could occur, notably towards Denmark (up to 6%), Italy (up to 4.5% for 2a and 6% for 2b), France (up to 2.5% for 2a and 3.4% for 2b) and Germany (up to 2.5% for 2a and 3.3% for 2b). In the United Kingdom, the impact of option 2a could be rather moderate (a decrease of 0.6%)[182]. These results are driven by the country-specific figures on migration flows, average levels of unemployment benefits and income differentials[183]. However, these reductions are likely to disappear if, as proposed now under this option, the Member State of previous employment would become responsible for paying unemployment benefits.[184]
Coherence with General, Specific and wider EU	+	This option (whether applied for one or three months) more effectively strikes a balance between the protection of workers and

[179] Tables 3-1, 3-2, 3-3 and 3-4, Annex XVII.
[180] Page 23, Annex XVII. However, it was possible to quantify (minimal) changes for the Member State of previous employment, but only for the previous version of the option, which did not foresee the Member State of previous employment becoming competent for unemployment benefits: see Tables 3-5, 3-6, 3-7, 3-8, Annex XVII.
[181] Annexe IV, XIX . This analysis was based upon Behavioural (dis)incentives to move to another Member State to take up employment there can be linked to the costs of moving, the (long-term) perspective of staying in employment in the new Member State set off against the risk of falling unemployed and the level of benefits in the previously competent Member State.
[182] Figure 4.1, Annex XIX.
[183] Page 22, Annex XIX.
[184] Pages 29-30, Annex XIX.

Objectives: Continue the modernisation of the EU Social Security Coordination Rules by further facilitating the exercise of citizens' rights while at the same time ensuring legal clarity, a fair and equitable distribution of the financial burden among the institutions of the Member States involved and administrative simplicity and enforceability of the rules. • Ensure a **uniform and consistent** application of the **aggregation and calculation rule**s reflecting the degree of integration in the Member State. • Ensure mobile EU workers benefit from **protection of rights** Ensure a proportionate distribution of financial burden between Member States		the protection of unemployment insurance schemes in the Member State of last activity as they require a certain degree of integration in the labour market and the insurance system of the State of last activity before benefits become due. This applies in particular for option 2b. The rights of the workers remain safeguarded if they become entitled to unemployment benefits from the Member State of previous activity although such export shall be limited to a period of six months. Both options are coherent with the wider EU objective of supporting fair mobility (fair for both jobseekers and tax-payers) and increasing access to employment opportunities throughout the Union.

5.2.6.5 Impacts of Policy Option 3: Taking into account previous earnings if a person has worked less that one month (sub-option 3a) or three months (sub-option 3b) in the competent Member State

Policy Option 3: Taking into account of previous earnings if a person has worked less than one (sub option 3a) or three months (sub option 3b) in the competent Member State		
Social impacts		
Clarification	+/-	Clarity of the legal rule on aggregation will be improved in combination with the baseline scenario.
Simplification	+/-	In combination with the baseline scenario, a uniform interpretation of the rules on aggregation will be achieved. On the other hand, the options would also result in an increase in the administrative burden for workers applying for unemployment benefits, as they would have to wait longer before receiving benefits, and they would face increased requirements to provide the relevant information themselves.
Protection of rights	+/-	This can be to the advantage of the unemployed person concerned, for example when he or she moves from a Member State with a higher wage to a Member State with a lower wage. But it could also cause a disadvantage in the reverse situation, where the worker could be faced with a lower level of unemployment benefits but is residing in a Member State with a comparatively higher cost of living. However, there is a risk that the additional information exchanges between Member States required to determine the correct salary may lead to delays for the determination of the average level of reference earnings and payment of benefits to the disadvantage of the

		unemployed person.
Economic impacts		
Financial impact	-	Option 3a would result in a reduction of 3.2% of the budget devoted to the aggregation of unemployment benefits in comparison to the baseline scenario for the 14 reporting Member States; option 3b would result in a reduction by 4.1% in the budget devoted to the aggregation of unemployment benefits. It would have a positive budgetary impact on Belgium (€ 1.4 million for 3a or € 2.3 million for 3b), Denmark (€ 80.000 for 3a or €78.000 for 3b), the Netherlands (€26.000 for 3a or €40.000 for 3b) and Finland (€34.000 for 3a or €90.000 for 3b), being Member States with a higher level of wages, compared to the Member States where the mobile EU workers were previously working. There could be a negative financial impact for Bulgaria (€ 36.000 for 3a or €230.000 for 3b), Latvia (€ 5.000 for 3a and 3b), Hungary (€ 5.000 for 3a or €6.000 for 3b), Slovakia (€ 200.000 for 3a or €370.000 for 3b) and Sweden (€25.000 for 3a and €50.000 for 3b), as relatively low wage Member States, compared to the Member State of previous employment. There would be no impact for those Member States which do not use previous earnings as reference for the calculation of unemployment benefits.[185]
Impact on fundamental rights	+	These options aim to facilitate the exercise of to the right to engage in work in another Member State (Article 15 of the Charter), as well as to take a balanced approach to free movement and the right to social security (Articles 34 and 45 of the Charter). Taking into account a previously earned salary or professional income does not compromise the right to equal treatment (Article 21 of the Charter), as the unemployment benefit paid to national workers is generally calculated over their average income during a certain reference period. The right to property (Article 17 of the Charter) is also respected as this sub option does not affect the entitlement to unemployment benefits as such.
Other impacts		
Regulatory Costs	-	These option will have a significant effect on the administrative burden of institutions, as they may become obliged to deal with a variety of different salary statements of other Member States and to interpret the content thereof. The options would also lead to an increase in man hours devoted to collect information on the income earned in the previous Member State and to calculate the amount of unemployment benefits. It is estimated that there will be an increase by 28-9% in the administrative tasks of Member States of last employment, mainly due to an increase in man hours devoted to collect information and calculate unemployment benefit.

[185] Ireland, Malta, Poland and the United Kingdom.

		This may translate into an increase in the total annual cost of handling aggregation of unemployment benefits for Germany (€ 8,700 for 3a or €43,000 for 3b), Denmark (€ 700 for 3a or €900 for 3b) and the Netherlands (€ 1,300 for 3a or €1000).[186] Also, a further increase could be expected for Germany (€ 4,800 for 3a and b) and Denmark (€ 900 for 3a and b) which as Member State of previous employment have to provide the Member State responsible for aggregating periods and calculating the unemployment benefits with additional information.[187] This option would also result in an increase in the administrative burden for workers as they would face increased requirements to provide the relevant information themselves[188].
Risk of fraud and abuse	+	From the point of view of the Member States, changing to the calculation mechanism in such a way could contribute to reducing 'possible' artificial conduct to obtain an unfair advantage[189]. On the other hand, this sub option could also provide a disincentive for a person to accept employment in a lower wage Member State if this person receives an unemployment benefits which are based on a much higher salary or professional income.[190]
Fair burden sharing between Member States	-	This option does not contribute to a fairer sharing of burden between Member States. Although it could for higher wage Member States mean that the amount of the unemployment benefits would be lower, lower-wage Member State may be required to pay a higher amount than under national law. This may also happen in cases where the beneficiaries have paid a relatively small part of the contributions.
Mobility	-	A moderate reduction in the mobility flows could occur as a result of this option, notably in Denmark (up to 1.9% for 3a and b) and in Italy (up to 1.7% for 3a and 2.2% for 3b)[191]. These results mainly concern flows of mobile EU citizens coming from Poland and Romania towards Germany, Denmark, Italy, the Netherlands and the United Kingdom and coming from the United Kingdom, Germany and Italy towards France.[192]
Coherence with General, Specific and wider EU Objectives: Continue the modernisation of the EU Social Security Coordination Rules by further facilitating the exercise of citizens' rights while at the same time ensuring legal clarity, a fair and equitable distribution of the financial burden among the	0	Options 3a and b aim at establishing a better reflection of the previously earned reference salary or professional income in calculating the level of the unemployed benefits. Thereby would avoiding 'random' results in levels of unemployment benefits based on extreme short periods of insurance which disrupt the balance of financial burden. However, they would also entail an increase of regulatory costs, as it would require more exchange of information between the institutions of the Member States to receive information on the last earned salary or professional income, and would thus lead to potential delays in providing the unemployment benefits to the

[186] Tables 3-1, 3-2, 3-3 and 3-4, Annexe XVII.
[187] Tables 3-5, 3-6, 3-7, 3-8, Annexe XVII.
[188] Page 25, Annexe XVII.
[189] See Annex VII, p. 47.
[190] It is true that the same could occur under option 2, if benefits calculated on the earnings received in the previous Member State are paid. However, such a payment would only be made for the limited export period of three or six months, whereas option 3 would entail a payment based on those earnings for the whole period of entitlement.
[191] Figure 4.1, Annex XIX. These can be explained by the differences in average earnings in the Member State of origin compared to the Member State of destination and average levels of unemployment benefits p26-29 Annex XIX.
[192] Pp. 26-29, Annex XIX.

institutions of the Member States involved and administrative simplicity and enforceability of the rules. • Ensure a **uniform and consistent** application of the **aggregation and calculation rules** reflecting the degree of integration in the Member State. • Ensure mobile EU workers benefit from **protection of rights** • Ensure a proportionate distribution of financial burden between Member States		detriment of workers' rights. In addition, these options would possibly provide a financial advantage only for Member States with a high level of earnings, not for those with a comparatively lower wage level. The uncertain outcomes means this option therefore may be considered less coherent with the wider EU objective of supporting fair mobility and increasing access to employment opportunities throughout the Union.

5.2.6.6 Impacts of Horizontal Policy Option: Clarification regarding the recognition of periods for the purpose of aggregation

Horizontal Policy Option: clarification regarding the recognition of periods for the purpose of aggregation of periods of insurance, employment or self-employment		
Social impacts		
Clarification	+	Clarity of the legal rule on aggregation will be improved by elminating the complications introduced by divergent interpretation of the rules.
Simplification	+	Whilst differences between the nature of the periods continue to exist, a uniform interpretation of the rules on aggregation will contribute to simplifying the aggregation procedure for the institutions concerned.
Protection of rights	+/-	A uniform application of the rules on aggregation would partially improve the protection of rights. It would ensure equal treatment in all cases where the rules will have to be applied and there is no risk that a person might lose out on rights due to existing different interpretations. On the other hand, if it were to be decided that periods of (self-) employment are only those periods that provide for cover under the legislation of the Member State in which they were fulfilled, this means a restriction in comparison to the baseline scenario (although this restriction is already applied by a majority of Member States). Nevertheless, the person that pursues an activity which does not afford any cover under an unemployment scheme in the competent State does not (and cannot) have any legal expectation that such period should give rise to an entitlement to unemployment benefit from an unemployment scheme of a different State. On the contrary, the result that such uninsured period will not be taken into account by any other State preserves the principle of equal treatment and puts national and mobile workers on exactly same footing.
Economic impacts		

Financial impact	0	This option will not have a substantial budgetary impact for Member States. If there is any marginal impact to be noticed, this would be positive. The social security coordination provisions will take into account insured periods only reflecting contributions or levies paid to the social scheme or public finance.
Impacts on fundamental rights	0	As regards option 3, taking into account a previously earned salary or professional income does not compromise the right to equal treatment (Article 21), as the unemployment benefit paid to national workers is generally calculated over their average income during a certain reference period. The right to property (Article 17) is also respected as this sub option does not affect the entitlement to unemployment benefits as such.
Other impacts		
Regulatory Costs	+	The impact is expected to be positive, as Member States will not be required to investigate periods of insurance not normally recognised or recorded under their national legislation. Thereby the clarification could lead to fewer disputes between Member States.
Risk of fraud and abuse	+	The clarification reduces the risk of abuses claims made with reference to periods of employment in respect of which no record exists.
Fair burden sharing between Member States	+	This option could contribute to a fairer sharing of burden between Member States if it were clear that all periods under all circumstances need to confer an entitlement to unemployment benefits in the country in which they are fulfilled.
Coherence with General, Specific and wider EU Objectives: Continue the modernisation of the EU Social Security Coordination Rules by further facilitating the exercise of citizens' rights while at the same time ensuring legal clarity, a fair and equitable distribution of the financial burden among the institutions of the Member States involved and administrative simplicity and enforceability of the rules. • Ensure a **uniform and consistent** application of the **aggregation and calculation rule**s reflecting the degree of integration in the Member State. • Ensure mobile EU workers benefit from **protection of rights** • Ensure a proportionate	+	The horizontal option responds to the general objective as it provides for a clear and uniform rule for the recognition of periods completed in another Member State for aggregation purposes. the purpose of aggregation providing ention the acquisition of unemployment benefits. This option is also considered efficient and coherent with the wider EU objective of supporting fair mobility and increasing access to employment opportunities throughout the Union.

distribution of financial burden between Member States		

5.2.7 *Conclusions*

The baseline scenario, from a merely administrative point of view, is the easiest option to implement and it has the support of a large number of stakeholders. It can however lead to uneven results when it comes to the protection of the mobile EU worker due to the unilateral introduction of minimum periods of insurance or (self-)employment by some Member States. The fact that the requirement of a 'genuine' link with the unemployment insurance system and labour market of a Member State is not explicitly expressed in the current rules may lead to unintended gains.

Option 1 introduces legal clarity and simplicity for unemployed persons and is relatively easy to implement from an administrative point of view for the majority of Member States. It also has a minor budgetary impact only for those Member States which currently apply a minimum period of insurance or (self-)employment. On the other hand, it fails like the baseline scenario to require a genuine link with the unemployment insurance system in the State of last activity. Eight delegations[193] have expressed in the Administrative Commission the view that they could accept option 1 if in return the calculation rule would be amended, or vice versa, as either one of the rules is needed to establish a 'genuine link' with the unemployment insurance system. This option in itself is therefore not the most effective option to strike a balance between the aims of protecting mobile workers and requiring a certain degree of integration in the labour market and insurance system of the State of last activity, before it becomes responsible for the payment of benefits. It is neutral in relation to coherence with wider EU policy objectives.

Options 2a and 2b more effectively strike a balance between the protection of workers and the protection of unemployment insurance schemes in the Member State of last activity as they require a certain degree of integration in the labour market and the insurance system of the State of last activity before benefits become due. This applies in particular for option 2b. The rights of the workers remain safeguarded if they become entitled to unemployment benefits from the Member State of previous activity although such export shall be limited to a period of six months. Taking into account the relative costs compared to the effectiveness of achieving objectives option 2b offers superior efficiency to option 2a (both are more efficient than the baseline). The idea to introduce a reimbursement mechanism instead has been discarded, as the current problems with the reimbursement mechanism for unemployed frontier workers show that such a mechanism is likely to create disputes and delays between the institutions involved. Both options are coherent with the wider EU objective of supporting fair mobility (fair for both jobseekers and tax-payers) and increasing access to employment opportunities throughout the Union.

Options 3a and 3b aim at establishing a better reflection of the previously earned reference salary or professional income in calculating the level of the unemployed benefits. They would avoid 'random' results in levels of unemployment benefits based on extreme short periods of insurance. However, this aim would be achieved in a less effective and efficient way than under option 2[194]. They would also entail an increase of regulatory costs, as it would require more exchanges of information between the institutions of the Member States to receive information on the last earned salary or professional income, and would thus lead to potential delays in providing the unemployment benefits. In addition, these options would possibly provide a financial advantage only for Member States with a high level

[193] The Bulgarian, Italian, Portuguese, Belgian, Estonian, Irish, Polish and Swedish delegations.

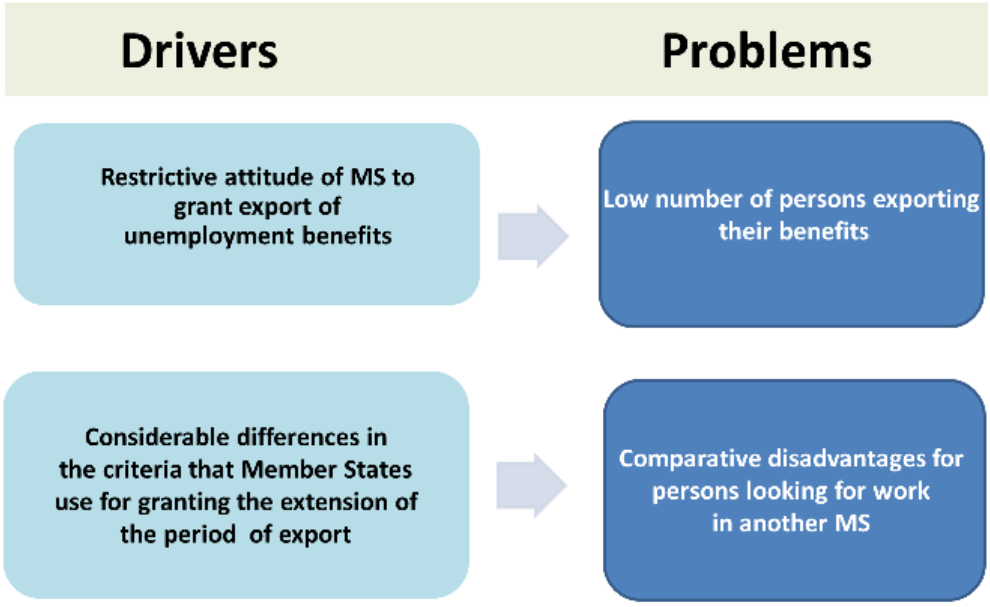
[194] It should be borne in mind, that unemployment benefits paid by the Member State of previous activity in accordance with options 2 are also calculated on the basis of reference earnings received in those States, and not on the earnings received for only a short period in the Member State of last activity.

of earnings, not for those with a comparatively lower wage level. The uncertain outcomes means this option therefore may be considered less coherent with the wider EU objective of supporting fair mobility (fair for both jobseekers and tax-payers) and increasing access to employment opportunities throughout the Union.

The horizontal option responds to the general objective as it provides for a clear and uniform rule for the recognition of periods completed in another Member State for aggregation purposes. Taking into account the negligible anticipated costs of this option compared to the potential success in realising objectives this option is also considered efficient and coherent with the wider EU objective of supporting fair mobility (fair for both jobseekers and tax-payers) and increasing access to employment opportunities throughout the Union.

5.3. Export of Unemployment Benefits

5.3.1 *Problems with the limited export of unemployment benefits and drivers behind them*



5.3.1.1 There are currently low numbers of persons exporting their unemployment benefits and the period of export does not give a realistic chance for a jobseeker to find work in another Member State

A worker who has acquired an entitlement to unemployment benefits has a right to look for a job in another Member State while retaining the unemployment benefit for a limited period of time. Under the current rules the period of export is limited to a minimum of three months and a maximum of six months.

The right to export unemployment benefits is either certified by the Portable Document U2 (PD U2 – *Retention of unemployment benefits*) or at request of the institution in the host State by the Structured

Electronic Document U008 (SED U008). Statistical data about the number of PD U2/SED U008 issued[195] shows that the mobility of jobseekers is rather limited, because only approximately 27.000 unemployed persons have exported their unemployment benefits in 2013 and in 2014[196] representing on average only 1 out of 1.000 unemployed persons received this document in 2013 and in 2014. Spain (3,128), Portugal (1.751), Germany (± 1.600) and France (1.510) issued the highest number of PD U2 during the second semester of 2013, whereas Malta (6) and Romania (3) issued the fewest.

There is anecdotal evidence that the period of three months generally considered too short to respond to the aspiration of unemployed persons that they will find abroad. Nine individual respondents to the public consultation had requested the export of unemployment benefits at some point in their lives.[197] Out of these nine, five reported problems when asking to receive their benefits abroad. In the public consultation, a mobile worker living in Sweden and with a full-time job pointed out that "With the current high unemployment and fierce competition it is almost impossible to find a job in 3 months, considering you have to create a new network, learn a new language, get into a new culture and the society as a whole. I would really like to see the rules changed to be the same for every Member State concerning exporting / receiving unemployment benefit for at least 6 months."

There is also statistical evidence that a prolongation of the export period is likely to enhance the chances of the unemployed person to find a job. The available statistical data show an average success rate between 11% (average percentage of the reporting sending Member States) and 8% (average percentage of reporting receiving Member Sedates). The figures also show an increase of the total success rate by 3 percentage points in case a prolongation was granted.[198]

Drivers behind these problems are that Member States do not consistently promote the right to export unemployment benefits. Under the current rules, the competent institution can decide if, depending on the circumstances of the case, an extension of the export period of another three months will be granted. Currently nine Member States structurally do not grant an extension of the export period,[199] even if this would increase the person's chances of finding employment in one of these Member States.

Furthermore, the negotiations in Council on the Chapter on Unemployment Benefits in the coordination Regulations showed that Member States are reluctant to grant a prolonged export of their unemployment benefits. This is not only due to considerations of financial interests, but also by concerns regarding the possibilities to supervise the jobseeking activities of the unemployed person. One of the drivers for the more stringent attitude of some countries seems to be inspired by (potential) difficulties in the mutual cooperation between Member States for monitoring the person's jobseeking activities, as well as the fear that the person is not genuinely looking for work. These factors seem to be mutually reinforcing and give a clear signal that the mutual cooperation mechanism needs to be strengthened. This is also confirmed by the online consultation by Deloitte Consulting[200] which shows that the current cooperation mechanism is not regarded as a sufficient safeguard that all necessary checks are performed due to the fact that employment services in the host State have no financial incentive to verify jobseeking efforts undertaken by those unemployed persons. Member States find it much more difficult to trust information confirming active jobsearch from foreign employment services institutions than from their own institutions. Public authorities in Austria, Czech Republic, Hungary, Italy, Lithuania, the Netherlands, Poland and Portugal who believe that the export of

[195] Pacolet, J. and De Wispelaere, F., Export of unemployment benefits – PD U2 Questionnaire, Network Statistics FMSSFE, European Commission, June 2014, p25.
[196] Pacolet, J. and De Wispelaere, F., Export of unemployment benefits – PD U2 Questionnaire, Network Statistics FMSSFE, European Commission, June 2014, 25 p.
[197] A public consultation between December 2012 and February 2013 invited citizens and organisations to provide their views on the main problems linked to the export of unemployment benefit.
[198] Pacolet, J. and De Wispelaere, F., Export of unemployment benefits – PD U2 Questionnaire, Network Statistics FMSSFE, European Commission, October 2015, 25 p. 15.
[199] Cyprus, Denmark, Finland, France, Hungary, Italy, Ireland, the Netherlands and the United Kingdom.
[200] Mentioned by representatives of public authorities from Austria, Hungary, Czech Republic, Ireland, Italy, Lithuania, the Netherlands, Poland, Portugal and Slovenia.

unemployment benefits could lead to increased risk of misuse of rights, proposed, among other measures, that the host Member State should assume more responsible for jobseekers who have exported their unemployment benefit from another Member State.[201]

However, there is no evidence[202] that points to a wide-scale abuse of the system. The Final Report of the Ad-hoc Group on Combatting Fraud and Error through the exchange of personal data within the framework of the Administrative Commission[203] shows that difficulties and obstacles in exchanging data do not derive from the Regulations, but are rather due to a lack of cooperation, prioritisations, long delays in answering and fragmented replies, as well as to limitations in domestic law in certain Member States to exchange personal data with institutions across the border. It is anticipated that these issues will be greatly reduced by the introduction of the Electronic Exchange for Social Security Information (EESSI) scheduled for launch by the end of 2016 with a deadline for full implementation in all Member State by the end of 2018 which will introduce common structured electronic documents and a uniform procedure for all national authorities to follow when processing claims for social security benefits has the potential to address the concerns raised by competent Member States concerning the need to monitor a jobseeker's compliance with active labour market requirements when seeking work in another Member State.[204]

Increased mobility can play a key role in tackling EU-wide unemployment. Whilst some areas of the EU are experiencing an acute unemployment crisis, there exist about 2 million positions that have remained unfilled for a significant period of time, according to information by the EURES network. Export of unemployment benefit allows a citizen to search for work in another Member State without becoming a burden to the social security system of that State. Instead, they continue to receive benefits to which they contributed in their 'home' Member State. The consequences of the comparatively small percentage of persons using the possibility to look for employment in another Member State points very clearly that the current rules are not achieving their full potential. EU rules on export and coordination should take this into account, whilst at the same time recognising the concerns of Member States in this respect.

5.3.1.2 Member States apply inconsistent criteria in determining whether to grant the extension of the export period leading to comparative disadvantages for persons looking for work in another Member State

Under the current rules Member States have a discretion to determine whether they export unemployment benefits only for the minimum period of three months or the maximum period of six months. However, the restrictive attitude from Member States towards granting export in general is also reflected in granting an extension of the export period beyond three months. The results of a survey carried out by the trESS network[205] and a questionnaire launched within the framework of the Administrative Commission[206] show that still a considerable number of Member States do not let their institutions make use of this discretion at all, or only exceptionally:

- 3 months, no extension: Cyprus, Denmark, Finland, France, Croatia, Greece, Sweden, Hungary, Italy, Ireland, the Netherlands and the United Kingdom;

- 3 months, possibility to extend: Austria, Belgium, Bulgaria, Spain, Germany, Luxembourg, Malta, Romania, Estonia, Latvia, Lithuania, Slovenia, Slovakia, Poland, Portugal;

[201] See Annex II, p. 7.
[202] Following the annual discussion on Fraud and Error within the framework of the Administrative Commission.
[203] To be published on https://Circabc.europa.eu.
[204] Annex VI, p17.
[205] Think tank report 2012, *Coordination of Unemployment Benefits,* to be consulted at: http://www.tress-network.org/tress2012/EUROPEAN%20RESOURCES/EUROPEANREPORT/trESS_ThinkTankReport2012.pdf.
[206] Pacolet, J. and De Wispelaere, F., Export of unemployment benefits – PD U2 Questionnaire, Network Statistics FMSSFE, European Commission, June 2014, 25 p.

- 6 months by default[207]: Czech Republic and Malta.

The main reasons for not granting an extension of the export period vary as well. Sometimes, the national legislation does not allow for an extension or does not contain any criteria for granting an extension (e.g. the United Kingdom). Other Member States have developed their own criteria. In Germany for example, the expected national demand for labour in the coming months, the individual reasons for a preferred work abroad and better integration opportunities are taken into account in the decision of whether to extend the export period.

Luxembourg and Romania grant the extension every time upon an individual request. In some Member States, such as Belgium, the extension of export is exceptional and can only be granted if there is proof that the intensive search for employment and a further stay are indispensable in the light of ongoing applications. Similarly, the Austrian institutions request proof of whether there is a job offer available in the home country before grating an extension and the Spanish authorities ask the unemployed person to prove that he or she is likely to find work during the extended period. Also, Latvia, Lithuania, Estonia, Slovenia, Bulgaria and Slovakia examine every case individually after the expiry of the the three months of export.

Unemployed persons in countries which never grant an extension of the period of export are put at a disadvantage compared to those who get their benefit from more 'generous' institutions. They therefore have more limited support in their search for work in another Member State.

The consequence of this problem is that there is inconsistent treatment of applications to extend the period of export of unemployment benefits across the EU and mobile jobseekers face inconsistent treatment when they seek work in another Member State depending on which Member State is competent for payment of the unemployment benefits. Once again this suggests the EU social security rules are not achieving their full potential to support the internal market by facilitating intra-EU mobility in particular to target asymetrical spikes in unemployment or to address skills mismatches or shortages in skilled workers.

5.3.2 *Baseline scenario*

There are about 24.000 persons exporting unemployment benefits to another Member State, representing only 0.1% of all unemployed persons in the EU[208]. Only limited data is available on the countries to which unemployed persons export their benefits in table 65 in Annex V.[209] From that table it follows that persons mainly apply to export their benefits to a neighbouring country. For example, Belgium issued the highest number of PD U2 forms for persons moving to France. Unemployed persons in Poland, Denmark and the Netherlands tend to look for work in Germany. The United Kingdom is also a preferred destination of jobseekers, most probably for linguistic reasons. On the basis of the current spread over the destination countries, a large influx of unemployed persons in either of these countries not to be expected.

Based on the projections of the 2015 Ageing report, assuming that the unemployment rate in the EU will diminish between 2015 and 2020, and assuming that the rate of unemployed persons exporting unemployment benefits will remain stable at 0.1%, then we could expect that the number of people exporting unemployment benefits when moving abroad under the current scenario would decrease to around 23,000 in 2020 and 19,000 in 2030. However, as this report only describes the effect of the demographic development and as other factors such as the general evolution of the economy in the

[207] i.e. PDs U2 had immediately been granted for the maximum period from the outset.
[208] European Commission, *Export of Unemployment Benefits* (2015).
[209] See also Pacolet, J. and De Wispelaere, F., Export of unemployment benefits – PD U2 Questionnaire, Network Statistics FMSSFE, European Commission, June 2014, 25 p. However, no data with regard to the bilateral flows between Member States are available. Different reasons to export the unemployment benefit might appear (a lower unemployment rate compared to the competent Member State, familiarity with the Member State where looking for employment, 'return' of the mobile worker to his/her country of birth etc.).

different Member States has a more decisive impact on the rate of unemployment and on movements of unemployed persons between Member States, these projections alone do not necessarily present the likely future trends in this area.

Providing the right to export unemployment benefits is, in itself, not sufficient to encourage people to work where they are most needed, or where the chances of finding a job are higher. A person's motivation to move is always a combination of 'push factors' in the home country and 'pull factors' in the receiving country. The decision to move is inspired by better prospects for the future and the potential costs are carefully weighed against the knowledge of the potential costs associated with the migration[210]. If we look at the reasons to move for unemployed persons, 24% declared that they wish to move to a particular country due to the employment opportunities there, while 43% wish to earn more money.[211]

Not undertaking action in the field of export of unemployment benefits would maintain the current divergences as regards the application of the existing rules. It would also stifle the mobility of jobseekers between national labor markets and not only deprive them of a chance of finding more suitable employment, but also the Member States of a chance to fill in persistent vacancies and to even out skill mismatches.

The Electronic Exchange for Social Security Information (EESSI) scheduled for launch by the end of 2016 with a deadline for full implementation in all Member State by the end of 2018 which will introduce common structured electronic documents and a uniform procedure for all national authorities to follow when processing claims for social security benefits has the potential to address the concerns raised by competent Member States concerning the need to monitor a jobseeker's compliance with active labour market requirements when seeking work in another Member State. Electronic exchange will provide a more consistent and efficient means for Member States to cooperate and exchange information in cases of export of unemployment benefits.[212]

5.3.3 *Objectives for review on the export of unemployment benefits*

The **general policy objective** of this initiative is to continue the modernisation of the EU Social Security Coordination Rules by further enabling the citizens to exercise their rights while at the same time ensuring legal clarity and a fair and equitable distribution of the financial burden among the institutions of the Member States involved.

In relation to the rules on export of unemployment benefits, this means in particular to ensure that jobseekers can benefit from the opportunities of the European labour market and exert their right to free movement without having to fear a loss of their benefit entitlements. As long as they can enjoy their acquired rights to unemployment cash benefits, they are less likely to become a burden on the welfare system of the host Member State to which they went in order to seek employment there. It also generally supports financial equilibrium within the internal market by serving to mitigate cyclical adjustment measures in response to asymmetric shocks[213] spikes in unemployment and skill mismatches between Member States.[214]

In view of this general objective, the **specific objective** in this field can be defined as follows:

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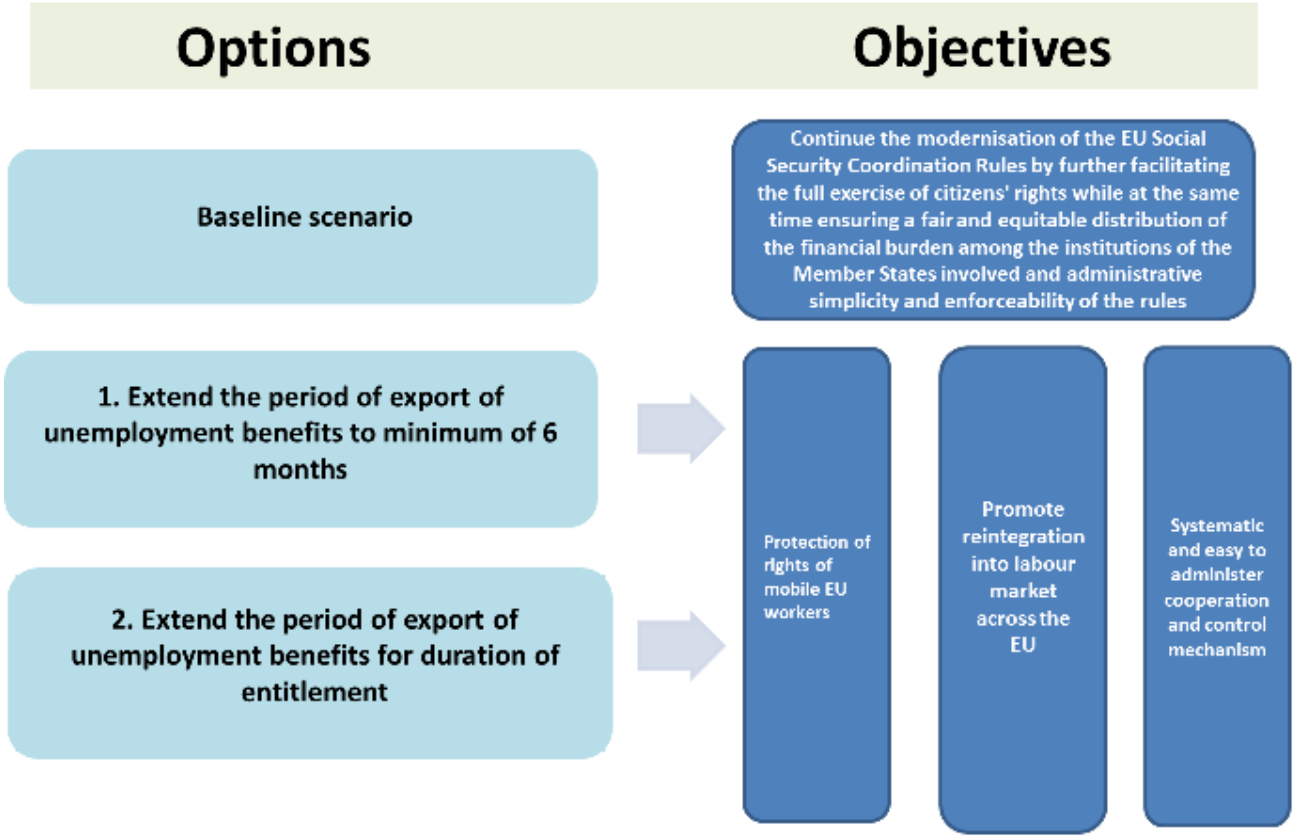
[210] European Policy Centre ,*Making progress towards the completion of the Single European Labour Market,* EPC Issue Paper no. 75, May 2013, p. 17. http://www.epc.eu/documents/uploads/pub_3529_single_european_labour_market.pdf. and Drinkwater and Garapich, *Migration Plans and Strategies of Recent Polish Migrant to England and Wales: Do they Have Any and How do they Change?* NORFACE-ERA NET (TEMPO), Nov. 2013.
[211] European Commission, *Geographical and labour market mobility,* Special Eurobarometer Review N. 337, June 2010, p. 36.
[212] Annex VI, p17.
[213] Labour Market and Wage Developments in Europe 2015, European Commission.
[214] ESDE 2015.

- **Protection of rights** of unemployed persons when they move to another Member State to take up employment there.
- **Promotion of integration** of unemployed persons **into the labour market across the EU.**
- Provision of **a systematic and easy to administer cooperation and control mechanism** in order to monitor the fulfilment of their rights and obligations.

5.3.4 *What are the various options to achieve the objectives concerning the export of unemployment benefits?*



5.3.4.1 Option 0: baseline scenario

Under the status quo, export of unemployment benefits can be granted for a period of three months with a possibility for extension of up to six months.

5.3.4.2 Option 1: Extend the period for export of unemployment benefits to a minimum period of 6 months (or end of entitlement period if shorter)

This option can be combined with the previous options as all unemployed persons have the opportunity to look for a job in another Member State while maintaining their right to unemployment benefits. Clear guidance, provided by the Commission, on the correct application of the export period

of unemployment benefits could be helpful to attain more uniformity in the interpretation of this particular export rule.

The time limit of 6 months is chosen for several reasons and aims at increasing the number of persons exporting their benefit. The first one is the increased chances of finding a job after a period of 6 months. Based on figures provided by 9 Member States, the average success rate increases by 3 percentage points if an extension from 3 to 6 months is granted. [215]

The period of six months also coincides with the period that was seen as appropriate for a person to find a job independently of active labour market assistance[216]. It is also the time limit awarded to jobseekers under EU law[217] for having a right-to-reside as a jobseeker. An extension of the period will also be beneficial for the unemployed cross border workers who wish to return to their State of residence and look for work there.[218] It is also beneficial to mobile EU workers who have not completed a sufficient periods of insurance or (self-)employment to apply for aggregation of periods.[219] In addition, the competent institution paying the unemployment benefits can decide to extend export of unemployment benefits beyond the period of six months on the basis of an individual assessment of the chances and efforts made to find employment in another Member State.

5.3.4.3 Option 2: Provide for export of unemployment benefits until the end of the entitlement period.

This option stipulates that an unemployed person has the right to search for a job in another Member State and to receive unemployment benefits for as long as the entitlement to such benefits under national legislation of the competent Member State lasts. The availability for the labour market in another Member State should be considered parallel to the availability to the labour market in the competent Member State.

In relation to both options, ensuring improved support for Member States to address their concerns over the administrative burden caused by benefit coordination is important.Therefore in relation to both options extension of the export period will be coupled with a reinforced cooperation mechanism to facilitate the information exchange between Member States and to increase mutual trust over performing effective checks on the person's jobseeking activities. The verification procedure will consist of:

a) The possibility to ask for 'ad hoc' checks by the employment services in the receiving State.

b) Introducing a system of automatic reporting by the employment services in the ‘receiving State’ to the employment services of the competent Member State. An automatic process, expedited by EU law, could help to remove much of the problems quoted by administrations involving delays in receiving the information they need to verify jobseeking activities.

c) Introducing a legal basis in Regulation (EC) No 883/2004 for "data matching" (i.e. the comparison of bulk data of insured persons). Such data transmission can take place in a case where there is no actual doubt about the accuracy of the information provided to enable Member States to identify any fraud or error in the proper implementation of the Regulations. For example, it allows Member State A

[215] Pacolet, J. and De Wispelaere, F., Export of unemployment benefits – PD U2 Questionnaire, Network Statistics FMSSFE, European Commission, October 2015. Based on figures provided for 2014 on PDs U2 or SEDs U008 issued in the year 2014, they calculated an average total success rate, i.e. the percentage of unemployed persons exporting their unemployment benefit who have found work abroad of between 11% (average percentage of the reporting sending Member States) and 8% (average percentage of the reporting receiving Member States). This rate increases by 3 percentage points in case of prolongation of the export period up to 6 months.
[216] Grubb, David, *Key features of successful activation strategies,* PES to PES dialogue conference “Activation and integration: working with individual action plans” OECD Employment and Analysis Policies Division, Brussels, 8-9 March 2012.
[217] *Antonissen* C-292/89 ECLI:EU:C:1991:80158, 30.4.2004, p. 77..
[218] For more information about the rules that apply to cross-border workers see paragraph 5.4
[219] For more information about the rules that apply to aggregation of unemployment benefits see paragraph 5.2.

to provide Member State B with personal data which Member State B will check against its own data in order to identify any inconsistencies which would affect the proper application of the Regulations. This "data-matching" may be used by Member States to identify whether there is fraud and error in the payment of unemployment benefits to persons living outside the paying State, by comparing lists of persons in receipt of such exported benefits living in State B against data held on persons in employment by that State.

Under this option, the delivery of support services to assist any person interested in matching, placement and recruitment through the EURES network can be an important complement to the person's jobseeking activities[220].

5.3.5 Stakeholder Support on amending the rules on the export of unemployment benefits

5.3.5.1 Option 1: Extend the period for export of unemployment benefits to a minimum period of 6 months

Based on the first consultation in the Administrative Commission of Member States' opinions as regards the extension of the export period, 8 delegations[221] have indicated to support his option.16% of the individual respondents to the public consultation supported this option and no clear preference was identified among the respondents from social partners.

5.3.5.2 Option 2: Provide for export of unemployment benefits until the end of the entitlement period

None of the experts within the Administrative Commission seemed to support this option explicitly. Three delegations[222] seemed flexible to introduce this option. The results of the online consultation by Deloitte Consulting show that 79% of the public authorities think that the risk of misuse or abuse of rights is particularly high if the unemployment benefits would be provided until the end of a persons'entitlement, according to the rule of the Member State which provides them.

On the other hand, it seems that almost 60% of the individual respondents to the public consultation support this option and 18% of the representatives of social partners.

All delegations recognised the importance of reinforcing the cooperation mechanism while keeping the administrative burden on an acceptable level.

5.3.5.3 What are the impacts of the Different Options on the export of unemployment benefit

The options have been compared to the baseline scenario and with regard to their effectiveness in achieving the specific objectives of the initiative, their efficiency (cost-effectiveness/even burden sharing), coherence with the general objectives of the EU and their impacts as assessed above.[223]

Figures for all EU-Member States on the export of unemployment benefits have become available via the administrative PD U2 Questionnaire launched in 2015 within the framework of the Administrative Commission (for 2013). Additional data available for Belgium has been used to describe the impact of

[220] Receiving assistance with matching, recruitment and placement for, including in gaining access to both active labour market measures and information and advice on social security as proposed in the Communication on the reformed EURES network.

[221] Czech Republic, Luxembourg, Portugal, Italy, Malta, Slovakia, Slovenia and Romania.

[222] Czech Republic, Italy and Portugal.

[223] Secondary impacts are not considered in the final comparison in recognition of the limitations of the data available to conduct this assessment.

the prolongation period on finding a job abroad. Finally, figures of Eurostat (based on the LFS) were used to calculate the average duration of the unemployment period.

5.3.5.4 Summary of the impact of different options concerning the export of unemployment benefits

Type of impact	Clarification	Simplification	Protection of rights	Fundamental rights	Economic impacts	Regulatory costs	Risk of fraud and abuse	Equitable burden sharing Member State	Coherence with General, Specific and EU objectives	Overall Effectiveness	Overall Efficiency (cost vs effectiveness
Baseline Scenario	0	0	0	0	0	0	0	0	0	0	0
Option 1	+[224]	+	+	+	+/-[225]	-	+	+	++	++	++
Option 2	+[226]	+	+	+	+/-	-	+	+/-	+	+	+

[224] Duration of export up to 6 months is no longer at the discretion of Member State.
[225] The economic impact is expected to be neutral, because the duration of export does not affect the overall period of entitlement.
[226] No discretion as regards duration of export.

5.3.5.5 Impact of Policy Option 1: extension of the export period up to a minimum of 6 months

Policy Option 1: extension of the export period up to a minimum of 6 months		
Social impacts		
Clarification	+	This option eliminates the uncertainty derived from the degree of flexibility applied by the national institutions. There would be a clear and uniform standard for all persons wishing to take their unemployment benefits with them when looking for a job in another Member State.
Simplification	+	This option would make an end to the widely varying practices that currently exist across Member States. The period of six months also coincides with the periods that was seen as appropriate for jobsearch within the framework of freedom of movement and in which persons can find a job independently of active labour market assistance[227].
Protection of rights	+	This option would ensure that the persons concerned can retain their entitlement to unemployment benefit for a longer period than under the existing rules. It would also allow them to make better use of the possibilities offered by the host Member State to find suitable employment.
Economic impacts		
Financial impact	+/-	This option does not affect substantially the duration, nor the amount of unemployment benefits paid by the competent Member State. It does not have any significant financial impact on the Member States, either at an individual or aggregate level, as it does not create a right for unemployment benefits, but only maintains an existing right to benefit in case of search of employment in another Member State.
Impacts on fundamental rights	+	This option contributes to the freedom to choose an occupation and the right to engage in work in another Member State (Article 15), as well as to a better protection of rights for workers who have made use of their right to free movement (Article 45). There is no impact on the right to property (Article 17) as acquired rights to unemployment benefits are maintained.
Other impacts		
Regulatory Costs	-	Improving and standardising unemployment benefit export between Member State, including introducing a new co-operation and control mechanism, will contribute to reducing the administrative burden that is often cited by Member States as being experienced by their competent institutions. Currently the length of

[227] Grubb, David, Key features of successful activation strategies, PES to PES dialogue conference "Activation and integration: working with individual action plans", OECD Employment Analysis and Policies Division, Brussels 8-9 March 2012.

		time for which Member States will export unemployment benefit varies between Member States, necessitating separate processes for granting an extension of the period of export. Setting up the reinforced cooperation mechanism requires an increased effort in comparison to the baseline scenario, for the person concerned to inform the employment services and for the employment services to communicate the follow-up on the unemployed person's job searching activities. It is not expected that this will have a substantial impact on the administrative burden of the individual Member States. The total number of PD U2 forms issued is still rather moderate and varies between 0,001% and 1,26% of the total population of unemployed persons in 2013.
Risk of fraud and abuse	+	Combined with the intended introduction of a reinforced cooperation mechanism, it is expected that this option will entail a lower risk of fraud and abuse than the current rules.
Fair burden sharing between Member States	+	During the export period, the person concerned remains covered by the legislation of the Member State which provides the benefit. This reduces the risk that the person concerned has to rely on welfare benefits from the host Member State if he stays there beyond the current minimum export period of three months. Moreover, the investment that an employment service in the host state may make in cooperation activities may pay itself back when the person actually succeeds in finding a job in that country, starts working and paying social security contributions.
Coherence with General, Specific and wider EU Objectives: Continue the modernisation of the EU Social Security Coordination Rules by further facilitating the exercise of citizens' rights while at the same time ensuring legal clarity, a fair and equitable distribution of the financial burden among the institutions of the Member States involved and administrative simplicity and enforceability of the rules. • Ensure a **uniform and consistent** application of the export rules. • Offer jobseekers the best chance of (re)integrating into the labour market • Provide for a systematic and easy to administer cooperation and control mechanism to monitor the fulfilment of obligations by the jobseeker in exchanges between Member States	++	By setting a minimum period for the export of unemployment benefits that is longer than the current three months, option 1 is effective in providing opportunities for job searching activities in another Member State supporting better allocation of labour force (and human capital) within the internal market and indirectly resulting in savings in terms of public funds devoted to payments of unemployment benefits and social assistance. [228] A new cooperation mechanism that would be more effective and efficient than the current one would reduce the fear of fraud and error. This option may therefore be considered coherent with the wider EU objective of supporting fair mobility and increasing access to employment opportunities throughout the Union while limiting the time in which a jobseeker does not have direct access to activation measures and support from the competent Member State. It is also aligned with 2013 citizenship report (COM(2013)269) which as its key action 1 refers to the proposal to extend the export of unemployment benefits to six months.

[228] European Policy Centre, Making progress towards the completion of the Single European Labour Market, available at: http://www.epc.eu/documents/uploads/pub_3529_single_european_labour_market.pdf.

5.3.5.6 Impact of Policy Option 2: extension of the period of export of unemployment benefits until the end of the entitlement period

Policy Option 2: extension of the period of export of unemployment benefits until the end of the entitlement period.		
Social impacts		
Clarification	+	The adoption of this option could have positive effects in comparison to the baseline scenario, as the period of export will be subject to a uniform rule with no room for differing interpretation or practices.
Simplification	+	A direct link between the export and the entitlement period will be aligned with national rights in a way mobile workers may find easier to understand.
Protection of rights	+	This option would ensure that the persons concerned retain their entitlement to unemployment benefit for the whole period in case of search for work in another Member State. It would also allow them to make full use of the possibilities offered by the host Member State to find suitable employment. Figure 2.1 in Annex IX shows that 55.5% jobseekers exit unemployment after 12 months and 75% after 24 months. The increases are proportionally not as substantial as between 3 and 6 months.
Economic impacts		
Financial impact	+/-	The impact is the same as for option 1.
Impacts on fundamental rights	+	The impact is the same as for option 1.
Other impacts		
Regulatory Costs	-	The impact of this option on the administrative burden is the same as for option 1.
Risk of fraud and abuse	+	Combined with the intended introduction of a reinforced cooperation mechanism, it is expected that this option will entail a lower risk of fraud and abuse than the current rules.
Fair burden sharing between Member States	+/-	The effect is the same as for option 1, although potentiallly for an even longer period.
Coherence with General, Specific and wider EU Objectives: Continue the modernisation of the	+	Extension until the end of the entitlement period under option 2 will allow a person to perform jobseeking activities in another Member State throughout the full entitlement period and it complies with the 2013 citizenship report (COM(2013)269) proposal to extend the export of unemployment benefits to six

EU Social Security Coordination Rules by further facilitating the exercise of citizens' rights while at the same time ensuring legal clarity, a fair and equitable distribution of the financial burden among the institutions of the Member States involved and administrative simplicity and enforceability of the rules. • Ensure a **uniform and consistent** application of the export rules. • Offer jobseekers the best chance of (re)integrating into the labour market • Provide for a systematic and easy to administer cooperation and control mechanism to monitor the fulfilment of obligations by the jobseeker in exchanges between Member States		months. However, the effects on length of time spent unemployed are in the long-term unclear and it is uncertain longer entitlement to unemployment benefits actually increases likelihood of reintegration into the labour market. It could increase the administrative burden for the State of destination, through needing to actively monitor the person's employment situation over a longer period. Moreover, there will be little incentive for the country to which the person has gone to provide active labour market assistance throughout the full period of the payment of the unemployment benefit, if that institution has no power to control the payment of unemployment benefits or is not compensated financially by the competent Member State. This measure may therefore be considered less effective in achieving the wider EU objective of supporting fair mobility (fair for both jobseekers and tax-payers) and increasing access to employment opportunities throughout the Union and promoting access to labour market activation measures.

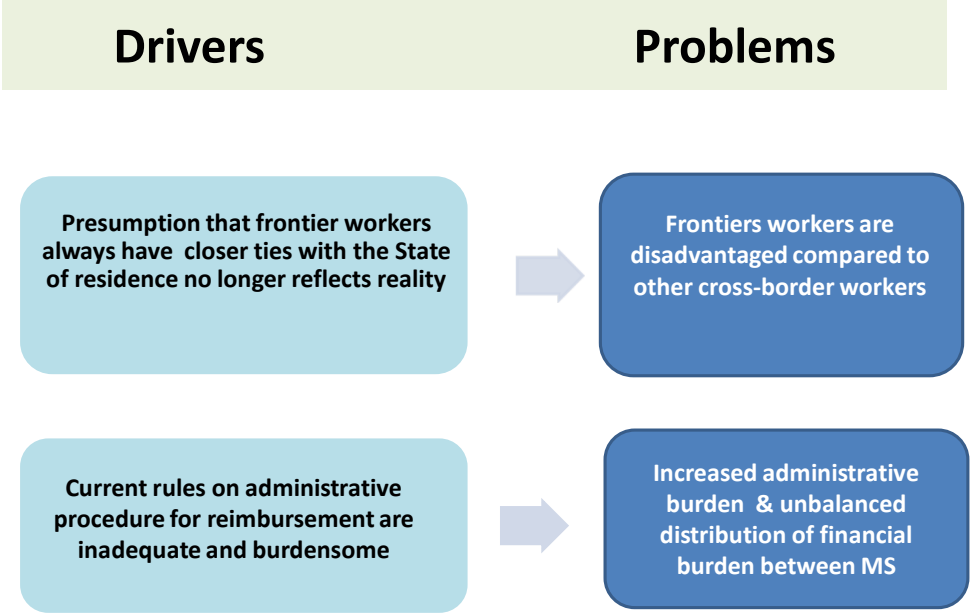
5.3.6 *Conclusions*

By setting a minimum period for the export of unemployment benefits that is longer than the current three months, option 1 is more effective in providing opportunities for job searching activities in another Member State. It will involve communication between Member States for an extended period of time and an effective cooperation mechanism to take away the fear of fraud and error in Member States. This option may therefore be considered coherent with the wider EU objective of supporting fair mobility (fair for both jobseekers and tax-payers in the competent Member State) and increasing access to employment opportunities throughout the Union while limiting the time in which a jobseeker does not have direct access to activation measures and support from the competent Member State. It is also aligned with 2013 citizenship report (COM(2013)269) which as its key action 1 refers to the proposal to extend the export of unemployment benefits to six months.

Although extension until the end of the entitlement period under option 2 will allow a person to perform jobseeking activities in another Member State throughout the full entitlement period, it will not be effective if not accompanied by an established control mechanism that will allow competent Member States to follow up on the jobseeking activities of the person. The effects on length of time spent unemployed are in the long-term unclear. It could increase the administrative burden for the State to which the person has gone, through needing to actively monitor the person's employment situation. Moreover, there will be little incentive for the country to which the person has gone to provide active labour market assistance throughout the full period of the payment of the unemployment benefit, if that institution has no power to control the payment of unemployment benefits or is not compensated financially by the competent Member State. This measure may therefore be considered less effective in achieving the wider EU objective of supporting fair mobility (fair for both jobseekers and tax-payers) and increasing access to employment opportunities throughout the Union and promoting access to labour market activation measures even if it complies with the 2013 citizenship report (COM(2013)269) proposal to extend the export of unemployment benefits to six months. This option is therefore not the most effective, or efficient option. The results of the online consultation by Deloitte Consulting show that 79% of the public authorities think that the risk of misuse or abuse of rights is particularly high if the unemployment benefits would be provided until the end of a persons'entitlement, according to the rule of the Member State which provides them.

5.4. The rules on the provision of unemployment benefits for frontier and other cross-border workers

5.4.1 *Problems with the coordination rules on the provision of unemployment benefits for frontier and other cross-border workers*



5.4.1.1 Frontier workers are disadvantaged compared to other cross-border workers

The legislator has made an explicit choice in Regulation (EC) No 883/2004 that a frontier worker should receive unemployment benefits in the State of residence. This is a derogation from the general principle that a person pursuing a gainful activity should be affiliated to the social security scheme of the State in the territory of which he/she is employed or self-employed (*lex loci laboris principle*).

However, this derogation is not applied consistently:

1) It applies only to frontier workers, but not to other cross-border workers. Cross-border workers who do not return on a regular basis to their country of residence have a right of choice, i.e. they can remain in their country of activity and claim unemployment benefits there or they can claim unemployment benefits from the country of residence, provided they return to that country.

2) Moreover, the derogation only applies to frontier workers who are wholly unemployed, whereas frontier workers, who are only partially or intermittently unemployed continue to receive their unemployment benefit from the country of last activity.

3) In addition, it does not necessarily apply to those frontier workers who were formerly self-employed. If they reside in a country where there is no unemployment insurance for self-employed persons, they shall be entitled to receive unemployment benefit from the institution in the country of last activity to which they had been affiliated.

The derogation for unemployed frontier workers is based on the assumption that, as a rule, they have closer ties to the Member State of residence then to the Member State of previous employment and therefore better prospects of finding a job there Moreoever, unemployed persons have to register with the employment service which is competent for them in order to receive their benefits and they are required to available for work. It has been assumed that this condition can more easily be fulfilled in the country of residence than in the State of previous employment and that, for this reason, frontier workers can get their benefits in the State of residence under more favourable conditions. [229]

However, this assumption appears to be flawed when looking at the latest statistics[230]. An estimated average of 927.000 cross-border workers[231] (76% of the total number of cross-border workers) were employed for longer than 12 months in the State of activity before becoming unemployed which indicates that they have established a strong link to the labour market of the State of activity. Compared to that, only 287.000 cross-border workers (or 24% of the total number of cross-border workers) had been employed less than 12 months in their State of activity.

Moreover, distances can nowadays more easily be bridged by modern means of transport and also by electronic means of comunication which are more and more frequently used by employment services of Member States also for the purpose of registration and supervision of the jobseeking activities of an unemployed person.

Another problem derives from the fact that it is not always easy to distinguish between frontier workers and other cross-border workers. A number of Member States have pointed out in the discussions within the Administrative Commission[232] that it has become more and more difficult to assess in practice if a person is a frontier worker or another cross-border worker. Large distances can be more easily overcome nowadays, so that it cannot be excluded that for example, a person who works in Brussels returns every weekend to London and is therefore a frontier worker. The Member States concerned have therefore questioned if it is still justified to make a distinction between frontier workers and other cross-border workers on the basis of their commuting patterns.

It has also to be acknowledged that a consequence of the current different treatment of unemployed frontier workers and other cross-border workers may disadvantage the first group in comparison to the latter, especially when the legislation of the State of last employment would have resulted in a more favourable level of unemployment benefits for the unemployed frontier worker. This became apparent in the Case C-443/11 *Jeltes*[233] and there are also numerous complaints (28 from August-December 2012 and 35 in the period of January-September 2013) showing that the current rules are not always in the interest of the workers' concerned. Being bound to claim unemployment benefit in their country of residence, they are at a significant disadvantage compared to cross-border workers, who have right of choice. As cross-border workers tend to work in countries where comparatively higher wages and benefits are paid, there is some evidence that, as a general rule, they will be entitled to higher unemployment benefits when they are allowed to claim them in their country of last activity. There is

[229] For these reasons and in spite of the inherent flaws, the compatibility of this provision with the principle of free movement of persons had been confirmed by the Court in the Case C-443/11, *Jeltes, EU:C:2013:224,* paragraph 51.
[230] Pacolet, J. & De Wispelaere, F., *Update of the analytical studies for an impact assessment for revision of Regulations (EC) Nos 883/2004 and 987/2009: coordination of LTC benefits and unemployment benefits* , HIVA - KU Leuven, September 205, See Annex XXVI.
[231] Average figure for the years 2013 and 2014.
[232] Czech Republic, Poland, Finland, Spain, Portugal, Slovenia, Latvia.
[233] Case C-443/11*, Jeltes*, EU:C:2013:224.

a difference of 68% between the amount of the unemployment benefits paid by the State of last activity and the State of residence.[234]

Example: The Austrian authorities in the framework of the Impact Assessment Study presented the case of a Hungarian frontier worker, who resided in Hungary and worked for a period of 30 years in Austria, after which he became unemployed. An average monthly salary of € 2000 gives entitlement to three months of unemployment benefits in Hungary of around € 340 per month. Had the frontier worker applied for unemployment benefits in Austria, he would have been entitled to € 1100 for a period of at least nine months.

5.4.1.2 The reimbursement procedure for unemployment benefits between Member States is inadequate and burdensome

Regulation (EC) No 883/2004 introduces a reimbursement mechanism between the State of last activity and the State of residence to compensate for the fact that the institution in the Member State of residence has to provide unemployment benefits to unemployed cross-border workers without having collected any contributions or taxes for the period of last activity carried out in another Member State. From a financial and administrative point of view, the reimbursement mechanism is not satisfactory.

The current mechanism only partially covers the additional expenses incurred in the Member State of residence. This is due to a number of limitations:

1) The amount of reimbursement to be paid by the State of last activity is capped at the amount that the State of last activity would pay under its national legislation. As a result the actual reimbursement by the State of last activity to the State of residence, on average, is 23% lower than the amount of the claims representing the amount of unemployment benefit paid by the State of residence[235]. For Luxembourg and the Netherlands, the discrepancy is 0%; i.e. they pay out the entirety of the benefit reimbursement that is claimed from them. At the other end of the scale are Romania, Bulgaria and Poland which reimburse, on the average, only 5% or less of the amount claimed.

2) Reimbursement is limited in time. The competent Member State is only obliged to reimburse the first three months of the unemployment benefit payment. This period is extended to 5 months if the person has been insured in the competent Member State for at least 12 months in the preceding 24 months. Any unemployment benefit payments beyond that period are not reimbursed creating a disproportionate burden for the Member State of residence.

3) The reimbursement only covers the 'gross amount' of the unemployment benefit, i.e. the full amount of those benefits before any deductions (e.g. taxes or contributions levied on the benefit). It does not cover other benefits which may become payable due to the fact that the State of residence also becomes responsible for other social security benefits (e.g. health care or family benefits).

Table 2.7 in Annex XXVI gives a complete overview of the division of costs between the competent Member State and the State of residence. Based on the average amount of unemployment benefits, the yearly expenditure by the State of residence on unemployment benefits to cross-border workers is estimated at € 277 million, of which € 238 million is related to frontier workers and € 39 million to other cross-border workers (Annex XXVI, table 2.7[236]). Of the yearly expenditure on unemployment benefits, 67% is paid by the State of residence and 33% is paid by the State of last activity on

[234] Tables 2.7 and 2.8 in Annex XXVI.
[235] Annex XXVI - Table 2.3.
[236] In order to estimate the budgetary impact of the baseline scenario, the estimated number of unemployed cross-border workers (based on the LFS and the unemployment rates of the 2015 Ageing Report) is multiplied by the annual unemployment benefit per unemployed person taking into account the annual average duration of the payment of the unemployment benefit.

average[237]. However, these figures mask very large discrepancies in the share of the burden shared by the Member States of last activity and of residence. For example, in the cases of countries with a very low number of incoming cross-border workers, the cost is mainly borne by the State of residence.

This demonstrates quite clearly that the current system is particularly disadvantageous for States of residence with a high number of 'outgoing' frontier workers or with a higher level of unemployment benefits compared to the States of last activity[238]. Member States that are net 'exporters' of frontier workers can, in a time of economic downturn, find themselves confronted with a much larger number of former frontier workers claiming an unemployment benefit for which the State of residence never received social security contributions.

Another problem is that the reimbursement procedure is administratively burdensome. It requires that for each single case, that information is exchanged on the working period of the person concerned, the reimbursement period and payment dates[239]. The debtor Member State then has to check if reimbursement has not already been applied for the same periods, or if the ceiling under national legislation has been reached. If a request for reimbursement is refused, or only partially accepted, further exchange on the reasons for refusing the requests is needed. Delays of reimbursement are mentioned as a common problem by 22% of the respondents on behalf of organisations[240] to the EU public consultation. This leads to uncertainty in the Member State of residence if and when it will receive the reimbursement requested from the Member State of last activity.

It follows from the online consultation by Deloitte Consulting[241] that the long processing time of a case is seen as very problematic for claimants of unemployment benefits, because as long as a Member State does not have the required information about a claimant, it is not able to make a decision about the unemployment benefit. Communication between institutions of Member States is perceived as an area with margin for improvement. Problems of delays are reported by public authorities in the online survey by Deloitte Consulting and the public consultation. Only 10% of the respondents to the Deloitte survey think that the communication with other Member States in dealing with individual claims for unemployment benefits is effective and smooth. About 25% of the respondents describe the communication as ineffective and slow.

Member States have therefore agreed on an administrative procedure for the reimbursement of unemployment benefits in Decision U4 of the Administrative Commission[242]. Although this Decision constitutes a good step towards a joint interpretation of the reimbursement mechanism, it is not applied consistently across the EU. Member States even have started questioning its value, despite it being applicable as of 2012 only. The Decision states that reimbursement can be claimed ‘regardless of the eligibility conditions for unemployment benefits laid down by the legislation of the creditor State.” This is not complied with by a State which makes the reimbursement conditional upon the fulfilment of sufficient periods of contributions, because it argues that otherwise, the maximum amount payable under its own legislation is zero. In December 2013, the Commission received a letter from the Chair of the Administrative Commission raising the collective concern that one particular Member State is not applying Decision U4 in a correct way.

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[237] After reimbursement, these percentages are 55% and 45%.
[238] Table 2.2 in Annex XXVI.
[239] Institutions at national, regional and local level to that end exchange information via 'Structured Electronic Documents' (SEDs). SEDs U 20 to U 27 are developed to communicate in cases when reimbursement is requested: U 20 (Reimbursement Request), U 21 (Reimbursement Full Acceptance), U 22 (Reimbursement Non Acceptance), U 23 (Partial Acceptance of Request for Reimbursement), U 24 (Reimbursement Payment Notification), U 25 (Reimbursement Receipt/Closing Notification), U 26 (Charging Interest (in case of delay)), and U 27 (Reply on Charging Interest). A number of Member States (Belgium, Czech Republic, Germany, Austria, Slovakia and Finland) apply reimbursement on the basis of fixed amounts.
[240] The group 'organisations' consists of national administrations, social partners and trade unions, civil society and non-governmental organisations and a private company.
[241] Annex II.
[242] Administrative Commission for the Coordination of Social Security Systems, Decision No U4 of 13 December 2011concerning the reimbursement procedures under Article 65(6) and (7) of Regulation (EC) No 883/2004 and Article 70 of Regulation No 987/2009, OJ C. 5, 25.2.2012.

Another problem concerns disputes about the determination of the place of residence. In these situations, it is frequently extremely difficult to verify retroactively where the place of residence of the person concerned had actually been during his or her past period of employment.[243]

In the online consultation carried out by Deloitte consulting, 72% of the respondents from public authorities indicated that the current rules are not uniformly understood and applied by the Member States. A recurrent concern is the reimbursement procedure between Member States which are not sufficiently detailed and clear. 40% of the participating public administrations in the online consultation by Deloitte consulting reported that the EU rules create significant administrative costs for national administrations. The reimbursement was repeatedly mentioned as a source of burden mainly due to slow and ineffective communication between Member States.

5.4.2 *Baseline Scenario*

There are some 1.2 million cross-border workers employed in the EU28 who are potentially affected by the provisions on unemployment benefits[244]. It can be assumed that some 793,000 of them are frontier workers, because they reside in a neighbouring country.[245] Applying the national unemployment rates on those figures, results in an estimate of 91,700 unemployed cross-border workers 53,500 of whom are frontier workers.

The evolution of those numbers in the future will depend to a large extent on the evolution of the number of frontier workers and other cross-border workers and the unemployment rates. Cross-border work has increased over the last 10 years in absolute figures largely due to the accessions of the new Member States. However, in relative terms (% of employed population) it remained at a low level (from 0.5% in 2006 to 0.7% in 2014). If we assume that the number of cross-border workers remain stable in relative terms as a % of the employed population between 2015 and 2020, then we could expect some 1.3 million cross-border workers in 2020, but the numbers of unemployed cross-border workers may indeed go down as a lower unemployment rate is projected for 2020[246].

Not undertaking action in the field of coordination of unemployment benefits would mean maintaining rules which no longer reflect the real interests of the persons concerned and it would mean to maintain the current reimbursement procedure with all its inherent flaws.

5.4.3 *Objectives for review of the existing rules on the provision of unemployment benefits for frontier and other cross-border workers*

The **general policy objective** of this initiative is to continue the modernisation of the EU Social Security Coordination Rules by further enabling the citizens to exercise their rights while at the same time ensuring legal clarity and a fair and equitable distribution of the financial burden among the institutions of the Member States involved.

In relation to the rules on the provision of unemployment benefits for frontier and other cross-border workers, this means in particular to remove unjustified differentiations and to strengthen the link

[243] This issue had been raised by Poland, the Czech Republic and Malta in the 342nd and 343rd meeting of the Administrative Commission in 2015.
[244] 2015 Annual Report on Labour Mobility.
[245] This is a gross estimation, because there are no figures available on the number of frontier workers in the sense of the legal definition contained in Regulation (EC) No 883/2004.
[246] *2015 Annual Report on Labour Mobility,* European Commission (2015).

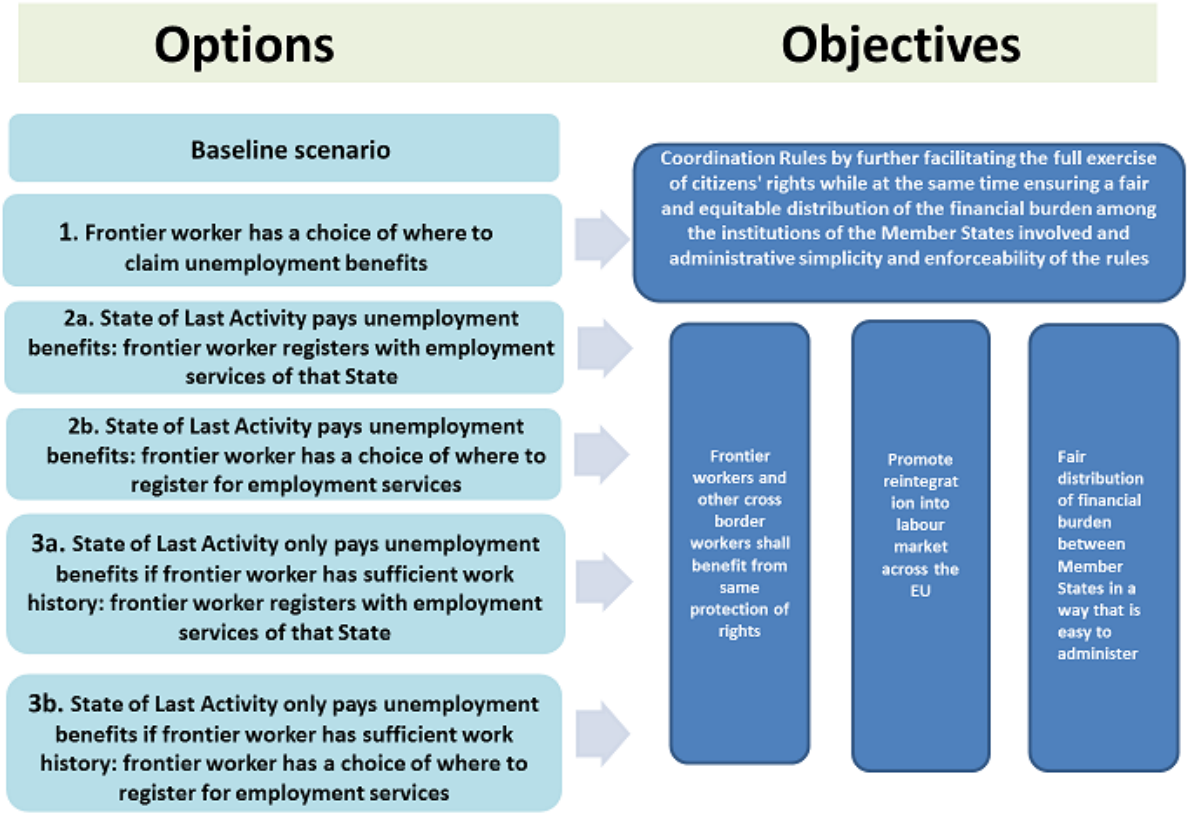
between the acquisition and the provision of unemployment benefits, i.e. between the payment of contributions by the insured person and the payment of benefits for the insured persons.

In view of this general objective, the **specific objective** in this field can be defined as follows:

- Frontier and other cross-border workers, who reside in another Member State than the State of last activity, shall benefit from the same **protection of rights** in case of unemployment.
- Frontier and other cross-border workers, who reside in another Member State than the State of last activity, shall benefit from the **best available opportunities of reintegration** in the labour market.
- **The financial burden** for paying unemployment benefits **shall be distributed** between the competent Member State of last activity and the Member State of residence in a manner that corresponds to contributions or taxes received in a way which is **easy to administer** and achieves **fair results**.

5.4.4 *What are the various options to achieve the objectives concerning the provision of unemployment benefits for frontier and other cross-border workers*

A number of policy options have been identified to meet the objectives set out above.



5.4.4.1 Option 0: baseline scenario

Under the status quo, unemployed cross-border workers who are not frontier workers can choose either to remain available to the employment services in the territory of the competent Member State or to make themselves available to the employment services in the territory of the Member State where

he/she resides. In the first case, they receive their unemployment benefits from the Member State where they were last employed, in the second case from the Member State where they reside.

Frontier workers, i.e. those cross-border workers who return to their State of residence on a regular daily or at least weekly basis do not have this right of choice, as they can claim their unemployment benefits only from the employment service at their place of residence.

A reimbursement system has been established in order to compensate for situations in which the Member State of residence is obliged to pay unemployment benefits to former cross-border workers without having benefited from their contributions or taxes during their previous economic activity.

5.4.4.2 Option 1: Introduce a right of choice for frontier workers to receive unemployment benefits from the Member State of last activity, or the Member State of residence

This option 'copies' the baseline scenario by offering frontier workers the same right of choice as other cross-border workers currently enjoy under the status quo. This option thus abolishes the distinction between frontier workers and other cross-border workers as regards the State in which they can claim the benefits, while offering the best chance of reintegrating into the labour market across the EU.

The choice would imply making oneself available to the employment services in the Member State where the benefits are claimed. This requires that the competent Member State creates a legal fiction of residence and pays the unemployment benefits *as if* the person resided on its territory. If the person decides to be available for the labour market of the State of former activity and is claiming benefits there, this State should pay the unemployment benefits *as if* he/she resided on its territory.

The choice for one Member State does not exclude that the unemployed frontier worker may also go and look for work in the other Member State. To increase the opportunities to find work the unemployed frontier worker may also register with the employment services in the Member State *not* paying the benefit as a supplementary step which does not affect the obligations that the unemployed person needs to fulfil in the State paying the benefits. Therefore, the obligations and/or jobseeking activities in the Member State which pays the benefit take priority over any obligations in the second Member State.

5.4.4.3 Option 2: Provide for the payment of unemployment benefits by the Member State of last activity

This option aims to ensure that the country which has received the contributions or income tax is the one that should pay the benefit. It will also abolish the distinction between frontier and other cross-border workers. The sub-options differ as regards the country in which the person registers with the employment services and is available for the labour market.

5.4.4.3.1 Option 2a: The unemployed cross-border worker shall register with the employment services in the State of last activity

Under this option, the unemployed cross-border worker registers with the employment services of the State of last activity and will claim benefits there.

This option assumes that the worker is to a certain degree integrated into the labour market of the State of last activity and is orienting towards finding a job in this Member State. If the person rather wishes to return to the State of residence to look for work there, he/she can make use of the right to export the unemployment benefits from the competent Member State to the Member State of residence. Whilst the unemployed worker still needs to comply with the obligations in the State of last activity, the

employment services in the Member State of residence will carry out verification procedures and provide assistance with jobseeking activities on behalf of the competent institution.

5.4.4.3.2 Option 2b: The unemployed cross-border worker is awarded the choice to register with the unemployment services in the State of last activity, or the State of residence

This option is the same as option 2a when it comes to the payment of the benefit, but offers the unemployed cross-border worker the opportunity to either register with the employment services in the State of last activity, or in the Member State of residence.

The aim of this option is to offer cross-border workers whose habitual place of residence is far away from their place of last activity the opportunity to fulfil the jobseeking activities in their Member State of residence. If the legislation of the competent Member State requires participation in activation measures, training and physical presence, a person will satisfy these criteria by performing the obligations in the State of residence.

Secondly, this option also aims to facilitate the check on jobseeking obligations by the employment services in the State of residence on behalf of the State of last activity[247].

As the Member State of residence will be made responsible for following up on the jobseeking activities of the person concerned, but will not reap the financial benefits from these activities, incentives will require introduction for the Member State of residence to check this. In this respect, the employment services in the State of residence should be given discretionary power to mandate extra activity that meets the needs of the regional labour market. Enhanced mobility support services and improved exchanges of information within the EURES network could contribute to providing assistance to persons on behalf of the employment services in another Member State. In addition, the public employment services (PES) are encouraged to develop partnerships to promote a coherent service package to employers as regards intra-EU labour mobility[248].

5.4.4.4Option 3: Provide for the payment of unemployment benefits by the Member State of last activity only in situations where the cross-border worker has worked there for a sufficiently representative period (at least 12 months)

When discussing this option in the Administrative Commission, it was noticeable to what extent the delegations were divided between keeping the system as it is now[249], and moving to a coordination system under which the State of last activity is paying the unemployment benefits. The delegations in favour of the status quo feared that a change of the coordination system would not provide adequate protection for the person and would put a heavy financial burden on the State of last activity in case of short periods of employment there. Moreover, this option would require more stringent monitoring and control measures from the labour market authorities in the Member State paying the benefits.

The divide between Member States was the reason to develop a third option that could meet the concerns raised[250]. This option only makes the State of last activity competent if the cross-border worker is deemed to have a 'sufficient link' with the labour market of the State of last activity. This 'sufficient link' is reflected in the duration of insurance for unemployment benefits in the State of last activity. The rationale for this option is that Member States will not be confronted with claims for unemployment benefits after only a very short period of insurance in that Member State. Moreover,

[247] The CJEU has concluded in the *Caves Krier* case (Case C-379/11) that a Member State may not make the registration of a jobseeker subject to the condition of residence on its territory.
[248]. The Commission Staff Working Document on Reforming EURES to meet the goals of Europe 2020 (SWD(2012) 100 final) sets out the goals and lines along which the EURES reform will take place.
[249] Germany, Ireland, Denmark, the Netherlands, Austria, Greece, Slovakia.
[250] This option is a compromise solution and no explicit consultation has taken place.

the option aims at a better correlation between the level of the benefit and the earning level of the person concerned.

The link with the labour market of the State of last activity arises from the insurance under an unemployment scheme of that State for at least the last 12 months before becoming unemployed. This length of the period is based on the average length of the reference periods in Member States[251], the distribution of the average duration of current unemployment spells among cross-border workers, plus the fact that nearly all conflict rules in Regulation (EC) No 883/2004 refer to the period of 12 months as a reference period for establishing either a connection to the social security system of a Member State[252], or for acquiring rights[253].

It is also based on the assumption that having been insured in another Member State for at least 12 months[254] creates a close link with the labour market of the State of last activity, which gives the unemployed cross-border worker a good chance of finding suitable employment in that State. If the person wishes to register with the employment services in the State of residence, he/she can opt to export the unemployment benefits from the State of last activity.

In the situation where a person has not fulfilled the reference period in the State of last activity, the Member State of residence is competent for paying the unemployment benefits,[255] therefore rendering the current reimbursement mechanism redundant. Also under this option, two sub-options can be explored that differ as regards the possibilities to register with the employment services in the State (not) paying the benefits:

5.4.4.4.1 Option 3a: The unemployed person shall register with the employment services in the State of last activity

In the situation where the State of last activity is competent to pay the unemployment benefits, the unemployed cross-border worker is required to register with the employment services in the State of last activity.

5.4.4.4.2 Option 3b: The unemployed person is awarded the choice to register with the unemployment services in the State of last activity, or the State of residence

Under this option, the competent Member State will remain responsible for paying the unemployment benefits, whereas the unemployed cross-border worker can register with the employment services in the State of residence. The employment services of the State of residence will follow up on performing the checks on the jobseeking activities on behalf of the competent Member State. Enhanced mobility support services and improved exchanges of information for the EURES network could be used to provide assistance to persons on behalf of the employment services in another Member State.

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[251] Source: www.missoc.org. The reference period should be sufficiently long enough to avoid parallel entitlements in two Member States at the same time.

[252] Title II of Regulation (EC) No 883/2004.

[253] For example pension rights: only periods of insurance or residence of at least a year will be taken into account for calculating pension rights.

[254] How the 'insurance' is established, is a matter of national law. Regulation (EC) No 883/2004 defines as a period of insurance "periods of contribution, employment or self-employment as defined or recognized as periods of insurance by the legislation under which they were completed or considered as completed, and all periods treated as such, where they are regarded by the said legislation as equivalent to periods of insurance" (Article 1 (t)) . It must be stressed that Regulation (EC) No 883/2004 cannot take away rights that have been acquired independently on the basis of national legislation. If the national reference period in the State of last activity is shorter than 12 months, the person can choose if he would like to receive the unemployment benefits from that Member State.

[255] If the Member State of residence has no unemployment benefit system for self-employed frontier workers, the Member State of last Portugal, without taking account of the potentially higher earnings in the Netherlands activity will have to export the unemployment benefits as is currently the case.

5.4.5 *Stakeholder support for the different options concerning the provision of unemployment benefits for frontier and other cross-border workers*

5.4.5.1 Option 1: Introduce a right of choice for frontier workers to receive unemployment benefits from the Member State of last activity, or the Member State of residence

Only one delegation of the Administrative Commission seemed to support this option. Concerns were expressed that rather than the employment opportunities, the level of the benefits could be a decisive factor for making the choice. The option was supported by almost half of the individual respondents to the public consultation and 29% of the respondents who are representatives of the social partners.[256]

5.4.5.2 Option 2: Provide for the payment of unemployment benefits by the Member State of last activity either with registration with the employment services in the State of last activity (2a) or giving the worker a choice of registering with the employment services in the State of last activity or the State of residence (2b)

When presenting this option to the Administrative Commission, it was favoured by nine delegations for reasons of simplification[257]. Looking at the results of the public consultation, 40% of the individual respondents and 47% of the social partners supported this option.

5.4.5.3 Option 3: Provide for the payment of unemployment benefits by the Member State of last activity only in situations where the cross-border worker has worked there for a sufficiently representative period either with registration with the employment services in the State of last activity (3a) or giving the worker a choice of registering with the employment services in the State of last activity or the State of residence (3b)

These options were developed in direct response to feedback from Member States in the Administrative Commission to address concerns about the potential financial burden on the State of last activity in case of short periods of employment there and the need for robust monitoring and control measures from the labour market authorities in the Member State paying the benefits. Option 3 (and its sub-options) was developed as a compromise in response to this feedback but no formal consultation on this option has taken place.

5.4.6 *Impact assessment of the different options concerning the provision of unemployment benefits for frontier and other cross-border workers frontier workers*

These options are assessed for the specific group of frontier workers and cross-border workers. It has not been possible to give quantitative estimations for the possible secondary effects on their mobility.

As the number of outgoing and incoming cross-border workers differs between Member States, an assessment of the economic impact has to combine both situations. Moreover, the reimbursement

[256] A public consultation between December 2012 and February 2013 invited citizens and organisations to provide their views on the main problems linked to the coordination of unemployment benefits for cross-border workers.
[257] Czech Republic, Spain, Portugal, Poland, Italy, Romania, Slovenia, France and Malta.

mechanism has to be taken into account. Calculations are based on the assumption that frontier workers claim benefits in their country of residence and other cross-border workers will choose the highest amount and based on the assumption that they will receive the country-specific average amount for an average duration of unemployment.[258]

Based on Labour force Survey (LFS) data for 2013 and 2014, an estimation of the number of cross-border workers has been made. In the further analysis we considered all workers who worked in another country than the country of residence as cross-border workers. Workers who worked in a neighbouring country are considered as frontier workers. This is different from the legal definition provided in Regulation (EC) No 883/2004. National unemployment rates from Eurostat were applied to the number of cross-border workers in order to estimate the number of unemployed cross-border workers. The unemployment rates of the country of last activity and not of the country of residence have been applied on the number of cross-border workers. In order to estimate the budgetary impact of the baseline scenario, the estimated number of unemployed cross-border workers are multiplied by the annual unemployment benefit per unemployed by taking into account the annual average duration of the payment of the unemployment benefit (on the basis of ESSPROS, Eurostat figures and the LFS).

There are no reliable figures on the administrative cost for handling claims for unemployment benefits for cross-border workers. A stylised and cautious estimate on the regulatory costs on the basis of a limited number of Member States comes to the conclusion[259], that in all cases, in which the State of residence pays the unemployment benefit, this results in an additional administrative cost of around € 43 for the handling of a PD U1 in the State of residence and some € 20 in the State of last activity. For the processing of a reimbursement claim, the regulatory costs are estimated at € 20 in both countries. Multiplying this estimated standard cost with the total number of cases results in a total administrative cost for the payment of the unemployment benefit has been used to estimate the regulatory costs.

[258] Source: Table 2.4 in Annex XXVI.
[259] See Table 2.9 of Annex XXVI.

5.4.6.1 Summary of the impact of different options concerning the provision of unemployment benefits for frontier and other cross-border workers

Type of impact	Clarification	Simplification	Protection of rights	Fundamental rights	Economic impacts	Regulatory costs	Risk of fraud and abuse	Equitable burden sharing Member State	Coherence with General, Specific and EU objectives	Overall Effectiveness	Overall Efficiency (cost vs effectiveness
Baseline Scenario	0	0	0	0	0[260]	0[261]	0	0	0	0	0
Option 1	-	-	++	+	-[262]	+[263]	-	-	+	+	-
Option 2a	+	+	+	+	-[264]	+[265]	+/-	+/-	++	+	+
Option 2b	+	+/-	+	+	-[266]	-[267]	+/-	+/-	+	+	-
Option 3a	+	+	+	+	-[268]	+[269]	+	+	++	++	++
Option 3b	+	+/-	+	+	-[270]	-[271]	+	+	+	++	+

[260] € 416 m is budget devoted to the payment of unemployment benefits to frontier and other cross-border workers This figure also takes the effect of the reimbursement mechanism into account Table 2.4 in Annex XXVI.
[261] € 9.9 m is the cost of handling unemployment benefits for frontier and other cross-border workers.
[262] Budget devoted to the payment of unemployment benefits increases to € 556 m.
[263] The regulatory costs decrease to € 4.9 m See Table 2.9 of Annex XXVI.
[264] Budget devoted to the payment of unemployment benefits increases to € 499 m.
[265] The regulatory costs decrease to € 3.7 m.
[266] Budget devoted to the payment of unemployment benefits increases to € 499 m.
[267] Regulatory costs will increase due to additional cooperation and control mechanisms.
[268] Budget devoted to the payment of unemployment benefits increases to € 442 m.
[269] The regulatory costs decrease to €5.1 m.
[270] Budget devoted to the payment of unemployment benefits increases to € 442 m.
[271] Regulatory costs will increase due to additional cooperation and control mechanisms.

5.4.6.2 Impacts of Policy Option 1: Introduce a rights of choice for frontier workers to reeive unemployment benefits either in the State of last activity or State of residence.

Policy Option 1: Introduce a right of choice for frontier workers to receive unemployment benefits either in the State of last activity or the State of residence		
Social impacts		
Clarification	-	For the workers and public institutions, this option will cause a significant increase in uncertainty as the choice is only made at the moment when a person falls unemployed.
Simplification	-	In comparison to the baseline, this option does not lead to a simplification, as the right of choice is only made at the moment when the person claims unemployment benefit. It also requires effective follow-up of the jobseeking activities of the unemployed person who does not reside in the Member State paying the benefit.
Protection of rights	++	This option contributes to optimise a frontier worker's chances of resuming employment under the most favourable conditions by providing the worker with the maximum amount of freedom to decide where they have the best chances of finding work
Financial impact	-	This option will lead to an overall increase of the annual unemployment benefit expenditure for cross-border workers of 34% (€ 556 million instead of € 416 million under the baseline scenario[272]) due to the fact that the persons concerned are likely to choose the scheme providing the highest benefit (Annex IX – Table 2.10 and Annex XXVI – Table 2.4). The estimated effect differs for the individual Member States depending on the average amount of benefits paid by the Member States concerned. For 8 Member States[273] this is the most expensive option and the least expensive option for 9 Member States[274].
Impacts on fundamental rights	+	This option contributes to the freedom to choose an occupation and the right to engage in work in another Member State (Article 15), as well as to a better protection of rights for workers who have made use of their right to free movement (Article 45). There is no incidence on the right to property (Article 17) as acquired rights to unemployment benefits are maintained.
Other impacts		
Regulatory Costs	+	This option will reduce the number of reimbursement cases between Member States, as they will be distributed between the State of last activity and the State of residence. The unemployed person makes his/her choice explicit by applying

[272] Calculations are based on the average amount of unemployment benefits paid in 2013/2014 and an assumed average duration of payment of 3 months.
[273] Czech Republic, Denmark, Germany, Ireland, Spain, Luxembourg. Netherlands and Finland, see Table 2.6 in Annex .
[274] Bulgaria, Estonia, Latvia, Hungary, Poland, Portugal, Slovak Republic, Sweden and the United Kingdom.

		for unemployment benefits, thereby providing all the information required under the national legislation. If the unemployed person wishes to receive the unemployment benefit from the State of residence, they can request a PD U1 from the State of last activity and submit it to the institution where they claim unemployment benefit. If the unemployed person opts to receive unemployment benefits from the State of last activity, this will result in a 'permanent export' of the unemployment benefits by that State, necessitating information exchange between the institution in the State of residence and in the competent Member State on the follow-up of the jobseeking activities of the person concerned. The administrative cost for the State of residence is estimated at € 4.9 million (Annex XV - Table 15 and Annex XXVI – Table 2.9). This is a decrease of 50% in comparison to the baseline scenario (of € 9.9 million euro). The costs for issuing PD U1s by the State of last activity drops from € 51.400 to € 18.500; a decrease in the administrative burden of 64% (Annex XV - Table 14[275]).
Risk of fraud and abuse	-	This option itself does not lead to an increased risk of fraud and abuse, as the person concerned is subject to the same obligations as any other unemployed person in the Member State of which he or she chooses to receive the unemployment benefits. The risk of 'opportunistic behaviour' rather relates to the choice from which country to receive unemployment benefits. As was indicated by many public authorities in the stakeholder consultation, the labour market chances may frequently not outweigh the choice for the most generous unemployment benefits.
Fair burden sharing between Member States	-	This option is likely to put a additional burden in particular on the Member States with comparatively high unemployment benefits and will therefore not lead to a more equitable distribution of the financial burden for Member States.
Coherence with General, Specific and wider EU Objectives: Continue the modernisation of the EU Social Security Coordination Rules by further facilitating the exercise of citizens' rights while at the same time ensuring legal clarity, a fair and equitable distribution of the financial burden among the institutions of the Member States involved and administrative simplicity and enforceability of the rules. • Frontier and other cross-border workers, who reside in another Member State than the State of last activity, shall benefit from the same **protection of rights** in case of unemployment. • Frontier and other cross-border workers, who reside in another	+	The unemployed frontier worker is offered the greatest flexibility to re-integrate into the labour market of their choice. It will eventually reduce the administrative burden of processing reimbursement and will shift a part of the financial burden from the State of residence to the State of last activity. However, this is fully dependent on the choice that the person makes and this option entails great uncertainty for the Member States. This option also entails an overall increase in budgetary costs. It could also encourage the unemployed person to choose the State with the most generous unemployment benefits, rather than the one with the best prospects for re-integration. However, this may still be considered coherent with the wider EU policy objective to promote greater support and labour activation measures to promote reintegration into the labour market.

[275] This calculation is based on stylized estimates.

Member State than the State of last activity, shall benefit from the **best available opportunities of reintegration** in the labour market. • **The financial burden** for paying unemployment benefits **shall be distributed** between the competent Member State of last activity and the Member State of residence in a manner that corresponds to contributions or taxes received in a way which is **easy to administer** and achieves **fair results.**		

5.4.6.3 Impacts of Policy Option 2a: Member State of last activity provides the unemployment benefits to frontier workers and other cross-border workers – registration for employment services in Member State of last activity

Policy Option 2a: Introduce the rule in Regulation (EC) No 883/2004 according to which the Member State of last activity provides the unemployment benefits to frontier workers and other cross-border workers – requirement to register with the employment services in the Member State of last activity		
Social impacts		
Clarification	+	This option will bring more clarity for the unemployed cross-border workers and the institutions, as it will always be the institution in the Member State of last activity that pays out the benefit. The person will receive all benefits from the same source, which will provide welcome clarification in relation to cases where a person receives another benefit from the of last State (i.e. a partial invalidity benefit).
Simplification	+	One system will apply to all unemployed persons and there will no longer be a distinction between frontier and other cross-border workers. A direct link will be established between benefits and contributions and there is no need for a reimbursement mechanism. Persons residing at a large distance from the Member State of last activity may face more difficulties in meeting the eligibility conditions, as they will have to travel a longer way for this purpose to their competent employment service, but these could be mitigated by an option to claim an export of their unemployment benefits to their Member State of residence. This means that persons who prefer to orientate to the labour market of the State of residence can return to that State by using the right to export their unemployment benefits. This means that the unemployed person can be more responsive to the relative likelihood of finding a job in the different Member States, and can direct his or her efforts to the Member State with the best job opportunities in their particular field.
Protection of rights	+	This option ensures that cross-border workers are not treated differently from other workers in the same situation, who work and reside in the same Member State. It also ensures that unemployment benefits are paid under the conditions and at the

		amount acquired by the payment of contributions.
Financial impact	-	The total expenditure on unemployment benefits will increase from € 415 million to € 499 million; an increase of 20% in comparison to the current scenario. This is due to the fact that cross-border workers use to work in countries with comparatively heigher wages and correspondingly higher benefits (see (Annex XV - Table 2.2 and Annex XXVI – Table 2.4). The estimated effect differs for the individual Member States depending on the average amount of benefits paid and depending on the relation of frontier works to other cross-border workers residing in the Member State concerned.[276] From a Member States' perspective, very short period of employment can have a negative financial impact, when no contributions were received in proportion to the cost for paying the unemployment benefit.
Impacts on fundamental rights	+	This option eliminates differences in treatment between frontier workers and other cross-border workers and contributes to the freedom to choose an occupation and the right to engage in work in another Member State (Article 15) as well as to a better protection of rights for workers who have made use of their right to free movement (Article 45). The right of property (Article 17) is protected, as the person directly receives the benefits from the State to which he/she lastly paid contributions.
Other impacts		
Regulatory Costs	+	Only one Member State will be competent for paying unemployment benefits and monitoring the availability of the person to the labour market. The unemployed person can apply directly to the institution in the Member State in which he/she was insured during the last employed activity. Reimbursement arrangements are no longer necessary. Member States will have to waive residence conditions for persons registering with their employment services and may have to make changes to their administrative procedures to check upon persons residing outside their territory. It is also the cheapest option, as the total regulatory costs are reduced from around € 9.9 million to € 3.7 million, i.e. to 37% of the costs under the baseline scenario (Annex XXVI – Table 2.9).
Risk of fraud and abuse	+/-	This option itself does not lead to an increased risk of fraud and abuse, as all unemployed persons are subject to the same obligations as any other unemployed person in the Member State of last activity.However, in the case of export of unemployment benefits there may be a perceived risk that jobseeking obligations are not fully complied with (see section 5.3.1).
Fair burden sharing between Member States	+/-	This option will lead to a more equitable distribution of the costs related to the payment of benefits for Member States who have a relatively large number of unemployed frontier workers residing in that Member State. It will also remove the obligation

[276] It is the most expensive option for Greece, Cyprus, Malta, Austria and the United Kingdom

		to reimburse the Member State of residence. However, it may also lead to the situation that benefits have to be provided by a Member State after a relatively short period of insurance.
Coherence with General, Specific and wider EU Objectives: Continue the modernisation of the EU Social Security Coordination Rules by further facilitating the exercise of citizens' rights while at the same time ensuring legal clarity, a fair and equitable distribution of the financial burden among the institutions of the Member States involved and administrative simplicity and enforceability of the rules. • Frontier and other cross-border workers, who reside in another Member State than the State of last activity, shall benefit from the same **protection of rights** in case of unemployment. • Frontier and other cross-border workers, who reside in another Member State than the State of last activity, shall benefit from the **best available opportunities of reintegration** in the labour market. • **The financial burden** for paying unemployment benefits **shall be distributed** between the competent Member State of last activity and the Member State of residence in a manner that corresponds to contributions or taxes received in a way which is **easy to administer** and achieves **fair results.**	++	This option restores the direct link between receiving unemployment benefits and availability for the labour market. The financial and administrative burden shifts to the State of last activity, leading to an absolute increase in terms of financial and administrative burden in States that have a high number of incoming cross-border and frontier workers, although overall in fewer Member States this option has the lowest budgetary impact. Moreover, this option does not prevent the Member State of last activity becoming competent even after a very short period of activity there, which would in reality not contribute to an even burden sharing. This option provides for some flexibility for the person concerned, who can continue looking for work in the State of last activity or, by making use of the export of benefits, can return to the Member State of residence to look for employment there. However, where the person is residing far away from the place where he/she is registered with the employment services, he/she can experience difficulties in following up on the jobseeking activities. This therefore may not be considered entirely coherent with the wider EU policy objective to promote greater support and labour activation measures to promote reintegration into the labour market.

5.4.6.4 Impacts of Policy Option 2b: Member State of last activity provides the unemployment benefits to frontier workers and other cross-border workers – choice of registration for employment services in either Member State of last activity or State of residence

Policy Option 2b: Introduce the rule in Regulation (EC) No 883/2004 according to which the Member State of last activity provides the unemployment benefits to frontier workers – choice to register with the employment services in the Member State of last activity, or the Member State of residence		
Social impacts		
Clarification	+	This option will bring more clarity for the unemployed person and the institution, as it will always be the institution in the Member State of last activity that pays out the benefit for all unemployed persons. On the other hand, it contributes to optimise a frontier worker's chances of resuming employment under the most favourable conditions, either in the Member State of last activity, or in the State of residence

Simplification	+/-	One system will apply to all unemployed persons and there will no longer be a distinction between frontier and other cross-border workers. A direct link will be established between benefits and contributions and there is no need for a reimbursement mechanism. However, the split of competences between the payment of the benefits and the responsibility to follow-up on the jobseeking activities of the person concerned calls for new arrangements between the competent Member State and the State of residence.
Protection of rights	+	This option ensures that all cross-border workers are treated equally. They would also get the same benfits under the same conditions as workers who work and reside in the Member State in which they pursued their activity. From the point of view of the Member States this is also positive; as it is in their interest to allow their unemployed persons to look for work in the Member State where they are most likely to find it. Therefore, the impact in comparison to the baseline scenario is considered as being positive.
Financial impact	-	The economic impact is the same as for option 2a. The costs for the introduction of the cooperation mechanism will depend on the specifics of the mechanism and could therefore not be quantified.
Impacts on fundamental rights	+	The impact on fundamental rights is the same as for option 2a.
Other impacts		
Regulatory Costs	-	The impact on regulatory costs is the same as for option 2a. However, additional cooperation and control mechanisms need to be established, as the responsibility for paying unemployment benefits and checking availability for work can lie with different institutions. The cooperation mechanism should not only include regular reporting on the situation of the unemployed person, but also provide for incentives for the employment services in the State of residence to actively follow-up on the jobseeking activities, and possible financial compensation for providing active labour market measures on behalf of another Member State. This could have a negative impact on the administrative burden in comparison to the baseline scenario, depending, in each case, on the actual measures taken.
Risk of fraud and abuse	+/-	This option itself does not lead to an increased risk of fraud and abuse, as all unemployed persons are subject to the same obligations as any other unemployed person in the Member State of last activity. There may be a need to incentivise the employment services in the State of residence to actively

		follow-up on the jobseeking activities.
Fair burden sharing between Member States	+/-	From the perspective of providing the unemployment benefits, this option establishes a direct link between receiving contributions and providing unemployment benefits. It will also remove the obligation to reimburse the Member State of residence. Active labour market assistance measures will, in the first place, be at the expense of the employment services in the State of residence. However, it may also lead to the situation that benefits have to be provided by a Member State after a realtively short period of insurance.
Coherence with General, Specific and wider EU Objectives: Continue the modernisation of the EU Social Security Coordination Rules by further facilitating the exercise of citizens' rights while at the same time ensuring legal clarity, a fair and equitable distribution of the financial burden among the institutions of the Member States involved and administrative simplicity and enforceability of the rules. • Frontier and other cross-border workers, who reside in another Member State than the State of last activity, shall benefit from the same **protection of rights** in case of unemployment. • Frontier and other cross-border workers, who reside in another Member State than the State of last activity, shall benefit from the **best available opportunities of reintegration** in the labour market. • **The financial burden** for paying unemployment benefits **shall be distributed** between the competent Member State of last activity and the Member State of residence in a manner that corresponds to contributions or taxes received in a way which is **easy to administer** and achieves **fair results.**	+	This option offers the person concerned the opportunity to register with employment services in the State of residence. This option provides the unemployed persons a right of choice as regards their registration which may be convenient for them in particular in those situations where their place of residence is far away from the place where the competent institution in the Member State of last activity is located. They may also prefer to deal with their local institution for linguistic reasons. There is however also a drawback to this option as the current rules only provide for an export of cash benefits, but not necessarily also for the provision of training and reactivation measures in a country different from the one where the competent institution is located. This therefore may not be considered coherent with the wider EU policy objective to promote greater support and labour activation measures to promote reintegration into the labour market. The institution in the State of residence may want to be compensated for these type of activities provided to the person concerned.

5.4.6.5 Impacts of Policy Option 3a: Member State of last activity provides the unemployment benefits to frontier workers and other cross-border workers only if person has worked there for 12 months– registration for employment services in Member State of last activity

Policy Option 3a: Introduce a rule in Regulation (EC) No 883/2004 that the State of last activity only pays unemployment benefit if the person has worked there for a sufficiently representative period , i.e. for 12 months – registration with the State of last activity
Social impacts

Clarification	+	This option establishes a direct causal link between the level of integration in the labour market of a Member State and compensation for lost employment periods. The link with the labour market arises from the length of the contributions paid in the State of activity and will provide a balanced reflection of the relationship between the contribution period and acquiring the right to unemployment benefits.
Simplification	+	There will be a 'switch' between the competent Member State and the State of residence dependent on the employment duration of the former cross-border workers. The impact for persons residing at a large distance from the Member State of last activity will be the same as 2a.
Protection of rights	+	The unemployed person will always receive unemployment benefits from the State with which he/she has the closest link with the labour market, either from the State of last activity or the State of residence.
Financial impact	-	This option will lead to an increase of 6% in budgetary costs for Member States from € 416 million to € 442 million (Annex IX – Table 2.10 and Annex XXVI – Table 2.4[277]). For 6 Member States , this option has the lowest budgetary impact, whereas for 5 Member States, it is the most costly option (Annex X– Table 2.6 and and Annex XXVI – Table 2.4). Many 'outgoing' (seasonal) workers have their place of residence in these countries. They are mostly employed less than 12 months, which means that they will have to claim unemployment benefits in their State of residence. When looking at the distribution of unemployment benefits for incoming cross-border workers, under this option 12% of the total unemployment benefit will be paid by the State of residence and 88% by the State of last activity (Annex XXVI – Table 2.7). The Member State of last activity thus has a higher share in the payment of unemployment benefits than under the current scenario (68%), but it is guaranteed that it has received contributions corresponding to at least 12 months of insurance. Based on 2.2c of Annex XXVI, 53.800 unemployed frontier workers would receive unemployment benefits in the State of last activity on the basis of their insurance for at least 12 months there. In the baseline scenario, only the 28.500 cross-border workers can claim unemployment benefits from the State of last activity (73.700 – 45.200 frontier workers). This explains why the 70-30% division between the State of last activity and the State of residence moves to 88%-12% under this option, as more frontier workers will receive unemployment benefits from the State of last activity.

[277] The same calculation method has been used as for option 1. Calculations are based on the assumption that the 'sufficiently representative period' is set at 12 months.

Impacts on fundamental rights	+	The impact on fundamental rights is the same as for option 2. The right to property (Article 17) is protected, as the person will always have an entitlement to unemployment benefits corresponding to the period of contributions paid into a system.
Other impacts		
Regulatory Costs	+	Depending on the employment history of the person during the last 12 months, the competence for paying unemployment benefits will switch between the State of last activity and the State of residence. Member States do not have to apply the aggregation rules for determining the period of 12 months (it concerns a minimum period that the person must have worked in the State of last activity) and hence there is additional information exchange needed between the competent Member State and the State of residence as regards the reference period of 12 months. For the opening of the right to unemployment benefits the information obligations for the person and the information exchanges between Member States or the purposes of aggregation will be the same as under the baseline scenario. In combination with the annulment of the reimbursement procedure, this option has a postive impact on administrative burden for the institutions in comparison to the baseline scenario. The total amount of the regulatory costs for this option are estimated at around € 5.1 million, a reduction of approximately 4.8 million or 51% of the baseline scenario. As verification of jobseeking activities and benefit payment will both be dealt with by the same institution in the State of last activity, this option can help reduce administrative burden caused by 'cross-border' monitoring of the benficiary.
Risk of fraud and abuse	+	This option itself does not lead to an increased risk of fraud and abuse. There is no incentive for 'opportunistic behaviour' due to the binding effect of the conflict rule. Moreover, this option excludes the possibility that a person can claim unemployment benefit in a Member State after having worked there for only one day, or too short a period to have a genuine link with the labour market of the State of last activity. Periods of insurance in other Member States cannot be aggregated for the calculation of the 12 month period to avoid 'forum shopping'. Verification of jobseeking activity and benefit payment are linked and carried out by the same institution. This makes ensuring applicable jobseeking activities are being carried out easier for the institutions of the State of last activity.
Fair burden sharing between Member States	+	This option ensures that the cost of the unemployment benefits are divided between the relevant Member State in a way that is proportional to level of contributions or income tax received by the competent Member State. A reimbursement mechanism is no longer needed.
Coherence with General, Specific and wider EU Objectives: Continue the modernisation of the EU Social Security Coordination Rules by further facilitating the exercise of citizens' rights while at the same time	++	This is a 'compromise' solution. It not only restores the direct link between receiving contributions and paying unemployment benefits, but also guarantees a ‘sufficiently close link’ in terms of received contributions and labour market integration. It may therefore be considered to promote greater efforts by the worker to reintegrate into the labour market by requiring the worker to

ensuring legal clarity, a fair and equitable distribution of the financial burden among the institutions of the Member States involved and administrative simplicity and enforceability of the rules. • Frontier and other cross-border workers, who reside in another Member State than the State of last activity, shall benefit from the same **protection of rights** in case of unemployment. • Frontier and other cross-border workers, who reside in another Member State than the State of last activity, shall benefit from the **best available opportunities of reintegration** in the labour market. • **The financial burden** for paying unemployment benefits **shall be distributed** between the competent Member State of last activity and the Member State of residence in a manner that corresponds to contributions or taxes received in a way which is **easy to administer** and achieves **fair results.**		register with the employment services in this location in a manner aligned to wider EU policy objectives on active labour market policy. This can meet the objective of proportionate sharing of the burden between Member States.

5.4.6.6 Impacts of Policy Option 3b: Member State of last activity provides the unemployment benefits to frontier workers and other cross-border workers only if worker has worked there for 12 months– choice of registration for employment services in either Member State of last activity or State of residence.

Policy Option 3b: Introduce the rule in Regulation (EC) No 883/2004 that the State of last activity only pays unemployment benefit if the person has worked there for a sufficiently representative period – choice of registration		
Social impacts		
Clarification	+	This option establishes a direct causal link between the level of integration in the labour market of a Member State and compensation for lost employment periods. The link with the labour market arises from the contributions paid in the State of activity and will provide a balanced reflection of the relationship between the contribution period and acquiring the right to unemployment benefits.
Simplification	+/-	Member States' institutions may have to apply a greater amount of flexibility when it comes to recognising the availability for the labour market in another Member State with availability in the competent Member State and procedures need to be set up for that purpose for both the citizen and the national authority.

Protection of rights	+	This option will be beneficial for persons receiving unemployment benefits from the State of last activity and residing far away from the State of last activity. It will contribute to optimising the unemployed person's chances of resuming employment under the most favourable conditions, either in the State of residence or in the State of last activity.
Financial impact	-	The impact is the same as for option 3a. The costs for the introduction of the cooperation mechanism will be dependent on the specifics of the mechanism and could therefore not be quantified.
Impacts on fundamental rights	+	The impact on fundamental rights is the same as for option 2a.
Other impacts		
Regulatory Costs	-	Depending on the employment history of the person during the last 12 months, responsibility for paying unemployment benefits will switch between the State of last activity and the State of residence. Member States do not have to apply the aggregation rules for determining the period of 12 months and the Member State of last activity only needs to take into account the periods effectively fulfilled within its territory. A reimbursement procedure is no longer necessary, but additional cooperation and control mechanisms need to be established, as responsbility for paying the unemployment benefits and checking the availability for work lie with different institutions. The cooperation mechanism should not only include regular reporting on the situation of the unemployed person, but also provide for incentives for the employment services in the State of residence to actively follow-up on the jobseeking activities of the person, and possible financial compensation for providing active labour market measures to the person on behalf of another Member State. This will have a negative impact in comparison to the baseline scenario.
Risk of fraud and abuse	+	This option itself does not lead to an increased risk of fraud and abuse. There is no opportunity for the unemployed person to go 'forum shopping' due to the binding effect of the conflict rule. Moreover, this option excludes the possibility that a person can claim an unemployment benefit in a Member State after having worked there for only one day, or too short a period to have a genuine link with the labour market of the State of last activity. The employment services in the State of residence may need to be incentivised to actively follow-up on the jobseeking activities without the responsibility for the payment.
Fair burden sharing between Member States	+	From the perspective of providing the unemployment benefits, this option establishes a direct link between receiving contributions and providing unemployment benefits. There is

		no need for reimbursement of the unemployment benefits. Active labour market assistance measures will, in the first place, be at the expense of the employment services in the State of residence.
Coherence with General, Specific and wider EU Objectives: Continue the modernisation of the EU Social Security Coordination Rules by further facilitating the exercise of citizens' rights while at the same time ensuring legal clarity, a fair and equitable distribution of the financial burden among the institutions of the Member States involved and administrative simplicity and enforceability of the rules. • Frontier and other cross-border workers, who reside in another Member State than the State of last activity, shall benefit from the same **protection of rights** in case of unemployment. • Frontier and other cross-border workers, who reside in another Member State than the State of last activity, shall benefit from the **best available opportunities of reintegration** in the labour market. • **The financial burden** for paying unemployment benefits **shall be distributed** between the competent Member State of last activity and the Member State of residence in a manner that corresponds to contributions or taxes received in a way which is **easy to administer** and achieves **fair results.**	+	This option offers the person concerned the opportunity to register with the employment services in the State of residence. From the point of view of the need for a sufficiently close link with the labour market, is seems more difficult to justify why payment of benefits should be separated from availability for the labour market. Without a cooperation and reimbursement mechanism, the incentive for the institution in the State of residence to actively support the unemployed person could be low. This therefore may not be considered coherent with the wider EU policy objective to promote greater support and labour activation measures to promote reintegration into the labour market. This option is more effective for the unemployed person concerned, but has as an important drawback in that it necessitates setting up a new cooperation mechanism, which may increase regulatory burden contrary to the objective of establishing an easy to administer system.

5.4.7 Conclusions – Combination of Preferred Options

Except for the horizontal option on the recognition of periods for the purpose of their aggregation, all the other options cannot be seen in isolation. A compromise is required between the objective to ensure a proportionate distribution of the financial burden, the objective of providing a unifom and consistent application of the aggregation and culcuation rules that reflect the degree of integration of the worker with the insurance system and the objective to ensure the best conditions for the unemployed person for reintegration in the labour market and to protect him/her against the loss of rights.

Such a compromise should aim at ensuring that a Member State becomes responsible for paying the unemployment benefit only after a sufficient link had been established by the mobile worker to the scheme in question, it should aim at ensuring administrative simplicity which means that – where possible –the full administrative procedure of registration, determination and payment of benefits, and assistance in offering job opportunities should be in the hand of one institution and that this competent

institution should be, where possible, the institution which is in close distance to the place of residence of the beneficiary. Should the latter not be the case, then an extended period for exporting unemployment benefits will allow the unemployed person to stay in or return to the Member State with which he/she has the closest ties and the highest probability of finding a job.

From the comparison of the options under Section 7, it follows that:

For the coordination of unemployment benefits, the best compromise would be a combination of option 2b for the aggregation of periods in combination with the horizontal option regarding the recognition of periods for the purpose of aggregation, option 1 for the export of unemployment benefits, and option 3a for competence and registration, of.

This combination of options would ensure that:

a) Periods completed in another Member State are only taken into account by way of aggregation, where those periods would also have been considered as periods of insurance in that Member State where they have been completed;

b) The Member State of last activity becomes competent for the aggregation of periods in all cases in which the insured person had been most recently insured that State for at least three months;

c) The Member State of previous activity becomes competent and has to export the benefit whenever this condition has not been satisfied;

d) Cash benefits are exported, i.e. are paid to unemployed persons looking for a job in another Member State than the competent one for an extended period of at least six months in order to provide sufficient time for an effective job search;

e) The Member State of last activity would remain competent for providing unemployment benefits to frontier and other cross-border workers in all cases where those persons have been insured there for at least 12 months, because it can be assumed that this suffices to create a strong link to the labour market of this State;

f) The Member State of residence becomes competent for those who have not satisfied this requirement and thus have not established such a strong link.

6. Access by econonically inactive mobile citizens to certain social benefits

6.1. Introduction

For a number of years social security institutions have had to deal with two distinct sets of EU rules regarding access to welfare benefits by economically inactive citizens from other EU Member States. On the one hand, Regulation (EC) No 883/2004 which provides for equal treatment in relation to social security benefits. On the other hand, Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States ("the Free Movement Directive")[278] which applies limitations and conditions to the residence of EU citizens and their families in other Member States and contains a number of exceptions from equal treatment as regards access to Member States' social assistance systems. Although Regulation (EC) No 883/2004 and Directive 2004/38/EC were negotiated partly at the same time and adopted by the EU legislators on the same day (30 April 2004), Regulation (EC) No 883/2004 makes no reference to the Directive; nor does the Directive make any reference to the coordination Regulation. The relationship between the two sets of rules has therefore not been entirely clear.

Social assistance encompasses all assistance schemes established by the public authorities to which recourse may be made by an individual who does not have resources sufficient to meet his own basic needs and those of his family. By reason of that fact, such an individual may, during his period of residence, become a burden on the public finances of the host Member State which could have consequences for the overall level of assistance which may be granted by that State.

Regulation (EC) No 883/2004 extends to all legislation concerning defined categories of social security. The material scope is exhaustive. Consequently, a branch of social security which is not mentioned, is in principle, outside the scope of the regulation. This is the case, for instance, for social assistance.

However, some benefits, falling within the Regulation, the so-called special non-contributory cash benefits (SNCBs), have characteristics both of social security legislation and of social assistance. SNCBs are defined as benefits which are provided under legislation which, because of its personal scope, objectives and/or conditions for entitlement, has characteristics both of the social security legislation and of social assistance (Article 70(1) Regulation (EC) No 883/2004).

SNCBs can either provide supplementary, substitute or ancillary cover against the risks covered by the branches of social security, and which guarantee the persons concerned "a minimum subsistence income having regard to the economic and social situation in the Member State concerned" or "solely specific protection for the disabled, closely linked to the said person's social environment in the Member State concerned" (Article 70(2)(a) Regulation (EC) No 883/2004).

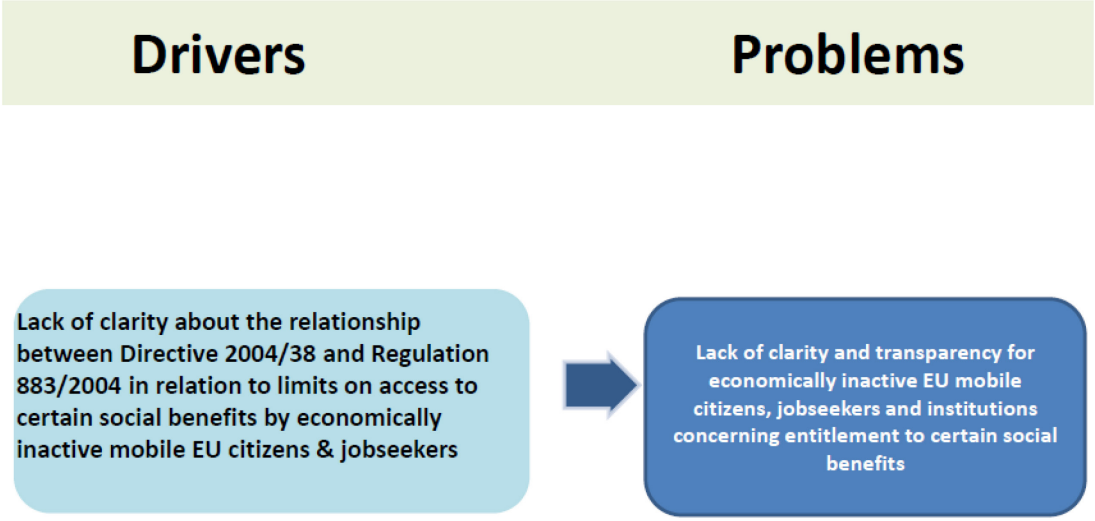
If all conditions for belonging to the SNCB category are satisfied and if the claimant falls within the personal scope of Regulation (EC) No 883/2004, SNCBs are provided exclusively in the Member State where the persons concerned reside, in accordance with its legislation and are not exportable.

As explained below, the access of economically inactive EU citizens and jobseekers to social benefits constituting social assistance in the Member State where they are not nationals has been the subject of rulings form the Court of Justice in recent years, which have clarified the relationship between the Regulation and the Free Movement Directive. At the time of preparing this Impact Assessment Report the jurisprudence of the Court of Justice was limited to finding that SNCBs could be subject to the conditions of the Free Movement Directive.

[278] OJ L158, 30.4.2004, p.77.

On 14 June 2016 the Court gave its ruling in the case of C-308/14 European Commission v United Kingdom holding that access of economically inactive EU citizens to classic social security benefits (not constituting social assistance within the meaning of the Free Movement Directive) could also be subject to such conditions.[279] This ruling has impacted on the base line scenario and hence also on the impact assessment of alternative options compared to that scenario. Following the judgment, codifying the case law of the Court by introducing a dynamic reference to the limitations to equal treatment in the Free Movement Directive implies that, in relation to economically inactive persons, Member States may make the access both to social assistance and social security benefits, subject to fulfilling the conditions referred to in that Directive. The situation is different in respect of jobseeker whose right of residence is conferred directly by Article 45 of the Treaty on the Functioning of the European Union. As a consequence, for economically inactive citizens, options 1a and 1b have become virtually the same; and option 1c and 2 have been overtaken by the jurisprudence. It should be noted, however, that following this judgment option 1a must be understood as permitting Member States, for economically inactive citizens, to derogate from the principle of equal treatment in respect of social security as well as social assistance where such a person does not fulfil the conditions for legal residence as set out in the Free Movement Directive, while for jobseekers that limitation is only possible in relation to social assistance. As this report had been approved by the Regulatory Scrutiny Board prior to the aforementioned judgment, the authors have not substantially revised the options described below or the analysis of their impact, which does not reflect this differentiated treatment of economically inactive citizens and jobseekers.

6.2. Problems with access by economically inactive mobile citizens to certain social benefits



6.2.1 *Lack of clarity and transparency for economically inactive mobile EU citizens and institutions concerning entitlement to certain social benefits*

According to the recent jurisprudence of the CJEU, Member States may choose to limit equal treatment for special non-contributory cash benefits claimed by economically inactive citizens and

[279] C-308/14 European Commission v United Kingdom.

jobseekers to the extent permitted by the Free Movement Directive. Specifically the Free Movement Directive provides that there is no obligation for Member States to award social benefits for an economically inactive citizen for the first three months of residence and after three months Member States may still refuse to award benefits if the person lacks sufficient resources not to impose an unreasonable burden on the host Member State or does not have comprehensive sickness insurance. This is not however apparent from the current wording of Regulation (EC) No 883/2004, which suggests that all mobile citizens are entitled to full equal treatment. In the absence of clear wording within the Regulation, economically inactive EU mobile citizens and jobseekers do not have a clear view of what their rights are. This lack of transparency also affects national social security institutions which pay such benefits. This is also reflected in the high number of court cases instituted in some Member States (in particular in Germany but also in the United Kingdom) seeking clarity as to the interaction between the Free Movement Directive and Regulation (EC) No 883/2004.[280]

The driver behind these specific problems is the recent jurisprudence of the Court that has changed the previous understanding of the relationship between the Social Security Coordination Rules and the Free Movement Directive. In September 2013 the Court of Justice delivered a judgment in Case C-140/12 *Brey*, subsequently confirmed in Case C-333/13 *Dano* in November 2014, which clarified that Regulation (EC) No 883/2004 on the coordination of social security systems can in certain circumstances be read in conjunction with the provisions of the Free Movement Directive. Both judgments concerned economically inactive EU mobile citizens who were claiming a specific type of minimum subsistence benefit, classified as a "special non-contributory cash benefit" within the meaning of Regulation (EC) No 883/2004. The Court held that these benefits could, under certain conditions, be regarded as social assistance within the meaning of the Free Movement Directive and that therefore the exceptions from equal treatment in the Directive could be applied to such benefits.

These conclusions were confirmed in the Court's judgment of 15 September 2015 in Case C-67/14 *Alimanovic* where the Court provided clarification of when EU law requires Member States to pay social assistance benefits to jobseekers (mobile jobseekers enjoy a specific legal status under EU law and form a separate category of mobile citizens from economically inactive citizens[281]). In particular, the Court held that special non-contributory cash benefits providing for a minimum level of subsistence and which form part of a scheme which also provides for benefits to facilitate the search for employment[282], are to be considered as social assistance if this is their predominant function. The Court also held that jobseeking EU citizens who have worked for less than one year, in case of involuntary unemployment retain their status of workers for no less than 6 months as provided for in Article 14(4)b of the Directive. As long as they retain their status as workers, these jobseeking EU citizens benefit from equal treatment and thus are entitled to social assistance benefits for this period of six months. After that period of six months, Member States are not obliged to grant social assistance by virtue of Article 24(2) of the Directive which allows Member States not to confer entitlements to social assistance during the longer period provided for in Article 14(4)b of the Directive. The Court clarified that there was no need to carry out an individual assessment before refusing to grant such benefits beyond the period of six months since such a proportionality test had already been carried out by the legislator by setting the conditions in the Directive.

The recent judgments of the Court mean that Member States can choose to limit equal treatment for special non-contributory cash benefits (and potentially other non-contributory tax financed benefits) claimed by these economically inactive citizens and jobseekers to the extent permitted by the Free

[280] There have been 99 first instance court or tribunal decisions in Germany since 1 May 2010 concerning the relationship between Regulation (EC) no 883/2004 and Directive 2004/38/EC, 67 of which have been appealed to a higher national court . There have been 11 first instance court or tribunal decisions in Germany since 1 May 2010 concerning the relationship between Regulation (EC) no 883/2004 and Directive 2004/38/EC, 2 of which have been appealed to a higher national court.

[281] See Recital 9 and Article 14(4)(b) of Directive 2004/38/EC.

[282] the CJEU has held that Member States must accord jobseekers from other Member States equal treatment in respect of "benefits of a financial nature intended to facilitate access to employment in the labour market of a Member State", provided the jobseeker can show "a genuine link" with "the employment market of that state" Case C-138/02 Collins of 23 March 2004, para. 63.

Movement Directive. This is not however apparent from the wording of Regulation (EC) No 883/2004, which still suggests that full equal treatment is the rule and furthermore the material scope of this derogation remains unclear pending the judgment of the Court in case C-308/14 European Commission v United Kingdom.[283] This means economically inactive EU mobile citizens and jobseekers do not have a clear view of what their rights are. It also affects national social security institutions which pay such benefits: EU legislation does not set out what limitations they can apply to payment of benefits to economically inactive EU mobile citizens and jobseekers. This is also reflected in the high number of court cases instituted in some Member States (in particular in Germany but also in the United Kingdom) seeking clarity as to the interaction between the Free Movement Directive and Regulation (EC) 883/2004.[284]

The consequences of this problem are that there is a lack of clarity and transparency for EU citizens as regards their right to claim special non-contributory cash benefits in their host state in order to have a minimum subsistence. There is also a similar lack of clarity for mobile jobseekers on whether they are entitled to access subsistence jobseekers' benefits when looking for work in their host State. Moreover, social security institutions which are responsible for taking decisions on claims to benefits made by these groups of mobile citizens do not have the necessary legal certainty in the rules. In particular in relation to the question of whether for the purposes of Regulation (EC) No 883/2004, the exceptions from equal treatment in the Directive apply only to special non-contributory cash benefits providing for a minimum level of subsistence, or whether the principle may extend further to other types of "classic" social security benefits for the purposes of the EU social security coordination rules. This question still awaits clarification in the case of C-308/14 European Commission v United Kingdom.[285]

6.3. *Baseline Scenario*

Out of a total EU-28 mobile population of 14.3 million in 2014[286], there were an estimated 3.7 million economically inactive mobile EU citizens[287]. If we assume that the 3.1% average yearly growth of mobile EU citizens between 2009 and 2014 continues between 2015 and 2020, and that the ratio between active and non-active mobile EU citizens also remains constant, then we can expect that in 2020, out of a total EU-28 mobile population of 17.5 million[288], there will be some 4.4 million economically inactive mobile EU citizens[289].

This group comprises many vulnerable citizens, for example, old-age pensioners, persons with a disability who cannot work, parents temporarily outside of the labour market as they are looking after children. Nearly 80% of economically inactive mobile citizens derive rights (residence rights and/or rights to benefits) from economically active family members with whom they are living in the host Member State and are entitled to equal treatment with the family members of national workers. However, there still remains a significant group of economically inactive mobile EU citizens who

[283] The case C-308/14 European Commission v United Kingdom (judgment pending) relates to the question of whether it is possible to require a right of residence as a condition of access to tax financed family benefits. Advocate General Cruz Villalón's indicated in his opinion dated 6 October 2015 that there was nothing to indicate that the findings of the Court in the cases of Brey and Dano should apply exclusively to social assistance benefits or special non-contributory benefits with which those cases were concerned (paragraph 74). The scope of "social assistance" and whether or not it may include certain classic social security benefits was also raised by a number of Member States in the Reflection Forum of the Administrative Commission in December 2014 and June 2015.

[284] There have been 99 first instance court or tribunal decisions in Germany since 1 May 2010 concerning the relationship between Regulation (EC) no 883/2004 and Directive 2004/38/EC, 67 of which have been appealed to a higher national court. There have been 11 first instance court or tribunal decisions in Germany since 1 May 2010 concerning the relationship between Regulation (EC) no 883/2004 and Directive 2004/38/EC, 2 of which have been appealed to a higher national court.

[285] C-308/14 European Commission v United Kingdom (ibid).

[286] All ages (LFS, 2014).

[287] All ages except 0-14 (LFS, 2014).

[288] All ages.

[289] All ages except 0-14.

cannot derive rights from others. It is this group of EU citizens that is affected by the current lack of clarity and transparency as regards their right to claim certain social benefits in their host state in order to have a minimum subsistence income on which to live.

Mobile jobseekers are also affected by this lack of transparency. There are in the region of 1 million EU jobseekers looking for employment in Member States other than their own[290]. Assuming that the unemployment rate in the EU between 2015 and 2020 remains at 11.7%, and that the share of mobile EU jobseekers over the total EU population also remains constant at 9%, then we can estimate that in 2020 there will be some 1.2 million EU jobseekers looking for employment in Member States other than their own. Moreover, 25% of EU citizens say they would definitely (8%) or probably (17%) consider working in another EU country in the next ten years.[291]

6.4. Objectives for the review of the rules on access by economically inactive citizens to certain social benefits

This initiative serves to facilitate the exercise of the right to free movement by creating and enabling a conducive environment. It is in the interest of all parties to design co-ordination rules that allow full exercise of citizens' rights whilst making the requirements of Member States clear, manageable and efficient.

As with other elements of the revision, the **general policy objective** of this initiative is to continue the modernisation of the EU Social Security Coordination Rules by further facilitating the exercise of citizens' rights while at the same time ensuring legal clarity, a fair and equitable distribution of the financial burden among the institutions of the Member States involved, and administrative simplicity and enforceability of the rules.

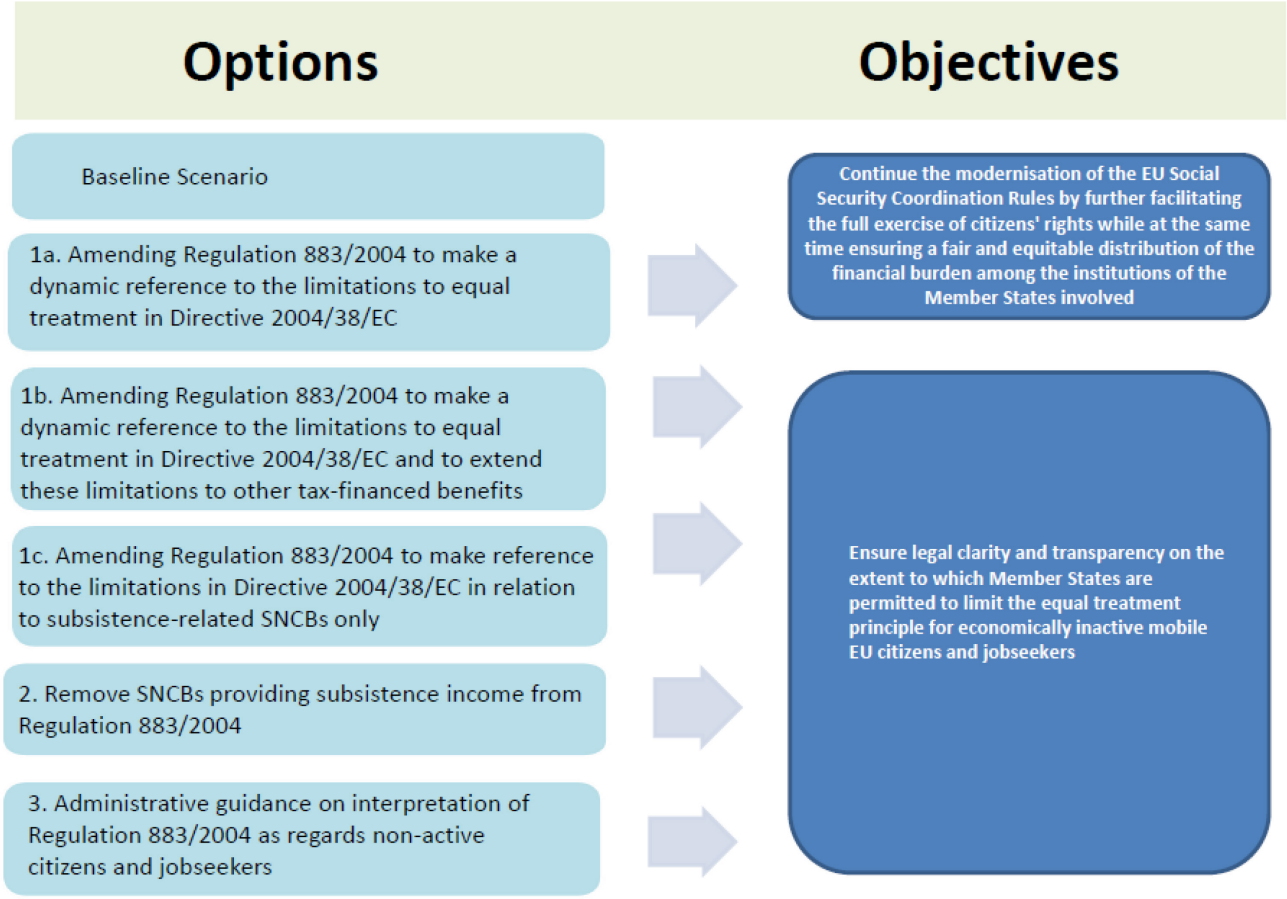
In particular, this is reflected in the need to ensure legal clarity in the rules in relation to the limitations and conditions to the residence of EU citizens and their families in other Member States and the exceptions from equal treatment as regards access to Member States' social assistance systems. This is also an issue of protection of rights as in the absence of clarity in the current rules there is inconsistent treatment of such benefits by different Member States which creates uncertainty for citizens and competent institutions and consequent difficulties in enforceability and litigation risk. Promoting legal certainty is therefore also anticipated to improve effective and efficient administration and reduce administrative burden.

The **specific objective** can be defined as follows:

Ensure legal clarity and transparency on the distinctions between the rights of workers, jobseekers and economically inactive mobile EU citizens, including the extent to which Member States' social security institutions are permitted to limit the equal treatment principle for economically inactive mobile EU citizens and jobseekers who claim certain tax financed social benefits.

[291] Special Eurobarometer 398 – Internal Market, October 2013.

6.5. Options for addressing the problems of access by economically inactive mobile citizens and jobseekers to certain social benefits



6.5.1 *Option 0: Baseline scenario*

The case-law of the Court is directly applicable in national law and this option leaves it to national decision-makers to apply the Court's judgments directly. Where questions of interpretation arise, they can be solved in national courts, which if necessary can refer issues to the Court.

6.5.2 *Option 1: Amendment of Regulation (EC) No 883/2004 to make reference to the limitations in Directive 2004/38EC*

This option codifies the Court's case-law by stipulating that the equal treatment principle of Regulation (EC) No 883/2004 may be limited in relation to payment of certain social benefits to economically inactive mobile EU citizens and jobseekers.

As the discussion with experts in the Administrative Commission in June 2015 showed, it is possible to take either a broad or a narrow approach to amending Regulation (EC) No 883/2004 to make reference to the Free Movement Directive. Option 1 can therefore be sub-divided into three sub-options:

- Introducing a general amendment to the equal treatment principle in Article 4 of Regulation (EC) No 883/2004 by referring to the possible limitations in Directive 2004/38/EC

- Introducing a general amendment to the equal treatment principle in Article 4 of Regulation (EC) No 883/2004 by referring to the possible limitations in Directive 2004/38/EC, but extending the limitations by analogy to other tax-financed benefits

- Making a more limited amendment to Article 70 of Regulation (EC) No 883/2004, which permits Member States to limit equal treatment only in relation to the specific category of special non-contributory cash benefits, which provide subsistence income.

6.5.2.1 Option 1a Amendment of Article 4 of Regulation (EC) No 883/2004 to make a dynamic reference to the limitations to equal treatment in Directive 2004/38/EC

This option would permit Member States to apply the provisions of the Free Movement Directive generally to limit equal treatment in Regulation (EC) No 883/2004. This option would permit national legislators to derogate from the principle of equal treatment in respect of social assistance in accordance with the limitations in Directive 2004/38/EC specifically to provide that Member States are not obliged to award social benefits to economically inactive persons or first time jobseekers for the first three months of residence and further are only required to award social benefits to an economically inactive citizen or first time jobseeker after three months of residence if that person has sufficient resources not to pose an unreasonable burden on public finances and has comprehensive sickness insurance. This option does not propose to define the material scope of social assistance within Regulation (EC) No 883/2004 meaning that it can evolve according to the case law of the Court of Justice.

6.5.2.2. Option 1b: Amendment of Article 4 of Regulation (EC) No 883/2004 to make a dynamic reference to the limitations to equal treatment in Directive 2004/38/EC and to extend these limitations by analogy to other tax-financed benefits

This option would also permit national legislators to derogate from the principle of equal treatment in respect of social assistance in accordance with the limitations in Directive 2004/38/EC as described in option 1a. In addition, it would expressly define the material scope to apply to certain tax-financed social security benefits, specifically non-contributory family benefits, long-term care benefits and sickness benefits for economically inactive EU mobile citizens and jobseekers in the same way as special non-contributory cash benefits, which provide subsistence income.

6.5.2.3 Option 1c Amendment of Article 70 of Regulation (EC) No 883/2004 to make a reference to the limitations in Directive 2004/38/EC in the context of benefits that provide a minimum subsistence income

This option would make clear that Member States can apply the provisions of the Free Movement Directive to limit equal treatment only in relation to special non-contributory cash benefits providing a minimum subsistence income under Regulation (EC) No 883/2004. This would have the effect of permitting national legislators to derogate from the principle of equal treatment in relation to a limited category of benefits only, namely special non-contributory cash benefits linked to minimum subsistence income payable to economically inactive citizens.

The report of the FreSsco network of experts on free movement of workers and social security coordination identified this as a possible legislative solution for dealing with the Court's recent judgments. It noted that Article 70 of the Regulation would be the appropriate place to incorporate a new provision dealing with access to social assistance benefits.[292]

6.5.3 *Option 2: Remove SNCBs providing subsistence income from Regulation (EC) No 883/2004*

This option removes SNCBs which provide a minimum subsistence income from the scope of Regulation (EC) No 883/2004. This would effectively de-classify such benefits as "social security benefits" and would leave them subject to a common, albeit non-coordinated, regime of rules under the Free Movement Directive concerning all benefits classified as social assistance.

The report of the FreSsco network of experts advised against this option on the ground that such a change would be detrimental for both citizens and for social security administrations as many of the practical and protective rules in the social security coordination rules would no longer apply.[293] The option is retained nonetheless as it offers a simple solution for dealing with the impact of the Court's rulings.

6.5.4 *Option 3: Provide administrative guidance*

This option takes a “soft law” approach through which the Commission would draw up administrative guidance on how the Court’s judgments should be interpreted. Such guidelines could deal with both questions of what benefits are covered by the judgments and with the extent to which the rules of the Free Movement Directive limit rights in Regulation (EC) No 883/2004. Such guidance would offer the advantage of containing considerably more detail than a legislative amendment. It is also easier to update and change guidance than in the case of legislation. Moreover, given the opportunities for consultation with national administrators in drawing up this guidance, it should also meet the objectives of ensuring as far as possible a common understanding of the judgments and a uniform application by national social security institutions. This option could stand on its own or be combined with another option.

6.6. **Stakeholder support**

6.6.1 *Baseline Scenario*

This option was supported by nine delegations as a first or second choice in discussions in the Administrative Commission in June 2015[294]. In addition, nine delegations supported the status quo as at least a short-term strategy, given that further judgments of the CJEU are pending[295].[296]

6.6.2 *Option 1: Amendment of Regulation (EC) No 883/2004 to make reference to the limitations in Directive 2004/38/EC*

6.6.2.1 Option 1a Amendment of Article 4 of Regulation (EC) No 883/2004 to make a dynamic reference to the limitations to equal treatment in Directive 2004/38/EC

In discussions in the Administrative Commission in June 2015, eleven Member States supported this option as a first or second choice[297]. However, there was no consensus on exactly how such an amendment should be drafted and some of those Member States were in favour of awaiting the outcome of the pending court cases before adopting a fixed position.

[293] See Annex VIII at p.52.
[294] Malta, Hungary, Italy, Poland, Portugal, Finland, Lithuania, Sweden and Spain.
[295] Czech Republic, Germany, France, Lithuania, Latvia, Luxembourg, Netherlands, Sweden and United Kingdom.
[296] Case C-299/14 Garcia-Nieto; Case C-308/14 Commission v United Kingdom.
[297] Austria, Belgium, Czech Republic, Germany, Estonia, France, Ireland, Lithuania, Latvia, Poland, United Kingdom

6.6.2.2 Option 1b Amendment of Article 4 of Regulation (EC) No 883/2004 to make a dynamic reference to the limitations to equal treatment in Directive 2004/38/EC and to extend these limitations by analogy to other tax-financed benefits

This option has not been subject to discussions with external stakeholders.

6.6.2.3 Option 1c Amendment of Article 70 of Regulation (EC) No 883/2004 to make a reference to the limitations to equal treatment in Directive 2004/38/EC in the context of SNCBs that provide for a minimum subsistence level

No Member State expressly supported this proposal.

6.6.3 *Option 2: Remove SNCBs providing subsistence income from Regulation (EC) No 883/2004*

In discussions in the Administrative Commission in June 2015, two Member States supported this option[298]. Eight Member States regarded this option as being a backward step in the development of the EU rules on social security coordination.

6.6.4 *Option 3: Provide Administrative Guidance*

In discussions in the Administrative Commission in June 2015, four Member States favoured this option[299].

Consultations with social partners and NGOs indicated mixed views as to whether there was a need for change in relation to access to benefits by economically inactive persons. Some stakeholders advocated stronger enforcement of the existing legislation to ensure public confidence in the current provisions.[300] Other stakeholders emphasised the risks to vulnerable mobile citizens and the importance of ensuring such persons were not left without social protection.[301]

6.7. **What are the impacts of the Different Options**

6.7.1 *Introduction*

For all of the options assessed, the potentially affected groups are the same. The options are specifically targeted at mobile economically inactive citizens and jobseekers who are unable to derive rights from an economically active family member.

For the purposes of assessing the impact, a range of criteria has been identified with reference to the general and specific policy objectives and the Commission's Better Regulation Guidelines. In relation to **social impact**, the options are assessed against the criteria of **clarification; simplification; protection of rights** and **impact upon fundamental rights.** This analysis draws upon the findings of the FreSsco Legal Experts report at Annex VIII supplemented by the Commission's Services own analysis and the findings from the stakeholder consultations and the Inter-Service Steering Group.

In relation to the **economic impact** and **regulatory costs** for both public administrations and citizens no specific studies have been conducted as, with the limited exception of Option 1b, the options under consideration are codification of the EU case-law which is already directly applicable and therefore

[298] Estonia and Ireland.
[299] Spain, Finland, Hungary, Sweden
[300] For example CEC and Business Europe
[301] For example, Eurodiaconia

there is no anticipated impact on Member States' budgets. However, potential administrative burden of implementing the various options under consideration have been qualitatively assessed.

In relation to option 1b, it should be noted that the estimated budgetary impact may be an under-estimation for the EU-28. Calculations have been based on data from LFS 2012 of proportion of EU28/EFTA migrants residing less than 1 year in their new Member State of residence including the proportion who live in a household with at least one child where no adults in the household are in work for the age-group 15-64 compared with all ages and the proportion aged over 65. This estimation has limitations as it is not possible to identify what proportion of the identified group are unemployed jobseekers or how long such jobseekers may have been seeking work. There is also no information about the level of income or resources of the identified group or whether or not they are currently in receipt of particular social security benefits. These numbers have then been applied to average expenditure per capita in Member States in relation to long-term care benefits, family benefits and sickness benefits. Such a model does not distinguish between contributory and non-contributory systems and also assumes that EU mobile citizens will make use of such benefits in the same proportions as native citizens. The calculation needs to be construed in light of these multiple limitations.

With reference to coherence with the **general objective**, the options have also been assessed with reference to their impact upon; **legal clarity; risk of fraud and abuse** and ability of Member States to counteract such risks and by reference to the objective of achieving **equitable burden-sharing between Member States (**corresponding to the **specific objective** to ensure legal clarity and transparency on the distinctions between the rights of workers, jobseekers and economically inactive mobile EU citizens, including the extent to which Member States' social security institutions are permitted to limit the equal treatment principle for economically inactive mobile EU citizens and jobseekers who claim certain social benefits).

Finally the assessment considers overall coherence with EU objectives with reference to relevant policies identified at section 1.3 of this report.

6.7.2 *Summary of the impacts of the options for access by economically inactive mobile citizens and jobseekers to certain social benefits*

Type of impact	Clarification	Simplification	Protection of rights	Fundamental rights	Economic impacts	Regulatory costs	Risk of fraud and abuse	Equitable burden sharing Member State	Coherence with EU objectives	Overall Effectiveness	Overall Efficiency (cost vs effectiveness
Baseline Scenario	0	0	0	0	0	0	0	0	0	0	0
Option 1a Legislative Amendment to Article 4	+	+	+	0	0	+/0	+	0	+	++	++
Option 1b Legislative Amendment to Article 4 and extension of limitations	+	+	-	-	0	-/0	+	0	+/-	++	++
Option 1c Legislative Amendment to Article 70	+	+/-	+	0	0	+/0	+	0	+	+	+
Option 2 Remove SNCBs providing for subsistence income from Regulation	++	++	-	0	0	--	-	0	-	-	-

Option 3 Administrative Guidance	+/0	++	+/0	0	0	+/0	+	0	+	+	+

6.7.3 *Impacts of Policy Option 1a: Dynamic reference to Directive 2004/38EC*

Policy Option 1a: Amendment of Article 4 of Regulation (EC) No 883/2004 to make a dynamic reference to the limitations to equal treatment in Directive 2004/38/EC		
Social impact		
Clarification	+	The codification of existing case-law would clarify the rights of EU mobile citizens and would enable citizens to make an informed choice when exercising their rights to move to another Member State.
Simplification	+	The codification of existing case-law would also simplify the process whereby EU mobile citizens and national institutions could verify their respective rights and obligations by making explicit the relationship between Regulation (EC) No 883/2004 and the Directive 2004/38/EC. As this measure contains a dynamic reference to the Directive, it is anticipated that it will not require further amendment even if the case law of the CJEU continues to evolve.
Protection of Rights	+	By increasing clarity the application of the case law of the CJEU, legal certainty is also increased thereby facilitating greater uniformity in application by Member States and facilitating the ability of citizens to enforce their rights.
Financial impact	0	There will be no direct impact on Member States' budgets as this measure simply reflects codification of the case-law of the Court.
Impacts on fundamental rights	0	Mere codification of the case-law of the Court. Any impact on fundamental rights already exists in EU law – the amendment to the Regulation will merely reflect this.
Other impacts		
Regulatory costs	+/0	Costs related to lack of clarity/transparency/legal certainty (for instance litigation costs, legal advice, elaboration of administrative guidance) for both citizens and public authorities could be reduced. However, as this option sets out the limits on the equal treatment principle only in very general terms, it is likely that some litigation on the relationship between the Regulation and the Directive would continue. Public administrations may additionally decide themselves to improve clarity by producing detailed guidance at national level (although such measures will be at their own discretion).

Risk of fraud and abuse	+	This option gives greater visibility to the safeguards in EU law against abusive behavior including the need to prevent economically inactive Union citizens from using the host Member State's welfare system to fund their means of subsistence, which may act as a deterrent to such conduct.
Fair burden sharing between Member States	0	As codification of the case-law this option is not anticipated to have a direct impact on the distribution of financial burden between Member States.
Coherence with General, Specific and wider EU Objectives: Continue the modernisation of the EU Social Security Coordination Rules by further facilitating the exercise of citizens' rights while at the same time ensuring legal clarity, a fair and equitable distribution of the financial burden among the institutions of the Member States involved and administrative simplicity and enforceability of the rules. to ensure legal clarity and transparency on the distinctions between the rights of workers, jobseekers and economically inactive mobile EU citizens, including the extent to which Member States' social security institutions are permitted to limit the equal treatment principle for economically inactive mobile EU citizens and jobseekers who claim certain social benefits.	+	This option will increase legal clarity and transparency on the rights of economically inactive mobile EU citizens and jobseekers and also on the extent to which Member States' social security institutions are permitted to limit the equal treatment principle for such persons in relation to access to certain social benefits. It is anticipated to thereby improve administrative simplicity and enforceability of the rules.

6.7.4 *Impacts of Policy Option 1b: Dynamic reference to Directive 2004/38EC and extension of limitations by analogy*

Policy Option 1b: Amendment of Article 4 of Regulation (EC) No 883/2004 to make a dynamic reference to the limitations to equal treatment in Directive 2004/38/EC and extend the limitations by analogy		
Social impact		
Clarification	+	The option would clarify the rights of EU mobile citizens and would enable citizens to make an informed choice when exercising their rights to move to another Member State.
Simplification	+	The option would also simplify the process whereby EU mobile citizens and national institutions could verify their respective rights and obligations by making explicit the relationship between Regulation (EC) No 883/2004 and the Directive 2004/38/EC. As this measure expressly defines the material scope to which the conditions of the Directive apply it is possible that it may require further amendment if the case law of the CJEU continues to evolve.

Protection of Rights	-	In relation to any extension of the potential derogation to non-contributory family benefits, long-term care benefits and sickness benefits there will be a loss of rights compared to the baseline scenario. The affected population of economically inactive citizens is estimated at 70.700 of whom approximately 14.000 live in a household with at least one child and of whom 2.500 are aged 65 or older)
Financial impact	0	In relation to an extension of the existing case-law to non-contributory family benefits, there would be a total estimated decrease for the EU-28 of between €37.7 and 79.2 million (equivalent to a reduction of 0.03% to 0.06% of total expenditure on child benefits)[302] in the case of long-term care benefits there would be an average estimated decrease of €31.5 million (equivalent to 0.014% of total expenditure on long-term care benefits)[303] and in relation to sickness benefits there would be an average estimated decrease of €185.1 million (equivalent to 0.017% of total expenditure on sickness benefits)[304]
Impacts on fundamental rights	-	The option is expected to adversely affect the best interests of the child (Article 24), the freedom to choose an occupation and the right to engage in work in another Member State (Article 15), as well as protection of rights for jobseekers who have made use of their right to free movement but who do not retain worker status (Article 45). There may also be an adverse impact on the right to social security and social assistance (Article 34) when compared with the baseline scenario.
Other impacts		
Regulatory costs	-/0	The assessment is likely to be similar to option 1a. However, by extending the limitations of Directive 2004/38/EC by analogy to a wider range of benefit decisions, there may be additional regulatory costs for case handlers in public authorities. Conversely, there may be a reduced risk of ongoing litigation costs as the legislature will have resolved the question of whether or not the limitations of the Directive apply also to tax-financed social security benefits.
Risk of fraud and abuse	+	This option gives greater visibility to the safeguards in EU law against abusive behavior including the need to prevent

[302] Estimation based on HIVA's own calculations. It should be noted that the calculation relates to child benefits and therefore the estimated budgetary impact may be an under-estimation for the EU-28. The calculation is made using data in relation to only 9 Member States (although those Member States have on average a higher stock of EU mobile citizens than average) and the calculation needs to be construed in light of these limitations.

[303] Annex XXIV, Table 2, Estimation based on HIVA's own calculations. It should be noted that the calculation relates to average expenditure per capita in Member States which does not distinguish between contributory and non-contributory long-term care benefits systems. It assumes that EU mobile citizens will make use of long-term care benefits in the same proportions as native citizens. The calculation needs to be construed in light of these limitations.

[304] Annex XXIV, Table 3, Estimation based on HIVA's own calculations. It should be noted that the calculation relates to average expenditure on healthcare per capita in Member States using ESSPROS figures. It assumes that EU mobile citizens will make use of healthcare in the same proportions/frequency as native citizens. The calculation needs to be construed in light of these limitations.

		economically inactive Union citizens from using the host Member State's welfare system to fund their means of subsistence, which may act as a deterrent to such conduct.
Fair burden sharing between Member States	0	This option is not anticipated to have a direct impact on the distribution of financial burden between Member States.
Coherence with General, Specific and wider EU Objectives: Continue the modernisation of the EU Social Security Coordination Rules by further facilitating the exercise of citizens' rights while at the same time ensuring legal clarity, a fair and equitable distribution of the financial burden among the institutions of the Member States involved and administrative simplicity and enforceability of the rules. to ensure legal clarity and transparency on the distinctions between the rights of workers, jobseekers and economically inactive mobile EU citizens, including the extent to which Member States' social security institutions are permitted to limit the equal treatment principle for economically inactive mobile EU citizens and jobseekers who claim certain social benefits.	+/-	This option may be considered coherent with the wider EU objective of supporting fair mobility (fair for both mobile citizens and tax-payers in the State of destination) but is less coherent with objectives to promote a social agenda in particular in relation to mobility for more vulnerable groups within the Union.

6.7.5 *Impacts of Policy Option 1c: Specific reference to Directive 2004/38/EC (SNCBs)*

Policy Option 1c: Amendment of Article 70 of Regulation (EC) No 883/2004 to make reference to the limitations in Directive 2004/38/EC in the context of benefits that provide a minimum subsistence income		
Social impact		
Clarification	+	The codification of existing case-law would clarify the rights of EU mobile citizens and would facilitate citizens to make an informed choice when exercising their rights to move to another Member State. In particular, it is specified that in accordance with the jurisprudence of the CJEU, derogation of the principle of equal treatment solely applies to SNCBs providing for a minimum level of subsistence as listed in Annex X of the Regulation, thereby achieving a greater level of legal certainty.
Simplification	+/-	As per option 1a, the codification of existing case-law would also simplify the process whereby EU mobile citizens and national institutions could verify their respective rights and obligations. The precise nature of the codification ensures the scope of application is clear, however, it is possible further amendments may be necessary if the case law of the CJEU continues to evolve leading to trade-offs between clarity and simplicity.

Protection of Rights	+	As Option 1a and for the same reasons.
Financial impact	0	There will be no direct impact on Member States' budgets as this measure simply reflects codification of the case-law of the Court.
Impacts on fundamental rights	0	Mere codification of the case-law of the Court. Any impact on fundamental rights already exists in EU law – the amendment to the Regulation will merely reflect this.
Other impacts		
Regulatory costs	+/0	Costs related to lack of clarity/transparency/legal certainty (for instance litigation costs, legal advice, elaboration of administrative guidance) for both citizens and public authorities could be reduced. However, as this option sets out the limits on the equal treatment principle only in very general terms, it is likely that some litigation on the relationship between the Regulation and the Directive would continue. Public administrations may additionally decide themselves to improve clarity by producing detailed guidance at national level (although such measures will be at their own discretion).
Risk of fraud and abuse	+	As with Option 1a
Fair burden sharing between Member States	0	As with Option 1a
Coherence with General, Specific and wider EU Objectives: Continue the modernisation of the EU Social Security Coordination Rules by further facilitating the exercise of citizens' rights while at the same time ensuring legal clarity, a fair and equitable distribution of the financial burden among the institutions of the Member States involved and administrative simplicity and enforceability of the rules. to ensure legal clarity and transparency on the distinctions between the rights of workers, jobseekers and economically inactive mobile EU citizens, including the extent to which Member States' social security institutions are permitted	+	As with Option 1a although it is foreseen that if the case law of the CJEU continues to evolve there may be trade-offs between clarity and simplicity.

to limit the equal treatment principle for economically inactive mobile EU citizens and jobseekers who claim certain social benefits.		

6.7.6 *Impacts of Policy Option 2: Remove SNCBs providing for minimum level of subsistence from scope of Regulation (EC) no 883/2004*

[Policy Option 2: Remove SNCBs providing subsistence income from Regulation (EC) No 883/2004		
Social impact		
Clarification	++	This option achieves clarity by clearly delineating between social security rights which fall within the scope of Regulation (EC) No 883/2004 in respect of which citizens retain a full right to equal treatment and those to which the limitations in Directive 2004/38/EC apply. This would facilitate citizens to make an informed choice when exercising their rights to move to another Member State.
Simplification	++	This option also achieves simplicity by separating the material scope of Regulation (EC) No 883/2004 from Directive 2004/38/EC apply in a manner which means both citizens and institutions only need to refer to one legal instrument at a time.
Protection of Rights	-	A significant disadvantage of this option is that some of the rules in Regulation (EC) No 883/2004, which can be beneficial for mobile EU citizens (e.g. for example, the rule that social security institutions may not reject documents submitted to them in an official language of another Member State;[305] or the rule of assimilation of facts which requires Member States to take into account facts or events occurring in any Member States as though they had taken place on their own territory.[306]), would no longer apply. It seems likely that it may become more difficult for mobile EU citizens to claim such benefits in other Member States. Some EU citizens could be discouraged from exercising their free movement rights as a result.
Financial impact	0	There will be no direct impact on Member States' budgets as this measure simply reflects codification of the case-law of the Court.
Impacts on fundamental rights	0	Mere codification of the case-law of the Court. Any impact on fundamental rights already exists in EU law – the guidelines will merely reflect this.
Other impacts		

[305] Article 76(7) of Regulation (EC) No 883/2004.
[306] Article 5 of Regulation (EC) No 883/2004.

Regulatory costs	--	While there may be some savings for both citizens and public authorities related to lack of clarity/transparency/legal certainty(for instance litigation costs, legal advice, elaboration of administrative guidance) There would be some noticeable administrative costs for Member State social security institutions arising as a result of (a) changes to procedures and (b) being unable to benefit from the existing cooperation procedures for information exchange and verification provided under the Regulation, (for example, to check with institutions in other Member States the validity of documents or accuracy of facts supplied to them).[307] In addition, institutions would not be able to benefit from the efficiencies of the EESSI electronic information exchange platform due to be launched by the end of 2016 with full implementation by 2018. As institutions may be required to separately establish mechanisms for information exchange to ensure rights and obligations are respected.
Risk of fraud and abuse	-	There may be an increased risk of fraud and abuse because Member States would not be able to benefit from the existing cooperation procedures for information exchange and verification provided under the Regulation, if this option were followed. In addition, the provisions in the Regulation concerning recovery of benefits that are paid in error could also not be used.[308]
Fair burden sharing between Member States	0	As with Option 1a.
Coherence with General, Specific and wider EU Objectives: Continue the modernisation of the EU Social Security Coordination Rules by further facilitating the exercise of citizens' rights while at the same time ensuring legal clarity, a fair and equitable distribution of the financial burden among the institutions of the Member States involved and administrative simplicity and enforceability of the rules. to ensure legal clarity and transparency on the distinctions between the rights of workers, jobseekers and economically inactive mobile EU citizens, including the extent to which Member States' social security institutions are permitted to limit the equal treatment principle for economically inactive mobile EU citizens and jobseekers who claim certain social benefits.	-	As with Option 1a although it is foreseen that there may be trade-offs between clarity and simplicity of establishing a clear separation between Regulation (EC) No 883/2004 and Directive 2004/38/EC and the protection of rights for citizens and regulatory burden/risk of fraud and error for national institutions arising from the loss of application of the Regulation to SNCBs.

[307] Article 5(3) of Regulation (EC) No 987/2009.
[308] Article 71 to 85 of Regulation (EC) No 987/2009.

6.7.7 Impacts of Policy Option 3: Provide Administrative Guidance

Policy Option 3: Provide administrative guidance		
Social impact		
Clarification	+/0	Guidance could provide detailed explanations on when limitations on the equal treatment principle could be applied and circumscribe closely the group of benefits which are affected (namely special non-contributory cash benefits providing a minimum subsistence income). Although guidance is not legally binding it is more flexible and easier to update and modify and allows to better explain the legal rules to citizens. However, the non binding character of guidance limits its impact.
Simplification	++	Guidance may be provided in a range of accessible formats, giving precise guidance on specific scenarios which may be easier for citizens to understand than legal text.
Protection of Rights	+/0	By increasing clarity the application of the case law of the CJEU, legal certainty is also increased thereby facilitating greater uniformity in application by Member States and facilitating the ability of citizens to enforce their rights.
Financial impact	0	There will be no direct impact on Member States' budgets as this measure simply reflects codification of the case-law of the Court.
Impacts on fundamental rights	0	Mere codification of the case-law of the Court. Any impact on fundamental rights already exists in EU law – the guidelines will merely reflect this.
Other impacts		
Regulatory costs	+/0	Costs related to lack of clarity/transparency (for instance litigation costs, legal advice) for both citizens and public authorities could be reduced. It is anticipated that these savings may be achieved sooner in the light of the relative ease of implementing guidance compared with a legislative measure. But given the non binding character of guidance this measure in isolation may not entirely reduce litigation risk.
Risk of fraud and abuse	+	As with Option 1a although the benefits are anticipated to be greater in light of the increased transparency of the guidance.
Fair burden sharing between Member States	0	As with Option 1a.
Coherence with General, Specific and wider EU	+	As with Option 1a although it is foreseen that there may be trade-offs between clarity and simplicity of establishing

Objectives: Continue the modernisation of the EU Social Security Coordination Rules by further facilitating the exercise of citizens' rights while at the same time ensuring legal clarity, a fair and equitable distribution of the financial burden among the institutions of the Member States involved and administrative simplicity and enforceability of the rules. to ensure legal clarity and transparency on the distinctions between the rights of workers, jobseekers and economically inactive mobile EU citizens, including the extent to which Member States' social security institutions are permitted to limit the equal treatment principle for economically inactive mobile EU citizens and jobseekers who claim certain social benefits.		clear and accessible guidance and the non-binding nature of guidance which may not be the most effective means of achieving legal certainty or reducing litigation risk.

6.8. ***Conclusions***

Based on the above table, the following preliminary conclusions can be drawn.

The baseline scenario is the most straightforward to implement. However, this option does not however, address the objective of ensuring legal clarity and transparency nor the wider EU objective of supporting fair mobility.

Option 1a) introduces legal clarity for economically inactive mobile EU citizens and jobseekers and the persons/institutions involved in the enforcement of the legislation. This option addresses the objective identified and at the same time provides flexibility if the case-law on the relationship between the Directive and the Regulation evolves. This option may be considered coherent with the wider EU objective of supporting fair mobility and reflects the case-law of the CJEU. However, it also means that full clarity on the relationship between the Regulation and the Directive will have to await further jurisprudence from the CJEU.

Option 1b) introduces legal clarity for economically inactive mobile EU citizens and jobseekers and the persons/institutions involved in the enforcement of the legislation. This option addresses the objective identified and at the same time provides flexibility if the case-law on the relationship between the Directive and the Regulation evolves. The extension of the limitations to non-contributory family benefits, long-term care benefits and sickness benefits is anticipated to result in a total cost saving estimated at €37.7 and 79.2 millions in relation to family benefits; €31.5 millions in relation to Long-term care benefits and €185.1 millions in relation to sickness benefits for the EU-28 Member States compared with the baseline (although it is also noted there would be a potential negative impact on the social and fundamental rights of economically inactive EU mobile citizens and jobseekers). This option may be considered coherent with the wider EU objective of supporting fair mobility (fair for both mobile citizens and tax-payers in the State of destination) but less coherent with objectives to promote a social agenda in particular in relation to mobility for more vulnerable groups within the Union.

Option 1c) may be considered to provide greater legal certainty. This option also addresses the objective identified but if the case-law on the relationship between the Directive and the Regulation evolves, further legislative changes might be necessary meaning this may not be the most efficient method of achieving the objective nor the wider EU objective of supporting fair mobility.

Option 2 would not contribute to the attainment of the objective identified. On the contrary, it presents a major draw-back since several beneficial rules of the Regulation would no longer apply. This is therefore considered neither an efficient or effective means of addressing the problems identified nor the wider EU objective of supporting fair mobility or objectives to promote a social agenda.

Option 3, on its own, would be less effective and less efficient in achieving the identified objective since the Regulation would not contain all the elements necessary for its direct applicability to the detriment of both citizens and the persons/institutions involved in its enforcement.

7. Family Benefits

7.1. Current Coordination Rules for Family Benefits

Family benefits are all benefits in kind or cash intended to help to meet family expenses which arise from the obligation to maintain children.[309] This covers a wide diversity of social security benefits including not only the traditional "child benefits" but also other types of benefits for families e.g. to encourage educational attainment, labour market participation by parents or to replace income during child-raising periods.

The principle of exportability contained within the EU social security coordination rules means that when the child of a worker resides in another State, the worker can export the full amount of the family benefits received from the State of activity to the State where the child resides: in fact, a mobile citizen cannot be denied access to family benefits in cash under the national legislation of a Member State solely on grounds that the person concerned and/or his/her family reside in another Member State. The regulation effectively overrules any residency requirement in national legislation regarding such cash benefits and doesn't allow cash benefits to be reduced, amended, suspended, withdrawn or confiscated.[310]

The EU social security rules provide that primary responsibility for payment of family benefits lies with the Member State of economic activity, on the assumption that the country of employment will usually be the country where a mobile EU citizen pays social security contributions and taxes. However, in the field of family benefits, it is very common that families in a cross-border situation to have overlapping entitlements to family benefits. This is because a child normally has two parents, who may each have independent entitlements to family benefits from different States. To address this issue, the coordination rules provide specific anti-overlapping rules which establish an order of priority for the Member States to make payments.[311] Under these rules, the primary competent Member State will pay its family benefits in full, but entitlement to family benefits in cash under the legislation of the Member State with secondary competence will be suspended up to the amount of the benefits due under the legislation of the State that takes priority (usually the Member State of Employment or in the case of two economically active parents, the place of residence of the child). The current rules also provide that in the event of overlapping entitlements the family concerned will always receive an amount equivalent to the highest level of benefits available.[312] Consequently, if the amount of family benefit provided for by the legislation of the former State is higher than that

[309] Article 1(z) Regulation (EC) No 883/2004 . The definition expressly excludes advances of maintenance payments and special childbirth and adoption allowances mentioned in Annex 1 of Regulation (EC) No 883/2004.

[310] Article 7 of Regulation (EC) No 883/2004. The current rules do not provide for any such derogation in relation to family benefits while the CJEU has accepted derogation from the principle of export in relation to special non-contributory benefits and unemployment benefits (*Snares*, C-20/96, EU:C:1997:518) although such derogation must be construed narrowly. Article 48 TFEU on the minimum content of the coordination Regulations explicitly mentions two principles: aggregation and exportability of the acquired rights to facilitate the exercise of freedom of movement. For more detailed overview of current EU legal framework, see Annex XXII.

[311] The priority rule is defined in Article 68 of Regulation (EC) no 883/2004. See Annex XXII for details.

[312] The Court has been explicit in its case law by concluding that "the Regulation cannot be applied in such a way as to deprive the worker, by substituting the benefits provided by one Member State for the benefits payable by another Member State, of the most favourable benefits" (Case C-73/79, *Laterza).*

provided in accordance with the legislation of the other State; the former State will pay a supplement or "top up" corresponding to the difference between the two benefits.

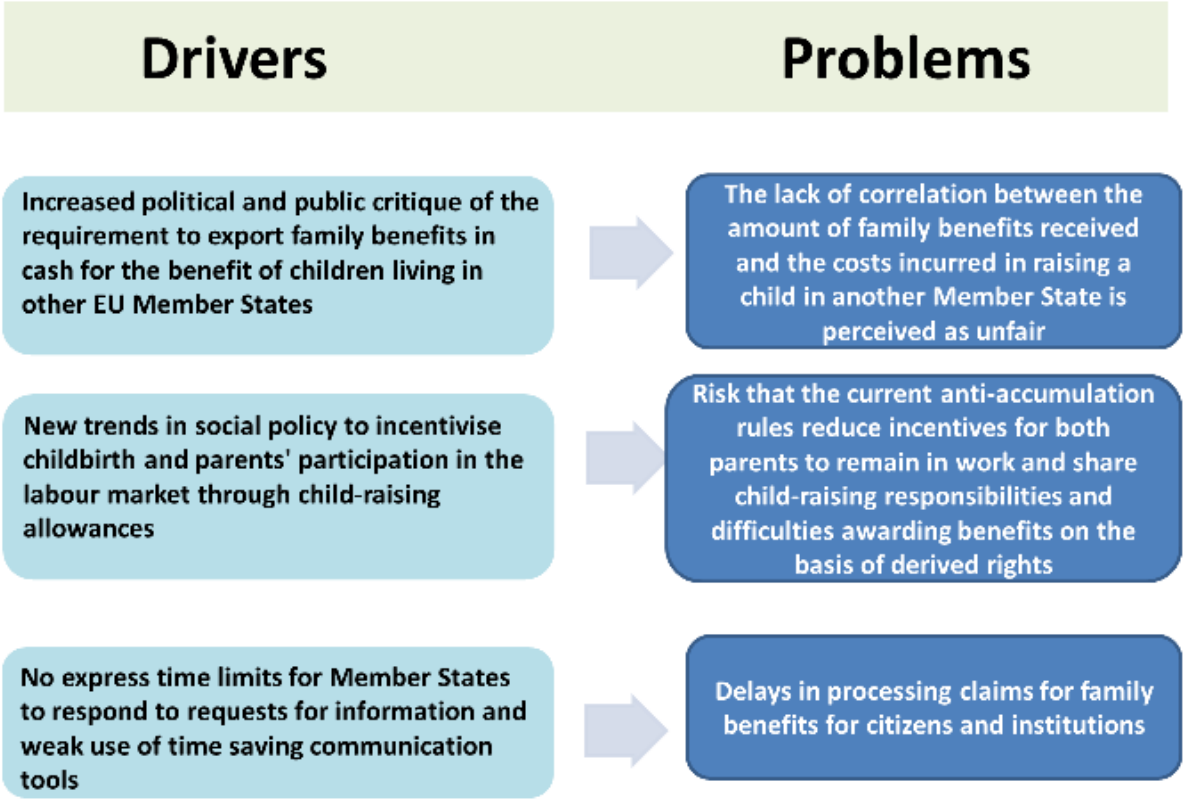
A further important principle in the rules on family benefit coordination is that family benefits are considered benefits for the family as a whole. [313] This means that a family member may have a derived right to claim such benefits even if they reside and work in another Member State and have no personal connection to the social security system of the Member State awarding the benefit.[314]

The current rules include an important safeguard for Member States against the risk of abuse or undue burden on national social security systems. There is no obligation for a country to export a differential supplement where a right to family benefit is derived solely on the basis of residence of an EU mobile citizen.[315]

Based on data collected from 19 Reporting Member States and EFTA States in the survey on export of family benefits,[316] a total export of € 983 million in family benefits was declared for 2013, which includes export of child benefits (an important sub-category of family benefits) to 324 thousand households or 506 thousand children living in another Member State. This is equal to a total expenditure of € 942 million. Benefit export amounted to 0.8% of EU-28 expenditure on child and family allowances.[317] On average 1% of child benefits are being exported abroad, which represents 1.6% of total public spending on child benefits.[318]

[313] Joined cases C-245/94 and C-312/94 *Hoever and Zachow.*
[314] See for example, Article 68A of Regulation (EC) no 883/2004 and Article 60(1) of Regulation (EC) 987/2009 supporting the rights of a parent or person in loco parentis to assert derived rights.
[315] Article 68(2) Regulation (EC) No 883/2004 . In the case of two economically inactive parents, the Member State of residence of the child would have primary competence to pay family benefits in accordance with its national legislation.
[316] Annex XI
[317] In 2012, total family and child allowance expenditure was € 126,043 million. (ESSPROSS, Pacolet 2015)
[318] Table 11, Annex XI (Data based on 16 reporting Member States)

7.2. Problems with the export of family benefits and drivers behind them



7.2.1. The lack of correlation between the amount of exported benefits and the costs incurred in raising a child in the State of residence of the child is perceived as unfair

The family benefit systems differ considerably in terms of eligibility criteria, design and generosity across the EU.[319] These differences reflect the diversity in the economic and social context between Member States, which to some extent have been exacerbated by austerity measures adopted in response to the recent economic crisis.[320] For example, in Luxembourg, a family with one child might expect to receive child benefit at the rate of €185 per month, by contrast in Bulgaria, the child benefit would be €18 per month. [321] This means that a worker in Luxembourg whose family resides in Bulgaria may be able to export €185 per month to Bulgaria to support his or her family; conversely a worker in Bulgaria whose family resides in Luxembourg would only be entitled to export €18 per month.[322] A worker based in Luxembourg may be entitled to family benefits that represent 190% of the average earnings of a one-earner married couple with two children in Bulgaria, while on average child benefits equal to 10% of the net earnings of household in EU-28/EFTA.[323]

[319] For more details, see section 3, p. 156-169 in Annex XXI.
[320] By mid-2010, austerity measures affecting family policy had either been adopted or announced in 11 Member States (Czech Republic, Denmark, Estonia, Germany, Hungary, Ireland, Italy, Luxembourg, the Netherlands, Spain and the United Kingdom OECD (2011), *Doing Better for Families.*
[321] In 2014, Luxembourg had a GDP per capita in PPS of more than two and a half times above the EU-28 average while Bulgaria had it less than half the EU-28 . http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tec00114&plugin=1
[322] Family living in Luxembourg may receive a differential supplement from Luxembourg up to the level of the national family benefits. For the definition of differential supplement see the glossary in Annex XXIII.
[323] Annex XI.

Furthermore, there is a perceived unfairness of the system as in accordance with the statutory definition of family benefits as "all benefits in kind or cash intended to meet family expenses,"[324] the primary objective of such benefits is to help to meet the additional expenses which arise from the obligation to maintain children (e.g. additional or special nutrition, nappies, prams, school books, childcare, etc.). Those expenses will often be linked to the actual costs of goods or services in the place of residence of the child, which means that the level of such expenses can differ significantly from one Member State to another. Viewed from this perspective, recipients of exported family benefits may be in a privileged position compared to nationals because exported benefits may provide a comparatively greater purchasing power in the country of residence.

Such perceptions of unfairness are sustained (reinforced) both by the non-contributory nature of family benefits that are predominantly financed wholly or partially through general taxation[325] and the fact that in the majority of Member States entitlement to family benefits is on the basis of legal residence whereas under the EU social security rules priority is awarded to the State of economic activity.[326] This results in a tension between the EU social security rules and principles of national legislation and leads to the perception that Member States of residence are abdicating their social security responsibilities in relation to children resident within their territory to another Member State.[327] As a consequence of this perceived unfairness, there is a risk of negative attitudes towards migration amongst the general population, as are already observed in the public debate in some Member States, which entails a risk that public and political support for the EU social security coordination rules may be undermined with a subsequent negative impact on labour mobility. There is also a risk of unilateral imposition of restrictive measures by Member States. For example, there have been a number of examples of public criticism of the current EU rules on export of family benefits and counter-proposals by senior politicians challenging the concept of export for family benefits.[328]

This political discourse may be perceived as both a catalyst and a reaction to sentiments expressed by national media outlets and public opinion in some[329] (although by no means all[330]) Member States and is in spite of studies[331] which consistently show both support for[332] and the positive effect of free movement of workers: mobile EU workers make a positive contribution to the mix of skills, fill labour shortages, increase the GDP, and tend to make a net positive contribution to the national budget (including welfare systems). In addition the evidence demonstrates that mobile workers use welfare

[324] Article 1(z) Regulation (EC) No 883/2004 . The definition expressly excludes advances of maintenance payments and special childbirth and adoption allowances mentioned in Annex 1 of Regulation (EC) No 883/2004.

[325] 16 Member States, finance family benefits exclusively through general taxation FreSsco, The relationship between social security coordination and taxation law, 2014.

[326] The priority for social security competence accorded to the Member State of Work is a consistent principle across the EU social security coordination rules for both contribution and non-contribution based social security benefits based on the economic logic that the worker usually pays taxes and contributions in the State of employment (Article 11(3) Regulation (EC) no 883/2004).

[327] A member state of residence will only be obliged to pay a differential supplement if the level of family benefits under its national legislation is higher than that available from the Member State of Work. For the definition of differential supplement see the glossary in Annex XXIII.

[328] Statements by the Austrian Foreign Minister Ziarul Financiar: *"The Austrians control Romania's oil, banks, insurance sector and forests, ..."* page: 3 info: by Pâslaru Sorin date: Monday, June 22, 2015; Prime Minister of the United Kingdom's speech at JCB, Staffordshire. It includes proposals made as Leader of the Conservative Party, 28 November 2014 https://www.gov.uk/government/speeches/jcb-staffordshire-prime-ministers-speech.

[329] Berlingske Tidende: *"Danskerne vil begrænse vandrende arbejdstageres adgang til velfærdsgoder..."* date: Saturday, June 6, 2015 In Denmark, 83% of the respondents in a new survey say that they agree that foreigners should only receive child benefits if their children are living in the country where their parents work.

[330] . Waterfield, 'Poland attacks David Cameron plan to ban Polish and EU migrants from claiming child benefit', *The Telegraph*, 6 January 2014, available at http://www.telegraph.co.uk/news/worldnews/europe/poland/10553020/Poland-attacks-David-Cameron-plan-to-ban-Polish-and-EU-migrants-from-claiming-child-benefit.html (last accessed 17 March 2015). He argued that Polish people contributed about double the amount to the British economy than they withdrew in benefits and that in the long run the United Kingdom is receiving the fiscal contribution of migrants' work, without paying for the education and training that enables them to work. Ziarul Financiar: *"The Austrians control Romania's oil, banks, insurance sector and forests, ..."* page: 3 info: by Pâslaru Sorin date: Monday, June 22, 2015.

[331] See review of studies in European Commission, ESDE 2011 (chapter 6); EPC (2013).

[332] Eurobarometer 83, (Spring 2015) "the free movement of people, goods and services within the EU" was regarded as the most positive result of the EU by 57%, ahead of peace (55%) among member states. Both of these items have always been mentioned by at least a half of Europeans since this question was first asked.

benefits no more intensively than the host country's nationals.[333] Further two-thirds of Europeans believe that legal immigrants should have the same rights as national citizens.[334] This belief is also reflected in relation to specific studies on equal rights in the field of welfare and social protection.[335]

Underneath the heated political discourse, the situation is more complex. It is to be noted that despite the widely held view that family benefits correlate to the social and economic environment of the competent Member State, the level of family benefits are not directly linked to the minimum or average wage, subsistence level or living costs in any Member State.[336] Moreover, despite the criticism that the general model for determining competence under the EU social security rules is inappropriate for family benefits, it is significant that in 12 out of 28 Member States, family benefits are financed either through a combination of general taxation and employer/employee contributions, or are exclusively contribution-based.[337]

While some critics believe the current model for coordinating family benefits leads to an unfair distribution of burden between the Member State of Work and the Member State of Residence, this does not acknowledge either the fact that a mobile citizen will normally pay taxes and social security contributions in the State of Work. Nor does such criticism acknowledge the financial contribution of the Member State of residence in providing and financing family benefits in kind (such as subsidized child-care services),[338] or benefits outside the scope of the coordination rules, such as advances to maintenance payments and to special childbirth and adoption allowance.[339] In addition, while family expenses may vary according to the actual costs of goods or services in the place of residence of the child, families in a cross-border situation may also face increased expenses (e.g. travel and communication costs to maintain contact or additional child-care costs for the parent with primary caring responsibilities due to the absence of the other parent). There may also be further socio-economic consequences of family separation for example, the impact on the level and extent of labour market participation that the parent with primary caring responsibilities may engage in and the psychological and emotional consequences for the child.[340]

7.2.2. Risk that the anti-accumulation rules reduce incentives for both parents to remain economically active and share child-raising responsibilities and difficulties in awarding "parent-centred" benefits on the basis of derived rights

The EU social security coordination rules contain a wide definition of family benefits, which include child-raising allowances.[341] A child-raising allowance is a benefit intended to cover wages/income lost when a parent stays home from work to take care of the child and may be calculated by reference to salary or professional income or may be flat-rate.

It is a core principle of the EU social security coordination rules that two Member States are not simultaneously obliged to pay social security benefits for the same purpose in respect of the same period (anti-accumulation principle). This is also the basis of the priority rules for overlapping family

[333] See OECD's International Migration Outlook 2013, the Centre for Research and Analysis of Migration study on Assessing the Fiscal Costs and Benefits of A8 Migration to the UK and the study by the Centre for European Reform and ICF GHK in association with Milieu Ltd Fact finding analysis on the impact on 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.
[334] Special Eurobarometer 380 "Awareness of home affairs", December 2011.
[335] Jurgen Gerhards, Holger Lengfeld, European Citizenship and Social Integration in the European Union, (Routledge 2015).
[336] For example, child allowances in both Luxembourg and Sweden are awarded on a flat rate not related to living costs, average or minimum income and regardless of the relative income level of the recipients. Similarly, Member States don't adjust its level of family benefits to reflect different costs of living within the relevant territory (even where significant variations exist). There may be indirect links to subsistence or minimum wage in relation to certain means-tested family benefits in Belgium, Bulgaria, Croatia and Slovenia. In addition indirect links to cost of living in the Member State concerned is apparent from indexation rules in Austria, Belgium and Slovenia (Annex VI, p.22-25.).
[337] FreSsco, The relationship between social security coordination and taxation law, 2014.
[338] Member State expenditure on family benefits in kind typically ranges between 0.2 and 1.7 percent of GDP . Annex XIII: Table 3.
[339] Article 1(z) Regulation (EC) no 883/2004.
[340] http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2432946 http://opus.bath.ac.uk/46410/.
[341] Joined cases C-245/94 and C-312/94 *Hoever and Zachow.*

benefits explained at section 7.1 above. However, applying the anti-accumulation rules to child-raising allowances is perceived as unfair by some citizens because in contrast to other family benefits a child-raising allowance is intended to cover wages lost when a parent stays home from work to take care of the child. It is therefore perceived as a sum that parent has "earned" and which should be awarded without deduction.[342]

Example: David and Marie live with their child in Member State A. David is working in Member State A and Marie is a frontier worker in Member State B. They both work part-time and share child-care responsibilities. Member State A has a child raising allowance calculated with reference to salary while Member State B has a flat-rate child-raising allowance regardless of salary or income. David is entitled to €75 per week based on his salary in Member State A, and Marie is entitled to €25 per week. Member State A is primarily competent to pay child allowance because of child's residence and David's work. Member State B is the secondary competent and obliged to pay only the differential supplement (see Annex XXII for details). In calculating differential supplement, Member State B takes into account the benefits paid in Member State A in line with the anti-accumulation rules. The level of allowance in Member State A (€75) is higher than the amount in Member State B (€25) and therefore Member State B does not pay Marie anything during periods when she takes leave from work to take care of her child. The family gets €75 but it would get €100 if the child-allowance based on individual salary would be treated as individual right and not as an entitlement for the entire family.

Some critics also complain that the application of the anti-accumulation rules undermines the policy objective of promoting greater gender equality by encouraging parents to share child-raising responsibilities as the potential loss in household income that results from the anti-overlapping rules acts as a deterrent against both parents claiming child-raising allowances at the same time.[343] A driver for these challenges is the social security trend among Member States to promote parents' (in particular mothers') participation in the workplace. Reconciliation of work life balance and gender balance is an objective for family policy in 24 Member States,[344] while 22 Member States have a benefit intended to replace income during child-raising periods.[345]

A related problem with the application of the current coordination rules to child-raising allowances is that these are generally considered "parent-centred" rights, intended to protect the individual parent concerned. However, under EU law, family benefits are deemed benefits for the family as a whole. This means that either parent may have a derived right to claim such benefits even if such parent is residing and working in another Member State and has no personal connection to the social security system of the Member State awarding the benefit.[346] Some national authorities complain that there are administrative and practical challenges for their institutions when a claim is made as a derived right by a spouse or partner as it is difficult to determine if national conditions are satisfied. These complexities are exacerbated for salary-related child raising allowances where a claim is made by a family member who does not have earnings in the Member State awarding the benefit.[347] Consequently, some Member States refuse to coordinate such benefits as family benefits under the EU Coordination rules, instead classifying them as maternity or equivalent paternity allowances in a

[342] Annex VI p18 and 26 in relation to Sweden.
[343] For critique of the application of the anti-accumulation rules to salary-related child-raising allowances see Sakslin, M. (2000) 'Social Security Co-ordination – Adapting to Change', European Journal of Social Security, 2(2), p184 and Holm, E " Parental Benefits in the Coordination Regulation: Where do they fit in the Swedish Example" European Journal of Social Security, Volume 16 (2014), No. 2: p136
[344] The Council of Europe Family Policy Database.
[345] Annex XXV p 7.
[346] For example, David works in country A, while Marie with a child lives and works in country B. Member State A has a salary-related child allowance. David can share part of his parental related benefits entitlements with Marie without any loss to the household income providing that Marie fulfils the conditions under A's national law, i.e. she has taken leave from work to take care of the child.
[347] See results of FreSsco mapping exercise Annex VI p27.

manner that circumvents both the anti-accumulation rules and the application of derived rights. The 2012 Nordic Convention[348] excludes benefits intended to compensate for income loss from professional activity when calculating differential supplements for family benefits.[349] In other cases, Member States restrict entitlement to this type of benefit exclusively to a person who is insured under the national social security insurance.[350] Consequently, notwithstanding enforcement action taken by the Commission, [351] very few Member States are currently fully complying with EU law.[352]

The consequence of such divergent approaches is inconsistent treatment of families and uneven distribution of burden between Member States. The other secondary competent Member States are unable to "off-set" such awards when calculating the differential supplement in a manner which may be seen as unfair, if those Member States categorize similar benefits according to the social security rules as family benefits.[353] Likewise, there may be increased accumulation of benefits by families and increased risk of infringement proceedings.

7.2.3. Delays in processing claims for family benefits

Situations of overlapping entitlements are very common when insured parents with dependent children live and work in different Member States. The *priority rules* define the process in establishing the primary and secondary competent states and the way to calculate level of benefits and differential supplements.[354] This requires a number of exchanges of information between the Member States and increases time needed to process the claims for the export of family benefits.[355] In addition, a number of sociological changes (that are outside the scope of this initiative such as legalisation of same-sex marriage, increased instances of lone parents, divorce, family breakdown and remarriage) have increased the complexity of family structures.[356] These new patterns of family formation, and

[348] A multilateral convention based on Regulation (EC) No 883/2004 between Sweden, Denmark, Finland, Norway and Iceland. Iceland and Norway apply Regulations (EC) Nos 883/2004 and 987/2009 pursuant to the 1994 European Economic Area Agreement. According to the Article_8.2 of Regulation (EC) No 883/2004, such agreements shall be based on the principles of the Regulation and in keeping with the spirit thereof.

[349] Article 11 of the Nordic Convention 2012.

[350] For instance, in Austria entitlement to the income replacement scheme requires (among others) that the person concerned has been employed for a minimum period of six months before childbirth under the Austrian social security insurance. Thus, a person who resides in Austria but is working in another Member State and is therefore subject to the social security scheme of that Member State, is not entitled to income replacing cash childcare benefits in Austria. Similarly in Belgium, in order to qualify under the 'professional' scheme, work has to be carried out in Belgium. For more, see Annex VI (p. 37).

[351] European Commission, June Infringement Package: Key Decisions "Commission requests SWEDEN to comply with EU coordination rules in relation to its parental allowance" 18 June 2015 http://europa.eu/rapid/press-release_MEMO-15-5162_en.htm

[352] Only four of the seventeen Member States who have salary-related child-raising allowances recognise claims based on derived rights See also the FreSsco report by J. De Coninck, 'Reply to an ad hoc request for comparative analysis of salary-related child-raising allowances', FreSsco, European Commission, September 2015. Annex XXV, p14.

[353] Member States where parental benefits are included in the total sum of family benefits will have higher benefits, and are more often obliged to pay supplements. See an evaluation made by the Swedish Social Insurance Agency on the payment of family benefits Försäkringskassan analyserar 2005:3 Utbetalning av familjeförmåner med stöd av EG-lagstiningen under 2004. p. 20 and Försäkringskassan analyserar 2007:10 Utbetalning av familjeförmåner med stöd av EG- lagstiftningen _ under 2006. p. 18.

[354] See Annex XXII for details.: if there are overlapping entitlements to family benefits in cash (i.e. entitlements under two or more legislations in respect of the same family member and for the same period) on different bases, the order of priority is as follows: firstly, rights available on the basis of an activity as an employed or self-employed person, secondly, rights available on the basis of receipt of a pension and finally, rights obtained on the basis of residence. In the case of rights available on the same basis, the Member State where the children reside shall be competent by priority right but in cases where a right exists solely on the basis of residence, there shall be no obligation for the secondary competent Member State to export the differential supplement in respect of children residing in another Member State . It should be noted, these rules apply to family benefits in cash, in the case where a child does not reside in the State which has primary competence, the State of residence of the child will usually be responsible for providing benefits in kind (subject to a family fulfilling conditions of entitlement).

[355] Exchanges of information are necessary to establish relative order of competence depending on the place of residence and economic status of both parents and subsequently to calculate the benefit to be awarded based on the family circumstances as a whole (in the case of the secondary competent Member State this will entail calculation of the differential supplement) . Such calculations may be subject to periodic adjustments relating to changes in the families circumstances or changes to the level of family benefits granted by the other Member State . Where a sum has been awarded to the family on a provisional basis (pending final determination of competence by the Member States concerned), there may be a need for additional exchanges and other administrative tasks to arrange recovery of the overpayment; likewise delays in communicating changes of circumstance may also result in the need to initiate recovery procedures.

[356] Between 1965 and 2011, the crude marriage rate in the EU-28 declined by close to 50 % while crude divorce rate increased from 0.8 per 1 000 persons in 1965 to 2.0. Further, the rate of births outside marriage has increased . In the EU-28 as a whole, some 40 % of children were born outside marriage in 2012. Eurostat, Marriage and Divorce Statistics, June 2015.

divergences in legislation between the Member States in relation to legal rights for different family structures have increased the need for the exchange of information and necessitate in many cases sensitive and time-consuming investigations to establish entitlement.

There are considerable delays in processing claims in the field of export of family benefits.[357] For example, data from the Latvian national authorities suggest that in over 65% of cases requests for information to other Member State to establish primary competence take longer than two-months for a response and in some cases even more than eight months.[358] Your Europe report a number of complaints received from citizens concerning excessive delays in processing their family benefit claims or receiving payment of family benefits.[359]

The driver for delays primarily relates to the investigations and subsequent exchange of information between competent institutions in the field of export of family benefits. First, there is no common understanding between Member States as to the deadlines for responding to a request for information from another Member State as the EU rules only oblige to exchange the information "without delay".[360] A second driver is the inefficient exchange of information between competent national institutions. Pending the implementation of a pan-European Electronic Exchange for Social Security Information (EESSI)[361] it is permissible for institutions to exchange information via paper and electronic means in a variety of different formats in a manner which also hinders efficient exchange.[362]

The consequences of long procedures are twofold. The families concerned have to wait for a long time before they receive the full amount of benefit they are entitled to. The regulatory costs and burden for national authorities may increase in circumstances where repeated requests need to be made for information or a provisional decision on calculation on benefits transpires to be incorrect necessitating time-consuming recovery or reimbursement procedures.[363]

7.2.4. ***Baseline scenario***

Export of family benefits

The number of EU mobile workers has increased sharply in absolute terms over the last decade, however in terms of the overall active population it has only gone up one percentage point (from 2.1% in 2005 to 3.3% in 2014).[364]

On the basis of the demographic projections[365] there is no reason to anticipate dramatic increases in the expenditure for Member States in the field of family benefits while the increase in the age-dependency ratio may place greater pressures on national administrations to finance such benefits:

[357] The FreSsco mapping exercise revealed administrative problems and delays in all participating Member States, Annex VI , p.16-17
[358] Note presented by Latvian authorities to the Reflection Forum of the Administrative Commission on Social Security Coordination March 2015.
[359] Your Europe Advice, Quarterly Feedback Report No 11 (First Quarter, January-March 2015)
[360] Articles 68(3) and 76(4) of Regulation (EC) No 883/2004 and Articles 2, 60(2) and (3) of Regulation No (EC) 987/2009. The Regulation expressly provides only that provisional decisions on which Member State has primary competence will become binding after two months.
[361] Decision E1 of the Administrative Commission for Social Security Coordination.12 June 2009 C 106, 24/04/2010, p. 9
[362] Administrative problems in the cross-border exchange of data associated with paper exchange of documents were reported by a number of Member States. See Annex VI (p. 17).
[363] Only a small minority of national administrations have a good view on the actual administrative burden or are able to support their arguments with quantitative data or a detailed description of the burden. A detailed analysis for seven Member States shows, that the national administration of primary competence spends on averages around two man-hours per case. For details, see Annex XVI
[364] Eurostat, LFS and European Commission calculations.
[365] The total fertility rate (TFR) is projected to rise from 1.59 in 2013 to 1.68 by 2030 and further to 1.76 by 2060 for the EU as a whole. However, during the same period, the proportion of young people (aged 0-19) is projected to remain fairly constant by 2060, while the total age-dependency ratio (people aged below 20 and aged 65 and above over the population aged 20-64) is projected to rise from 64.9% to 94.5% . European Commission: The 2015 Ageing Report: Economic and Budgetary Projections for the 28 EU Member States (2013-2060): Graph I.1.2.

still, a recent OECD Working Paper[366] concluded that public spending on family cash benefits is significantly associated with an increase in the total fertility rate. The fertility rate is projected to rise from 1.59 in 2013 to 1.64 by 2020 in the 2015 Ageing Report. Moreover, the fertility rate is projected to increase over this period in nearly all Member States, with the exception of France.

Intra-EU cross-border workers (i.e. working in a Member State other than the Member State of residence) are the main group of persons concerned by the export of family benefits. Compared to 2010, the number of cross-border workers increased sharply in absolute terms, but in relative terms (as percentage of the employed population) it has stayed at a relatively stable level of some 0.6% of the working population. It moved only from 0.5% of the employed population in 2006 to 0.7% of the employed population in 2014.[367] There is no indication that the relative level of cross-border workers will change considerably between now and 2020. In the 2015 Ageing Report we even read a projected negative growth of the number of employed persons (20-64) over the projection period (2013 to 2060. However, between 2013 and 2020 the number of employed persons would increase by 4.4 million persons (aged 20 to 64): this would result in a projected increase of 26,500 cross-border workers (+2.1%) between 2013 and 2020 (assuming that 0.6% of the labour force continues being employed as a cross-border worker).

EU mobile workers appear to have relatively fewer children compared to native workers (0.31 compared to 0.48 children in 2014).[368] While this may reflect the reality that EU citizens are more likely to be mobile when they do not have dependents, it is notable that the average for EU mobile workers has increased compared to 0.25 in 2004. In addition, statistics show a 39% increase in the number of permits issued to children wishing to join an EU citizen (18.756 in 2008 compared to 26.076 in 2013).[369] This may imply that as the economic outlook in the EU improves that EU mobile parents will be less inclined to seek work in a different Member State while leaving their children behind (at least in the longer-term). Supporting this assumption is the projections for greater levels of female labour market participation[370] as mothers are more likely to relocate as a family to the Member State of work, while men are proportionately more likely to work remotely from the country where their partners and children reside. [371]

In this way it may be anticipated that the instances of export of family benefits may reduce in the longer term as more mobile workers relocate with their families and because of the expected static or even reduced mobility flows. Likewise, in cases of frontier workers, increased levels of labour market participation by parents is likely to increase instances where the Member State of residence of the child has primary responsibility for payment of family benefits. This trend may increase the numbers of cases of export by the secondary competent Member State but reduce the level of benefits paid. Such trends are likely to result in a clearer alignment between the place of residence of the child and Member State with primary responsibility for payment of Family Benefits in a manner which may reduce the perception of unfairness due to the export of family benefits albeit that ongoing pressures created by the age-dependency ratio may in part counteract the impact of these trends. In conclusion, the total spending on family benefits might increase slightly based on the assumption that is

[366] Adema, W., Ali, N. and Thévenom, O. (2014), 'Changes in Family Policies and Outcomes: Is there Convergence?', *OECD Working Papers*, No. 157, OECD Publishing.

[367] Fries-Tersch, E. and Mabilia, V. (2015*), Annual report on statistics on intra-EU movers*, Network Statistics FMSSFE, European Commission.

[368] Analysis per household with two working age adults . A child is defined as a person aged 0-14, while a working age adult is defined as a person aged 15-64 years. Eurostat Labour Force Survey.

[369] There are no reliable data to compare numbers of EU mobile citizens who reside in a different household to their children and the trend in number of permits serves as a proxy for the reunification intentions of families. Eurostat First permits issued for family reasons by reason, length of validity and citizenship [migr_resfam]

[370] European Commission: The 2015 Ageing Report: Economic and Budgetary Projections for the 28 EU Member States (2013-2060): Graph I.2.4 shows The total participation rate of women (for the age group 20-64) in the EU is projected to increase by 6 pp compared with 1 pp for men.

[371] See Renee Luthra, Lucinda Platt & Justyna Salamońska, Migrant diversity, migration motivations and early integration: the case of Poles in Gemany, the Netherlands, London and Dublin (LEQS Paper No. 74/2014) and further research cited.

associated with the minor increase in fertility rate, but there is no indication that spending related to the export of family benefits will change in relative terms between now and 2020.

Labour market participation of women

Labour Market Participation for women is increasing rapidly with ILO predicting a participation rate of close to 75% in EU28 by 2020.[372] Likewise, in cases of frontier workers, increased levels of labour market participation by parents is likely to increase instances where the Member State of residence of the child has primary responsibility for payment of family benefits (already based on current LFS data in a households where a couple is living with children, 64% of parents are both economically active compared with 25% where only one parent is working). This trend may increase the numbers of cases of export by the secondary competent Member State but reduce the level of benefits paid per case of export by that Member State. Such trends are likely to result in a clearer alignment between the place of residence of the child and Member State with primary responsibility for payment of Family Benefits in a manner which may reduce the perception of unfairness described above.

However, in light of this trend of increased parents' labour market participation combined with the trend of the ageing population and increased family-carer responsibilities it will be increasingly important that there are flexible family policies to facilitate ongoing participation in the labour market during period of child-raising (and other caring obligations) and that barriers to such participation are minimised. Therefore the number and importance of child raising allowances is expected to increase and without common approach to classifying those benefits the problem of inconsistent treatment of families, uneven distribution of burden between Member States and of infringement proceedings will persist.

Delays in processing of family benefits

It is anticipated that reported delays in the processing of applications for family benefits will be reduced by the recent adoption of the decision F2 by the Administrative Commission for Social Security Coordination which imposes maximum time limits for responding to requests for information and by the launch of the Electronic Exchange for Social Security Information (EESSI) scheduled for launch by the end of 2016 with a deadline for full implementation in all Member State by the end of 2018 which will introduce common structured electronic documents and a uniform procedure for all national authorities to follow when processing claims for family benefits.[373]

It may also be assumed that there will be some improvement in public perceptions towards EU mobile citizens' access to family benefits arising from co-existing initiatives outside the scope of this review such as the Communication on Free movement of EU Citizens and their families: five actions to make a difference (COM(2013)837final) and ongoing research and communication initiatives by the Commission such as the development of annual data collection and reporting on the level of export of family benefits among Member States (including as a percentage of national expenditure on family benefits) as compared to expenditure on family benefits in kind for children resident in a Member State will elucidate the debate.[374]

7.2.5. Objectives for review of existing coordination rules on export

As with all elements of this review exercise, the **general policy objective** of this initiative is to continue the modernisation of the EU Social Security Coordination Rules by further facilitating the exercise of citizens' rights while at the same time ensuring legal clarity, a fair and equitable

[372] ILO, Economically Active Population Estimates and Projections.
[373] Annex VI, p17.
[374] See also *Socio-economic inclusion of migrant EU workers in 4 cities*¸ European Commission (2015).

distribution of the financial burden among the institutions of the Member States involved and administrative simplicity and enforceability of the rules.

In relation to family benefits in particular, this is reflected in the need to examine the reasons for perceptions of unfairness concerning the current rules on family benefits both in relation to fair treatment of mobile families and the balance of financial burden between Member States and to examine if there is a need to change the rules in order to counteract the risk of unilateral actions by some Member States. It also reflected in the need to ensure clarity in the rules as they apply to child-raising allowances recognising the current inconsistent treatment of such benefits by different Member States which creates uncertainty for citizens and competent institutions and consequent difficulties in enforceability. In recognition of the current administrative complexity and delays in processing family benefits, an important criterion in assessing all options under consideration will be the need for administrative simplicity and clarity.

In addition to the general objective the **specific objectives** in the field of family benefits are defined as follows:

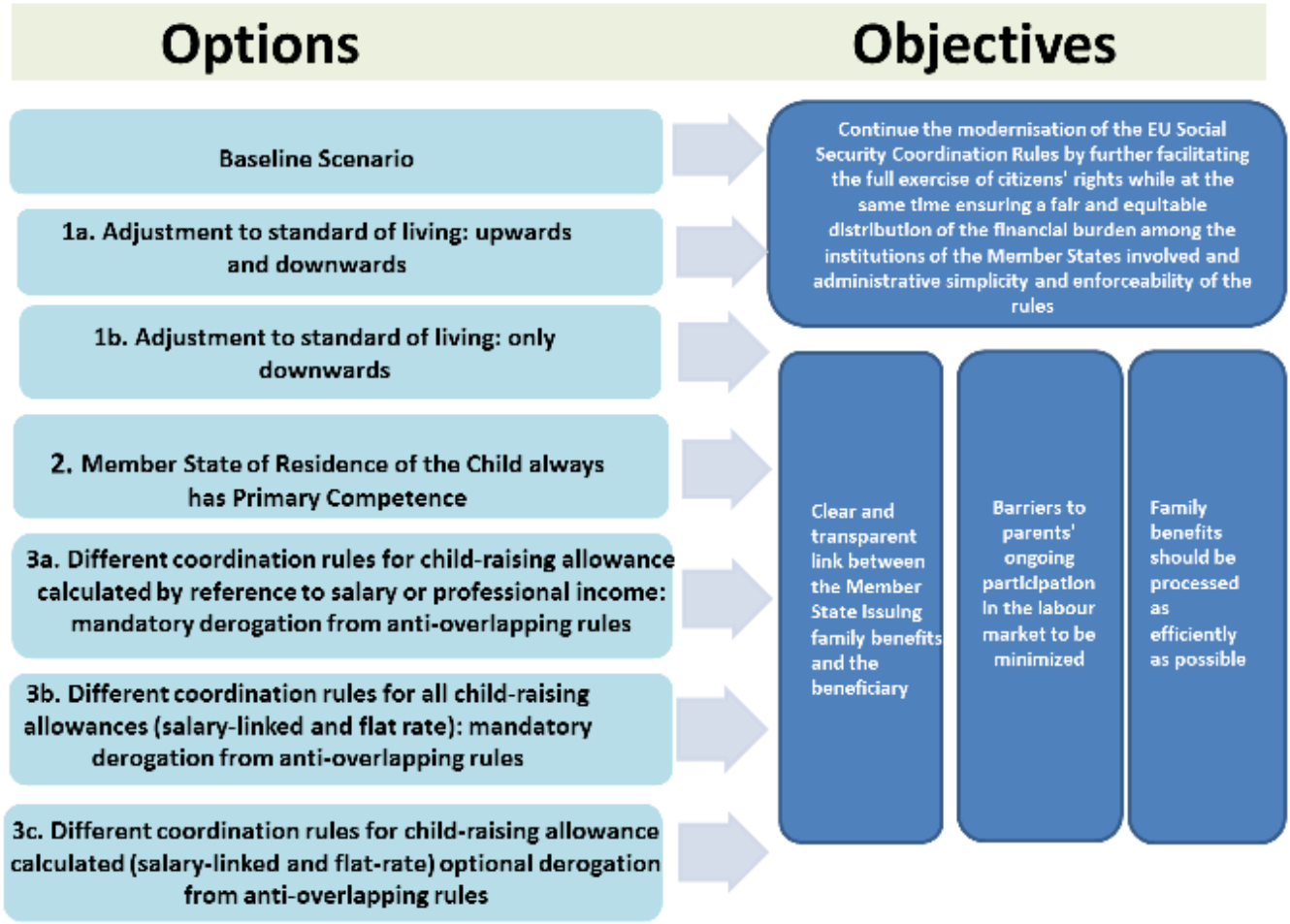
- To ensure a clear and transparent link between the Member State issuing family benefits and the recipients of those benefits;
- To reduce barriers or disincentives to parents' ongoing participation in the labour market;
- To ensure family benefits are processed as efficiently as possible.

7.3. What are the various options to achieve the objectives concerning export of family benefits

There will be no specific option proposed for the problem of delays in processing claims for family benefits, as it is anticipated that this issue will be resolved horizontally and through measures already envisaged outside the scope of this initiative.

A number of policy options have been identified to meet the objectives set out in Section 7.2.5. These span from non EU-action all the way to creating specific changes to the legal framework[375]. Whenever a combination of options is possible, this is indicated.

[375] As the problems relate to the application of Regulation (EC) Nos 883/2004 and 987/2009, all legislative options concern a change to these Regulations.



7.3.1. Option 0: Baseline Scenario:

Family benefits are exported to another Member State at the level of the competent Member State (=State of activity of the worker). They are conceptualised as benefits for the entire family and therefore are not regarded as individualised rights but may be transferrable between either parent who satisfies the conditions of entitlement. In cases of overlapping entitlement to family benefits, the rules of priority apply.

Example[376] 1.B: Peter works in Member State A (a country with a higher cost of living) and Marie, his non-working spouse, resides with their children in Member State B (which has a lower cost of living). Peter is entitled to Member State A's family benefits at the same amount as if his family were residing in Member State A. Member State B will not pay a differential supplement because the level of family benefits under its national legislation is lower than that provided in Member State A. Either Peter or Marie can make the claim for family benefits from Member State A.

Example 2.B: Anna works in Member State B (a country with a lower cost of living) and David, her non-working spouse, resides with their children in Member State A (which has a higher cost of living). Anna is entitled to Member State B's family benefits at the same amount as if her family were residing in Member State B. If the family is also entitled to benefits in Member State A, Member State A will also pay a differential

[376] The same two examples will be used to present differences in the options for adjusting the level of family benefits. The assumption is that a country with a higher cost of living has also a higher level of family benefits and vice versa.

supplement up to the level of family benefits provided under its national legislation. Either Anna or David can make the claim for family benefits from Member States A and B.

7.3.2. Option 1: Adjustment to standard of living

Option 1 proposes that the amount of exported family benefits would be adjusted according to the standard of living in the Member State of residence of the child(ren) in two variants (Options 1a and 1b).

In developing this option the Commission has identified a risk that such an option may be incompatible with primary law if it were to be applied to family benefits to which a citizen (and in particular a worker) has an autonomous right existing outside the scope of the Regulation. Therefore it is proposed that option 1a and 1b would only apply to the export of non-contributory based family benefits where there is no pre-existing right of export under national law. [377] This safeguard is important as it may exceed the scope of Article 48 TFEU to propose measures that would increase the disparities arising from the absence of harmonisation between national legislation in a manner that may have negative ramifications for mobile workers. [378]

7.3.2.1. Option 1a: Adjustment to standard of living: upwards and downwards

The amount of exported family benefits would be adjusted upwards and downwards according to the living standard in the Member State of residence of child(ren). First, the standard of living between the primary competent Member State and the Member State where the child resides would be compared.[379][380] Second, this coefficient would be applied to the amount of family benefits payable under the national legislation of the primary competent Member State. In a case, where both parents are in employment, the Member State with secondary competence may also apply the coefficient when calculating the differential supplement. Such an approach would reflect the practice applied for adjustment of remuneration (and in certain cases family allowances) of EU civil servants deployed in service outside Belgium and Luxembourg.[381]

Example 1.1a: Peter would receive family benefits from Member State A adapted to the living standard in Member State B and therefore a lower amount than under the current rules. If the amount of family benefits in Member State B is lower than the amount in Member State A (the "adjusted amount"), Member State B will pay nothing.

[377] This follows the judgment in *Petroni*, C-24/75, EU:C:1975:129 approved in *Jerzak*, C-279/82, EU:C:1983:228 which provides that according to Articles 45 and 48 TFEU, which constitute the basis of the coordination, "*limitation may be imposed on migrant workers to balance the social security advantages which they derive from the Community regulations and which they could not obtain without them*", but the Regulations may not withdraw or reduce the social security advantages that derive from the legislation of a single Member State.. On the application of this principle on the differential supplement of family benefits, see the judgment in *Dammer,* C-168/88, not available, paragraph 21 . See Annex VI.

[378] Judgment in *Pinna v Caisse d'allocations familiales de la Savoie,* C-41/84, EU:C:1986:1, paragraph 21 . It is to be noted that in this case, the CJEU ruled that a provision the preceding Regulation, that permitted France to pay the family benefits granted by the Member State of residences of the children instead of the family benefits they granted to children residing in France was unlawful because it gave rise to an indirect discrimination on grounds of nationality and that the right to freedom of movement was at stake if the migrant worker received less than the national workers just because his or her spouse and children remained in the Member State of origin . While there are grounds to distinguish Option 1a from Pinna as it proposes adjustment not substitution of benefits and sets objective criteria for ensuring benefits are linked to protective needs irrespective of the place of residence, the CJEU's findings must be given due weight.

[379] For example, using data compiled by Eurostat . It could be argued that the basket of goods taken for these general statistics is not specifically tailored to the needs of a child, however it could be challenging to develop a more specific and regularly updated source of information.

[380] It could be argued that the basket of goods taken for these general statistics is not specifically tailored to the needs of a child, however it could be challenging to develop a more specific and regularly updated source of information.

[381] Under the Articles 64 and 67(4) of Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community (OJ 45, 14.6.1962, p. 1385, as amended); the last publication can be found for the period beginning with 1.7.2014 in OJ C 444, 12.12.2014, p. 10. In relation to family allowances, this adjustment only applies if the allowance is directly paid to a person other than the official to whom the custody of the child is entrusted. The model of the EU Staff Regulations could not be applied directly as calculations are based on a coefficient compared to the standard of living in Belgium and Luxembourg not the factor of 100 for the EU-28.

Example 2.1a: Anna will receive family benefits from Member State B increased to reflect the living standard in Member State A. If there is also entitlement to family benefits in Member State A, and their level remains higher than the "adjusted amount" paid by Member State B, Member State A will be required to cover the difference by paying a supplement.

7.3.2.2. Option 1b: Adjustment to standard of living: only downwards

The amount of exported family benefits is adjusted downwards only according to the cost of living standard in the Member State of residence of child(ren). The level of benefit would be limited to the amount provided by the competent Member State. Under this option, a Member State would never pay more than the maximum amount under its national legislation. In cases of overlapping entitlement, the State of residence of the child(ren) will be required to pay a differential supplement in relation to the difference between the "adjusted amount" paid by the primary competent Member State and the amount payable under its own national legislation.

Example 1.1b: Peter would receive Member State A's family benefits adapted to the living standard in Member State B and therefore a lower amount than under the current rules. If the amount of family benefits paid in Member State B is lower than the amount paid by Member State A (the "adjusted amount"), Member State B will pay nothing.

Example 2.1b: Anna will receive family benefits from Member State B to the maximum rate permitted under national law of Member State B irrespective of the fact that the living standard in Member State A is higher. If there is also entitlement to family benefits in Member State A, and their level remains higher than the "adjusted amount" paid by Member State B, Member State A will be required to cover the difference by paying a supplement.

The same principles in relation to compatibility with Articles 45 and 48 TFEU set out above also apply in relation to Option 1b.

7.3.3. Option 2: State of residence of the child always has primary competence

This option determines new order of priority as follows: 1) country of residence of the child; 2) the country of work; and 3) country of pension. The country of residence of the child has primary responsibility to pay the full amount of family benefits to which the entitlement exists under its national rules. The country of work would top up this amount if the level of family benefits would be higher there.

The principle of priority for the Member State of Residence of the child already exists under the current rules in cases of overlapping rights on the same basis (e.g. where two parents work in different Member States). This option extends this principle to cases where only one parent is in work and is employed in another Member State. The rationale for this proposal is that in the case of family benefits, almost all national legislations are residence based. Therefore it is hoped that the inversion of the priority rules may mean a simpler situation for families in which payments may be processed more quickly.

Example 1.2: Marie will receive family benefits from Member State B. If Peter is also entitled to benefits in Member State A, the family would receive a differential supplement from Member State A. The family overall receives the same amount as under the current rules but the division of costs between Member State A and Member State B is different.

Example 2.2: David will receive family benefits from Member State A. As the amount of family benefits in Member State B is lower than in the Member State A, Member State B will pay nothing. The family overall receives the same amount as under the current rules but the division of costs between Member State A and Member State B is different.

7.3.4.1 Horizontal Option: Different coordination rules for child-raising allowances: greater emphasis on individual rights and different treatment under the anti-overlapping rules

This section sets out a number of horizontal options, which may be applied in isolation or in conjunction with any of the options above. As there are no synergies or inter-dependencies between the impacts it is intended to assess the impact of these options separately.

It should be made clear that these options relate solely to the right to claim a social security benefit intended to wholly or partially replace income during periods of child-raising. The option does not propose to create or extend rights to parental leave which may separately exist under the Parental Leave Directive,[382] national legislation or collective agreement.

7.3.4.2 Different coordination rules for child-raising allowances calculated by reference to salary or professional income: greater emphasis on individual rights and mandatory derogation from the anti-overlapping rules

Salary-related child raising allowances (or any salary-related components of a benefit which comprises of both salary-related and flat rate elements) would continue to be exportable as family benefits, but would be treated as individual and personal rights which may only be claimed by the parent who is subject to the applicable legislation in question (not by other members of their family). In addition, it is proposed that no anti-overlapping rules would apply to such benefits meaning that they would be payable in full to the parent concerned.

Where under national legislation, parents are permitted to share a salary-related child raising allowance, the parent who is subject to applicable legislation is entitled to the allowance for the maximum duration permitted under national legislation.[383] However, where a family receives a salary-related child raising allowance in more than one Member State, national authorities will be entitled to "off-set" periods of entitlement in another Member State from the overall duration of the benefit (although not the amount).

Example 1.3a: **Peter and Marie live with their child in Member State A (which has a child raising allowance calculated by reference to salary). Marie is a national worker of Member State A. Peter is a posted worker from Member State B. (Member State B has a flat rate allowance).** Member State A is the primarily competent Member State because this is the place of residence of the child. When Marie takes leave to take care of her child she is able to claim the child-raising benefit from Member State A. Peter has no entitlement to salary-related component of the child-raising benefit from Member State A. If Peter claims the child-raising allowance from Member State B, Member State B cannot into account the salary-related benefit from Member State A's child-raising allowance in calculating the level of supplement Peter is entitled to.

Example 2.3a: **David lives and works in Member State A. Anna his wife lives in Member State A but works in Member State B. Both Member State A and Member State B have salary-related child-raising allowances.** Member State A is the primary competent Member State because this is the place of residence of the couple's children. David is able to claim salary-related child-raising benefit during periods he has taken leave to take care of their children. According to Member State A's legislation, each parent is individually entitled to 13 weeks of salary-related child raising allowance. However, as Anna is unable to claim the allowance under Member State A's legislation, David is entitled to 26 weeks of salary-related child-raising benefit (assuming national entitlement conditions are satisfied). Anna is separately entitled to salary-related child-raising benefit under Member State B's law. However, if Anna makes a claim for salary-related child-raising benefit during the same period as David, Member State B will be entitled to take into account periods of benefit that David has already claimed in calculating the length of period of leave although Member State B

[382] 2010/18/EU

[383] taking into account restrictions that may separately exist to the labour law right to parental leave under the Parental Leave Directive 2010/18/EU

may not deduct amounts already paid by Member State A when calculating the level of benefit payable to Anna.

7.3.4.3 Different coordination rules for all-child raising allowances (flat rate and salary-related): greater emphasis on individual rights and mandatory derogation from the anti-overlapping rules.

As a variation to the horizontal option described above, it could also be considered to extend the horizontal option A so it applies to all child-raising allowances regardless of whether they are calculated by reference to salary/professional income or are awarded on a flat-rate basis.

Example 1.3b: Marie will receive the full amount of child-raising allowance but Peter will have no entitlement to child-raising allowances from Member State A. Member State B cannot take into account any of the child-raising allowance paid by Member State A when calculating the level of child-raising allowance Peter is entitled to.

Example 2.3b: David and Anna will be treated in the same way as under example 2.3a

7.3.4.4 Different coordination rules for all-child raising allowances (flat rate and salary-related): greater emphasis on individual rights and optional derogation from the anti-overlapping rules

As a further variation to the horizontal options described above, it could also be considered to provide that child-raising allowances (either salary-related only or salary-related and flat-rate) should be treated as individual and personal rights which may only be claimed by the parent who is subject to the applicable legislation in question, however, it is only optional rather than mandatory for a secondary competent Member State to exempt such benefits from the anti-overlapping rules Such an approach would allow national administrations greater flexibility to promote flexible child-raising arrangements in line with national policy objectives of the Member States concerned but the requirement would not be mandatory.

There will be no requirement to allocate the maximum duration of child-raising allowance permitted under national legislation to the parent subject to the applicable legislation concerned and consequently no requirement to "off-set" periods of taken by the other parent under the law of another Member State.

Example 1.3c: Marie will receive the full amount of child-raising allowance but Peter will have no entitlement to child-raising allowances from Member State A. Member State B (as secondary competent Member State) will have a choice whether to take into account any of the child-raising allowance paid by Member State A when calculating the level of child-raising allowance Peter is entitled to. This choice will be exercised in relation to all claims for the benefit concerned (not on a case-by-case basis)

Example 2.3c: David will receive 13 weeks of child-raising allowance (the normal period for an individual parent under Member State A's law), the duration of the child-raising allowance that Anna receives will depend on the national conditions of Member State B's law.

7.3.5 *Discarded option*

It was also considered that family benefits would be provided by the Member State of residence of child(ren) under its national legislation only, i.e. no export of family benefits. 4 Member States supported this option.[384]

This option has subsequently been discarded by the Commission on grounds it is considered incompatible with the Treaty on Functioning of the European Union, in particular as the refusal to export family benefits has already been ruled contrary to Article 45 TFEU.[385] The right to family benefits is granted to *workers* by reason of their employment in the Member State of employment. Refusing to grant them the right to equal treatment as regards entitlement to family benefit would amount to a violation of primary law.

7.4. **Stakeholder Support**

7.4.1 *Baseline Scenario*

In discussions in the Administrative Commission in March and June 2015, 16 Member States[386] were in favour of maintaining the status quo in preference to adjusting benefits to option 1a or b or 2. In consultation with stakeholders also indicated the status quo was favoured by a number of national organisations with responsibility for family benefits such as REIF, SVB, CNAF, CCMSA and FAMIFED. In the response to the public consultation only 33% of organisations and 31% of individuals indicated support for legislative change.[387]

7.4.2 *Adjustment to standards of living*

7.4.2.1 Option 1a: Adjustment to standards of living: upwards and downwards

Three Member States[388] supported this option in the Administrative Commission. NGOs underlined the unfairness of adaptation, since the workers concerned pay the same taxes, but also the fact that, for the competent Member State, adapting family benefits may have unintended consequences if the concerned families were to move to the Member State as a result. In this sense, it was mentioned that the biggest challenge for local authorities is pressure on public services, and not "benefit tourism".[389] Social partners[390] pointed out that the right to family benefits should be considered attached to the worker and not to the place of residence of the family. In their view lowering the family benefits for mobile workers would in any event constitute unequal treatment.[391] In the response to the public consultation, only a minority of respondents commented on the issue of adjustment of family benefits to the place of residence of the child. Among those that did there were mixed responses, with some respondents indicating strong support for this principle and others strong opposition.

[384] Luxembourg, Malta (in relation to family benefits specific to the social or economic conditions of the Member State), Finland and the United Kingdom. Annex II.
[385] Joined Cases C-4/95 and C-5/95, *Stöber and Pereira* ECLI: EU: C: 1997:44 (amongst others).
[386] Belgium, Bulgaria, Czech Republic, Estonia, Spain, Croatia, Italy, Latvia, Lithuania, Poland, Portugal, Romania, Slovenia, Slovakia, Finland and Sweden.
[387] A public consultation between July and October 2015 invited citizens and organisations to provide their views on the main problems linked to the coordination of unemployment benefits, family benefits and posting of workers.
[388] Denmark, Ireland and France. Annex II.
[389] For example, EURODIACONIA. Annex II.
[390] Annex II.
[391] For example, ETUC and TUC (Trades Union Congress, United Kingdom).Annex II.

7.4.2.2 Option 1b: Adjustment to standards of living: only downwards

No Member States expressly supported this option in the Administrative Commission. Stakeholder feedback was similar to Option 1a.

7.4.3 *Option 2: Member State of Residence of the child always has primary competence*

10 Member States[392] supported this option as a first or second choice but 9 Member States[393] were expressly opposed to the option in the Administrative Commission. Some social partners emphasized that the right to family benefits should be considered attached to the worker and not to the place of residence of the family.[394] In the response to the public consultation, only a minority of respondents commented on the issue of a change to the order of competence so the place of residence of the child always has primary competence. Among those that did there were mixed responses, with some respondents indicating strong support for this principle (in particular because they considered it would improve the simplicity and efficiency of the rules and create a stronger link to the economic environment where the child resides). However, others expressed strong opposition to the idea of reducing the link between the Member State of Employment and competence for providing family benefits.

7.4.4 *Horizontal Option: Different Coordination of child-raising allowances*

This option was initially not envisaged and was developed in response to the stakeholders' feedback.[395]

In March and June 2015, 4 Member States in the Administrative Commission indicated support for an alternative coordination of salary-related child-raising allowances and action was also recommended by the FreSsco network of experts (see Annex VI[396]).

The Council, the Parliament, the social partners, the Advisory Committee on Equal Opportunities for Women and Men and other stakeholders have called for developing a comprehensive set of measures to address women's under-representation in the labour market and to support more equal sharing of family responsibilities. In June 2015, EPSCO Council Conclusions[15] highlighted that measures could include improving the provision of childcare and long-term care, flexible working time arrangements, addressing financial disincentives for both parents (and single parents) to participate in paid work, as well as supporting smoother transitions for women and men between part-time work and full-time employment, and between care-related leave periods and employment. The European Social Partners have also recognised that work-life balance and gender inequality in the labour market remain serious challenges. They have made "promoting better reconciliation of work, private and family life and gender equality to reduce the gender pay gap" a priority in their new joint work programme for 2015-2017.

[392] Austria, Estonia, Finland, Ireland, Latvia, Luxembourg, Malta, Slovenia, Sweden and the United Kingdom
[393] Cyprus, Germany, France, Italy, Netherlands, Poland, Portugal, Romania and Slovakia
[394] For example, ETUC and TUC (Trades Union Congress, United Kingdom). Annex II.
[395] This option was developed following consultation with Member States in the Administrative Commission in March and June 2015 and feedback from other stakeholders . See Annex II and Annex VI.
[396] SPIEGEL, B. (ed.), CARRASCOSA BERMEJO, D., HENBERG, A. and STRBAN, G., Assessment of the impact of amendments to the EU social security coordination rules on export of family benefits, Analytical Report 2015, FreSsco, European Commission, May 2015 (Annex VI).
[15] 2015 EPSCO Council Conclusions on the Gender Pension Gap.

7.5. What are the Impacts of the Different Options

7.5.1 *Introduction*

For all of the options assessed, the potentially affected groups are the same. The options are specifically targeted at mobile EU parents and their children, that is to say: citizens who either work or reside in a different State to that where their children reside. Hence, it may concern both mobile workers and frontier workers or other cross-border workers. It may also concern non mobile citizens and children who have not exercised their right to freedom of movement but who have a parent or partner (or former partner) who is a mobile citizen.

For the purposes of assessing the impact, a range of criteria has been identified with reference to the general and specific policy objectives for family benefits and the Commission's Better Regulation Guidelines. In relation to **social impact**, the options are assessed against the criteria of **clarification; simplification; protection of rights** and **impact upon fundamental rights** (with reference to the **specific objective** this analysis also includes an assessment of the potential impacts of **barriers or disincentives to parents' ongoing participation in the labour market).** This analysis draws upon the findings of the FreSsco Legal Experts report at Annex VI supplemented by the Commission's Services own analysis and the findings from the stakeholder consultations and the Inter-Service Steering Group.

In relation to **Fundamental rights** all options under consideration aim to facilitate the exercise of the right to engage in work in another Member State (Article 15), as well as to a better protection of rights for workers who have made use of their right to free movement (Article 45). At the same time the options seek to ensure the right to equal treatment (Article 21), the best interests of the child (Article 24), rights of the family in particular to reconcile family and professional life (Article 33(2)), the right to property and social security (Articles 17 and 34).

In relation to the **economic impact**, the options are assessed against the impact on Member States' budgets. It has to be noted that 19 Member States and EFTA countries (Belgium, Czech Republic, Denmark, Germany, Estonia, Ireland, Spain, Latvia, Luxembourg, Hungary, Netherlands, Austria, Poland, Romania, Slovakia, Finland, United Kingdom, Iceland and Norway) were able to provide data on the export of family benefits, while 10 (Czech Republic, Germany, Estonia, Latvia, Luxembourg, Hungary, Netherlands, Austria, Slovakia and Iceland) were able to provide a breakdown of exported family benefits by primary and secondary competence[397]. This entails a number of limitations in the assessment of the economic impact of option 2 (reversing priority rules) and the horizontal options (different coordination rules for salary-related child-raising allowances), which will be presented/discussed in full in the section. In particular, for reasons of practicality, the economic analysis has also been conducted based on the assumption that all Member States are in full compliance with the EU social security coordination rules currently in force including in respect of the most recent jurisprudence of the Court of Justice. It should further be noted that in the absence of comprehensive data from the Member States, the economic assessment for the horizontal option is made with reference to ESSPROS figures for parental benefits awarded for children aged 0-3 regardless of whether or not the benefit is indexed to salary or professional income. The estimations must be construed in light of these limitations. The full studies are attached to this report at Annexes XI and XIII[398].

The **regulatory costs** for both public administrations and citizens in relation to Options 1a, 1b and 2 were assessed through a number of interviews with public officials working for administrations dealing with the export of family benefits (both as primarily competent and secondarily competent

[397] P. 6, Annex XI
[398] PACOLET and DE WISPELAERE *Export of family benefits, Analysis of the economic impact of the options,* 2015 (Annex XIII).

Member States) in six Member States (Germany, Denmark, Netherlands, Poland, Romania and the United Kingdom). The full study is attached to this report in Annex XVI.[399] This assessment also takes into account the **specific objective** of **faster and more efficient processing of family benefit claims.**

With reference to coherence with the **general objective**, the options have also been assessed with reference to their impact upon **risk of fraud and abuse** and ability of Member States to counteract such risks and by reference to the objective of achieving **equitable burden-sharing between Member States** (corresponding to the **specific objective** of achieving a **clear and transparent link between Member State paying benefits and recipient**). Finally the assessment considers overall coherence with EU objectives with reference to relevant policies identified at section 1.3 of this report.

The secondary impacts of the options on mobility flows was estimated on the basis of case studies in seven Member States (Belgium, Germany, Poland, Romania, Netherlands, Spain and Ireland), with a target population of one-earner families in which the person entitled to the exportability of child benefits works and resides in a Member State different from the one where the dependent family member resides[400]. The full study is attached to this report in Annex XVIII. It should be acknowledged however, that such methodologies are imperfect tools for predicting families' motivations and migration drivers which in practice are likely to be influenced by a far-wider range of factors than purely economic influences.

Finally, when looking in particular at economic impact, regulatory costs and secondary impact for horizontal options a, b and c, it must be noted that these options were developed and refined at a late stage of the impact assessment process. Therefore, in addition to the limitations already highlighted due the limitations on data highlighted above, the late development/refinement of the horizontal options has led to a less detailed assessment of impact, at times only at a qualitative level.

[399] Julie Abrahamsen, Monica Lind, Peter G. Madsen, *Administrative costs of handling exports of family benefits*, 2015 (Annex XVI).
[400] Michele Raitano, Matteo Luppi, Riccardo Conti, Diego Teloni, *Secondary effects following a change of regulations on the exportation of family benefits*, 2015 (Annex XVIII).

7.5.2 *Summary table of the impacts of the options for export of family benefits*

Type of impact	Clarification	Simplification	Protection of rights	Fundamental rights	Economic impacts	Regulatory costs	Risk of fraud and abuse	Equitable burden sharing Member State	Coherence with EU objectives	Overall Effectiveness	Overall Efficiency (cost vs effectiveness
Baseline Scenario	0	0	0	0	0[401]	0[402]	0	0	0	0	0
Option 1a Adjustment to standards of living: upwards and downwards	-	--	--/+	-	+/-[403]	--[404]	-	+/-	--	-	-
Option 1b Adjustment to standards of living: only downwards	--	-	--	-	+[405]	--[406]	-	++/-	--	-	-
Option 2 Member State	++	+	+	0	+/-[407]	+/-[408]	+	+/-	+	+	+

[401] €942 m is the budget devoted to exported child benefits in 19 reporting Member States; Annex XIII; Table 9.
[402] Cost for handling export of FB is estimated at on average 1.9 man hours per case for the primary competent Member State and at 1.6 man hours per case for the secondary competent Member State this corresponds to an annual cost in the range of between €40 and €2,000 in selected Member State (variation according to number of cases and labour costs).
[403] Overall decrease of €150m (-15.9%) but increase for Member State with lower cost of living.
[404] Increase of approx. one man-hour per case.
[405] Overall decrease of €156m (-16.6%).
[406] As 1a above.
[407] Decrease of exported benefits of €420m (-30%) but increase in expenditure of State of residence by up to 120%.
[408] Moderate decrease in cases of recovery and overpayments but moderate increase in cases of differential supplement and verification of residence.

of residence has primary competence											
Horizontal A Personal rights to salary-linked child-raising allowance mandatory derogation from overlapping rules	++	+	+/-	+/-	--[409]	+/-[410]	+	+/-	++	++	+
Horizontal B Personal rights for all child-raising allowance mandatory derogation from overlapping rules	++	+	+/-	+/-	--[411]	+/-[412]	+	+/-	++	++	+
Horizontal C Personal rights for all child-raising allowance	-/+	+	+/-	+/-	--[413]	+/-[414]	+	+/-	+/-	+/-	+

[409] Estimated Increase in expenditure on exported salary-related child-raising allowances for secondary competent Member State of 62-81%.
[410] Moderate decrease in regulatory costs No need to process/ calculate claims on derived rights . Some new tasks to compare benefits in different Member State.
[411] Estimated Increase in expenditure on exported child-raising allowances for secondary competent Member State of 58-84%.
[412] Same as Horizontal Option a but wider field of application as covers all child-raising benefits.
[413] Maximum impact same as Horizontal Option b (but not all Member States will rely upon the derogation).
[414] Maximum impact same as Horizontal Option b with added advantage that no need to compare duration of claims in other Member States (but not all Member States will rely upon the derogation therefore information exchange for differential supplement may continue).

optional derogation from overlapping rules

7.5.3 *Impacts of Policy Option 1a: Adjustment to standard of living: upwards and downwards*

Policy Option 1a: Adjustment to standard of living: upwards and downwards		
Social impacts		
Clarification	-	This option is less transparent than the baseline scenario. There is a significant risk that mobile workers would be less aware of the level of benefits they are entitled to as the amount of the family benefit received would be subject to fluctuations depending on various factors, such as macro-economic criteria or the country of residence of the children during the life-cycle of a family benefit claim. This may affect the citizens' ability to assert and enforce their rights.
Simplification	--	In comparison to the baseline, this option is more complex to apply as it imposes additional obligations for mobile workers and public administrations to state and verify the Member State of residence of the children. Possible changes in the Member State of residence of the children or macro-economic changes would result in additional administrative obligations for the mobile worker and public authorities in changes in the amount of the benefit granted by one and the same Member State.
Protection of rights	--/+	This option will result in EU mobile families receiving either a lower or higher level of family benefits than would normally be awarded by the exporting Member State depending on the cost of living in the country where the child resides. It can be anticipated that the most likely situation is that the family benefits will be lower. Firstly, because trends in labour mobility patterns show a bias in mobility from lower wage destinations towards higher wage destinations. Secondly, because the existing rules relating to the differential supplement already ensure that a family will receive a "top-up" from the secondary competent Member State to the level awarded by that Member State. This existing provision under the baseline scenario already mitigates against the potential disadvantage that a family who resides in a high-cost of living destination but workers in a lower cost of living destination might otherwise experience meaning the positive financial impact for the mobile worker arising from this option are expected to be marginal.
Financial impact	+/-	The adjustment of the amount of exported family benefits could decrease the total expenditure on exported family benefits by € 150 million (15.9%). Member States with a higher cost of living compared to the countries where they currently export family benefits will experience a reduction in their expenditure on exported family benefits – by more than 30% in the case if Germany (€34 million) and Ireland (€4 million), by 13% in the case of Luxembourg, . By contrast, Member States with a lower cost of living compared to the countries where they currently export family benefits will experience an increase in their expenditure on exported family benefits to a level that is higher than permitted under their own national rules. This increase

		would be above 70% for Poland (€ 4 million) and above 40% for Latvia (€ 50,000)[415], 37% for Estonia, 35% for Slovakia, 21% for Hungary. Extending this analysis to the EU-28, in principle, all Member States with the exception of Denmark (the State with the highest index for comparative price levels[416]) would have to raise its family benefits at least in respect of export of family benefits to a child resident in Denmark.
Impacts on fundamental rights	-	In the case of a lower adjustment, this option may adversely affect the right to property (in this case social security benefits) (Article 17); the right to equal treatment (Article 21) and the best interests of the child (Article 24) and the right to social security and social assistance (Article 34) when compared with the baseline scenario. In particular, compared to the baseline scenario, workers would receive lower or higher levels of family benefits that their co-workers even though they pay the same taxes and social security contributions. Likewise Member States with a lower cost of living would be required to export family benefits at a higher rate than is awarded to national citizens resident within their territory. Even though there is precedence for deductions from family benefits in the context of the anti-accumulation rules, the fact that these options do not guarantee that the family of a mobile worker will receive a sum at least equivalent to the highest rate available under the overlapping applicable legislation also gives rise to concerns of interference with the right to Property under Article 17.
Other impacts		
Regulatory Costs	--	This option would increase the administrative burden compared with the current rules. The running cases would need further administrative processes as e.g. the updating of the adjustment factors has to be made on a regular basis (even if national amounts do not change). Processing times between the claim being filed and benefit being received could be increased due to the verification of residence. In addition, as application of indexation to rights deriving from worker-status or which exist independently of the application of the Regulation would violate primary law, there will be additional administrative tasks, for example, to distinguish between contributory and non-contributory family benefits in each Member State. On the basis of the interviews conducted with national administrations, it is estimated that the administrative tasks as primarily competent may increase by around one man-hour per case (+49%), mainly due to the increase in the time devoted to the calculation of benefits and the reimbursement activities[417]: The total cost will thus increase of a sum ranging from €12,900 in Romania (+300%) to 1,068,100 (+60%) in Germany[418].

[415] Table 13, Annex XIII.
[416] http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tec00120&plugin=1 (last accessed 25 March 2015).
[417] Table 3-1, Annex XVI.
[418] Tables 3-1, 3-2, 3-3 and 3-4, Annex XVI.

		The administrative tasks of secondarily competent Member State, will also increase by around one man-hour per case (+60%), mainly due to the increase in the time devoted to the calculation of benefits, as it becomes more complex. this will translate into an increase in the cost per case (ranging from €1.4 in Romania to €58.3 in Denmark). It is not estimated that this option would increase the administrative burden for citizens, though longer processing times of the cases may well have a negative impact in increasing delays between application and receipt of family benefits[419].
Risk of fraud and abuse	-	Families could be tempted to declare that their children live in a Member State with a higher factor of adjustment (or even in the Member State with primary competence), as far as the amount of the benefits would depend on the children's place of residence. For the Member State with primary competence, the children's place of residence is usually more difficult to determine than, for example, the place of work, so the risk of abuse could increase necessitating additional activities by Member States to counter this risk. Further, the greater complexity entailed in indexation may increase the risk of administrative error by public authorities.
Fair burden sharing between Member States	+/-	This option shifts the burden from the Member States with a higher factor of adjustment, i.e. those where income and costs are higher, to Member States with lower factors of adjustment. In particular, it will require Member States with lower costs of living to export family benefits at a higher rate than payable to national citizens within their own territory. This shift in burden is exacerbated due to the effect of the differential supplement. As compared with the baseline scenario, more Member States with lower income and costs may be required to pay a differential supplement than under the current rules. Taking into account that migration patterns usually are from Member States with lower living standards to those with higher standards, this option would probably shift the burden from the latter to the former. This could result in a certain disruption of the economic logic that assigns the obligation to pay the family benefits to the Member State receiving the contributions and taxes.
Mobility	-/+	This option could entail a moderate reduction of mobility flows of one-earner married persons who would move without his/her family towards Member States with relatively higher cost of living with subsequent consequences for the skills availability to those labour markets.[420] On a sample of six Member States when all factors are neutral it may be expected to have the following impact: Netherlands (-4%), Germany (-3%), Belgium (-1.%), Spain (-0.9%) and Ireland (-0.7%) – and an increase towards Member States with relatively lower cost of living – Poland (3%) and Romania (8%)[421]. This would entail

[419] Page 32, Annex XVI.
[420] Annex XVIII.
[421] Figure 4.1, Annex XVIII.

		consequent reductions/increases in the budget devoted to exported family benefits[422]. However, another possible secondary effect could also be that dependent family members would reunite with the working partner/parent working in another (with higher living cost) Member States, which would counterbalance the effects of the option[423]. The impact of such reunification may potentially have consequences for the education, health, housing and other systems of the Member State of the economically active citizen. In the context of the low flows anticipated no estimates have been carried out for the economic impact of this. This analysis ignores other variables that may influence a family's decision about whether or not to relocate and needs to be viewed accordingly.
Coherence with General, Specific and wider EU Objectives: Continue the modernisation of the EU Social Security Coordination Rules by further facilitating the exercise of citizens' rights while at the same time ensuring legal clarity, a fair and equitable distribution of the financial burden among the institutions of the Member States involved and administrative simplicity and enforceability of the rules. • Ensure a clear and transparent link between the Member State issuing family benefits and the recipients of those benefits • Remove barriers or disincentives to parents' ongoing participation in the labour market • Ensure family benefits are processed as efficiently as possible	--	This option achieves a greater correlation between family benefits and the cost of living in a manner likely to address the perceptions of unfairness held by some critics. However, it does not fully achieve the aim of achieving a fair distribution of financial burden as it disrupts the economic logic that the State that receives taxes and social security contributions should have responsibility for paying benefits by transferring the economic burden from the Member State of Work to the State of Residence. It also does not achieve a clear and transparent link between the Member State issuing a benefit and the families in receipt of such benefits as Mobile workers will receive lower level of family benefits than nationals notwithstanding the fact they pay the same level of tax and social security contributions (conversely Member States with comparatively lower costs of living may be required to export family benefits at a higher level than payable to citizens resident on their territory in a manner likely to be perceived as unfair by nationals of that State). The option also reduces clarity and legal certainty compared to the baseline particularly in relation to level of entitlement and which benefits may be subject to indexation. It is likely to be administratively burdensome for both citizens and national authorities to apply. This option may increase rather than reduce disincentives to parents' ongoing participation in the labour market during periods of child-raising (at least in relation to non-contributory benefits) as such benefits will not only be subject to the anti-accumulation rules but also subject to reductions based on place of residence of the child. It may also increase delays in processing family benefits.

7.5.4 *Impacts of Policy Option 1b: Adjustment to standard of living: downwards only*

Policy Option 1b: Adjustment to standard of living: only downwards

[422] Figure 5.1, Annex XVIII.
[423] Pp. 33-34, Annex XVIII

Social impacts		
Clarification	--	As with Sub-option 1a, and for the same reasons, this option is less clear or easy to understand than the baseline scenario. In addition, changes in the relative cost of living between different Member States means it may be even less clear to workers whether they can expect family benefits to be exported at the national level or indexed at a lower level.
Simplification	-	As with Sub-option 1a, and for the same reasons, this option is less clear or easy to understand than the baseline scenario.
Protection of rights	--	This option is anticipated to have the same social impact as option 1a, exacerbated further compared to the baseline scenario because it does not improve the protection of rights of beneficiaries residing in a Member State with a higher standard of living and further may increase the lack of clarity concerning the level of family benefits payable as indexation will not be applied consistently in all cases
Financial impact	+	There is expected to be a moderate, decrease of € 156 million (16.6%) in the expenditure on exported family benefits would occur. It is predicted that all reporting Member States would now experience either a reduction or no change to their expenditure on exported family benefits compared to the baseline, which will be nearly 40% for Ireland (€ 4.5 million) and above 30% for Germany (€ 36 million)[424] the change is more negligible for Latvia, Poland, Hungary, Slovakia and the Czech Republic where the estimated impact ranges from 0-0.5% (€0-8,230).
Impacts on fundamental rights	-	This option is anticipated to have the same impact upon fundamental rights as option 1a, exacerbated further because it does not improve the protection of rights of beneficiaries residing in a Member State with a higher standard of living.
Other impacts		
Regulatory Costs	--	As with sub option 1a and for the same reasons, this option is more complex to apply, however, the complexity is anticipated to increase because as opposed to uniformly applying a standard co-efficient across all Member States, national administrations will need to analyse in each case whether the relationship between cost of living requires a Member State to export the national level of benefit or whether a downward adjustment should be applied. It is anticipated that these procedures would fluctuate along with changes to the relative cost of living across the EU-28. As per option 1a, it is estimated that the administrative tasks as primarily competent will increase by around one man-hour per case (+49%), mainly due to the increase in the time devoted to the calculation of benefits and the reimbursement activities[425] this will translate into an increase in the cost per case (ranging from €0.8 in Romania to €58.3 in Denmark). Moreover, a change in the number of cases

[424] Table 14, Annex XIII.
[425] Table 3-1, Annex XVI.

		of export of family benefits could also occur as a result of the introduction of this option[426] - see also *mobility* below. The total cost will thus increase of a sum ranging from €8,700 (+20%) in Romania to 1,063,500 (+60%) in Germany[427]. Administrative tasks as secondarily competent, are also expected to increase by around one man-hour per case (+55%), mainly due to the increase in the time devoted to the calculation of benefits, as they become more complex: this will translate into an increase in the cost per case (ranging from €1.4 in Romania to €58.3 in Denmark).
Risk of fraud and abuse	-	As with Sub-option 1a, and for the same reasons, this option may increase incentives for fraud while the greater complexity may increase the risk of administrative error thereby necessitating greater action by public authorities to mitigate these risks.
Fair burden sharing between Member States	++/-	As with option 1a, this option shifts the burden between Member States due to the effect of the differential supplement. However, this option would bring a financial relief for the Member State with a higher factor of adjustment (as they could reduce their family benefits for children living in Member States with lower factors of adjustment, while Member States with lower factors of adjustment would not see any change in their situation in cases where they have to grant benefits for children residing in Member States with higher factors of adjustment.
Mobility	+/-	Like option 1a, this option could also entail a moderate reduction of mobility flows of the target population (one-earner married persons who would move without his/her family) towards Member States with relatively higher cost of living. For example, in a sample of six Member States, this is expected to impact the Netherlands (-4%), Germany (-3.2%), Belgium (-2.2%), Spain (-0.9%) and Ireland (-1.7%), while no increase would occur towards Member States with relatively lower cost of living[428]. This would entail reductions (Belgium, Germany, Spain, Ireland and Netherlands) in the budget devoted to exported family benefits[429]. However, as per option 1a, another possible secondary effect could also be that dependent family members would reunite with the working partner/parent working in another (with higher living cost) Member States, which, again, would nullify the effects of the option[430]. As stated above, this analysis ignores other variables that may influence a family's decision about whether or not to relocate and needs to be viewed accordingly.
Coherence with General, Specific and wider EU Objectives Continue the modernisation of the EU	--	For the same reasons as Option 1a this option is not considered effective at achieving the General and Specific EU objectives, while it may be considered generally neutral in relation to the wider EU objectives, with the exception of the Fresh Start to

[426] Table 3-3, Annex XVI.
[427] Tables 3-1, 3-2, 3-3 and 3-4, Annex XVI.
[428] Figure 4.1, Annex XVIII.
[429] Figure 5.1, Annex XVIII.
[430] Pp. 30-31, Annex XVIII.

Social Security Coordination Rules by further facilitating the exercise of citizens' rights while at the same time ensuring legal clarity, a fair and equitable distribution of the financial burden among the institutions of the Member States involved and administrative simplicity and enforceability of the rules. • Ensure a clear and transparent link between the Member State issuing family benefits and the recipients of those benefits • Remove barriers or disincentives to parents' ongoing participation in the labour market • Ensure family benefits are processed as efficiently as possible		address the challenges of work-life balance faced by working families, where it is considered to be likely to be incoherent

7.5.5 *Impacts of Policy Option 2: Member State of Residence of the Child has primary competence*

Policy Option 2: Member State of Residence of the child always has primary competence		
Social impacts		
Clarification	++	As the Member State which is competent by priority is always the Member State of residence of the children, it is clear which Member State has to start granting its benefits and means the EU rules are aligned with the residence system in place in the majority of Member States. Many disputes which today's coordination could cause (if Member States do not agree on which Member State is the primarily competent one) could be avoided.
Simplification	+	On the one hand this option could be regarded as simpler, as it is always the same Member State that primary competence. There is also likely to be a greater stability in order of competence as the Member State of Residence of the child will remain competent irrespective of the economic status of their parents or the place where the parents work. On the other hand, this option could lead to more cases with differential supplements than today (if we assume that in general the family benefits in Member States to which workers migrate are higher than in the Member State of residence of the children) which may lead to ongoing delays in families receiving the full entitlement to family benefits even if benefits from the State of Residence are processed more rapidly.
Protection of rights	+	Families will receive the same level of benefits as under the baseline, but it is expected that benefits which are provided for by the Member State of residence will be processed more rapidly. In residence-based systems this will ensure a greater

		alignment between the normal rules for entitlement under national legislation and the EU social security rules. It also in part responds to the perception of some Member States and EU citizens that the State that should have primary responsibility for paying family benefits is the one where the children reside (although the obligation remains for the Member State of Employment to pay a differential supplement where the level of benefits in this State may be higher).
Financial impact	+/-	This option will have the effect of shifting the financial burden from the Member State of work to the Member State of residence in cases of export where only one parent in a EU mobile family is economically active (in cases where both parents are economically active the place of residence of the child already has priority under the current rules). It is estimated that, because of a shift of the expenditure from the Member State of residence of the worker towards the Member State of residence of the children, a decrease of approximately €213 million (approximately 29%) in the expenditure on exported family benefits could occur.[431] However, there would also be an increase in the expenditure of the Member State of residence of the child by up to 120%.[432] A case study analysis of the impact on two of the main flows of exported family benefits for which data are available, notably from Luxembourg to France (33% of reported total expenditure for export of family benefits) and from Germany to Poland (11% of reported total expenditure for export of family benefits): the application of this option to these flows would result in a reduction in the expenditure for Luxembourg (€60 million) and Germany (€25 million), and an increase in that of France (€60 million) and Poland (€25 million)[433].
Impacts on fundamental rights	0	The proposed changes to the rules of priority engages consideration of the right to equal treatment (Article 21), as a workers in the State of Employment will receive lower benefits compared to national workers in that Member State. This may give rise to concerns about discrimination in particular in relation to Member States with either tax and contribution based systems or solely contribution based systems. However, there is already precedence for the Member State of Residence of the Child to assume priority in the case of overlapping entitlement on the same basis (both in the case of economic activity and pension rights). This solution may still be considered proportionate in the context of the legitimate aim to reduce accumulation of benefits particularly as the family will receive the same level of benefits overall and so the right to property (Article 17) and the rights of the child (Article 24) are respected.
Other impacts		

[431] This estimation is subject to limitation as only 10 Member States were able to provide a breakdown of exported family benefits according to primary and secondary competence.

[432] The predictions of increased expenditure by the Member State of residence of the child may be over-estimated as it has not been possible to take into account the existence of means-tested criteria applied by some family benefits in predicting the likely increase in expenditure. Annex XIII Table 26.

[433] Figures 8 and 9, Annex XIII.

Regulatory Costs	+/-	Although not fully supported by the qualitative interviews[434] conducted with national administrations, in general, this option is likely to reduce regulatory costs for national authorities as it provides greater certainty for which Member State has primary competence and therefore takes away the obligation under the current rules of this Member State to grant provisional benefits in the event of dispute of competences.[435] This also safeguards that not so many cases of recovery of overpayments will occur (which is often the case today when the final competence differs from the provisional competence and thus overpayments have to be recovered (Article 6(5) and Title IV, Chapter III of Regulation (EC) No 987/2009) and which may entail administrative burden. However, on the other hand, it is anticipated that this option may result in more cases of the need to calculate a differential supplement than under the current rules (taking into account the incentives for mobility from lower wage to higher wage destinations of employment). Furthermore, this option may increase the importance of verifying the child's place of residence (currently only required in cases of overlapping benefits on the same basis – estimated as being 64% of cases[436]) for both national authorities and citizens.[437] On the basis of the interviews conducted with national administrations, it is estimated that the administrative tasks as primarily competent will increase by around one man-hour per case (50%).[438] This will translate into an increase in the cost per case ranging from €0.6 in Romania to €58.3 in Denmark, and an increase of the total cost ranging from €5,600 (+13%) in Romania to €642,700 (+37%) in Germany[439]. Looking at administrative tasks as secondarily competent, these will also increase by around 0.8 man-hours per case (47%), mainly due to the increase in the time devoted to the calculation of benefits, as it becomes more complex[440]. This will translate into an increase in the cost per case ranging from approximately €0.6 in Poland to €50 in Denmark, and in an approximate increase of the total cost ranging from €3,500 (+81%) in Romania to €214,800 (+12%) in Germany[441].
Risk of fraud and abuse	+	The Member State of residence will check the family in the same way as any other family resident there. Usually checking and evaluating the situation is easier in the same Member State than abroad and also if all residents are subject to the same checking procedures. Problems experienced under the baseline

[434] It is acknowledged that there is some tension between the data indicated here and the assessment outlined below . This divergence is a consequence of the qualitative nature of the assessment and the fact the assessment was based on the model of a two parent family in which only one parent was economically active rather than blended results involving blended results from a wider range of families including with two economically active parents.
[435] Article 60(4) of Regulation (EC) No 987/2009.
[436] Estimation based on EU-28 averages for labour market participation in two adult households with at least one child under 14 (LFS 2014).
[437] During the consultation of the Administrative Commission in June 2015, five Member States raised concerns that this may increase administrative burden (Cyprus, Germany, Netherlands, Romania and Slovakia). The FreSsco legal experts have also noted potential challenges with determining habitual residence of children Annex VI, p32-33.
[438] Table 3-1, Annex XVI.
[439] Table 3-2, Annex XVI.
[440] Table 3-5, Annex XVI.
[441] Table 3-6, Annex XVI.

		scenario, where sometimes the work of a parent in another Member State has not been reported would no longer be an issue, as the Member State of residence is the competent one in all cases.
Fair burden sharing between Member States	+/-	This option shifts the burden in cases of only one working parent abroad from the Member State of work to the Member State of residence. In case of a residence-based scheme this could be regarded as fairer, as already without the Regulation all residents would be entitled to the benefits. This would change if the State of residence has a contributory scheme and, has to grant also benefits for persons not contributing to the scheme. This could result in a certain disruption of the economic logic that the Member State receiving the contributions and taxes pays the benefit.
Mobility	0	As this option envisages a redistribution of competence for funding between Member States, with no change in the benefits paid to the recipients, it is not envisaged that it would entail any mobility change[442].
Coherence with General, Specific and wider EU Objectives Continue the modernisation of the EU Social Security Coordination Rules by further facilitating the exercise of citizens' rights while at the same time ensuring legal clarity, a fair and equitable distribution of the financial burden among the institutions of the Member States involved and administrative simplicity and enforceability of the rules. • Ensure a clear and transparent link between the Member State issuing family benefits and the recipients of those benefits • Remove barriers or disincentives to parents' ongoing participation in the labour market • Ensure family benefits are processed as efficiently as possible	+	Option 2 introduces legal clarity and simplicity for families and public administrations by establishing a closer alignment between the EU rules and national legislation which generally require residence of a child as a condition of entitlement for family benefits. The rights of families are respected as they will receive the same level of benefits as under the current rules. The rules create a clear and transparent link between the Member State issuing a benefit and the families in receipt of such benefits while retaining the rights deriving from the Member State of Employment. However, it may be regarded as less effective in achieving the general objective of fair and equitable distribution of financial burden between Member States as the effect of this option is to redistribute financial burden away from the Member State of economic activity (which receives a mobile worker's tax and social security contributions) towards the Member State of Residence. In relation to cases where national administrations are not currently required to investigate residence of the child (cases of one economically active parent one economically inactive parent) there may be a slight increase in administrative burden which may in the short term contribute to delays for family members. This option is neutral in relation to wider EU objectives including the Fresh Start to address the challenges of work-life balance faced by working families.

7.5.6 *Impacts of Horizontal Policy Option a: Different coordination rules for salary-related child-raising allowances: mandatory derogation from anti-overlapping rules*

Horizontal Option a: Different coordination rules for salary-related child-raising allowances: mandatory derogation from anti-overlapping rules

[442] Page 25, Annex XVIII.

Social impacts		
Clarification	++	A parent claiming a child-raising allowance will always be entitled to the full level of benefit permitted under national legislation regardless of whether the State where he or she works has primary or secondary competence for family benefits. The question of who has entitlement to claim such benefits is also clarified as it becomes clear there are no derived rights reducing the number of disputes over this issue. This provides greater clarity for parents and national authorities compared with the baseline. However, some parents may find the application of anti-overlapping rules to the maximum duration of child-raising allowances difficult to understand
Simplification	+	This option is simpler to administer for both parents and public authorities compared with the baseline scenario as such benefits are no longer subject to the anti-accumulation rules so the level of benefit to be awarded will be aligned with calculations under national legislation. In addition, the prohibition of claims on the basis of a derived right will means benefits will be calculated on the basis of actual salaries or professional income earned in the competent Member State. It will no longer necessary to undergo a hypothetical assessment of potential earnings in that State.
Protection of rights	+/-	Under this option, salary-related child raising allowances would be exempt from the anti-accumulation rules, thereby having the advantage that workers would not experience deductions from entitlement under the applicable legislation of the Member State with secondary competence even if the other parent was receiving similar benefits from the Member State with primary competence. In such cases, parents may receive more in benefits than under the current rules in a manner that removes existing disincentives from sharing child-raising responsibilities. However, this option also provides that salary-related child raising allowances would be treated as individual and personal rights which may only be claimed by the parent who is subject to the applicable legislation in question (not by other members of their family). This may have the consequence that some parents currently in receipt of such a benefit as a derived right would no longer have entitlement (although would retain entitlement to any flat-rate child-raising allowances or flat-rate components). The maximum adverse impact could be up to 40% of the number of entitled persons.[443] However, as only a limited number of Member States are currently complying with the requirement to recognise derived rights to employment-related family benefits[444] the adverse effects are likely to be limited in practice.

[443] Table 27 Annex XIII – based on a case-study, the number of incoming-cross border workers who live in a household with one other adult and at least one child aged less than 15.
[444] Only four Member States who have child-raising allowances recognise claims based on derived rights Annex XXV, p14.

Financial impact	--	Member States with secondary competence may be required to pay more than under the current rules because they will be required to pay a salary-related child-raising allowance in full as they will no longer be entitled to take such benefits into account when calculating the differential supplement. In the absence of comprehensive information on exported child-raising benefits from the Member States[445], analysis has been conducted using ESSPROS data for Member State expenditure on parental benefits for children aged 0-3. This analysis suggests that this option will lead to an average increase in expenditure of 62% for those Member States who provide a child-raising benefit calculated wholly or partially with reference to salary or professional income exporting benefits to the EU-28 (increasing to an average increase of 81% if only the Member States of residence which have an salary-related child-raising benefit are selected).[446] The extent of the increase may range from 37% (46%) in Slovenia to 210% (432%) in Sweden.[447] It should be noted that this analysis is based on the assumption all Member States concerned are fully complying with the EU social security rules and is made with reference to ESSPROS figures for parental benefits awarded for children aged 0-3 regardless of whether or not the benefit is indexed to salary or professional income or is classified as a family benefit for the purposes of the EU social security rules. The estimations must be construed in light of these limitations. More widely it may also be anticipated that excluding salary-related child-raising allowances from the anti-accumulation rules will increase the level of export for Member States with flat-rate child when acting as the secondary competent Member State. Using the same model of calculation the increase in expenditure compared to the status quo in this case is on average 58% (increasing to an average increase of 84% if only the Member States of residence which have a salary-related, flat-rate or mixed type child-raising benefit are selected).[448] A case study on export by Germany as secondary competent Member State of its parental allowance (Elterngeld) to a family of two working parents with two children residing other Member States that also have a salary-related child-raising allowance assuming that such a family is in receipt of the average personal net income for that Member State (one at 100% and the other at 67% of the average wage) anticipates the increase in Germany's expenditure would range from 24% to Poland (increase from €383 to €476) to more than 250% in the

[445] Only four Member States were able to provide a detailed breakdown of levels of export per benefit type including data on child raising allowances (Germany, Latvia, Hungary and Romania).

[446]Annex XIII Table 24a Average calculated with reference to ESSPROS figures for 13 Member States (Bulgaria, Croatia, Estonia, Finland, Germany, Greece, Hungary, Latvia, Lithuania, Romania, Slovenia, Spain and Sweden . No data was available for Austria, Denmark Italy or Portugal). This analysis assumes that pursuant to the judgment of the CJEU in *Wiering*[446] that a differential supplement should only be calculated by reference to family benefits "of the same kind" that the secondary competent Member State will only make reference to other income-replacement benefits when calculating entitlement to another income-replacement benefit.

[447]Annex XIII Table 24a This analysis is based on the assumption all Member States concerned are fully complying with the EU social security rules and is made with reference to ESSPROS figures for parental benefits awarded for children aged 0-3 regardless of whether or not the benefit is indexed to salary or professional income . The estimations must be construed in light of these limitations.

[448] Table 24b Annex XIII Average calculated with reference to ESSPROS figures for 19 Member States/EEA States (Belgium, Bulgaria, Croatia, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Latvia, Lithuania, Luxembourg, Norway, Poland, Romania, Slovenia, Spain and Sweden. No data was available for Austria, Denmark Italy or Portugal).

		case of Austria (increase from €405 to €1428 paid to the family).[449] It is also to be envisaged that some Member States may make savings as a result of this option as they will no longer be obliged to pay salary-related child-raising allowances on the basis of a derived rights, although once again as a number of Member States do not comply with the requirement to grant salary-related benefits on the basis of derived rights the anticipated savings in this regard are limited.
Impacts on fundamental rights	+/-	This option offers superior protection in relation to the rights of the family (Article 33(2)) to reconcile family and professional life by reducing potential disincentives to exercising the right to parental leave. Exempting salary-related child raising allowances from the anti-accumulation rules ensures the right to equal treatment in respect of such benefits as it guarantees mobile citizens working in the Member State of secondary competence would receive a benefit calculated in the same as national workers without deductions and in a manner that promotes the reconciliation of family and professional life. Likewise the right to property (Article 17) is also respected in relation to these workers. While it is noted that some parents may lose entitlement to salary-related child raising allowances currently awarded as a derived right the rights of the family as a whole are protected through the preservation of entitlement for the parent with primary entitlement.
Other impacts		
Regulatory Costs	+/-	In general, this option is likely to reduce administrative burden for national administrations as Member States will be entitled to award salary-related child-raising allowances to EU mobile citizens subject to the applicable legislation in accordance with the normal rules under national legislation. There will no longer be a requirement to include such benefits (which can be subject to fluctuation according to earnings) within the calculation of the differential supplement nor would there be a need to apply a hypothetical calculation in relation to a parent who does not have relevant income or earnings within the competent Member State but who asserts a derived right to benefits. However, it may be anticipated that there will be some increase in administrative tasks for Member States who seek to verify whether or not a benefit available in another Member State should be considered a salary-related child-raising allowance or who wish to exchange information about entitlement to or claims for salary-related child-raising allowance for the other parent in another Member State for the purposes of applying anti-accumulation principles to the duration of a benefit. This will also entail additional administrative tasks for citizens. As this option was developed after commissioning the analysis of regulatory costs at the time of drafting this report it has not possible to draw direct comparisons with the baseline scenario

[449]Table 25 Annex XIII.

		in the same manner as with Options 1a, 1b and 2.
Risk of fraud and abuse	+	Removal of derived rights is likely to reduce the risk of fraud and abuse as Member States will be able to assess and verify entitlement to salary-related child raising allowances according to their national legislation and normal procedures. However, there will be a need to establish clear policies and procedures to ensure exchanges of information to assess the other parent's entitlement to a benefit in order to apply anti-accumulation principles to the duration of a benefit.
Fair burden sharing between Member States	+/-	This option shifts the burden in cases child-raising allowances to the Member State of work as benefits will be required to be paid in full and for the maximum duration permitted under national legislation (except in cases where there is simultaneous entitlement in another Member State meaning increases to duration may be limited). However, such a change in burden may be considered consistent with the economic logic that assigns the obligation to pay the family benefits to the Member State receiving the contributions and taxes.
Mobility	+	This option may have a slight impact on mobility by removing potential disincentives for parents to move to a different Member State because of the risks that a change in primary competence may have a negative impact on the level of their salary-related child-raising allowances.[450] As noted above there are a range of variables that may influence a family's decision about whether or not to relocate and this prediction needs to be viewed accordingly. As this option was developed after commissioning the analysis of regulatory costs at the time of drafting this report it has not possible to draw direct comparisons with the status quo in the same manner as with Options 1a, 1b and 2.
Coherence with General, Specific and wider EU Objectives Continue the modernisation of the EU Social Security Coordination Rules by further facilitating the exercise of citizens' rights while at the same time ensuring legal clarity, a fair and equitable distribution of the financial burden among the institutions of the Member States involved and administrative simplicity and enforceability of the rules. • Ensure a clear and transparent link between the Member State issuing family benefits and the recipients of those benefits • Remove barriers or disincentives to parents' ongoing participation in the	++	The horizontal options provide greater protection for mobile EU parents in the field of child-raising allowances (calculated by reference to salary/professional income). In general, exempting these benefits from the application of derived rights and the anti-accumulation rules is likely to remove disincentives for parents to share child-raising responsibilities increasing ongoing labour market participation. Other potential disadvantages for EU transnational families concerning duration of a right to benefit are also mitigated (with safeguards to protect over-compensation of families). This option is also likely to decrease regulatory costs for public authorities in administering these benefits by removing the need to calculate the differential supplement and calculate claims on the basis of derived rights increasing administrative simplicity and reducing delays for families in processing claims. By preventing claims on the basis of derived rights to be made in respect of family benefits intended to replace an individual worker's income during periods of child-raising the aim of achieving a clear and transparent link between the Member State issuing the benefit

[450] It is to be noted that the Nordic Council of Ministers identified the inconsistent treatment of parental benefits in the Nordic countries and the application of the anti-accumulation rules to such benefits as a potential cross-border barrier Nordic Council of Ministers, 2012 Freedom of Movement within the Social- and Labour market Area in the Nordic Countries: Summary of obstacles and potential solutions.

labour market • Ensure family benefits are processed as efficiently as possible		and the recipient is achieved. Although there may be an increase in the economic costs for secondary competent Member States, such an increase is aligned to costs that would otherwise be incurred under national legislation. This option supports the wider EU objectives including in relation to the Fresh Start on maternity and parental leave.

7.5.7 *Impacts of Horizontal Policy Option b: Different coordination rules for all child-raising allowances: mandatory derogation from anti-overlapping rules*

Horizontal Option b: Different coordination rules for all child-raising allowances (salary-related and flat rate): mandatory derogation from anti-overlapping rules		
Social impacts		
Clarification	++	The impact would be the same as horizontal option a, although the advantages would be greater as this would apply to all child-raising allowances (both salary-related and flat rate)
Simplification	+	The impact would be the same as horizontal option a, although the advantages would be greater as this would apply to all child-raising allowances.
Protection of rights	+/-	The impact would be the same as horizontal option a, although the costs and benefits would be greater as this would apply to all child-raising allowances.
Financial impact	--	The financial impact is similar to horizontal option a, however, the number of Member States affected and the range of economic costs is likely to be greater as a result of the extension to all child-raising allowances. Based on ESSPROS data for Member State expenditure on parental benefits it may be anticipated that this option will lead to an average increase in expenditure for secondary competent Member States with child-raising allowances of 58% exporting benefits to the EU-28 (increasing to an average increase of 84% if only the Member States of residence which have an salary-related, flat rate or mixed child-raising benefit are selected).[451] The extent of the increase may range from 32% (43%) in Luxembourg to 210% (474%) in Sweden.[452]
Impacts on fundamental rights	+/-	The impact would be the same as horizontal option a, although the impact would be greater as this would apply to all child-raising allowances

[451] Annex XIII Table 24b Average calculated with reference to ESSPROS figures for 19 Member States/EEA States (Belgium, Bulgaria, Croatia, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Latvia, Lithuania, Luxembourg, Norway, Poland, Romania, Slovenia, Spain and Sweden . No data was available for Austria, Denmark Italy or Portugal).

[452] Annex XIII Table 24b This analysis is based on the assumption all Member States concerned are fully complying with the EU social security rules and is made with reference to ESSPROS figures for parental benefits awarded for children aged 0-3 regardless of whether or not the benefit is indexed to salary or professional income . The estimations must be construed in light of these limitations.

Other impacts		
Regulatory Costs	+/-	The impact would be the same as horizontal option a, although the anticipated reduction in regulatory burden would be greater as this would apply to all child-raising allowances (and conversely the scope of additional administrative tasks to verify duration of leave taken in another Member State could increase for both national authorities and citizens)
Risk of fraud and abuse	+	The impact would be the same as horizontal option a, although the advantages would be greater as this would apply to all child-raising allowances
Fair burden sharing between Member States	+/-	The impact would be the same as horizontal option a, although the benefits would be greater as this would apply to all child-raising allowances.
Mobility	+	The impact is likely to be similar to horizontal option a
Coherence with General, Specific and wider EU Objectives Continue the modernisation of the EU Social Security Coordination Rules by further facilitating the exercise of citizens' rights while at the same time ensuring legal clarity, a fair and equitable distribution of the financial burden among the institutions of the Member States involved and administrative simplicity and enforceability of the rules. • Ensure a clear and transparent link between the Member State issuing family benefits and the recipients of those benefits • Remove barriers or disincentives to parents' ongoing participation in the labour market • Ensure family benefits are processed as efficiently as possible	++	For the same reasons as horizontal option a this option may be considered effective at achieving the General and Specific EU objectives and also the wider EU objectives, the Fresh Start to address the challenges of work-life balance faced by working families. Further, as this horizontal option encapsulates both salary-related and flat rate child-raising allowances it is slightly more effective at achieving these aims.

7.5.8 *Impacts of Horizontal Policy Option c: Different coordination rules for all child-raising allowances: optional derogation from anti-overlapping rules*

Horizontal Option c: Different coordination rules for all child-raising allowances (salary-related and flat rate): optional derogation from anti-overlapping rules		
Social impacts		
Clarification	+/-	The impact would be the similar to horizontal option b, although the effects would be mixed depending on whether a

		member state chooses to disapply the anti-accumulation rules or not. Some citizens may find this confusing.
Simplification	+	The impact would be the similar to horizontal option b, although the effects would be mixed depending on whether a Member State chooses to disapply the anti-accumulation rules or not. Some citizens may find this confusing.
Protection of rights	+/-	The impact would be the similar to horizontal option b, although the effects would be mixed depending on whether a member state chooses to disapply the anti-accumulation rules or not. In addition, as this option does not envisage a measure to ensure that where only one parent in a family is subject to the legislation of a Member State, that parent shall be able to claim the allowances for the maximum duration, some mobile families may face disadvantages in national systems which are designed to incentivise parents to share child-raising allowances by limiting the duration that an individual parent can claim a benefit.
Financial impact	--	The maximum impact would be the similar to horizontal option b, although it may be anticipated that not all Member States will choose to derogate from the anti-overlapping rules. In cases where there is no derogation there will be no change from the baseline.
Impacts on fundamental rights	+/-	The impact would be the similar to horizontal option b, although the effects would be mixed depending on whether a Member State chooses to disapply the anti-accumulation rules or not
Other impacts		
Regulatory Costs	+/-	The impact would be the similar to horizontal option b, although the effects would be mixed depending on whether a member state chooses to disapply the anti-accumulation rules or not. However, no additional administrative tasks are envisaged under this option as competent authorities will not be required to exchange information about the duration of claim for child-raising allowances taken by a parent in another Member State. This will also not entail any additional administrative tasks for citizens.
Risk of fraud and abuse	+	The impact would be the similar to horizontal option b.
Fair burden sharing between Member States	+/-	The maximum impact would be the similar to horizontal option b, although it may be anticipated that not all Member States will choose to derogate from the anti-overlapping rules.
Mobility	0	No material impact on mobility is anticipated as a result of this measure.
Coherence with General, Specific and wider EU Objectives	+/-	This option has the potential to be just as effective at achieving the General and Specific EU objectives and also the wider EU objectives, the Fresh Start to address the challenges of work-life

Continue the modernisation of the EU Social Security Coordination Rules by further facilitating the exercise of citizens' rights while at the same time ensuring legal clarity, a fair and equitable distribution of the financial burden among the institutions of the Member States involved and administrative simplicity and enforceability of the rules. • Ensure a clear and transparent link between the Member State issuing family benefits and the recipients of those benefits • Remove barriers or disincentives to parents' ongoing participation in the labour market • Ensure family benefits are processed as efficiently as possible		balance faced by working families as horizontal option b with slightly increased simplicity as it does not entail any additional administrative tasks, meaning it is even more simple to apply. However, as the derogation from the anti-accumulation rules is optional rather than mandatory in practice it is likely to be less effective at achieving the goals and the problems identified concerning disincentives to ongoing labour market participation may continue to subsist.

7.5.9 *Conclusions*

Based on the above tables, the following preliminary conclusions can be drawn.

The baseline scenario, from a merely administrative point of view, is the easiest option to implement and it has the support of a large number of stakeholders. It also offers the same or superior levels of protection to workers and their families as the other options. This option maintains a clear and transparent link between the Member State issuing a benefit and the place where a mobile worker pays taxes and social security contributions. It is anticipated in light of the launch of EESSI and implementation of Decision F2 that efficiency and effectiveness of processing family benefit claims will also be increased.

Option 1a and 1b may be the most effective options in achieving a greater correlation between family benefits and the cost of living, however, they do not fully achieve the aim of maintaining a clear and transparent link between the Member State issuing a benefit and the families in receipt of such benefits as mobile workers as the transparency of the award of family benefits will be reduced compared to the baseline particularly in relation to employment-related benefits. These options may increase rather than reduce disincentives to parents' ongoing participation in the labour market during periods of child-raising leave in the field of child-raising allowances related to salary or professional income as such benefits will not only be subject to the anti-accumulation rules but also subject to reductions based on place of residence of the child. They may also increase delays in processing family benefits. Workers and their families will generally be provided with an inferior level of protection compared to the status quo (in particular in relation to option 1b) as workers will receive lower level of family benefits than nationals notwithstanding the fact they pay the same level of tax and social security contributions. Therefore not withstanding the potential cost savings (particularly in the case of option 1b) these considerations these options are not considered the most effective at achieving the objectives and therefore are not the most efficient options.

Option 2 introduces legal clarity and simplicity for families and public administrations by establishing a closer alignment between the EU rules and national legislation which generally require residence of a child as a condition of entitlement for family benefits. However, it may be regarded as less effective

in achieving the general objective of fair and equitable distribution of financial burden between Member States as the effect of this option is to redistribute financial burden away from the Member State of economic activity (which receives a mobile worker's tax and social security contributions) towards the Member State of Residence. The rights of families are respected as they will receive the same level of benefits as under the current rules although there may be a moderate budgetary impact for those Member States which currently have secondary competence for family benefits in particular those that do not currently have to pay the differential supplement because the level of family benefits in the primary competent Member State is higher. In cases where there is only one economically active parent, the increase in economic burden for the Member State of residence of the child and away from the Member State of employment is contrary to the relative distribution of taxes and social security paid by the family to these Member States. Therefore although in many respects this is an effective option, in light of the anticipated increase in costs for the Member State of residence of the child it is not the most efficient.

Horizontal option

The horizontal options provide greater protection for mobile EU parents in the field of child-raising allowances (either calculated by reference to salary/professional income or all types of such benefit), and by exempting these benefits from the application of derived rights and the anti-accumulation rules will also decrease regulatory costs for public authorities in administering these benefits and reduce delays for families in processing claims. By preventing claims on the basis of derived rights to be made in respect of family benefits intended to replace an individual worker's income during periods of child-raising the aim of achieving a clear and transparent link between the Member State issuing the benefit and the recipient is achieved. These options will entail a significant economic impact for Member States as by disapplying the anti-accumulation rules, Member States with secondary competence will experience an increase in expenditure of on average increase of 62-81% in relation to Horizontal Option a and 58-84% for Horizontal Option b. This financial impact may be mitigated by allowing Member States to derogate from the anti-overlapping rules on an optional basis although this option is less effective at reducing disincentives to labour market participation. There is therefore a trade-off between cost and effectiveness. The risk of a loss of protection for parents currently relying on derived rights to such benefits is assessed as low due to the current low levels of compliance with the existing EU law requirement to award family benefits calculated with reference to salary or professional income on the basis of a derived right.

8. Overall Conclusion

The **key policy objective** of this initiative is to continue the modernisation of the EU Social Security Coordination Rules by further facilitating the exercise of citizens' rights while at the same time ensuring legal clarity, a fair and equitable distribution of the financial burden among the institutions of the Member States involved and administrative simplicity and enforceability of the rules.

This initiative serves to facilitate the exercise of the right to free movement by ensuring the social security coordination is effective and efficient and therefore does not act as a deterrent to free movement. It is in the interests of all parties to design co-ordination rules that allow full exercise of rights of citizens whilst ensuring coordination requirements for both citizens and Member States are clear and transparent and thereby easy to apply and enforce.

Achieving greater clarity over the social security coordination system is an important step to face the challenges and controversies that exist over intra-EU mobility and to address demographic challenges ahead of us.

Achieving a system of social security coordination that responds to the social and economic reality in Member States has been one of the central drivers for the Commission to continue the modernisation process of social security coordination that started more than a decade ago.

It is important the rules are fair (in particular in relation to the relative balance of responsibility between Member States who receive or have received social security contributions and the obligation to pay benefits) and that perceptions of unfairness are properly investigated so that they can be addressed where such views are well grounded but challenged where a perception is misplaced. Further the rules should be efficient in terms of cost, administrative burden and risk of fraud or administrative error.

Finally the rules should be effective in relation to meeting the overall goals of coordination in particular safeguarding the continuity of social security protection as citizens move from from one Member State to another.

This report has carefully reviewed the existing rules, taking into account the views of stakeholders to identify actions that may be necessary to achieve this overall objective. This impact assessment report has considered the impact of possible improvements to the rules in four distinct areas:

- Long-term care benefits
- Unemployment benefits
- Access to social benefits for economically inactive mobile EU citizens
- Family benefits

In each area, the Report has identified a number of policy options to address the problems identified outlined below against the baseline (preferred options identified in yellow).

Overview of Options Per Area

Long Term Care Benefits

Baseline: No specific provisions for long-term care benefits. Competent Member State provides long-term benefits in cash and reimburses the cost of benefits in kind provided by the Member State of residence	**Option 1:** The competent Member State provides long-term care benefits in cash and reimburses the cost of benefits in kind provided by the Member State of residence. New definition of LTC benefits to facilitate coordination√	**Option 2a** : Member State of residence provides all long-term care benefits (in cash and in kind) with reimbursement by the competent State, at the level of the state of residence without supplement by the competent Member State	**Option 2b:** As option 2a, but with supplement by competent Member State

Unemployment Benefits

Aggregation of Periods	**Baseline:** No minimum insurance period to qualify for aggregation. Divergent approach between MS.	**Option 1:** formalisation of one-day rule	**Option 2a** : introduction of minimum insurance requirement of 1 month	**Option 2b**: introduction of minimum insurance requirement of 3 months√	**Option 3a** : taking account of previous earnings having been insured less than 1 month	**Option 3b:** taking account of previous earnings having been insured less than 3 months
Export of Unemployment Benefits	**Baseline:** Export for 3 months with the option to extend to 6 months.	**Option 1:** Extend period of export of UB to minimum 6 months and possibility of further extension √		**Option 2:** Extend period of export of UB for duration of entitlement		
Rules for cross-border workers	**Baseline:** frontier workers receive UBs in Member State of residence. All other wholly unemployed persons receive UBs from Member State of last activity.	**Option 1:** frontier worker chooses where to claim	**Option 2a:** state of last activity pays UB, and frontier worker registers there	**Option 2b:** state of last activity pays UB, frontier worker can choose where to register	**Option 3a** : state of last activity only pays UB after sufficient (at least 12 months) work history and frontier worker registers there√	**Option 3b:** state of last activity only pays UB after sufficient work history and frontier worker chooses where to register

Access for economically inactive persons and jobseekers to social benefits

Baseline: Economically inactive mobile citizens have no right to benefits for first 3 months. After 3 months only if (i)Sufficient resources(ii) Comprehensive sickness coverage	**Option 1a** Dynamic reference to Directive 2004/38/EC in equal treatment provisions √	**Option 1b** Amendment of Article 4 of Regulation (EC) No 883/2004 to make a dynamic reference to the limitations to equal treatment in Directive 2004/38/EC and to extend these limitations by analogy to other tax-financed benefits	**Option 1c** Specific Reference to Directive 2004/38/EC (SNCBs)	**Option 2:** Removing SNCBs providing subsistence from Regulation (EC) No 883/2004	**Option 3:** Administrative guidance on interpretation of Regulation (EC) No 883/2004

Family Benefits

Export of Family Benefits	**Baseline:** Family benefits payable in full by Member State of Work including for children living in another Member State.	**Option 1a:** Adjustment to standards of living: upwards and downwards	**Option 1b:** Adjustment to standards of living: only downwards	**Option 2:** Member State of residence has primary competence

Horizontal Option: Child-raising allowances	**Baseline:** Family Members have a derived right to family benefits. Anti-overlapping rules apply.	**Horizontal Option a:** individual rights for salary-related child-raising allowances: mandatory derogation from anti-overlapping rules	**Horizontal Option b:** Individual rights for all child-raising allowances: mandatory derogation from anti-overlapping rules	**Horizontal Option c:** individual rights for all child-raising allowances: optional derogation from anti-overlapping rules √

Each of these options has been assessed in relation to their social, economic and regulatory impact as well as their effectiveness and efficiency in meeting the general and specific policy objectives. An overview of the impact in relation to **the preferred options** is set out below:

Table - overview of impact of preferred options (impacts grouped per objective)				
General Objective	**Facilitate the exercise of citizens' rights**	**Ensure legal clarity and transparency for citizens, institutions and other stakeholders on coordination rules applicable to them**	**Ensure a fair and equitable distribution of the financial burden between Member State**	**Ensure administrative simplicity and enforceability of the rules**
Relevant Impact	-Protection of rights	-Clarification	-Financial impact -Fair burden sharing	-Simplification -Regulatory Costs -Risk of fraud and abuse
Long-term care benefits	+	++	0	+
The competent Member State provides long-term care benefits in cash and reimburses the cost of benefits in kind provided by the Member State of residence	The inclusion of a common definition for long-term care benefits and uniform criteria for classifying these benefits will bring clarity and consistency to the system. Receipt of benefits will remain subject to national conditions of entitlement and so a move to another Member State may be more or less advantageous depending on the allocation of benefits in kind and cash in the Member States concerned.	This option takes into account the specific characteristics of long-term care benefits, distinguishing them from sickness benefits and other branches of social security, while maintaining the current method of coordination.	No significant economic impact in comparison to the baseline is foreseen as the same rules will continue to apply. No fundamental changes in burden sharing, but some benefits not currently coordinated as Long-Term Care Benefits could become subject to the rules. This may lead to some additional cases of export, but also contribute to greater efficiencies by avoiding duplication in the allocation of benefits.	The option will make it easier for citizens to identify and understand the application of the coordination provisions on national long-term care benefits. Information obligations for national administrations will remain the same as under the baseline scenario. The option facilitates the comparison of benefits in kind and in cash and could lead to fewer cases of duplication and also fewer disputes between institutions concerning reimbursement.
Unemployment benefits: Aggregation	+	+	++	++
introduction of minimum insurance	No substantive loss of rights. Approximately	Improved clarity of the EU rules on	Slight increase of expenditure for the	A uniform interpretation of the rules on aggregation

requirement of 3 months	10,082 mobile EU workers will receive export of unemployment benefits from the Member State of previous activity instead of the last State of activity.	aggregation, elminating divergent interpretations between Member States.	Member State of previous employment, but corresponding decrease of expenditure on unemployment benefits for Member States of last activity. Overall decrease of expenditure amounting to approximately € 29 million is expected.	will contribute to simplifying the aggregation procedure. A clearer link between the award of benefits and contributions paid diminishes the risk of random results. Overall regulatory costs will remain unchanged.
Unemployment benefits: Export	+	+	+	0
Extend period of export of Unemployment Benefits to minimum period of 6 months and possibility of further extension for whole period of entitlement.	About 24,000 persons will have the possibility to retain their rights to unemployment in case of job search in another Member State for a period of six instead of three months.	Clearer and uniform standards for all persons wishing to take their unemployment benefits with them when looking for a job in another Member State.	The extension of the export period is not expected to have any significant financial impact on the Member States, either at individual or aggregate level, as it only maintains an existing right to unemployment benefits in case of job search in another Member State. Extended export reduces the risk that a jobseeker has to rely on welfare benefits from the host Member State.	Clear and uniform rules regarding the expot period will simplify the procedure for citizens and national administrations. The introduction of a reinforced cooperation mechanism will reduce the risk of fraud and abuse by ensuring that the jobseeker remains subject to supervision in the host State and so cases of non-compliance with activation measures may be detected.
Unemployment benefits: Frontier Workers	+	+	+/-	++
State of last activity only pays Unemployment Benefits after sufficient (at least 12 months) work history and frontier worker registers there. The current reimbursement procedure is abolished.	This option will result in greater consistency in the treatment of frontier and other cross-border workers. It will also contribute towards an even stronger link between benefits and contributions, creating better chances for the worker to reintegrate into labour market.	Clear and uniform rules for frontier and other cross-border workers	Across the EU-28, there will be an increase of 6% of the overall expenses for unemployment benefits from € 416 million to € 442 million. This is because frontier workers tend to work in countries with (on the average) higher wages and higher benefits. It contributes to a shift in burden sharing as the cost of the unemployment benefits will be reallocated in a way that is proportionate to level of contributions or income tax received.	Clear and uniform rules for frontier and other cross-border workers will simplify the administrative procedure and thus facilitate enforcement of existing rules for citizens. Additional information exchanges are needed between the Member State of last activity and the State of residence as regards the reference period of 12 months. However, in combination with the annulment of the reimbursement procedure, this option has an overall positive impact on administrative burden (-50%).
Access for economically inactive persons and jobseekers to social benefits	+	+	0	+

Dynamic reference to Directive 2004/38/EC in equal treatment provisions & Commission guidance	Greater uniformity in the application of rules by Member States and the ability of citizens to enforce their rights thanks to more clarity in the application of the CJEU case law, leading to greater legal certainty.	The codification of existing case-law combined with clear guidance would clarify the rights of EU mobile citizens and would enable citizens to make an informed choice when exercising their rights to move to another Member State.	No direct impact on Member States' budgets as this measure simply reflects codification of the case-law of the Court. No direct impact on the distribution of financial burden between Member States.	It will be more straightforward to verify rights and obligations. Costs related to lack of legal certainty for both citizens and public authorities could be reduced Greater visibility to the existing safeguards in EU law against "welfare tourism" may act as a deterrent to such conduct.
Export of Family Benefits	0	0	0	0
Baseline: Family benefits payable in full by Member State of Work including for children living in another Member State.	N/A	N/A	N/A	N/A
Horizontal Option: Child-Raising Allowances	+/-	+/-	-	+
Different coordination rues for all child-raising allowances: optional derogation from anti-overlapping rules	Where Member States choose to disapply the anti-accumulation rules, workers will not experience deductions to child-raising benefits facilitating the right for both parents to share child-raising responsibilities. However, this advantage is limited as not all Member States will apply the derogation A limited number of family members will lose entitlement on the basis of derived rights.	In cases where a Member State applies the derogation, entitlement will be aligned to national law, making it clearer for parents to understand. However, this advantage is limited as not all Member States will apply the derogation. Doubts about who has entitlement to claim such benefits are resolved reducing the number of disputes over derived rights.	The maximum financial impact would be an average increase in expenditure on exported child-raising benefits for secondary competent Member States of 84% (in practice this is expected to be more limited as not all Member States will apply the derogation). Where applied, there would be a shift in the burden to the Member State of work as child-raising allowances benefits will be paid in full by the secondary competent Member State.	The removal of derived rights is likely to reduce administrative burden and the risk of fraud and abuse as Member States will be able to assess and verify entitlement to child raising allowances according to their national legislation and normal procedures.

The likely economic impact on the individual budgets of Member States is set out on the table opposite. As previously highlighted in the methodology, this analysis is limited to the actual social security costs for Member States for providing social security benefits. It has not been possible to analyse the corresponding receipt of 'contributions' (levies earmarked for social security purposes) into national social security schemes before the contingency occurs. The impact on income taxation is also left aside, as under Regulation (EC) No 883/2004 only contributions are coordinated, while

general taxation is not. Analysis has been based on administrative data provided by Member States, it has to be underlined that not all Member States were able to provide data on the different benefits, nor was all data complete. Therefore analysis is provided to the extent possible. No economic impact has been provided where it is assumed that these measures are financially neutral as they either do not confer or limit rights or obligations beyond those already existing under national legislation or EU law.

Indicative budgetary impact of preferred options against baseline scenario, in € ,000, 2013/2014

	Long-Term Care Benefits			Unemployment Benefits									Access to Social Benefits for Economically Inactive Citizens and Jobseekers			Family Benefits		
	The competent Member State provides long-term care benefits in cash and reimburses the cost of benefits in kind provided by the Member State of residence			Frontier workers: Provide for the payment of unemployment benefits by the Member State of last activity only in situations where the cross-border worker has worked there for a sufficiently representative period (12 months). The unemployed person shall register with the employment services in the State of last activity			Export of Unemployment Benefits: Extend the period for export of unemployment benefits to a minimum period of 6 months (or end of entitlement period if shorter)			**Aggregation of Unemployment Benefits**: Introduction of a minimum period of insurance or (self-)employment of three months before aggregation of unemployment benefits			The amendment of Article 4 of Regulation (EC) No 883/2004 to make reference to the limitations in Directive 2004/38/EC. This could be combined with guidance to provide a more detailed explanation of the rules.			**Status quo with** individual rights for all-child raising allowances (flat rate and salary-related): and optional derogation from the anti-overlapping rules)		
	Baseline Annual expenditure (in € ,000)	Option Annual Expenditure (in € ,000)	% change	Baseline Annual expenditure (in € ,000)	Option Annual Expenditure (in € ,000)	% change	Baseline Annual expenditure (in € ,000)	Option Annual Expenditure (in € ,000)	% change	Baseline Annual expenditure (in € ,000)	Option Annual Expenditure (in € ,000)	% change	Baseline Annual expenditure (in € ,000)	Option Annual Expenditure (in € ,000)	% change	Baseline Annual expenditure (in € ,000)	Option Annual Expenditure (in € ,000)	% change
BE	66,999	66,999	-	67,478	55,044	-18%	n.a.	n.a.	n.a.	20,466	9,692	-53%	n.a.	n.a.	n.a.	83,567	83,567	-
BG	1,576	1,576	-	236	480	103%	n.a.	n.a.	n.a.	1,319	1,264	-4%	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
CZ	8,098	8,098	-	1,073	2,102	96%	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	951	951	-
DK	49,694	49,694	-	7,342	11,709	59%	n.a.	n.a.	n.a.	316	117	-63%	n.a.	n.a.	n.a.	24,384	24,384	-
DE	166,721	166,721	-	85,752	70,428	-18%	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	105,760	105,760	-
EE	1,278	1,278	-	309	159	-49%	n.a.	n.a.	n.a.	64	29	-55%	n.a.	n.a.	n.a.	573	573	-
IE	6,832	6,832	-	16,569	14,818	-11%	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	11,577	11,577	-
EL	3,839	3,839	-	678	981	45%	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
ES	16,126	16,126	-	23,148	20,162	-13%	n.a.	n.a.	n.a.	6,503	1,953	-70%	n.a.	n.a.	n.a.	11	11	-
FR	41,317	41,317	-	69,820	36,868	-47%	n.a.	n.a.	n.a.	52,962	19,735	-63%	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
HR	572	572	-	168	182	8%	n.a.	n.a.	n.a.	8	7	-6%	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.

IT	44,820	44,820	-	23,838	19,221	-19%	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
CY	711	711	-	513	479	-7%	n.a.	n.a.	n.a.	4	4	0%	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
LV	485	485	-	24	66	175%	n.a.	n.a.	n.a.	5	3	-42%	n.a.	n.a.	n.a.	107	107	-
LT	1,121	1,121	-	15	59	293%	n.a.	n.a.	n.a.	53	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
LU	129,420	129,420	-	29,501	86,596	194%	n.a.	n.a.	n.a.	525	438	-17%	n.a.	n.a.	n.a.	476,900	476,900	-
HU	1,293	1,293	-	520	640	23%	n.a.	n.a.	n.a.	337	326	-3%	n.a.	n.a.	n.a.	336	336	-
MT	628	628	-	75	79	5%	n.a.	n.a.	n.a.	11	8	-25%	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
NL	61,883	61,883	-	55,344	65,275	18%	n.a.	n.a.	n.a.	1,824	1,220	-33%	n.a.	n.a.	n.a.	35,622	35,622	-
AT	93,118	93,118	-	16,051	33,257	107%	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	147,323	147,323	-
PL	6,865	6,865	-	594	606	2%	n.a.	n.a.	n.a.	342	220	-36%	n.a.	n.a.	n.a.	3,995	3,995	-
PT	4,572	4,572	-	3,735	4,968	33%	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
RO	5,366	5,366	-	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	2	1	-33%	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
SI	1,860	1,860	-	975	1,276	31%	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
SK	1,851	1,851	-	1,463	730	-50%	n.a.	n.a.	n.a.	441	275	-38%	n.a.	n.a.	n.a.	1,545	1,545	-
FI	6,940	6,940	-	1,755	6,633	278%	n.a.	n.a.	n.a.	797	366	-54%	n.a.	n.a.	n.a.	19,359	19,359	-
SE	8,585	8,585	-	2,559	2,100	-18%	n.a.	n.a.	n.a.	773	303	-61%	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
UK	60,227	60,227	-	6,440	5,919	-8%	n.a.	n.a.	n.a.	43	17	-60%	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
EU-28	792,797	792,797	-	415,995	441,686	6%	n.a.	n.a.	n.a.	86,794	35,979	-59%	n.a.	n.a.	n.a.	912,010	912,010	-

Based on the preceding analysis of the options against these objectives it follows that:

For long-term care benefits, option 1 is the most efficient and effective option to fulfil the objectives for long-term care benefits.

By introducing a legal basis for the already applicable rules, this option introduces a regime appropriate to long-term care benefits, while maintaining continuity with the current system. In parallel, it achieves legal clarity and transparency on the rules applicable both for citizens and institutions as well as other stakeholders. Although benefits in kind are provided by the residence State, costs of all cash and in kind benefits provided are at the expense of the competent Member State which ensures a fair distribution of the financial burden. This option however will not solve existing mismatches in case the competent Member State has no benefits in cash and the State of residence has no benefits in kind.

Option 1 is the most cost-efficient and effective option in facilitating the application of the coordination rules.

For the coordination of unemployment benefits, the best compromise would be a combination of option 3a for competence and registration of frontier workers, option 1 for the export of unemployment benefits, and of option 2b for the aggregation of periods in combination with the horizontal option regarding the recognition of periods for the purpose of aggregation.

This combination of options would ensure that:

a) The Member State of last activity would remain competent for providing unemployment benefits to frontier and other cross-border workers in all cases where those persons have been insured there for at least 12 months, because it can be assumed that this suffices to create a strong link to the labour market of this State;

b) The Member State of residence becomes competent for those who have not satisfied this requirement and thus have not established such a strong link;

c) Periods completed in another Member State are only taken into account, where those periods would also have been considered as periods of insurance in that Member State where they have been completed;

d) The Member State of last activity becomes competent in all other cases for those who have been insured there for at least three months as regards the aggregation of periods;

e) The Member State of previous activity becomes competent and has to export the benefit whenever this condition has not been satisfied;

f) Cash benefits are exported, i.e. are paid to unemployed persons looking for a job in another Member State than the competent one for an extended period of at least six months in order to provide sufficient time for an effective job search and increasing access to employment opportunities throughout the Union.

They are also aligned with the general and specific objectives and wider EU policy objectives on active labour market policy such as the 2013 citizenship report (COM(2013)269) which as its key action 1 refers to the proposal to extend the export of unemployment benefits to six months.

For access to social benefits for economically inactive EU mobile citizens and jobseekers the most efficient option responding to the objectives is the amendment of Article 4 of Regulation (EC) No 883/2004 to make reference to the limitations in Directive 2004/38/EC. To increase the effectiveness

of this option it could be combined with option 3, which would allow for a more detailed explanation of the rules. This option would increase legal certainty and clarity and transparency while, at the same time, allowing room for a dynamic interpretation of the Regulation as the case-law of the CJEU concerning the relationship between the Regulation and the Directive develops.

This option will increase legal clarity and transparency on the rights of economically inactive mobile EU citizens and jobseekers and also on the extent to which Member States' social security institutions are permitted to limit the equal treatment principle for such persons in relation to access to certain social benefits. It is anticipated to thereby improve the administrative simplicity and enforceability of the rules.

For family benefits the most efficient and effective combination responding to the objectives is the combination of the status quo with the horizontal option c. This combination will ensure that primary responsibility for family benefits is retained by the Member State of economic activity where a parent pays taxes and social security contributions in a manner, while the Member State which has secondary competence will pay a differential supplement if its family benefits are higher. This maintains protection for family members and upholds the best interests of the child. By introducing the horizontal option c, it is also possible to protect the individual interests of parents who seek to maintain a balance between work and family life during periods of child-raising by placing a greater emphasis on individual rights and supporting those Member States who are actively promoting flexible and family friendly working practices without imposing this obligation. This option has the potential to be effective at achieving the General and Specific EU objectives and also the wider EU objectives, the Fresh Start to address the challenges of work-life balance faced by working families and is simple to apply. This flexible approach will thereby increasing sustained labour market participation by parents during periods of child-raising. However, as the derogation from the anti-accumulation rules is optional rather than mandatory in practice it is likely to be less effective at achieving the goals and the problems identified concerning disincentives to ongoing labour market participation may continue to subsist. It is anticipated in light of measures already foreseen outside the scope of the revision (the launch of EESSI and implementation of Decision F2) that the aim of improving efficiency of processing family benefit claims will also be achieved.

9. How would the impacts be monitored and evaluated?

9.1. Monitoring indicators

In accordance with the Better Regulation Guidelines, this section provides an outline of the proposed arrangements for monitoring and evaluation (including the proposed indicators). Final monitoring and evaluation arrangements will be approved at a later stage.[453]

Monitoring will take place on two levels. The first level consists of monitoring the implementation of the proposed action by the Commission at EU Level. In its role as the guardian of the Treaties, the Commission closely monitors and assists Member States and citizens in the implementation of the EU social security coordination and of free movement of workers rules by regularly assessing the national legislations and/or practices in place, investigating potential infringements of EU rules in the Member States, filing observations in preliminary references made by the national courts on questions on the

[453] Better Regulation Guidelines, Section 2.7, p30.

interpretation and application of the EU social security rules and responding to individual questions, complaints, petitions or citizens' queries. For example, the Commission's Your Europe Advice and SOLVIT citizens' advice services publish annual reports identifying the number and nature of citizens concerns on particular topics within EU competence including EU social security coordination.

The second level consists of the monitoring by the Administrative Commission to assess the application of the proposed changes at national level. The Administrative Commission has the specific tasks to[454]:

- facilitate the uniform application of EU law, especially by promoting exchange of experience and best administrative practices between the Member States;
- foster and develop cooperation between Member States and their institutions in social security matters and facilitate the realisation of actions of cross border cooperation activities in the area of coordination of social security systems;
- modernise the procedures for exchanging information and adapting the information flow between institutions for the purposes of exchanging data by electronic means.

The Commission can request the Member States represented in the Administrative Commission to report on the effective application of the coordination rules in the Member States, especially on the close and effective cooperation between the authorities and institutions in different Member States as one of the key factors for an efficient functioning of the EU rules on the coordination of national social security systems. It is supported by associated networks such as the informal Social Security Coordination Communication Network and National Contact Points on Fraud & Error also comprised of representatives from Member States who are also able to monitor effectiveness of the proposed measures and identify any potential difficulties in application in specific fields.

Moreover, the Member States are under the obligation to compile statistics on the application of Regulation (EC) No 883/2004 and (EC) No 987/2009 and forward them to the Secretariat of the Administrative Commission[455] including in relation to the payment of unemployment benefits; on the coordination of long-term care benefits and the coordination of family benefits to be analysed by the Network of experts on statistics on Free movement of Workers and Social Security Coordination, a consortium of HIVA- KU Leuven, Milieu Ltd, IRIS University Ghent, whose tasks is to collect and analyse the statistical data on an annual basis. Reports are compiled annually on these topics and published on the DG EMPL website.[456]

The Administrative Commission may set up working parties and study groups for special problems. A 'Reflection Forum' was set up in June 2014, consisting of a collective brain storming exercise within the framework of the Administrative Commission on the future challenges for social security coordination. The discussions in the Reflection Forum will provide a platform for analysing, and clarifying issues of common concern on an administrative level and for openly discussing them in the context of social security coordination as part of a wider challenge, irrespective of whether some may be more controversial than others in their political context. The purpose of the Reflection Forum is to frame the discussion of the topics, draw parallels between them and identify specific issues that warrant further action in the future.

[454] Article 72 of Regulation (EC) No 883/2004.
[455] Article 91 of Regulation (EC) No 987/2009.
[456] Publication of reports is at the discretion of the Commission with the exception of sensitive information or any sensitive reference to single Member States.

The informal Social Security Coordination Communication Network, composed of Member States' representatives dealing with communication issues on EU social security coordination rules, provides feedback to the Commission about the challenges faced in communicating EU rules on social security coordination at national level, and advance proposals in order to improve the quality and availability of information on EU rules on social security coordination. For instance, the revision of the guides on Member States national security systems published by the European Commission to make them more simple, user friendly and adaptable to national website, was based also on a feedback received from the network. The network can thus play a positive role in monitoring the awareness of the rules on long-term care, unemployment benefits, family benefits and access of economically inactive citizens and mobile jobseekers to certain social benefits.

Mechanisms for gathering data in relation to the indicators at both EU level and National Level are already in place with capacity for informing the review on at least and annual basis and therefore there is no need for development of new mechanisms for data collection or to envisage that such methods will entail additional costs for the European Commission or for the Member States to achieve. Indicators based on the data collection consortium HIVA, Milieu Ltd, IRIS University Ghent are foreseen to be monitored on an annual basis, while surveys on the application of the Regulation are envisaged to be less frequent (every 2-3 years).

9.2. Operational objectives for the preferred policy options and their monitoring

9.2.1 *Long-term care benefits*

Table 19: Monitoring indicators for Long-term care benefits

Operational objective	Indicator	Definition/Unit of Measurement[457]	Existing data/Sources
Bring legal clarity and transparency for citizens, institutions and stakeholders by introducing a definition for long-term care benefits, group the rules under a separate Chapter and establish a list of long-term care benefits under Regulation (EC) No 883/2004.	Complaints from citizens on Long-term care benefits	- number of queries and complaints from citizens and institutions about difficulties in exercising their rights.	Yes: Incoming correspondence Commission (annually)
	EU litigation on LTC	No. of national and CJEU cases on the interpretation of EU law on long-term care benefits.	Yes: National Courts/ CJEU
	Complaints from national authorities on Long-term care benefits	Experiences from national institutions with the application of the revised legal framework.	No: Survey in the Administrative Commission
Reduce administrative costs and cases of double payments by providing clear rules of when long-term care benefits in cash and in kind are	Cases of overlapping payments	amount of benefits in cash and the reimbursement for benefits in kind in Euros.	Yes: Survey in the Administrative Commission/ Data collection consortium HIVA, Milieu Ltd, IRIS University Ghent (annually)

[457] The benchmark against which the indicators will be evaluated will be the data of application of Regulation (EC) No 883/2004, i.e. 1 May 2010.

provided for the same purpose and for the same time frame.			
	Administrative costs for public authorities	administrative costs per case for processing claims for long-term care benefits in Member State of residence.	Yes: Survey in the Administrative Commission/ Data collection consortium HIVA, Milieu Ltd, IRIS University Ghent (annually)
	Complaints from national authorities on Long-term care benefits	Experiences from national institutions with the application of the revised legal framework.	No: Survey by the Administrative Commission
Reduce the number of conflict situations between institutions, resulting in l individual complaints, and fewer preliminary or infraction procedures to be dealt with by the CJEU.	Complaints from citizens on Long-term care benefits	Number of complaints from citizens about difficulties in exercising their rights.	Yes: Incoming correspondence Commission (annually)
	EU Litigation on LTC	No. of national and CJEU cases on the interpretation of EU law on long-term care benefits.	Yes: National Courts/CJEU

9.2.2 *Unemployment benefits*

Table 20: Monitoring indicators for unemployment benefits

Operational objective	Indicator	Definition/Unit of Measurement	Existing data/Sources
Reduce the number of complaints concerning access to unemployment benefits by frontier workers and cross-border workers	Complaints on coordination of unemployment benefits by frontier workers/cross-border workers	- number of queries and complaints from frontier workers/cross-border workers about difficulties in exercising their rights	Yes: Incoming correspondence Commission (annually)
	EU Litigation on UBs for frontier/cross-border workers	Number of national and CJEU cases on the interpretation of EU law on unemployment benefits for the frontier and cross-border workers	Yes: National Courts/ CJEU
Ensure a better correlation between the level of the unemployment benefits paid and the contributions received for the frontier, cross-border and mobile EU citizens	Level of contributions received vs level of unemployment benefits paid	overall amounts of contributions received and paid per Member State	Yes: Data collection consortium HIVA, Milieu Ltd, IRIS University Ghent (annually)
Increase the number of persons exporting their benefits	Number of cases of export of unemployment benefits	Number of persons applying for a PD U2	Yes: Data collection consortium HIVA, Milieu Ltd, IRIS University Ghent (annually)
Establish common ground for extending the period of	Number of exchanges on control measures between	Number of exchanges between Member States in	No: Data collection consortium HIVA, Milieu

export of unemployment benefits and establish a systematic cooperation and control mechanism to monitor the fulfilment of rights and obligations by the unemployed person when exporting benefits.	Member States	the EESSI system concerning the monitoring of rights and obligations of unemployed person, report on delays and other communication problems	Ltd, IRIS University Ghent (annually)
	Concerns/Recommendations from national authorities on unemployment benefits	Exchange of (best) practices between Member States	No: Survey in the Administrative Commission (2-3 years)
	Number of cases of fraud and error in field of unemployment benefits	Reported number of cases of 'fraud and error'	Yes: Annual discussion on fraud and error in the Administrative Commission (annually)
	Concerns/Recommendations from national authorities on unemployment benefits	Feedback from communication activities	Yes: Survey in the Informal Communication Network (annually)
	Concerns from national authorities on aggregation of unemployment benefits	Survey on use of PD U2	Yes: Survey in the Administrative Commission (annually)
Reduce the number of complaints and infringements by establishing clear rules on the aggregation of periods	Complaints on aggregation of unemployment benefits	- Number of Queries and complaints from citizens about difficulties in exercising their rights	Yes: Incoming correspondence Commission (annually)
	Infringement proceedings	Number of Infringement procedures on aggregation of	Yes: European Commission (annually)
Increase the integration of workers in the insurance system of a Member State	Unemployed mobile persons applying for aggregation of insurance periods	Number of applications for the aggregation of periods by wholly unemployed persons	Yes: Survey in the Administrative Commission on Document PD U1 (annually)
	Concerns/Recommendations from national authorities on unemployment benefits	Exchange of (best) practices between Member States	No: Survey in the Administrative Commission (every 2-3 years)
Reduce administrative costs for public administrations between Member States connected the administrative cooperation and control mechanism for monitoring the fulfilment of rights and obligations of unemployed persons who are exporting their unemployment benefits.	Administrative costs for public authorities	For all Member State: Unemployment rate of cross-border and frontier workers, total yearly expenditure on unemployment benefits for frontier and cross-border workers having worked in that Member State and distribution effects between national and cross-border workers	No: Survey in the Administrative Commission Data collection consortium HIVA, Milieu Ltd, IRIS University Ghent (annually)

9.2.3 *Access of economically inactive EU citizens and jobseekers to certain social benefits*

Table 21: Monitoring indicators for access by economically inactive citizens and jobseekers to certain social benefits

Operational objective	Indicator	Definition/Unit of Measurement[458]	Existing data/Sources
Reduce the number of complaints concerning access to certain social benefits	Complaints from citizens on access to social benefits	- number of queries and complaints from citizens and institutions about difficulties in exercising their rights.	Yes: Incoming correspondence Commission (annually)
	EU Litigation on relationship between Social Security Rules and Directive 2004/38/EC	No. of national and CJEU cases on the interpretation of EU law on long-term care benefits.	Yes: National Courts/ CJEU (annually)
	Complaints from national authorities on access to social benefits	Experiences from national institutions with the application of the revised legal framework.	No: Survey in the Administrative Commission (every 2-3 years)

9.2.4 Export of family benefits

Table 22: Monitoring indicators for export of family benefits

Operational objective	Indicator	Definition/Unit of Measurement	Existing data/Sources
Ensure greater clarity on respective responsibilities of Member States for export of family benefits to families in a cross-border situation	Complaints from citizens on export of family benefits	- number of queries and complaints about difficulties in exercising their rights	Incoming correspondence Commission (annually)
	EU Litigation on Family Benefits	No. of national and CJEU cases on the interpretation of EU law on family benefits	National Courts/ CJEU (annually)
Increase the number of cases in which parents are able to export child-raising benefits and reduce the number of complaints concerning their export ensure clarity and consistency in applying these rules	Export of child-raising allowances	- Survey on export of family benefits	Yes: Survey in the Administrative Commission (annual)
	Complaints from citizens on export of child raising allowances	Queries and complaints about difficulties parents experience in exercising their rights	Yes: Incoming correspondence to the Commission (annually)
	EU Litigation on child-raising allowances	No. of national and CJEU cases on the interpretation of EU law on the export of child-raising allowances	Yes: National Courts/CJEU (annually)

[458] The benchmark against which the indicators will be evaluated will be the data of application of Regulation (EC) No 883/2004, i.e. 1 May 2010.

Reduce regulatory costs for public administrations in Member States associated with export of family benefits	Speed of processing claims	Time needed to respond to requests for information	No- Survey in the Administrative Commission (annually) -No Monitoring by Administrative Commission, Technical Commission and Executive Board (annually)
	Number of exchanges between Member States	Number of exchanges between Member States in the EESSI system, report on delays or other communication problems	No - Data collection consortium HIVA, Milieu Ltd, IRIS University Ghent (annually)

9.3. **Evaluation**

In addition, the Commission will evaluate the revised legal framework 5 years after its application in accordance with the Better Regulation Guidelines.

It is anticipated that the Commission submits to the European Parliament, the Council and the Economic and Social Committee, 5 years after the date of implementation of the amended Regulations, and every 5 years thereafter at the latest, an evaluation report on the application of the new instrument.

10. Annex I: Procedural Information

10.1. Annex I: Procedural Information

The "Revision of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2010" forms part of the Labour Mobility Package, included in the Commission's 2015 Work Programme. The lead DG for this initiative is EMPL.

The preparatory work started in 2009 with the establishment of an ad hoc expert group on long-term care benefits under the auspices of the Administrative Commission for the Coordination of Social Security Systems.

In 2013 and 2014 the preparatory work on a revision of 883/2004 continued, involving an impact assessment and a draft proposal for legislation. The proposal was drafted in response to the 2011 Council's call for a revision of the rules on unemployment benefits in order to strengthen the link between contributions and benefits, and in view of the need to respond to the introduction of a new type of "long-term care benefit" at national level in view of population change.

An Impact Assessment Steering Group (IASG) was set up to discuss the elements of the proposal initially scheduled for adoption in Spring 2014 (coordination of long-term care benefits; export of unemployment benefits; coordination of unemployment benefits for frontier workers) with representatives of the following Commission's services: SG, SJ, ECFIN, MARKT, HOME, ENTR, SANCO, COMM, JUST, RTD, EAC, TAXUD, REGIO and BEPA. The IASG met six times between June 2012 and November 2013. The minutes of the IASG meeting of 25 November 2013, as well as comments received on the draft Impact Assessment Report after the meeting, are annexed to this report in Annex XXIV.

The adoption of the proposal was originally scheduled for spring 2014. However, in view of the European Parliament elections and the changes in political level playing field, the initiative was put 'on hold' and action to follow it up was left to the new Commission.

Preparatory work was resumed in autumn 2014 and continued throughout 2015.

An Inter-Service Steering Group (ISSG) was set up on 19 December 2014 to discuss the Labour Mobility Package, and concerned the following elements of the proposal: coordination of family benefits, aggregation of unemployment benefits, and access to special non-contributory cash benefits for economically inactive persons, with representatives of the following Commission's services: SG, EMPL, MOVE, JUST, CNCET, ESTAT, HOME, NEAR, GROW, SJ, ENER, REGIO, TAXUD, SANTE, TRADE. The ISSG met 6 times between January 2015 and September 2015.

1.1.1 Advice from independent experts

A study supporting the Impact Assessment for the elements of the proposal initially scheduled for adoption in spring 2014 (coordination of long-term care benefits; export of unemployment benefits; coordination of unemployment benefits for frontier workers) was carried out by Deloitte Consulting[459] and a final report was delivered on 6 December 2013. Available data

[459] Deloitte, Consulting *Study for the impact assessment for revision of Regulations (EC) Nos 883/2004 and 987/2009,* 6 December 2013. The study can be found in Annex V to this report.

(principally through Labour Force Survey[460] and 2012 Ageing Report[461]) was used to model budgetary impacts for all Member States. Further data was collected in a representative sample of 14 Member States[462], and additional quantitative information to support problem definition and assessment of options was delivered by the HIVA KU Leuven Research Institute for Work and Society (HIVA)[463].

Six studies supporting the Impact Assessment for the further elements of the revision (coordination of family benefits and aggregation of unemployment benefits) were carried out by a consortium under the lead of Fondazione Giacomo Brodolini[464] and by HIVA – KU Leuven Research Institute for Work and Society (HIVA)[465], and the final reports were delivered in August 2015. Administrative data from Member States[466] and EU available data[467] were used to model economic impact and administrative burden for Member States.

The training and reporting on European Social Security (trESS) network[468] of independent experts in the field of social security coordination evaluated the coordination of long-term care benefits[469], export of unemployment benefits and coordination of unemployment benefits for frontier workers[470] and the potential legal impacts of the revision of Regulation (EC) No 883/2004 with regard to coordination of long-term care benefits[471]. These three studies were presented in 2011 and 2012 to the Administrative Commission for the Coordination of Social Security Systems. The evaluations looked into the current legal framework of coordination of long-term care and unemployment benefits, identified the challenges that stem from the application of the current EU rules in these areas and identified possible areas for improvement.

The network of independent experts in the fields of free movement of workers and social security coordination in the European Union (FreSsco) evaluated the potential legal impacts

[460] To be consulted at: http://epp.eurostat.ec.europa.eu/portal/page/portal/microdata/lfs.
[461] To be consulted at: http://ec.europa.eu/economy_finance/publications/european_economy/2012/pdf/ee-2012 2_en.pdf.
[462] See Annex IV for a complete list of the analytical models used in preparing the impact assessment
[463] Pacolet, J. & De Wispelaere, F., *Additional analysis for the partial revision for the provision on social security coordination in Regulation (EC) No 883/2004,* November 2013 (Annex IX) and Pacolet, J. and De Wispelaere, F., *Analysis of the characteristics and the duration of employed activity by cross-border and frontier workers for the purposes of coordinating unemployment benefits,* November 2013 (Annex X).
[464] Julie Abrahamsen, Monica Lind, Peter G. Madsen, *Administrative costs of handling exports of family benefits*, 2015 (Annex XVI); Katrine Julie Abrahamsen, Monica Lind, Peter G. Madsen , *Administrative costs of handling aggregation of periods or salaries for unemployment benefits,* 2015 (Annex XVII); Michele Raitano, Matteo Luppi, Riccardo Conti, Diego Teloni, *Secondary effects following a change of regulations on the exportation of family benefits*, 2015 (Annex XVIII); Michele Raitano, Matteo Luppi, Riccardo Conti, Diego Teloni, Secondary effects following a change of regulations on the aggregation of periods or salaries for unemployment benefits, 2015 (Annex XIX)
[465] PACOLET and DE WISPELAERE *Export of family benefits, Analysis of the economic impact of the options,* 2015 (Annex XIII); Pacolet, J. & De Wispelaere, F, *Aggregation of periods or salaries for unemployment benefits - Analysis of the economic impact of the options,* 2015 (Annex XIV);
[466] PACOLET and DE WISPELAERE*, Export of Family Benefits: Report on the Questionnaire on the Export of Family Benefits,* 2015 (Annex XI), PACOLET and DE WISPELAERE, *Aggregation of periods or salaries for unemployment benefits*, HIVA-KU Leuven, 2015 (Annex XII)
[467] EUROSTAT, LFS
[468] www.tress-network.org.
[469] trESS Think Tank Report 2010, Analysis of selected concepts of the regulatory framework and practical consequences on the social security coordination, to be consulted at: http://www.tress network.org/tress2012/EUROPEAN%20RESOURCES/EUROPEANREPORT/ThinkTank_SelectedCncepts_Final_140111.pdf and the trESS Think Tank Report 2011, Coordination of long-term care benefits-current situation and future prospects, to be consulted at: http://www.tress-network.org/tress2012/EUROPEAN%20RESOURCES/EUROPEANREPORT/trESSIII_ThinkTankReport-LTC_20111026FINAL_amendmentsEC-FINAL.pdf.
[470] trESS Think tank report 2012, Coordination of Unemployment Benefits, to be consulted at: http://www.tress-network.org/tress2012/EUROPEAN%20RESOURCES/EUROPEANREPORT/trESS_ThinkTankReport2012.pdf.
[471] trESS Analytical Study 2012, Legal Legal impact assessment for the revision of Regulation 883/2004 with regard to the coordination of long-term care benefits, to be consulted at: http://www.tress-network.org/tress2012/EUROPEAN%20RESOURCES/EUROPEANREPORT/trESS_Analytical%20Study%202012.pdf

of the Revision of Regulation (EC) No 883/2004 with regard to the coordination of family benefits[472], the aggregation of unemployment benefits[473], and access to special non-contributory cash benefits for economically inactive persons[474]. The three studies were completed in June 2015.

Technical amendments to the EU coordination rules

Outside the scope of this impact assessment report, but included in the revision package are a number of proposals for technical amendments to the EU coordination rules. These amendments aim to bring clarification to a number of coordination provisions, but not to substantially revise them. These amendments will not have a substantial impact and hence their estimated effects will be explained in explanatory notes to the legislative proposal.

Moreover, the package will also include a 'periodic update' of the Regulations to reflect developments in national legislation that have an effect on the coordination of social security systems in the EU. The aim is to ensure legal certainty for institutions and citizens by making technical amendments the wording of EU provisions or by amending certain annexes. This is, for instance, the case where a benefit ceases to exist in a Member State and has to be deleted from a specific annex to the EU Regulation, or where a wording of a specific article has to be corrected or clarified to avoid misinterpretation.

The proposals for these technical amendments are based either on the proposal of a Member State, or a group of Member States, or of the Commission services. They were discussed and agreed by at least of qualified majority of Member States in the Administrative Commission on the Coordination of Social Security Systems.

Finally, the revision package will include a proposal for a governance change concerning the procedure to amend the country-specific annexes to the coordination Regulations, with which the Commission proposes a simpler and faster legislative procedure to adapt the annexes. This element of the proposal is not expected to have social, economic or environment impacts and is therefore also excluded from the scope of this impact assessment. Its limited effects will be outlined in an explanatory note to the proposal.

Further details concerning the Technical Amendments are contained in Annex XX.

[472] SPIEGEL, B. (ed.), CARRASCOSA BERMEJO, D., HENBERG, A. and STRBAN, G., *Assessment of the impact of amendments to the EU social security coordination rules on export of family benefits, Analytical Report* 2015, FreSsco, European Commission, May 2015 (Annex VI)

[473] FUCHS, B. (ed.), GARCIA DE CORTAZAR, C., BETTINA, K. and PÖLTL, M., *Assessment of the impact of amendments to the EU socials security coordination rules on aggregation of periods or salaries for unemployment benefits*,
Analytical report 2015, FreSsco, European Commission, June 2015 (Annex VII)

[474] LHERNOULD, J.-P. (ed.), EICHENHOFER, E., RENNUY, N., VAN OVERMEIREN, F. and WOLLENSCHLÄGER, F., *Assessment of the impact of amendments to the EU social security coordination rules to clarify its relationship with Directive 2004/38/EC as regards economically inactive persons*, Analytical Report 2015, FreSsco, European Commission, June 2015

11. Annex II - Stakeholder consultation

As the preparatory work for the "Revision of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2010" began in 2009, stakeholders were consulted on several occasions on the different elements which are now subject to revision:

6. Member States were consulted on coordination of long-term care benefits, export of unemployment benefits, aggregation of unemployment benefits, coordination of unemployment benefits for frontier workers, export of family benefits and access to special non-contributory cash benefits for economically inactive persons, within the framework of the Administrative Commission for the Coordination of Social Security Schemes (Administrative Commission).
7. National administrations were also consulted via a specialised online survey on the coordination of long-term care benefits, export of unemployment benefits and coordination of unemployment benefits for frontier workers. Also, a group of national organisation in charge of the payment of family benefits sent a position paper.
8. Social partners were consulted on the coordination of long-term care benefits, coordination of unemployment benefits for frontier workers and export of unemployment benefits in the framework of the Advisory Committee for the Coordination of Social Security Systems, and on the coordination of family benefits, long-term care benefits, and unemployment benefits during a dedicated hearing.
9. NGOs were consulted on the coordination of family benefits, long-term care benefits, and unemployment benefits during an ad-hoc consultation workshop.
10. Two online consultations were also launched, one on the coordination of long-term care benefits, export of unemployment benefits and coordination of unemployment benefits for frontier workers; the other one on the coordination of unemployment benefits and the coordination of family benefits.

It has to be noted that the different consultations presented different degrees of specifity in relation to the options assessed, and due to the high level of complexity of some topics, and the late definition of some options, some consultations have been kept very wide (e.g. the publis consultation on aggregation of unemployment benefits; export of family benefits and social security coordination rules on the posting of employed and self-employed persons). A summary of these consultations is given in the sections below.

1. Member States

Discussions with the Member States on coordination of long-term care benefits, export of unemployment benefits and coordination of unemployment benefits for frontier workers took place at the meetings of the **Administrative Commission for the Coordination of Social Security Systems**[475] in the period 2009 to 2013.

In relation to the coordination of long-term care benefits, during the Working Party of the Administrative Commission on the revision of EU provision on coordination of long term care benefits and unemployment benefit of 10 October 2013, Member States delegations

[475] While all Member States are represented at the meetings of the Administrative Commission for the Coordination of Social Security Systems, not all delegations necessarily have taken the floor during the several discussions on the different options.

(some representing their governments' positions, other sharing their opinions as experts) expressed their views on the options under consideration. A majority of delegations supported the creation of a specific definition and/or specific chapter and/or list of benefits (Luxembourg, Spain, Italy, Portugal, Lithuania, Poland, Belgium, Malta, Sweden, Czech Republic, Hungary and Latvia explicitly supported the option, whilst Austria, Germany, France, Ireland, Slovenia, Slovakia and Greece, without taking definite position, supported some elements of this option or did not object it). Others were in favour of the status quo (Belgium, Greece, Spain, Hungary, Malta, Poland, Sweden, Estonia as well as the United Kingdom and France without declaring their definite position).

A **specialised questionnaire** was also launched by the Commission at the beginning of 2012 on the coordination of long-term care benefits: on the basis of a report[476] prepared in 2012 by the trESS (Training and Reporting on European Social Security) Network, Member States were asked to describe their policy approach with regards to persons in need of LTC, to assess a new definition for LTC benefits, to identify further challenges than those presented in the report.

To the question whether the Regulation shoud be amended to better coordinate LTC benefits, MS answered as follows:

- Open to any solution: Hungary, Finland;
- There should be a separate Chapter for LTC benefits (including also a definition and elaborated list): Luxembourg, Austria, Greece, Slovakia, Ireland, Portugal, Czech Republic, Lithuania, and Slovenia.
- Special rules for LTC benefits (irrespective of the place – new chapter or Sickness Chapter): Netherlands.
- No change of the existing system of coordination: Poland, Sweden, France.
- All benefits should be regarded as benefits in kind: Denmark.
- No coordination as sickness benefits: Estonia.
- Competence only of the MS of residence: Austria (if safeguarded that no differential payments or subsidiary competence of any other MS – some parameters are elaborated in the note), Lithuania.
- Always the first MS which grants LTC benefits should remain competent is not acceptable: Czech Republic, Lithuania.
- LTC benefits should not be coordinated as pensions: Lithuania, Romania (as invalidity benefits).
- Benefits granted to the carer should be regarded as income and so Title II should apply to the carer: Poland, Ireland (also the existing system seems to focus more on direct benefits than on the provision of services), Hungary.
- A detailed list for the application of Article 34 of Regulation (EC) No 883/2004 should be made: Poland, Bulgaria, Lithuania, France.
- Rights to LTC benefits should be treated as individual rights: Slovenia.

Other remarks:

[476] trESS Network, *Legal impact assessment for the revision of Regulation 883/2004 with regard to the coordination of long-term care benefits*; Analytical Study 2012, available at: http://www.tress-network.org/tress2012/EUROPEAN%20RESOURCES/EUROPEANREPORT/trESS_Analytical%20Study%202012.pdf

- Whatever solution is sought, it must be stable, easy to administer and transparent for the citizens, and social tourism must be avoided: Austria.
- Further rulings of the CJEU should be awaited: Finland.
- An introduction of a specific equalisation of claims for LTC benefits: Poland.
- Special rules for LTC benefits should be included in the Sickness Chapter: Italy.
- Another possibility would be to follow the same principles as under the Family Benefits Chapter: Czech Republic.
- There should be a non-exhaustive list of LTC benefits: Spain.
- First the work should focus on the application of Article 34 of Regulation (EC) No 883/2004 and on the various CJEU rulings concerning LTC: Lithuania.
- Article 66 (2) of Regulation (EC) No 987/2009 has to be amended to allow for reimbursement of LTC benefits via a separated liaison body: France.
- A better coordination seems to be necessary (it is not yet clear which one): Belgium.

Finally, to the question as whether all LTC benefits should be coordinated in the same way (i.e. one set of coordination rules), or should it be still possible to coordinate them under different Chapters, MS answered as follows:

- All LTC benefits and schemes should be coordinated under one Chapter: Luxembourg, Denmark, Finland, Greece, Bulgaria, Portugal, Czech Republic, Spain, Slovenia, France, Netherlands, Romania.
- Open to both solutions: Finland.
- LTC benefits should be inserted in Article 3 of Regulation (EC) No 883/2004: Luxembourg.
- There should be a more elaborated list of all the LTC benefits covered by the new coordination: Luxembourg.
- LTC benefits should remain coordinated as today under the various chapters of Regulation (EC) No 883/2004: Italy, Hungary (new coordination only for the rest not covered by these special chapters), some MSs refer to some of these cases explicitly.
- Social assistance benefits cannot be coordinated as other LTC benefits: Austria (at least this has to be further examined), Poland, Germany (this also applies to LTC benefits for victims of war), Slovakia, Lithuania.
- Special family allowances for handicapped children shall remain coordinated as family benefits: Austria, Latvia; same opinion concerning medical care allowances for children and supplement to family benefits which are treated as family benefits: Poland.
- LTC benefits granted under the accidents at work and industrial diseases scheme should remain coordinated under the relevant chapter, as this is more favourable for the persons concerned: Austria, Germany, Latvia.
- Benefits which up until now have been regarded as invalidity benefits cannot be treated as LTC benefits: Poland, Germany.
- Benefits in kind and in cash should not be coordinated in the same way: Estonia, Slovakia.
- A better coordination seems to be necessary (it is not yet clear which one): Belgium.

In relation to the **coordination of unemployment benefits for frontier workers**, during the Working Party of the Administrative Commission on the revision of EU provision on coordination of long term care benefits and unemployment benefit of 10 October 2013, Member States delegations (some representing their governments' positions, other sharing their opinions as experts) expressed their views on the options under consideration:

- 8 delegations were in favour of maintaining the status quo (Germany, Ireland, Denmark, Switzerland, Netherlands, Austria, Greece, Slovakia);
- 1 in favour of introducing an option to choose between receiving unemployment benefits from the country of last activity and residence (Hungary);
- and 9 in favour of providing unemployment benefits for all workers from the state of last activity (Czech Republic, Spain, Poland, Italy, Romania, Slovenia, Luxembourg, France, Malta).

In relation to the **export of unemployment benefits**, during the Working Party of the Administrative Commission on the revision of EU provision on coordination of long term care benefits and unemployment benefit of 10 October 2013, Member States delegations (some representing their governments' positions, other sharing their opinions as experts) expressed their views on the options under consideration:

- 9 delegations supported the current provisions (Germany, Spain, Netherlands, Greece, Austria, Denmark, Ireland, France, Belgium);
- and 6 delegations supported the option for a right to export for at least 6 months (PT, Slovenia, Malta, Slovakia, Romania, Italy)

In relation to **export of family benefits,** during a Reflection Forum within the framework of the Administrative Commission meeting on 10-12 March 2015, Member States' delegations (sharing their opinions as experts) expressed their views on the options under consideration:

- a significant majority of delegations favoured maintaining the status quo for ensuring that family benefits were exported at the same rate payable in the state of employment (Bulgaria, Switzerland, Czech Republic, Estonia, Spain, Finland, Croatia, Italy, Lithuania, Lithuania, Latvia, Poland, Portugal, Romania, Sweden, Slovakia and Slovenia)[477];
- a minority of delegations favoured adjustment of the amount of family benefits to reflect the living standards in the Member State of Residence of the child (Denmark, France, Ireland and Norway);
- a similar minority of delegations favoured the option of no export of family benefits in some or all cases (Austria, Luxembourg, Malta, UK).

In light of the feedback from national experts following consultation within the Reflection Forum of the Administrative Commission, the Commission has developed a new option concerning the priority rules for the payment of family benefits. During a second meeting on 23-25 June 2015, the new option according to which the Member State of residence of the child should always be primarily competent to award family benefits was discussed:

- ten delegations indicated support for this option as a first or second choice (Austria, Estonia, Finland, Ireland, Latvia, Luxembourg, Malta, Sweden, Slovenia, UK) although Sweden indicated they preferred changes in classification of benefits before considering changes in priority and the UK indicated their support for this option was conditional on not having to pay the differential supplement;
- nine delegations were expressly opposed to the new option (Cyprus, Germany, France, Italy, Netherlands, Poland, Portugal, Romania, and Slovakia);

[477] Belgium also expressed support for the status quo in a written note sent to the Commission

- the most popular option remained maintaining the status quo, which is supported by 17 delegations.

In the discussions concerning export of family benefits, a number of delegations raised concerns about the application of the family benefit rules to child-raising allowances. This concern was expressed by Denmark, Finland, Austria and Sweden. The development of the horizontal option was developed at a later stage as a result of the feedback from Member States and other stakeholders.

In relation to **the aggregation of unemployment benefits**, during a Reflection Forum within the framework of the Administrative Commission meeting on 10-12 March 2015, Member States delegations (sharing their opinions as experts) expressed their views on the options under consideration. The discussion revealed widely divergent views of the delegates with a slight majority, however, favouring the maintenance of the status quo. However, some delegations had rather strong views on the issues (in particular Denmark and Greece, who had submitted notes in favour of the 'three-month' option), whereas others were more flexible or declared that they could support more than one option:

- option 1 (maintenance of status quo) was supported by the following delegations: Germany, Czech Republic, Poland, Italy, Portugal, Bulgaria, Estonia, Slovakia, Belgium, Croatia, Slovenia;
- option 2.a (aggregation only after working one month) was supported by: Luxembourg, Finland;
- option 2.b (aggregation only after working three months) was supported by: Greece, Denmark, Malta, Austria, Luxembourg, France, Lithuania, Luxembourg, Romania, UK, Latvia, Ireland.

The supporters of the one-day rule (option 1) rather focused on the needs of (returning) migrant workers and felt the need to ensure that there are no gaps in their protection. The supporters of option 2 (aggregation only after one or three months of work) rather focused on the needs of their institutions and wanted to ensure that unemployment benefits are only paid to those who had made a "substantial" contribution to their own schemes.

In relation to the debate concerning the method of calculation of unemployment benefits:

- the majority of delegations were in favour of maintaining the status quo (i.e. benefits should be calculated solely on the basis of salaries earned in the competent MS) (Czech Republic, Ireland, Portugal, Bulgaria, Estonia, Slovakia, Romania, Latvia, Hungary, Poland, France, Slovenia, Croatia, Lithuania and Italy) – however, a number of delegations caveated their position to make clear it may vary depending on the policy adopted in respect of aggregation. For example, some pointed out that a strengthening of the precondition for aggregation (three-month rule) would make a change of the calculation method superfluous;
- in relation to those Member States who were open to change in the current rules (so that the calculation of unemployment benefits would also take into account salaries earned in another MS), the positions of delegations regarding the policy options concerning were less clear, because many favoured such a change without time limitation. Open for such a change were the following delegations: Denmark, Greece, Germany, Malta, UK, Finland, Netherlands, Luxembourg, Italy, Austria.

The supporters of the status-quo as regards the calculation of unemployment benefits felt the need to ensure that benefits are paid quickly without additional administrative complications. The supporters of a change, i.e. of also taking into account foreign salaries for the calculation of benefits, felt that this would lead to fairer results.

During a second meeting on 23-25 June 2015, delegations were consulted on how to deal with the coverage of unemployed persons in case of introduction of a waiting period for the aggregation of unemployment benefits:

- three delegations (Poland, Portugal, Hungary) expressed concerns about the risk of a gap in protection for mobile workers;
- six Member States (Austria, France, Greece, Ireland, Malta and Romania) all of whom supported the introduction of a 3 month period of insured employment to qualify for aggregation proposed that the gap should be addressed by extending the application of Article 65(5)(a) to mobile workers who have worked for less than 3 months in the country of new employment allowing them to "reactivate" entitlement in the former country of employment. This proposal was opposed by the delegates from Germany, Spain, Sweden, Hungary and Portugal. The UK delegate also had concerns about the practicalities;
- three delegations (Czech Republic, Germany, Sweden) were opposed to specific coordinating measures to address the gap because the numbers of potentially affected unemployed persons were very low and any changes to the rules to address the gap would be administratively burdensome to apply and may risk mobile workers being treated more favourably than nationals.

In relation to **non-contributory cash benefits providing for a minimum subsistence level**, during a Reflection Forum within the framework of meeting of the Administrative Commission meeting on 23-25 June 2015, Member States delegations (sharing their opinions as experts) expressed their views on the options under consideration:

- nine delegations (Czech Republic, Germany, France, Lithuania, Latvia, Luxembourg, Netherlands, Sweden and UK) made clear that they preferred to wait for the outcome of the judgments of *Alimanovic* and *Garcia Nieto* before any firm action is taken;
- eight delegations (Malta, Hungary, Italy, Poland, Portugal, Finland, Lithuania and Spain) favoured the status quo as a first or second choice;
- four (Spain, Finland, Hungary, Sweden) expressed support for the status quo accompanied by administrative guidance;
- twelve delegations supported the option of amending Article 4 as a first or second choice (Austria, Belgium, Czech Republic, Germany, Estonia, France, Hungary, Ireland, Lithuania, Latvia, Poland, UK) although there was no general consensus on the changes needed and some of these views are provisional as it includes Member States who were in favour of awaiting the outcome of the pending court cases before adopting a fixed position;
- finally, two delegations favoured the option of excluding SNCBs from scope of Social Security Regulation (Estonia and Ireland).

2. National administrations

A web-based survey among the responsible national public authorities and other key actors with regard to the coordination of unemployment benefits for frontier workers, the export of unemployment benefits and the coordination of long-term care benefits was launched in December 2012 by Deloitte consulting.

In relation to the **coordination of unemployment benefits for frontier workers,** 43% of all respondents think that the competent Member State should be the one in which the person last worked and paid social security contribution, even if a person lives in another Member State. About 27% of the respondents favour a right of choice for workers to claim their unemployment benefits either in the country of last activity or the country of residence. About 25% say that the country of residence should be the competent Member State, even if a person last worked and paid social contributions in another Member State. Applying a country-by-country analysis, the results are slightly different with regard to the 2nd and 3rd preferred option. In 11 countries (Cyprus, Czech Republic, Finland, France, Hungary, Italy, Latvia, Malta, Netherlands, Portugal, Slovenia), the most popular option among public authorities is that unemployment benefits should be provided by the Member State in which the person last worked and paid social security contributions, even if he/she lives in another Member State.

In several of these countries, there is also strong support for the option where workers would have a right of choice with regard to where to claim their unemployment benefits. The reasons why respondents say to favour this option are: it would put an end to the reimbursement of unemployment benefits between Member States and it is fairer that the Member State which receives the social security contributions is also competent to provide the unemployment benefits. However, several respondents warn that this option entails risks of abuse/fraud. The country of residence may lack an incentive to check the legitimacy of the benefits provided by the competent country and to follow-up the unemployed person during the job-seeking process. In 9 countries (Austria, Belgium, Denmark, Germany, Ireland, Luxembourg, Spain, Sweden, Switzerland), most public authorities are in favour of the Member State in which the person lived being the competent Member State, even if he/she last worked and paid social security contributions in another Member State. These countries are also generally against a thorough revision of the coordination rules. In 5 countries(Czech Republic, Estonia, Romania, Slovakia, UK), the most popular option is that a person should be allowed to choose to claim the benefit either in the Member State of last employment or in the Member State where the person lived (if these Member States are different).

In relation to the **export of unemployment benefits,** almost 45% of all respondents are in favour of giving the possibility of "exporting unemployment benefits" (going to another country to look for a job while continuing to receive the unemployment benefits from the competent institution) until the end of the person's entitlement to unemployment benefits, according to the rules of the Member State which provides them. 34% of all respondents would like to maintain the current period of export of 3 months with a possible extension of the export of unemployment benefits to 6 months. About 12% would like to extend the period of export in the entire EU to at least six months.

Analysing the replies on a country-by-country basis, the results look differently. The current rule of a three-month period of export with a possible extension to 6 months is the most chosen option among public authorities in 11 countries (Austria, Belgium, Cyprus, Denmark, Estonia, Finland, France, Germany, Lithuania, Luxembourg, Netherlands, Switzerland). In 9 countries (HU, Italy, Latvia, Malta, Poland, Romania, Slovakia, Slovenia, Spain, UK), exporting the unemployment benefit until the end of the person's entitlement to

unemployment benefits, according to the rules of the Member State which provides them, is the most preferred option. Only in one Member State (PT), public authorities favour a general period of export of minimum 6 months.

52% of all respondents think that the export of unemployment benefits could lead to increased risk of misuse or abuse of rights. This is also the opinion of most public authorities in 15 Member States. 79% of this group of respondents think that the risk of misuse or abuse of rights is particularly high when the unemployment benefits would be provided until the end of a persons' entitlement to unemployment benefits, according to the rule of the Member State which provides them. 33% of the respondents also believe that there would be an increased risk of abuse if the period of export would be generally extended to minimum 6 months.

45% of the respondents do not think that misuse or abuse of rights is a risk in cases of export of unemployment benefits. This is also the most dominant position among public authorities in 8 countries.

Public authorities, who believe that the export of unemployment benefits could lead to increased risk of misuse of rights, propose the following mitigation measures to reduce this risk:

- The receiving Member State should feel more responsible for jobseekers who have exported their unemployment benefit from another Member State. Agreements should be made between Member States about the control and the provision of active assistance to jobseekers (HU, Austria, Czech Republic, Ireland, Italy, Lithuania, Netherlands, Poland, Portugal and Slovenia). However, more control of jobseekers by the guest Member State will also increase the administrative burden and costs on Member States (Denmark).

- Some Member States say that the keeping the period of export generally limited to maximum 3 months will limit the risk of abuse and misuse of rights. Extension may be possible, if there is a high probability that the jobseeker will find work at short term (Austria, Belgium, Ireland). Several Member States would like to enhance the role of the receiving Member State in providing information to the competent Member State about the chances of a person to find a job at short-term, so that the competent Member State can take a well-argumented decision about extending the period of export in a specific case (BE, Estonia, Czech Republic and France).
    - All jobseekers who have exported their unemployment benefits should be obliged to report about their job seeking activities to the competent Member State (Czech Republic, Germany, Malta, Lithuania and France). Some countries are in favour of monthly reporting by the jobseeker to the competent institution (Germany, Malta and Lithuania); other Member States say that a 3-monthly reporting would be sufficient (FR).
    - One respondent suggests making language courses compulsory in the "guest" country, as language is often the most important barrier to integration in the labour market. Also reducing the height of unemployment benefit over time could provide an incentive to jobseekers abroad to actively apply for a job.

- In the long-run, it should be possible to introduce an EU-Job pass for every EU citizen which contains his/her social data. Every public employment service should be able to access these data, based on a single European social database (Germany, Netherlands).

When people are exporting their unemployment benefit abroad, 40% of the organisations that deal with claims for exportation of unemployment benefits say that they receive information about the status of these job-seekers from the country of residence, but only on request. About 19% automatically receives information from country of residence. About 10% of the respondents say that this information is not needed. The majority of these respondents cannot say if these job-seekers (who exported their unemployment benefit) had found a job.

In relation to the **coordination of long-term care benefits,** 17% of the national administrations and social security institutions would like to keep the current coordination rules for long-term care benefits. About 28% of the respondents believe that people should be treated equally in the Member State where they are insured and should not have their care benefits reduced if they move to another Member State.

The options where a person in need of care is treated equally in the Member State where he is insured or where he/she lives are considered by national administrations as the best ones to stimulate free movement of persons. The current coordination rules are seen as the **worst** option to stimulate mobility of persons.

In terms of social security coverage, national administrations have a preference for the option in which a person in need of care is treated equally in the Member State where he/she lives and receives LTC benefits there in accordance with national legislation. Also the option where a person receives care benefits in cash from the Member State of residence, supplemented by the Member State of insurance in case of more advantageous conditions (top-up).

Making the competent Member State fully responsible for the provision of the LTC benefits is seen as the best option to ensure a fair share of the financial burden between Member States.

Almost half of the national administrations are of the opinion that all costs for LTC benefits should be borne by the competent Member States (where the migrant person is insured). About one third prefers a system where those costs are shared between the Member State of residence and the competent Member State. The latter option however is seen as the most burdensome in terms of administration.

Views of national organisations in charge of the payment of family benefits

On 7 October 2015, a group of five national organisations in charge of the payment of family benefits from Belgium, France and the Netherlands[478], issued a position paper in relation to the possible revision of rules on the export of family benefits, strongly supporting the status quo.

3. Social partners

In relation to the **coordination of long-term care benefits**, **export of unemployment benefits** and **coordination of unemployment benefits for frontier workers**, social partners

[478] CCMSA – Caisse centrale de la Mutualité sociale agricole, CNAF – Caisse Nationale des Allocations familiales and REIF – Représentation des institutions françaises de Sécurité sociale auprès de l'UE (France); FAMIFED (Belgium); and SVB - Sociale Verzekeringsbank (The Netherlands)

were consulted in the framework of the Advisory Committee for the Coordination of Social Security Systems on 24 October 2013.

ETUC (European Trade Union Confederation) noted that in this work the Commission should take into account the experience of cross-border workers – the ETUC has found that these workers are often the first to lose their jobs during an economic downturn and can then be refused unemployment benefits in their Member State of residence. The ETUC's research showed this to be a persistent and spreading problem. ETUC also noted that the current Regulations do not cater sufficiently for certain groups of mobile workers, like apprentices. ETUC also expressed surprise at questions in the public consultation on whether the current regime was abused by migrant workers, given that the document was aimed at finding out how the rights of migrant worker can be improved.

BUSINESS EUROPE commented on the need to strike the right balance taking account of potential costs to Member States and businesses. BUSINESSEUROPE considered that unemployment benefits should be time-limited for those seeking employment in another Member State, and deciding the specific time period left as a national competence.

ETUC underlined the pressing need to focus on defending and improving the rights of workers. In particular, if a mobile worker has been employed and paid contributions in another Member State to that in which they are resident, it seems right that the Member State of last activity should pay their unemployment benefits.

A dedicated hearing with social partners was also organised on 10 June 2015 to allow for collecting views on the **coordination of long-term care benefits**, **export of unemployment benefits, aggregation of unemployment benefits, coordination of unemployment benefits for frontier workers, export of family benefits, and access to special non-contributory cash benefits for non-active mobiel EU citizens.**

Employers generally referred to the importance of finding the right balance between promoting labour mobility and combatting fraud.

BUSINESSEUROPE stated, during the workshop and in written statements, that respecting the equal treatment principle and ensuring access to information is key. The package should take a comprehensive approach by also addressing issues like e.g. linguistic skills and EURES. The difference in perspectives between origin and destination countries was also underlined. They also suggested that sectoral approaches may be necessary. Mobile workers should not have access to unemployment benefits after one day of work and article 61 of Regulation 883/04 should be adapted. In relation to export of unemployment benefits, there is no change needed in the current period of export of unemployment benefit for a minimum of 3 months. BUSINESSEUROPE recognised the link with the sustainability of social protection systems and the need to combat fraud and abuse. The Dano case was welcomed as a clarification in this respect.

CEEP (European Centre of Employers and Enterprises providing Public Services) stressed the importance of combating fraud and insuring the sustainability of systems.

UEAPME (European Association of Craft, Small and Medium-sized Enterprises) stated, during the meeting and in written contributions following the meeting, that the provision that the export of unemployment benefits to a second Member State can take place for 3 months (and optionally extended to 6 months, Art. 64.c) should remain and not be extended. UEAPME considers it important that workers are activated to find a job in the Member State

of destination as soon as possible, in the interest of both employers and the unemployed. In relation to the coordination of unemployment benefits for frontier workers**,** UEAPME does not consider the current situation, where an exception is made to the principle that the country of employment is normally responsible for the payment of unemployment benefits, as problematic since a real frontier worker has generally a stronger relationship with the country of residence than the country of employment, which provides good grounds for this Member State to pay the benefits. In relation to the aggregation of unemployment benefits, UEAPME would be in favour of introducing a minimum waiting period in the Member State of last employment before entitlement to social security coverage and notably access to unemployment benefits in that Member State. In relation to export of family benefits, UEAPME considers that the principle of the country of employment being responsible for the payment of family benefits should be maintained. However, if this family lives in another Member State, UEAPME considers it fair to adapt the amount of benefits to the cost of living in that Member State.

EFCI (European Federation of Cleaning Industries) stressed the need to promote mobility of apprentices and the establishment of national systems of apprenticeship to fight youth unemployment.

PEARLE (Performance Arts Employers Association Europe), during the meeting and in a written contribution, emphasised that employers in the live performance sector are confronted with specific issues on social security and posting and need instruments such as one-stop-shop or national centres where they can obtain guidance to comply with the requirements in different countries.

DA (Confederation of Danish Employers) mentioned that electronic data exchange can also be used to combat issues like lacking payments of contributions in the country of origin.

CEC (Confederation of European Managers), during the meeting and in a written contribution, highlighted the necessity to make sure that public authorities designated for the enforcement of the different provisions (and limitations to the enjoyment of benefits) apply rigorously the current legislation and adopt all necessary measures to ensure that workers no longer satisfying the conditions set by legislation are excluded from the benefits.

The trade unions warned that caution should be applied when discussing so-called 'social security tourism' and possible abuses as it might end up in some unilateral action of Member States that are not in line with EU law. Before engaging in a debate on a possible change of the rules, proper analysis should be conducted to assess if the problems are a result of shortages in implementation, or problems that call for legislative action. A holistic approach should be applied to tackle issues such as possible unequal treatment, involuntary mobility and brain drain.

ETUC, during the meeting and in a written statement, stressed the need to base the discussion on labour mobility on proper analysis instead of copying populist propaganda from some Member States. On the coordination of unemployment benefits for frontier workers, ETUC supports the possibility for frontier workers and/or mobile workers who are seeking new employment in another Member State to receive their unemployment benefit for up to six months. On the export of unemployment benefits, ETUC supports the possibility to pay between three and six months. In relation to the aggregation of rights and the level of salary which should be calculated for the unemployment benefit, ETUC is of the opinion that full

entitlement to unemployment benefits should be assured and that qualifying periods could be accumulated across Member States. In relation to long-term care benefits, ETUC is of the opinion that a rights based approach to long term care across the EU is urgently needed and calls upon the EU institutions to develop a coherent approach to long term care. In general, ETUC underlined that the principle of full equal treatment in the host country is indispensable, and considers it unacceptable if amendments to the Regulation would touch upon this principle and are guided by the concept of residence. ETUC also stated that if exceptions are considered they should be limited to cases which constitute clear abuses and must be based on sufficient evidence about abuses and / or for reasonable motivations.

TUC (Trades Union Congress, UK) highlighted that the right to family benefits is attached to the worker and not to the place of residence of the family. In their view lowering the family benefits for mobile workers would in any event constitute unequal treatment.

EFBWW (European Federation of Building and Woodworkers) stated that the proposals by the Commission appeared to focus mainly on some national concerns about "benefit tourism", and it underlined that only European problems, and not national ones, should be addressed at European level.

4. NGOs

Representatives from 11 NGOs[479] were consulted in relation to the **coordination of long-term care benefits**, **export of unemployment benefits, aggregation of unemployment benefits,** **coordination of unemployment benefits for frontier workers, export of family benefits, and access to special non-contributory cash benefits for non-active mobiel EU citizens** during a meeting on 17 June 2015.

Participants highlighted the importance for the Commission of looking at the definition of worker, of ensuring that existing gaps in social security protection for mobile citizens are addressed, and of strengthening the collection of statistics on intra-EU mobility. They also acknowledged the importance of addressing the issues in the current debate on labour mobility to avoid that free movement becomes an even more contentious issue that it already is. However, they insisted on the importance of preserving the principle of equal treatment, especially for those more vulnerable.

Also, participants underlined the importance of adopting non-legislative measures, arguing that several barriers to free movement of workers linked to social security coordination are the result of incorrect/non application of existing rules, or to the fact that the cooperation between Member States, envisaged by the 2010 reforms of SSC rules, has not been strengthened enough yet.

Access to the labour market for mobile EU workers and jobseekers was mentioned as a specific issues that the Commission needs to look at: specific examples were provided by participants about administrative barriers (notably for jobseekers in Scandinavian countries), and recognition of professional qualifications was also mentioned as a barrier. Also, the issue

[479] European Citizen Action Service (ECAS); European Disability Forum; Conference of European Churches; EURODIACONIA; Confederation of Family Organisations in the European Union; Advice on Individual Rights in Europe; Friedrich-Ebert-Stiftung; European Anti Poverty Network; European Solidarity Network; Europeans Throughout the World; l'Association Européenne de la Pensée Libre;

of destitution of migrant workers was mentioned as a major issue, often resulting in homelessness.

In relation to unemployment benefits, participant expressed their support to the extension of the period of their exportability, in view of the time needed to find a job, and of existing administrative barriers.

In relation to export of family benefits, some participants recognised the need for some compromise in view of the position of some MS opposing export, which would entail the (dynamic) adaptation of exported family benefits to the living conditions of the country where the children of the workers reside. Others underlined the unfairness of adaptation, since the workers concerned pay the same taxes, but also the fact that, for the competent MS, adapting family benefits may prove anti-economical if the concerned families were to move to the MS as a result. In this sense, it was mentioned that the biggest challenge for local authorities is represented by pressure on public services, and not by "benefit tourism".

In relation to long-term care benefits, participants expressed support to the idea of creating a specific chapter for their coordination, underlining that they should be exportable, but also warning against endangering the important link between healthcare and social care.

Written contributions were also received from EURODIACONIA, recommending to extend the duration of the export of unemployment benefits; and from ECAS, recommending to provide explicitely for the exportability of long-term benefits; to extend the duration of the export of unemployment benefits; to ensure full respect for the principle of equal treatment give in the reform of the rules on family benefits.

5. Public consultations

a) EU Citizenship Report

Relevant results of the public consultation on the extenstion of the right to unemployment benefits in the framework of the EU Citizenship Report[480] have also been taken into account with regard to the export of unemployment benefits.

b) Online consultation on the coordination of long-term care benefits and unemployment benefits (export of unemployment benefits and coordination of unemployment benefits for frontier workers)

The European Commission launched an online consultation on the coordination of long-term care benefits and unemployment benefits (export of unemployment benefits and coordination of unemployment benefits for frontier workers) on 5 December 2012 to which 299 replies were received. 199 of the replies received were from individuals and 100 on behalf of an organisation or as specialists. Both individuals as well as organisations (including Member States' authorities, trade unions and non-governmental organisations and private companies) from the EU and EEA-EFTA States replied to the public consultation.

The content of these replies has been taken into account in the overall analysis and included in the statistics whenever possible (they did not contain full replies to all questions in the consultation). Not all respondents gave full replies to the consultation and the replies are only reflected in the results to the extent that a reply was received to a particular question.

By nationality, Spanish were the most numerous among individual respondents, accounting for 26.6% of the responses. No replies were received from persons from Cyprus, Denmark, Iceland, Luxembourg and Malta.

Stakeholder category	Number of replies	Percentage
National administration	67	67%
Social partner / Trade union	19	19%
Civil society / Non-governmental organisation	11	11%
Company	2	2%
Unknown	1	1%

[480] Action 1 in the Report from the Commission to the European Parliament. The Council, the European Economic and Social Committee and
the Committee of the Regions, EU *Citizenship Report 2013: EU citizens: your rights, your future, COM (2013) 269 final*. See http://ec.europa.eu/justice/citizen/files/eu-citizen-brochure_en.pdf.

Coordination of unemployment benefits

In relation to the coordination of unemployment benefits, the consultation provided some evidence of the diversity of opinions among individuals and different types of stakeholders. National administrations often had different opinions than the social partners, trade unions, civil society and non-governmental organisations. The combination of all opinions allows for a comprehensive view of the current system of coordination of unemployment benefits in the EU, including what are perceived to be the main problems and shortcomings perceived, and what the possible options are for reform.

Almost half of the respondents (49%) were in favour of giving the unemployed person the right to choose to claim unemployment benefits in the Member State of last employment, or in the Member State where the person lived during his/her last period of employment (where these Member States were different). The second most commonly chosen option (40% of the individual respondents) was that the unemployed person should have to apply for unemployment benefits in the Member State where he/she last worked and paid contributions, even if he/she lived in another Member State. In third most commonly chosen option (far behind the first two in terms of percentage of respondents), selected by 7% of the participants, was the option where unemployed workers should claim unemployment benefits in their country of residence, even if they last worked and paid social security contributions in another Member State.

Options	Number of replies	% of Individual replies
The Member State where the person last worked and paid social security contributions, even if he/she lived in another Member State.	72	40,22%
The Member State where the person has lived, even if he/she last worked and paid social security contributions in another Member State.	13	7,26%
The person should be allowed to choose to claim the benefit either in the Member State of last employment or in the Member State where the person has lived (if these Member States were different).	87	48,60%
Other solution	7	3,91%

Individuals and organisations at large shared some views with regard to which Member State should be the Member State competent for the provision of unemployment benefits. Only a small share of both groups (and, within organisations, of each type of stakeholder) considered that the country of residence should be the competent Member State. Individuals were rather divided between preferring a right of choice for mobile workers (49% of replies) and making the country of last activity competent (40%). The same two options were clearly preferred by organisations, but in reverse order. National administrations (47% of them) and civil society

organisations and NGOs (78%) were more often in favour of making the country of last activity competent, while social partners and trade unions (47%) preferred the right of choice option).

With regard to the export of unemployment benefits, individuals favoured the export until the end of the person's entitlement (59%) of them. This option also received support among organisations (34% of national administrations and 56% of civil society organisations and NGOs), although less than the maintenance of the current rules, which were the preferred option by national administrations (42% of them) and social partners and trade unions (76%). One option received less support across the respondents (export for at least six months).

Options	Number of replies	% of Individual replies
For three months, with a possible extension up to six months (the current situation under EU law)	43	24,02%
For at least six months	28	15,64%
Until the end of the person's entitlement to unemployment benefits, according to the rules of the Member State which provides them	105	58,66%
Other solution	3	1,68%

Therefore, for both questions making the country of residence competent for paying unemployment benefits an export unemployment benefits for at least six month where the least preferred options and opinions were fairly divided among two other options.

Coordination of long-term care benefits

A total of 127 individual responses and 45 responses on behalf of national authorities, an organisation or as a specialist were received for the part covering the coordination of long-term care benefits. The results of the public consultation highlight the diversity of opinions regarding the Member State competent for providing long-term care benefits. Opinions on these questions varied both across individuals and among stakeholders.

a) Individuals' replies

For individuals, the preferred option was for entitlements to be equal to those in the country of insurance (39%), but two other options (namely: entitlement to be equal to those in the country of residence; maintenance of the current rules) gathered almost 20% of the support. Options where the introduction of a supplement to the long-term care cash benefits is foreseen gathered respectively: 14% if benefits provided by the competent State and 6% if provided by the Member State of residence.

Opinions on the competent Member State and on the level of LTC to be provided	Number of requested records	% Requested records(127)
Should continue receiving benefits as it is today (depending on the Member States' legislation the person might end up in a win or in a lose situation).	23	18,11%
Should be treated equally in the Member State where he/she is insured and should not have his/her care benefits reduced if he/she moves to another Member State.	49	38,58%
Should be treated equally in the Member State where he/she lives and receive the care benefits there (including the cash benefits), in accordance with the national legislation.	25	19,69%
Should get care benefits in cash from the Member State of insurance, supplemented by the Member State of residence in case of more advantageous conditions (top-up).	18	14,17%
Should get care benefits in cash from the Member State of residence, supplemented by the Member State of insurance in case of more advantageous conditions (top-up).	8	6,30%
Other solution	4	3,15%

b) Replies by national administrations, social partners, NGOs and other organisations

Opinions among organisations[481] were also divided. The most-selected option was that the current rules be maintained (supported by 36% in total), but based largely on national administrations' opinions (they accounted for 75% of these replies).

Considered per type of stakeholders, the current rules were the preferred option by national administrations (53% of replies). Preference among social partners and trade unions were quite spread among the different options, with some slight preference for the entitlements to be equal to those in the country of insurance. Civil society organisations and NGOs also showed some divergent opinions among them, with the most often-selected option for the entitlement to be equal to those in the country of residence. More insights could not be gained

[481] Including national authorities, social partners, NGOs and other types of organisations.

directly from the consultation, since there was no possibility to elaborate on the arguments for selecting each option.

There was consensus among respondents on behalf of organisations that all costs for care benefits provided to an insured person should be borne by the Member State where the migrant person is insured for healthcare or long-term care (67 %)[482].

	Option A	Option B	Option C	Option D	Option E	Option F
National administration	12	4	2	3	1	1
social partner / trade union	2	4	2	1	3	0
civil society / non-governmental organisation (NGO)	1	2	4	1	0	0
Company	0	0	1	0	0	0
unknown	1	0	0	0	0	0
Total	**16**	**10**	**9**	**5**	**4**	**1**
Total (%)	**35,56%**	**22,22%**	**20,00%**	**11,11%**	**8,89%**	**2,22%**

c) Online consultation on the aggregation of unemployment benefits and on the export of family benefits

DG EMPL launched an online consultation on the coordination of unemployment benefits (aggregation rules) and on the coordination of family benefits (export rules), which ran from 15 July 2015 until 7 October 2015[483].

307 responses have been received from 199 individuals and 108 organisations (public authorities; workers' organisations; NGOs; employers; SMEs; companies; think-tanks…) from 25 Member States. Hereunder an overview of the outcome of the consultation.

Export of family benefits

As it can be seen in the table below, around a third of the respondents believe that the current rules on the export of family benefits should be changed.

[482] This question was not included in the part of the questionnaire addressed to the individuals.
[483] http://ec.europa.eu/social/main.jsp?catId=333&langId=en&consultId=16&visib=0&furtherConsult=yes

Question	Individuals	Organisations
Are you aware of the current rules?	61% - Yes	79% - Yes
The current rules are satisfactory?	22% * - disagree or strongly disagree	32%* -disagree or strongly disagree
The current rules could be improved in practice	60%* - agree or strongly agree	65%* - agree or strongly agree
The current rules could be better explained	62% * - agree or strongly agree	79%* - agree or strongly agree
The current rules need to be changed	31%* agree or strongly agree	33%* agree or strongly agree
* % of those who are aware of current rules 206 respondents in relation to family benefits		

A number of comments and proposals for possible changes of the rules on the export of family benefits were also made:

- Mixed views on indexation to country of residence of child
- Member State of residence of child should be competent
- Harmonisation/Unification of European Social Security Schemes
- Improvements to the accessibility and simplicity of scheme
- Improved speed of processing of claims
- Special provisions for single parents and family breakdown/remarriage
- Concerns about inter-dependency between between social security and taxation
- Clarification of certain concept e.g. "benefits of the same kind"; "family members"; "mainly dependent on the insured person" distinction between family benefits and SNCBs

Aggregation of unemployment benefits

As it can be seen in the table below, more than a third of the respondents believe that the current rules on the aggregation of unemployment benefits should be changed.

Question	Individuals	Organisations
Are you aware of the current rules?	63% - Yes	79% - Yes
The current rules are satisfactory?	33% * - disagree or strongly disagree	42%* -disagree or strongly disagree
The current rules could be improved in practice	33%* - agree or strongly agree	74%* - agree or strongly agree
The current rules could be better explained	55% * - agree or strongly agree	78%* - agree or strongly agree
The current rules need to be changed	33%* agree or strongly agree	40%* agree or strongly agree

* % of those who are aware of current rules 211 respondents in relation to unemployment benefits

A number of comments and proposals for possible changes of the rules on the aggregation of unemployment benefits were also made:

- General support for concept of minimum qualifying period (3 months to 5 years) before aggregation provided former MS pays benefit
- General support for extension of period of export for benefit (6+6 months)
- Some support for right of choice for where to claim unemployment benefits
- Proposal that EU should harmonise/unify unemployment benefits
- Benefits to be calculated on the entirety of qualification period
- Improved accessibility of information
- Mandatory deadlines for administrative procedures
- Robust procedures to combat fraud

12. Annex III Who is affected and how

The Annex is based on the preferred options (see section 8. of the main report) and presents the practical implications for individuals and public administration that will be the most affected by the initiative.

Long-term care benefits

The preferred option consists of coordination, following the same logic as with sickness benefits, but adding clarifications. The competent Member State provides long-term care benefits in cash and reimburses the cost of benefits in kind provided by the Member State of residence. This legislative proposal would have no impact on rights as such: it would merely reflect the already-applied rules on sickness, while complementing the sickness rules with some specific rules that take account of the characteristics of long-term care benefits.

a) Public administration

The information obligations for administrations under this option will remain unchanged. The option could reduce disputes between institutions. In an initial phase the new legal definition and the in-or exclusion of long-term care benefits in the definition can increase the administrative burden for Member States and impact the exchange of information between Member States. In the long term, the clarification would save time and money spent per case by the Member States, especially in light of increasing demand for long-term care benefits.

b) Individuals

The clarification will enable EU mobile citizens to receive all the long-term care benefits to which they are entitled while exercising their right to free movement. It will also contribute to expediting the process by which persons that require care receive the benefits to which they are entitled, by removing much of the uncertainty or conflicts on the part of the Member States involved over the status of the various long-term care benefits.

Unemployment benefits

Competence for paying unemployment benefits to frontier and other cross-border workers

The competence for paying unemployment benefits will switch from the State of residence to the State of last activity, if the frontier and other cross-border workers have worked in that State for more than 12 months.

a) Public administration

The number of cases handled by the employment services in the State of last activity can be expected to increase while it will decrease in the State of residence. Except for the changes in the number of cases, no further changes in the administrative procedures/tasks are expected in comparison to baseline under which – as a rule – this information is anyway required for the purpose of determining whether the qualifying period for a right to benefits under the legislation of the State residence had been completed.

This option may result in more cases of export, whenever a frontier worker for whom the competence has switched from the State of residence to the State of last activity prefers to focus the search for employment in the State of residence and therefore wants to register with the employment service located in that State. The administrative procedures for the export of unemployment benefits are established and therefore the only change expected inthis respect is the potential number of cases.

b) Individuals

The length of insured employment will be certified by means of the PD U1 and this will also enable the worker and the employment services to determine the competent institution. There will be no need for them to provide additional information.

Aggregation of periods of insurance or (self-)employment

Mobile workers will no longer be able to rely on the aggregation of periods completed in the Member State of previous activity if they have worked for less than three months in the Member State of last activity. However, in this situation, the Member State of previous activity becomes competent. This means that the competence for paying unemployment benefits will switch from the State of last activity to the State of previous activity for mobile workers who have workerd less than 3 months in the State of last activity.

a) Public administration

The number of cases handled by the employment services in the State of previous activity can be expected to increase while it will decrease in the State of last activity. The employment services will also have to take the necessary measures to provide for an export of their unemployment benefit to the Member State of last activity (e.g. provide the person with a Portable Document U2), while the employment service in the Member State of last activity will assume the task of assisting the worker in finding new employment. They will also have

to assume the task of informing the employment services in the Member State of previous activity whenever a mobile worker registers with them, who has not yet been insured for the required minimum period of three months.

This option may result in more cases of export, whenever a mobile worker has not completed the required three-month period in the Member State of last activity. As the administrative procedures for the export of unemployment benefits are established, this would be the only change expected.

b) Individuals

There is no change for the individuals as they continue to register in any case of unemployment with the employment service of the Member State of last activity. It is then the task of this institution to determine, whether it can provide the benefits based, if necessary, on aggregation or whether it has to refer the case to the employment service of the Member State of previous activity.

Export of unemployment benefits

The period for export of unemployment benefits is extended to a minimum period of 6 months with possibility of further extension up to the end of the entitlement period.

a) Public administration

The employment services in the competent State can be expected to have to handle more situatoinis in whichthe unemployment benefit is exported. This does not necessarily result in an increase of the administrtaive burden, as they do not have to assume the task of controlng the person duringthe export period. As before, they will have to provide the unemployed persons with a Portable Document U2 and inform him or her about the duties to fulfil in the State to which they intend to go in order to look for employment.

The employment services in the Member State to which the unemployed person went in order to look for employment will have to register those persons and assist them in their job-searching activities. Moreover, the reinforced cooperation mechanism will require them to report regularly on a monthly basisto the competent institution on the follow-up of the unemployed person's situation, in particular whether the latter is still registered with the emplyoment services and is complying with organised checking procedures.

b) Individuals

Unemployed persons have to register with the employment service of the State to whichthey went in order to look for employment and provide all relevant information as this has been the case so far. The only change is that the export can be granted for longer periods than before.

Access for economically inactive mobile EU citizens and jobseekers to certain social benefits

The preferred option is the amendment of Article 4 of Regulation 883/2004 to make reference to the limitations in Directive 2004/38/EC. This option will merely codify existing case-law.

a) Individuals

For economically inactive EU mobile citizens and jobseekers this option would facilitate them to make an informed choice when exercising their rights to move to another Member State. At the same time it is likely to reduce litigation costs and legal advice costs.

b) Public administration

For administrations this option is likely to reduce litigation costs and legal advice costs as well as the number of requests for benefits.

Family benefits

a) Individuals

The baseline scenario would have no direct impact on citizens and require no additional procedural steps. However, the introduction of a pan-European Electronic Exchange for Social Security Information (EESSI) is likely to increase the speed and efficiency of processing time to the benefit of citizens.

The horizontal option c is in general likely to entail reduced administrative procedures for claimants as where the derogation is applied the process will be aligned to normal national procedures resulting in a predictable level of income, meaning citizens will be subject to

fewer unexpected changes arising from periodic adjustments in benefit levels in another Member State with a reduced risk of recovery procedures. However, as it will be at the discretion of Member States whether or not they choose to disapply the anti-accumulation rules, these benefits will not be experienced by all families. Families will claim on the basis of the parent with direct entitlement meaning there is a simpler procedure with no need to supply data for hypothetical calculation of salary (although a small number of parents will lose derived rights).

b) Public administration

In relation to the baseline scenario, it is already anticipated that regulatory burdens may be mitigated by the implementation of EESSI, including the adoption of consistent protocols for administering exchanges of information on export of family benefits. The Administrative Commission Ad-Hoc Working Group for establishing the definition of data to be exchanged electronically under EESSI in the field of family benefits is currently working on stream-lining processes**.** The Structured Electronic Document (SED) F001 – Request for determining competences and F002 Reply for determining competences have been developed for establishing competence. Specific exchanges may also be applied where there is a need for detailed information on periods of employment and contribution or medical information related to family benefits for a child or young person with a disability or health condition.[484]

In relation to the horizontal option c, Member States will be entitled to award salary-related child-raising allowances to EU mobile citizens subject to the applicable legislation in accordance with the normal rules under national legislation regardless of whether they have primary or secondary competence for awarding family benefits. In particular, the secondary competent Member State will no longer be required to include such benefits (which can be subject to fluctuation) within the calculation of the differential supplement. Thereby simplifying the calculation procedure and avoiding need for periodic adjustments relating to changes in the families circumstances or salary or the need to arrange recovery of any overpayment that might arise from delays in communicating such changes of circumstance.

There will no longer be any need to apply a hypothetical calculation in relation to a parent who does not have relevant income or earnings within the competent Member State but who asserts a derived right to benefits resulting in considerable simplification for those public administrations who recognise benefits on the basis of a derived right.[485]

However, it may be anticipated that there is some increase in administrative tasks for Member States who seek to verify whether or not a benefit available in another Member State should be considered a child-raising allowance.

[484] EESSI Business Use Case: FB_BUC_01_Determine Competences

[485] In practice only four Member States recognise entitlement to child-raising allowances calculated with reference to salary or professional income on the basis of derived rights. Annex XXV p14