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Introduction of a European Social Security pass for improving the digital enforcement of social security rights and fair mobility

European Parliament resolution of 25 November 2021 on the introduction of a European social security pass for improving the digital enforcement of social security rights and fair mobility (2021/2620(RSP))

(2022/C 224/07)

The European Parliament,

— having regard to Article 3 of the Treaty on European Union,

— having regard to Article 153 of the Treaty on the Functioning of the European Union (TFEU),

— having regard to its resolution of 14 January 2014 on effective labour inspections as a strategy to improve working conditions in Europe ([1]),

— having regard to its resolution of 19 January 2017 on a European Pillar of Social Rights ([2]),

— having regard to its resolution of 17 December 2020 on a strong social Europe for Just Transitions ([3]),

— having regard to its resolution of 22 October 2020 on the employment and social policies of the euro area 2020 ([4]),

— having regard to its resolution of 20 January 2021 on strengthening the single market: the future of free movement of services ([5]),

— having regard to its resolution of 20 May 2021 on impacts of EU rules on the free movements of workers and services: intra-EU labour mobility as a tool to match labour market needs and skills ([6]),

— having regard to its resolution of 19 June 2020 on European protection of cross-border and seasonal workers in the context of the COVID-19 crisis ([7]),

— having regard to question E-001132/2021 of 25 February 2021 and the written answer thereto, provided by the Commissioner for Jobs and Social Rights on behalf of the Commission on 28 April 2021 ([8]),

— having regard to Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work ([9]),

— having regard to Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority ([10]),

— having regard to Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems ([11]),

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([1]) OJ C 482, 23.12.2016, p. 31.
([2]) OJ C 242, 10.7.2018, p. 24.
([3]) OJ C 445, 29.10.2021, p. 75.
([4]) OJ C 404, 6.10.2021, p. 159.
([5]) OJ C 456, 10.11.2021, p. 14.
([6]) Texts Adopted, P9_TA(2021)0249.
([7]) OJ C 362, 8.9.2021, p. 82.
([8]) https://www.europarl.europa.eu/doceo/document/E-9-2021-001132-ASW_EN.html
([9]) OJ L 327, 5.12.2008, p. 9.
([10]) OJ L 186, 11.7.2019, p. 21.
([11]) OJ L 166, 30.4.2004, p. 1.

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— having regard to 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 ([12]),

— having regard to 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 ([13]),

— having regard to Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services ([14]),

— having regard to Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') ([15]),

— having regard to Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012 ([16]),

— having regard to Regulation (EU) 2020/1054 of the European Parliament and of the Council of 15 July 2020 amending Regulation (EC) No 561/2006 as regards minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) No 165/2014 as regards positioning by means of tachographs ([17]),

— having regard to Regulation (EU) 2020/1055 of the European Parliament and of the Council of 15 July 2020 amending Regulations (EC) No 1071/2009, (EC) No 1072/2009 and (EU) No 1024/2012 with a view to adapting them to developments in the road transport sector ([18]),

— having regard to Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union ([19]),

— having regard to CJEU judgment in case C-55/18, according to which Member States must require employers to set up a system enabling the duration of daily working time to be measured ([20]),

— having regard to the European Pillar of Social Rights (EPSR), proclaimed by the European Council, Parliament and the Commission in November 2017,

— having regard to the Commission proposal of 3 June 2021 for a regulation of the European Parliament and of the Council amending Regulation (EU) No 910/2014 as regards establishing a framework for a European Digital Identity (COM(2021)0281), 'a trusted and secure European e-ID',

— having regard to the Commission communication of 30 March 2020 on guidelines concerning the exercise of the free movement of workers during COVID-19 outbreak,

— having regard to the Commission communication of 16 July 2020 on guidelines on seasonal workers in the EU in the context of the COVID-19 outbreak,

— having regard to the Commission communication of 4 March 2021 on the European Pillar of Social Rights Action Plan (COM(2021)0102),

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([12]) OJ L 284, 30.10.2009, p. 1.
([13]) OJ L 18, 21.1.1997, p. 1.
([14]) OJ L 173, 9.7.2018, p. 16.
([15]) OJ L 159, 28.5.2014, p. 11.
([16]) OJ L 249, 31.7.2020, p. 49.
([17]) OJ L 249, 31.7.2020, p. 1.
([18]) OJ L 249, 31.7.2020, p. 17.
([19]) OJ L 186, 11.7.2019, p. 105.
([20]) Judgment of 14 May 2019, Federación de Servicios de Comisiones Obreras (CCOO) v Deutsche Bank SAE, C-55/18 — CCOO, EU:C:2019:402.

— having regard to the question to the Commission on the introduction of a European Social Security Pass for improving the digital enforcement of social security rights and fair mobility (O-000071/2021 — B9-0041/2021),

— having regard to Rules 136(5) and 132(2) of its Rules of Procedure,

— having regard to the motion for a resolution of the Committee on Employment and Social Affairs,

A. whereas intra-EU labour mobility has followed an upward trend in recent years; whereas in 2019, 17,9 million people from the EU-28 moved to another EU country; whereas 13 million of these movers were of working age and 78 % of them were employed; whereas there were 1,5 million cross-border workers in the EU in 2019 ([21]); whereas the active movers accounted for 4,3 % of the total labour force in the EU's 28 Member States in 2019; whereas the Commission's 2017 data estimates undeclared work at approximately 11,6 % of total labour input in the EU private sector and 16,4 % of gross value added ([22]); whereas 4,6 million A1 portable documents were issued in the EU in 2019 which accounts for an estimated 3,06 million workers; whereas posted workers are required to possess an A1 form when working in another Member State; whereas the A1 form provides information regarding the social security system which is covering a worker; whereas A1 forms do not provide up-to-date information in real time regarding social security coverage;

B. whereas Eurofound data shows that the spells of intra-EU mobility are getting shorter, with 50 % of movers staying in the host country for one to four years; whereas return mobility has also increased ([23]): for every four people who left a Member State in 2017, three returned ([24]); whereas shorter and repeated spells of mobility make it even more necessary for mobile workers to keep track of their social security contributions and pension rights;

C. whereas Article 48 TFEU confers on Parliament and the Council, acting in accordance with the ordinary legislative procedure, the competence to adopt such measures in the field of social security as are necessary to provide freedom of movement for workers; whereas to this end, they must make arrangements to secure social security rights for employed and self-employed migrant workers and their dependants; whereas Article 153(1) TFEU confers on the Union the competence to support and complement the activities of the Member States in the field of social security; whereas Article 153(2) TFEU establishes that, in the field of social security, the Council is to act unanimously, in accordance with a special legislative procedure, after consulting Parliament, the European Economic and Social Committee and the Committee of the Regions;

D. whereas mobile workers and citizens contribute to the wealth of the socio-economic fabric in border regions, which account for 40 % of the EU's territory; whereas it is therefore necessary to ensure a level playing field and fair mobility conditions for citizens by providing them with the appropriate tools in order to guarantee them legal certainty, protection of their rights and social security coverage; whereas it is important to avoid placing an excessive administrative burden on companies, in particular small and medium-sized enterprises (SMEs);

E. whereas Principle 12 of the European Pillar of Social Rights states that, regardless of the type and duration of their employment relationship, workers and, under comparable conditions, the self-employed have the right to adequate social protection;

F. whereas the challenges concerning unfair competition based on labour exploitation, fraudulent forms of contracting and unfair practices such as social dumping remain an issue across Member States and are highly problematic for European companies, workers and societies; whereas various forms of contracting work appear to be most affected by

([21]) European Commission, *Annual Report on Intra-EU Labour Mobility 2020*, 8 January 2021. https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8369

([22]) European Commission, *Evaluation of the scale of undeclared work in the European Union and its structural determinants*, November 2017. https://ec.europa.eu/social/ BlobServlet?docId=19002&langId=en

([23]) Eurofound, *Tackling labour shortages in EU Member States*, Publications Office of the European Union, Luxembourg, 2021.

([24]) European Commission, *Annual Report on Intra-EU Labour Mobility 2020*, 8 January 2021. https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8369

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fraud; whereas there is a lack of reliable data to establish the size of the problem especially in the context of the posting of workers ([25]); whereas one of the causes is the lack of effective monitoring and enforcement of applicable Union law, in particular as regards the principles of equal treatment and equal pay for equal work at the same place, which cannot be guaranteed if the principle of traceability and portability of rights is not respected and which needs to be improved;

G. whereas the COVID-19 pandemic has highlighted and exacerbated the precarious working and living conditions of many mobile and cross-border workers in the EU; whereas the crisis has shed light on the importance of robust and stable social security systems, ensuring that no one is left behind as a result of having exercised their freedom of movement; whereas at the outbreak of the pandemic, measures taken by Member States resulted in legal uncertainty for mobile workers as regards applicable rules on social security and many struggled to request unemployment benefits remotely; whereas the pandemic has shed light on the particular vulnerabilities of undeclared and seasonal workers without social security coverage, and abuse and fraudulent use of COVID-19 induced short-term financial support rescue packages has led to increased levels of undeclared and under-declared work, including new forms of undeclared work support ([26]);

H. whereas digitalisation provides an unprecedented opportunity to facilitate labour mobility while making compliance with applicable EU provisions faster and easier to control; whereas there is no EU-wide systematic data gathering exercise aiming to provide adequate data on mobile workers or to facilitate the portability of social security rights across borders through the real-time verification of workers' social security coverage and benefits by competent actors and institutions; whereas access to information on applicable rules as well as effective compliance, monitoring and enforcement are necessary preconditions for fair mobility and the fight against abuses; whereas digital technology, which can facilitate the supervision and enforcement of legislation, safeguarding the rights of mobile workers and reducing administrative costs for companies and national institutions, should therefore be promoted and used in compliance with data protection rules;

I. whereas different forms of national cards or comparable instruments in the field of labour law have been developed by national social partners in various sectors in the Member States, either in cooperation with local authorities or by national authorities; whereas these various initiatives have an essential characteristic in common: an identification number or a personal card that supply workers, authorities and main providers with an effective instrument to ensure social security coverage and decent wages and working conditions at the workplace; whereas these initiatives create awareness of employment and working conditions for all workers and improve enforcement;

J. whereas in its resolution of 14 January 2014 on effective labour inspections, Parliament called on the Commission to investigate the benefits of introducing a forgery-proof European social security card or other EU-wide electronic document at European level, on which could be stored all the data needed to verify the bearer's employment relationship, such as details on social security status and working hours, and which would be subject to strict data protection rules; whereas in its resolution of 19 January 2017 on a European Pillar of Social Rights, Parliament pointed to the potential of accessible e-government solutions, possibly including a European social security card, with strong data protection guarantees, which could improve EU social security coordination and individual awareness; whereas, in its resolution of 22 October 2020 on the employment and social policies of the euro area 2020, Parliament called on the Commission to put forward a proposal for a digital EU social security number following a proper, fact-based impact assessment; whereas in its resolution of 17 December 2020 on a strong social Europe for Just Transitions, Parliament called once again on the Commission to put forward a proposal for a digital European social security number (ESSN) and for a potential control mechanism such as a personal labour card, and asserted that workers and their representatives and inspectorates must have up-to-date access to information about their employers and their wage

([25]) Eurofound, *Exploring the fraudulent contracting of work in the European Union*, Publications Office of the European Union, Luxembourg, 21 November 2016.

([26]) European Platform tackling undeclared work, *COVID 19: combating fraud in short-term financial support schemes*, May 2021. https://ec.europa.eu/social/BlobServlet? docId=24072&langId=en

entitlements and labour and social rights; whereas in its resolution of 20 May 2021 on intra-EU labour mobility, Parliament stressed that the digitalisation of data exchanges between Member States could facilitate the free movement of workers on a fair and equitable basis as well as ensuring the enforcement of relevant Union rules;

K. whereas the Commission's work programme for 2018, dated 24 October 2017, announced the intention to introduce an ESSN with the aim of contributing to the overall objective of safeguarding fair working conditions for mobile workers, upholding social standards for all mobile citizens and ensuring their proper enforcement; whereas the Commission consulted stakeholders and citizens on the introduction of an ESSN between 27 November 2017 and 7 January 2018; whereas in its 2017 inception impact assessment for an ESSN, the Commission envisaged, in a longer-term perspective, the possibility of extending the use of the ESSN to other policy areas beyond social security coordination; whereas the Commission confirmed in its 2019 Annual Burden Survey, published on 13 August 2020, that it was working on an initiative on an ESSN; whereas Commission President Ursula von der Leyen announced in the State of the European Union speech on 16 September 2020 that the Commission would soon propose a trusted and secure European e-identity system; whereas the Commission announced in the European Pillar of Social Rights action plan that it would start a pilot in 2021 to explore launching a European social security pass (ESSP) by 2023, building on the initiative for a European e-ID;

L. whereas the European Trade Union Confederation considers the ESSN a valuable instrument to fight fraud and social security abuses; whereas on 12 January 2018, Business Europe published a note stressing the potential of the ESSN to improve the coordination of social security in the EU, while also addressing concerns related to the diversity of national social security systems, possible data protection issues and additional administrative burdens; whereas the social partners in the construction sector have called for effective digital tools to ensure the enforcement of the applicable legislation, including a European approach to personal labour cards ([27]);

M. whereas the European Labour Authority (ELA) was established in June 2019; whereas an ESSN is not included in the ELA Regulation; whereas the objective of the ELA is to ensure fair labour mobility by assisting Member States and the Commission in their effective application and enforcement of Union law related to labour mobility and the coordination of social security system;

1. Recalls that Parliament has called on the Commission on several occasions since 2014 to investigate the benefits of introducing a legislative proposal for an ESSN in order to create an EU-wide digital instrument for social security coordination and safeguarding fair labour mobility for mobile workers; expresses its regret that the Commission has not presented a proposal for an ESSN despite making several commitments to do so; reiterates its call on the Commission to give an explanation as to why it has not done so;

2. Calls on the Commission to share with Parliament the draft impact assessment of the ESSN that was submitted to the Regulatory Scrutiny Board (RSB) in 2017/2018 and to share with it the opinion of the RSB on this draft impact assessment; calls on the Commission to share with Parliament any other documents that have contributed to its decision not to move forward with the proposal for an ESSN;

3. Welcomes the commitment of the Commission in the European Pillar of Social Rights action plan to start a pilot to explore launching a digital ESSP; welcomes the launch of pilot projects to explore digital solutions and calls on the Commission to duly inform Parliament about the results and the possible difficulties faced during the implementation phase; underlines that the ESSP pilot project needs to have a strong focus on safeguarding fair mobility; calls on the Commission to step up its ambition as regards both content and timing, launching a proper assessment in parallel with the

([27]) EFBWW & FIEC statement, *EU construction social partners call for digital enforcement*, 24 June 2021. https://www.efbww.eu/news/eu-construction-social-partners-call-for-digital-enforcement/2657-a

pilot based on the work done so far with a view to initiating a legislative proposal on the ESSP before the end of 2022, in order to ensure the portability and traceability of workers' rights as soon as possible;

4. Takes note of the Commission's proposal on establishing a framework for a European digital identity; calls on the Commission to update Parliament on the rolling out of the e-ID; considers that the ESSP initiative, which is intended to be anchored in the e-ID framework, should be mandatory for all Member States;

5. Points to the role played by mobile workers during the COVID-19 pandemic, especially in certain key sectors, and the urgent need to guarantee these workers not only decent working conditions but also equal conditions for work of equal value done in the same place;

6. Considers that the introduction of an ESSP initiative should aim to: ensure effective identification, traceability, aggregation and portability of social security rights; improve enforcement of EU rules on labour mobility and social security coordination in the labour market in a fair and effective way to ensure a level playing field in the EU; enable real-time verification of the mobile workers' insurance status and contributions by the relevant national authorities such as labour and social security inspectorates and social partners, where they are carrying out or involved in labour and social security inspections; better prevent unfair practices such as abuse and social fraud, and therefore contribute to combating undeclared work and non-compliance with wage setting mechanisms in place in the host country and obligations related to social security contributions; underlines that a ESSP would also make it easier for workers to track and claim their social security contributions and benefits such as pension rights, facilitating their portability; stresses that the ESSP, building on the European e-ID, should entail both an element of identification of the mobile citizen and worker, and an element of real-time verification of their social security benefits;

7. Underlines that an ESSP initiative should aim to safeguard social rights by facilitating information and improving enforcement of applicable rules on social security coordination and labour mobility in cross-border situations; considers that the Commission's proposal for an ESSP initiative needs to bring about clear benefits for all stakeholders involved in the process of mobility such as mobile citizens and workers, businesses, including SMEs, employers, and trade unions, as well as national authorities such as labour and social security inspectorates; is of the opinion that an ESSP initiative should aim to simplify interactions and bring these stakeholders in cross-border situations closer together, with the objective of better protecting mobile citizens and workers and their rights, and providing all these stakeholders with clear information in order to improve predictability and make the administrative procedures run in a smooth and time-efficient way; recalls that an ESSP initiative must be in line with the principle of subsidiarity and therefore without prejudice to national social security systems and their diversity, respecting the traditions of each Member State, national labour market models and the autonomy of social partners; underlines that an ESSP initiative must not constitute a requirement to be able to exercise one's freedom of movement, but must aim to facilitate access to information and improve enforcement of applicable rules on social security coordination and labour mobility in cross-border situations;

8. Calls on the Commission, in close cooperation with the ELA and after a proper assessment, to put forward a legislative proposal for an ESSP with a view to providing national authorities such as labour and social security inspectorates and social partners, where they are carrying out or are involved in labour and social security inspections, with a real-time instrument to effectively enforce national and EU law; believes that the ESSP should enable real-time verification of workers' place of work, place of employment, employment relationship and identity, as well as standardised social security benefits, provisions and certificates as set out in Regulation (EC) No 883/2004; calls on the Commission to assess the possibility of the ESSP enabling checks of other relevant information without prejudice to data protection rules and while ensuring equal treatment;

9. Believes that the ESSP must cover all mobile EU citizens and workers including the self-employed, as well as all mobile third country nationals who are covered by EU rules on intra-EU mobility;

10. Considers that the introduction of an ESSP should include a system of real-time verification and monitoring control and exchange of information via cross-referencing between national databases in strict compliance with the EU rules on the protection of personal data, in order to be fully functional and to maintain a high level of data reliability and of certification of identifiers, and avoid errors and fraudulent use; stresses that social security and personal data should only be made available to the person and the competent national authorities concerned, and should not be shared for any other purposes than the enforcement of EU rules on social security coordination and intra-EU labour mobility in strict compliance with data protection rules; considers that in Member States where social partners are carrying out or are involved in labour inspections, access to social security data of workers from other Member States must be ensured for social partners without jeopardising compliance with data protection provisions;

11. Welcomes initiatives in several Member States to improve effective enforcement of Union law through the use of national cards or comparable instruments in the field of labour law ([28]); stresses that while these national initiatives create awareness of wage and working conditions for all workers and improve enforcement, they cannot facilitate an exchange of valid and accurate information including employment relationships and rights across borders; calls on the Commission to ensure that the ESSP initiative affords Member States the possibility to draw on the information made available by the improved identification and verification possibilities provided by national cards or comparable instruments in the field of labour law in countries where these initiatives exist; stresses that the integration of the ESSP in the national cards or comparable instruments in the field of labour law should not replace but be complementary to these national practices, and only provide the relevant information to the appropriate authorities; adds that it must be without prejudice to the autonomy of national social partners and working conditions set out by applicable collective agreements in accordance with national law and practice; believes that the ESSP and its integration with national cards or comparable instruments in the field of labour law where they exist may prove to be a basis for future enforcement efforts at EU level;

12. Believes that all workers, social partners and national labour and social security inspectorates should have up-to-date access to information about employment relations, wage entitlements and labour and social rights, in accordance with the applicable collective agreement or national legislation;

13. Notes that the portable document (PD) A1 is important but that it is currently the only instrument for the verification of social security coverage of mobile workers; acknowledges the limitations and challenges related to the PD A1 procedure, in particular with regard to the use of PD A1 forms by employers, depending on the level of digitalisation of social security systems in Member States, as well as their verification by the competent national authorities in the context of the provision of services in another Member State, but also to obtaining accurate information on the number and characteristics of posted workers in the EU; calls on the Commission and the Member States to further improve the verification process of PD A1 forms and believes that speedy procedures between Member States must be developed to address fraudulently obtained or used PD A1 certificates; notes that the limitations and challenges related to the PD A1 are an obstacle to obtaining accurate information on the number and characteristics of posted workers in the EU; points out that the ESSP initiative would provide real-time information on the social security coverage of mobile workers on the day of a labour inspection in the host Member State; calls on the Commission to ensure that the ESSP pilot project facilitates social security coverage by simplifying the procedures on request, issuance and verification of the PD A1 in order to combat fraud;

14. Considers that the ESSP should build on and complement the European e-ID, the European Health Insurance Card (EHIC) and the Electronic Exchange of Social Security Information (EESSI), including with a view to being extended to other areas of social security coordination and EU labour law; calls on the Commission and the Member States to ensure that the EESSI becomes fully functional as soon as possible and to make use of the opportunities provided by existing EU funds to facilitate the implementation of the national plans under the Recovery and Resilience Facility to fully implement the EESSI and further digitalise public administration, facilitate exchanges between social security institutions, speed up the handling of individual cases and improve the enforcement capacity of the ELA and relevant national competent authorities; calls on

([28]) EFBWW-FIEC Report, *Social identity cards in the European construction industry,* 2015.

the Commission to clarify the role that the ELA will have in the design and implementation of the ESSP; underlines that increased digitalisation must not undermine national safeguards that are already in place to counter social fraud;

15. Calls on the Commission to cooperate closely with social partners and relevant national social security institutions and labour inspectorates when it comes to the development and introduction of an ESSP initiative, ensuring full respect for the autonomy of social partners and national labour market models; considers that an ESSP with real-time data access would allow for national competent authorities and social partners to verify social security coverage for workers at any given point in time and thereby strengthen labour inspections and support the collection of evidence in joint cross-border labour inspections ([29]);

16. Instructs its President to forward this resolution to the Council and the Commission, the European Economic and Social Committee and the governments and parliaments of the Member States.

([29]) Eurofound, *Joint cross-border labour inspections and evidence gathered in their course*, 2019.