

Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 883/2004 on the coordination of social security systems and Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004’

(Text with relevance for the EEA and Switzerland)

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(2017/C 345/14)

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Plenary Assembly decision	5.7.2017
Section responsible	Section for Employment, Social Affairs and Citizenship
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Outcome of vote	135/2/1
(for/against/abstentions)	

1. Conclusions and recommendations

1.1. The EESC is of the view that the proposal for a new Regulation on the coordination of social security systems should be aimed at facilitating the movement of jobseekers and workers, and not restricting it. The reason for this is that improved social security coordination facilitates the free movement of workers by providing benefits to them (development of skills and enhanced adaptability) as well as to employers (motivated workforce with technical know-how). It also helps the economy at large by addressing unemployment disparities across EU Member States and promoting a more efficient allocation of human resources, as well as contributing to the EU's growth and competitiveness.

1.2. Rules that work well and are fair for those who are mobile, but also for those who are not, are important factors for the political acceptance of mobility. The EESC contends that the aim of this exercise should be to achieve a fair balance between home and host countries.

1.3. As for the conditions applicable to citizens who are entitled to ‘export’ long-term care benefits when they move abroad, the EESC finds that the new rules give citizens better protection in cross-border situations. However, the EESC points out that the new rules do not establish a new entitlement to long-term care in every Member State, as this depends on the existence of such services in the host country.

1.4. The EESC notes that the proposal for the revision of the Regulation on Social Security Coordination and the Posting of Workers Directive are both relevant for labour mobility. However, since the two instruments deal with distinct issues, the EESC fears that referring to definitions of the proposed revised posting of workers directive in the regulation on coordination of social security will in fact create less legal clarity in practice.

1.5. The EESC notes that the proposed requirement to work at least 3 months in the host Member State before a worker can qualify for unemployment benefits will delay the ‘aggregation of periods’ giving the right to benefits. While this may make the rules for destination countries fairer, it may also influence negatively the motivation for mobility.

1.6. The EESC is unclear how the proposal to extend the period for 'exporting' unemployment benefits from the current 3 to at least 6 months can effectively provide employment opportunities for jobseekers, as this will depend on the labour market situation, which differs from one country to another.

1.7. The EESC contends that greater convergence in terms of benefits, aggregation and activation would help improve and facilitate the coordination of social security systems. Also, the public employment services (PES) ought to be more effective in supporting mobile jobseekers to find suitable work.

1.8. The EESC calls for a stronger commitment on the part of the Member States to facilitate the option of allowing mobile citizens who are economically inactive to contribute in a proportionate manner and according to the principle of equal treatment to a scheme for health sickness coverage in the host Member State. Member States should also consider the advantages of receiving mobile citizens in general, even those who are inactive but, in one way or another, still contribute to the economy (and cultural diversity) of the host country.

1.9. Finally, the EESC is of the view that nothing in the proposed new rules should restrict the fundamental rights recognised in the Charter of Fundamental Rights of the European Union.

2. Proposed changes to social security coordination rules

2.1. As the cross border labour market continues to evolve, and national social security systems change, there is an obvious need for updating or adjusting existing rules. This, besides the need for simpler and easier methods of enforcement, is the rationale behind the proposed changes as proposed by the European Commission in its communication dated 13 December 2016.

2.2. This proposal seeks to provide clarity and fair and enforceable rules to facilitate labour mobility. The free movement of workers remains one of the key pillars of the internal market. However, national authorities are also being urged to combat abuse or benefit fraud.

2.3. The main changes proposed cover:

- i) Exporting unemployment benefits: The period for 'exporting' unemployment benefits (when benefits are 'exported' to another Member State where one is looking for a job) is to be extended from a minimum period of 3 to 6 months, with the possibility of a further extension for the remaining period of entitlement.
- ii) When assessing whether a jobseeker qualifies for unemployment benefits, a Member State will be required to verify and consider any previous periods of insurance in other Member States (as it is the case in the current rules). However, this is only possible if the person concerned has worked in that Member State for at least 3 months (new proposal). If the person does not qualify, it will be the Member State where he/she was formerly employed that will be responsible for paying those benefits.
- iii) Unemployment benefits for frontier workers: Under the proposed rules, it is the Member State of former employment that will be responsible for paying any unemployment benefits if these workers have worked there for 12 months. However, under the current rules, frontier workers currently pay contributions and taxes to the Member State where they work. For employment periods below 12 months it will be the Member State of residence which pays the unemployment benefits.
- iv) Welfare benefits for economically inactive persons: In this case, the proposal aims to codify the recent case law of the European Court of Justice whereby economically inactive citizens moving from one Member State to another can only access welfare benefits if they satisfy the condition of legal residence, as defined in the Free Movement Directive. However, legal residence of economically inactive persons requires that they prove they have sufficient means of subsistence and a comprehensive health insurance. This condition does not apply to active jobseekers: their right of residence in another Member State is conferred directly from Article 45 TFEU.

- v) Social security for posted workers: It is stated that the proposed rules aim to strengthen the administrative tools related to the social security coordination of posted workers, to ensure that national authorities have the adequate means to verify the social security status of such workers and to address potential unfair practices or abuses.
- vi) Family benefits: The proposal updates the rules on parental leave allowances, which compensate a parent for loss of income or salary during time spent raising a child. The proposal does not modify the existing rules on exporting child benefits. No indexation of child benefits is envisaged either.

3. Overview of social security systems across the EU

3.1. Social security systems typically cover areas such as sickness, maternity/paternity, family, old-age, unemployment and other similar benefits and are the exclusive responsibility of the national authorities. This means that each state is responsible for the design of its own social security system. Because of this, the social security benefits received by citizens across the EU vary to a high degree both in terms of actual benefits received and the way systems are organised.

3.2. An issue of serious concern to the EESC is the wide gap in performance between the welfare systems in different EU countries: the best systems help reduce the risk of poverty by 60 %, the least effective by less than 15 % with the EU average being 35 % ⁽¹⁾. This gap is in part the reason for the varying social conditions faced by citizens across the EU. It is therefore all the more important for the EU Member States to agree on principles for effective and reliable social security systems, as called for by the EESC in its opinions on *Principles for effective and reliable welfare provision systems* ⁽²⁾ and on the *European Pillar of Social Rights* ⁽³⁾. Common European values and economic development require that a minimum income, basic health care, the provision of suitable social services and social participation are safeguarded in every Member State. This can help boost solidarity in the Member States and also reduce macroeconomic imbalances.

3.3. Free Movement of Workers (FMW) is one of the four fundamental freedoms of movement in the European Union. The EESC considers that the FMW should be promoted more effectively and respected in its various dimensions, since in practice there is no FMW without respecting the social rights of mobile citizens and workers on the basis of the principle of equal treatment, as referred below. The coordination of social security systems is one of such dimensions. The history of its application is generally a success story and has contributed over the last decades to the fact that the many millions of workers who have benefited from it have become the best 'ambassadors' of FMW.

3.4. In order to facilitate the free movement of workers and citizens, better coordination of social security systems is necessary to provide more clarity and assurances with regard to the benefits they are entitled to. To this end, the European Union has rules to coordinate national social security systems. These determine which Member State social security system a citizen or worker is covered by. The rules are also intended to avoid double coverage of benefits in cross-border situations, and, at the same time, they provide safeguards for persons working in another country or seeking work across the EU.

3.5. It should be stressed that the existing rules are about coordination, not harmonisation of social security systems. The rules are contained in Regulations (EC) No 883/2004 and (EC) No 987/2009. The EU rules are founded on four principles:

- i) one country: a person is covered by the social security system of only one Member State at a time so that he/she only pays contributions in and receives benefits from one country.
- ii) equal treatment: a person has the same rights and obligations as the nationals of the country where he/she is insured.

⁽¹⁾ <http://ec.europa.eu/social/main.jsp?catId=751>

⁽²⁾ OJ C 13, 15.1.2016, p. 40.

⁽³⁾ OJ C 125, 21.4.2017, p. 10.

- iii) aggregation: depending on the case, when a person claims a benefit, proof of periods of insurance, work or residence in other Member States is required (for example, to prove that the person satisfies a minimum period of insurance required under national law for the entitlement of benefits).
- iv) exportability: if a person is entitled to receive a benefit from one Member State, he/she will be able to receive the benefit even if the person is living in a different Member State.

3.6. The provisions of Regulations (EC) No 883/2004 and (EC) No 987/2009 cover anyone who moves to another Member State to settle permanently or work or study temporarily. These include persons who cross the border to work. In addition, persons seeking work in another Member State can receive unemployment benefits from their Member State whilst they are seeking work for a specified period.

4. General comments

4.1. In 2015, around 11,3 million EU-28 citizens of working age (20-64) were residing in another EU Member State, of which 8,5 million were employed or seeking work (the numbers on both aspects vary between Member States). That accounts for 3,7 % of the total EU's working age population. In the EU there were 1,3 million cross-border workers (who work in a different EU Member State than the one in which they live). The number of posted workers was around 1,92 million. This represented 0,7 % of total EU employment with postings averaging four months.

4.2. Social security coordination facilitates the free movement of workers by providing benefits to the workers and indirectly to employers, as well as the economy at large, contributing to growth and competitiveness. The overwhelming majority of citizens who are mobile in the EU want to improve their livelihood and job prospects.

4.3. From the worker perspective, the right to work in another Member State provides not only work opportunities but also facilitates the development of new skills, enhances adaptability and enriches the worker himself/herself via new work experiences. Movement of workers also helps to address labour shortages and skills gaps. It also tends to contribute to the finances of public services in the host Member State and may help ease some of the tax burden arising and compensate for fewer contributions from an ageing population.

4.4. From a macroeconomic perspective, labour mobility helps address unemployment disparities between EU Member States and contributes to a more efficient allocation of human resources. Research also suggests that intra-EU mobility has played a significant role in preventing further instability in the aftermath of the financial crisis and economic recession.

4.5. When conducted under fair conditions, labour mobility can be beneficial for workers, businesses and society as a whole. It can represent a major opportunity for the personal, economic and social development of citizens and workers and must therefore be facilitated. Rules that work well and are fair for those who are mobile, but also for those who are not, are important factors for the political acceptance of mobility. The aim of all this should be to achieve a fair balance between countries of destination and home countries.

4.6. In the light of the foregoing, the EESC believes that any proposed change should be aimed at facilitating the movement of jobseekers and workers, and not restricting it. The EESC is also of the view that social security coordination rules should facilitate access to jobs for people with different skills sets. Equal treatment between EU workers and national workers regarding active labour market measures are key to overcoming social divisions.

5. Specific comments

5.1. With regard to the coordination system for frontier workers, the EESC takes note of the proposal to shift the responsibility for the payment of unemployment benefits to the Member State of the last working activity, but believes that the requirement of having worked in that Member State for a minimum period of 12 months might limit the positive effects resulting from this change. However, the EESC acknowledges that the proposal also presents a challenge for Member States becoming responsible for paying the benefits.

5.2. As for the conditions applicable to citizens who are entitled to 'export' long-term care benefits when they move abroad, the EESC finds that the new rules give citizens better protection in cross-border situations. The new rules are particularly relevant in view of demographic ageing and the promotion of greater independence and mobility for disabled persons, with an increasing number of citizens moving from one Member State to another needing long-term care benefits. However, the EESC points out that the new rules do not establish a new entitlement to long-term care in every Member State, as this depends on the existence of such services in the host country.

5.3. The EESC is of the view that the new rules will make the procedure for recovery of unduly paid social security benefits easier. Member States will be able to benefit from a uniform instrument for enforcement of claims for unduly paid social security benefits and clearer procedures for mutual cross-border assistance.

5.4. The EESC notes that the proposal for revision of the EU Regulation on Social Security Coordination and the Posting of Workers Directive are both relevant for labour mobility. However, the two instruments deal with distinct issues. Whereas the Posting of Workers Directive deals with the terms and conditions (including remuneration) of employment of posted workers, the Regulation on Social Security Coordination aims to determine which social security system applies. The new proposal does not change the scope of the EU rules on social security coordination, nor of the Posting of Workers Directive. The EESC thus fears that referring to definitions of the proposed revised posting of workers directive in the regulation on coordination of social security, which aims to facilitate their application, will in fact create less legal clarity in practice. Referring in a regulation (which is binding and directly applicable in all Member States) to a directive (only binding for Member States regarding the result to be achieved) raises legal doubts.

5.5. The EESC notes that there is a need to ensure uniform conditions for application of the specific rules on coordination of social security regarding posted workers. This includes the determination of situations in which A1 forms shall be issued, elements to be verified before issuing and the withdrawal when contested. Given the fact that these aspects can be crucial for the practical application of Articles 12 and 13 of Regulation (EC) No 883/2004, the EESC is concerned about conferring such unclearly defined powers on the EC. Feedback to the EESC on the implementation of this delegation and afterwards an evaluation of the impact of the new procedures would be welcome, as the posting of workers is a really sensitive issue. The EESC is also concerned about the cumulative effect of the new rules on posting, the previous mentioned technical amendments in the social security regulation and the growing number of national initiatives to control workers from other EU countries. The growing complexity through the combination of these different regulations is likely to restrain the transnational mobility and should be closely monitored at European level. Moreover, there is also a need to respect social security rules related to posted workers.

5.6. According to the new rules, an EU mobile worker must work at least 3 months in the host Member State before he/she can qualify for unemployment benefits there. The EESC finds that this proposal sets restrictions for access to unemployment benefits for mobile workers in the host country, compared to current conditions (according to which it is sufficient to work only one day to have that right). By taking this stance, the proposal is actually delaying the 'aggregation of periods' (regardless of where one's last place of residence is) giving the right to benefits. On the one hand, this might negatively influence the motivation for mobility, but, on the other hand, it may make the rules fairer for destination countries.

5.7. According to the proposed new rules, the minimum period during which jobseekers can export unemployment benefits earned in one Member State to another will be extended from the current 3 to at least 6 months, whereas the current regulation leaves the decision – 3 or 6 months – to the benefit-exporting Member State. The EESC considers this change as an acknowledgment on the part of the Commission of the difficulties in finding a job quickly in another Member State. However, the EESC is unclear how the proposal to extend the time for 'exporting' unemployment benefits can effectively provide employment opportunities for jobseekers, as this will depend on the labour market situation, which differs from one country to another. The EESC also doubts the usefulness of this proposal at a time when unemployment, and in particular youth unemployment, remains high in several EU Member States.

5.8. The EESC believes that the proposed new rules do not address the existing shortcomings of a coordinated social security system that was originally designed for Member States with relatively similar levels of purchasing power parities and social security systems. More effective measures are therefore required to bring about convergence in regard to the duration of unemployment benefits, the amount of benefits received, and the period of aggregation for the activation of

unemployment benefits. This convergence would help improve and facilitate the coordination of social security systems. The question of how to reach this convergence needs to be considered separately from this opinion. In principle, at least, the proposed new rules related to the 'export' of unemployment benefits provide for stronger cooperation between public employment services (PES) at all levels. The revision will clarify the obligations of the employment service in the host Member State to support jobseekers with job search activities and to monitor and report on their activities to the Member State responsible for paying the unemployment benefits. However, the EESC believes that PES ought to do more to support mobile jobseekers to find non-precarious jobs, especially considering the limited time allowed to find a job, and thereby contributing to reaching greater convergence as referred to in the previous paragraph.

5.9. The EESC takes note of the fact that, in the case of mobile EU citizens moving from one Member State to another (the host Member State) and who are not working or not actively seeking work, the proposed new rules can make access to specific social security benefits dependent on the individual providing proof that he/she has a legal right of residence under EU law, which is conditional on having sufficient means of subsistence and comprehensive health insurance). In other words, Member States must comply with the conditions set out in the Free Movement Directive (Directive 2004/38/EC). Member States should also consider the advantages of receiving mobile citizens in general, even those who are inactive and do not pay into social security systems, but, in a way or another, still end up contributing to the economy (and cultural diversity) of the host country.

5.10. It is in fact laid down in recital 5b of the EC's proposal that Member States should ensure that economically inactive EU mobile citizens are not prevented from having comprehensive health insurance cover in the host Member State. This also means that such citizens should be allowed to contribute in a proportionate manner to a scheme for health coverage in the host Member State. The EESC calls for a stronger commitment on the part of the Member States to facilitate this option.

5.11. The EESC is of the view that nothing in the proposed new rules should restrict the fundamental rights recognised in the Charter of Fundamental Rights of the European Union, notably the right to human dignity (Article 1), the right to social security and social assistance (Article 34), and the right to health care (Article 35).

5.12. In conclusion, whilst acknowledging that a need for a balance between receiving and sending Member States insofar as job seeking is concerned cannot be ignored, the EESC concludes that the proposed new rules will not necessarily facilitate the movement of jobseekers. The most fragile and weaker segments of European societies will remain as vulnerable as they are today, as will the socioeconomic divisions between and within the EU Member States.

Brussels, 5 July 2017.

The President
of the European Economic and Social Committee
Georges DASSIS
