

January 2017

## Coordination of social security systems

**Regulation (EC) No [883/2004](#) on the coordination of social security systems and Regulation (EC) No [987/2009](#) laying down the procedure for implementing Regulation (EC) No 883/2004**

*This briefing is one in a series of 'Implementation Appraisals' on the operation of existing EU legislation in practice. Each briefing focuses on a specific EU law, which is likely to be amended or reviewed, as envisaged in the European Commission's annual work programme. Implementation appraisals aim at providing a succinct overview of publicly available material on the implementation, application and effectiveness of an EU law to date – drawing on input from EU institutions and external organisations. They are provided to assist parliamentary committees in their consideration of the new proposals, once tabled.*

### EP committee responsible at time of adoption of the EU legislation:

Committee on Employment and Social Affairs (EMPL)

### Date of adoption of original legislation in plenary:

[20 April 2004](#) (Regulation 883/2004) and [22 April 2009](#) (Regulation 987/2009)

### Entry into force of original legislation:

20 May 2004 (Article 91, Regulation 883/2004) and 1 May 2010 (Article 97, Regulation 987/2009)

### Planned date for review of legislation:

According to Article 87a of Regulation 883/2004, no later than 29 June 2014 the 'Administrative Commission' was obliged to evaluate the implementation of the provisions laid down in Article 65a (special provisions for wholly unemployed self-employed frontier workers) of Regulation 883/2004 and present a report on their application. On the basis of this report, the European Commission may, as appropriate, submit proposals to amend those provisions. By 31 October 2014 and on the basis of the Administrative Commission's report, the list contained in Annex III of the regulation should have been reviewed. This report had to include an impact assessment (Article 87 (10b), Regulation 688/2004).

In accordance with Article 86(1) of Regulation 987/2009, the Administrative Commission should have presented a comparative report on the time limits regarding the introduction and settlement of claims, and on the rules for conversion of periods expressed in different units, by the end of 2014. The Administrative Commission was also required to present a report assessing the application of Chapters I and III of Title IV of the regulation by 1 May 2015.<sup>1</sup>

### Timeline for new amending legislation:

On 13 December 2016, the European Commission submitted a proposal for a regulation amending Regulation 883/2004 and Regulation 987/2009.

## 1. Background

The free movement of persons requires effective and efficient social security coordination. It is in the interest of all parties that the social security coordination rules allow 'full exercise of citizens' rights whilst

<sup>1</sup> Although the Administrative Commission submits to the European Commission its yearly activity reports, it seems that reports pursuant to Regulations 883/2004 and 987/2009 have not been submitted. However, the Administrative Commission adopted several decisions dealing with the content of the reports required by the regulations. See below.

making the requirements of Member States clear, manageable and efficient'.<sup>2</sup> The EU provides common rules to protect social security rights of European citizens when moving within Europe.<sup>3</sup> The EU rules on social security coordination do not replace national social security systems with a single European one, as the Member States decide on various aspects of social security, such as the beneficiaries of their social security systems, levels of benefits and eligibility conditions.<sup>4</sup>

The current European rules under Regulation 883/2004 and Regulation 987/2009 give Member States discretion to decide who is to be insured under their national social security systems, which benefits are granted and under what conditions. The intention to amend these regulations has already been voiced in the [labour mobility package](#). This package was included in the work programme of the European Commission for the years 2015 and 2016. Apart from the proposal for improving coordination of social security systems, it also contained a targeted review of the Posting of Workers Directive and an action to support labour mobility.<sup>5</sup> Improved social security legislation is one of the priorities of the [Joint Declaration](#) on the EU's legislative priorities for 2017 signed by the Presidents of the European Parliament, the Council and the European Commission.

This implementation appraisal concentrates on the experience gained and on the latest changes in the area of social security coordination, taking into account the 2016 proposal<sup>6</sup> of the European Commission. The period before 2015 and before the submission of this proposal was covered by our previous implementation appraisal: [Coordination of social security systems](#), published in January 2015.

#### **[Administrative Commission for the Coordination of Social Security Systems](#)**

- The Administrative Commission is made up of government representatives from all Member States (Article 71, Regulation 883/2004).
- It deals with administrative questions and questions of interpretation arising from the provisions of Regulation 883/2004 and those of Regulation 987/2009.
- It facilitates the uniform application of European law and it fosters and develops cooperation between Member States in the field of social security.
- It can make proposals to the European Commission concerning the coordination of social security schemes.
- It adopts various [recommendations and decisions](#) in the field of social security. For example, in 2013 the Administrative Commission published a [practical guide - the applicable legislation in the EU, EEA and in Switzerland](#).

#### **Regulation (EC) No 883/2004 on the coordination of social security systems**

Regulation 883/2004 lays down the rules protecting social security rights of European citizens, and occasionally also the rights of third persons, when moving within Europe. The regulation covers various branches of social security including: sickness benefits, maternity and equivalent paternity benefits, invalidity benefits, old-age benefits, survivors' benefits, benefits in respect of accidents at work and occupational diseases, death grants, unemployment benefits, pre-retirement benefits and family benefits (Article 3 (1)). As a rule, the regulation 'replaced all social security conventions applicable between Member States falling under its scope.'<sup>7</sup>

<sup>2</sup> European Commission staff working document (SWD(2015) 460 final) p. 108.

<sup>3</sup> This includes EU-28, Liechtenstein, Norway, Iceland and Switzerland.

<sup>4</sup> The EU and Member States have a shared competence in the field of social policy (see, Article 4 (2) (b) and Article 151, TFEU). Furthermore, the [EU Charter](#) of Fundamental Rights recognises the fundamental right to social security benefits for anyone residing and moving legally within the European Union (Article 34, Social security and social assistance).

<sup>5</sup> In this context see, Remáč M, [Posting of workers](#) and [European Employment Service](#), implementation appraisals, EPRS, European Parliament, September and June 2015.

<sup>6</sup> See below Proposal for a regulation 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.

<sup>7</sup>Tymowski J, [Coordination of social security systems](#), implementation appraisal, EPRS, European Parliament, January 2015, p. 2.

The regulation applies to nationals of all Member States, as well as to the nationals of Iceland, Norway, Liechtenstein and Switzerland and stateless persons and refugees residing in Member States who are, or have been, subject to the legislation of one or more Member States, including the members of their families and their survivors (Article 2 (1)). The regulation also applies to third country nationals, to members of their families and to their survivors who legally reside in the territory of a Member State.<sup>8</sup>

Regulation 883/2004 sets out general principles of social security systems, including:

- **Principle of equality of treatment (principle of non-discrimination)**, which prohibits direct and indirect discrimination on grounds of nationality (Article 4).
- **Principle of equality of benefits, income, facts or events**, according to which the receipt of benefits and other income and facts or events occurring in one Member State have legal effects, i.e. they must be taken into account by other Member States as if they had happened on their territory (Article 5).
- **Principle of aggregation of periods**, which guarantees that periods of insurance, employment, including self-employment or residence built up in one of the Member States,<sup>9</sup> should be recognised and taken into account when calculating benefits and entitlements in another Member State (Article 6).
- **Principle of single applicable legislation**, which, as a general rule, requires that persons should be subject to legislation of a single Member State (Article 11 (1)). In the majority of cases, it is the Member State of employment or residence, with exceptions provided inter alia for civil servants and ship/plane personnel (Article 11(4)).
- **Principle of exportability**, which makes clear that the persons are allowed to 'export' and receive their cash benefits in any other Member State (Article 7).

Apart from these main principles, the regulation includes a general rule preventing overlapping benefits of the same kind for one and the same period of compulsory insurance (Article 10). Furthermore, the regulation includes special provisions concerning the various categories of benefits. Our January 2015 implementation appraisal concentrates on these provisions.<sup>10</sup>

#### **Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004**

This implementing regulation adopts coordination measures in order to guarantee the effective exercise of the free movement of persons. It contains provisions concerning the cooperation and the exchange of data between the Member States' institutions and the persons concerned. Furthermore, the implementing regulation deals with various administrative arrangements. The implementing regulation also contains rules for determining the legislation applicable according to Regulation 883/2004. At the same time, in its Title III, the implementing regulation provides special provisions concerning various categories of benefits.

#### **[Proposal](#) for a regulation 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 (13 December 2016)**

The explanatory memorandum of the proposal underlines the need to protect the social security rights of 'mobile Europeans and their family members'. It explains that the proposal is part of the European Commission's labour mobility package. Its goal is a 'continuation of the process of modernisation of the EU law on social security coordination set out in Regulations (EC) Nos 883/2004 and 987/2009, by further facilitating the exercise of citizens' rights while ensuring legal clarity, a fair and equitable distribution of the financial burden among the Member States and administrative simplicity and enforceability of the rules.'<sup>11</sup> The proposal intends to respond to a new social and economic reality. It underlines the link between

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<sup>8</sup> Article 1, [Regulation \(EU\) No 1231/2010](#) of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these regulations solely on the grounds of their nationality. This provision is not applicable to Denmark and the United Kingdom.

<sup>9</sup> Including Liechtenstein, Norway, Iceland and Switzerland.

<sup>10</sup> These special provisions of Regulation 883/2004 have not been amended since the publication of our implementation appraisal in January 2015.

<sup>11</sup> Explanatory Memorandum, p. 2.

Regulations 883/2004 and 987/2009 and [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, mainly with regard to the limitations concerning access to social benefits for economically inactive EU citizens. Furthermore, the proposal takes into account the analysis from the [trESS network](#).<sup>12</sup> The proposal also intends to clarify several issues by providing definitions of various terms such as 'long-term care benefits' or 'fraud'. Apart from amending the existing provisions, the proposal also introduces new provisions, for example, with regard to the payment of unemployment benefits to frontier workers who resided outside the competent Member State during the last period of work (new Article 65).

The main part of the proposal concentrates on:

**- Access to social benefits claimed by economically inactive intra-EU migrants (mobile EU citizens).**

The proposal intends to amend the regulations in accordance with the most recent jurisprudence of the Court of Justice of the European Union<sup>13</sup> in order to clarify the circumstances allowing Member States to limit access to these social benefits.

**- Long-term care benefits.**

The proposal includes a new separate chapter on long-term care benefits, currently included in chapter 1 on sickness, maternity and equivalent paternity benefits, which defines and lists them.

**- Unemployment benefits in cross-border cases.**

The proposal concentrates on the aggregation of periods of insurance for the creation and/or retention of rights to unemployment benefits and determination of the Member State responsible for the payment of these benefits.

**- Family benefits intended to replace income during child-raising periods.**

The proposal includes new provisions on family benefits.

**- Various other substantial and technical amendments**, such as the clarification of the conflict rules on applicable legislation or granting new implementing powers to the European Commission.<sup>14</sup>

**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 (13 December 2016)**

The impact assessment explains that the goals of the proposal include the modernisation of the EU social security coordination rules, strengthening legal certainty, and fair and equitable distribution of financial burden among the Member States.<sup>15</sup> It intends to bring a balance between the responsibility of the Member States receiving the social security contributions and the obligation to pay benefits.<sup>16</sup>

The impact assessment and its [executive summary sheet](#) identify several problems with the current system of the coordination of social security systems and point to a need to deal with them. The main problems are identified in the following table:

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<sup>12</sup> The [trESS network](#) was a training and reporting project on European social security. Between 2007 and 2013, trESS adopted several reports covering various issues of social security schemes within the EU. It adopted its last report in [2013](#). With regard to specific reports and analysis adopted by the trESS network, please see our 2015 implementation appraisal. A new European Commission funded network of independent experts has been set up - [Free movement of workers and social security coordination network](#) (FreSsco). FreSsco adopts various reports and organises seminars in the field of social security and free movement of workers in the EU. See below.

<sup>13</sup> See below in point 4.

<sup>14</sup> For additional information on the proposal, please see the forthcoming legislative briefing by the EPRS Economic Policies Unit.

<sup>15</sup> For additional information on the impact assessment (IA), including the opinions of the Regulatory Scrutiny Board, please see the forthcoming initial appraisal of the IA by the EPRS Ex-Ante Impact Assessment Unit.

<sup>16</sup> Impact assessment, p. 163.

| Area                    | Problem identified  |
|-------------------------|---|
| Long-term care benefits | <ul style="list-style-type: none"> <li>- Lack of clarity for citizens and institutions,<sup>17</sup></li> <li>- Lack of clarity in legal framework for long-term care benefits<sup>18</sup> and</li> <li>- Risk of losing benefits, or double payments.<sup>19</sup></li> </ul>   |
| Unemployment benefits   | <ul style="list-style-type: none"> <li>- Uneven application of the aggregation rules by Member States,<sup>20</sup></li> <li>- Low number of persons exporting their unemployment benefit,<sup>21</sup></li> <li>- Problems with the coordination rules on the provision of unemployment benefits for frontier and other cross-border workers<sup>22</sup> and</li> <li>- Unsatisfactory and inadequate reimbursement rules.<sup>23</sup></li> </ul>  |
| Social benefits         | <ul style="list-style-type: none"> <li>- Lack of clarity and transparency concerning entitlement to certain social benefits.<sup>24</sup></li> </ul>  |
| Family benefits         | <ul style="list-style-type: none"> <li>- 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 are perceived as unfair.<sup>25</sup></li> <li>- Risk that the anti-accumulation rules reduce incentives for both parents to remain economically active and share child-raising responsibilities in awarding 'parent-centred' benefits on basis of derived rights.<sup>26</sup></li> <li>- Delays in processing claims for family benefits.<sup>27</sup></li> </ul> |

Source: European Commission impact assessment, SWD(2016)460

## 2. EU-level reports, evaluations and studies

### European Commission [Analytical report 2014](#): The notions of obstacle and discrimination under EU law on free movement of workers (December 2014)

This analytical report discusses the personal and material scope of Article 45 of TFEU which deals with the free movement of workers.<sup>28</sup> The report provides an overview of the legislative framework and of the Court's extensive jurisprudence. Although freedom of movement is rather straightforward, the report notes several uncertainties linked with this freedom, such as the classification as a worker, gender perspective or labour market situation. In this regard, the report notes that Article 45 applies to rules that discriminate directly or indirectly on grounds of nationality and impose a barrier to the ability of the worker to move, or impose a barrier to market access.<sup>29</sup> The report furthermore shows that in all these cases, discrimination and obstacles can be justified mainly by public interest grounds or by public service derogations.<sup>30</sup>

### European Commission [Analytical Report 2014](#): The relationship between social security coordination and taxation law (April 2015)

This analytical report discusses two types of measures: the levying measures (social security contributions and taxes) and the granting measures (social and tax benefits).<sup>31</sup> It briefly analyses different elements of the interaction between social security and taxes in cross-border situations. The report notes that the different situations in various Member States often lead to problems and challenges, mainly for the person active cross-border. In this context, the report notes uncertainties stemming from the lack of clear definitions and

<sup>17</sup> *ibid.*, p. 20.

<sup>18</sup> *ibid.*, p. 21.

<sup>19</sup> *ibid.*, p. 22.

<sup>20</sup> *ibid.*, p. 42.

<sup>21</sup> *ibid.*, p. 67.

<sup>22</sup> *ibid.*, p. 80.

<sup>23</sup> *ibid.*, p. 82.

<sup>24</sup> *ibid.*, p. 105.

<sup>25</sup> *ibid.*, p. 125.

<sup>26</sup> *ibid.*, p. 127.

<sup>27</sup> *ibid.*, p. 129.

<sup>28</sup> This report was outsourced by the European Commission and carried out by FreSso in 2014.

<sup>29</sup> *ibid.*, pp. 29-30.

<sup>30</sup> *ibid.*, pp. 43-45.

<sup>31</sup> This report was outsourced by the European Commission and carried out by FreSso in 2014-2015.

complex legal situations linked with socially earmarked taxes.<sup>32</sup> The report also considers that various changes and amendments of the legislation are necessary. It proposes, for example, better cooperation between the stakeholders, legislative amendments of Regulation 883/2004 or fundamental changes including 'synchronising competences to levy taxes and contributions'.<sup>33</sup>

#### **European Commission [Analytical Report 2016](#): The principle of assimilation of facts (November 2016)**

The report concentrates on the specific legal principle included in Regulation 883/2004, namely the principle of assimilation of facts (principle of equality of facts).<sup>34</sup> The report also assesses the relation between this principle and the proportionality principle. The report notes that the assimilation of facts 'extends the territorial scope of Member States' social security legislation to circumstances which happen outside of that State'.<sup>35</sup> In this regard, the report notes that this principle provides the national authorities with discretion to determine conditions for granting social security benefits while requiring equal treatment. The report underlines that this principle, included in Regulation 883/2004, is a codification of various guidelines that can be found in the jurisprudence of the Court.<sup>36</sup> Despite this codification, the report notes that the general principle included in Article 5 of the regulation is 'articulated in a general way' which limits its clarity.<sup>37</sup> Furthermore, it points to some special provisions of Regulation 883/2004 that include some 'assimilation aspects', such as Article 13(5).<sup>38</sup> Because of some 'grey areas' of Article 5, the report suggests that any assessment based on this article can be only conducted on a case-by-case basis.<sup>39</sup>

### **3. European Parliament position / MEPs' questions**

#### **3.1 Resolutions of the European Parliament**

##### **European Parliament [resolution](#) of 24 November 2016 on new opportunities for small transport businesses, including collaborative business models**

Parliament called<sup>40</sup> on the European Commission 'to publish guidelines on how EU law applies to the various types of collaborative business models, in order to fill, where necessary, regulatory gaps in the area of employment and social security in a manner that respects national competences' (point 30).

At the time of preparation of this briefing, the European Commission has not yet reacted to this resolution.

##### **European Parliament [resolution](#) of 14 September 2016 on social dumping in the European Union**

Parliament called<sup>41</sup> on Member States to improve their information exchange concerning social security for posted workers. Furthermore, Parliament repeated its appeal to the European Commission to look into the benefits of introducing a 'European social security card or EU-wide electronic document, on which could be stored all the data needed to verify the bearer's social security status on the basis of his or her employment relationship' (point 14). Parliament also pointed to challenges linked to the digitalisation of the economy, recalling the importance of a connection between the digital and sharing economy and the protection of workers. It noted that more flexible working practices may result in forms of employment with lower standards, including standards of social security. In this context, Parliament emphasised the need for the Member States to amend their legislation to 'the digital and sharing economy'. It also called on the European Commission and the social partners to 'evaluate rapidly the provisions of European legislation applying to this sector and, if necessary, to draw up proposals to regulate the digital, sharing and

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<sup>32</sup> *ibid.*, p. 5-6. The earmarked taxes are those of which the revenues must be used for specific (e.g. social, environmental) purposes.

<sup>33</sup> *ibid.*

<sup>34</sup> This report was outsourced by the European Commission and carried out by FreSsco in 2016.

<sup>35</sup> *ibid.*, p. 7.

<sup>36</sup> For the overview of the Court's jurisprudence see the table in the analytical report, pp. 17-20.

<sup>37</sup> *ibid.*, p. 72.

<sup>38</sup> See, *ibid.*, pp. 63-71.

<sup>39</sup> *ibid.*

<sup>40</sup> P8\_TA-PROV(2016)0455.

<sup>41</sup> P8\_TA(2016)0346.

collaborative economy in order to ensure fair competition and protection of workers' rights' (point 39). At the same time, Parliament noted that there are 'differing levels of employee and employer social security contributions in the Member States'. In this context, it asked the Commission 'to evaluate the economic and social impact of these differences in the context of the single market' (point 47).

At the time of preparation of this briefing, the European Commission has not yet reacted to this resolution.

#### **European Parliament [resolution](#) of 13 September 2016 on creating labour market conditions favourable for work-life balance**

With regard to demographic changes, such as rising life expectancy, lower birth rates and changing family structures, Parliament called<sup>42</sup> on the European Commission and the Member States to 'put in place positive policies and incentives to support demographic renewal, preserve social security systems and promote the well-being and development of people and of society as a whole' (point 3). Regarding family leave and care-related types of leave, Parliament called on the Member States to 'introduce care credits through labour and social security legislation for both women and men as equivalent periods for building up pension rights in order to protect those taking a break from employment to provide informal, unpaid care to a dependant or a family member' (point 34). Parliament also called on the Commission and the Member States to 'guarantee social security, social protection and remuneration in the case of sick leave in order to enable a genuine work-life balance' (point 58).

At the time of preparation of this briefing, the European Commission has not yet reacted to this resolution.

#### **European Parliament [resolution](#) of 14 January 2014 on social protection for all, including self-employed workers**

Parliament called<sup>43</sup> on the European Commission to 'review legislation and monitor the implementation and coordination of social security systems, where necessary in respect of the subsidiarity principle' and underlined that 'all EU migrant workers should enjoy adequate social security entitlements and cover when working in another Member State'(point 20). Furthermore, Parliament invited the Commission and the Member States to 'strike an appropriate balance between labour market security and flexibility' (point 21). In this context, Parliament called for the global implementation of flexicurity principles and addressing the labour market segmentation by 'providing adequate social cover for those in transition or employed under temporary or part-time contacts'. According to Parliament, failure to ensure flexicurity detracts from the sustainability of social security systems; as such it 'undermines the EU 2020 Strategy for maintaining and increasing employment levels'. Parliament also called on the Commission to conduct an EU-wide study on the relation between changes in Member State labour laws and social security cover of employees (point 22). Parliament also supported information exchange among the Member States and called on the Commission to involve social partners 'in a process of developing and modernising social protection and to develop the social dialogue at EU and national level' (point 35).

In April 2014, the European Commission reacted to this resolution with a [follow-up](#) document.<sup>44</sup> The Commission noted that 'coordination of social security systems is about "connecting" a person to a social security system when moving within the EU'. It underlined the equal treatment of EU nationals. Still, it noted that Member States are responsible for organising and financing their own social security systems. In this regard, the Commission acknowledged the need to cooperate among the Member States and informed about its intention to amend Regulation 883/2004 in spring 2014<sup>45</sup> as a response to calls to revise the rules on unemployment and long-term care benefits.

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<sup>42</sup> P8\_TA-PROV(2016)0338.

<sup>43</sup> P7\_TA-PROV(2014)0014.

<sup>44</sup> SP(2014)320.

<sup>45</sup> No such proposal was submitted in spring 2014.

### 3.2 Written questions by MEPs

#### [Written question by Joëlle Mélin \(ENF, France\)](#), 1 August 2016

The Member inquired whether the Commission plans to draw the appropriate conclusions from the ruling of the Court of Justice (the Court) in the case C-308/2014 *Commission v United Kingdom* and adapt the legislation accordingly. The Member noted that the Court ruled that 'making the payment of social benefits contingent on a right of permanent residence was not a form of discrimination and not prohibited.'

#### [Answer given by Marianne Thyssen on behalf of the Commission](#), 28 September 2016

The Commissioner acknowledged that the judgment provides an important clarification of the rights to access social security benefits. She noted that the judgment confirmed a broad discretion of the Member States and that the Commission was analysing the judgment to draw appropriate conclusions.

#### [Written question by Maria Arena \(S&D, Belgium\)](#), 6 July 2016

With regard to the latest jurisprudence of the Court of Justice, the Member asked whether the Commission could examine the conditions imposed by Member States for the allocation of social security services to nationals of other EU States.

#### [Answer given by Marianne Thyssen on behalf of the Commission](#), 16 September 2016

The Commissioner informed that the recent jurisprudence of the Court 'clarified the balance between the fundamental freedom of EU citizens to move and reside freely in another EU Member State and the public interest of the host Member States to protect their public finances.' The Commissioner also recalled that in Case C-308/14 the Court held that Member States are entitled to set conditions for the access of economically non-active EU citizens to their social security systems.

#### [Written question by Sergio Gutiérrez Prieto \(S&D, Spain\)](#), 14 October 2016

The Member's question was a reaction to a bill approved by the German Government requiring that unemployed citizens from other EU countries who have not paid social security contributions in Germany should reside there for at least five years before claiming certain forms of social assistance available to German nationals. According to the Member, this was against the principles included in EU legislation. The Member asked whether the Commission considered this German bill to be a breach of EU law and whether it intended to launch an investigation to determine whether infringement proceedings should be commenced.

#### [Answer given by Marianne Thyssen on behalf of the Commission](#), 22 November 2016

The Commissioner replied that the Commission had taken note of this proposal and that, once it had been adopted, it would assess its compatibility with the EU law and the jurisprudence of the Court.<sup>46</sup>

## 4. Court of Justice of the European Union

On several occasions, the Court of Justice of the European Union has reacted to preliminary questions from national judiciaries and provided interpretation for several principles included in Regulation 883/2004 and other relevant EU legislation.<sup>47</sup> For example, in Case [C-140/12 Brey](#), the Court dealt with the relation between Regulation 883/2004 and Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. It noted that, 'Regulation No 883/2004 does not set up a common scheme of social security, but allows different national social security schemes to exist and its sole objective is to ensure the coordination of those schemes.'<sup>48</sup> The Court also ruled that granting of social security benefits to the EU citizens who are not economically active can, in

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<sup>46</sup> Apart from the above-mentioned questions, MEPs also asked various questions about coordination of social security systems (for example, [E-007968-16](#), [E-007577-16](#), [E-006140-16](#), [E-002060-16](#), [E-001303-16](#)) or various benefits and their conditions (for example, [E-008577-16](#), [E-008378-16](#), [E-008229-16](#), [E-005766-16](#)).

<sup>47</sup> Apart from the cases referred to in the text of this briefing, see also Case [C-67/14 Alimanovic](#), dealing with social security benefits, Case [C-299/14 Nieto](#), dealing with social assistance or Case [C-453/14 Knauer](#), where the Court dealt with the concept of 'equitable benefits'.

<sup>48</sup> Case [C-140/12 Brey](#), judgment of 19 September 2013, para. 43.



principle, be subject to 'the necessary requirements for obtaining a legal right of residence in the host Member State' i.e. these citizens can be required to fulfil the conditions for possessing a right to reside lawfully in the host Member State.<sup>49</sup>

Also in Case [C-333/13 Dano](#), the Court clarified that a Member State must have the possibility 'of refusing to grant social benefits to economically inactive Union citizens who exercise their right to freedom of movement solely in order to obtain another Member State's social assistance although they do not have sufficient resources to claim a right of residence.'<sup>50</sup> This principle was reiterated in Case [C-308/14 Commission v United Kingdom](#), in which the Court ruled that Member States have the power to make the granting of social benefits to economically inactive Union citizens 'subject to the substantive condition that those citizens meet the necessary requirements for possessing a right to reside lawfully in the host Member State'.<sup>51</sup> By this action, according to the Court, the Member State 'lawfully commits indirect discrimination'.<sup>52</sup> However, such 'indirect discrimination must be appropriate for securing the attainment of a legitimate objective and cannot go beyond what is necessary to attain that objective'. One of these legitimate objectives was also 'the need to protect the finances of the host Member State'.<sup>53</sup>

## 5. European Economic and Social Committee

In its April 2016 [opinion](#) on fairer labour mobility within the EU, the European Economic and Social Committee (EESC) supported 'streamlining the rules on the coordination of social security systems and cooperation among the Member States for their implementation'. In this context, the EESC called for a revision of Regulation 883/2004 to 'show due regard for the principle of equal treatment of mobile workers' (point 1.10). In this regard, the EESC stated that the 'legislative framework must be adapted to the changing realities in the world of work, to new forms of employment and, above all, to new forms of mobility' (point 4.5.5). Furthermore, the EESC argued that 'ensuring the portability of social rights for mobile workers is another key aspect of fair mobility' (point 4.5.2). In its March 2016 [opinion](#) on the Commission's Communication on upgrading the single market: more opportunities for people and business, the EESC called 'for closer coordination between social security systems, with the introduction of welfare bodies whose functions are recognised at European level' (point 1.3). Also in its June 2014 [opinion](#) on the proposal for a regulation on a European network of Employment Services, the EESC called on the European Commission 'to present an adequate legislative package to improve the coordination of social security systems and the recognition and transfer of rights acquired by employees' (point 1.12).<sup>54</sup>

## 6. European Commission public consultation

Between December 2012 and March 2013, the European Commission carried out a [public consultation](#) on the revision of the EU provisions on coordination of long-term care benefits and unemployment benefits. According to its [summary](#), the consultation collected opinions and ideas about the obstacles in the area of coordination of unemployment and long-term care benefits in a cross-border situation and provided evidence of the diversity of opinions among individuals and different types of stakeholders.<sup>55</sup>

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<sup>49</sup> *ibid.*, para. 44.

<sup>50</sup> Case [C-333/13 Dano](#), judgment of 11 November 2014, para. 78.

<sup>51</sup> Case [C-308/14 Commission v United Kingdom](#), judgment of 14 June 2016, paras. 68 and 75.

<sup>52</sup> *ibid.*, para. 76.

<sup>53</sup> *ibid.*, paras. 79 and 80.

<sup>54</sup> This section includes only the most relevant opinions of the EESC mentioning coordination of social security systems. For further examples, see the [EESC](#) document list.

<sup>55</sup> *ibid.*, p. 31.

| <b>Unemployment benefits</b>  | <b>Replies of individuals<br/>(179 replies)</b> | <b>Replies on behalf of<br/>organisations (81 replies)</b> |
|---|---|--|
| <b>MS competent for the provision of unemployment benefits:</b>   |   |  |
| a) depends on the right of choice for mobile workers  | 49 % of replies                                 | 37 % of replies  |
| b) is the country of last activity  | 40 % of replies                                 | 46 % of replies  |
| <b>Export of benefits is possible:</b>  |   |  |
| a) until the end of the person's entitlement  | 59 % of replies                                 | 33 % of replies  |
| b) for 3 months, with a possible extension up to 6 months   | 24 % of replies                                 | 47 % of replies  |
| <b>Long-care benefits</b>   | <b>Replies of individuals<br/>(127 replies)</b> | <b>Replies on behalf of<br/>organisations (45 replies)</b> |
| <b>Persons should be treated equally in the MS where he/she is insured and should not have his/her care benefits reduced if he/she moves to another MS.</b> | 39 % of replies                                 | 20 % of replies  |
| <b>Persons should continue receiving benefits as they are today</b>   | 18 % of replies                                 | 36 % of replies  |
| <b>Persons should be treated equally in the MS where he/she lives and receive the care benefits there</b>   | 20 % of replies                                 | 22 % of replies  |

Source: European Commission public consultation summary (2013)

The individual respondents pointed to several problems such as, for example, lack of communication by the national authorities, delays in decision on entitlements and in payments of benefits, or feeling of discrimination based on nationality.<sup>56</sup> The organisations noted a need for better coordination and communication between Member States, for a clarity of rules concerning which country should be responsible for the provision and the payment of benefits, and for the awareness of institutions about the rights of migrant workers.<sup>57</sup>

Between July and October 2015, the European Commission carried out another [public consultation](#) on EU social security coordination. This consultation fed into the revision of Regulation 883/2004 and Regulation 987/2009 and was used to gather data on the functioning of the EU rules for coordination of family benefits, unemployment benefits and rules for posted employed and self-employed persons.

| <b>Family benefits</b>                                      | <b>Replies of individuals<br/>(122 replies)</b> | <b>Replies on behalf of<br/>organisations (87 replies)</b> |
|---|---|--|
| <b>Satisfaction with the current rules</b>                  | 37 % of replies                                 | 51 % of replies  |
| <b>Need to improve the application of rules in practice</b> | 60 % of replies                                 | 64 % of replies  |
| <b>Better explanation of rules in practice</b>              | 62 % of replies                                 | 79 % of replies  |
| <b>Unemployment benefits</b>                                | <b>Replies of individuals<br/>(127 replies)</b> | <b>Replies on behalf of<br/>organisations (87 replies)</b> |
| <b>Satisfaction with the current rules</b>                  | 31 % of replies                                 | 45 % of replies  |
| <b>Need to improve the application of rules in practice</b> | 54 % of replies                                 | 75 % of replies  |
| <b>Better explanation of rules in practice</b>              | 54 % of replies                                 | 78 % of replies  |

Source: European Commission public consultation summary (2015)

The [summary](#) of the public consultation showed that, with regard to family benefits, respondents made some suggestions such as improved communication among the national authorities, greater clarity and simplicity of legal provisions and the introduction of a single European social security number.<sup>58</sup> Respondents also made several suggestions about unemployment rules, such as harmonising or unifying

<sup>56</sup> *ibid.*, p. 31 and p. 38.

<sup>57</sup> *ibid.*, p. 23 - 25 and p. 46.

<sup>58</sup> *ibid.*, p. 14.

the European social security systems, the right to choose where to claim unemployment benefits or an extension for exportability of the benefits.<sup>59</sup>

## 7. Petitions to the European Parliament

Numerous petitions have been submitted to the European Parliament dealing with coordination of social security systems and specific benefits. This is the case of petition [46/2014](#), for example, where a citizen petitioned on social security cover for her parents following their move to Spain. Petition [2295/2014](#) was filed with regard to family benefits for a child studying in another Member State. In petition [972/2014](#), the petitioners claimed that they were discriminated against, with regard to family benefits, by the authorities of the Member State in which they currently lived. In petition [956/2014](#), the petitioner argued about his right to have his pension transferred to another Member State.<sup>60</sup>

## 8. Stakeholders

The European Confederation of Trade Unions (ETUC), in a December 2016 [press release](#), noted that, although it saw some positive points in the Commission proposal, workers and their families should not be disadvantaged by working in another EU country ... [as] the workers who pay their dues deserve their rights.' ETUC noted that the package does not deal with 'workers in frontier regions who work in one country and live in another'. The representative of national business federations, BUSSINESSEUROPE, called in its 2015 [statement of worker mobility](#) for a review of the social security legislation. In this context, BUSSINESSEUROPE claimed that the improvement of the coordination of social security can 'help to promote mobility within the EU and improve its political acceptance ... if regulations are reviewed to adapt to the evolving situation, loopholes eliminated and regulations are implemented and interpreted correctly.' It also called for better cooperation between the Member States' authorities in this field which should take into account, when assessing the individual cases of benefits, employment and remuneration earned in other Member States.

## 9. Conclusions

The complex system of EU rules on social security coordination needs to comply with various challenges and national circumstances. These challenges include uneven and inadequate application, the lack of transparency and lack of understanding of the existing rules, and an uncertainty about the position of cross-border workers and the benefits applicable to them. Another outstanding challenge is the most recent jurisprudence of the Court of Justice of the European Union that clarifies several important rules applicable to the relation between Member States and provision of benefits to the EU citizens.

The European Parliament has called on the European Commission on several occasions to update the existing legislation on the coordination of social security systems so that it would react to these challenges. Similarly, the European Economic and Social Committee has recommended that the existing legislation be updated. Furthermore, the representatives of various stakeholder groups have voiced similar requests.

In December 2016, the European Commission submitted a long awaited proposal amending Regulation 883/2004 and Regulation 987/2009 dealing with the coordination of social security systems. The proposal concentrates on changes linked to a broad spectrum of issues and benefits, mainly long-term care benefits, unemployment benefits, social benefits and family benefits. This proposal provides the opportunity for improvements to be made to the currently applicable rules.

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<sup>59</sup> *ibid.*, p. 20.

<sup>60</sup> There were also several other petitions dealing with social security systems and social benefits, for example, petition [0071/2015](#) on the operation of German institutions responsible for social benefits, or petition [0594/2015](#) concerning recognition by the Romanian services of five years of employment in Romania.

## 10. Other sources of reference

Scholz N, Milotay N, Eatock D, Parry M, Dobrev A, [Public expectations and EU policies - Health and social security](#), EPRS, European Parliament, July 2016

Karakas C, [Basic income: Arguments, evidence, prospects](#), EPRS, European Parliament, September 2016

Kiss M, [European cooperation to tackle undeclared work](#), EPRS, European Parliament, February 2016

Kiss M, [European Platform for tackling undeclared work](#), EPRS, European Parliament, February 2016

[Social security cover in other EU Member States](#), Fact Sheet, European Parliament, January 2016

European Commission [factsheet](#) on social security coordination of unemployment benefits, 2016

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To contact the Policy Cycle Unit, please e-mail: [EPRS-PolicyCycle@ep.europa.eu](mailto:EPRS-PolicyCycle@ep.europa.eu)

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