

ECONOMICALLY INACTIVE CITIZENS

Current rules

| Regulation (EC) 883/2004 | Directive 2004/38/EC |
|---|---|
| Access in the MS of residence, i.e. the place where they habitually reside, to special non-contributory cash benefits (SNCB) | Residence right and permanent residence right can be denied to economically inactive citizens if they lack sufficient resources not to become a burden on the social assistance system of the host MS |
| SNCB cannot be exported abroad (Article 70) | SNCB under Reg. 883/2004 can be classified as 'social assistance' under Dir. 2004/38/EC (see CJEU, <i>Brey, Dano</i>) |
| A request for SNCB in the country of residence can lead to withdrawal of the residence right upon assessment of the individual case | |

Categories of EU citizens currently most at risk:

- Citizens losing their job after no more than one year of employment in the host MS;
- Inactive family members residing in the host MS for less than 5 years who lose their affiliation with the worker (i.e. divorce, death or departure of the worker)

Proposed changes

Article 4 Equality of treatment

1. Unless otherwise provided for by this Regulation, persons to whom this Regulation applies shall enjoy the same benefits and be subject to the same obligations under the legislation of any Member State as the nationals thereof.
2. A Member State may require that the access of an economically inactive person residing in that Member State to its social security benefits to be subject to the conditions of having a right to legal residence as set out in Directive 2004/38/EC (...).

Assessment

- The codification of the CJEU case law would de facto preclude access to special non-contributory benefits by vulnerable economically inactive citizens;
- The reference to 'social security benefits' in Art. 4(2), although not warranted by CJEU case law, would go beyond it and may restrict access to other benefits possibly deemed to be 'social assistance' within the meaning of Dir. 2004/38/EC.

UNEMPLOYMENT BENEFITS

Current rules as compared to Commission proposal

| Rules | Regulation 883/2004 | EC Proposal |
|-------------------------|--|--|
| Aggregation | One day rule: The claimant asks for UB in the MS of last employment, possibly aggregating previous periods of employment completed in other MS | Three month-rule: The MS where at least three months of employment have been completed becomes the competent state |
| Export | Up to three months (possibly extended to six months) | Up to six months (possibly extended to the whole duration of the benefit) |
| Limits to export | The competent MS may require the beneficiary to stay at disposal of PES for 4 weeks before export is allowed | Unchanged |

Categories of workers negatively affected:

- Workers in casual or precarious jobs;
- High mobile workers (short periods of employment in different Member States);
- Workers moving from 'low-wage' Member States to 'high-wage' Member States.

UNEMPLOYMENT BENEFITS (CROSS-BORDER WORKERS)

Current rules

Wholly unemployed Cross-border workers

Access to UB in the **MS of residence** AND option to register at PES in the **MS of last employment**

Partial reimbursement of costs between MS involved

Partially unemployed Cross-border workers

Access to UB in the **MS of employment**

Proposed changes

| Wholly unemployed Cross-border workers | |
|---|--|
| More than 12 months of employment in the host MS | 12 months of employment or less in the host MS |
| Access to UB in the MS of last employment | a) Access to UB in the MS of residence |
| | b) Access to UB in the MS of last employment , without relying on the 'aggregation principle' |
| Reimbursement of costs between MS no longer necessary | |
| Partially unemployed Cross-border workers | |
| Access to UB in the MS of employment (no change) | |

Assessment

- Simplification of current rules;
- Stronger link between entitlement to benefits and payment of contributions in a Member State;
- Possible problems in the computation of the 12 months (e.g. in case of casual employment).

LONG-TERM CARE BENEFITS

Current rules as compared to Commission proposal

| Rules | Regulation 883/2004 | EC Proposal |
|-------------------|--|--|
| Definition | No definition of LTC benefits | Art. 1 (va): 'LTC benefit means any benefit in kind, cash or a combination of both for persons who, over an extended period of time, (...) require considerable assistance'. |
| Chapter | LTC regulated as part of sickness benefits | LTC coordinated as a separate chapter |

Assessment:

Due to the absence of separate long-term care benefit coverage in most Member States, there is a risk:

- that only insurance periods specifically related to the risk of long-term care would be taken into account for coordination, which could lead to a failure of coordination and denial of access to long-term care benefits;
- of increased administrative burden, as insured persons would need two different kinds of documents.

FAMILY BENEFITS

Current rules as compared to Commission proposal

| Rules | Regulation 883/2004 | EC Proposal |
|--------------------|--|--|
| Definition | Only 'family benefit' in general defined in Art. 1 (z) | Art. 68b (1): introduction of special provisions for family benefits in cash intended to replace income during periods of child-raising, listed in the newly proposed Annex XIII to Regulation 883. These benefits are distinguished by other family benefits insofar as they compensate either parent for the time spent raising a child, rather than for general family expenses. |
| Entitlement | Entitlement in one competent MS only (for a person and his/her family members) | Child raising benefits becomes a 'personal benefit' |
| Overlapping | Priority rules to prevent overlapping (e.g. in case two family members are entitled to benefits in two MS on the basis of their work activity) | In cases of overlapping entitlements, a Member State may award a child raising benefit in full to a beneficiary regardless of the amount provided for by the first legislation. Where a Member State chooses to dis-apply the priority rules it must do so consistently in respect of all entitled persons in an analogous situation and be listed in Part II of Annex XIII. |

Assessment:

- A stronger link between individuals and the State of insurance can be expected;
- The aim to encourage the sharing of parental responsibilities is in line with other current initiatives to support work-life balance for working parents and carers under the European Pillar of Social Rights.

POSTED WORKERS - PERSONAL SCOPE**The proposal****Article 12****Special rules**

A person who pursues an activity as an employed person in a Member State on behalf of an employer which normally carries out its activities there and who is posted within the meaning of Directive 96/71/EC or sent by that employer to another Member State to perform work on that employer's behalf shall continue to be subject to the legislation of the first Member State, provided that the anticipated duration of such work does not exceed twenty-four months and that the person he is not posted or sent to replace another employed or self-employed person previously posted or sent within the meaning of this Article.

Assessment:

- Who are workers 'sent' abroad?
- The alignment with Directive 96/71/EC may reduce legal clarity, since the definitions in both pieces of legislation differ considerably;
- Extension of the requirement not to replace another worker also to self-employed (see also Art. 12(2)) may reduce room for frauds.

POSTED WORKERS - THE A1 FORM**Current rules as compared to Commission proposal**

| Current rules | EC Proposal |
|---|--|
| | The institutions of the sending MS must properly assess the facts before releasing the form. |
| A1 form is binding upon institutions of the host MS, even if released with retroactive effect (see also cases <i>Banks</i> , <i>A-Rosa Flussschiff GmbH</i>) | A1 form is binding upon institutions of the host country, even if released with retroactive effect, provided it has been duly filled in all the compulsory sections. |
| | In case of 'fraud' the A1 is withdrawn by the sending MS with retroactive effect |
| Two stage dialogue procedure in case of doubts over the validity of the A1 form (first stage to be completed within 3 months, | Dialogue procedure in case of doubts over the validity of the A1 form to be completed within 25 days |

| | |
|---|-----------|
| possibly extended to 6 months, second stage to be completed within 6 weeks) | |
| Conciliation procedure before the Administrative Commission in case of failure to reach an agreement | Unchanged |
| <p>Implementing acts by the European Commission, assisted by the Administrative Commission, shall establish a standard procedure including time limits for:</p> <ul style="list-style-type: none"> • the issuance, the format and the contents of the A1 form; • the determination of situations in which the A1 form shall be issued; • the elements to verified before the A1 form can be issued; • the withdrawal of the A1 form when its accuracy and validity is contested by the competent institution of the MS of employment. | |

Assessment:

- Increased obligations upon sending MS to prevent fraud;
- Risks of delays in the release of the A1 form or failure to duly perform assessment of facts;
- Key aspects to be defined by EC implementing acts;
- Lack of sanctions and enforcement measures in case of failure to cooperate.

ADMINISTRATIVE COOPERATION

Commission proposal and its assessment

| EC proposal | Assessment |
|---|--|
| Definition of fraud and error | |
| Digitalisation (EESSI) and standardisation of information sharing | This should ease administrative cooperation procedures |
| Promotion of bilateral agreements to support mutual assistance | |
| Introduction of deadlines for information sharing: 25 days for normal requests and 2 days for urgent requests. | This should speed up administrative procedures, but the lack of concrete sanction and enforcement measures in case of failure to cooperate may hamper this target. |
| Standard procedures for the enforcement of the recovery of unduly paid social security benefits | This should improve the ability of MSs to recover unduly paid sums. |
| <p>An Implementing act by the European Commission, drafted with the support of the Administrative Commission, should set forth rules concerning the withdrawal of the document when its validity is disputed over by the concerned institutions (Article 20a of the Implementing Regulation).</p> | |

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CONTACTS

Policy Department A: Economic and Scientific Policy

ECON - ENVI - EMPL - IMCO - ITRE - TAXE

poldep-economy-science@ep.europa.eu

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Contact: Poldep-Economy-Science@ep.europa.eu

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