

MODERNISATION OF SOCIAL SECURITY COORDINATION IN THE EU

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Social security coordination needs to be aligned with an evolving labour market

The free movement of workers - a key principle of the EU single market - requires robust coordination of national social security systems. The Executive Vice-President for Social Rights and Skills, Quality Jobs and Preparedness therefore aims to work on the modernisation, simplification and digitalisation of social security coordination rules. Since the start of negotiations on the proposed revision in 2016, the labour market has evolved significantly:

- **More flexibility:** Flexible job arrangements, short-term assignments, multi-country careers and highly mobile workers are increasingly replacing traditional, long-term roles.
- **Digitalisation:** Telework, platform jobs, and digital nomads have reshaped employment and increased cross-border opportunities.
- **Labour shortages:** Structural labour shortages and an aging workforce across the EU are increasing the urgency for policies that enhance workforce participation.

These trends occur increasingly internationally, driving greater international mobility within and beyond the EU. The provisions of Regulation 883/2004 are not properly tailored to these developments. As a result of the increasing number and complexity of cross border cases, social security institutions, businesses, and citizens face challenges which lead to higher administrative burdens and longer waiting times. Modernising the EU's social security legislation is essential, yet the current revision proposal fails to adequately address the observed developments and is therefore no longer fit for purpose. Furthermore, the lack of broad support for the two open controversial chapters (applicable legislation and unemployment) highlights the need for reflection.

Building a future-proof framework for the coordination of social security

The La Hulpe Declaration of 2024 underscored the ambition to make social security coordination future-proof by enhancing legal certainty, transparency, and cooperation among Member States. Building on these principles, five priorities can be identified to achieve this goal:

- 1. Simplify the rules for the institutions, businesses and citizens**
Relevant chapters: *applicable legislation, sickness benefits, and family benefits.*
- 2. Prioritise legal certainty for citizens by making the rules better understandable**
Relevant chapters: *applicable legislation, sickness benefits, and family benefits.*
- 3. Align with today's and tomorrow's cross-border labour market**
Relevant chapters: *applicable legislation and family benefits.*
- 4. Facilitate reintegration for recipients of benefits**
Relevant chapters: *unemployment, sickness, and disability.*
- 5. Provide adequate tools for institutions to effectively combat fraud and abuse**
Relevant chapters: *applicable legislation and unemployment.*

In line with these priorities, the annex provides an *initial inventory of challenges encountered by EU-citizens and implementing organisations, as well as proposals for further steps.*

Next steps

The European Commission is encouraged to reflect on the identified challenges and proposals and to include these in an analysis to assess the impact for citizens, businesses, administrations and Member States. This impact analysis should eventually give rise to an updated proposal for a future-proof revision to replace the outdated 2016 revision proposal. An impact analysis should also evaluate how possible solutions interact with other policy areas, such as tax legislation and labour law, which are often interconnected with social security law.

Annex: Initial inventory of challenges and proposals for a futureproof coordination of social security systems

A. Applicable legislation: addressing emerging work and residence patterns

The current rules for determining applicable legislation are based on traditional work patterns, such as full-time jobs with one employer at one location. However, the labour market increasingly features new forms of work and cross border mobility. A revision of these rules is necessary to address such situations effectively.

1. Introduction of provisions for new forms of work

- **Essence:** A specific rule is needed to address emerging (flexible) work arrangements and cross border mobility, such as teleworking, to facilitate labour mobility across borders.
- **Proposal:** Develop a comprehensive rule for new forms of work, such as telework. Include provisions for specific groups, such as self-employed individuals and highly mobile workers, which frequently operate across multiple Member States.

2. Special provision for international transport

- **Essence:** The current rules on applicable legislation, determining where someone is socially insured while working in different Member States, are not tailored to people working in the transport sector.
- **Proposal:** Explore whether a specific provision for people working in the transport sector should be reintroduced to enhance legal certainty and avoid abuse and mistakes.

3. Introduction of provisions for situations involving a combination of living and working within and outside the EU

- **Essence:** Globalisation and the rise of telework have led to an increasing number of individuals living and working across both EU and non-EU borders as well as employers operating (partly) within and outside the EU.
- **Proposal:** Provide clarification of the relevant case law of the European Court of Justice.

4. Prevention of frequent switches or intermittent social security coverage

- **Essence:** Short-term and part-time employment across borders can cause intermittent social security coverage, creating administrative burden and legal uncertainty for citizens as they switch frequently from one social security system to another.
- **Proposal:** Explore the feasibility and pros and cons of implementing a threshold to prevent frequent switches in social security and/or extending coverage duration in specific cases, without increasing the risk of abuse or limiting free movement.

5. Special provision for defence personnel and family

- **Essence:** Under the current rules on applicable legislation, inactive family members of civil servants (including defence personnel) may face a switch in the applicable legislation in cases where their country of residence changes. This could lead to unnecessary changes in applicable legislation.
- **Proposal:** Explore the feasibility of introducing a specific provision for the inactive family members of defence personnel.

6. Legal clarification of the provisions

- **Essence:** Due to the complexity of cross border cases, social security institutions have to dedicate a significant part of their capacity to a relatively low quantity of these situations.
- **Proposal:** Clarify certain articles, such as distinguishing situations where Article 12 (posting) and Article 13 (work in multiple Member States) apply, to ease administrative burden and promote legal clarity for businesses, citizens and implementing institutions. Clarification is also needed for Article 14(8) of Regulation 987/2009, which outlines criteria for determining whether a substantial part of the work is performed in the Member State of residence.

B. Combating social dumping and fraud with A1-Certificates

The rules on posting protect workers from fragmented social security accrual in order to facilitate the free movement of workers and services. However, some cross border service providers use bogus arrangements (with EU workers as well as with third country nationals) to minimise social security contributions. This leads to difficulties in terms of enforcement and increases the risk of fraud and exploitation.

7. Introduction of the requirement of a three-month insurance period prior to posting

- **Essence:** The General Approach comprises measures to combat social dumping and fraud with A1-certificates, such as the requirement of three months prior insurance.
- **Proposal:** Introduce these measures in line with the General Approach to establish a genuine link between the sending State and the person being posted.

8. Reflection on the system of prior notification for postings

- **Essence:** A system of prior notification (PN) aims to enhance enforcement. However, the proposed design - as included in the various proposals over the years - has shortcomings while increasing administrative burdens.
- **Proposal:** Conduct a thorough assessment and reflect on the added value of PN for enforcement and its impact on administrative burden. Preconditions for a well-functioning system are the introduction of automatic forwarding of notifications to the institution in the host State and the avoidance of spillover effect from article 12 (posting) to article 13 (pluri-activity).

9. Enhanced enforcement possibilities for the host country

- **Essence:** The most significant risk of fraud occurs when an A1-certificate is issued without meeting the required conditions.
- **Proposal:** Investigate measures that enhance cross border enforcement. For example, look into ways of strengthening the role of the host State by giving the host State more options to have the A1 revoked, e.g. by submitting a request for withdrawal to a special arbitration chamber to be set up by ELA.

C. Adapting family benefits chapter to evolving work patterns

In today's world, we see a growing number of families with members living in different Member States. The adequate determination of family benefits can be challenging, for example due to problems in communication between institutions or as a result of switches in insurance because of flexible work patterns of the parents. This leads to legal uncertainty and the risk of recovery of undue payments.

10. Revision of priority rules: exclusive or primary competence for the Member State of residence

- **Essence:** The implementation of the family benefits chapter is becoming increasingly complex. Moreover, the character of *traditional child benefits* is more suited towards the Member State of residence of the child: traditional child benefits are financed in most Member States by taxes, the benefit is granted for the benefit of the child rather than for the parents, and the costs are incurred in the child's Member State of residence. The Member State of residence of the child is also less subject to change than the Member State of work of the parents.
- **Proposal:** Explore whether the Member State of residence of the child can be exclusively competent for traditional child benefits or, alternatively, primarily competent.

11. Simplification of the current system for overlapping benefits

- **Essence:** The current priority rules are unclear in the case of blended families where members live in different Member States.
- **Proposal:** Investigate possible simplifications of the system for overlapping of benefits.

D. Promoting workforce reintegration for benefits

Today's EU labour market is facing growing shortages. The Draghi Report emphasises the urgent need to optimise the use of our labour potential to maintain the EU's competitiveness on the global stage. For that reason, it is paramount that measures in Regulation 883/2004 are implemented which help the recipient of a benefit to reintegrate into the labour market, including in cross border situations. The current revision proposal neglects this point, despite reintegration being highly beneficial for both the individual and society as a whole.

12. Establishing effective measures for return-to-work after unemployment

- **Essence:** Unemployment benefits are generally intended as a temporary wage loss benefit where finding new work is essential. When revising the unemployment chapter, the central focus should be on how to promote return-to-work.
- **Proposal:** Maintain current responsibilities on benefit payments. The current unemployment benefits chapter builds on the idea that the Member State in which the person concerned stays or resides is better equipped to promote re-integration. That is why the Member State of residence is mainly responsible for the payment of benefits and why the export of unemployment benefits is limited to a three months period. The current provisions on export should, however, be enhanced with measures that facilitate re-integration to work, such as a mandatory notification to EURES and more powers for the Member State paying the benefit.

13. Implementing effective arrangements on monitoring and controls

- **Essence:** In the event of the export of unemployment benefits, significant challenges arise for monitoring and control.
- **Proposal:** Ensure that the Member State paying the benefit is informed by means of automatic data exchange on, for example, work resumption and income. Specific provisions and arrangements are required.

14. Introduction of a substantial affiliation period for persons who resided in a Member State other than the competent Member State

- **Essence:** Maintaining responsibilities on benefit payments in their current form is the preferred option regarding the unemployment chapter. Should the revision of Article 65 remain under consideration, measures should be implemented to establish a more genuine link between the unemployed person and the Member State paying the benefit.
- **Proposal:** Introduce a substantial affiliation period (minimum of 6 months), among other necessary measures.

15. Capping the total duration of unemployment benefits in case of export

- **Essence:** After exporting unemployment benefits from the Member State of last employment, an individual may be eligible for the continuation of unemployment benefits from their Member State of residence. In this case, the individual may benefit from both the amount of the first benefit and the extended duration of the second.
- **Proposal:** Cap the total duration of unemployment benefits.

16. Revising rules for calculating unemployment benefits

- **Essence:** Currently, the unemployment benefit is calculated based on the amount of the previous salary, taking into account solely the salary received in the competent Member State.
- **Proposal:** Take into account the actual salaries accrued within the national reference period, also when the salary was accrued in a different Member State.

17. Introducing provisions to promote reintegration in case of sickness and disability benefits

- **Essence:** The Regulation does not provide any provisions on reintegration to work in the context of exporting sickness or disability benefits.

- **Proposal:** Introduce provisions on enhanced cooperation between the competent Member State and the Member State of residence to support the person in finding work again. Notwithstanding such agreements, the competent institution should retain the competence to assist the recipient in finding suitable work, e.g. through intermediary re-integration agencies.

E. Sickness benefits in kind

In the field of sickness benefits in kind, simplification of the rules - where possible - may contribute to legal clarity for citizens and institutions.

18. Ensure greater coherence between Regulation 883/2004 and the Patients' Rights Directive

- **Essence:** The existence of two different sets of rules for obtaining medical treatment or other benefits in kind across borders (Regulation 883/2004 and the Patients' Rights Directive) makes the legal context complex to understand for citizens and complex to implement for institutions.
- **Proposal:** Seek coherence between Regulation 883/2004 and the Patients' Rights Directive, where possible. For instance, regarding prior approval of treatments and transparency of costs. Further research on the impact is needed, also with a view to the differing legal bases of Regulation 883/2004 and the Patients' Rights Directive.

F. Improving processing times

There is a strong need for timely co-operation between Member States. Delays in response times, can cause uncertainty, financial disadvantages and administrative burden for both individuals and institutions.

19. Establish clearer response times and introduce procedures to meet deadlines

- **Essence:** Social security often comes into play in the event of significant life events, such as sickness or unemployment. Legal certainty for citizens and relevant authorities should be increased, by promoting faster response times.
- **Proposal:** Identify areas in the Regulation where response times are absent or considered too long. Moreover, it should be assessed what procedures can contribute to the realisation of the deadlines in the Regulation. For instance, by implementing interest penalties or the introduction of dispute resolution through binding recommendations by a newly introduced committee.

G. Digitalisation

Digital initiatives such as the ESSPASS have the potential to improve services to EU citizens. The aim of ESSPASS is to simplify the process for mobile workers by enabling them to provide proof of identification and share digital versions of entitlement documents. Maintaining focus on the outcomes of the ESSPASS pilot activities is crucial in order to identify digital processes that address challenges faced by mobile workers, citizens, and administrations. In this context, it is essential to explore synergies and ensure interoperability between social security systems and related sectors, such as labour and company law.

20. Explore amendments to the Regulation to facilitate ESSPASS integration

- **Essence:** The role of digitalisation will shift from being complementary to becoming central to new policies in the field of coordination of social security.
- **Proposal:** Consider a revision of the Regulation and the development of digitalisation initiatives in greater coherence. In concrete terms, it is important to assess what amendments to the Regulation are needed to optimise the utilisation of the ESSPASS.