



European Parliament

**DIRECTORATE GENERAL FOR INTERNAL POLICIES**  
**Policy Department A: Economic and Scientific Policy**

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**Coordination of Social Security  
Systems in Europe**

## Content of the study

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- Key principles and aims of SSC in EU
- Assessment of current SSC rules
- Assessment of the EC proposal
- Summary and Recommendations

# Policy areas addressed by the EC proposal

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- Economically inactive citizens
- Unemployment benefits
- Unemployment benefits (cross-border workers)
- Long-term care benefits
- Family benefits
- Posted workers
- Administrative cooperation

# 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>Bray</i> , <i>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 |   |

# Economically inactive citizens

## Categories at risk

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- 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)

# Economically inactive citizens

## EC proposal

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### Codification of the CJEU case law:

#### 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 (..).

# Economically inactive citizens

## Assessment

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- The codification of the CJEU case law would *de facto* preclude access to SNCB by vulnerable economically inactive citizens
- Reference to ‘social security benefits’ in Art. 4(2) may even restrict access to other benefits possibly deemed to be ‘social assistance’ within the meaning of Dir. 2004/38/EC

# Unemployment benefits

## Current rules and EC proposal

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| Rules                   | Regulation 883/2004  | EC Proposal   |
|-------------------------|--|---|
| <b>Aggregation</b>      | One day rule   | Three month-rule  |
| <b>Export</b>           | Up to three months (possibly extended to six months)   | Up to six months (possibly extended to the whole duration of the benefit) |
| <b>Limits to export</b> | The competent MS may require the beneficiary to stay at disposal of PES for 4 weeks before export is allowed | Unchanged   |

# Unemployment benefits

Focus – Entitlement after less than 3 months of employment in a host MS

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## Current rules

The claimant asks for UB in the **MS of last employment**, possibly aggregating previous periods of employment completed in other MS

## EC Proposal

The MS where at least **three months of employment** have been completed becomes the competent state

# Unemployment benefits

Assessment – Categories negatively affected by the EC Proposal

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

# UB – Cross-border workers

## Current rules

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### 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**

# UB – Cross-border workers

## EC Proposal

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### 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)

# UB – Cross-border workers

## Assessment

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

# Long-term care benefits

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## Current rules

- No definition of LTC benefits under Reg. 883/2004
- LTC considered as part of sickness benefits

## EC proposal

- LTC benefits: 'any benefits in kind, cash or a combination of both for persons who, over an extended period of time, (...) require considerable assistance'.
- LTC coordinated as a separate chapter

# Long-term care benefits

## Assessment

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**Absence of separate LTC coverage in most MS**

### Risks of:

- Failure of coordination and denial of access to LTC
- Increased administrative burden

# Family benefits

## Current rules

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- Entitlement in one competent MS only (for a person and his/her family members)
- 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)

# Family benefits

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## EC Proposal

**Child raising benefits** becomes a 'personal benefit'

No introduction of indexation of child benefits

## Assessment

**Child raising benefits:** Stronger link between **individuals** and the State of insurance

**Indexation of benefits:** Unpredictability of costs for the competent MS and risks of increasing administrative burden while fairness is questionable in the light of costs for raising children abroad

# Posted workers

The current rules and the EC Proposal – focus on the personal scope

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## Article 12

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.

# Posted workers

## Assessment

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- Who are workers 'sent' abroad?
- Alignment with Directive 96/71/EC may create confusion
- 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

## Focus: the certificate of applicable legislation (A1)

| 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, possibly extended to 6 months, second stage to be completed within 6 weeks) | Dialogue procedure in case of doubts over the validity of the A1 form to be completed within 25 days   |
| Conciliation procedure before the Administrative Commission in case of failure to reach an agreement  | Unchanged  |

# Posted workers

Focus: the EC Proposal and the A1 (Art. 20a of Regulation (EC) 987/2009)

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Implementing acts by the European Commission, assisted by the Administrative Commission, shall establish a standard procedure including time limits for:

- 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 be 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.

# Posted workers

## Assessment

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- 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

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**Thank you for  
your attention!!**



# Administrative cooperation

## EC Proposal

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- Definition of fraud and error
- Digitalisation (EESSI) and standardisation of information sharing
- Promotion of bilateral agreements to support mutual assistance

# Administrative cooperation

## Assessment

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- Digitalisation and standardisation shall ease cooperation
- Lack of concrete sanction and enforcement measures in case of failure to cooperate