

Coordination of Social Security Systems

Reform of Unemployment Benefits

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The European Commission, Council and European Parliament are at odds over reforming legislation on the coordination of social security systems. The subject matter of the reform includes provisions on unemployment benefits. This cep**Input** will set out and evaluate the positions of the EU institutions and make the following recommendations for the legislative process going forward:

- ▶ As currently, the right to take unemployment benefits to another state EU-wide should only be stipulated for 3 months and states permitted to decide as regards a longer period.
- ▶ An unemployed person should have a right to claim unemployment benefits from the state in which he/she last fulfilled the relevant qualification period. States should, however, be able to determine the duration of the qualification period for unemployment benefits themselves.
- ▶ Frontier workers and other cross-border workers should receive unemployment benefits from the state in which they were last gainfully employed if they meet the qualification period applicable there. States should be able to prescribe a longer qualification period for such workers than for those who have taken up residence.

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1 Introduction

On 13 December 2016, the EU Commission proposed a reform of the EU legislation on the coordination of social security systems [COM(2016) 815].¹ EU legislation on the coordination of social security systems² regulates which state is responsible for social benefits in cross-border cases and under what conditions a person can claim social benefits in another state. The current provisions apply e.g. to unemployment, sickness and retirement benefits.³ The EU Commission wants inter alia to reform the legislation to coordinate benefits in case of unemployment.⁴

The Council set out its position on the proposal from the EU Commission on 21 June 2018.⁵ The EU Parliament set out its position on 23 November 2018.⁶ Trilogue discussions then began between representatives of the EU Commission, the EU Parliament and the Council. On 19 March 2019, a provisional agreement was reached on the reform of this legislation.⁷ Nevertheless, the Council did not want to confirm the result of the trilogue officially as some Member States did not agree with the negotiated compromise. This is unusual. Normally, confirmation of the trilogue result by the EU Parliament and the Council is merely a formality. The legislative process on the reform of provisions on the coordination of social security systems therefore remains ongoing.

This cepInput will set out and evaluate the positions of the three EU institutions regarding reform of the legislation on the coordination of unemployment benefits and make recommendations for this legislative reform.

2 Context

Free movement is a fundamental right in the EU.⁸ Around 17 million EU citizens live and work in an EU Member State other than that of their nationality.⁹ In order to ensure that people do not lose the social security rights which they have acquired in one Member State, when they move to another Member State, common rules to coordinate the social systems have existed since the 1950s.¹⁰ These rules apply to the 28 Member States as well as to Iceland, Liechtenstein, Norway and Switzerland. The term “state” or “states” as used hereinafter refers to these 32 states.

The rules on coordination apply to all citizens and to nationals of third countries lawfully residing in these states.¹¹

¹ Proposal of the EU Commission, COM(2016) 815, 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.

² Regulation (EC) No. 883/2004 of the European Parliament and of the Council on the coordination of social security systems; Regulation (EC) No. 987/2009 of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems.

³ Art. 3 (1) Regulation 883/2004

⁴ Cf. Proposal of the EU Commission, p. 2 et seq.

⁵ https://www.europarl.europa.eu/doceo/document/A-8-2018-0386_EN.pdf.

⁶ <https://data.consilium.europa.eu/doc/document/ST-10295-2018-INIT/en/pdf>.

⁷ <https://data.consilium.europa.eu/doc/document/ST-7698-2019-ADD-1-REV-1/en/pdf>.

⁸ Art. 45 Charter of Fundamental Rights of the EU.

⁹ https://ec.europa.eu/germany/news/20190320-koordinierung-soziale-sicherheit_de

¹⁰ Commission Staff Working Document SWD(2016) 460, Part 1/6, 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, p. 4.

¹¹ Art. 2 (1) Regulation (EC) No. 883/2004; Art. 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 ground of their nationality.

The provisions on the coordination of social security systems are based on the following four principles:¹²

1. A person is only subject to the rules of one state, i.e. he/she only pays contributions in one state and only receives benefits from one state.
2. A person has the same rights and duties in the state that is responsible for him/her as the nationals of that state.
3. Periods of insurance, employment or residence completed in other states will be taken into account by the responsible state.
4. Rights to cash benefits may be taken to another state - or to use the Commission's terminology: "exported".

The rules on the coordination of social security systems do not harmonise national provisions on social benefits. States decide for themselves on how to organise their social systems, what contributions must be paid and what benefits will be granted. The legislation on the coordination of social security systems only determines the extent to which rights and duties applicable under national law also apply to people who fall within the scope of the coordination provisions.

3 Reform of Legislation on Unemployment Benefits

The reform of legislation on unemployment benefits, which is under negotiation in the current legislative process, mainly concerns the following three areas:

1. How long benefits can be "exported" to another state,
2. The conditions for claiming benefit in another state,
3. Provisions on frontier workers and cross-border workers.

3.1 "Export" of benefits to another state

In principle, the state responsible for the payment of benefits in the event of unemployment (responsible state) is that in which a person last completed periods of insurance, employment or self-employment entitling him/her to claim unemployment benefits (entitlement periods). If a person in the responsible state becomes unemployed and then goes to another state to look for work, he/she retains his/her entitlement to receive unemployment benefits from the responsible state for at least 3 months.¹³ Thus, to a certain extent, the person can "export" - in the words of the Commission - unemployment benefits from the responsible state to the state in which he/she is looking for work.¹⁴ The responsible state may also provide, however, that benefits can be claimed abroad, i.e. exported, for up to a maximum period of 6 months.¹⁵ Where a person returns to the state of his/her last period of gainful employment prior to the expiry of these time limits, he/she will then be able to continue receiving unemployment benefits there in accordance with national law.¹⁶

¹² Commission Staff Working Document SWD(2016) 460, Part 1/6, 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, p. 5.

¹³ Art. 64 (1) (c) Regulation (EU) No. 883/2004.

¹⁴ See EU Commission proposal, COM(2016) 815, p. 3.

¹⁵ Art. 64 (1c) Regulation (EC) 833/2004.

¹⁶ Art. 64 (2) Regulation (EC) 833/2004.

3.1.1 Positions of the EU Institutions

The EU institutions, the EU Commission, EU Parliament and the Council, are agreed that, in future, the responsible state should be able to extend the export of unemployment benefits until the end of the relevant person's entitlement period under national law. The three EU institutions have differing opinions, however, when it comes to the **minimum duration** of export:

- EU Commission: **6 months**
- Council: **3 months** (as currently)
- EU Parliament: **6 months**
- Trilogue: **6 months**

3.1.2 Assessment

The ability to export unemployment benefits is basically appropriate. People who have acquired a right to claim unemployment benefits in one state, should also be able to claim these benefits when they are looking for work in another state. People should not lose the protection of the social security systems due to the fact that they are making use of their freedom of movement. In addition, overall economic efficiency may be increased if disparities between supply and demand on European labour markets are reduced. Firstly, it is in the interests of the state that has to pay unemployment benefits if the recipient finds work abroad because the national system will then be relieved of the burden. Secondly, states which do not have enough working capacity have an interest in the influx of workers from other states.

However, a uniform extension from 3 to 6 months of the minimum period in which unemployment benefits can be exported - as agreed in the trilogue - is economically inappropriate, principally for two reasons:

Firstly: Most job seekers find work in the first 3 months.¹⁷ The current minimum duration is therefore sufficient in most cases. In addition, extending the period in which unemployment benefits can be exported, from 3 to 6 months, does not on average increase the chances of successfully integrating into the labour market of another country.¹⁸ People who have not found a job in another state after 3 months are also highly unlikely to have found work after 6 months.

Secondly: Unemployment benefits are only paid if the recipient proves that he/she is actively looking for work. The authorities of the state that is paying the unemployment benefits therefore check and support the person's efforts to find work. However, the work of the authorities is much more difficult if the unemployed person is located in another state. For this reason, a person who wants to export benefits to another state must register with the responsible authorities of that state.¹⁹ The latter must regularly inform the authorities in the state where the unemployed person was last employed about his/her progress.²⁰ Until now, however, collaboration between authorities and thus the checks on

¹⁷ Export of unemployment benefits, Report on u2 Portable Documents Reference Year 2016, De Wispelaere & Pacalot, 2017 p. 23.

¹⁸ Export of unemployment benefits, Report on u2 Portable Documents Reference Year 2016, De Wispelaere & Pacalot, 2017 p. 21.

¹⁹ Art. 64 (1) (c) Regulation (EU) No. 883/2004.

²⁰ Art. 55 Regulation (EC) No. 987/2009.

unemployed persons abroad are considered to have been inadequate.²¹ This gives rise to the possibility of abuse. One reason for the inadequate collaboration between authorities could be that the state to which unemployment benefits are exported has no financial incentive to integrate the unemployed person because it does not bear the financial burden of the unemployment benefits. Extending the ability to export unemployment benefits from 3 to 6 months would increase the existing problems of checking unemployed persons in another state and thus also the risk of abuse.

Instead of a uniform extension from 3 to 6 months, states themselves should - as is currently the case - be able to decide for themselves on the duration of the export period. At the same time, they should be able to allow export up to the end of the entitlement period specified under national law if they believe that this will facilitate the search for work in another state. States should have the ability either to provide generally for a longer export period under national law or to decide on an extension on a case by case basis. The latter would allow states to make an extension dependent on the actual chances of success of the job search.

In addition, stricter rules on cross-border collaboration between the authorities should be adopted in order to make collaboration more effective and thereby prevent abuse of the unemployment benefits export system.

3.2 Conditions for claiming benefits in another state

When a person moves from one state to another where he/she completes qualifying periods giving rise benefit entitlements, responsibility for payment of unemployment benefits passes from the first state to the second. There is currently no clear indication of how long the periods of insurance, employment or self-employment have to be in one state in order for them to give rise to benefit entitlements in the second state (qualification period). The current version of the rules simply states that the person must have been working there “most recently”.²² Thus the length of the qualification period varies from state to state.²³

3.2.1 Positions of the EU Institutions

The three EU institutions agree that a uniform qualification period should apply to all states in future. The EU institutions have differing opinions, however, when it comes to the **length of the qualification period**:

- EU Commission: The qualification period is **3 months**. If a person does not meet the qualification period, the state in which the person last met the qualification period remains responsible for benefit payments.
- Council: The qualification period is **1 month**. If a person does not meet the qualification period, the state in which the person last met the qualification period remains responsible.
- EU Parliament: The qualification period is **1 day**. As soon as a person starts to work in another state, responsibility for granting unemployment benefits passes to that state.

²¹ Commission Staff Working Document (2016) 460, Part 1/6, 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 68.

²² Art. 61 (2) Regulation (EU) No. 883/2004.

²³ Commission Staff Working Document (2016) 460, Part 1/6, 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 p. 39.

- **Trilogue: 1 month.** If a person does not meet the qualification period, the state in which the person last met the qualification period remains responsible.

3.2.2 Assessment

The current legal position may result in a gap in the protection provided by unemployment benefits: When a person moves to another state but becomes unemployed there before he/she has met the qualification period applicable in that state, he/she has no right to claim unemployment benefits either in this state or the state where he/she worked previously because he/she was not working there “most recently” before becoming unemployed. This gap in protection may dissuade people from seeking work in another state and may therefore have a negative impact on the European labour market. For these reasons, a person who becomes unemployed before he/she has met the qualification period should have rights to claim unemployment benefits from the state in which he/she last met the qualification period. Thus, the positions of the EU Commission and the Council are appropriate.

However, a short uniform qualification period of just 3 months, or even 1 day, for all states is inappropriate. The coordination rules are based on the principle that the state in which a person has paid contributions should be responsible for benefits. Qualification periods uphold this principle by ensuring that a state does not become responsible for benefits until a person has paid contributions in that state for a certain period of time. The qualification periods currently specified individually by the Member States are thus principally aimed at contributing to the fairness of benefits within the relevant social systems. Qualification periods can also be seen to indicate that a state should not be responsible for unemployment benefits until a person has proven, by fulfilling the qualification period, that he/she has integrated well into the national labour market and will therefore be able to find another job in this state. States should therefore be permitted to continue to decide for themselves on the length of the qualification period.

States could of course also use this freedom to lay down relatively short qualification periods. In France, for example, the qualification period is currently just 4 months.²⁴ With short qualification periods, states could help to increase the attractiveness of their domestic labour markets to workers from other states.

In any case, states should not be permitted to impose longer qualification periods on resident non-nationals than those applicable to their own nationals because both groups contribute equally to financing unemployment benefits by way of contributions.

3.3 Frontier workers and cross-border workers

Frontier workers and cross-border workers are subject to special rules. Frontier workers are people who reside in one state and work in another and return to their state of residence at least once a week.²⁵ People who return to their state of residence less than once a week are referred to as

²⁴ Commission Staff Working Document (2016) 460, Part 1/6, 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 p. 39.

²⁵ Commission Staff Working Document (2016) 460, Part 6/6, 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 p. 181 et seq.

cross-border workers.²⁶ Both groups make contributions to the unemployment fund of the state in which they are working. However, until now, the following has applied with regard to unemployment benefits: Frontier workers who become unemployed do not receive benefits from the state where they were last employed but from their state of residence.²⁷ If cross-border workers become unemployed, they have a right to choose. They can either look for a new job in the state where they were last employed and receive benefits from that state, or they can seek work in their state of residence and claim benefits there.²⁸

3.3.1 Positions of the EU Institutions

The three EU institutions agree that, in future, unemployment benefits for frontier workers and cross-border workers will generally be paid by the state in which they were last employed if they have fulfilled the qualification period applicable there. However, there is no agreement when it comes to the **duration of the qualification period**:

- EU Commission: The qualification period is **12 months**. If a person has not fulfilled the qualification period, the state of residence remains responsible.
- Council: The qualification period is **3 months**. If a person has not fulfilled the qualification period, the state of residence remains responsible.
- EU Parliament: The qualification period is **1 day**. As soon as a person starts to work in a state other than their state of residence, responsibility for granting unemployment benefits passes to that state.
- Trilogue: The qualification period is **6 months**. If a person has not fulfilled the qualification period, the state of residence remains responsible.

3.3.2 Assessment

A new provision on the responsibility for unemployment benefits for people who work in a state other than their state of residence is appropriate. The existing provision that the state of residence is responsible for benefits is inappropriate: unemployment benefits is financed by way of contributions from employers and employees.²⁹ People who work in a state other than their state of residence do not pay their contributions in their state of residence but in the state where they are employed. The state where a person is employed should therefore be responsible for unemployment benefits. In addition, the financial burden on the state of residence arising from unemployment benefits for people who have worked in another state is generally higher than that arising from benefits for people who have worked in the home state because the level of benefit is based on the amount of the last salary.³⁰ In most cases, frontier workers and cross-border workers work in states with higher wages than in the

²⁶ Commission Staff Working Document (2016) 460, 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 (2016) 460 p. 181 et seq.

²⁷ Art. 65 (5) (a) Regulation (EC) 883/2004.

²⁸ Art. 65 (5) (b) Regulation (EC) 883/2004.

²⁹ European Commission, Unemployment Benefits in EU Member States, available online at: <http://ec.europa.eu/social/BlobServlet?docId=10852&langId=en>

³⁰ Commission Staff Working Document (2016) 460, Part 1/6, Commission Staff Working Document (2016) 460, 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, p. 81.

state of residence.³¹ For example, the average annual salary in Switzerland in 2018 was around € 72,000, whereas in Germany it was only € 39,000.³² Someone who has been working in Switzerland whilst living in Germany will therefore receive on average higher benefits than someone who has been living and working in Germany. If a person has worked over a long period, and paid contributions, in a state other than his/her state of residence, that state should also be responsible for unemployment benefits as soon as the person meets its qualification period (see Section 3.2.2).

A state should, however, be able to impose longer qualification periods on people working in that state but living in another state as compared with people living and working in that state, i.e. nationals and resident non-nationals because as soon as a person has exhausted his/her right to claim unemployment benefits, he/she still has a right to basic support for job seekers. This basic support is generally financed from tax. A person working in a state other than his/her state of residence pays contributions in the state where they work but continues to pay at least part of his/her tax in the state of residence. He/she therefore contributes less in the state where he/she is working towards the financing of basic support than do those who also live in the state in which they are working. States should therefore be free to impose longer qualification periods.

3.4 Summary of the controversial provisions

Provisions / Position of the EU Institutions	Commission	Council	Parliament	Trilogue
Minimum duration for the export of benefits	6 months	3 months	6 months	6 months
Length of the general qualification period	3 months	1 month	1 day	1 month
Length of the qualification period for frontier workers and cross-border workers	12 months	3 months	1 day	6 months

4. Recommendations for the ongoing legislative process

The EU legislative process to reform the rules on the coordination of social security systems was not completed in the 2014-2019 legislative period. The EU Parliament and the Council will therefore continue to debate the EU Commission's reform proposals in the legislative term that has just begun. As regards the reform of legislation on unemployment benefits, the following recommendations are submitted:

4.1 "Export" of benefits

An unemployed person wishing to seek work in another state should, as is currently the case, be able to export his/her right to claim unemployment benefits to that state. The existing uniform minimum

³¹ Commission Staff Working Document (2016) 460, Part 1/6, Commission Staff Working Document (2016) 460, 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 p. 81.

³² <https://www.worlddata.info/average-income.php>

period of 3 months should not be extended. As currently, states should be able to decide for themselves on whether to extend the export period.

In order to improve the effectiveness of cross-border collaboration between the authorities and thereby prevent abuse of the benefits export system, stricter provisions on cross-border collaboration between authorities should be adopted.

4.2 Conditions for claiming benefits in another state

The current legal position may result in a gap in the protection provided by unemployment benefits if a person moves to another state but becomes unemployed there before he/she has met the qualification period applicable in that state. This gap must be closed. An unemployed person should have a right to claim unemployment benefits from the state in which he/she last fulfilled the relevant qualification period.

The introduction of a uniform qualification period for all states is inappropriate. States should remain able to decide for themselves on the length of the qualification period. States should not, however, be permitted to impose longer qualification periods on resident non-nationals than on nationals.

4.3 Frontier workers and cross-border workers

In the case of frontier workers and cross-border workers, the state in which they last worked should in future be responsible for paying unemployment benefits. A state should, however, be able to impose longer qualification periods on people working in that state but living in another state as compared with people living and working in that state, i.e. nationals and resident non-nationals.

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