

Economic Digital Geographic Social

FAMILIES on the MOVE

#FamiliesMoveEU



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Workshop on Economic move

**Portability of benefits
and services for families
moving within the EU:
breaking down key legal
and practical barriers**

Families on the Move conference

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Introduction

This workshop focused on the portability of social security benefits and services for families moving within the EU. Freedom of movement and residence for persons in the EU is the cornerstone of EU citizenship established by the treaty of Maastricht in 1992. While the EU provides common rules to protect EU citizens' social security rights when moving within Europe, there are a number of legal and structural barriers that families face when relocating to another EU Member State. The situation is especially challenging for families where someone has support needs (e.g. disability), or in cases

where the family form is legally not recognised in another EU Member State (e.g. cohabitating or same-sex attracted couples). The workshop explored these barriers and provided some practical recommendations from local, regional and European levels on how to improve the situation and ensure that the rights of EU citizens are respected. It is important to note that the portability of social benefits and services is a new area for COFACE to work on, therefore this workshop represents an important first step in developing our position and planning further actions.

Reality check and State of play

Dr. Emma Carmel, Associate Professor, University of Bath, UK presented a transnational comparison of the legal complexity and practical challenges of social security portability in the EU. Her presentation built on findings of the TRANSWEL project¹, which analysed the implementation of the EU's portability regulations for four country pairs Bulgaria–Germany, Hungary–Austria, Estonia–Sweden and Poland–United Kingdom.

First of all, it is important to understand that portability always has political, technical and normative dimensions. Furthermore, portability is a good indicator for the perception of who is included in national or European society, and under what terms. In 1971, when the first social security coordination developed in the EU, the context was very different from current trends. Back in the 70s, the diversity of member states' social security systems and labour markets, within the EU was much lower. At this time, a linear model of portability regulation was deemed fit for purpose through aggregating contributions from different places to secure entitlements, or exporting these entitlements. However, analysis from the TRANSWEL project

¹ "Mobile Welfare in a Transnational Europe: An Analysis of Portability Regimes of Social Security Rights" (TRANSWEL) (Starting date: 1 Feb 2015, duration: 36 months), more information about the TRANSWEL project is available at: <https://transwel.org>

showed that a more dynamic view of portability regulation, as co-produced by the EU and its Member States, is necessary to understand how portability works in practice. As the TRANSWEL research identified, portability regulation in the EU is established through the interplay of:

- residency conditions (habitual residency test, length of residence required, additional residency requirements);
- operational conditions (length of entitlement, procedural requirements, institutional complexity, degree of discretion);
- and employment requirements (length of contributions, (dis)continuity of contributions, threshold for paying contributions).

Dr Carmel underlined that regulatory and institutional complexity hides barriers to access and export social security benefits, especially for precarious workers. This complexity includes social security system differences, co-existence of residency rules, or procedural requirements. For instance, the research found that some Bulgarian posted migrants did not have health insurance in Germany. Some specific challenges also derive from the different definitions of 'family' in EU Member States (e.g. only 10 out of 28 EU Member States recognises rainbow families), or from different operational conditions (e.g. a Member State requires certain documents to prove eligibility to entitlements, which simply don't exist in another Member State). Despite the EU's effort to coordinate social security, Member States can still design policies that may undermine this effort and hinder citizen's access to their social rights and benefits. The research showed that the combined effects of EU regulation and

member state policies privilege one-time and long-term migration over mobility per se. During the discussion, participants emphasised that there are also specific challenges in federal states, such as in Austria, or in Germany, where different laws and regulations apply in the different states regarding benefits.

Dr. Mara Yerkes, Assistant Professor, Utrecht University, The Netherlands provided an overview of the barriers and challenges faced by diverse families building on the findings of the bEUcitizen project². The research has been filling an important gap by collecting data on the attitudes towards the mobility of EU residents and their citizenship rights. The pilot study targeted university students in six countries (Denmark, Spain, Croatia, Italy, the Netherlands, and Israel) and on one hand, aimed at exploring differences in national attitudes, and on the other hand, testing newly developed survey items for measuring these attitudes. Their questionnaire focused on which civil³ and social rights⁴ should be granted and to whom (married vs cohabitating couples; heterosexual vs homosexual couples) and what role the respondents feel the EU should play in guaranteeing those rights. Preliminary research results showed polarization between traditional (i.e. Italy

² Yerkes, M., C. Solera, G. Dotti Sani, T. Knijn and M. Naldini. Attitudes of national populations towards social and civil rights for family members and the role of the EU in converging these rights: A cross-national pilot study. Deliverable 9.4 for FP7 Programme bEUcitizen, WP9.

³ Civil rights guarantee an individual's right to equality by due process of law. The focus here is on partnership and parenthood rights.

⁴ Wide cache of rights and benefits, such as the right to work (full employment), income protection, housing, education and healthcare, in essence ensuring a minimum standard of living.

and Croatia) and less traditional (Spain, Denmark, the Netherlands) countries, with a greater gap in traditional countries between approval of rights for married, heterosexual couples versus other family forms. In general, there seems to be greater acceptance of equality of treatment in social, rather than civil rights. Interestingly, in terms of the portability of rights, there is less agreement on the portability of social vs civil rights. One of the problematic aspects about EU citizens maintaining their social rights when they move from one country to another concerns who should pay for such rights. A very high percentage of respondents in Denmark (43%) and the Netherlands (65%) believed that no one should pay, i.e. that social rights should not be portable from one EU country to another.

When it comes to the role of the EU, countries also differ. But in all countries, students seem more in favour of EU regulation in the field of civil rights in comparison to social rights. Furthermore, students more clearly support a harmonizing role for the EU when it concerns civil partnership rather than marriage, both for heterosexuals and homosexuals. Yet, differences in attitudes towards marriage and civil partnership appear stronger in those countries where a legal recognition of civil unions does not exist or is recent, such as in Italy, Spain and Croatia. No differences emerged in the Netherlands and Denmark, where culturally and institutionally, marriage and civil partnership are equally recognized. Dr Yerkes concluded that attitudes present a barrier to improve the enjoyment of civil and social rights for mobile families in the EU, especially for diverse families. However, more data would be needed to assess the real impact of this barrier and to see how EU

initiatives, such as the recently proposed European Pillar of Social Rights, could improve the situation.

Kamil Goungor from the European Network on Independent Living shared his personal experiences in relation to the enjoyment of the right to free movement in the EU. Mr Goungor was one of the first persons who participated in the European Voluntary Service (EVS) with a budget for personal assistant's salary. EVS is an international volunteer programme under Erasmus+, funded by the European Commission. It gives the opportunity to young people (aged 17-30) to work voluntary (full-time) at an organisation or at a public body, in a foreign country within or outside the EU, from 2 weeks to 12 months. The programme gives important learning and working experience for young people and helps to develop their social and practical skills. All essential costs related to the volunteering project are covered, including accommodation, board and transport, as well as some pocket money.

While in theory, EVS is inclusive to all, there are some practical barriers faced by persons with disabilities, beyond the common challenges faced by any other participants. For instance, persons with complex support needs have to find a personal assistant who would travel and stay with them in the hosting country and their salaries and costs need to be covered too. Furthermore, there are some practical (e.g. lack of accessibility) and administrative barriers (e.g. information gap) that have to be tackled beforehand, or on the spot. Mr Goungor's mentioned several examples that clearly showed that the barriers around exporting social benefits can hinder one's enjoyment of the right to

free movement within the EU, despite being a core right for all EU citizens.

Mr Goungor was placed with ENIL, the European Network on Independent Living, as well as Onafhankelijk Leven, a non-profit organisation for Independent Living in Flanders, which is fighting for deinstitutionalisation and the right of persons with disabilities to live independently and to be part of the community. As part of the EVS, Mr Goungor attended and presented at meetings and conferences, completed long-term assignments, as well as carried out administrative work to support the organisations day-to-day operations (staff

meetings, articles, emails, reports, notes, develop survey, social media, collecting data etc.). Mr Goungor's participation in the EVS was not only an important personal and professional experience, but also helped to raise awareness in general on the exclusion of persons with disabilities from EU funded projects and the challenges to export personal budget, or social benefits to another Member State. Nevertheless, his experience can stand as a good example to form the social attitude and show that it is possible for people with complex needs to participate in EU mobility programmes, if they are provided with the necessary support.

Actions and next steps

After discussing different challenges on exporting social benefits across the EU, the afternoon session looked at some on-going actions and good practices from the EU, regional and local level.

Carla Osman, Legal Officer at Directorate General for Employment, Social Affairs and Inclusion at European Commission provided a great overview on the on-going revision of the EU social security coordination rules. The current rules have been in force since 1st May 2010, however society and the labour market are constantly evolving, as are national security systems and the case-law of the European Court of Justice. The aim of making targeted adjustments is to ensure rules are fair, simpler to apply and easier to enforce. The European Commission has

proposed changes in five areas following the outcome of a long consultation process with social security experts and the general public⁵:

- Access of economically inactive citizens to social benefits.
- Family benefits.
- Long-term care benefits.
- Unemployment benefits;
- Social security of posted workers.

The proposed changes include for instance extending the period of exporting unemployment benefits to minimum 6 months and strengthening the cooperation between Member States to support and

⁵ More information is available at: <http://ec.europa.eu/social/main.jsp?langId=en&catId=849&newsId=2699&furtherNews=yes>

monitor jobseekers. Regarding the issue of family benefits exported to the Member State where the child resides, the European Commission decided that there will be no indexation. This decision is based on fairness (for the same contributions paid the same benefits should be accrued) and proportionality (the budgetary impact of indexing family benefits would be minor compared to significant administrative costs that an indexation mechanism would entail). New rules are proposed for the coordination of child raising benefits, by which they would become an individual right or the parent and Member States will have the option to pay them in full. The proposal is one of the initiatives identified for priority treatment in line with the Joint Declaration of the Council, Parliament and the Commission of the EU's legislative priorities for 2017.

The discussion in the Q&A session focused on how 'work' could, or should be redefined, in order to avoid considering those who are carrying out unpaid work as economically inactive citizens (e.g. family carers). For instance, in the UK, the access to family benefits is linked to income, which presents a great disadvantage for those in already a vulnerable situation. The definition of worker is set out in the ECJ case law and includes as elements an activity conducted under hierarchical supervision, for remuneration. Furthermore, the issue of awareness of the rights and social security rules came up during the discussion too. Given that social security regulations are rather complicated both at EU and national level, citizens should be provided with accessible information, including those who are moving to another EU Member State and don't necessarily speak the language of the country. Services

are available at EU level to provide information on social security coordination and assist in cross border problem solving (e.g. Your Europe, SOLVIT). Adequate timing to access social benefits in another EU country is a key factor to mobility. Unfortunately, entitlements are often not available upon arrival, but after some months, which presents an additional barrier for the mobility of persons with disabilities and for people with other support needs and their families. The revision of the Regulations (EC) 883/2004 and 987/2009, and in particular the introduction of a separate long term care chapter should bring more clarity to the rules in this area.

Håkan Stoor, Senior legal adviser, Office of the Parliamentary Ombudsman of Finland presented an excellent regional model, the Nordic cooperation that support citizens in moving with their benefits and services to another Nordic country. There has been close cooperation among Nordic countries for a long time due to their common history and languages, similar societies (welfare states, large public sector) and administrative structures (local self-government, municipalities 100-300/country). The freedom of movement for Nordic citizens is formally guaranteed since the 1950's together with other social rights established via 24 binding multilateral agreements, the so-called 'Nordic acquis'⁶. Since 2007, the removal of barriers to cross-border mobility is a priority area in line with the assessment of the Free Movement Council. In 2017, there are 21 unsolved barriers relating to social protection, including among others transport services for persons with

⁶ More information at: www.norden.org

disabilities, travelling with guide dogs (administrative formalities), or retention of personal assistance for persons with disabilities. There is an on-going political will and a clear plan to tackle these barriers through administrative cooperation and the revision of national laws, as well as the Nordic Convention on Social Services and Social Assistance. The current Convention has been adopted in 1994 and a working group is now looking into how to ensure the compatibility of the Convention with EU Law and to solve some barriers to free movement for persons with special needs, such as disability.

In Nordic countries, assistance and services are provided on the grounds of residence in a municipality (instead of nationality, work, or insurance), yet, some people face challenges when they want to retain their benefits and it is unclear whether this falls under the scope of the Convention, or not (e.g. when they move to a Baltic country). Some of the new provisions would outline that if a person with special needs (e.g. a disability) wants to move to another Nordic country, an obligation should be introduced for the providers of service (local government) to consult each other. Furthermore, a right to apply for services and receive a decision before the moving should be also introduced.

Marie Nyssens, President, La Ligue des familles, Belgium presented her organisation and shared why moving families is a key topic for them to work on this year, given that that mobility has increased into and within Belgium in the past years. She noted some of the emotional, economical and practical challenges that families face when moving to another country and settling in

the community. As a pluralistic non-governmental organisation, La Ligue des familles provides information, advocates for the interest of all families and offers a broad range of support services, including legal aid, childcare services, financial support etc. A small-scale research showed that moving is the third most stressful thing for families, so they decided to develop ideas on how to make it easier to move between continents, or countries, but also within the same city.

The 'Icioci' campaign also aimed to build some bridges during the migration crisis and change positively the attitude of Belgian people towards families who are on the move, due to war, or a humanitarian situation in their home country⁷. They found that it is hard for people to make the first step and to develop contact with their neighbours, nevertheless welcoming new neighbours is an uplifting experience for most people. Therefore, Ligue des Familles started to take part in 'Fête des voisins' an annual neighbour festival in Belgium and to organise city tours led by locals to share useful information about the neighbourhood. Local initiatives like this can make a great impact on the integration of newcomer families and help creating more inclusive and tolerant communities.

⁷ More information at: www.laligue.be/association/campagnes/icioci

Summary

At the end of the workshop, participants agreed on some common challenges and necessary actions that could be taken to improve the situation and remove currently existing barriers from the mobility of families in Europe, with special regard to vulnerable families. This table below summarizes the outcomes of the discussion and the non-exhaustive list includes challenges and potential actions that will hopefully help COFACE Families Europe to shape our future work on this very important topic:

Challenges	Suggestions/Needed Actions
Lack of common definitions across the EU (e.g. family, worker)	Review the definition of worker and include marginalised groups (e.g. recognise family carers and other unpaid roles)
Information gap, lack of knowledge of social rights	Clarify EU and national competences in the area, provide citizens with accessible information
Administrative barriers	Political will at national level to govern benefits that are not covered by EU law, tackle barriers (e.g. delays in accessing entitlements in another EU country)
Attitudes in society	Invest in research and positive campaigns to change the attitude of local communities towards new-comers (e.g. provide them with welcome packages, step by step approach)
Lack of mutual recognition of entitlements	Shift towards a system where people get corresponding benefits if they cannot take their benefits with them
Decentralised services	Public investment in accessible and affordable community-based social and health services
Lack of communication and cooperation between services	Collect concrete problems, good solutions and facilitate discussion among service providers

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