

# THE COORDINATION OF SOCIAL SECURITY SYSTEMS AFTER BREXIT - DISPOSITIONS APPLICABLE FROM 1 JANUARY 2021 AND POTENTIAL LEGISLATIVE CHANGES

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## Abstract

The European Union's secondary law includes several regulations and dispositions concerning the social security rights enjoyed by nationals of the EU Member States, nationals of Iceland, Norway, and Liechtenstein (as states which are part of the European Economic Area), Switzerland, stateless persons, and refugees who reside in one of these states, as well as citizens from third-party states, if they legally reside on the EU's territory and have exercised their freedom of movement.

As a consequence of the United Kingdom's withdrawal from the EU, it has become necessary to clarify the legal status and social security rights that individuals falling into one of the aforementioned categories enjoy, whether they be British citizens whose contributions have been paid in an EU Member State, or citizens of an EU Member State whose contributions have been paid in the UK. The Withdrawal Agreement concluded between the United Kingdom and the European Union covers the cross-border situations in existence at the end of the transition period, which concluded on 31 December 2020. The Trade and Cooperation Agreement between the EU, Euratom, and the UK, which was signed on 30 December 2020, contains provisions regarding the coordination of social security systems between the parties to the Trade and Cooperation Agreement, largely borrowing from the existing EU legislation on the matter, but also diverging from it in some aspects. This article will analyse the relevant provisions of the Withdrawal Agreement, those of the Trade and Cooperation Agreement, as well as potential legislative changes concerning the coordination of social security systems.

**Keywords:** Social security – Brexit – Regulation (EC) no. 883/2004 on the coordination of social security systems – Trade and Cooperation Agreement – Withdrawal Agreement.

## 1. Introduction

The free movement of persons is one of the four fundamental freedoms of the European Union's internal market, alongside the free movement of goods, capitals, and services,<sup>1</sup> and it represents a key aspect of the European citizenship.<sup>2</sup> When a person works in a state that is different from their state of origin, or when they're detached or posted to another state, an issue of particular interest is that of the social security system they will contribute to, with the obvious risk being that of having to contribute to two (or more) such systems. The coordination of social security systems is thus essential to ensuring that the persons exercising their freedom of movement are guaranteed social security protection when moving from one Member State to another, and that they don't lose accrued benefits. To that purpose, EU law on the subject matter follows four principles: non-duplication (persons in cross-border situations are subject to the legislation of a single state),

non-discrimination (they must enjoy the same rights as the citizens of the state to whose legislation they are subject), aggregation (periods of work carried out in different EU Member States all count towards contributory benefits), and exportability (benefits earned in one Member State carry over to another, when the beneficiary moves).<sup>3</sup>

As long as the United Kingdom was a Member State of the European Union, it complied with the organisation's legislation in this matter, following the four principles, but the British state's departure from the Union means that EU law will no longer apply to it. 1 January 2021 marked the end of the transition period introduced by the Withdrawal Agreement<sup>4</sup> concluded between the EU and the UK. The contents of said Agreement ensure that citizens finding themselves in a cross-border situation at the end of the transition period will continue to be protected in accordance with EU legislation on the matter of social security, for as long as the cross-border situation continues without interruptions. In the case of cross-border situations

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<sup>1</sup> EU law provisions regarding the four freedoms of movement also apply to the three states (Norway, Iceland, and Liechtenstein) that are part of the European Economic Area alongside the EU Member States, as well as in Switzerland's case, by way of a series of bilateral agreements concluded between the state and the EU. For more on the free movement of persons, see Augustin Fuerea, *Dreptul Uniunii Europene. Principii, acțiuni, libertăți*, Universul Juridic, Bucharest, 2016.

<sup>2</sup> Introduced through the Treaty of Maastricht, which was signed in 1992 and came into force in 1993. For more on this subject, see Augustin Fuerea, *Manualul Uniunii Europene*, Sixth Edition, Universul Juridic, Bucharest, 2016, p. 68, and Paul Craig, Gráinne de Búrca, *EU Law: Text, Cases, and Materials*, Sixth Edition, Oxford University Press, 2015.

<sup>3</sup> Meghan Benton, 'Reaping the Benefits? Social Security Coordination for Mobile EU Citizens,' *Policy Brief Series*, Issue No 3, Migration Policy Institute, Brussels, 2013, p. 3.

<sup>4</sup> Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (2019/C 384 I/01), OJ C 384I, 12.11.2019, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12019W%2FTXT%2802%29> (accessed on 20 March 2021).

occurring, between the EU and the UK, from 1 January 2021 onwards, the applicable provisions are those contained in the Trade and Cooperation Agreement,<sup>5</sup> signed on 30 December 2020 by the two parties, which includes a Protocol on the matter of social security, governing newly occurred cross-border situations.

## 2. Historical aspects and current EU secondary legislation on the matter of social security coordination

The UK's position on the matter of free movement of workers (and, implicitly, aspects related to the social security awarded to cross-border workers) and border control has been one influenced, in part, by its status as an island state,<sup>6</sup> a status which was invoked to explain its decision to opt out of the Schengen acquis. At the time, the UK's argument was that the possibility of strictly controlling its borders, a possibility awarded by it being an island, was too valuable to forego in favour of joining the Schengen Area. The UK's objection was solely focused on the issue of the elimination of border controls on persons, and the risk it would supposedly pose, while considering the elimination of internal frontiers with respect to goods, services, and capitals a desirable and advantageous development.<sup>7</sup> Despite signing the Single European Act,<sup>8</sup> which 'contributed to the Community's competence to adopt legislation in the field of social policy' and set the stage for the future adoption of the Community Charter of the Fundamental Social Rights of Workers in 1989, the UK chose not to adopt the Charter, and later chose to opt out of the Social Chapter annexed to the Maastricht Treaty, in the form of a Protocol which 'provided the EU with greater legislative competences and enhanced the role of the social partners and collective agreements at EU level'.<sup>9</sup> The UK started following the EEC's legislation on this matter in the late 1990s, when the Treaty of Amsterdam<sup>10</sup> consolidated all the existing dispositions on Social Policy in a single title.

At present, according to the UK's national provisions, employees and employers both are liable to pay UK National Insurance contributions (NICs), if they are resident, present, ordinarily resident, or have a place of business (in the case of employers) on the UK's territory. While the UK was a member of the European Union, employees who were nationals of an EU Member State, Norway, Iceland (as members of the EEA), or Switzerland had their social security rights protected under EU legislation. After the UK's withdrawal from the EU, this must naturally change.

At the supranational level, there have been provisions on the coordination of social security systems ever since the European Economic Community (today, the European Union) started its existence, with the signing of the Treaty of Rome, in 1957.<sup>11</sup> At the time, the Council (the legislative institution) adopted two regulations concerning the matter of social security for cross-border workers: Regulations No 3/1958 and 4/1958.<sup>12</sup> Ever since, dispositions on this subject matter have expanded, with the EU's institutions aiming to adopt legislation that would offer as thorough protection as possible for the persons exercising their right to freedom of movement. The EU legislation does not replace national legislation on the matter of who is insured, what benefits they receive, and under what conditions, focusing on aspects like the cumulation of periods when the person has been insured on the territory of a Member State, when calculating benefits.

The two 1958 regulations were replaced by Regulation (EEC) No 1408/71<sup>13</sup> and its corresponding Implementing Regulation (EEC) No 574/72.<sup>14</sup> The most recent legislative acts on the matter, which replaced the ones adopted in the 1970s, are Regulation (EC) No 883/2004<sup>15</sup> and its implementing act,

<sup>5</sup> Trade and Cooperation Agreement between the European Union and European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, OJ L 444, 31.12.2020, available at [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L\\_.2020.444.01.0014.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2020.444.01.0014.01.ENG) (accessed on 20 March 2021).

<sup>6</sup> Yves Jorens, Grega Strban, "New Forms of Social Security for Persons Moving Between the EU and the UK?", in Nazaré da Costa Cabral, José Renato Gonçalves, Nuno Cunha Rodrigues (Eds.), *After Brexit. Consequences for the European Union*, Palgrave Macmillan, 2017, p. 271.

<sup>7</sup> Elspeth Guild, "The Single Market, Movement of Persons and Border", *The Law of the Single European Market*, Catherine Barnard, Joanne Scott (eds.), Hart Publishing, 2002, p. 298.

<sup>8</sup> The Treaty was signed in 1986 and came into force in 1987.

<sup>9</sup> Yves Jorens, Grega Strban, *op. cit.*, p. 273.

<sup>10</sup> The Treaty was signed in 1997 and came into force in 1999.

<sup>11</sup> The Treaty came into force in 1958, alongside the Treaty establishing the European Atomic Energy Community, which had also been signed in 1957, in Rome.

<sup>12</sup> Regulation No 3 concerning the social security of migrant workers and Regulation No 4 establishing the methods of implementation and completing the dispositions of Regulation No 3 concerning the social security of migrant workers.

<sup>13</sup> Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community.

<sup>14</sup> Regulation (EEC) No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community.

<sup>15</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems. The regulation also applies with regards to the EEA and Switzerland.

Regulation (EC) No 987/2009,<sup>16</sup> which came into force in 2010.

Regulation (EC) No 883/2004 on the coordination of social security systems in the EU was modernised and implemented through Regulation (EC) No 987/2009 on coordinating social security systems, which repeals Regulation (EEC) No 574/72. According to Regulation (EC) No 883/2004, social security contributions are payable in a single Member State, usually the one where the person is working, thus ensuring that people exercising their freedom of movement are not liable to pay double contributions. Special dispositions apply to detached workers (persons employed in one Member State, but sent to work in another), and multi-state workers (persons working in two or more Member States), as well as other exceptional situations, like those of self-employed workers. The Regulation contains six titles and eleven annexes. Title I, 'General provisions', lists a series of definitions, the persons and matters covered by the act, and the principles upon which the coordination of the security systems is founded – equality of treatment, aggregation of periods of insurance, employment, self-employment or residence, waiving of residence rules, and prevention of overlapping of benefits. Title II, 'Determination of the legislation applicable', states the core principle of the matter – persons to whom the Regulation applies are subject to the legislation of a single Member State of the EU. The text then sets out the rules according to which said legislation is determined. Title III, 'Special provisions concerning the various categories of benefits,' legislates the titular types of benefits, such as sickness, maternity, and equivalent paternity benefits, and pensions. Title IV, 'Administrative Commission and Advisory Committee,' regulates the Administrative Commission for the Coordination of Social Security Systems and other procedural aspects. Title V, 'Miscellaneous provisions', addresses matters such as the cooperation between Member States of the EU, the protection and processing of personal data, the collection of contributions and recovery of benefits (which can be effected in another Member State than that to whose institutions the contributions are due), the rights of the institutions responsible for providing the benefits. Title VI of the Regulation contains 'Transitional and final provisions.'

Regulation (EC) No 987/2009 on coordinating social security systems contains five titles and five annexes. Title I, 'General provisions,' covers definitions of the terms used within the regulation, rules on the cooperation between the institutions responsible for social security at the EU's and the Member States' level, and dispositions concerning the determination of

residence, the aggregation of periods of contributions, and the prevention of overlapping of benefits. Title II, 'Determination of the legislation applicable', sets out a list of criteria, so that persons falling under the scope of the regulation will be subject to the legislation of a single Member State. Title III, 'Special rules concerning the various categories of benefits', contains dispositions on matters such as sickness, maternity and equivalent paternity benefits; benefits in respect of accidents at work and occupational diseases; death grants; invalidity benefits and old-age and survivors' pensions; unemployment benefits; family benefits. Title IV, 'Financial aspects', regulates the reimbursement and recovery of the costs of benefits, while Title V, 'Miscellaneous, transitional and final provisions' regulates the entry into force of the act, and issues such as medical examinations, administrative checks, and currency conversion.

### 3. Provisions of the Withdrawal Agreement and of the Trade and Cooperation Agreement

The Withdrawal Agreement concluded between the European Union<sup>17</sup> and the United Kingdom regulates, in Title III, the matter of the coordination of social security systems post-Brexit. The persons covered by its dispositions<sup>18</sup> include:

a) Union citizens (and their family members and survivors) who, at the end of the transition period, are either subject to the legislation of the United Kingdom, or who reside in the United Kingdom and are subject to the legislation of a Member State at the end of the transition period';

b) United Kingdom nationals (and their family members and survivors) who, at the end of the transition period, are subject to the legislation of a Member State, or who reside in a Member State, and are subject to the legislation of the United Kingdom;

c) Union citizens and United Kingdom citizens (and their family members and survivors), who are employed or self-employed on the territory of the other part to the Agreement, while being subjected to UK law and EU law, respectively;

d) stateless persons, nationals of third countries, and refugees (and their family members and survivors), if they reside on the territory of one of the parts to the Agreement, and are in one the previously mentioned situations, and fulfil the requirements of Council Regulation (EC) No 859/2003 (14), in the case of third-country nationals;

e) persons (and their family members and survivors) who don't fall within any of the previous

<sup>16</sup> Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems. The regulation also applies with regards to the EEA and Switzerland.

<sup>17</sup> All relevant dispositions apply similarly in the case of Euratom, as per Art. 7 of the Withdrawal Agreement.

<sup>18</sup> Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (2019/C 384 I/01), OJ C 384I, 12.11.2019, Art. 30.

categories, but who fall within the scope of Article 10 of the Agreement.

The persons mentioned will be covered by the dispositions of EU law ‘for as long as they continue without interruption to be in one of the situations set out in that paragraph involving both a Member State and the United Kingdom at the same time.’

According to the Withdrawal Agreement, the dispositions contained in Article 48 TFEU, Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 of the European Parliament and of the Council will continue applying to the aforementioned categories of persons.<sup>19</sup>

In terms of special situations covered by the Agreement,<sup>20</sup> it is mentioned that the EU’s dispositions on ‘aggregation of periods of insurance, employment, self-employment or residence, including rights and obligations deriving from such periods’ will continue to apply to persons in cross-border situations (and their family members and survivors) if, despite not fitting one of the categories identified in Article 30, they were subject to the legislation of the other party to Agreement, at the end of the transition period. In these persons’ cases, the periods completed both before and after the end of the transition period will be aggregated, according to Regulation (EC) No 883/2004.

The EU legislation on social security will continue to apply, even after the transition period, to persons who, before its end, ‘had requested authorisation to receive a course of planned health care treatment pursuant to Regulation (EC) No 883/2004, until the end of the treatment,’ as well as persons who are on a stay at the end of the transition period in a Member State or the United Kingdom, for the duration of that stay. The Withdrawal Agreement regulates the family benefits awarded, after the end of the transition period, to persons who are in a cross-border situation and who have family members residing on the territory of the other part to the Agreement.<sup>21</sup> The EU’s provisions on such benefits will continue to apply for as long as the persons concerned fulfil the conditions of the two regulations on the subject.

EU legislation on the matter of social security will also continue to apply to nationals of Norway, Iceland, Liechtenstein, and Switzerland, provided that those states conclude corresponding agreements with the UK and with the EU, which apply to Union citizens and British citizens respectively.<sup>22</sup>

Concerning the matter of administrative cooperation, the Withdrawal Agreement provides that the UK shall have the status of observer in the Administrative Commission, where it may send a representative, if the items on the agenda concern the British state, and that it shall also take part in the Electronic Exchange of Social Security Information (EESSI).<sup>23</sup> The EU provisions on reimbursement, recovery and offsetting will continue to apply in the case of the persons mentioned in Article 30, as well as those situations which occurred before the end of transition period, or which occurred after but involve the persons covered by Articles 30 and 32.<sup>24</sup>

Should Regulations (EC) No 883/2004 and (EC) No 987/2009 be amended or replaced after the end of the transition period, the new dispositions shall apply wherever the two regulations are mentioned within the Agreement.<sup>25</sup> This means that the UK will be held to enforce regulations that it did not have a hand in elaborating and adopting, and it also means that the persons falling under the scope of the Withdrawal Agreement will enjoy a level of protection similar to that of citizens of EU Member States.

As the dispositions of the Withdrawal Agreement only cover the cross-border situations in existence at the end of the transition period, with small exceptions, it was necessary for the EU and the UK to negotiate and conclude a different agreement concerning situations that would arise from 1 January 2021.

In December 2020, EU and UK negotiators agreed on a Trade and Cooperation Agreement which came into force on 1 January 2021 and which covers several important aspects of the parties’ relationship after Brexit. The matter of the coordination of social security systems between the EU’s Member States and the UK was addressed through a Protocol annexed to the Agreement, thus ensuring that the UK will apply the same conditions, in this matter, for all EU Member States, avoiding discrimination between their citizens. Titled ‘Protocol on social security coordination’, and comprising of 5 titles and 8 annexes, it includes provisions regarding the applicable legislation to cross-border situations (maintaining the principle that individuals are to be subject to the legislation of a single state),<sup>26</sup> aggregation of insurance periods, exportability of benefits, and the equal treatment of workers. The Protocol will be in effect for 15 years, or until it is extended by mutual agreement,<sup>27</sup> or terminated by

<sup>19</sup> *Ibidem*, Art. 31.

<sup>20</sup> *Ibidem*, Art. 32.

<sup>21</sup> *Idem*.

<sup>22</sup> *Ibidem*, Art. 33.

<sup>23</sup> *Ibidem*, Art. 34.

<sup>24</sup> *Ibidem*, Art. 35.

<sup>25</sup> *Ibidem*, Art. 36.

<sup>26</sup> Trade and Cooperation Agreement between the European Union and European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, OJ L 444, 31.12.2020, available at [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L\\_.2020.444.01.0014.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2020.444.01.0014.01.ENG) (accessed on 20 March 2021), Protocol on social security coordination, Art. SSC. 10.

<sup>27</sup> *Ibidem*, Art. SSC. 70.

either party.<sup>28</sup> It must also be noted that the Protocol only covers the UK's relationship with the EU's Member States, while the relationship with the European Free Trade Association states<sup>29</sup> must be regulated through bilateral agreements.

The Protocol mostly replicates the existing rules on social security coordination, and it specifies that affected workers will be subject to the legislation of only one state, determined in accordance with the Protocol, thus avoiding double imposition of taxes and contributions or the lack of a layer of social security. However, there are some differences, compared to the applicable EU regulations, and some protection measures are absent.

In the case of persons working in the UK for EU companies, the Protocol provides that the employers are liable to pay National Insurance contributions and account for their employees' National Insurance contributions. UK companies, regardless of not being resident in the EU, will pay employer social security contributions and account for the social security contributions for all of their EU-based employees. In terms of reciprocal healthcare arrangements, it's stated that persons travelling between the EU and the UK will be covered under their existing European Health Insurance Card (EHIC), or equivalent such as a Provisional Replacement Certificate (PRC), with the UK likely replacing, in the future, EHICs with a UK Global Health Insurance Card (GHIC).

The Protocol also addresses the matter of detached workers.<sup>30</sup> In the case of cross-border situations occurring, between the EU and the UK, from 1 January 2021 onwards, employers will be able to detach workers to the territory of the other party to the agreement and have their contributions paid in the state of origin for up to 24 months. After that point, the social security legislation of the host state will apply, unless the EU Member States and the UK conclude a new agreement on the matter. This means that persons sent by UK employers to work in the EU for periods of up to 24 months, and not to replace another detached worker, will remain liable to contribute to the UK social security system, on the condition that the Member State to which the worker was sent agrees to these rules. If it did not, the person in question would be at risk of dual contribution liability, and employers would become liable to foreign social security, being subject to the legislation in both the UK and the state to which they were sent to work in.

A provision contained by the EU's regulations, but not by the Protocol, is one according to which a detached worker can continue contributing to the social security system of their state of origin, in exceptional circumstances, usually for a period of up to 60 months, on the condition that the other state approves it. In

addition, family benefits are excluded from the Trade Agreement, affecting some detached workers.

Different from detached workers, posted workers are sent to work for a different entity (that usually forms part of the same group as the employer in the state of origin); they fall under the legislation regarding the free movement of services, not the free movement of persons, and the Agreement does not cover them. Consequently, a worker posted from the UK to an EU Member State, to work for an EU entity, will pay contributions according to the legislation of the host state, and might continue to be liable to pay contributions in the UK as well. As a transitional measure, Member States of the EU may request to continue the existing posting system for a period of up to 15 years (with the possibility to end it sooner than initially requested), during which the posted workers will contribute to the social security system of the UK. Consequently, the treatment of posted workers will not be uniform, considering the possibility that Member States have to either retain the existing system or not, and if they do retain it, they can do so for different lengths of time.

Another subject covered by the Protocol is that of multi-state workers – persons who conclude most of their work in the UK, but also spend at least 5% of their working time in one or more of the EU Member States, and vice versa. According to the Protocol, that worker contributes to the social security system of the state where they are habitually resident, on the condition that at least 25% of their working time is spent or their remuneration earned in that jurisdiction. If that condition is not fulfilled, there are several tests which will be performed to determine the state where that person will be liable to social security contributions. Unlike the case of detached workers, EU Member States cannot opt out of these dispositions. The Protocol does not extend to Norway, Iceland, Liechtenstein, and Switzerland on this issue, and the matter of multi-state workers must be regulated through bilateral agreements between these states and the UK.

The Protocol doesn't cover all types of benefits that the EU regulations do, and does not, thus, provide the same level of protection. An Annex to the Protocol lists all the benefits that are excluded, divided into special non-contributory cash benefits, long-term care benefits, and payments awarded to meet expenses for heating in cold weather. Each Member State, and the UK respectively, has decided which benefits it wishes to exclude from the scope of the Protocol. For example, Bulgaria has decided to exclude social pension for old age, France has excluded the disabled adults' allowance, and Ireland has excluded jobseekers' allowance. The United Kingdom has excluded, among others, the winter fuel payment, carer's allowance, the

<sup>28</sup> *Ibidem*, Art. SSC. 69.

<sup>29</sup> Iceland, Liechtenstein, Norway, and Switzerland.

<sup>30</sup> *Ibidem*, Art. SSC. 11.

state pension credit, and income-based allowances for jobseekers.

As far as determining which legislation is the one applicable, the Agreement states that people will be subject to the legislation of the state on whose territory they are employed or self-employed. Civil servants are subject to the legislation of the state employing them in its administration. Persons who don't fit in any of the previous categories are subject to the legislation of their state of residence. Special provisions, similar to the ones previously applicable, are also laid in place for persons working on board vessels at sea flying the flag of a different state, and for flight and cabin crew members.

#### 4. Potential legislative changes

On 13 December 2016 the Commission put forward a proposal<sup>31</sup> to revise the current legislation regarding the coordination of social security systems (specifically, Regulations 883/2004 and 987/2009). The Commission's proposal focuses on facilitating labour mobility and cooperation between the authorities of the Member States, and updates the existing provisions in four main areas: unemployment benefits, long-term care benefits, access of economically inactive citizens to social benefits, and social security coordination for posted workers. Under current rules, jobseekers can export their unemployment benefits for a minimum period of 3 months; this period is raised to a minimum of 6 months, in the Commission's proposal, offering better protection to jobseekers. Concerning frontier workers (persons who work in a different state than the one where they live, and who go to their state of residence at least once a week), the proposal states that unemployment benefits would be paid by the Member State where they worked for the last 12 months.

Simultaneously, Member States' interests are protected through a proposed provision regarding a minimum amount of time (3 months) that someone would have to work on the territory of a state, before they could claim unemployed benefits, upon becoming jobless, that take into account previous experience in another Member State. The Commission's proposal also clarifies that 'Member States may decide not to grant social benefits to mobile citizens which are economically inactive citizens – this means those who are not working nor actively looking for a job, and do not have the legal right of residence on their territory. Economically inactive citizens have a legal right of residence only when they have means of subsistence and comprehensive health coverage.'

In the case of posted workers, the proposal provides tighter administrative rules, which are meant

to ensure that national authorities can adequately verify the social security status of said workers, and can cooperate with the authorities of the other Member States in order to address potentially unfair practices or abuse.

The Commission's proposal does not introduce any changes to the rules on export of child benefits, with the parent's host state (i.e. the state where the parent works) remaining responsible for paying the child allowances. Despite the fact that social benefits in general, and child benefits in particular,<sup>32</sup> were among the topics raised during the debate which preceded the UK's vote on its withdrawal from the European Union, it can be noticed that the EU Member States and its institutions continue to display support for the coordination of social security systems at an EU level, and for ensuring that all individuals exercising their freedom movement are protected as well as possible.

A provisional agreement, regarding the project, was reached between the Commission and the European Parliament in 2019, under the auspices of the Romanian Presidency of the Council, and the proposal continues to be negotiated between the EU's institutions.

#### 5. Conclusions

The EU's dispositions on the coordination of social security systems constitute a guarantee that citizens of the Union's Member States, as well as other persons covered by its primary and secondary law, can exercise their freedom of movement while having their rights fully protected, and without risking a situation where the legislation of more than one state becomes applicable to them, creating an obligation to contribute to several social security systems. In short, the free movement of people could not function optimally without these EU rules in place. The Union's institutions also make sure to periodically reexamine and revise these rules, so that they accurately reflect the current social, political, and economical context, and offer the highest protection possible, at the time, to the persons falling subject to this legislation.

As long as the UK was a member of the EU, and willing to participate in measures concerning social policy matters, its citizens also enjoyed this level of protection, when working in another Member State, and, simultaneously, citizens from those states also enjoyed the same privileges (and were held by the same obligations) when working in the UK. Despite the UK's initial reluctance to transfer competences in this area to the supranational level, time proved that doing so was advantageous both to its citizens and to its economic operators, both categories benefiting from the clarity and the simplified procedures provided by the EU's

<sup>31</sup> Details at <https://ec.europa.eu/social/main.jsp?langId=en&catId=849&newsId=2699&furtherNews=yes> (accessed on 20 March 2021). For more on this proposal and its connection to the UK's withdrawal from the EU, see Augustin Fuerea, "Brexit - limitele negocierilor dintre România și Marea Britanie", *Revista de Drept Public*, nr. 4/2016, Universul Juridic, Bucharest, p. 111-112.

<sup>32</sup> According to the Commission's data, less than 1% of child benefits in the EU are exported from one Member State to another.

applicable legislation. This is confirmed by the fact that, even after having withdrawn from the Union, the UK agreed to prolong the effect of said legislation with regards to cross-border situations already in existence at the end of the transition period (31 December 2020). In addition, the UK agreed to annex the Protocol on Social Security Coordination to the Trade and Cooperation Agreement, a Protocol which largely duplicates EU legislation on the subject. For now, the UK's withdrawal from the Union has not brought any advantages to its citizens, in the area of social policy, and has instead led only to the loss of some benefits and advantages, considering the EU's Member States have the possibility, under the terms of the Protocol, to opt out of certain measures, while other possibilities guaranteed by the EU's Regulations are entirely absent from the Protocol's text. Moreover, if the EU's social

policy legislation no longer applies to it, the UK must conclude separate agreements with the three EEA members who are not part of the EU, which gives those states the possibility to negotiate more advantageous terms for themselves, possibly to the detriment of UK citizens.

At a time when cross-border workers are more and more numerous, and such situations are likely to arise with a greater frequency than ever before, the loss of a mechanism that ensures a smooth and efficient coordination of social security systems does not bring any considerable advantages, suggesting that, at least on this specific issue, withdrawal from the European Union is a decision that brings clear disadvantages to the citizens and economic operators of the withdrawing state.

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