



# Social security system coordination after Brexit

Free movement provides for more than the right to work in partner countries

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The issue of future EU-UK relations has many facets. Among those widely overlooked so far are the consequences for the coordination of social security systems. Will the EU's social and labour law-related standards still apply in the UK after Brexit? Will British pensioners living in France or Spain still be allowed to reside there and to receive a full pension? What about EU citizens' access to services from Britain's National Health Service (NHS)? Will bankers who have migrated from London to Frankfurt still be eligible to receive the German child benefit for their children who stayed behind?

The answers depend on the kind of relations the British government wants to establish for the time after Brexit. Among the options debated at present we will discuss two: (i) the UK switches to the European Economic Area (EEA) and (ii) it acquires the status of a third country with privileged trade relations, i.e. the WTO solution. Focusing on these two (extreme) scenarios helps to clarify how deeply an exit from the Single Market would cut into the entitlements of mobile citizens to social benefits in partner countries. In this scenario the need for new bilateral regulation would be accordingly pronounced if the political actors on both sides wanted to secure the existing entitlements and other social protection rights.

In the unlikely event of a pure switch from EU to EEA membership with limited restrictions on the free movement of labour, most things would stay as they are today. This holds true for the consequences for factors in the UK as well as for those in the EU and the other EEA countries. However, the British government would lose the power to directly participate in the EU law-making procedure.

The EU citizens' right of free movement in the Single Market is accompanied by strong social protection rights. The pivotal aspect here is the prohibition of any discrimination on grounds of nationality as laid down in Article 18 of the Treaty on the Functioning of the European Union. This key rule is complemented by the rules on coordination of the social security systems. The relevant legislation, i.e. Regulation (EC) No 883/2004, defines the kind of social benefits which mobile persons can claim in partner countries. The regulation also stipulates the relevant competences, namely that persons moving within the EEA are subject to the social security scheme of only one single Member State. In addition, the EU has defined a variety of minimum standards in the area of labour and labour



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protection law such as the EU Working Time Directive, which attracted strong criticism in the UK.

By joining the EEA the UK could not rid itself of these regulations and unpopular standards. This would go against the EEA Treaty's provision that the relevant EU social law and labour protection laws are to be applied in the EEA countries, too. As a result citizens, workers and corporations in the EEA countries, i.e. today (the EU plus) Norway, Iceland, Liechtenstein and Switzerland (according to the agreement on free movement), have the same rights and obligations as their counterparts in the EU.

The coordination rules protect the entitlements and accrued rights of mobile citizens in partner countries, especially in terms of (cash) benefits from the major branches of social security financed by contributions. Mobile workers (employees and self-employed) and their dependants are eligible to receive such benefits on the same criteria as nationals. All rights and advantages acquired in one member state have to be maintained. For social security (cash) benefits, a strong principle of exportability applies, i.e. these benefits have to be paid to entitled persons living in a partner country, too.

In practice, this primarily applies to pensions. The EU rules guarantee that retired workers will get their pension in accordance with the contributions they once paid in no matter in which member state they live and even if they paid their contributions in several countries. Therefore the competent pension authorities have to aggregate all periods of pension insurance from all EEA countries involved when they calculate an individual's pension. Member states are also obliged to export family benefits as well as (in principle) unemployment benefits among others. However, this does not apply to (means-tested) welfare benefits.

In the health sector EEA citizens are entitled to (unplanned) medical treatment in partner countries. This benefits workers, pensioners and students who temporarily live in the host country and persons on holiday who need (emergency) medical aid there. These citizens can get the necessary medical treatment without advancing a cash payment (according to their home country's rules) on the basis that they are members of a public health insurance scheme in their home country and are able to demonstrate this by presenting a European Health Insurance Card (EHIC). Then the home country's scheme will bear the incurred costs. For pensioners who permanently reside in a partner country the situation is slightly different. Here the home country's scheme usually bears the cost only in case the pensioner does not receive a pension or parts of his pension (due to accrued rights) or other income from his host country.

While the free movement and coordination rules would not be affected if the UK joined the EEA, a third country status for Britain would invalidate these rules. Of course, this would entail substantial consequences especially for British pensioners in Spain and other EEA countries.\* They would not run the risk of being deported. According to international law and practice their right to reside acquired before Brexit would remain valid. However, the respective UK pensioners could no longer be sure to receive annual increases to their state



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pension, as outside the EEA the UK state pension is only up-rated if there is a reciprocal social security agreement requiring this.\*\*

More important for the respective pensioners would be a possible loss of health care insurance coverage. As a result of an exit from the EEA British citizens could lose their eligibility for cashless medical treatment in member states. Vice versa, the EEA citizens' access to the NHS's services in the UK would be challenged. Mobile UK pensioners would face further problems. They could no longer count on the principle of aggregation of insurance periods, i.e. that the official calculation of their pension would include rights acquired in another EEA country. In general, many pensioners would find it more complicated to claim pensions or the recognition of accrued rights from EEA member states, as in this scenario the present one-stop-shop principle would be abolished. In fact, EU citizens in the UK would face the analogous problems. Last but not least, British employees working in the EEA could in principle no longer expect to be eligible to receive child benefit for their children living in the UK, although this might be different with regard to child allowances that are an element of national income taxation like in Germany.\*\*\*

These examples demonstrate the problematic consequences of an exit from the EU's coordination of social security schemes. In short, Britons in the EEA as well as EU citizens in the UK would be confronted with less social protection but more red tape. Thus Brexit might impact the mobility also of skilled labour in Europe. This would be an additional burden on economic growth, which is weakened anyway as a result of the outcome of the UK referendum. To avert such consequences it would be necessary to implement similar new social coordination rules on the basis of bilateral treaties.

1. ) \* At present about 300,000 UK citizens live in Spain, and about 170,000 in France. Amongst the latter about 61,000 received a UK state pension in 2015.
2. ) \*\* See House of Commons Library (ed.) (2016). Brexit – implications for pensions. Briefing Paper, No. CBP-07629, 20 July 2016.
3. ) \*\*\* The child allowance in the German income tax schedule reflects the assumption that a taxpayer's ability to pay tax is reduced if he or she has a child. In principle, the child allowance is applied to children living abroad, too. However, for children residing in countries outside the EEA the tax authorities apply only a fractional amount of the general allowance. The relevant fraction depends on the cost of living in the respective country and with regard to these costs countries are classified in four groups. For example, for children in Brazil and Chile 50% of the general allowance is applied, and for children in Albania or Bolivia, 25%.

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