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# What Impact does the Freedom of Movement have on Social Protection Systems in the European Union?

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The freedom of movement is one of the pillars of European integration: one is impossible without the other<sup>1</sup>. After article 50 is triggered by the British government, it will mainly be on this principle that future negotiations with the UK to define the terms of divorce will be based. The latter would like to be able to benefit from total access to the European Single Market without having to accept the free movement of citizens on its territory. And this is because the referendum campaign that led the country to its departure was focused on the fight to counter intra-community migration, in other words that of European citizens. The decision of the British people on 23rd June 2016 was won on the simple idea that European migrants were costing the UK too much. As of February and quite exactly during the European Council on 20th and 21st of that month in 2016, the then British Prime Minister David Cameron revealed to his counterparts the conditions that would have to be accepted for the UK to consider remaining in the club: the limitation of social aid to European migrants. Whether it was the Brexit or Remain camp, the issue of the pressure of community migrants on social protection systems was on everyone's lips. And the rise of anti-European populism in most of the Member States is the sign that the question was not being asked just on one side of the Channel. In France the so-called "Molière" clause is a glaring example of these excesses: obliging workers to speak French on worksites under the pretext of safety in the workplace is just an excuse to discriminate against foreign workers who participate in the economy of the country. I reject this approach: it is not by withdrawing into our shells, nor by discriminating against others that we shall revive employment in our country.

Europeans are very much attached to their systems of social protection. They match the historical, economic and social heritage of each country. Although work towards convergence has been started at European level, it remains nonetheless that articulation between the heterogeneous nature of the national systems and the mobility of their beneficiaries is complex.

## THE STAKES OF WORKER MOBILITY

In 2013, Eurostat noted that there would be an annual decrease of 0.4% in the number of people of working age over the next forty years. The interest of this study was not so much its worrying result, but its analysis of major divergences between the Member States and these developments from an infra-State point of view. This observation, which is worrying for our continent, does however have one merit: it justifies the importance of protecting the

free movement of labour within the European Union. Although the Founding Fathers thought of this in the 1950's when the demographic outlook was very much different, if used well this principle could be salutary for the future of Europe. One of the goals of free movement is the construction of a European labour market. Although we are still relatively far from this, the rules regarding mobility aim to palliate divergences between the Member States and attract labour, qualified or not, to areas in which workers are lacking.

<sup>1</sup>. This text is published in the 8th edition of the "Schuman Report on Europe. The State of the Union 2017", Editions Lignes de Repères, Paris, March 2017

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But this goal is not meeting with public approval. A recent opinion poll<sup>2</sup> reflected European concern about migration: 40% thought negatively of European migrants. More than a mistrust of migrants, it shows a rising challenge to free movement. Beyond the fear of increasing migratory flows from third countries experienced by the European Union, this phenomenon can be explained for two reasons:

The first is the social consequences of the financial and economic crisis that struck Europe as of 2008, whose effects are still palpable in most Member States. Although declining in Europe, unemployment is still high, even extremely high in certain regions. Young people, who represent the future of our continent and who should be able to choose in which direction to take it, have been particularly affected by unemployment and the loss of socio-economic points of reference. Whilst European mobility should appear as a solution to this problem, it is too often stigmatised as additional pressure on the employment market.

The crisis also accentuated existing differences in Europe, whilst a convergence process had been started. Which leads to the second fear linked to the freedom of movement: social dumping. Indeed the differences in labour costs between Member States are still extremely significant, ranging from one to ten in terms of hourly costs (around € 40 in Belgium to € 4 in Bulgaria). Moreover even though most European Union countries now have a legal minimum wage, the differences between them also range from one to ten (€ 1,923 in Luxembourg and € 184 in Bulgaria). Social and economic disparities complicate the understanding of European professional mobility for the citizens of Europe: how can we speak of wanting to create a European labour market with divergences like this?

### THE SUBSIDIARY QUESTION OF POSTED WORKERS

To these fears we might add the issue of posted workers which is too often addressed to a backdrop of hysteria, whilst it deserves to be settled in a sensible manner. The European Union allows any worker to provide his or her services temporarily in a country other than in the one he usually works. The worker

is now subject to part of the labour law of the host country, notably regarding the minimum wage and even the working hours, but he remains under the responsibility of the social protection system of his country of origin due to the temporary nature of his work.

Social contributions are therefore paid in his country of origin; changing this principle would mean opening the way to social rights in the host country for a mission that on average lasts just a few weeks. As a consequence this would also complicate the worker's social security record which would then be detrimental to his own social rights. We should bear in mind the damaging effects that this would have on posted workers who come from countries with strong social protection in one where social protection is weak. Revoking this principle would put the social protection of hundreds of thousands of people at risk. By definition posted workers have no direct impact on the social protection systems of the countries in which they are providing their service. However the issue constantly takes us back to the question of unfair competition, which has gradually become established due to rules that are ill-adapted to the present European social and economic situation and which are too often overridden. Although the present rules play against local workers who have to pay national social contributions, then can we not deem that there is a shortfall for the social security system? Fairer rules have to be introduced so that businesses can interact with a competitive, fair European system. This was the task I was given by the European Parliament as rapporteur to the review of the Directive on Posted Workers.

### EUROPEAN MOBILITY AND SOCIAL PROTECTION

Paradoxically, although a major share of Europeans view community migrants badly three quarters of them believe that free movement is "good thing"<sup>3</sup>. Since the start of European integration, the original wish to build a great internal market has gone hand in hand with the organisation of free movement and particularly that of workers. Already with the Rome Treaty in 1957 freedom of movement was approved

2. Eurobarometer, Spring 2015

3. Eurobarometer, Spring 2015

and has constantly been promoted as the legal structure that guided the European Union in 1992 via the Maastricht Treaty has developed.

From a practical point of view the freedom of movement, to establish and to work in another country other than one's own had to be supported by the organised monitoring of the social protection of workers, since as the President of the European Commission, Jean-Claude Juncker repeats "Europe is not the Far West". Even though we can divide Europe's social security systems into five main categories (Northern Europe, Continental Europe, Anglo-Saxon Europe, Southern Europe, and Central and Eastern Europe)<sup>4</sup>, it is not a caricature to state that there are as many of these as there are Member States. Based on the idea that a unified social security system at European level was not topical, although the harmonisation of the social systems is included in the Treaties<sup>5</sup>, a guiding principle had to be introduced: a person is not subject just one to social security regime.

This principle is protected in the coordination regulation of social security regimes which precisely aims to define – in the case of European mobility – which system is to apply. The European Commission put forward a reform of this regulation which is now in the hands of the European Parliament and the Council. As far as I am concerned, what I would like is clear: fostering worker mobility by clarifying the rules so that everyone gets a fair deal and to make these fairer for the beneficiaries and also for all contributors to national systems.

In 2015, just over 14 million Europeans had settled in another country other than their country of origin, i.e. less than 3% of the population of the European Union. Although there is not just one reason that pushes people to go and live in another European country other than their own, most intra-European mobility occurs for professional reasons.

According to the European Commission nearly 80% of European migrants are of working age and their employment rate is higher than that of nationals. As shown annually by the OECD studies regarding the development of international migration<sup>6</sup>, mobile European citizens contribute more to the social system

of their host country than they cost it. Although there is divergence between Member States, they are net contributors to the social protection systems.

It was the Member States in 2013 which provided data to the European Commission that enabled the assertion that mobile citizens did not turn more to social benefits than their national counterparts.

The narrative whereby the main reason motivating mobility is the attractiveness of the social protection schemes is unfounded and lacks credibility, since it is mainly based on delusions and unfounded fears, which unfortunately are too prevalent in public opinion. Europe means the mobility of labour not that of social benefits.

#### MANAGING FREE MOVEMENT

Although the majority of mobile European citizens are so for professional reasons, it remains that fraud does exist and this has to be countered fervently for several reasons: firstly, because this fraudulent minority destroys the benefits brought by the working majority – primarily from an economic point of view because it reduces the benefits they bring to society; but especially from a symbolic point of view, as it breaks the image of European mobility, since it reflects dishonest practices. Finally this type of fraud destroys the very idea of European integration based on the four freedoms of movement including that of people who over time have become citizens.

Whether it is in its secondary law, *via* directives or regulations, or in the jurisprudence of the European Court of Justice, all of the tools are now available to the Member States to counter "social tourism". The regulation for the coordination of the social security regimes set the principle: a citizen, whatever his situation, cannot be subject to one social security regime alone. This is determined by two factors: his professional situation and his place of residency.

But even before being able to pretend to benefit from the social security system of his host country, a person has to satisfy the criteria of residency rights.

European rules are very clear: in order to remain more than three months in another country other than the one of origin a person has to have a work contract, or adequate resources so as not to be a

4. Bruno Palier and Christine Daniel, « La protection sociale en Europe : le temps des réformes », Paris, La Documentation française, 2001

5. TFEU, Article 151

6. Outlook on International Migration, OECD, 19th September 2016

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burden for the country's social protection system. This was introduced in 2004 by the "Citizens of the Union" directive.

Regarding the articulation between these rules pertaining to the right to stay and rights to social security, the Court of Justice has just created recent, crystal clear case law. In 2014 in the Dano case, it concluded that a person established in another Member State other than his/her own could not automatically pretend to social benefits if he/she could not justify having worked or if he/she represented a burden for his/her host country. This was confirmed in 2015 with the Alimanovic judgment which ruled on the issue of job seekers. If a person has work for at least a year in a country, he/she is entitled to receive unemployment benefit of the country for a period of 6 months. If this is not the case the person cannot automatically demand benefits. All of these rules that emanate from the Court of Justice's jurisprudence will have to be integrated in the coordination regulation of social security regimes so that European law becomes the tool to protect our social security systems.

It is therefore extremely sad to see that anti-European populists are surfing on the theme of "social tourism" although the European Union provides the Member States with all of the tools necessary to combat this abuse. Germany is introducing a law at the moment which provides that mobile European citizens living within its territory will not be able to pretend to the German minimum wage before the

end of a five year period of residency if they cannot prove that they have employment. The tools are there, the Union provides them, hence the priority is to implement European policy in this area.

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Although the impact of European mobility on the social security systems is positive this is not the image that reaches public opinion due to fraud that does exist and has to be fought. But this battle cannot be waged via greater restrictions on free movement, – quite the contrary! Europe needs more citizen and worker mobility. However, where there is weakness the rules have to be revised, as with posted workers in order to guarantee that mobility is better organised. The work to promote fairer movement must go hand in hand with European rules that enable the Member States to prevent fraud and sanction them with measures that could go as far as banning the person from staying in their territory. There will be no radical change in how Europeans view their fellow citizens established in a country other than their own, or of the European Union in general as long as fraud continues to go unpunished.

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