

Common Position

Citizens' mobility: what is at stake for French social security?

27 June 2024

The main requests of the French social security institutions for the
2024-2029 mandate

REQUEST No. 1: Maintain the revision of the coordination regulations as a priority for 2024-2029, including the 6 chapters; this is the only approach likely to enable rapid agreement between the Council and European Parliament, on the basis of the recent progress made under the Swedish and Spanish Presidencies, i.e.:

- **Revision of the unemployment chapter, with a shift to the core principle of *Lex loci laboris***, i.e. unemployment benefits for cross-border workers should be paid by the State of employment, since the current rules result in a disproportionate burden on the countries of residence of these workers.
- **A system of prior notification of posting** to mitigate the risks of fraud and error. The agricultural and construction sectors should remain outside the exemptions to this obligation for prior notification, given the specific potential for fraud in these sectors.

REQUEST No. 2: Update rapidly the guidelines specific to the regime for multi-state workers in the Commission's practical guide on the applicable legislation, to provide clearer guidance on this highly attractive regime; **reevaluate the interplay between the coordination regulations and the directive on cross-border healthcare** and create a European website showing the country-lists of healthcare services covered by the directive or the regulation.

REQUEST No. 3: Strengthen the role of the European Labour Authority in the area of social security, clarifying its tasks and fields of activity and developing its coordination role between Member States on issues of fraud and fake cross-border workers; improve dialogue and dispute resolution procedures, as well as identification of the digital tool needs of Member States.

REQUEST No. 4: Set clear objectives for the digitalisation of social security, ensuring full and complete functioning of the EESSI system in all the Member States, and clarifying the impact of the many digital social security initiatives intended to simplify procedures; set up **a shared, secure database containing the essential data on mobile workers and citizens** in order to facilitate access to health, identification and protection of mobile workers and to better combat fraud.

REQUEST No. 5: Adopt a pragmatic and global approach to mobility in Europe based on existing tools to find specific and operational solutions to the new, problematic forms of mobility: family structures, atypical workers, the self-employed, persons with disabilities and **future enlargements**.

Detailed position

Again, during the European Commission's 2019-2024 mandate, no agreement was reached on revision of the regulations governing coordination of social security systems (Regulations 883/2004 and 987/2009). REIF and its members deplore this delay, given the urgent need to update the mobility rules in Europe. We call for this issue to be put back on the agenda as a top priority for the new European Commission, on the basis of the provisional agreement reached in 2021 under the Slovenian Presidency and the recent substantial progress made by the Swedish and Spanish Presidencies in 2023.

Tools developed in the meantime by the Commission, the Member States and the social security bodies, to promote mobility of European workers and citizens, also now require certain adjustments, so that they properly reflect new trends in mobility. This is particularly true of the role of the European Labour Authority, which must be better defined, and of the tools for the digitalisation of social security, to simplify procedures and cooperation between institutions.

General comments

Since the launch of the public consultation in 2015, the Representation of French social security institutions to the EU (Reif) and its members stand behind the revision of the regulations governing coordination of social security systems. There is widespread support for the intention of the European Commission to update these texts in order to better guarantee free movement of persons and access to administrative procedures which are simple, clear and in line with the European rules for each category.

In our view, therefore, an ambitious revision of the coordination regulations is more necessary than ever, to **take account of the development of new forms and situations of mobility in Europe, to ensure a fair and equitable distribution of the financial burden between Member States** and to enable simplification of procedures, thus benefitting citizens, companies and the social security institutions.

Since the initial revision proposal from the European Commission in 2016, **mobility situations have become more complex, with new forms and dynamics of mobility**: the boom in telework following the Covid-19 pandemic; higher numbers of mobile self-employed workers; evolving flows of seasonal workers – often with poor social security coverage; an increasingly complex situation for mobile artists; the new phenomenon of nomadic workers in and outside Europe; new family structures insufficiently addressed in the current legislation; far more frequent use of the less binding scheme of multi-state worker; a steep rise in the number of posted workers; increased reimbursements of cross-border care, etc.

In the meantime, **new bodies and tools have been added to the mobility structures in Europe**: the European Labour Authority (ELA), the Electronic Exchange of Social Security Information (EESSI), the framework agreement on telework, and the ESSPASS projects.

Despite these developments and these new tools, the legal framework still needs to be revised, to ensure legal certainty for these newly evolved forms of cross-border work. **The basic ideas in the proposal for revision of the coordination regulations, presented by the European Commission on 13 December 2016, and its six chapters, still seem to us to be relevant** – both its initial ambition to ‘tackle abuse through better application and coordination of the social security systems’, and its general objectives to make the rules fairer, simpler and more easily enforceable.

An urgent need to revise the coordination regulations for social security systems

The **most recent negotiations conducted by the Spanish Presidency in late 2023**, on the basis of the provisional agreement reached by the Slovenian Presidency on 16 December 2021 and the six original

chapters from the European Commission, have produced, in our view, an overhaul of the coordination of social security systems which is **well balanced and suited**, in part, to the new mobility situations.

This approach was the only one likely to result in a compromise agreement with the team of negotiators from the European Parliament; thus promising **rapid application of the new rules**, since all the parties involved European Commission, European Parliament and social partners see an urgent need for the European Union to adapt to the new forms of mobility and to the practical issues raised by these for European citizens and companies in the internal market.

It is indeed urgent to relaunch the negotiations during the Commission's next term of office. Otherwise, a hypothetical new Commission proposal, necessarily preceded by another impact assessment, stakeholder consultation, and followed by the decision-making process between the co-legislators, would delay the introduction of any new rules for far too long (5 to 10 years?), to the detriment of proper social security coverage for mobile European citizens.

Finally, the failure of the negotiations, hurried as the Commission's term of office drew to a close, **should not obscure the visible and substantial progress** made during the long journey of the interinstitutional negotiations (12 Presidencies, 18 trilogues and 2 provisional agreements).

We therefore deem it essential to **retain the unemployment chapter in the revision proposal, based on the progress obtained** by the Slovenian and Swedish Presidencies. In the specific case of unemployed cross-border workers (Article 65 (2) of Regulation 883/2004), this would enable **a shift to the central principle of *Lex loci laboris***, so that unemployment benefits for cross-border workers would be paid by the State of employment, rather than the current, widely misused system for cross-border unemployment. Under the current mechanism for reimbursement between the State of employment and the State of residence, designed to offset the financial burden on the latter, only a certain percentage of the benefits' expenditure is reimbursed – somewhere between 15% for Germany and 24% for Belgium (the four main countries employing cross-border workers living in France are Switzerland, Luxembourg, Germany and Belgium).

The current rules, therefore, which derogate from the core principle of *Lex loci laboris*, **result in a disproportionate burden on the country of residence of cross-border workers**. In the year 2023 alone, the extra cost to the French unemployment insurance system (Unédic) of benefits to cross-border workers amounted to around 800 million euros. **In total, since 2011, these extra costs for the French unemployment insurance regime are estimated at more than 8.9 billion euros**. It is therefore urgent and essential to modify the current mechanism and to establish rules on benefits for cross-border workers based on the *Lex loci laboris* principle, **in order to strike a fairer balance between countries**, irrespective of national divisions and political positions.

Regarding the chapter on applicable legislation, agreements also need to be reached rapidly on the issues of criteria for the registered office, and of prior notification. **In our view, prior notification could reduce the risks of fraud and error** by ensuring a systematic, defined obligation to provide prior information before any assignment or posting, something which is currently left to the discretion of the employer or the self-employed worker. It is therefore essential, we believe, that **the agricultural and construction sectors should not be included in the exemptions to this obligation to provide prior notification**, given the potential for fraud specific to these sectors.

[Specific improvements to the rules governing mobility in Europe](#)

- **Applicable legislation: multi-state worker and posting**

The chapter on applicable legislation introduces key points to ensuring the viability of social security regimes in the EU, particularly by providing clearer conditions for the posting of workers: prior affiliation, minimum period between two postings, general use of portable document A1, a common definition of fraud, etc. However, it fails to tackle directly the question of the regime applicable to people with multi-state workers, particularly self-employed workers.

There has been a **boom in the use of the regime for multi-state worker** (Article 13 of Regulation 883/2004), which applies when a person works in two or more Member States. The number of A1 forms issued with regard to Article 13 has risen from 168 000 in 2010 to 1 million in 2017, to 1.4 million at the present time, according to the most recent figures in the Commission's 2023 Statistical Report on the coordination of social security systems. Companies and self-employed workers clearly find this **regime attractive, as it has far less binding provisions and allows them to choose the most advantageous legislation**. The Covid-19 crisis highlighted the tendency for some companies supplying large numbers of workers, particularly temporary employment agencies, to take advantage of the flaws in the European legislation and use social security systems as an **adjustment variable for cost and competitiveness**, to the detriment of worker protection. This is particularly true for the regime for multi-state worker and the notion of 'substantial activity' (Article 14 (8) of Regulation 987/2009). Reif therefore calls on the **European Commission to rapidly update the specific guidelines on the regime for multi-state workers in its Practical Guide on the applicable legislation in the European Union**, which dates back to 2013, to take account of the considerable case law on this issue and the joint process of interpretation by the institutions of the Member States.

For this purpose, and along the lines of the work done by the ad hoc group on cross-border telework, a joint, operational project could be established to prepare **new guidelines for self-employed workers**.

The **directive on posted workers** (Directive (EU) 2018/957), which addresses posting situations from the perspective of labour law, rather than social security (coordination regulations), should, in the same way, better define the conditions of the regime established by the 2020 revision, in order to avoid over-frequent derogations, and to strengthen the links of the posted worker to the Member State where he or she is insured. Reif and its members note with interest the evaluation report on the implementation of this directive, presented by the Commission on 30 April 2024.

The increased use of the posting regime and the regime for multi-state worker means, moreover, that often there is little monitoring of the criteria relating to these regimes set out in the coordination regulations, while, at the same time, not all these processes are entirely digitalised (see the section on EESSI).

- **The European Labour Authority (ELA)**

The growing activities of the **European Labour Authority (ELA)**, particularly in social security-related areas where Reif hopes to see progress, should make cross-border control procedures more flexible and agile but also procedures for dialogue and resolve differences of views between Member State institutions, to enhance proper application of the European mobility rules and to detect, for example, fake multi-state workers and disguised cases of posting. We are thus pleased to see that the Authority has chosen to **prioritise 'social security' in its programme for 2025, which will help to clarify the tasks and area of activity of the ELA** in its work to support the coordination of social security between the Member States. The ELA could also be asked to draft a structured monitoring report on the new forms of mobility and their implications for social security coordination, as well as being given a strengthened role and visibility regarding coordination and exchanges of good practice, and in managing the European network to combat cross-border social security fraud.

This good cooperation should go hand in hand with respect of the **principle of fair and sincere cooperation** between national social security institutions (Article 4 of the Treaty on European Union, and Article 76 of Regulation 883/2004), to speed up and **simplify administrative procedures** for mobile workers, to ensure continued social protection for employees, the self-employed, those in multi-state worker, seasonal and teleworkers. The ELA again plays a key role here, as it can enable good coordination and collaboration between the Member States in areas where this principle of fair and sincere cooperation is not properly respected.

- **Health**

Regarding simplification, one aspect not addressed in the 'health' chapter of the 2016 overall revision package is the correct **interaction between the coordination regulations and the directive on cross-border**

healthcare (2011/24/EU). Currently, there is much confusion for European citizens in mobile situations due to their work, living in a border region or on holiday abroad as to how these two texts fit together; this hinders proper application of the law and good health coverage. Each country needs to clarify the **list of care services covered by the directive or regulations, and there needs to be a European website showing all these lists**, regularly updated.

- **Digitalisation of social security**

In our view, **clear objectives must also be set regarding digitalisation of the coordination of social security systems**, as the social security bodies are responsible for the operational and technical implementation of the tools proposed by the Commission. Digitalisation must meet the needs of companies, individuals and bodies by, once again, simplifying procedures while reducing the risks of error and fraud.

It is important **to ensure that EESSI is fully operational in all Member States and updated regularly**, if necessary with the help of European financing, since implementation of these European digital initiatives require considerable human, financial and technical resources. It is vital to make sure that the existing tools (EESSI, as well as the Single Digital Gateway, the EU Digital Identity Wallet, ESSPASS) are up and running before the launch of new projects and legislation. The Letta report on the single market says the same, recalling that for companies and citizens, ‘the full implementation of the Electronic Exchange of Social Security Information by all Member States needs to be completed’. **The Commission needs to give general clarification of the impact of the many digital initiatives on social security.**

While the plan to develop a **European Social Security Number (ESSN) seems to be facing insurmountable challenges**, the creation of the European Digital Identity Wallet for each European citizen, the development of the ESSPASS project (by the consortia DC4EU and EBSI-VECTOR), as well as joint projects for a social identity card for certain sectors (such as SIDE-CIC for the construction sector) will partially resolve the issues which the ESSN was designed to address such as greater interoperability between the bodies and stakeholders concerned and broader access to data from other countries, thus enabling improved identification and protection for mobile workers in Europe and a more effective fight against fraud. These various projects also involve advanced monitoring of data by users and citizens. They should nevertheless also include the **setting up of a shared, secure data base containing essential data on mobile workers, patients and citizens**, including A1 forms.

In this area too, the ELA could act as a facilitator by reinforcing the collection, exchange and analysis between social security institutions of needs regarding digital tools for social security coordination. Applying the principle of fair cooperation, the setting of targets for the quality of the data exchanged through EESSI via the SED’s (structured electronic documents) or medical reports would also enable exchange of relevant and usable data between institutions. This principle could also be applied by establishing a community of end users, equipped with monitoring and communication tools to notify difficulties with implementation.

- **Other files: enlargement, data access**

Already during this mandate, the members of Reif also wish to think ahead and prepare for the future **enlargement of the European Union**, planned for 2030, to ensure proper take-up of the particularly complex Community acquis in the area of social security, via exchange and mutual learning programmes with the institutions of the candidate countries. Dedicated European funds could be made available to enable the social security funds and their officials to access these programmes, together with support for the establishment of the infrastructure needed for coordination of social security systems.

Finally, several social security bodies in Europe have persistently and repeatedly called for **limited, regulated access for the public social security institutions of two Member States to each other’s social security databases**. Indeed, several agreements have already been concluded as part of bilateral cooperation arrangements set up due to the lack of progress at European level on this issue. **A proposal along these lines in the form of a framework agreement**, providing the legal certainty inherent to such a

text, would make it possible to compare data on potentially multi-border activities in cases of bogus cross-border workers, recovery or fraud. Here too, the European Labour Authority could play a coordinating role, as set out in its regulation (Article 7(4) of Regulation 2019/1149 establishing a European Labour Authority). Several other subjects should be considered by the next European Commission in relation to mobility issues in Europe: evolving family structures in Europe and how to take account of these for the payment of, in particular, family benefits; more systematic inclusion of disability issues and persons unable to work for health reasons; coverage of mobile self-employed and atypical workers; and how to prepare, even now, for the impact of the future EU enlargement on flows and forms of mobility in Europe.

Concluding comments

Finalisation of the revision package on the coordination of social security systems, based on the 2016 Commission proposal, the 2021 Slovenian provisional agreement and the most recent developments under the Swedish and Spanish Presidencies, including the 6 initial chapters, will enable considerable progress to be made to improve the mobility of European citizens in the internal market.

However, only when we move beyond purely national thinking and adopt a **pragmatic and global approach to mobility in Europe**, based on the tools available to the EU (EESSI, ELA, posted workers directive) and improving these, will the European Union be able to provide **specific and operational solutions to benefit European citizens and workers**. On this point, the La Hulpe Declaration could not be clearer: ‘To make social security coordination future-proof, more legal certainty, more transparency and more cooperation between Member States is needed.’

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The European Representation of French Social Security Institutions (Reif) was set up in May 2003 to represent the main French social security funds to the European Union. Today, it brings together all the branches of the general scheme, professional schemes and specialised structures: health insurance, accidents at work and occupational diseases (Cnam), pensions (Cnav), family benefits (Cnaf), autonomy (CNSA), recovery (Urssaf Caisse nationale, formerly Acoass), the National Professional Union for Employment in Industry and Trade (Unédic), the Central Agricultural Social Mutual Fund (CCMSA), the National School of Social Security (EN3S), the Union of National Social Security Funds (Ucanss), the Centre for European and International Liaisons for Social Security (Cleiss) and the Retirement Pension Fund for Professional Air Crew Members in Civil Aviation (CRPNPAC). Reif has a permanent office in Brussels.

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