Maastricht University

Institute for Transnational and Euregional cross border cooperation and Mobility / ITEM

Cross-border impact assessment 2017

Dossier 3: Social Security

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Dossier 3: Social security

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ITEM is an initiative of Maastricht University (UM), the Dutch Centre of Expertise on Demographic Changes (NEIMED), Zuyd University of Applied Sciences, the City of Maastricht, the Euregio Meuse-Rhine (EMR), and the Dutch Province of Limburg.

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3. Social Security

Moving and working in another EU country is a fundamental right of all EU citizens and a cornerstone of the Single Market. Free movement would not be possible without EU rules on coordination of social security.[1] *It is in the interest of all parties that the social security coordination rules allow 'full exercise of citizens' rights whilst making the requirements of Member States clear, manageable and efficient'.*[2]

1. Introduction

In December 2016 the European Commission launched a *proposal for the amendment of the coordinating regulations 883/2004 and 987/2009,* as part of the 'Labour Mobility Package'.[3] These regulations make cross-border labour, study, residence and care possible by leaving the national social security systems alone, while at the same time setting rules for the identification of the applicable legislation in cross-border situations.[4] The proposal for the amendment of the European social security and posting rules had been eagerly awaited for several years by both the European Parliament, the European Economic and Social Committee and the different stakeholders. This cross-border impact assessment focuses on the social security rules, while leaving the revision of the Posting of Workers Directive undiscussed.[5]

The current coordination rules have applied since May 2010 and an update is needed. The rules seem to have *never* been adapted to the social and economic European labour market, to the national social security systems, nor to the case law of the European Court of Justice. The purpose of the recast regulations is to create *(more) simple, honest, efficient, and clear rules*, while ensuring that the financial and administrative *burdens are shared amongst Member States more fairly*.[6] The underlying aim of the update is to make it easier for all employees to enjoy or to continue to enjoy free movement. The proposed amendments also fit the *new Europe,* to which Juncker referred in his

[1] European Commission: Social Security Coordination, guiding principles and rules: see ec.europa.eu.
[2] European Commission staff working document (SWD(2015) 460 final), p.108.
[3] Labour Mobility Package: this term is part of the 2015 and 2016 Work Programmes of the European Commission and refers to the objective of achieving better labour mobility and the prevention of abuse through, among other things, better coordination of the social security systems and a revision of the Posting of Workers Directive; see Http://www.europarl.europa.eu, consulted on 26 June 2017. See also Proposal for a Regulation of the European Parliament and the Council, 13 December 2016, COM(2016) 815 final.
[4] Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, OJ L 166 of 30 April 2004, p. 1 (as amended) and 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, OJ L 284/1 of 30 October 2009 (as amended). In the text, these regulations are denoted as EC Regulation 883/2004 and EC Regulation 987/2009.
[5] The Posting of Workers Directive 69/71/EC of the European Parliament and the Council *concerning the posting of workers in the framework of the provision of services* dates from 16 December 1996 and needs an update. On 15 June 2017, the EU Ministers of Social Affairs were unable to reach an agreement on the revision of the Posting of Workers Directive, however. The relevant negotiations will be resumed In the autumn of 2017.
[6] See COM(2016) 815 final, pp.2-4.

opening speech 'A New Start for Europe' as candidate President of the European Commission on 15 July 2014.[7]

The main proposed amendments to social security are aimed at long-term care, unemployment benefits, family benefits and social benefits for EU citizens who are not economically active.[8] This year, in 2017, the debate will continue at national and European level, and the changes and their effects will be thoroughly studied. Some of the amendments will have greater effects on the *border regions* than others. The amended rules on unemployment, for instance, will have greater influence on the Dutch border regions than those on family benefits. This cross-border impact assessment seeks to offer more insight into the proposed changes.

2. Objectives & Method

2.1 Current or Future Effects: Ex-post or ex-ante

With its focus on the proposed amendments to the rules contained in the Regulation, this cross-border impact assessment has an *ex-ante* character. The negative border effects, i.e. the bottlenecks and shortcomings, of the proposed amendments are the main objects of research. Whether these proposals will actually become legislation, and in what form, will probably become clear in the course of 2018.

2.2 Demarcation

This Dossier uses a broad interpretation of term 'border region', including not only the border regions on the Dutch side, but the cross-border areas as a whole. These are not strictly linked to certain Euregional areas or other definitions of a border region but include all areas where cross-border labour exists. In small Member States, such as the Netherlands or Belgium, this may include the whole territory, although daily cross-border traffic will of course be more prominent in the border regions of Member States than in the middle of the country. This dossier thus allows for a broad interpretation of the border region. It includes areas where daily cross-border labour takes place, e.g. between the Netherlands and Germany, as well as areas with labour migration across greater distances, with people choosing the Netherlands as their state of work and Spain or Poland as their state of residence, for instance.

Despite the considerable efforts made by the EU to facilitate and promote the mobility of labour, the percentage of EU citizens that actually cross the border for work, whether employee or self-employed, remains relatively low. Only 0.9% of all workers in the EU make use of this possibility. In some areas, however, such as certain border regions of Austria, France, Germany, Belgium and The Netherlands, the number of frontier workers lies well above this percentage.[9] It is precisely for this reason that cross-border impact assessments are useful and that the border regions deserve special attention. In short, this report uses the following definition of the border region: an area separated by national borders in which cross-border labour occurs.

[7] See ec.europa.eu/priorities page/Publications/president-junckers-political-guidelines_nl; priority No. 4.

[8] In addition to these four main themes, there are also technical amendments, which will not be further discussed here.

[9] Eurostat, Statistics on commuting patterns at regional level, ec.europa.eu/Eurostat (consulted on 10 July 2017); and Benelux Union, General Secretariat, *Benelux, Kerncijfers en trends 2014*, p.41. This also shows that cross-border labour in the Benelux, France and Germany constitutes 37% of all cross-border mobility within the EU.

A different definition applies to the object of research: cross-border social security focused on four areas: long-term care, unemployment benefits, family benefits and social benefits for mobile EU citizens who are not economically active.

2.3 Research Themes, Principles, benchmarks and indicators of the Dossier

2.3.1 The Research Themes of the Dossier on Cross-Border Social Security

ITEM cross-border impact assessments are typically structured around the following three themes: European integration, sustainable and socio-economic development and Euregional cohesion.

Themes 1 and 3 are the most suitable for further analysis in the context of this Dossier on cross-border social security regulations. Theme 2, sustainable development from a cross-border perspective, is difficult to measure, however, without targeted figures.[10]

Theme 1, European integration, requires the study of the cross-border effects that citizens and companies, i.e. employees and employers, experience due to the new measures, in the framework of the European civil liberties, European citizenship and non-discrimination. Do frontier workers, for instance, experience discrimination, compared to colleagues who live and work in the same Member State, due to the proposed rules? Or do employers encounter barriers to the freedom of movement in Europe?

Theme 3, Euregional cohesion, focuses on the cooperation of governments, citizens and entrepreneurs from a Euregional perspective. It may, for example, include an investigation of the cooperation between national unemployment agencies or health-care administration offices, which may or may not be burdened by the new measures.

The proposed amendments to the EC Regulations are discussed below, in light of European integration (Theme 1) and Euregional cohesion (Theme 3). The four types of social security benefits mentioned above are dealt with from the perspective of both themes only to the extent that they can be supported by numbers or solid ex-ante analysis. The Commission proposal towards amending EC Regulations 883/2004 and 987/2009, (EC, COM(2016) 815 final of 13 December 2016) is based on a comprehensive impact assessment, which weighed a number of options for every amendment and included one of them in the proposed amendment.[11]

[10] Detailed figures on the numbers of benefits or the amounts spent across the border are not available or cannot be obtained in the short term (query posed to CBS in May 2017). The European Committee of the Regions also regrets the lack of reliable information and data, in particular on the number of frontier workers under EC Regulation 883/2004, see European Committee of the Regions, *working paper, Social Policy, Education, Employment, Research and Culture; Coordination of the Social Security Systems*, 13th meeting of the SEDEC Commission , 31 March 2017, p.5.

[11] For the different options per proposed amendment, see: EC, *Impact Assessment, accompanying the document Proposal for a Regulation of the European Parliament and of the Council*, SWD(2016) 460 final, 13 December 2016.

2.3.2 Dossier on Cross-Border Social Security: Principles, Benchmarks and Indicators for a positive situation in frontier regions:

The table below presents the four research objects for European integration (Theme 1) and Euregional cohesion (Theme 3). The four social security benefits mentioned above thus return in each of the themes.

Theme	Principles	Benchmark	Indicators
European Integration	***Free movement of persons*** *Art.45 TFEU;* *Art.48 TFEU (= basis for the coordinating regulations);* *Article 3 EC Regulation 883/2004.* *Recital 2 and 13 of EC Regulation 987/2009;* ***Equal treatment*** *Articles 18 and 19 TFEU;* *Recital 5 and 8 of EC Regulation 883/2004;* *Articles 4 and 7 of EC Regulation 883/2004* ***European citizenship*** *Art.20 TFEU* ***Residence Directive 2004/38***	- long-term care across borders without (much) nuisance to stakeholders; - unemployment benefit schemes: no abuse of the rules, no disadvantage of rules - family benefits: n/a to the Netherlands - benefits for EU citizens who are not economically active: balance between freedom of movement and prevention of abuse and disproportionate burdening of certain Member States	- Long-term care: determine whether and to what extent people are obstructed in exercising their right to cross-border care - unemployment benefits: identifying improper use How to measure? When does a rule lead to disadvantage? How to measure? - family benefits: n/a - social security tourism: does it exist and where?
Sustainable/ socio-economic development	**Among others, Article 3, paragraph 3, TFEU**	N/A	N/A

Theme	Principles	Benchmark	Indicators
Euregional cohesion	***Loyal cooperation*:** Art. 4 TEU ***Closer cooperation between Member States*:** Art.20 TEU; recital 2, 8, 9 of EC Regulation 987/2009; Chapter II of EC Regulation 987/2009 ***Europe 2020 strategy*** ***EC focus on social cohesion***	- long-term care: Member States concerned and care organizations are able to handle cross-border health cases promptly and correctly - family benefits: correct implementation despite complexity - unemployment benefit schemes: fair burden sharing between Member States and no abuse - benefits for EU citizens who are not economically active: ensuring the mobility of EU citizens and, at the same time, preventing abuse by social security tourism	- long-term care: further clarification of the definition and scope of long-term care - family benefits: how big is the difference between NL and other Member States - unemployment benefits: a.o. proper distribution of public effort across beneficiaries in their own country and those who use the export regime. - benefits for EU citizens who are not economically active: is there abuse and how to measure it?

3. Evaluation of the European integration theme

3.1 European integration and long-term care

The **current** regulations 883/2004 and 987/2009 lack specific coordination rules for long-term care and deal with this type of care under the general rules for disease (Chapter 1, Title III of EC Regulation 883/2004). This means that, on the one hand, *care* is provided as a benefit in kind in the state of residence or stay, at the expense of the competent State in which the person concerned is insured. On the other hand, the *benefits* for long-term care (benefits in cash) are paid by the State in which the person concerned is insured and are exported from there to the state of residence or stay in the EU. Despite this existing practice, there is a lack of clarity, legal uncertainty and a difference in interpretation on long-term care, sometimes leading to no or double benefits being paid.[12]

A detailed examination of trESS indicates what causes the complexity of the problem regarding long-term care: the differences in the national systems and the lack of a common concept make

[12] See also COM(2016) 815 final, pp.2-3.

coordination very difficult, while unresolved issues and shortcomings persist with a general solution.[13] It is clear that the current rules are not adequate and that amendment of the regulations is necessary. In addition, long-term care is increasingly provided or requested across borders, and multiple caregivers are often involved in the care for one person, which broadens the circle around the stakeholder beyond the beneficiary alone with benefits in cash or in kind. The lack of a definition, the different interpretations and implementations of the concept of 'long-term care' by Member States, as well as the lack of a clear legal framework do not benefit the free movement of people. Citizenship and equal treatment are also at odds with the current regime regarding long-term care. It is both necessary and desirable to implement and adjust the current system.

The **proposed amendments** add a separate section, a definition and a list of long-term care provisions. The purpose of these amendments is to arrive at a clear and appropriate arrangement, more legal certainty and transparency, as well as a better distribution of the burden across the Member States. This ex-ante analysis does not reveal large negative effects since the existing practice will be retained but will be embedded in a separate legal framework. It should be further noted, though, that several countries, through their delegations, have indicated that the definition of long-term care service is not always clear.[14] Perhaps a reformulation of the definition at the follow-up discussions will bring more clarity. Once this has improved too, the proposed amendments on long-term care will serve European integration, especially from the point of view of the citizens. The free movement of EU nationals, citizenship and the non-discrimination of cross-border citizens vis-à-vis same-state citizens will, in fact, receive a positive stimulus through the additional rules and clarity on long-term care.

3.2 European integration and unemployment benefits

The **current** unemployment regulations are (often) controversial, are not always experienced as fair and/or clear by Member States, workers and employers, and they are susceptible to fraud (see further under 'time of the claim'). They also have a separate status: where other benefits based on employment status come from the country in which the contributions were paid, the unemployment scheme sometimes deviates from this principle. In the past, it was agreed that the *country of residence* rather than the last country of employment would pay the benefits of unemployed *frontier workers* (Article 65 of EC Regulation 883/2004).

In addition, *the export option* for unemployed persons who wish to seek work in another EU Member State was restricted to three (sometimes six) months (Article 64 of EC Regulation 883/2004). In 2013 and 2014 approximately 0.1% of all unemployed persons (27,000) made use of the export scheme.[15] Since May 2010 a three-month *restitution scheme* has been in place between country of residence and country of work. This requires the former country of work to pay for the unemployment benefits for the first three, sometimes five months (Article 65, paragraph 6 and paragraph 7 of EC Regulation 883/2004).

[13] TrESS *Analytical Study 2012*, Legal Impact Assessment for the revision or Regulation 883/2004 with regard to the coordination or long-term care benefits, by Y.Jorens, B. Mirror, JC. Fillon, G. Strban, p.5/156, www.trESS-network.org.

[14] See Annex III, Report of the Council of the European Union, of the Presidency (Malta) to the Committee of Permanent Representatives/the Council, Inter-institutional Dossier: 2016/0397 (COD), 2 June 2017.

[15] EC, Social Security Coordination: statistics on the number of U2-documents (SED U008), source: J. Pacolet & F. De Wispelaere, *export or unemployment benefits - PD U2 FMSSFE Questionnaire,* Network Statistics, European Commission, June 2014, 25p.

Another element of the unemployment scheme is the *time of claim* of the unemployment benefit, which has been a point of discussion for years. Both the implementing bodies, the government and the 'fair' EU citizens sometimes perceive its practice under the current rules as unfair. Article 6 of Basic Regulation 883/2004 contains the *aggregation rule*. This is considered one of the fundamental principles of coordination law as it guarantees EU citizens that their insurance periods, periods as an employee or as a self-employed person or periods of residence in other Member States are retained and even count in the new Member State where they establish themselves for work or residence. The problem is in the application of the rule, where coordination between Member States appears to be lacking. Regarding unemployment, Article 6 is specified in Article 61 of EC Regulation 883/2004. Some Member States adhere strictly to the 1-day rule, whereby all EU citizens who have worked at least one day in their last country of work can apply for unemployment benefits there even after only one day of work, demanding aggregation of their insurance periods in other countries.[16] After one day of work in Member State A, EU citizens can claim unemployment benefits in Member State A, whereby all their previous work periods in other Member States also count towards the determination of the duration of these benefits. The height of these unemployment benefits is solely determined by the legislation of Member State A and is independent of whether unemployment benefits are lower or shorter in Member States B and/or C where the subjects worked. Other Member States interpret the condition of 'having worked' differently, stating that there must have been a certain period of work in the last country of work for the aggregation rule to take effect. In practice, these different interpretations and applications have undesirable effects. The free movement of persons is thus not only stimulated by employment opportunities, i.e. positive stimulation, but also by the fact that some countries are very quick to offer unemployment benefits, i.e. negative stimulation.

The **proposed amendments** will change the rules on unemployment in different areas.
Firstly, the *restitution scheme* will be abolished (see further under 5.2).
Secondly, the *export* possibilities for unemployment benefits will be extended. Where the current rule provides for an export term of three (up to six) months, the amendment proposal extends exportability to six months, including an option until the end of the benefit period. This means that people with Dutch unemployment benefits who are looking for work in another Member State can take their benefits with them for six months and even longer if benefits continue. At first glance, this measure seems to serve citizens and governments. What could be against having someone look for work? The underlying question, however, is whether this measure serves its purpose. Is it so that looking for work abroad is often used as a tool, and, if so, does that lead to more job opportunities? The proposal does not cite any research showing that this measure will be useful and will lead to fairer legislation. On the contrary, it is generally known that the export of unemployment benefits leads to abuse and distrust, even in its current form, with limits of 3 to 6 months. Monitoring the unemployed who claim to be looking for work abroad is not an easy task, after all. In addition, Member States prefer deploying their limited resources and people for national monitoring and policy making. This proposed measure, i.e. longer exportability of unemployment benefits, will therefore not obviously lead to a fairer and more efficient rule. The European Committee of the Regions also warns that the extension of the export period, which it basically welcomes, should not

[16] The aggregation rule is laid down in Art. 6 of EC Regulation 883/2004. Belgium is one of the Member States that apply the one-day rule.

lead to less effort being exerted by job seekers.[17] As far as the border effects are concerned, I would venture to say that not many bottlenecks are to be expected in the relationship between the Netherlands, Belgium and Germany. The question is rather whether this measure will positively or perhaps even only negatively affect the relationship with other countries, further away and less committed to the rapid activation of job seekers. For the Netherlands, this could mean that unemployed persons might disappear from Employee Insurance Agency – UWV's radar for at least six months, possibly even until the end of their benefit period (if that option is approved). It would then depend on the relevant foreign government agency whether and how these unemployed persons are supported, stimulated and monitored. This goes against Dutch policy and is also discriminatory towards the unemployed who remain in the Netherlands. The free movement of an unemployed person with benefits will increase, but the price to be paid is high: activation and monitoring from the Netherlands are hampered, and the ensuing inequality with sedentary unemployed persons cannot be justified. The effects on the unemployed themselves are difficult to assess as it is difficult to predict which unemployed will make use of the export option. It is certain, however, that their ties to the UWV and the Dutch labour market will become weaker rather than stronger. Unemployed persons seeking to strike luck abroad will have to wait and see whether and how they receive the support that they expect and whether there is any difference with the Dutch approach.[18]

A third amendment to the unemployment rules concerns *time of claim*. The amendment constitutes a move away by the EC from the fundamental coordination principle of unconditional aggregation of periods. The new rule states that applicants must have worked in the relevant Member State for three months before the aggregation rule becomes applicable. Until then, the Member State where they used to work will be the competent Member State responsible for the payment of the unemployment benefits. This has mixed effects on the government body in the last country of work. On the one hand, there will be fewer applications in the last country of work since the three-month period will not have been satisfied, and, on the other hand, the last country of work will have to accommodate and support more people with foreign unemployment benefits. In the internal market there should be no distinction between citizens with national benefits and citizens with foreign benefits. The question, however, is how this will develop in practice. Favourable market prospects, of course, also play a role. If the market calls for more workers, people who have only worked in the Netherlands briefly and receive foreign unemployment benefits there may also have a chance. This situation will occur more frequently due to the extended exportability of unemployment benefits. It remains to be seen how this will develop for the unemployed, the competent paying Member State and for the new Member State, where the unemployed person still resides after only a short period of work.

The fourth amendment of the unemployment rules regards *frontier workers*. As mentioned above, they currently enjoy a separate status, falling under the country-of-residence principle, as opposed to the country-of-work principle applied to unemployed non-frontier workers. The proposal currently on the table uses the *country of employment principle*, also for frontier workers (Article

[17] European Committee of the Regions, *working document, Committee on Social Policy, Education, Employment, Research and Culture; Coordination of social security systems*, 13th SEDEC Commission meeting, 31 March 2017, p.5.
[18] In fairness, it should be noted that UWV support for the Dutch unemployed is limited in the Netherlands too at the moment.

65(1)). This is a fundamental change. This change from the country-of-residence to the country-of-work principle is subject to a number of conditions. The country-of-work principle does not apply in cases of temporary or partial unemployment, for example, but only to full unemployment. Also, the country-of-work principle only becomes effective after 12 months; people who become unemployed before having been insured in a state for 12 months must turn to their country of residence for benefits (Article 65(2)). The effects on the free movement of persons, equal treatment and citizenship will depend on the further development and clarification of these provisions. Paragraph 2 of Article 65 of the proposed amendment, for instance, provides that the person concerned must report to the employment services of his place of residence (second sentence of paragraph 2, Art. 65), while the country of residence pays the benefits as well (third sentence of paragraph 2, Art. 65). Confusion is caused, however, by a provision which seems to provide an additional option for the unemployed to report to he labour services in the last country of employment and receive benefits there (fourth sentence of paragraph 2, Art.65). This rule requires further clarification and perhaps rewriting. This provision is purportedly high on the agenda of the negotiations to be held in the near future. More clarity is needed.

A brief study among frontier workers and their representatives[19] shows that unemployed frontier workers prefer the current *country-of-residence principle* over the proposed country-of-work principle. The main reason is that frontier workers are indeed focused on their country of work for work but are more oriented towards their country of residence for any benefits and new job opportunities. In addition, it is necessary to take the whole situation into account, as the tax situation also plays a major role besides the social security position. Social security regulations naturally only focus on ensuring the social security position of frontier workers. The confluence between fiscal and social arrangements is nevertheless essential to the overall picture. The current country-of-residence rule fits better with the tax regulations than the proposed country-of-work rule. The proposal includes the continued taxing of unemployment benefits in the country of residence, a discrepancy which leads to unpleasant and uncertain duties for frontier workers.

Sufficient numbers are needed to make sound analyses. Those are often lacking. The European Committee of the Regions also regrets the lack of reliable information and data, particularly on the number of frontier workers within the meaning of EC Regulation 883/2004.[20]

The proposed *country-of-employment principle* implies a change in applicable legislation in case of *work resumption* in the country of residence, whereby the social security legislation of the previous country of employment is replaced by the legislation of the new country of work, in this case the country of residence. For unemployed frontier workers who seek and find employment in their state of residence, the proposed scheme thus involves a change in the applicable social security legislation. When resuming work in the former country of work, on the other hand, the country-of-work principle involves no change of applicable legislation.

[19] Discussions on the proposed amendments were held in Brussels on 16 June 2017. The discussion meeting was organized by ITEM together with a delegation from the European Parliament and was visited by, inter alia, trade union representatives from Belgium and the Netherlands, as well as advisors and academics.

[20] European Committee of the Regions, *working document, Committee on Social Policy, Education, Employment, Research and Culture; Coordination of social security systems*, 13th SEDEC Commission meeting, 31 March 2017, p.5.

The potential abuse of unemployment benefit schemes is difficult to measure as this requires weighing all sorts of considerations of job seekers as well as labour-market factors. There are many variables involved, while geographical and social distance to the border will also play a role. The following factors are involved: the desired duration of employment in a new country of work, i.e. the temporary or permanent character of the labour migration; the feasibility of travel times, given that cross-border public transport is still not regulated properly; the labour-market position of the job seeker or worker; etc.
The final element to be taken into account in the evaluation of the new rule is the feasibility of proper application. Can cross-border businesses count on a correct and efficient implementation of the 12-month rule? Does this rule not hamper free movement and does it not constitute a disproportionate burden on the principle of equality? The portable unemployment documents (PD U1) will play an important role in the prevention of abuse, while the digital exchange of social-security data (EESSI) is still pending. For this reason, the paper exchange will continue to exist for the time being. However, this also requires good cooperation between government bodies. The paper exchange need not be an obstacle to the free movement of citizens, but may be the last hurdle that keeps them from crossing the border.

3.3 European integration and family benefits

The **current** regulations 883/2004 and 987/2009 contain only four articles concerning child arrangements. There are no specific rules on family benefits linked to child-raising periods. For some Member States and their cross-border citizens, this lack leads to confusion and legal barriers.

The debates on family benefits also addressed the issue of whether child benefits should be indexed when exported to Member States with different living standards. Commitments made to the United Kingdom in the course of 2015 and 2016 were the reason to consider the indexation of child benefits within the EU after all, even though indexation would violate the European rules of coordination. However, the indexing of child benefits is off the table again as a consequence of the British Brexit vote in the referendum of 23 June 2016. This implies that the country of work of the parent(s) remains responsible for the payment of child benefits and that this amount is not adapted to the place of residence of the child.[21] There are nevertheless still proponents of adaptation of the amount of child benefits and other child arrangements to the living standard of the Member State to which these child arrangements are being exported.[22]

The **proposed amendments** serve multiple purposes: 1) establishing a clear link between the competent Member State and the receiving parents, 2) promoting instead of hindering the employment of parents and 3) keeping an efficient administration of family benefits.
The proposed amendment to the family benefits introduces a new article: Article 68b. The title of this new article reads as follows: ‘Special provisions for family benefits in cash intended to replace income during periods of child-raising'. The priority rules in case of overlapping benefits were retained, however. Priority will remain with the country of work and any financial supplements can

[21] Not only would indexation violate co-ordination right; it would also mean paying enormous administrative additional costs for a relatively small percentage of all child arrangements in the EU. Only less than 1% of all child arrangements are being paid to/for children residing in another state than the one where their parents work. See European Commission, *Fact Sheet*, *Questions and Answers on the revision of social security coordination rules,* Brussels, 13 December 2016.
[22] See for The Netherlands: motion of 22 February 2017 in *Kamerstukken II* 2016 2017, 34655, No. 3 and the vote in *Handelingen II* 2016 2017, 34655, No. 39.

come from the children's country of residence. The status quo of the anti-cumulation rules and the introduction of the new Article 68b ensure that the benefits are being granted in the best interest of the child. The benefits that parents receive for child raising are qualified as an individual right of each parent and no longer as a family right. This means that overlap cannot occur, and each of the parents has a right to child-raising periods. This enhances equality of the sexes[23] and provides a better balance between work and family life. EU citizens who are insured in the Netherlands are not affected by the amendment of Article 68b; they are not eligible from the Netherlands for this sort of scheme that serves as an income replacement. There are, however, some effects on EU citizens in Germany or Belgium who claim child arrangements from their insurance periods there. They can invoke their rights *individually* and turn to the relevant responsible Member States for administrative processing.

3.4 European integration and social benefits for mobile EU citizens who are not economically active

The **current** regulations 883/2004 and 987/2009 contain limited rules for mobile EU citizens who are not economically active. Society is changing at a rapid pace, however, with EU citizens without a job, job perspective or money trying their luck in other Member States. Mobile citizens who are not economically active are persons who do not work, are not actively looking for work, nor hold any derivative rights as a relative or as a working person. The administrative, financial and legal burden that this group of people puts on the social systems is increasing, so clarification is needed. A questionnaire distributed by the EC among the Member States has shown that Member States eagerly look forward to more clarity regarding the relationship between EC Regulation 883/2004 (the free movement of persons) and the Residence Directive 2004/38.[24] Both instruments are at odds with each other.

The **proposed amendments** seek to achieve greater clarity and consensus with regard to this sensitive matter. The case law of the Court of Justice in Luxembourg laid down a number of markers on the limits to the freedom of movement of persons and the expectations that migrant EU citizens should and should not have.[25] The codification of the Judgments Brey, Dano, Alimanovic, Garcia-Nieto and the Commission v United Kingdom are currently being discussed further, as appears from the conclusion of the Maltese Presidency (June 2017), where new Articles (Article 4bis) or paragraphs were introduced (Art. 70 (4bis)).
It is difficult to estimate the effects of the changes for the Dutch situation as far as this subject is concerned, since the wording and codification of the revised Regulation are not yet definitive. In the Dutch border regions people have been aware for years that those with social assistance benefits cannot move to the neighbouring country, i.e. The Netherlands, as social assistance is not exportable and it is impossible to start a new life there without any subsistence. The effects of the establishment of other EU citizens from non-neighbouring countries will depend on the precise wording decided upon.

[23] Or equality between partners in general.
[24] TrESS, *Analytical Study 2011, Social Security Coverage or non-active persons moving to another Member State,* by F. van Overmeiren, E. Eichenhofer, H. Verschueren, www.trESS-network.org.
[25] European Court of Justice, C-140/12 (Brey), C-333/13 (Dano), C-67/14 (Alimanovic), C-299 (Garcia-Nieto) and C-308/14 (Commission v United Kingdom).

4. Evaluation of the theme of sustainable/socio-economic development

The evaluation of the sustainable and socio-economic development requires targeted numbers. Since no such numbers are available on the subject of this report, i.e. the proposed amendments to some of the rules under Regulations 883/2004 and 987/2009, this research theme is not explored any further. More insight can only be obtained if it becomes clear how many benefits, i.e. unemployment, child, care and any non-contributory benefits, are being provided across borders. It would be convenient to specifically address the individual situations of the beneficiaries; what is their country of residence and (former) country of work; what is the amount paid; how many unemployment benefits are exported from the Netherlands to Belgium/Luxembourg / Germany for the maximum period of 3 months, as per Regulation 883/2004; how many frontier workers are there between the Netherlands/Belgium/Luxembourg/Germany; and how many in the entire EU; how much money for child arrangements, which include child benefits, paid and/or unpaid parental leave) - is being exported by the Netherlands to other countries, more specifically to Belgium and Germany; how many benefits and what amount in benefits, i.e. unemployment, sickness (ZW), and disability (WIA), does the Netherlands provide to non-Dutch citizens residing in the Netherlands or other EU Member States? Though this final question borders on discrimination, it will hopefully be included in the data collection of, for example, Statistics Netherlands (CBS) and/or the UWV employment agency nevertheless. Only with sufficient insight into the number of benefits and the amounts spent on benefits can we say something substantial about the socio-economic development that certain changes might bring.

5. Evaluation of the theme of Euregional cohesion

5.1 Euregional cohesion and long-term care

As mentioned under 3.1, the **current** regulations lack specific coordination rules for long-term care. This leads to legal obscurity and legal uncertainty, which may cause long-standing issues, thus unnecessarily burdening both government bodies and the persons concerned. Long-term care is a broad concept. It includes care related to old-age, invalidity, illness or disability and not only affects the EU citizens concerned, i.e. those who need care, but also their closest carer(s). It is estimated that about 80,000 cross-border citizens currently fall back on long-term care cash benefits, corresponding to 0.4% of the total cost of long-term care in the EU.[26] As long-term care becomes more prevalent and people may also receive care-related income from another Member State, such as a cash benefit, or wish to receive long-term care in another Member State as a benefit in kind, an amendment of the present regulation is desirable. Earlier research already pointed this out.[27]

The **proposed amendments** add a separate section, a definition and a list of long-term care provisions. They will have reached their purpose if they promote legal certainty and transparency and if the burden is more evenly shared between Member States. This ex-ante analysis does not reveal large negative effects since the existing practice will be retained but will be embedded in a separate legal framework. For Euregional cohesion as cross-border cooperation between public

[26] J. Pacolet & F. De Wispelaere, 'Update of the analytical studies for an impact assessment for the revision of Regulations (EC) Nos 883/2004 and 987/2009: Coordination of LTC benefits and unemployment benefits, 2015, Table 2.18.

[27] See TrESS *Analytical Study 2012*, *Legal Impact Assessment for the revision or Regulation 883/2004 with regard to the coordination or long-term care benefits*, by Y.Jorens, B. Spiegel, JC. Fillon, G. Strban, www.trESS-network.org.

authorities, a better legal framework should also lead to swifter processing of cross-border care cases. Some reservations are in order, however: in the initial phase, the amendments will lead to a greater administrative burden as the new rules are being interpreted and implemented. Once the authorities have adjusted to the new definition and working method, they will save time and money. This helps avoid overlap situations and spend funds in a better way.

5.2 Euregional cohesion and unemployment benefits

The **current** rules provide for *restitution schemes* between Member States. Frontier workers who become entirely unemployed and claim a benefit, shall receive this benefit from their country of residence. This benefit, however, must be reimbursed by the country of work for up to three months, representing the restitution of unemployment benefits between Member States. The current restitution scheme is controversial because not all Member States adhere to it. This leads to uneven application of the rules and to irritation between competent public bodies. In other words, it is a hindrance to the loyal cooperation expected of national public bodies and therefore to cohesion within Europe. A distinction has to be made, however between Member States: the cooperation between the Netherlands, Belgium and Germany, for example, does not suffer by the restitution scheme, but that with other countries does. Sometimes the scheme is a one-way street: the Netherlands reimburses the other Member State, which (happily) accepts the money, but does not apply the rule to the Netherlands in the reverse situation, so that the Netherlands continuously has to request correct and timely application of the restitution scheme.

The *export scheme* provides for a temporary possibility to seek work in another Member State, with preservation of one's unemployed status. This export period is currently set at three months, with a possible extension to six months.

The *time of claim* is currently not clearly coordinated between the different Member States. In some Member States the aggregation rule already becomes effective after one day of work, while other Member States require a longer period of work under their legislation (see section 3.2).

Unemployed frontier workers are subject to the *country-of-residence principle* under the current rules. This implies that frontier workers pay contributions in the country of work during their periods of work but fall back on a benefit from their country of residence when entirely unemployed. This rule diverges from the direct relationship between contributions and benefits, as exists, for example, for disease or pensions, but it has been in use for decades in cross-border work situations. The country-of-work principle was suggested but never implemented during a previous revision of the coordination rules (Regulation 883/2004). Thus the country-of-residence principle was retained.

The **proposed amendments** alter the unemployment rules in several areas, as indicated under 3.2. One change is the abolition of the *restitution scheme* if the amendment is adopted in its present form. This will have no negative side-effects for our Euregional cooperation. For the institutions, however, it does mean yet another change in their working methods, which may result in an additional administrative burden. Once this change has been implemented in the systems and working methods the competent Member States will be fully responsible for the benefit, without being able to fall back on the last country of work for a payment of up to three months. The ex-ante

effects are not negative for the Netherlands, Germany and Belgium and will not negatively affect their mutual relationship, nor the cohesion between the Member States.
With regard to the *export* of unemployment benefits, the above (3.2) has pointed to the proposed extension of the export period to six months and possibly the full benefit period if it exceeds six months. The effects for the relevant authorities are not insurmountable but do require additional administration and better coordination with the other Member States involved. To achieve Euregional cohesion, a further appeal is made to loyal and closer cooperation between government bodies. *If* the exportability of unemployment is used more, and thus more people would take their unemployment benefits abroad for half a year to find work there, the paying authorities will have to publish more U2-forms.[28] The host state will need to register, support and monitor more cases and provide feedback to the competent Member State from which the unemployed person has temporarily moved. Proper arrangements, trust, knowledge of each other's legislation and regular consultation are the factors that are important for an effective, fair and clear cooperation between Member States and between regions.
Whether abuse and social tourism can be prevented when unemployed persons export their unemployment benefits to another country for a minimum period of six months in order to find work there will depend on the monitoring and the willingness to invest in it.

The aggregation of insurance periods plays a role in the *time of claiming* a benefit. The proposed amendment opts for a different approach than usual for coordination regulations until now: no aggregation from the first day of insurance but only after a period of three months. In situations of short-term insurance, i.e. less than 3 months, the former country of work will be the competent Member State instead of the last country of work, as is the case now.
The effects of this measure are, in any case, an increase in claims and administrative burden in the former countries of work and, on the other hand, a decrease of claims and administrative work in the last countries of work. The latter are responsible for the coaching of the job seekers and the provision of feedback to the competent Member State that will pay the unemployment benefits for the first period. It doesn't require much effort, however, to question this measure: To what extent will Member States put effort into helping job seekers in their Member State who are not a financial burden? Agreements between Member States may well improve or stimulate Euregional cohesion, and this measure may have very different effects on neighbouring countries/Euroregions on the one hand and on countries with few Euregional ties due to their geographical situation on the other. It is essential to the process to maintain or extend the cooperation between the UWV and its sister organizations in Belgium and Germany, VDAB and RVA; and Arbeitsagentur, respectively. This will not only benefit the unemployed but certainly also Euregional cooperation on both sides of the border.

The introduction of the *country-of-work principle* was proposed for frontier workers, to replace the current country-of-residence principle (see also 3.2). The proposed amendment implies that frontier workers will receive unemployment benefits in a Member State after 12 months of work in that Member State. The question is whether it is possible to implement to *12-month rule* at *reasonable* cost. The acceptable costs and the monitoring effort exerted will be determined by each Member

[28] The U2 form is a 'portable document' that is conditionally provided to beneficiaries, offering them the opportunity to start looking for a job in another country. The U2 form is issued by the paying Member State that must also be presented upon registration in the host Member State.

State. It goes without saying that Euregional cohesion benefits more from a similar position and approach by the neighbouring countries than from vastly different approaches.
Frontier workers who are fully unemployed after having worked less than 12 months in a Member State are still subject to the country-of-residence principle.
Between the Netherlands, Belgium and Germany, the number of applications will increase or decrease in the country of work or country of residence *if* the country-of-residence principle for unemployment after 12 months of working in a Member State is introduced. This will only happen, however, in cases of longer-term employment of at least 12 months. The shorter periods of cross-border employment will still be dealt with according to the country-of-residence principle. The authorities will now have to start using another approach for the frontier worker who has been working in the Netherlands for years and lives in Belgium or Germany. This not only requires an administrative but also a financial adjustment, which might be beneficial in certain cases and less so in others. Frontier workers who live in Belgium and have been working and paying contributions in the Netherlands for years will thus be allowed to fall back on the Dutch unemployment benefits in case of full unemployment. This of course constitutes a new financial burden to the Dutch unemployment insurance funds. Conversely, frontier workers who live in the Netherlands and work in Belgium will receive their benefits from Belgium, instead of from their country of residence, the Netherlands, as the current rules prescribe. The practical effects of his change on the Netherlands, Belgium and Germany will depend on the number of unemployed, but also on the average duration of unemployment, i.e. how long the unemployed remain in the unemployment system, as well as the level of the benefits. This report lacks the relevant specific figures.

The proposed amendments are, of course, driven by economic or financial considerations, but perhaps other factors should be taken into account as well when there is continuous cross-border work between neighbouring states. One of them might be resolving temporary labour shortages on one or the other side of the border. This is not a static fact but one that fluctuates over the years. The approach of the current change seems to be to prevent the misuse of the unemployment rules by not rewarding labour mobility with a benefit too soon. It should be noted that this approach might be useful for labour migration from more distant countries to the Netherlands, but it is not for the 'age-old' cross-border work between the Netherlands, Belgium and Germany. In these situations, the proposed country-of-work rule for frontier workers leads to a more complex benefit situation for people on short-term and temporary contracts: first, country of residence, possibly with export option, then country of work. This change will require more manpower, more flexibility and, above all, more loyal and closer cooperation of the authorities concerned.

5.3 Euregional cohesion and family benefits

The **current** rules of the Regulation qualify family benefits as rights under family law. This might cause an overlap between the rights of both parents to child-raising periods, i.e. periods of staying at home, on behalf of their child(ren). Such situations are subject to the anti-cumulation provisions of Chapter 8 of Regulation 883/2004.

The **proposed amendments** add a new article, Article 68b, which would qualify these child-raising periods as an individual right. As a result, governments would no longer have to apply anti-cumulation when both parents invoke this right. This proposed amendment is likely to *have little*

direct impact on the Dutch government and its bodies as the Netherlands does not offer any income-replacement benefits for child-raising periods.[29] Germany and some other Member States do have such legal child arrangements as income-replacement benefits in place; for them, the amendment will bring about an administrative change. It is very unlikely, though, that Euregional cohesion will be adversely affected.
The introduction of a new procedure and new rules may, however, cause complications or problems as the current practice has now been implemented correctly at all levels of government. Child arrangements vary widely across the Member States and their implementation is complex. Modification of the current version, which is well-established despite the multiplicity and diversity, is a risk in that sense and a burden on the Member States.
The electronic exchange of social security information (EESSI) plays a prominent role in the issue of family benefits. The creation of the EESSI may well be a burden prior to its implementation, due to the mutual agreements and exchange protocols that have to be drawn up. Once these arrangements are in place, however, the use of the EESSI will simplify the application of these rules compared to the existing paper administration and exchange.

5.4 Euregional cohesion and social benefits for mobile EU citizens who are not economically active

The **current** rules of the Regulation, particularly Article 4 of EC Regulation 883/2004, stipulate that all persons covered by the personal scope of the Regulation are also entitled to the same treatment as all nationals regarding the rights and obligations arising under the legislation of that Member State. This equal-treatment rule aims to make European cohesion as strong as possible, which, of course, reflects on Euregional cooperation and structures. I have not been able to discover whether there is any abuse of the current rules in the Netherlands, nor the extent of the abuse. Figures are available, however, on the approximate number of mobile EU citizens who are not economically active: This involves around 750,000 citizens in the EU; due to the lack of clear, transparent rules, these people find themselves in an uncertain situation with regard to their rights to social benefits in their host states.[30]

The **proposed amendments** will extend Article 4 by a new paragraph (paragraph 2), which would allow for conditional access. Member States may, but are not required to make access to social security benefits by mobile EU citizens who are not economically active subject to a legal right of residence as per Directive 2004/38/EC. In June 2017 it became clear that the wording of the proposed amendments will not remain the same because the differences of opinion are too big.[31]
The Member States currently diverge too much regarding the approach of the codification of the Judgments on access to special, non-contributory benefits as indicated under 3.4.
An unambiguous position of the Member States and a clear wording of the Regulation, attempts at which will be made in the coming months, will, of course, benefit European and Euregional cohesion. A proposal in this direction would be for the Netherlands, Germany, Belgium and perhaps other neighbouring countries to decide on a joint position and approach. This prevents the unnecessary benefit applications, misunderstandings, confusion, abuse, legal costs, etc. and thus achieves the

[29] The supra-statutory regulations that most companies in the Netherlands have in place are not included in the material scope of the Regulations.
[30] See EC, Social Security Coordination, Labor Force Survey, 2014.
[31] See Report of the Council of the European Union, of the Presidency (Malta) to the Committee of Permanent Representatives/the Council, Inter-institutional Dossier: 2016/0397 (COD), 2 June 2017, p.4.

objectives of the amendments, i.e. fairer, clearer, simpler and more efficient rules, at Euregional and at European level.

6. Conclusions and recommendations from a Euregional perspective

6.1 Substantive Conclusions

This report has studied the border effects of the proposed amendments to the existing coordination regulations. In December 2016 the European Commission proposed changes to EC Regulations 883/2004 and 987/2009.[32] The purpose of the recast Regulations is to create *(more) simple, honest, efficient, and clear rules*, while ensuring that the financial and administrative *burdens are shared amongst Member States more fairly*.[33] The underlying aim of the update is to make it easier for all employees to enjoy or to continue to enjoy free movement.

The Commission's proposal to amend EC Regulations 883/2004 and 987/2009 has not yet been definitively approved but will be presented to experts and to the Member States in the time to come, for further refinement, analysis and rewording. This makes the analysis performed here an ex-ante analysis.

Setting aside the posting rules and rules concerning applicable law, the focus of this report is on the changes to cross-border social security in the four following areas: long-term care, unemployment benefits, family allowances and social benefits for mobile EU citizens who are not economically active. Each of these four areas is linked to two ITEM themes: European integration (see 3.1 to 3.4) and Euregional cohesion (see 5.1 to 5.4). This allows for a systematic elaboration of the border effects of each measure.

Regarding Theme 1, **European integration**, the proposed amendment regarding *long-term care* is certainly a step in the right direction, and there are not a lot of negative effects to be expected. The definition of 'long-term care benefits' requires refinement though.

The changes in the *unemployment rules* are more comprehensive and will also have more impact on the Netherlands. The main change concerns the switch by *frontier workers* from the country-of-residence principle to the *country-of-employment principle* after a working period of 12 months. This constitutes a radical reversal of the current approach and directly affects the financial situation of frontier workers, who will no longer be able to fall back on the social security protection from their country of residence in case of unemployment but will be covered by their country of work instead. While this affirms the relationship between the payment of contributions and the claiming of benefits in the country of work, this measure may not be as efficient, simple and clear as the EC expects for traditional frontier workers between, for instance, the Netherlands, Belgium and Germany. If the tax positions of frontier workers are also taken into account, this change to the country-of-work principle for unemployment benefits leads to complex situations, which make looking for a job across the border unattractive. For temporary and short-term contracts, the change involves a legitimate restriction of the immediate claim that some EU workers submit after only a

[32] These are the basic and implementing Regulation for the coordination of social security in the EU.
[33] See COM(2016) 815 final, pp.2-4.

very short period of work. This brings us to the *aggregation rule* to be modified. This rule can no longer be invoked from day one but only after three months of working in another Member State, thereby also making periods in other Member States count.
Another amendment to the unemployment rules is the extension of the *exportability* of the unemployment benefit. In the future, these benefits can be exported to another Member State for six months, instead of three now, in order to seek work there, provided that the unemployed also register with the public employment services in that country. Whether this measure actually leads to more employment opportunities and greater labour mobility is difficult to say as relevant figures are lacking.

Relatively few effects are to be expected for the third group of proposed amendments, i.e. amendments to the child arrangements for *child-raising periods,* because the Netherlands does not offer income-replacement benefits for child-raising periods.

The fourth amendment concerns social benefits for *mobile EU citizens who are not economically active*. A limited group of EU citizens, estimated at around 750,000 people, is trying to move to another Member State without a job or money and without actively looking for work. Directive 2004/38 conflicts with the Regulations in this matter, and the proposed changes still seem unable to lift the ambiguity. There is still controversy about the exact size and wording of the codification of a series of Judgments of the Court of Justice.

The four topics were re-examined for the theme of **Euregional cohesion**, this time with a focus on the governance structures in our Euregio, the border region with Belgium and Germany.
As far as *long-term care* is concerned, the extension of the Regulation with a dedicated chapter and specific provisions on cross-border long-term care will lead to more clarity, efficiency and cooperation. The start-up phase might cause an additional administrative burden, however, due to the implementation and interpretation of the new rules in the Member States.
The changes to the *unemployment rules* will have varying impact. There are no negative side effects to be expected from the abolition of the *restitution scheme*, unless it leads to another adjustment of the administrative procedures in the short term. A second amendment to the unemployment rules is the extension of the *export period* to six months. The impact on the public authorities and on mutual cooperation mostly concerns administration and the issuing of more U2 forms. In addition, quite a few demands are being made of the host Member States in terms of the support and monitoring of job seekers, as well as the provision of feedback to the paying Member State. The question remains whether and how this will take place; will Member States have the time, resources and staff to coach a group of cross-border job seekers during their period of unemployment, whose benefits are being paid by another Member State?
The third amendment regarding unemployment concerns the time of claim, i.e. the *aggregation rule*. If the aggregation rule becomes effective not from day one but only after three months, Member States will have to make proper mutual arrangements for job seekers for those first few months. Direct consultation, transparent agreements and evaluations will promote cooperation between the UWV and its German and Belgian counterparts. Cooperation with other Member States may be less urgent but also more difficult and difficult to gauge at the moment.
As far as the entirely unemployed *frontier workers* are concerned, the proposed introduction of the country-of-employment principle for unemployment benefits can be seen as the biggest change. The

new Article 65, paragraph 2 of Regulation 883/2004 emphasizes the country-of-work principle and its conditions in the first, second and third sentence: being entirely unemployed and having had insurance in the last country-of-work for more than 12 months. The fourth sentence of this Article, however, causes confusion by introducing a right of option based on place of residence. Transparency, clarity and the simplicity of the regulations are not served by proposing such combinations in one and the same Article.

The border effects of the proposed changes to child-raising periods and income-related benefits, as part of the *child arrangements*, mainly lie in the domain of administration and in making the necessary adjustments to practical implementation. The Netherlands will, if necessary, adapt its systems to the arrangements made in other Member States as these arrangements do not exist in our country.

The final subject is Euregional cohesion in its relationship with the social benefits for *mobile EU citizens who are not economically active*. We will have to await the final wording, given that current opinions on how to approach this issue diverge too widely. A joint approach would be both convenient and sensible, however, for Euregional cooperation. The Netherlands, Belgium, Germany and any other neighbouring countries can raise their profile by taking a clear, honest and efficient position in this matter.

In short, of the four subjects for which amendments have been tabled, the changes in the unemployment rules will have the largest direct impact on the Netherlands.

6.2 Outlook

This cross-border impact assessment can be further developed and supplemented by, among other things, adding more and better figures;[34] by setting up consultations between the (public) unemployment agencies of the Netherlands, Belgium and Germany, as well as those of other Member States; by maintaining contacts and arranging consultations with the frontier workers and their representatives. In addition, more thorough research is needed to distinguish, for example, between the traditional frontier workers who have lived in one country and worked in another for a long time, sometimes their entire career, and other mobile workers who have successive short work periods in different countries or work alternately in two countries. Frontier workers are currently largely subject to the same rules, which benefits the transparency of the regulatory framework and the equal treatment of workers. The question is, however, whether this is also effective, fair and clear.

[34] Data on cross-border labour and the associated movements of benefits and sums of money are useful in supporting and shaping further policy making.

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