

# TRANSNATIONAL SOCIAL PROTECTION IN THE EU FROM A STATISTICAL POINT OF VIEW

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## INTRODUCTION

In the past, the topic of *transnational social protection* within the EU, and more specifically, the coordination of social security systems,<sup>1,2</sup> attracted mainly the attention of legal scholars (see, for instance, Jorens 2009; Schoukens 1997; Watson 1980). At that moment, *no statistics, no problems* seemed the dominant credo and *data-free science* (Schlegel 1978) the daily reality, both in legal scholarship and in EU policy-making. At least that is the dominant feeling when, as a non-legal expert, one goes through the academic literature and the political decisions at the EU level of the past decades. Together with increasing political sensitivity to the topic, scholarly attention to the impact of these rules has recently taken on a more multidisciplinary dimension, as sociologists, economists, and political scientists have become more active in the academic debate on transnational social protection (see, for instance, Levitt et al. 2017),<sup>3</sup> not least in the area of intra-EU posting (related to scholarly and political discussions on risks of *social dumping*) (see, for instance, Arnholtz & Lillie 2019) and economically inactive persons (related to scholarly and political discussions

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1 The coordination of social security systems in the EU has both an internal and an external dimension (Melin 2019). In addition to the internal mobility in the EU, there is also a significant flow of mobility from non-EU countries to the EU and vice versa. The scope of this book chapter is limited to its internal dimension. For an analysis of the external dimension, see, for instance, Melin 2019; Bogoeski & Rasnača 2023; Verschueren 2023.

2 Currently implemented by Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, 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. Hereinafter, jointly referred to as *the Coordination Regulations*.

3 Devetzi (2019: 339) rightly points out: “The question ‘when are EU migrants who have made use of their right to free movement entitled to basic (non-contributory) social benefits in the host Member State?’ has been much discussed in academic literature and case law in the past years.”

on *European social citizenship* and risks of *benefit tourism*<sup>4</sup>) (see, for instance, Amelina et al. 2020; Bauböck 2019).

The above-mentioned old and new realities demonstrate the need for reliable data, as empirical evidence may refute, nuance, or confirm existing perceptions on social dumping and benefit tourism, and support evidence-based policy-making at the EU and national level. For instance, Roberts (2020: 534) points out that “social security coordination took centre stage in the Brexit narrative, in which, despite the evidence to the contrary, numerous inaccuracies, including the myth of benefit tourism, gained traction to create a moral panic.”<sup>5</sup> At the same time, quantitative data can show how (well) transnational social protection is developed in the EU and its importance for millions of EU citizens. For instance, at the beginning of the new millennium, Eichenhofer (2000: 231) wrote:

The coordination of social security between Member States has been the most significant development so far in social policy at the European level. Its success has been remarkable, yet its implementation has been scarcely noticeable. For decades, pensions have been exported, medical treatment has been available for tourists travelling between Member States,<sup>6</sup> and pro-rata pensions have been payable to those who have spent their working lives in more than one Member State. Such benefits of EU social security coordination are today taken for granted.

This book chapter aims to determine the reference group benefitting from transnational social protection in the EU by applying the Coordination Regulations. This assumes a methodologically correct measurement of the number of persons covered by the Coordination Regulations (i.e., the entire group of

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4 Similar notions are *welfare migration*, the *welfare magnet* hypothesis, the *welfare burden* thesis. Some recent relevant studies in this regard are, for instance, Martinsen & Rotger 2017; Montanari 2020; Osterman et al. 2019; Strockmeijer et al. 2020; Suari-Andreu & van Vliet 2022.

5 The perception of benefit tourism even led the UK and the other EU Member States (the UK was still a Member State at that moment) to conclude an agreement in February 2016 (2016/C 69 I/01) that included an *alert and safeguard mechanism* for Member States confronted with an inflow of workers from other Member States of an exceptional magnitude over an extended period. The Council authorised these Member States to limit the access of newly arriving EU workers to non-contributory in-work benefits for a total period of up to four years from the commencement of employment.

6 The 235 million European Health Insurance Cards (EHICs) circulating today illustrate that the Coordination Regulations are of importance for all EU citizens when they move between Member States, be it for work or for private reasons. One could even argue that there are two well-known European symbols: the EURO and the EHIC. The first of these is a visual symbol of the European Monetary Union, the latter of a *European Social Union* (Cornelissen & De Wispelaere 2020).

persons in a cross-border situation that falls under the personal scope of the Coordination Regulations) as well as the number of mobile persons in the EU who claimed their social rights through the application of it.<sup>7</sup> Furthermore, this chapter aims to quantify Member States' expenditure on transnational social protection by applying the Coordination Regulations and to compare this with total social spending. The focus is on the main branches of social security, namely, pensions, healthcare, and family benefits. The latter is often linked to benefit tourism and *financial unfairness* (Blauberger et al. 2020; Palme & Ruhs 2022). Regarding healthcare, the data analysed is limited to the provision of cross-border healthcare.<sup>8</sup> The analysis of the social security branches of pensions and family benefits mainly focuses on the exportability of these social benefits.<sup>9</sup> However, the scope and, thus, the impact of the Coordination Regulations is much broader than its exportability dimension. Particularly, there is the question of access to social security benefits when moving to another Member State, its take-up (and differences with native citizens),<sup>10</sup> and its financial consequences for national welfare states. Such figures are not reported. Finally, this book chapter only provides an overview of social security benefits paid to mobile persons and, therefore, does not provide an overview of the receipts of Member States from social security contributions paid by mobile persons and their employers. Before turning to the figures, the following sections briefly describe the concept of transnational social protection and the legal framework that facilitates this protection in the EU, primarily focusing on the Coordination Regulations.<sup>11</sup>

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7 It is only recently that statistics on the use and impact of the Coordination Regulations have been collected in a consistent manner at the EU level, mainly based on Article 91 of the Implementing Regulation 987/2009. For instance, in a publication from 2015 of Holzmann and Werding (2015: 343), the authors still concluded that “while the availability of micro data has dramatically improved over the last two decades in many OECD countries, data on *portability* issues are fraught with limited access, incompleteness, or simple nonexistence”.

8 The scope of the cases covered by applying the Coordination Regulations related to healthcare, however, is much broader. By applying the Coordination Regulations, workers moving between Member States have immediate access to the healthcare system of their new Member State. The financial consequences of these provisions are not reported in this chapter.

9 For instance, no figures are reported on the access to family benefits when the entire family, including the children, moved to another Member State.

10 See, for instance, Montanari 2020; Strockmeijer et al. 2020; Suari-Andreu & van Vliet 2022.

11 This section is just an introduction to the legal framework. For an elaborate analysis, see Pennings 2022.

## **TRANSNATIONAL SOCIAL PROTECTION IN THE EU: AN INTRODUCTION TO THE LEGAL FRAMEWORK**

### *The notion of transnational social protection*

In the case of transnational mobility, people move from one *social space* to another (Ferrera 2005). In this action, people enter a (European) transnational social space which includes several actors from the country of origin and the host country (Heidenreich 2019). These actors provide transnational social protection. The definition from Levitt et al. (2017: 6) to indicate this umbrella concept reads: “Transnational social protection comprises the policies, programmes, people, organisations, and institutions which provide for and protect individuals across national borders in the categories of old-age, survivors, incapacity, healthcare, family benefits, active labour market programs, unemployment, and housing assistance.” The definition indicates that persons may access transnational social protection through formal channels of social protection provided by the country of origin and/or the host country and through informal channels. In general, it defines four main providers of transnational social protection: states, markets, civil society, and social networks (Faist 2017; Lafleur & Vintila 2020; Talleraas 2019). This chapter focuses on how groups of states in the EU facilitate transnational social protection within the EU (mainly limited to the material scope of social security). Bilateral and multilateral agreements between Member States are the prevailing instruments in the EU to protect the social security rights of mobile persons within the EU.

### *Transnational social protection in the EU*

One of the essential components of the European single market is, without any doubt, the free movement of persons. Already in the earliest days of the European Economic Community (EEC), it was recognised that genuinely free movement could not be achieved without a solution for the social security rights of mobile persons, then limited to migrant workers and their dependents. Workers would be reluctant to move from one Member State to another if they stood to lose their already acquired social security rights. Consequently, from 1958 onwards, the Treaty of Rome included a solid legal basis for legislation in the field of coordinating social security. Now enshrined in Article 48 of the Treaty on the Functioning of the European Union (TFEU) (ex-Article 51 EEC), this legal basis obliges the legislature to take measures to provide, in the field of social security, protection to people who make use of their right

to free movement.<sup>12</sup> By coordinating Member States' social security systems, this objective was adopted into secondary law by Regulations 3 and 4. Both Regulations were replaced in October 1972 by Regulations 1408/71 and 574/72. Since May 2010, the Basic Regulation 883/2004 and the Implementing Regulation 987/2009 are in force. The personal scope of the Coordination Regulations covers all EU citizens<sup>13</sup> who are subject to the social security legislation of a Member State, including economically inactive persons.

To guarantee transnational social protection, at a minimum, the following concerns must be solved (Pennings 2022, Hirose et al. 2011): discrimination on grounds of nationality must be forbidden; existing gaps in insurance records by working in different Member States and their subsequent disadvantage to the fulfilment of the conditions for the social benefit and/or the calculation of the amount of the social benefit must be corrected; payment of benefit rights in other Member States must be ensured; conflicts of law must be avoided. Several key principles applied in the Coordination Regulation address the above concerns and thus protect the social security rights of persons moving within the EU: a) the prohibition of discrimination, reinforced by the equal treatment of cross-border facts and events (i.e., the principle of assimilation); b) the aggregation of insurance periods; c) the exportability of benefits; and d) the determination of a single applicable legislation. The first recital of the Basic Regulation 883/2004 adds an even more ambitious objective: the rules “should contribute towards improving the standard of living and conditions of employment” for mobile persons. It is surprising to read such an overwhelming objective for a Regulation whose sole purpose is *coordinating* social security systems.<sup>14</sup> After all, it is the responsibility

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12 Article 21 (3) TFEU constitutes a supplementary basis for EU citizens not covered by Article 48 TFEU.

13 Regulation (EC) No 1231/2010 offers the same protection to third-country nationals as EU citizens moving within the EU in terms of social security. However, this extension is subject to two conditions: the third-country national must legally reside in a Member State, and there must be a cross-border element between at least two Member States. Therefore, the Coordination Regulations do not apply to workers from a third country who remain in one and the same Member State.

14 Moreover, the Coordination Regulations cannot guarantee that a worker moving to a Member State other than the Member State of origin will be neutral in terms of social security. Given the disparities between the Member States' social security schemes and legislation, such a move could be advantageous or disadvantageous for the person concerned in that regard.

of the Member States to ensure a well-developed level of social protection for their citizens.<sup>15</sup>

The material scope of the Coordination Regulations is limited to the social security risks listed under Article 3(1) of Regulation 883/2004.<sup>16</sup> Social assistance schemes are excluded from its material scope.<sup>17</sup> In this regard, both Regulation 492/2011 on the freedom of movement of workers (i.e., Regulation on the Free Movement of Workers)<sup>18</sup> and Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (i.e., Citizens' Rights Directive)<sup>19</sup> are relevant

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- 15 See also Verschueren (2020: 391): "It is important to re-emphasise that this European coordination of the Member States' social security systems cannot ensure, as such, that these national systems provide adequate protection against social exclusion or poverty. That remains the responsibility of the Member States. The coordination system does not contain a rule that orders the Member States to provide social benefits that are sufficiently high or extensive so as to prevent poverty."
- 16 The Coordination Regulations apply to the following branches of social security: sickness benefits; maternity and equivalent paternity benefits; invalidity benefits; old-age benefits; survivors' benefits; benefits in respect of accidents at work and occupational diseases; death grants; unemployment benefits; pre-retirement benefits; family benefits. The Coordination Regulations also apply to special non-contributory cash benefits covered by Article 70 of the Basic Regulation.
- 17 However, as argued by Vonk (2020), the distinction between social assistance schemes and non-contributory cash benefits is becoming increasingly redundant (see also Paju 2022).
- 18 Articles 7(1) and 7(2) of Regulation 492/2011 are particularly important in safeguarding equal treatment. Both provisions are an important complement to the Coordination Regulations as they guarantee that the mobile worker will also be able to claim social rights that fall outside the material scope of the Coordination Regulations.
- 19 Economically inactive persons do not fall within the personal scope of Regulation 492/2011 and, consequently, leads to a risk of discrimination in the granting of social benefits that are not covered by the material scope of the Coordination Regulations. Such persons must rely on Article 18 TFEU mirrored by a principle of equal treatment for mobile EU citizens defined by Article 24(1) of Directive 2004/38. However, by way of derogation from this provision, the host Member State is not obliged to confer entitlement to social assistance during the first three months of residence or, where appropriate, a longer period provided for jobseekers, nor shall it be obliged, prior to acquisition of the right of permanent residence, to grant maintenance aid for studies, including vocational training, consisting in student grants or student loans to persons other than workers, self-employed persons, persons who retain such status and members of their families (Article 24(2)). There is actually a real chance, particularly due to recent case law, that this might not be possible during the first five years of legal residence when they constitute an *unreasonable burden* for the social assistance system. This reality demonstrates the legal uncertainty faced by economically inactive EU citizens, all the more so as access to social assistance will vary according to the conditions imposed by the public authorities based on their interpretation of the Citizens' Rights Directive and recent case law (Heindlmaier 2020).

in safeguarding (to some extent) social rights that fall outside the scope of the Coordination Regulations. Within the context of the provision of cross-border healthcare, reference should also be made to Directive 2011/24/EU on applying patients' rights in cross-border healthcare (i.e., Patient Mobility Directive).<sup>20</sup> Furthermore, the material scope of the Coordination Regulations only concerns statutory pension schemes and does not apply to supplementary pension schemes. Thus, adopting specific rules for the latter was imperative. As a first step in removing possible obstacles to free movement relating to supplementary pensions, Directive 98/49/EC on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community sets out certain rights for members of supplementary pension schemes. As a second step, Directive 2014/50/EU was adopted.<sup>21</sup> Finally, in addition to European legislation, – complemented by the case law of the Court of Justice of the European Union (CJEU) – national legislation and bilateral agreements add another social dimension to transnational social protection in the EU.<sup>22</sup>

### ***A preliminary assessment of transnational social protection in the EU***

This book chapter has neither the intention nor the ambition to assess in detail the extent to which transnational social protection is guaranteed in the EU. The above overview of the legal framework shows that many efforts have been made within the EU to guarantee this protection. However, the level of transnational social protection may vary depending on the status of the person concerned (e.g., economically active persons versus economically inactive persons) or the type of social benefit (social security schemes versus social assistance schemes). Moreover, the complexity of applying this legal framework may lead to several

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20 For data with regard to the application of Directive 2011/24/EU see Olsson et al. 2023.

21 See report from the Commission on the application of Directive 2014/50/EU of the European Parliament and of the Council of 16 April 2014 on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights (COM (2020) 291 final).

22 For instance, alongside the procedures provided by EU rules (the Coordination Regulations and Directive 2011/24/EU), several Member States have parallel procedures in place for planned cross-border healthcare.

problems on the ground, such as the non-take up of social rights.<sup>23</sup> In any case, transnational social protection seems to be more developed in the EU than in other regions worldwide. This observation can be concluded from data on the *portability of social security rights*.<sup>24</sup> According to Holzmann et al. (2005), the social protection status of migrants can be classified into four regimes:<sup>25</sup> *Regime I*: portability; *Regime II*: exportability; *Regime III*: no access; *Regime IV*: informal. Regime I is the most favourable regarding formal social protection for migrants. Avato et al. (2009) reveal that only a quarter of all migrants worldwide are covered by such a regime. The regime applies, however, to all EU citizens moving within the EU. This finding is a good indication of the well-developed transnational social protection the EU offers to mobile persons, which is far from guaranteed in the rest of the world. In that regard, *the glass seems to be half full rather than half empty* when it comes to the level of transnational social protection in the EU.<sup>26</sup> This finding largely contradicts the literature on *European (social) citizenship*. Over the past two decades, several scholars have researched the nexus of EU citizenship, free movement, and social rights. When reading their analyses, it is striking that for this evaluation, several scholars limit themselves to an analysis of the access to social rights of economically non-active persons and/or to an analysis of one specific EU legislation (mostly the Citizens' Rights Directive) (see, for instance, several authors in Bauböck 2019; Pennings & Seeleib-Kaiser 2018). The selectivity of such an analysis is worrying, particularly because it fails to recognise the crucial role of the Coordination Regulations in

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23 See also Verschuere (2020: 398): "Big obstacles to the application of the European Regulations are their complexity. Problems occur, for instance, in the case of non-standard forms of employment, employment in more than one Member State, posting and cross-border employment. The complexity of the legislation and the case law on this means that in situations of this kind the persons concerned cannot always enforce their rights adequately. Administrative practices in the Member States often add to this. No doubt, there is a problem with the non-take-up of rights." Furthermore, formal barriers to the access and portability of social rights still exist (too long waiting periods, application forms only available in the official language of the Member State of application, outdated application procedures, ...) (Amelina et al. 2020).

24 Portability can be understood as "the mobile person's ability to preserve, maintain and transfer acquired social security rights, independent of nationality and country of residence" (Holzmann et al. 2005).

25 However, as Lafleur and Vintila (2020) state, there are several limitations that question the validity of this exercise. For instance, this classification only covers the public intervention. As we have seen, the definition of transnational social protection also covers other actors.

26 Though, other scholars may take a different view. For instance, Mišič (2019) defines four categories of EU citizens: 1) unconditionally deserving EU citizens, 2) conditionally deserving EU citizens, 3) undeserving EU citizens, and 4) deserve-neutral EU citizens (see, also Mišič & Strban 2023).



safeguarding the social rights of mobile persons. As Verschueren (2020: 391) argues: “Its contribution to the social dimension of the European integration is undeniable as it creates some form of social citizenship beyond the boundaries of nation-states.”

## **QUANTIFYING THE IMPORTANCE OF REGULATIONS 883/2004 AND 987/2009**

Together with the provisions of the Coordination Regulations, two other variables (i.e., drivers) play a major role in the number of persons benefitting from the application of the Coordination Regulations as well as in the financial implications on Member States’ social security systems, notably 1) the mobility flows from and to the Member States, and 2) the design of national social security systems (eligibility criteria, level of benefits, duration) (De Wispelaere 2019). For instance, in the field of family benefits, the Member States with a high number of incoming frontier workers, such as Germany, Switzerland, Luxembourg, and Austria, are likely to be the Member States that pay a high number of family benefits to families living in another Member State. In addition, the impact on the exporting Member States will be even greater if the eligibility criteria and rates regarding family benefits differ significantly from those of the Member State of residence of the children.

In that regard, giving a brief overview of the main mobility flows in the EU is useful. This chapter only considers intra-EU mobility, both for occupational and other reasons. In 2021, an estimated 15.8 million EU/EFTA citizens lived in another EU/EFTA country (Eurostat data). About 2.6 million persons were under 20 years old, 11.5 million persons of working age (20–64) and 1.6 million persons 65 years and older. Labour mobility within the EU can occur in various forms, both permanent or (very) temporary.<sup>27</sup> *Active EU-movers* move from one Member State to another and are employed in their new Member State. *Cross-border workers* or *frontier workers* live in a Member State other than where they are employed, especially in border regions. *Seasonal workers* undertake temporary work in another Member State during seasonal increases in labour demand without changing permanent residence. *Posted workers* represent the growing group of workers temporarily providing services on behalf of their

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27 In delineating these forms of intra-EU labour mobility as well as quantifying them, it is not always possible to unambiguously distinguish between them. As a result, some forms of intra-EU labour mobility may overlap.

employer in another Member State. Finally, *business travellers* go to another Member State for a very short period, and *highly mobile workers* operate in several Member States, often for a short period. For the reference year 2020, there are estimated to be around 7 million economically active EU movers, 1.5 million cross-border workers, 2.4 million posted workers, and a minimum of 650,000 seasonal workers (Fries-Tersch et al. 2022). Furthermore, around 10 million trips annually for professional reasons are performed in the EU (Eurostat data). A (large) group of mobile persons is also economically inactive because they are still studying or retired (see the above figures for those younger than 20 years or older than 64). Furthermore, there is a group of economically inactive mobile persons of working age. This group was estimated to involve about 1.7 million EU movers (Fries-Tersch et al. 2022). As a result, probably about 4 in 10 EU-movers are economically inactive.<sup>28</sup>

The Coordination Regulations are very important for the above groups of mobile persons within the EU. In subsequent subsections, their importance will be further discussed regarding the export of pensions, access to and reimbursement of cross-border healthcare, and the export of family benefits.<sup>29</sup>

### ***The exportability of old-age, survivors', and invalidity pensions***

To facilitate the transnational mobility of persons of all ages, well-designed transnational social security rights are a prerequisite. For instance, EU citizens would be reluctant to move from one Member State to another if they were to lose their pension rights already acquired or if the pension was subject to any reduction or amendment. Such losses or reductions are not the case in the EU, thanks to the rules set out by the Coordination Regulations. Persons are entitled to a pension from every Member State where they were insured for at least one year, provided the conditions under national law are fulfilled. These pensions correspond to the insurance periods completed in each relevant Member State (i.e., based on a pro-rata method). Pensions are not subject to any reduction, amendment, suspension, withdrawal, or confiscation because the pensioner resides in a Member State other than the one in which the institution responsible for providing pensions is situated.

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28 About 2.6 million students, about 1.7 million economically inactive mobile persons of working age and about 1.6 million pensioners. This total of 5.9 million persons is divided by the total group of 15.8 million persons.

29 The term Member State is used in the subsections below to indicate the EU Member States, the EFTA countries, and the UK.

Large amounts of old-age, survivors', and invalidity pensions (limited to the statutory pension schemes) circulate among Member States (De Wispelaere et al. 2023a, 2023b). The reasons behind the export of pensions to other Member States are diverse, for instance, the payment of a pension to retired frontier workers or to EU-movers returning to their country of origin. In that respect, countries such as Luxembourg and Switzerland, with a high number of incoming frontier workers, or Germany, with a high number of incoming EU-movers, may export a high number of pensions. In addition, many pensions will be paid to pensioners who have decided to move abroad (mostly to Mediterranean countries).

In 2021, roughly 6 million pensions were paid to persons residing in another Member State, amounting to a total expenditure of 24.8 billion EUR (De Wispelaere et al. 2023a; 2023b). A total average monthly amount of 343 EUR was paid to pensioners residing abroad. The amount is much lower than the average monthly amount paid to the total group of pensioners in the EU (1,277 EUR) (Eurostat data). This difference can be explained by the fact that the exported amounts only represent a pro-rata pension. In most cases, one or more other Member States will pay an additional amount to the pensioner.

Switzerland, Germany, and France are the Member States that have by far paid the most pensions to persons residing in another Member State. Switzerland paid a total amount of 5.9 billion EUR to some 886,000 pensioners residing in another Member State. Germany paid 5.4 billion EUR to 1.3 million pensioners residing in another Member State. Finally, France paid 3.2 billion EUR to roughly 1 million pensioners residing abroad. Most pensions were exported to pensioners residing in Germany, Spain, Italy, France, and Portugal. Around two out of three exported pensions were paid to pensioners residing in one of these five Member States. For instance, some 900,000 pensioners residing in Spain received a total amount of pensions of 4 billion EUR from another Member State. The two main flows of the export of pensions were from Switzerland to Italy and France.<sup>30</sup>

In 2021, on average, 4.4% of the total pensioners in the EU resided in another Member State. Total spending for this group of pensioners amounted to only 1.2% of the total amount of paid pensions (because of the payment of a pro-rata pension, see above). Luxembourg is an outlier regarding the export of pensions, mainly due to the high number of incoming frontier workers. Some 44% of the pensions paid by Luxembourg were exported abroad, although they only represented 20% of total expenditure on pensions. In addition to

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30 Switzerland paid an amount of 1.9 billion EUR to almost 297,000 pensioners residing in Italy and an amount of 1.4 billion EUR to some 131,000 pensioners residing in France.

Luxembourg, Switzerland exported almost 30% of its pensions abroad. However, these pensions only represented 8% of the total pensions paid by Switzerland. Furthermore, Austria (7.9%), Slovenia (7.5%), Belgium (6.5%), Poland (6.4%), Germany (5.6%), Sweden (5.5%), the Netherlands (5.5%), and France (5.1%) exported a high share of their pensions to persons who reside abroad.

### ***Cross-border healthcare***

EU citizens have different routes at their disposal to receive cross-border healthcare in the EU and to be reimbursed (Berki 2018). They can seek treatment according to the rules and principles set by the Coordination Regulations, Directive 2011/24/EU, bilateral/multilateral agreements or national legislation. Moreover, cross-border healthcare can occur without any reimbursement (cost entirely borne by the patient), or there can be a (partial) reimbursement by a private insurer. The figures presented in this section refer only to cross-border healthcare provided under the Coordination Regulations.

The Coordination Regulations identify and regulate three cross-border healthcare situations. First, there is unplanned necessary cross-border healthcare when necessary and unforeseen healthcare is received during a temporary stay outside of the competent Member State (for instance, during a summer vacation in another Member State). Second, planned cross-border healthcare can be received in a Member State other than the competent Member State when patients purposely seek out healthcare abroad. Finally, persons residing in a Member State other than the competent Member State (mainly cross-border workers and pensioners) are also entitled to receive healthcare.

In 2021, reimbursement of cross-border healthcare in the EU under the Coordination Regulations amounted to roughly 4 billion EUR (De Wispelaere et al. 2023a; 2023c). The principal debtors were both the United Kingdom and Germany (their expenditure amounted to approximately 600 million EUR each), followed by Luxembourg, the Netherlands, and France (their expenditure amounted to approximately 400 million EUR each). From a creditor point of view (i.e., Member State of treatment), mainly Germany, France, and Spain requested reimbursement for the provision of cross-border healthcare, as in all three Member States, the reimbursement claims exceeded 750 million EUR.

One of the basic principles of the Coordination Regulations entails that the cost of healthcare provided abroad is fully reimbursed by the competent Member State, in accordance with the tariffs of the Member State of treatment and not of the competent Member State. This principle is particularly important for patients from Member States with relatively low tariffs and obtaining healthcare

in a Member State with higher medical charges. However, it results in a higher financial burden of cross-border healthcare on total health expenditure in those Member States with low healthcare expenditure per inhabitant. Consequently, East European Member States show a higher relative cross-border expenditure. Leaving aside Luxembourg (16% of their healthcare spending relates to cross-border healthcare), the share of cross-border healthcare in total healthcare spending exceeds 1% in Bulgaria (2.1%), Latvia (1.5%), Cyprus (1.4%), Romania (1.3%), and Lithuania (1.1%). In all these Member States, the share of cross-border healthcare spending is much higher than the EU average of only 0.4%.

The financial impact varies greatly, not only between Member States but also between the different types of cross-border healthcare. The most significant impact can be seen for healthcare provided to persons residing in a Member State other than the competent Member State (0.3% of total healthcare spending). In 2021, more than 2 million persons resided in a Member State other than the competent Member State. About two-thirds of this group were cross-border workers, and about one-third were pensioners. The fact that spending on this type of cross-border care is the highest (around 3 billion EUR in 2021) is hardly surprising as this group of people lives permanently in another Member State (in this, it differs from unplanned necessary healthcare provided to people temporarily staying in another Member State (for a few days or weeks)). As a result, the probability of having to provide healthcare to this group of persons during the reference year is significantly higher (for instance, compared to the total group of tourists). Moreover, expected healthcare costs have a strong lifecycle dimension, as they typically increase at higher ages. As part of this group are pensioners, the likelihood of having to provide healthcare is higher again. For unplanned necessary cross-border healthcare, the share in total healthcare spending amounted to 0.1%. The number of reimbursement claims for unplanned necessary cross-border healthcare is expected to strongly correlate with the number of tourist arrivals.<sup>31</sup> In that regard, the decrease in the number of tourism trips during the COVID-19 pandemic (both in 2020 and 2021) may have impacted the level of unplanned necessary cross-border healthcare in the EU. In 2019 (pre-COVID), some 2.4 million claims for reimbursement were issued by the reporting Member States, accounting for around 1.2 billion EUR. However, in 2020 and 2021, there was a sharp drop in the amount claimed by the Member States of stay (the total amount claimed was in both years less than 700 million EUR). Finally, the budgetary impact of planned cross-border

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31 Almost 100 million tourist trips (excluding trips for professional reasons) took place within the EU in 2021 (Eurostat data).

healthcare is only 0.02% of total healthcare spending. In 2021, less than 10 out of 100,000 insured persons received a so-called Portable Document S2 (PD S2) certifying the entitlement to planned healthcare treatment in a Member State other than the competent Member State of the insured person, based on the procedures provided by the Coordination Regulations. Only Luxembourg showed a relatively high volume of patient mobility to receive planned healthcare in another Member State (some 10 out of 1,000 insured persons received a PD S2). Moreover, cross-border planned healthcare is concentrated within a limited number of neighbouring Member States. The most prominent flows went from France to Belgium, Belgium to Luxembourg, Switzerland to France, Luxembourg to Belgium, Luxembourg to Germany, and Germany to Switzerland.

### ***The exportability of family benefits***

The exportability of child benefits is a specific issue that has been at the heart of recent and ongoing debates about EU workers' access to social benefits, as several Member States are in favour of a more restrictive indexation policy.<sup>32</sup> The shift towards such a policy was even suggested in an agreement concluded between the UK and the EU (2016/C 69 I/01) in February 2016 (a few months before its referendum on continued EU membership in June 2016) and in 2019 even implemented in Austria (see below). Despite the pressure from several Member States, no amendment to the coordination rules on family benefits was proposed by the Commission (COM(2016) 815), defended under the credo of *equal benefits for equal contributions at the same place* (Thyssen 2019).

When family members live in a Member State other than the one where the EU citizen works and/or resides, family benefits can, in some cases, be exported to these family members. Therefore, the Coordination Regulations lay down priority rules to define the primarily competent Member State, which is obliged to provide the family benefit for the person concerned. Another Member State might have to pay a supplement (corresponding to the difference between the amount of the two family benefits) as the secondarily competent Member State if the family benefit paid by the primarily competent Member State is lower than the family benefit the person would have received from the secondarily competent Member State.

In 2021, family benefits were transferred to more than one million family members residing in another Member State (De Wispelaere et al. 2023a, 2023d).

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32 In 2017 and 2018, the Ministers of Labour of Germany, Ireland, Denmark, the Netherlands, and Austria sent letters to the EC that called for the indexation of child benefits for children living in another Member State.

Germany, Switzerland, Luxembourg, and Austria were identified as the leading exporters of family benefits. Germany paid a child benefit to some 286,000 children residing in another Member State. Furthermore, some 250,000 child allowances were transferred from Switzerland to another Member State. Luxembourg paid a family benefit to roughly 97,000 households or some 169,000 children residing in another Member State. Finally, a family benefit was transferred from Austria to some 75,400 households or some 125,000 children residing in another Member State.<sup>33</sup> Unsurprisingly, these are the main exporting Member States of a family benefit. After all, Member States with a high number of incoming frontier workers typically must pay a substantial portion of family benefits to families living in another Member State.

Most family benefits are exported to Poland, France, Belgium, and Germany. The two main flows went from Germany to Poland and from Luxembourg to France. Some 134,000 children residing in Poland received a child benefit from Germany. A family benefit was transferred by Luxembourg to roughly 48,200 households or some 84,800 children residing in France. This flow amounted to 322.6 million EUR. Furthermore, based on the flow of frontier workers, a high number of family benefits will most likely be exported from Switzerland to France.

In 2021, on average, 1.8% of the family benefits were paid to persons residing in another Member State. The indisputable frontrunner in the export of family benefits was Luxembourg. This Member State exported 56% of its family benefits to another Member State, which accounted for 48% of its total spending on family benefits. Furthermore, Switzerland transferred about 14% of its child allowances abroad. Finally, about 6% of the families receiving a family benefit from Austria resided in another Member State. These families received about 2.6% of the total expenditure on family benefits. However, for most of the other Member States, the share was much lower.

Starting on 1 January 2019, Austria introduced an indexation for the amount of family benefits, child tax credits, and family tax credits for EU nationals who work in Austria and have children living abroad. This implied that the amount of the family benefit depended on the *cost of living* of the place of residence of the children. For these types of benefits, annual expenditure decreased by around 140 million EUR between 2018 and 2021 (from 275 million EUR in 2018 to 134 million EUR in 2021). As a result of this policy, the relative importance of the exported amount of family benefits in total expenditure decreased from 5.7% in 2018 to only 2.6% in 2021 and mainly affected cross-border workers with a

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33 In contrast, almost no family benefits were exported by Spain, Bulgaria, Croatia, and Malta as the entitlement to a family benefit in these Member States is *means-tested*.

family living in Hungary. However, on 14 May 2020, the Commission decided to refer Austria to the CJEU on the issue of indexation of family benefits and child tax credit. Accordingly, on 22 July 2020, the Commission filed a request with the Court of Justice to declare the relevant Austrian legislation incompatible with EU law.<sup>34</sup>

## CONCLUSIONS

The importance of the Coordination Regulations in safeguarding transnational social protection within the EU is demonstrated by the available statistical information. Approximately 15.8 million EU/EFTA citizens live in another EU/EFTA country and have thus benefited from the Coordination Regulations. Furthermore, it appears that large amounts of old-age, survivors', and invalidity pensions circulate within the EU. In 2021, roughly 6 million pensions were paid to persons residing in another Member State, amounting to a total expenditure of 24.8 billion EUR. In addition, the reported data reflects the importance of the Coordination Regulations in accessing and reimbursing cross-border healthcare.

The EU has always had an important social dimension for EU citizens who are mobile within the EU.<sup>35</sup> Indeed, the legal framework developed at the EU level, particularly by the Coordination Regulations, plays a crucial part in preserving and guaranteeing the social protection of persons moving within the EU (Verschuere 2020).<sup>36</sup> Although there are still gaps in the transnational social protection of EU citizens, mainly for economically inactive EU citizens, as well as in the application of these rules in practice, such far-reaching protection is far from guaranteed in the rest of the world.

The further development of transnational social protection in the EU is highly uncertain. On the one hand, there are still gaps in the transnational

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34 The CJEU (Case C-328/20 *Commission v Austria*) ruled on 16 June 2022 that the indexation of the family allowance, the child deduction of the Family Bonus Plus, and other family-related deductions is not compatible with EU law. With Federal Law Gazette I No. 138/2022, an amendment to the Family Burdens Equalisation Act and the Income Tax Act came into force. This law repealed the indexation provisions and created a legal basis for back payments.

35 For instance, according to Börner (2020: 432) “mobile citizens are at the heart of Social Europe”. Moreover, contrary to the common legal framework of social policy in the EU, the protection of mobile persons is based on hard social benefits law and thus not on soft law.

36 As a result, the Coordination Regulations “weave a seamless web of social protection: wherever they find themselves, migrants have uninterrupted access to many social benefits”, as argued by Rennuy (2017).



social protection of EU citizens which need to be addressed.<sup>37,38</sup> On the other hand, transnational social protection has become an object of contestation, as national political pressures seem to work in the direction of limiting social rights across borders, particularly regarding the access to (special) non-contributory cash benefits/social assistance and the exportability of family benefits and unemployment benefits. Moreover, the substantial expansion of transnational social protection in the EU makes some scholars argue that the sovereignty of Member States as *decision-making powers* regarding the determination of social security rights in a cross-border context is, to a large extent, transferred to the EU (Ferrera 2009).

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37 Pennings and Seeleib-Kaiser (2018: 98) conclude: “Despite the disputes on persons who have no access to social rights in the State of destination, it must be said that more generally, EU Citizenship has develop into a legal status where persons, after five years of legal stay in a country, have a permanent right to stay and to be treated equally as national citizens of the host Member State. And persons who are economically active in the State of destination have the right to reside and to be treated equally from the first day.” It makes Martinsen and Rotger (2017: 6) conclude that “European citizens are equal, but some European citizens are more equal than others.”

38 Several challenges and controversies came at the forefront of the debate by the Commission proposal to modify the Coordination Regulations (European Commission 2016).

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