

How will Brexit affect the social security rights of EU migrants in the UK, and how the social protection of EU staff?



Linda Hantrais focuses on two ways in which social security provisions may be affected by Brexit: the social security rights of EU migrants to the UK, where EU institutions have come to play an important coordinating role; and, the social protection rights of British officials working for EU institutions, where benefits and employers' contributions are paid from the EU administrative budget to which the UK contributes.

[EU social policy](#) has always been the poor relation to EU economic policy. Justifiably so, if we recall that, in 1957 the six founder member states established a European Economic Community where just six of the 248 articles in the original [Treaty of Rome](#) were devoted to 'Social Provisions'. The stated aim was to favour the harmonisation of social systems in 'an upward direction' and to achieve 'the approximation of legislative and administrative provisions' between members. In the social field, which covered essentially employment and working conditions, one of the areas identified for 'close collaboration' was social security (article 118). A further six articles under Social Provisions laid down the arrangements for the European Social Fund.

Fast forward to an EU with 28 member states. If a narrow definition of social policy is applied focusing on social security systems, the implications of Brexit for EU and UK social policy have so far attracted relatively little attention in the negotiations for two main reasons. Firstly, social policy has always been a contentious area, the more so as enlargement brought ever greater diversity of systems. Secondly, and primarily due to the failure to reach agreement at EU level, social security has remained one of the few areas where unanimous voting by the European Council is still required before any changes can be imposed on national social systems. No EU member state is prepared to sacrifice sovereignty over its social protection system. Subsidiarity and national sovereignty rule supreme. Or do they?

How will Brexit affect the social security rights of intra-EU migrants?

In the EEC Treaty, four articles were devoted to ensuring both that mobile 'Workers' would not be discriminated against, and that their right to benefits accumulated during their working lives would be protected. Employment in public administration was explicitly excluded. The free movement of persons is an area of shared competence within the European Union, which means that, despite the unanimity rule for social security, the UK does not have competence to act other than in accordance with EU legislation.

The obligations imposed on the member states in which migrants reside are set out in EU primary law (treaties) and in secondary legislation (regulations and directives). Some of the earliest regulations were designed to ensure freedom of movement and to protect mobile workers by giving the EU the power to 'coordinate' the social security systems of member states through cooperation and mutual recognition of one another's systems. By constraining the scope for members to decide qualifying conditions for social security benefits, the regulations sought to remove obstacles to free movement of citizens from or to, or residing in another member state.

By the time the UK joined the EU in 1973, almost all mobile workers and their families were covered by social security schemes in their country of origin or their host country. Subsequent treaty changes meant that the body of relevant coordinating legislation has been progressively extended. [By 2016](#), not only workers and their families were covered under the same terms as the host community, but also the self-employed, the economically inactive and unemployed, for the whole panoply of benefits and services including social care.

The UK has stated that it will repeal the [Free Movement Directive](#), which incorporates EU law 'on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States'. Post-Brexit, the social security rights of EU27 migrants to the UK will continue to be determined by their residential status in the UK, and it is this status which will no longer be decided by EU law. National sovereignty over the substance of social security provisions will thus remain intact.

How will Brexit affect the social protection of EU staff?

Technically, the EU does not have a fully fledged social protection system of its own, even for its employees, but nor are they directly covered by national social security schemes. As frequently pointed out in the [literature](#): ‘There are no EU laws granting individual entitlements against Brussels, no direct taxes or contributions, no real funding of a “social budget” for such entitlements, and *no* significant Brussels welfare bureaucracy.’

Largely modelled on the (French) continental system, a number of standardised deductions are made each month from the [salaries](#) of [EU staff](#) irrespective of their country of origin, covering sickness, accidents, pensions and a solidarity levy, totalling 12.6% of salary. Employees do not contribute to family allowances, although they benefit from provisions for household dependants (spouse/partner), dependent children, and education. Unemployment insurance applies only to temporary and contract staff. Income tax is levied progressively at a rate of between 8% and 45% of the taxable portion of salary, a tax abatement is granted for dependent children, and additional allowances cover expatriation.

While employees pay one-third of total insurance contributions, employers pay the other two-thirds, or the entirety in the case of family allowances. But who are the employers? Salaries and benefits are paid from the EU administrative budget, to which all member states contribute. Funds are managed by a ‘joint committee’ with equal representation of employers and employees. Member states’ contributions to the funds are not calculated according to the costs for their own eligible nationals, but as part of their share of total staffing costs, making this an area of indirect ‘shared competence’.

In terms of [social security rights](#), the impact of Brexit should be negligible for British EU employees (or ex-employees in the case of pensions), at least during the transition period of a [negotiated settlement](#) since these rights are subject to EU (not national) staff regulations. For ‘permanent’ British staff who remain in Brussels after Brexit, the situation is less straightforward, except if they have dual nationality of another member state, or are eligible to acquire Belgian citizenship, which are options under consideration.

Post-Brexit, the UK government, qua British tax payers, [has agreed to continue to contribute](#) to the EU’s administrative budget for an as yet undefined period. The UK’s contribution to the EU budget will help to guarantee that sufficient funds are available to pay the pensions of former EU staff, and the Court of Justice of the European Union will continue to have jurisdiction in any disputes that should arise involving British nationals, thereby constraining its sovereignty in this area of social security.

How will Brexit affect EU social policymaking?

The UK has not been alone in wanting to limit the powers of the EU in the social policy field by [obtaining opt-outs](#) and by embracing soft law alternatives. Other member states have been sympathetic to the UK’s concerns, for example as expressed in the proposals that David Cameron took to the [European Council meeting in February 2016](#). The heads of EU governments were ready to agree to restrict rights to social protection for mobile workers and their families across member states in specific circumstances. They gave a favourable hearing to the UK’s proposal to operate an ‘emergency brake’, with the aim of limiting access to non-contributory in-work benefits for new EU migrants to countries experiencing an inflow of workers of ‘exceptional magnitude’.

Without waiting for Theresa May to trigger Article 50, and with the prospect of the UK being effectively removed from the decision-making process, in March 2017 Jean-Claude Juncker produced a [White Paper on the Future of Europe](#), outlining his intention to promote a more pro-active approach to EU social policy. In the [European Pillar of Social Rights](#), Juncker set out his strategy for achieving ‘upward convergence’ between EU Member States with ‘social protection as a productive factor’. Reviving the concept of a multi-speed, à la carte, core-periphery or variable geography Europe, Juncker proposed several degrees of social regulation, prompting the Danes, a former UK ally in the social policy field, to ask whether, due to the loss of the UK’s soft power influence ‘[Brexit also made the case for closer Nordic cooperation within the EU](#)’.

Note: the above draws on the author’s [published work](#) in *Social Policy and Society*.

About the Author



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