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POLICY BRIEF

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A Comparative Analysis of the Portability of Social Security Rights within the European Union.

AT A GLANCE/KEY FINDINGS

- **The process of social security portability in the EU is clear in theory, but in practice is often complex, opaque and uncertain for both decision-makers and migrants.**
- **There is not always a straightforward, linear route for migrants through the social security benefits system from making contributions, to establishing entitlement, to accessing benefits and then porting those benefits.**
- **The way in which EU social security co-ordination rules are manifested at national and local level can create barriers for EU migrants to generate social security entitlements.**
- **Overall, uncertainty for migrants stems from regulatory and institutional complexity; administrative discretion; and formal procedural requirements for accessing benefits.**
- **These factors can create barriers to migrants in establishing entitlement, and in accessing and porting a variety of social security benefits, except contributory state pensions.**
- **Current arrangements on social security co-ordination do not support high levels of mobility in practice, especially for migrants who move more often between countries, and those with inconsistent employment histories.**

THE TRANSWEL PROJECT

The TRANSWEL project analyses the regulations, practices and limitations of portability by comparing experiences of post-EU enlargement labour migration between four country pairs: Hungary–Austria, Bulgaria–Germany, Poland–UK and Estonia–Sweden. This brief presents the cross-national findings in the first stage of TRANSWEL, and was produced by Dr Emma Carmel, Dr Bozena Sojka and Kinga Papiez (University of Bath). There are four accompanying Policy Briefs, each outlining the findings of the country pair case studies.

RESEARCH FINDINGS IN CONTEXT

According to Eurostat (2015), at the beginning of 2014, there were 17.9 million people residing in a different EU member state than the one they were born in, which amounts to just under 3.5% of the total EU population. The number of residents who had the citizenship of another member state was slightly lower, at 14.3 million. There is wide variation in the number of EU-nationals who reside in the different member states of the Union, and in their percentage share of the overall population. In most (18) member states, EU-nationals form the smaller share of the total non-national population. However, the special legal status of EU migrants creates policy challenges with wider political implications. Among key policy questions are those concerned with how social benefits and entitlements, which are organised and earned within national social security systems, can or should be delivered to EU migrants who may move between



their country of residence – sometimes several times.

The portability of social benefits in the EU is shaped by several EU-wide regulations and directives. The most important of these is the paired Regulations 883/2004, and 987/2009, on social security co-ordination and its implementation. These have been described as the currently most sophisticated system for organising portability of social benefits in the world (Avato et al, 2010). However, social security co-ordination sits alongside other directives and regulations, which together establish a diverse array of conditions and entitlements, which are applied to individual EU migrants' social protection. In particular, the free movement of citizens Directive (2004/38/EC), and the Regulation on the Freedom of Movement of Workers (492/2011), are especially relevant, while additional directives on cross-border healthcare (2011/24/EU) and posted workers may affect some EU migrants. There is also a recent directive on measures facilitating the exercise of free movement rights (2014/54/EU), to be implemented by May 2016.

However, these regulations and frameworks do not have a common scope of application or terms of reference, and the way in which they are integrated into national legislation, regulations and guidance, varies among member states. Recent years have seen a spate of cases taken to the European Court of Justice by member state authorities and by the Commission, to seek rulings to clarify the scope and meaning of EU and national laws. The UK is perhaps the leading, but also not the only member state, which has raised questions about the current functioning of legislation in this policy area.

The first stage of the TRANSWEL research project, reported in this policy brief, focused on comparing the regulatory frameworks and policies which apply between four pairs of EU member states. The aim was to identify the logical implications of these regulations for different categories of migrant, across four aspects of social security – state pensions, health insurance, unemployment benefit and family benefit.

Overall, social security portability for migrants does not in practice follow a straightforward or linear route from contributions, to entitlement, to benefit access and portability. Instead, our research shows that

EU migrants' access to, and portability of, their social security entitlements are shaped by specific combinations of conditions, and that these combinations vary by policy area in different country-pairs for different migrant groups.

There are three main types of condition which together shape EU migrants' access to, and portability of, social security: **contributions requirements, residency conditions, and institutional practices**. Each type of condition may present individual barriers to portability of social security, and migrants may face more than one of these barriers, especially if they move between countries more than once. In addition, the specific combination of these conditions which apply in any one case can create very high levels of complexity and uncertainty for both migrants and decision-makers in practice.

In particular, uncertainty and barriers to portability stem from regulatory and institutional complexity, including but not confined to:

- differences between social security systems;
- administrative discretion, especially in the interpretation of residency rules; and
- formal procedural requirements for accessing benefits.

In three of our four transnational country-pair cases, our research found that the residency and procedural conditions, some of which stem from EU Regulations and Directives, may in practice prevent some migrants from generating their entitlements across a number of benefits.

The requirement in the EU social security co-ordination regulations, for a migrant to prove 'centre of life' or 'habitual residence' before accessing entitlements, especially when combined with other national or procedural requirements, could be so discretionary and restrictive that migrants may not be able to generate entitlements in practice. This is especially the case if the migrants move between countries more than once, because administrative discretion is often especially important, and residency conditions harder to meet, in such cases.



In **contributory state pensions**, EU migrants' access to, and portability of, social security were reported as straightforward and well-understood in practice for all cases. In other policy areas, a number of barriers to access and portability were identified, although there was variation among country-pair cases as well as by benefit.

In **health**, complexity, cost, and procedural requirements for securing appropriate insurance could, in different cases, present barriers to adequate health-care cover, particularly in insurance-based health systems. These barriers may present a significant social risk to migrants if they do not have healthcare cover after the first three months of residence. In **unemployment benefits**, our research identified procedural conditions, high levels of discretion and regulatory complexity as barriers to access and portability of entitlements. For **family benefits**, social security system differences, and diversity of welfare regulations, were the main factors which can create barriers to access and portability of entitlements.

As a result, with the exception of pensions, it seems that in practice, the regulations on portability of social security benefits do not meet the needs of those migrants who move between countries more frequently. This is not only the case where social security systems are very different, but such differences can exacerbate difficulties for migrants. Migrants in precarious work may also find themselves disadvantaged, because it is difficult for them, not only to meet contributions requirements, but also to satisfy the residency and procedural conditions demanded of EU migrants.

METHODOLOGY

The research used an innovative methodology to generate and synthesise diverse data sources for interpretive policy analysis. Each transnational country-pair was treated as a 'case' when assessing the regulatory frameworks of entitlement and portability. A common comparative framework was developed and applied to all country-pair cases. Data generation

and analysis involved a) interrogation and analysis of legal frameworks, b) observations and clarifications from key informants on a regular basis, c) in-depth interviews with policy experts and policy makers, and d) integration, contextualisation, explanation of results in each country-pair case, and comparatively. Across all four 'country-pair' cases, research teams conducted 28 interviews with policy experts and 16 with key administrative informants.

SOURCES

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Eurostat (2015) Population and migration statistics. http://ec.europa.eu/eurostat/statistics-explained/index.php/Migration_and_migrant_population_statistics#Migrant_population. Last accessed 5 November 2015.

INFO AND CONTACT

The findings presented in this policy brief depend on research conducted by the four research teams of the TRANSWEL project.

This phase of TRANSWEL's work was designed and led by TRANSWEL's UK-Poland team, based at the Department of Social and Policy Sciences, University of Bath, who also conducted the comparative analysis.

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