

OPEN ACCESS

ISSN 2280-4056

*E-Journal of
International and Comparative*

LABOUR STUDIES

Volume 5, No. 2 May-June 2016



ADAPT
www.adapt.it
UNIVERSITY PRESS

ADAPT *International School of Higher Education in Labour and Industrial Relations*

Scientific Directors

Lauren Appelbaum (USA), Greg Bamber (Australia), Stuart M. Basefsky, (United States), Daria V. Chernyaeva (Russia), Richard Croucher (United Kingdom), Maurizio del Conte (Italy), Tomas Davulis (Lithuania), Tayo Fashoyin (Nigeria), József Hajdu (Hungary), Ann Hodges (USA), Richard Hyman (United Kingdom), Maarten Keune (The Netherlands), Chris Leggett (Australia), Guglielmo Meardi, (United Kingdom), Shinya Ouchi (Japan), Massimo Pilati (Italy), Valeria Pulignano (Belgium), Michael Quinlan (Australia), Juan Raso Delgue (Uruguay), Raúl G. Saco Barrios (Peru), Alfredo Sánchez Castaneda (Mexico), Malcolm Sargeant (United Kingdom), Jean-Michel Servais (Belgium), Silvia Spattini (Italy), Michele Tiraboschi (Italy), Anil Verma (Canada), Stephen A. Woodbury (USA)

Joint Managing Editors

Malcolm Sargeant (Middlesex University, United Kingdom)
Michele Tiraboschi (University of Modena and Reggio Emilia, Italy)

Editorial Board

Lilli Casano (Italy), Francesca Fazio (Italy), Emanuele Ferragina (United Kingdom), Antonio Firinu (Italy), Valentina Franca (Slovenia), Maria Giovannone (Italy), Erica Howard (United Kingdom), Karl Koch (United Kingdom), Lefteris Kretsos (United Kingdom), Attila Kun (Hungary), Felicity Lamm (New Zealand), Cristina Lincaru (Romania), Nikita Lyutov (Russia), Merle Muda (Estonia), Boaz Munga (Kenya), John Opute (UK), Eleonora Peliza (Argentina), Daiva Petrylaite (Lithuania), Ceciel Rayer (The Netherlands), Aidan Regan (Ireland), Marian Rizov (United Kingdom), Salma Slama (Tunisia), Francesca Sperotti (Italy), Araya Mesele Welemariam (Ethiopia), Barbara Winkler (Austria), Machilu Zimba (South Africa)

Language Editor

Pietro Manzella (ADAPT Senior Research Fellow)

Book Review Editor

Chris Leggett (James Cook University, Australia)

*E-Journal of
International and Comparative*

LABOUR STUDIES

Volume 5, No. 2 May-June 2016

@ 2016 ADAPT University Press

Online Publication of the ADAPT Series
Registration No. 1609, 11 November 2001, Court of Modena
www.adaptbulletin.eu

The articles and the documents published in the *E-Journal of International and Comparative LABOUR STUDIES* are not copyrighted. The only requirement to make use of them is to cite their source, which should contain the following wording: **@2016 ADAPT University Press.**

The “Labour Mobility Package”: A European Fraud against Mobile Workers and their Countries of Origin?

Carlo Caldarini *

Abstract. Among the reforms announced by the European Commission headed by Juncker, we have often heard about the “Labour Mobility Package”. But what is it, exactly? Indeed, the Commission does not provide us with much information about it. In theory, the main objective of this measure is “promoting a more comprehensive and fairer internal market for mobile and migrant workers”. In reality, under the pretext of preventing “fraud and abuse”, the EC’s “hypotheses to review provisions” challenge the pillars of free movement of workers and the coordination of social security systems, undermining the foundations of the entire European project. It will be mobile and migrant workers, and their countries of origin, that will suffer the most serious consequences of this move.

Keywords. *Coordination of social security systems, Europe, European Commission, Family allowances, Free movement of workers, Labour, Migration, Social Security, Unemployment benefits.*

* Carlo Caldarini (c.caldarini@numericable.be) is the Director of the *Inca-Cgil Observatory for social policies in Europe*, based in Brussels. As a sociologist and an expert in education, he has given lectures at Roma Tre University and undertaken research for various institutions, amongst which are Inea, Université Libre de Bruxelles, Ires-Cgil, Censis. Since 2004 he is working for Inca-Cgil focusing on social rights.

1. Introduction

The European Commission is gradually disclosing the content of the so-called *Labour Mobility Package*. This is a new set of measures on free movement of workers which, as announced in the spring of 2015, will be part of the programme of the Juncker Commission.

The Package builds on well-known pillar principles, according to which EU citizens have the right to:

- Seeking employment in another EU country;
- Working in that country without a work permit;
- Residing in that country for reasons of work;
- Remain there even after completion of the assignment.
- Enjoying equal treatment as nationals of that country as far as employment, welfare and social benefits are concerned;
- Transfer their health and pension insurances to the new country of residence.

Over the last years, the European Commission has repeatedly pointed out the issue of low intra-EU mobility (concerning only 3% of the EU labour force), highlighting the benefits associated with the principle of free movement of workers.

Nevertheless, and despite all principles and advantages, European workers still face many hurdles if they wish or, as is frequently the case, need to relocate abroad and seek employment in another Member State. These challenges have multiplied during the crisis and mobile workers often face discrimination and unequal treatment as regards in social security, working conditions, remuneration, access to welfare, training and taxation. It is cross-border workers and people on atypical contracts who are discriminated against, because of their ill-defined and low-protected status.

2. Preventing “Fraud and Abuse”?

In theory, the main objective of the European Commission’s Labour Mobility Package is promoting a more comprehensive and fairer internal market for mobile and migrant workers. In reality, the package will mainly aim to increase the capacity of Member States to prevent “fraud and abuse”, as it was put it.

The package intends to prevent fraud and abuse by monitoring companies’ behaviour, for instance in relation to posted workers, and by introducing new and more stringent criteria to access social security

benefits, with the latter being the real aim of the Commission. This move will favour countries such as Germany and the United Kingdom, while penalising both mobile workers and their countries of origin, as their economic, social and pension systems are usually weaker than those in destination countries.

In all likelihood, the Labour Mobility Package was influenced by the joint letter sent by representatives of Austria, Germany, the Netherlands and the United Kingdom to the Presidency of the European Union in April 2013¹. Highlighting the “benefits of free movement of European citizens”, the four Ministers asked forcefully to review EU rules to provide stricter sanctions, such as bans on re-entry after expulsion (currently, all bans on entry, including those following expulsion, are prohibited under Directive 38/2004 on the free movement of EU citizens and their family members). Their main argument is that:

this type of immigration from other Member States burdens the host societies with considerable additional costs, in particular caused by the provision of schooling, health care and adequate accommodation. On top of this strain on vital local services, a significant number of new immigrants draw social assistance in the host countries, frequently without a genuine entitlement, burdening the host countries' social welfare systems.

Therefore, EU citizens may be considered as “immigrants” and treated as “foreigners”. The European Commission provided its response 8 months later, arguing that no data supported the argument that these citizens are deriving benefit from the system, nor that they constitute a burden for host countries' welfare systems². However, this was not enough to pour oil on troubled waters.

Following the joint letter, leading policy-makers from Germany, United Kingdom and the Netherlands seized any available opportunity to put forward proposals to review EU rules on free movement of workers. Their background rationale is that migrant workers come handy to domestic and European economies, especially when they pay social contributions, but they do not when they claim the resulting social security benefits.

¹ <http://bit.ly/1ReNzb5>.

² European Commission upholds free movement of people, 25 November 2013, <http://bit.ly/1QgA6C3>.

The British Prime Minister, David Cameron, believes³ that European “immigrants” should not be given access to work-related social benefits – e.g. to jobseeker’s allowance (JSA) in the first four years living in the UK. Further, if their offspring do not live in the UK, they should not be entitled to receive family allowances. In such a tense climate, the Labour Party backs these views. In the words of MP Rachel Reeves⁴, an economist and the shadow Minister of Labour and Pensions, “Labour too should curb new EU migrants’ access to social security benefits”. In addition, “People arriving from EU countries should not be able to claim jobseekers’ allowance for the first two years of living in the UK”. In Germany,⁵ decision-makers are of the opinion that the amount of family allowances for foreign workers should be calculated based on the offspring’s country of residence. It might seem that the demands from Germany and UK are just small adjustments. In reality, they undermine the pillars of free movement of people and coordination of social security systems, therefore challenging the entire European project.

These restrictions were first introduced by Luxembourg 2000 and concerned children of foreign workers in Luxembourg not residing in the Grand Duchy. As a result, in 2013 the Court of Justice of the European Union ordered to withdraw all restrictive measures, stressing that migrant workers “shall enjoy the same social and tax advantages as national workers” (article 7.2 of Regulation EU 492/2011 on freedom of movement for workers).

However, the amendments currently reviewed by the European Commission build on the tackling-fraud-and-abuse argument to reduce the rights for mobile workers, lift social accountability from host countries and place a heavier burden on sending countries as far as economic, political and social security issues are concerned. But, how come that the Commission has not yet revealed the details of this project?

The EU Commissioner, Marianne Thyssen, presented the project guidelines at the international conference on labour mobility held on 23rd April 2015 at Krakow University. In Thyssen’s words, the Labour Mobility Package will “support national authorities tackle fraud and abuse” and European rules on coordination of social security systems will

³ David Cameron: We will bar EU nationals from benefits 'for four years', The Independent, 28 November 2014, <http://ind.pn/21wzxME>.

⁴ EU migrants would have to wait two years before claiming jobseekers’ allowance under Labour, www.labourlist.org, 18 November 2014, <http://bit.ly/1gHoPhj>.

⁵ Staatssekretärsausschuss: Kabinett beschließt Abschlussbericht, Bundesministeriums des Innern, August 27, 2014, <http://bit.ly/18nIs91>.

be reviewed “to reflect the changes in the economy and society”⁶. Nevertheless, the Dutch Vice-President of the European Commission, Frans Timmermans, had already announced its main contents one month earlier, bluntly explaining that “Access to labour markets and social security is not the same thing. Access to the labour market does not mean automatic access to social security systems”⁷. In plain language: one may surely come and work in our countries, will pay social contributions and taxes just as national citizens, but he does not enjoy equal rights on social security, as that would be a fraud!

3. Did You Say Impact Assessment?

In recent meetings with social partners, the European Commission has repeatedly stated that its Labour Mobility Package is at a planning stage and that an “impact assessment” will be carried out before defining its content that will involve representatives from European social partners.

But, what is it exactly?

In May, we had the chance to look at the questionnaires⁸ used to conduct this study. In short, the European Commission appointed three research institutes to assess “changes to administrative/compliance costs” in national administrations and for the families affected that might result from the possible review of the current EU provisions on unemployment and benefits laid down in Regulations 883/2004 and 987/2009 on the coordination of social security systems. One might note that here reference is made to “administrative/compliance costs” not to the economic and social ones for Member States and individual citizens.

More specifically, the study aims to “assess variations in administrative tasks” and the resulting costs for social security bodies to comply with the new rules.

Half a page of the 16-page questionnaire focuses on “assessing whether unemployed workers and their family members who receive benefits should - also - face changes in their administrative tasks in order to comply with new rules”.

⁶ Intervention of Commissioner Marianne Thyssen at 3rd Labour Mobility Congress, 23 April 2015, <http://bit.ly/21wBd8Q>.

⁷ Timmermans backs UK push against ‘welfare tourism’, EurActiv.com, 6 mars 2015, <http://bit.ly/1OIEwgC>.

⁸ Please contact c.caldarini@numericable.be to request a copy of the questionnaires.

The “administrative impact” on workers and their families is not calculated taking into account the amount of benefits, which is reduced, but rather the “man-hours/minutes” to comply with the new administrative tasks, as it is with social security bodies.

Through a phone interview, the questionnaires ask to clarify “the list of tasks and estimates of your current administrative/compliance time needs for handling the current EU provisions, and in assessing how these time needs may change from revisions to the provisions”.

The “impact assessment” questionnaire is based on the hypothesis that a European citizen from Member State B (which has a higher cost of living than that of Member State A) works in Member State A (where the cost of living is higher than that in Member State B). For reasons of simplicity, let us suppose that the worker is a Polish citizen who works in Germany.

The two tables on the following pages summarised the possible outcomes in relation to a review of current legislation.

Table 1. Family Allowances

Provisions in Force	Examples	Hypotheses of Amended Provisions	Consequences
<p>Any worker is entitled to receive family benefits for his dependant family members from the country of employment where he pays social contributions, regardless of the country of residence of the family.</p>	<p>Example 1: A <u>Polish citizen</u> lives, works and pays social contributions <u>in Germany</u> (which has a higher cost of living than Poland) whereas his wife, who does not work, lives <u>in Poland</u> with their children.</p>	<p>Hypothesis 1: The worker will receive family allowances from his working country, reduced to the <u>cost of living of the country of residence of his family</u>.</p>	<p>The Polish worker shall receive lower family allowances, although he pays social contributions just as his German counterpart!</p>
	<p>Example 2: A <u>German citizen</u> lives, works and pays social contributions <u>in Poland</u> (which has a lower cost of living than Germany) whereas his wife, who does not work, lives <u>in Germany</u> with their children.</p>	<p>Hypothesis 2: The worker will receive family allowances from the country of residence of his family members, at the standard rate applied in that country, <u>plus integration</u> from the country of employment as allowances are higher there.</p>	<p>Overall, the worker receives the same amount but one part of this cost is borne by Poland whilst social contributions are totally paid by the worker to Germany!</p>
		<p>Hypothesis 3: The worker will receive family allowances from the country of residence of his family members, at the standard rate applied in that country, <u>with no integration</u> from the country of employment as allowances are lower there.</p>	<p>Family benefits will be paid by the country of residence of the family and not by the country of employment to which social contributions are paid. This is the only case when the worker would receive, pursuant to the new legislation, higher family allowances. Too bad migration flows go from Poland to Germany and not the other way round!</p>

Source: Observatory Inca Cgil, based on the questionnaires used for the impact assessment.

Table 2. Unemployment Benefits

Provisions in force	Examples	Hypotheses of Revised Provisions	Consequences
The worker is entitled to receive unemployment benefits in the last country of employment, aggregating any insurance periods completed in other Member States as well.	Example 1: A <u>Polish worker</u> moves to Germany and works there for <u>2 weeks</u> before losing, involuntarily, his job.	Hypothesis 1: The worker is entitled to an allowance in the employment country, taking into account the periods of insurance completed in other Member States, only once he has worked <u>at least 1 month</u> in the employment country.	In both cases, the Polish worker would receive no unemployment benefit from Germany or Poland either, even though he had worked (and paid insurance contributions) for many years in Poland and in other Member States before moving to Germany!
	Example 2: A <u>Polish worker</u> moves to Germany and works there for <u>2 months</u> before losing, involuntarily, his job.	Hypothesis 2: The worker is entitled to an allowance in the employment country, taking into account the periods of insurance completed in other Member States, only once he has worked <u>at least 3 months</u> in the employment country.	
	Example 3: A <u>Polish worker</u> moves to Germany and works there for <u>2 months</u> before losing, involuntarily, his job.	Hypothesis 3: The worker is entitled to unemployment allowance in the country of employment. However, for the purposes of calculating the amount of the benefit, his <u>income earned</u> in other Member States will be taken into account.	Germany would pay the Polish worker lower allowances, calculated on the basis of his income in Poland, despite the worker took up residence in Germany where the cost of living is much higher!
	Example 4: A <u>German worker</u> moves to Poland and works there for <u>2 months</u> before losing, involuntarily, his job.		This is the only case when the worker would receive, pursuant to the new legislation, higher allowances. Too bad migration flows go from Poland to Germany and not the other way round!

Source: Observatory Inca Cgil, based on the questionnaires used for the impact assessment.

4. Some Figures

While it would be certainly given media coverage, the enforcement of such restrictive rules would produce a negligible impact. For instance, 14 million children are entitled to family allowances in Germany and only 0.6% of them live abroad. But, this may have detrimental effects on the families of the around 44,000 Polish workers who live in Germany and still have one dependent child in Poland.

According to a European Commission's press release dated 25 September 2014, workforce mobility in Europe constitutes a cost for sending countries rather than for host countries⁹. Indeed, the amount of taxes and contributions paid by the “foreign” population to its host country is higher than what is received in the form of welfare benefits and other forms of financial support. This gap would be further widened by the new rules because, as we have seen, they reduce the amount of allowances workers receive and not the contributions paid, with the costs of these measures that have to be met by the countries of origin.

The press release referred to above was based on a study carried out in 2013, which also showed that foreigners are a small minority among those who benefit from welfare allowances. For example, they are less than 1% in Austria and less than 5% in Germany and the Netherlands; as for national spending for healthcare, the cost ascribable to the foreign population is, on average, 0.2%¹⁰.

A University College of London study from November 2014, based on UK Government data, compared the net fiscal contribution of British nationals to the contribution of several groups of immigrants. The net fiscal contribution of European citizens exceeded that of British nationals by 10% between 1995 and 2011¹¹.

Another study published in June 2014 by *IZA World of Labor* shows that individual immigration decisions are not made based on the generosity of

⁹ European Commission, Labour Mobility within the EU, September 25, 2014, <http://bit.ly/1QQihx5>.

¹⁰ ICF GHK, Milieu (2013), *A fact finding analysis on the impact on the Member States' social security systems of the entitlements of non-active intra-EU migrants to special non-contributory cash benefits and healthcare granted on the basis of residence*. Final report, DG Employment, Social Affairs and Inclusion via DG Justice Framework Contract, October 14, <http://bit.ly/1BxQkf8>.

¹¹ Dustmann C., Frattini T. (2014), « The Fiscal Effects of Immigration to the UK », *The Economic Journal*, vol. 124, n° 584, November, p. 593-643.

the welfare systems of host countries¹². On the contrary, immigrants - including EU immigrants - rely on welfare less than national citizens, even if they face a higher risk of poverty. In short, once again, foreign workers pay their host country more than what they receive. And, even when immigrants benefit from welfare more than national citizens, this is because of social differences, and not the result of their immigrant status. Consequently, the myth that migrants take advantage of the generosity of social systems in rich countries is dispelled by international statistics¹³.

According to a 2013 OECD Report on International Migration, the delta between social and tax contributions paid by immigrants and the allowances they have received is always in favour of host countries, and to the detriment of migrants¹⁴. The net fiscal contribution of migrants is positive in all countries except Ireland, where the balance is negative for national citizens, too (see table below).

The OECD also clarifies that the balance is negative because the immigrant population is older than in other countries and, as a consequence, immigrants are over-represented in the group of beneficiaries of old-age pensions.

¹² Giulietti C. (2014), « The welfare magnet hypothesis and the welfare take-up of migrants », *IZA World of Labor*, n° 37, May, <http://bit.ly/1QLSVdN>.

¹³ 'Benefits tourism' in the EU is a myth, report says, EurActiv.com, <http://bit.ly/1QQiqAC>.

¹⁴ OCDE (2013), *Perspectives des migrations internationales 2013*, Paris, Éditions OCDE, <http://bit.ly/1DaVfqG>.

Table 3: Immigrants’ Net Fiscal Contribution in Some OECD Countries (2007-2009 average, purchasing power being equal)

	Families Born in		
	the Country	Abroad	Mixed Families
Australia	+ 3,776	+ 8,353	+ 2,303
Belgium	+ 9,159	+ 5,560	+ 16,830
Canada	+ 7,552	+ 5,167	+ 15,494
France	+ 2,407	- 1,451	+ 9,131
Germany	+ 5,875	-5,633	-4,453
Ireland	-2,487	- 1,274	+6,511
Italy	+ 3,980	+ 9,148	+ 12,126
Luxembourg	-1,228	+ 9,178	+ 7,232
The Netherlands	+ 9,940	+ 2,544	+ 21,303
Poland	+291	- 5,691	- 4,630
United Kingdom	+ 2,604	+ 3,029	+ 11,954
Spain	+ 3,106	+ 7,496	+ 9,830
Sweden	+ 6,815	+896	+ 13,473
Switzerland	+ 14,968	+14,549	+ 21,437
USA	+ 8,534	+ 8,274	+ 17,158

Source: OECD (<http://dx.doi.org/10.1787/888932831870>). Statistics have been summarized by the Inca Cgil Observatory on European Social Policies.

As we already said, a quick overview of the envisaged review might convey the message that just a few amendments are being made. Further, these changes appear to be based on common sense, for instance as a way to tackle fraud and abuse, bring allowances into line with the cost of living, and so on. In this connection, the package aims to prevent access to social security from workers who have earned this right based on their contribution. This can be seen as a “fraud”. As clearly stated by the Vice-President of the European Commission, the intent is to decouple access to labour market from access to social security.

After 60 years spent building a united Europe, it has been understood that workers move from countries with lower standards of living to countries with higher standards of living. This is the alleged “abuse”. It came as a shock to realize that Polish workers move to Germany, the Portuguese to Luxembourg, the Romanians to Italy, and the Italians to Belgium. One must not be a sociologist to understand that the reverse would be surprising. The “hypotheses to review provisions” challenge the very pillars of free movement of people and coordination of social security

systems, undermining the foundations of the entire European project. They question, among others:

- The principle of “equal treatment” enshrined by the treaty and Article no. 24 of the directive on free movement of EU citizens;

- The principle whereby all people are entitled to family allowances “even family members who reside in another Member State” (Article 67 of EU Regulation 883/2004 on the coordination of social security);

- The principle whereby European workers “shall enjoy the same social and tax advantages as national workers” (Article 7.2 of Regulation EU 492/2011 on freedom of movement for workers);

- The principle of unity of applicable legislation, whereby a person is subject to the legislation of a single Member State only, generally the country of employment (Article 11 of EU Regulation 883/2004 on the coordination of social security);

- The principle of retention of rights in course of acquisition. That is, the possibility to “aggregate” insurance periods completed in a Member State in order to determine entitlement to a right in another Member State (article 6 of the EU Regulation 883/2004 on the coordination of social security);

More importantly, this would deny a fundamental principle of social law, namely that cash benefits are a part of an individual and insurance-based right to which one is entitled upon the payment of contributions during his/her professional career.

5. Concluding Remarks

To conclude, the Labour Mobility Package is part of a wider strategy and not a single political measure. This was clearly demonstrated, among other things, during the European Council meeting of 18 and 19 February 2016¹⁵, when in order to “find mutually satisfactory solutions” to the British Prime Minister’s conditions for the permanence of his country in the EU, the 28 Heads of State and Government unanimously approved a

¹⁵ European Council meeting - Conclusions, 18 and 19 February 2016 (<http://bit.ly/21z0mjj>).

legally binding arrangement, *de facto* challenging 60 years of European legislation and case law on workers’ free movement.

This arrangement provides, among others, an “alert and safeguard mechanism” to limit access to social benefits to those who exercise their right to freedom of movement, and more precisely, to prevent EU workers from claiming “non-contributory in-work benefits” for a total period of up to four years from commencement of employment.

Moreover, a major amendment to Regulation No. 883/2004 regarding the coordination of social security systems will be presented by the European Commission in order to index (i.e. reduce) the child benefits exported to a Member State other than that where the worker resides. If the first device can be activated at the request of one Member State, the second will be automatically applicable in all EU states once it enters into force.

To the casual observer, this might appear as a minor adjustment: the fight against fraud and abuse, a cost-of-living indexation of family allowances, etc. However, it seems clear to us that the real goal is to limit access to social protection to workers entitled to it on the basis of their tax and social security contributions; and in this lies the real “fraud”.

The finding that populism and xenophobia concerning refugees, migrants or EU citizens, are spreading among EU authorities shows how the European project is itself in danger. As the Vice-President of the European Commission clearly stated, the goal is to separate access to the labour market from that to social security. And, while today this is the case for “foreigners”, the same might soon be applied to everyone else.

ADAPT is a non-profit organisation founded in 2000 by Prof. Marco Biagi with the aim of promoting studies and research in the field of labour law and industrial relations from an international and comparative perspective. Our purpose is to encourage and implement a new approach to academic research, by establishing ongoing relationships with other universities and advanced studies institutes, and promoting academic and scientific exchange programmes with enterprises, institutions, foundations and associations. In collaboration with the Centre for International and Comparative Studies on Law, Economics, Environment and Work, (DEAL) the Marco Biagi Department of Economics, University of Modena and Reggio Emilia, ADAPT set up the International School of Higher Education in Labour and Industrial Relations, a centre of excellence which is accredited at an international level for research, study and postgraduate programmes in the area of industrial and labour relations. Further information at www.adapt.it.

For more information about the E-journal and to submit a paper, please send a mail to LS@adapt.it.

