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# **The Portability of Social Rights of Great Britain with the European Union: Facts, issues, and prospects**

Pre-print version

Reference::

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## **Abstract**

The portability of social benefits – such as the state pension, child allowances and unemployment benefits – for international migrants is regulated by social security agreements concluded between countries or at supra-national level, such as within the European Economic Area (EEA). Focusing on the United Kingdom, this article aims at capturing the main issues that have been recently raised by such agreements, with particular emphasis on the case of migration between the UK and Europe. The first part of the paper summarises the main considerations researchers and policy makers should bear in mind in looking at portability. Using data from the 2013 World Bank migration matrix, the second part of the paper compares the stock of British migrants residing abroad and the stock of foreigners living in the United Kingdom. The third part of the paper summarises the main issues that were raised in relation to the EEA multilateral agreement including the notion of residence, the state pension, family allowances, and the portability of health care benefits. The conclusions highlight the main concerns and options that lie ahead following the withdrawal of the UK from the European Union.

**Keywords:** Social Security Agreement, Portability of Social Benefits, Health Care, Pensions, United Kingdom, Brexit

## **Introduction**

According to the European Social Survey (wave 7), about eight per cent of people aged 18-64 and living in the UK have already lived and worked abroad for more than six months<sup>1</sup>. They paid social contributions in the country in which they worked and, consequently, are potentially entitled to claim benefits while working and pension and health benefits when they retire. A few may have fallen ill in this other country and benefitted from their national health service/insurance. Some others may have lost their job, returned home, and received – under conditions – unemployment benefits. Others may have received a family allowance for children staying back home.

The way social benefits – or a subset of them – are made portable is regulated at bilateral or multilateral level. The most prominent way is bilateral social security agreements (BSSAs), in which two countries agree on which social security benefits they will offer mutual access to migrant workers (and, potentially, their families) in the residence and home country. The content of these agreements varies from one migration corridor to another and is subject to often lengthily negotiation. Within the European Economic Area (EEA) plus Switzerland - i.e., member countries of the European Union

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<sup>1</sup> In the EU, a minimum of six months' residence is often taken as a criterion for being considered a resident of the host country.

(EU) and Norway, Iceland, and Liechtenstein - portability is regulated multilaterally at the level of supranational law, and covers essentially all social benefits.

This paper provides a discussion of the main portability issues for two reasons: First, while the debate related to Brexit has focused on migration, European institutions, and the funding of the National Health Service (NHS), little has been said about the portability of social benefits and the way portability is regulated within the EEA. Yet given the size of the migrant population from and to the UK, the fate of social protection of British migrants residing abroad and European migrants resident in Britain after Brexit is important and requires an understanding of what is at stake.

Second, the negotiation between the UK and EU to settle the after Brexit arrangement on portability may take place within the framework of the EEA and hence cover all benefits currently regulated. It may, however, also be replaced by a set of multi- and bilateral agreements of different range and depth. Such an approach will require to think through which benefits should be made portable and with what country – a challenging task that requires a lot of information and reflection.

To this end, Section 2 provides a short presentation on BSSAs, the types of social benefits that are made portable, and the problems related. Using the World Bank Migration Matrix database (2013), Section 3 provides selected figures about BSSAs involving the UK and main migration corridors, worldwide and at the European level. Section 4 highlights issues raised recently on migration and portability within the EEA. Finally, Section 5 discusses main challenges that lie ahead in the context of the UK's scheduled withdrawal from the EU in 2019.

## **1. The portability of social benefits: A brief overview**

International portability of social benefits may be achieved in various ways: through unilateral action, bilateral or multilateral agreements; benefit redesign; or multinational

providers (Holzmann & Koettl, 2010). The most prominent way is BSSAs or equivalent. Yet, as of 2013 only 23 percent of international migrants profited from BSSAs or similar arrangements, only slightly increased since 2000 (Holzmann & Wels, 2018). Applying this percentage to the estimated number of international migrants of 258 million as of 2017, this amounts to 60 million people under such a privileged arrangement. This includes the intra EEA migrants covered under supranational legislation that became *aquis communautaire*<sup>2</sup> for new member states, such as the UK in 1973.

The analysis of benefit portability is a very new area of investigation and three types of research may be distinguished. A first approach, spearheaded by (Holzmann, Koettl, & Chernetsky, 2005), explores the large-scale perspective and investigates social security agreements across the world and how they affect migrants. Taha, Messkoub, and Siegmann (2013) reviewed this literature and compared portable social protection among three migration flows: North-North, South-North, and South-South. In the same vein but looking exclusively at the EEA, Moriarty et al. (2016) investigated the portability of social protection within the EEA with particular emphasis on the European expansion to new member states in May 2004.

The second approach explores the analytical underpinnings of why portability of social benefits is not so easily established and how benefit design or benefit provision may be able to establish it without a BSSA in place (Holzmann & Koettl, 2010). The third approach captures in detail the working of a BSSA in a specific migration corridor. Recent corridor studies looked at the Belgian–Moroccan corridor (Holzmann, Wels, & Dale, 2016), the French–Moroccan corridor (Holzmann, Legros, & Dale, 2016), the Austrian–Turkish corridor (Holzmann, Fuchs, Elitok, & Dale, 2016a), and the German–

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<sup>2</sup> The accumulated legislation, legal acts, and court decisions that constitute the body of EU law.

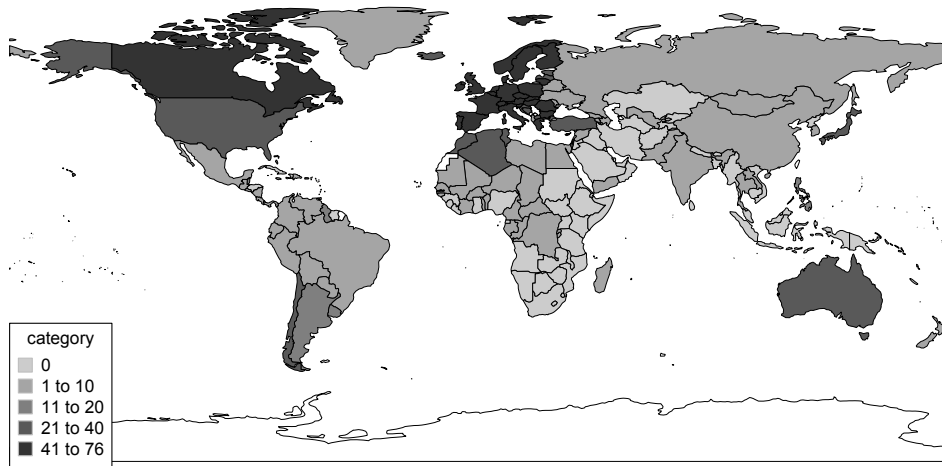
Turkish corridor (Holzmann, Fuchs, Elitok, & Dale, 2016b). Similarly, the French–Moroccan social security agreement and its evolutions was reviewed by Dkhissi, Dupuis, and El Moudden (2011), and the Belgian–Moroccan agreement by (Holzmann, Wels et al., 2016). Avato reviewed portability across different countries, including Italy and the UK (2008a and 2008b).

The literature of the third approach suggests three main criteria for assessing the effectiveness of BSSAs: (i) fairness for individuals, as a successful portability arrangement should not result in a benefit disadvantage for migrants or their dependents (for example, via lower pensions or gaps in healthcare coverage); (ii) fiscal fairness for corridor countries, which ensures that, at country level, neither the host nor home country experiences a negative fiscal effect or an unfair fiscal advantage at the expense of the other country; and (iii) a minimal bureaucratic burden, as administrative provisions should not cause a bureaucratic burden for the institutions involved and should be accessible to migrants with no dispensable burden.

## **2. Migration and benefit portability: Positioning the UK**

Figures 1 to 3 are derived from a bilateral migration matrix provided by the World Bank for 2013 in conjunction with information on social security agreements between countries for this year available from the International Labour Organisation (ILO) database. Data are provided for the vast majorities of countries, with the exception of 32 very small or politically sensitive countries (see Holzmann and Wels, 2018, for details). Figure 1 presents the number of BSSAs concluded by country as of January 1, 2013.

**Figure 1: Number of BSSAs by country**



Source: Data from Author A and al (B), updated using ILO 2012 and UK's administration and ILO websites  
 Note: figures were produced using the R-package RworldMap (South,2011)

Five categories are distinguished ranging from 0 to 76 social security agreements concluded at bilateral or multilateral levels (76 is the maximum). Canada and European countries are among those that have concluded a high number of BSSAs (41 to 76), and, to a lesser extent, the United States, Morocco, Algeria, Turkey, Japan, Australia, and Chile (21 to 40). Many countries have not signed any BSSA, particularly in East and Southern Africa and in Central Asia, such as Indonesia, Malaysia, and Papua New Guinea. “While the number of BSSAs between developed and developing countries has increased over the years, they may still be of limited value to migrants from countries with low coverage rates. These migrants typically come to developed countries with no or limited acquired rights, and if they return to their (low-income) home country before retirement, few acquired rights may be added” (Holzmann, 2016, p. 6).

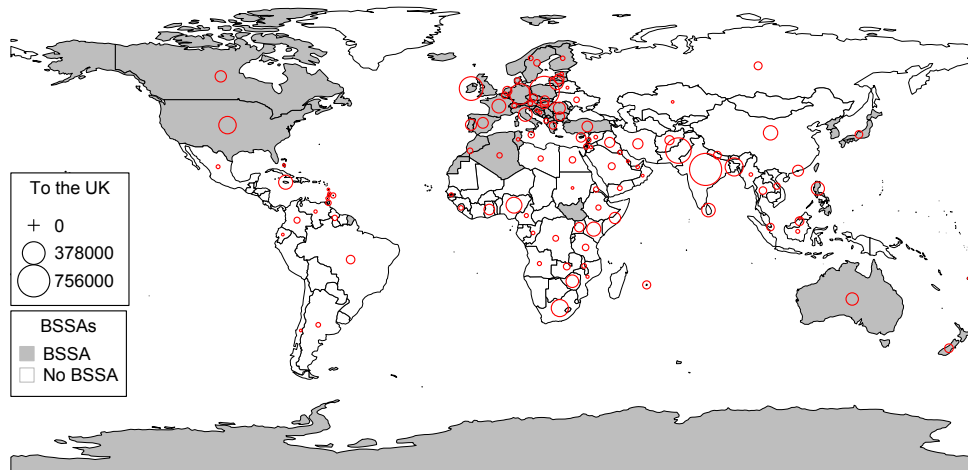
### **World migration and portability of social benefits with the UK**

The UK has one of the highest numbers of social security agreements (taking into consideration bilateral and multilateral agreements) in the world, with 59 currently implemented. Only Italy, Denmark, Belgium, the Netherlands, Spain, and France have more (from 60 to 76). This high number is partly due to European legislation that enhances the portability of social rights across EEA member states. Among the BSSAs

signed by the UK, four different categories of countries can be distinguished: EEA countries; comprehensive BSSAs; limited BSSA; and no BSSA (Avato 2008b).

The total number of international migrants living in the UK was 7,639,409 (World Bank 2017). Figure 2 shows information about BSSAs concluded with the UK (coloured in grey on the map) and the number of foreign citizens living in the UK by country of origin (circles). The bigger the circle, the higher the number of migrants from that country.

**Figure 2: BSSAs concluded with the UK and migrants living in the UK by country of origin**

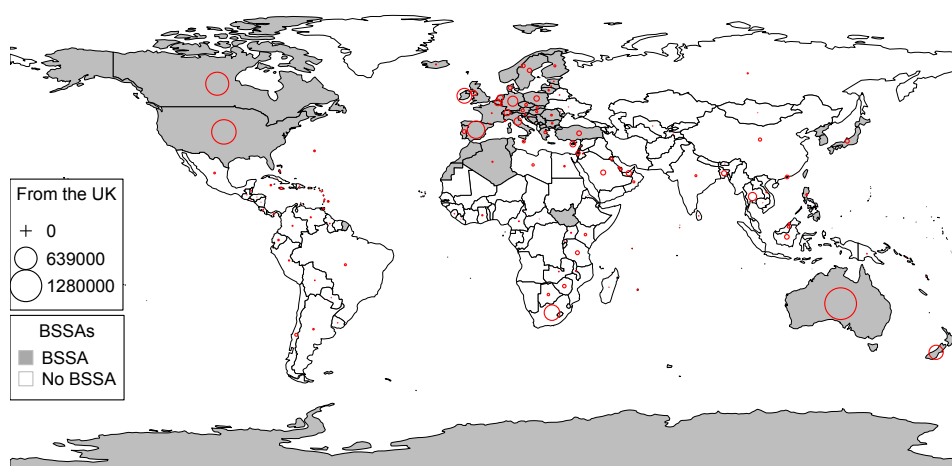


Source: As Figure 1 plus World Bank migration matrix (2013).

Figure 2 suggests that India, Pakistan, Poland, Ireland, Australia, the United States, China, South Africa, and Canada are among the most important corridors of migrants to the UK. However, just half of these countries are covered by a BSSA. The Australian, Polish, Irish, North American, and Canadian corridors are covered by a BSSA, while main corridors such as China, India, Pakistan, and South Africa do not provide portability through a BSSA.



**Figure 3: BSSAs with the UK and British migrants living abroad**



Source: As Figure 1 plus World Bank migration matrix (2013).

Figure 3 shows the total number of British citizens residing in a country other than the UK – 5,137,046 in 2013. Circles represent stocks of migrants while countries having concluded a BSSA with the UK are coloured grey.

The situation in both figures differs. Figure 2 indicates that conclusion of a BSSA is little associated with the number of migrants living in Britain. In contrast, Figure 3 clearly shows that British people living abroad tend to live in a country where a social security agreement was concluded.

### **Portability within the EU/EEA and the asymmetry of UK migration**

A main reason for the UK's high number of portability arrangements is that as an EU member, the portability of social benefits with the other 31 EEA member states is ensured under European legislation.<sup>3</sup> Portability of social benefits is a key point in enhancing workers' freedom of movement in the EU. Indeed, data from the Standard Eurobarometer Survey 75.1 of 2011 suggest that "an easy experience with the transfer

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<sup>3</sup> See the Treaty on European Union and the Treaty on the Functioning of the European Union, 2012/C 326/01 and EU Regulation 883/2004 and 987/2009.

of social security across countries may increase the propensity to move abroad for professional reasons” (D’Addio and Cavalleriz 2015).

The main principles of European Regulation (EEC) No. 1408/71 (which was later replaced by Regulation 883/2004) of the Council of the 14<sup>th</sup> of June 1971 on the application of social security schemes to employed persons and their families moving within the Community are: the *equal treatment* of workers and self-employed in any member state (Articles 4, 5), the *aggregation of the previous periods of work, insurance, or residence* in other member states for calculating benefits of workers (Article 6), the *single applicable law* preventing people to contribute to social security systems in more than one member state and to avoid the right to claim the same kind of benefits in two or more member states (Article 11,1), and the *exportability* of certain social benefits prohibits member state from reserving such benefits only to resident people (i.e., fairness for individuals; Article 7). However, the last point does not apply to all social security benefits. Originally, Regulation No. 1408/71 only covered workers, but self-employed are covered since July 1, 1982. The regulation also concerns families and dependents of workers and the self-employed. Another important point is that in the EEA (as in most BSSAs), noncontributory benefits are not transportable. For instance, minimum pension benefits (such as the Pension Credit in the UK, the GRAPA in Belgium, or the *Minimum Vieillesse* – ASPA – in France) or Special Non-Contributory Benefits (SNCBs), including benefits for the specific protection of disabled people, are not exportable under EU laws (Roberts 2016).

The legal framework of EU regulations is atypical compared to the typical BSSA, as the EU regulation is a multilateral tool. Furthermore, it is quite paradoxical that in the EU, portability of social benefits is framed by such a multilateral tool while bilateral double taxation agreements are still concluded at a bilateral level (Jousten, 2011). Yet, BSSAs preceded current arrangements. In the late 1940s BSSAs were implemented between the

UK and France (1948) and between the UK and Luxembourg, the Netherlands, and Belgium (BENELUX) through an “Agreement between the Governments of the United Kingdom of Great Britain and Northern Ireland, Belgium, France, Luxembourg and the Netherlands to ‘Extend and Co-ordinate Social Security Schemes in their application to Nationals of the Parties to the Brussels’ Treaty” (1949, article 4, p.4).<sup>4</sup>

Even though the Brussels treaty focused mainly on collective self-defence in the aftermath of World War II, it points out the necessity to organize the portability of crucial social benefits, including schemes for sickness, widowhood, orphanhood, and contributory and noncontributory old age and blind persons' pensions. The current European legislation may be considered an extension of this treaty, although involving a significantly higher number of countries and many more benefits. At the same time, ILO Convention N°102 from 1952, signed by the UK in 1954, set up minimum standards in social security and emphasised the necessity of equal treatment of nonnational residents through bilateral or multilateral agreements providing for reciprocity.

One of the main changes that occurred in the 2000s was not so much about the legislation but rather about countries involved in the free movement of people and the portability of social benefits of migrant workers and their families. With the EU expansion of May 1, 2004, the scope of European nationals increased. The new member states (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Slovakia, Slovenia, Poland, Malta, and Cyprus and, later, Romania and Bulgaria in 2007 and Croatia in 2013) are now under the same regulation concerning portability of social benefits. Although the Treaty of Accession signed in 2003 allowed member states to restrict the access of new member states' nationals (excluding Malta and Cyprus) to their labour

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<sup>4</sup> <http://treaties.fco.gov.uk/docs/pdf/1951/TS0030.pdf>

markets and, by extension, to their social security systems for a transition period of up to seven years, the UK, Ireland, and Sweden did not implement these restrictions (Moriarty et al. 2016, pp. 205–206). Today such temporary restrictions are not valid and these new member states are fully part of the EU, benefiting from both free movement of people and portability of social benefits.

Viewed globally, migration stocks between the UK and EEA member states remain moderately unequal (Table 1). About 25 percent of British migrants live in EEA countries while 75 percent live in non-EEA countries. By comparison, EEA migrants are 35.3 percent of the migrant stock living in the UK, while 64.7 percent come from the rest of the world.

**Table 1. Migration stock between the United Kingdom, EEA and non-EEA countries in 2013**

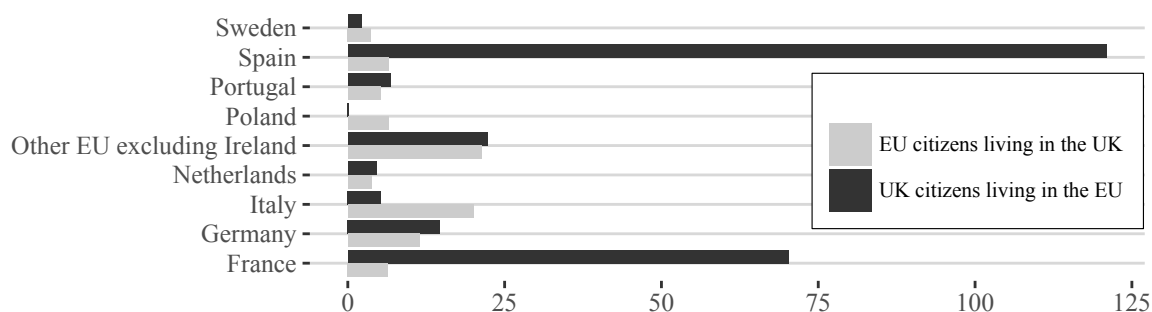
	From the UK		To the UK	
	N	Per cent	N	Per cent
EEA	1,252,396	24.9	2,712,548	35.3
non-EEA	3,777,050	75.1	4,966,064	64.7
Total	5,029,446	100	7,678,612	100

Source: World Bank migration matrix (2013), Authors' calculation

The asymmetry of distribution between the UK and EEA countries is much stronger when comparing the elderly abroad and at home (Figure 4). Around 247,000 British citizens aged 65 and over live in other EU countries (excluding Ireland), and 85,000 people aged 65 and over from other EU countries (excluding Ireland) live in the UK (Visual ONS 2017). These numbers of elderly are broadly equivalent to recipients of old-age pensions from their home country and receivers of healthcare benefits from the host country. The highest disequilibrium exists between the UK and Spain and France. Only for the UK–Italy and UK–Poland corridors do the numbers of elderly in the UK exceed those in the other country. Yet these two latter disequilibria are the result of old labour migration to the UK dating from the 1950s to 1970s. In contrast, the presence of

Britons in France, Italy, Malta, and Spain largely reflects more recent lifestyle or retirement migration (King, Warnes, and Williams 1998; Warnes 2009); the numbers represent the net stocks as many return after a few decades abroad, and the stocks continue to increase albeit with reducing speed (The Economist 2017).

**Figure 4. Older British citizens living in the EU, and older EU citizens living in the UK (selected countries)**



Source: ONS 2017

### 3. The UK and the EEA – main portability issues under discussion

While studies have shown the advantages of European migration to the UK – such as that EU nationals are less likely to claim benefits than UK nationals in the same circumstances (Dustmann and Read 2013), which might also be seen as a problem for some, or the positive effects of Eastern European immigration on economic growth, capital accumulation, consumption, and public finances (Iakova 2007; Lisenkova, Mérette, and Sánchez-Martínez 2014) – the portability of social benefits between the UK and the other 31 EEA members was discussed much less. This section highlights the main issues raised: the right to reside in the UK, family allowances, state pension, and healthcare benefits.

#### **Right to reside and scope of access to social benefits**

According to UK regulation, all ‘EEA nationals’ (and ‘family members’ of EEA nationals) have an ‘initial right of residence’ for three months when they enter the UK. Yet, during this initial phase many people are not regarded as “habitually resident,” and are therefore not entitled to benefits that require tests to be passed. For most benefits a

“right to reside” requirement is part of the Habitual Residence Test (or, Right to Reside Test – RRT) unless the EEA citizen is in paid work (employee or self-employee). The RRT applies for the following benefits: State Pension Credit, Income Support, Income-based Jobseeker’s Allowance, Income-related Employment and Support Allowance, Child Tax Credit, Child Benefit, Health and Pregnancy Grant, Housing Benefit, Council Tax Benefit, Council Housing and Homelessness Assistance, and Working Tax Credit. However, the RRT was considered by the European Commission to be against EU law, as EU labour migrants have an immediate right to reside. As raised by the European Commission, “social benefits in question come within the scope of Regulation 1408/71 which guarantees in Article 3 equal treatment between own nationals and persons from other EU countries and prevents both direct and indirect discrimination. (...). Such rights cannot be restricted on the basis of the more restrictive residence conditions emanating from the Directive” (Kennedy 2011). In 2010, the European Commission launched an infringement procedure against the UK concerning the RRT. On the 14<sup>th</sup> of June 2016, the European Court of Justice delivered its judgment (case C-308/14)<sup>5</sup> in which it confirmed the conformity of the Right to Reside Test with EU law.

The discussion point is not limited to the UK but has been raised in a few other EEA countries as well; namely, to what extent and for what period can labour migrant-receiving EEA countries restrict access to social benefits? Should full eligibility be established the very first day of employment in the host country or does an economic or social rationale justify establishment of differentiated waiting periods for social benefits to reduce benefit arbitrage?

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<sup>5</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62014CJ0308>

### **Family benefits and child allowances**

Among the costs of Central and Eastern European labour migration to the UK, the access to and scope and costs of child allowances sent abroad for children of labour migrants remaining in the home country has garnered special attention. According to a House of Commons Briefing Paper, “19,579 families had Child Benefit awarded in respect of 32,408 children living in other European Economic Area (EEA) member states, around two thirds of whom were in Poland” (Keen and Turner 2016, p. 6). The impact of this figure has been highly political, as the Conservative Party 2015 Election Manifesto proposed to not open the right to child benefits when the child lives outside the UK. In response, the President of the European Council hinted to index the child benefit for a child residing abroad to the country’s standard of living<sup>6</sup>.

Again, the discussion is not unique to the UK. While the principal of reciprocity of portability requires the payment of benefits to the home country if it exists there as well, the level of benefits can be questioned if the costs of living for children differ between countries; the differences can be high and the resulting implicit wage subsidy a main motivation for labour migration and thus infringe on labor mobility and fiscal neutrality of portability (Genser & Holzmann, 2016). Though, in the Settlement agreement of February 2016 the UK reached an agreement that it could index the amount of the exported family benefits in accordance with the conditions of the Member State where the child resides (Official Journal C 69 I, 2016: section D, point 2). The justification was as follow:

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<sup>6</sup> The “Letter by President Donald Tusk to the Members of the European Council on his proposal for a new settlement for the United Kingdom within the European Union” was published on the 2d of February 2016; <https://www.consilium.europa.eu/en/press/press-releases/2016/02/02/letter-tusk-proposal-new-settlement-uk/>

“ [...] the social security systems of the Member States, which Union law coordinates but does not harmonise, are diversely structured and this may in itself attract workers to certain Member States. It is legitimate to take this situation into account and to provide, both at Union and at national level, and without creating unjustified direct or indirect discrimination, for measures limiting flows of workers of such a scale that they have negative effects both for the Member States of origin and for the Member States of destination.” (Official Journal C 69 I, 2016: section D)

However, as a consequence of the outcome of the Brexit referendum, this settlement never came into force.

### **Pension benefits**

Section 3 highlighted the stark disequilibrium in the high number of British retirees in Spain compared to the very few Spanish retirees in the UK. This difference has no impact on the portability of benefits or direct pension costs of either country, but an indirect effect exists as noncontributory top-ups are not portable. While the calculation of the benefit level may be impacted depending on benefit coverage/work in more than one country, the portability of accrued rights and exportability of eligible pension benefits are fully guaranteed within the EEA. Incentives to return to the UK may be driven by changes in the level of pensions in Europe due to exchange rate movements between the pound and the Euro, and likely future changes in the taxation of pension benefits.

The large majority of British migrants living in Spain migrate with a British state pension plus occupational pensions or savings and do not have a professional background in Spain (Public Accounts Committee 2016). As a result, their state benefit level is uniquely determined by their insurance period in the UK (or, perhaps, in other



EEA countries). No coordination with the Spanish pension authority is required as the UK benefit is fully exportable and can be directly deposited into a Spanish bank account. However, as noncontributory schemes are not portable, the pensioner entitled to claim a Pension Credit would lose it when moving to other EEA countries. Indeed, the Pension Credit is a non-income-related benefit composed of two parts (a Guarantee Credit, which aims at increasing weekly incomes if they are below £159.35 for single people or £243.25 for couples; and a Saving Credit, which is an extra payment allowed to people who save some money toward their retirement). This may prevent some British subjects from moving for retirement purposes to Spain but does not constitute a labour mobility obstacle.

If the pensioner last worked in Spain (for at least one year) or resides in Spain at the time he/she claims pension benefits, he/she must claim his/her Spanish and British pension benefits directly from the *Instituto Nacional de la Seguridad Social* (INSS). This raises two issues. The first is the state pension age – the minimum age at which people are entitled to benefit from a state pension scheme varies across countries (e.g., 65 in Belgium and Spain, 60 in France, 67 in the UK, etc.<sup>7</sup>). The principle in EEA countries is that the state pension may be claimed once an individual reaches the legal retirement age of the country in which the state pension is claimed. However, if other pension rights have been accumulated in another EEA country, this part will be taken into consideration once the legal age of retirement of this other country is reached. The same applies when the person has worked in more than two EEA countries.

The second issue is the amount of state pension received once retirement age is reached. It is well known that the British state pension is among the less generous in Europe

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<sup>7</sup> For a discussion of the state pension age and the actual age of retirement in Europe, please read Wels, 2016.

(Macnicol 2015). The Net Replacement Rate (NRR) – which depends on previous incomes – was in the UK for both men and women between 67 and 31 percent for lower and higher incomes, respectively. By comparison, it was 80 and 79 in Spain, 76 and 61 in France, and 81 and 48 in Belgium (see Ayres and Cracknell 2015 for complete figures). In principal, the pension is calculated based on the idea of double calculation with the most advantageous calculation for the pensioner is to be retained by the public administration.

In any case, most British retirees residing in Spain are unlikely to survive only on their state pension. Many have other resources from occupational benefits and personal savings. These latter benefits and saving instruments typically benefited from tax advantages in the UK when working and accumulating (Emmerson and Johnson forthcoming), while the relevant income received, according to the double taxation treaty of 2014, was taxable in Spain as the residence country (and unchanged from a prior Double Taxation Treaty - DDT). Spain taxes the global income of their residents and also their global wealth. This fiscal tension between the former home and new host countries will intensify in coming years, and solutions are only very gradually emerging (Genser & Holzmann, 2016).

### **Healthcare benefits**

Last but not least, use of the NHS by EEA citizens became a point of discussion in recent years. This topic also emerged in other EEA member countries in the context of (i) hosts of labour migrants and the coverage of health costs for families staying back home, and of (ii) hosts of retirement migrants and the rising health cost profile of elderly people.

Unlike most European healthcare services, the NHS is a residence-based system<sup>8</sup>. Free treatment of EEA citizens is provided based on being an ordinary resident and does not depend on nationality, paying taxes in the UK, or being registered to National Insurance (NI) contributions. If residence cannot be proven, EEA nationals may be considered overseas visitors, and EEA visitors or tourists may access free healthcare if they possess a European Health Insurance Card. With such a card the overseas visitors “are exempt from charges for any medically necessary treatment they receive” ... “and the UK can recover the cost of their care from the relevant insuring member state” (Department of Health 2015, pp. 3–4). Therefore, when looking at the costs associated with EEA nationals using services provided by the NHS, it is important to distinguish EEA nationals considered resident in the UK from EEA nationals with overseas visitor status. In the first case the costs are directly and fully covered by the NHS; in the second, services are provided by NHS but the costs are reimbursed by the overseas visitor’s health institution. The case of EEA retirees provides a twist to the cost-covering obligation – an EEA retiree who takes up residency in the UK and receives a pension from abroad is registered with the NHS but the costs are reimbursed by the pension-paying home country institution; if he also receives a state pension from the UK

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<sup>8</sup> Italy and Spain are other EEA member states with a national healthcare-type scheme that host many British retirees. France has a two-tier health insurance system with mostly public hospitals and private doctors. For the differences in country’ access, see Médecins du monde International Network (2015). For an explanation of the rules of health care portability (in cash or in kind) that are applied within the EEA, please read Werding and McLennan 2015. Due to this heterogeneity within the EEA, one of the main barrier in accessing health care benefits abroad remains that, due to their diversity, health care systems are not ‘migrant-friendly’ and could ‘overcoming language and cultural barriers, improving the competencies of health workers and organisations, and increasing the health literacy of migrants’ (Rechel & Al. , 2013: 1235).

(however small), the cost-covering obligation lies with the UK and the NHS. The same applies for a UK retiree in Spain who also receives a (small) Spanish state pension. In the case of public health insurance, EEA countries have started to demand health contributions.

Looking at EEA nationals under an overseas visitor status and pensioners (involving a financial transfer across countries), a recent House of Commons report estimated that in 2015–2016 the UK paid other EEA member states £565 million, while income for treating EEA nationals in the UK was £56 million (House of Commons 2017). However, a large part of the amount paid by the UK goes to healthcare for British pensioners living in EEA member states. Of the £565 million paid by the UK, £429 million (75.9 percent) was for the healthcare of British pensioners, while of the £56 million paid by EEA member states, £13 million (23.2 percent) was for EEA pensioners **(House of Commons 2017, p. 10)**.

In July 2014, the Department of Health launched an overseas visitor and migrant cost recovery programme with the aim of increasing the amount recovered to £500 million a year by 2017 by extending the scope of charging and implementing the existing regulations more effectively (House of Commons 2017). The relationship between the NHS and migrants from the EEA is paradoxical, though. While the costs associated with EEA nationals using services provided by the NHS have been broadly debated, a large number of staff working for the NHS are actually from EEA member states. According to Ruhs and Anderson (2010), in 2007, 11,188 new doctors were registered in the UK, of which 55 percent were from the UK and 22 percent were EEA nationals. The share of non-British nurses practicing in England in 2015 was 6 percent of the English nursing workforce.

## **Discussion**

Based on World Bank data, the total number of international migrants living in the UK in 2013 was 7,639,409. The total number of British citizens living outside the UK was 5,137,046. A quick calculation brings some nuances to these figures. According to World Bank data, the world population was 7,182,860,115 in 2013 and the British population was 64,128,226. Hence, the total population excluding British citizen was 7,118,731,889. Thus, 8.0 percent of the British population is living abroad while 0.1 percent of the world population (except British citizens) lives in the UK. More generally, migration corridors do not bring the same number of migrants from both sides. British-born citizens are more likely to live in Australia, Canada, Spain and the United States while foreign-born people living in the UK are more likely to be from Ireland, India, Pakistan and Poland. The main issue is therefore about the disequilibrium between the countries where British citizens are residents and the origin countries of foreigners residing in the UK. Such disequilibria for immigration and emigration corridors are not unique to the UK but exist in most countries.

The voters in the British referendum of June 23, 2016 on exit or remain EU voted with slight majority to “leave.” On March 29, 2017, the British government triggered Article 50, which began the formal exit process. Consequently, the social security agreement between the EU and the UK will need to be renegotiated. Which legal form will this agreement take? Will it be continuation of the current framework and part of the EEA arrangement? This is hard to imagine as this framework is closely linked with the common market and the freedom of labour mobility which the Brexit wants to do away with. Will it be an inclusion such as currently of Norway or Switzerland? For such an approach the UK would need to specify first which legal arrangement with the EU it would like to have after Brexit. Would it be one common new agreement by the EU with the UK? While such an approach is possible and perhaps even desirable, no EU

template or even framework exists for BSSAs between EU and non-EU member countries (Spiegel 2010). Else the UK would have to negotiate 31 individual BSSAs with each of the EEA member states. What seems likely is that any new deal will be between the EU27 and the UK, with any effect for EEA countries inserted in the agreement (and unilaterally signed off by the EEA bodies). The result would be one international agreement between the EU27 and the UK, and several implementing acts by EEA member states.

The future agreement will be shaped by a number of the issues highlighted above. The size of the stock of British migrants residing in other EU member states as much as the size of the stock of EU citizens residing in the UK will play a role, as countries will certainly try to protect the interest of their citizens.

First, the new agreement will be affected by the demographics observed under the previous MSSA. Indeed, it is necessary to distinguish the *social expenditures* related to portability from the *reciprocity of the right* introduced by BSSAs. Even though reciprocity of right is one of the bases of BSSAs, these agreements may cover different types of populations using different types of social benefits and, consequently, affect the expenditures to be paid by the origin or host country. Two examples were mentioned herein. First, we highlighted that the UK government is not keen to ensure the full amount of child allowance for children residing in Poland. But would the UK government be willing to pay a lower child allowance to British subjects residing in Spain, which has a lower cost of living? In a similar case concerning the payment of pensions to former soldiers in Africa, the French Constitutional Court allowed the payment of lower benefits to countries with lower costs of living but not the

differentiation by nationality.<sup>9</sup> Other BSSAs concluded between EEA countries and other non-EEA countries can inspire the negotiation to find a compromise between respecting reciprocity and controlling social expenditures. For instance, some BSSAs limit the number of children covered by child allowance (e.g., the French–Moroccan BSSA) (Holzmann, Wels et al., 2016).

Second, we showed that transfers in healthcare provisions are unbalanced but reflect the demographic nature of migration flows within the EEA. The negotiation will need to look carefully at fairness for the different types of populations and the different kinds of social benefits that are made portable. The current financial state of the NHS led British authorities to question the amount transferred from EEA member states to Britain to cover healthcare services and vice versa. But one cannot understand healthcare transfers without paying attention to demographic factors. Globalisation and population ageing are two main features of today’s world and the significance of considering both together was raised recently (Hyde and Higgs 2017). But while the number of migrants is increasing all over the world, the characteristics of migration corridors vary from one country pair to another and, consequently, the nature and amount of social benefits claimed vary from one corridor to another. The outcomes in terms of healthcare provisions depend on the reimbursement regime used (lump-sum transfer or real-cost reimbursement). BSSAs and MSSAs typically do not consider the age profile for healthcare and, consequently, are bound to create fiscal unfairness (Werding and McLennan 2015).

Last but not least is the notion of “residence.” Currently EEA citizens living in the UK have to pass a RRT to claim social benefits unless they were employed or self-

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<sup>9</sup> Le Monde, Samedi 29 mai 2010: Le Conseil constitutionnel censure pour la première fois des lois en vigueur”. Page 1 et 10.

employed. Any future agreement would need to clarify this point and develop clear criteria to decide whether EU citizens are entitled to claim social benefits in the UK and under which administrative conditions and vice versa. One problem raised by the case of the UK is noncontributive benefits. Within the EEA, portability does not apply to noncontributory benefits. As discussed above, noncontributive pensions (such as the “minimum pension” in France) are currently not portable from one country to another. As reciprocity is a core principle in portability agreements, one needs to define noncontributory benefits in a Beveridgian system such as the UK. Even though the distinction between Beveridgian and Bismarckian is not clear – as contributive benefits exist in the UK and noncontributive benefits exist in other EU countries (Palier and Bonoli 1995) – a clarification about both the nature of the benefits that are made portable within the EEA and the minimum conditions for claiming them would clarify the situation. Once clearly defined, EEA citizens claiming those benefits should be treated equal to British citizens, and vice versa.



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