

# SOCIAL BENEFITS AND CROSS-BORDER MOBILITY

## STICKING TO PRINCIPLES MAY YIELD BETTER PRACTICAL RESULTS FOR EVERYBODY

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Issues that are relatively unimportant in quantitative terms often weigh heavily in the political debate. The political capital invested in the question of social benefits paid to non-nationals is a salient example of this paradox. However, principles can be important in politics. I make a link with the longstanding debate on posting of workers in the EU. These two debates have been separated. I argue that EU Member States should approach these two debates from a single, principled perspective. The argument is not about principles for the sake of principles: sticking to consistent principles may ultimately yield better results for everybody.<sup>1</sup> This Tribune reflects a theme developed in the Inaugural Lecture of [Frank Vandembroucke](#) on 1 June 2016, at the occasion of his appointment as University Professor at the University of Amsterdam.

Did David Cameron return with a ‘big victory’ from his negotiations with the other EU Member States? In economic and budgetary terms, the concrete issues in which Cameron invested his negotiating capital and on which he gained concessions do not weigh heavily. In terms of spending, the social benefits on which the negotiating agenda focused are less than *peanuts*, and the UK’s room of manoeuvre to change the rules of EU social security regulation is clearly limited. This underscores the fact that the European leaders were not discussing important economic or budgetary questions but matters of principle. However, principles can be important in politics. Not just because they define a political project; also, because they serve as a compass in coordinating our approaches when we have to solve conflicts. Depending on the compass, the coordination may yield superior or inferior solutions.

### 1. Non-discrimination in social policy and posting of workers

The EU is built on the basis of a principle of non-discrimination among EU citizens: Belgian social policy cannot be different for a Polish citizen in Belgium and a Belgian citizen in Belgium. For sure, this does not mean that a European citizen can enter Belgium without means of existence and immediately apply for social assistance: European legislation does not impose such an immediate and unconditional

generosity, at least not for those who are economically inactive.<sup>2</sup> But a Polish citizen working in Belgium (to take that simple example) enjoys the same social rights as the Belgian citizen working in Belgium: he is integrated into the Belgian solidarity circle, with everything that it entails. What is the rationale for that principle? First of all, it facilitates cross-border mobility. Second, it makes tangible an ideal of European citizenship, based on non-discriminatory access to national solidarity circles. Third, it justifies the fact that the Polish worker’s employer pays the same social security contributions to Belgian social security as the Belgian worker’s employer. In other words, non-discrimination in terms of social rights, justifies and so sustains the principle that we do not tolerate competition between the Polish and the Belgian social security system on Belgian territory.

Competition between the Polish and the Belgian social security system is exactly what happens in the context of ‘posting’ of workers: a Polish worker who is ‘posted’ in Belgium remains integrated in Polish social security. Thus, posting is an exception to a foundational principle of the European project. In order to accommodate work in other countries on short-term projects, such an exception is needed, a fortiori if one wants to develop an integrated market for services. Admittedly, the scope for this exception seems to have become too large, and there are important problems

of inspection and control. That is the reason why a number of Member States, notably the Netherlands, ask for reform. The European Commission launched a proposal to reform the Posted Workers Directive on March 8<sup>th</sup>, but that proposal has, politically, been blocked by the fact that 11 Member States (Central and Eastern European Member States, together with Denmark) used the so-called ‘yellow card’ via their national parliaments.

I should add to this that posting does not create a simple pattern of ‘social security competition’ against the mature welfare states of North-Western Europe. Social security contributions are lower (in proportion to wages) in Poland than in Belgium or France, but it is not the case that social security contributions are systematically lower in the new Member States, compared to social security contributions in the EU’s mature welfare states (Denmark and the UK are counterexamples, with social security contributions that are much lower than in the EU12). The insufficient control of ‘letter-box’ companies, which are created for reasons of wage cost optimization, is a major problem, rather than a systematic difference in the relative weight of social security contributions between mature and less developed welfare states in the EU.<sup>3</sup> Moreover, the main areas of concern with regard to posting, for countries that want to reform the system, are related to wages, working conditions and industrial relations, rather than to differences in social security systems.

In other words, posting is more than just an exception to principles of social security coordination, it is an exception to a broader notion of integration of all individuals working on a country’s territory into the social fabric of that country. This broader notion of integration into the ‘solidarity circle’ of the Member State in which one works, both in terms of wages, working conditions and social security contributions and entitlements, is the overarching principle at stake; the challenge is to find a balance between the need for an integrated market in services (for which posting is necessary) on one hand, and the foundational role of that overarching principle on the other hand.<sup>4</sup>

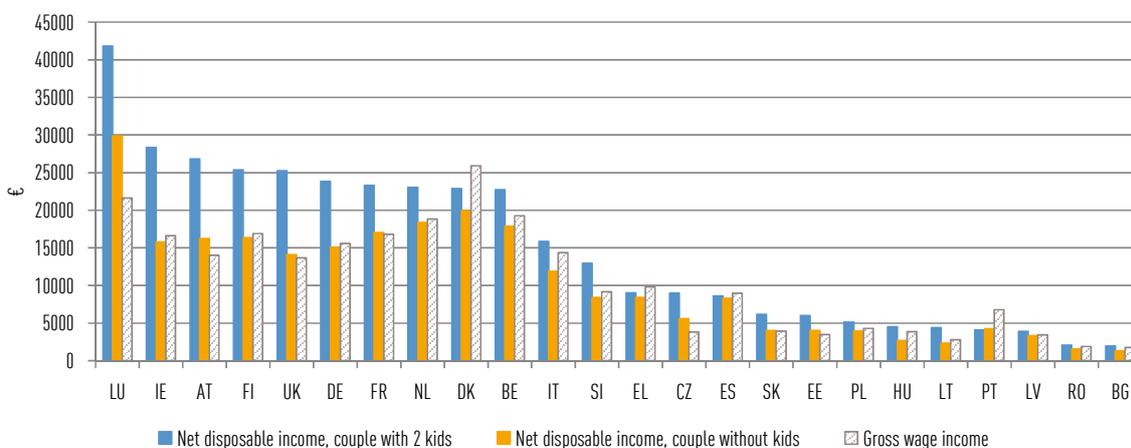
## 2. The United Kingdom’s special case

From a macro perspective, posting is a relatively marginal phenomenon in EU labour markets, but in many countries posting is a more important phenomenon than, say, child benefits paid out to non-resident children. Moreover, posting has an important impact on specific sectors in which it is concentrated. Whilst child benefits paid to non-residents is truly ‘peanuts’ in most EU Member States, the problem of posting cannot be dismissed as ‘peanuts’.

However, posting is relatively unimportant in the UK. Compared to Germany, France, Belgium, the Netherlands and Austria, the number of posted workers sent to the UK is limited, notably when the comparison is limited to posted workers sent by EU12 Member States. The number of posted workers ‘sent’ by UK companies is also relatively limited, certainly when compared to Poland, Germany and France. Geographical proximity is probably an explanation for the limited importance of the UK as a destination country (for workers sent from the EU12), as compared to some continental welfare states. But, *prima facie*, it is a plausible conjecture that the competitive edge of posting vis-à-vis the use of British employment contracts for mobile workers is reduced by the low level of social security contributions in the UK, the high degree of labour market flexibility and the still relatively low level of minimum wages (from the employers’ perspective), and by the system of in-work benefits linked with British employment contracts (from the workers’ perspective).

Even when we discard the difference in employers’ social security contributions, the UK is a rather special case with regard to the relationship between ‘net disposable income’ and ‘gross wage’, notably at the bottom end of the labour market. Figure 1, based on the MIPI-database<sup>5</sup>, illustrates this: we compare (in euros) the gross wage income for couples with one full-time earner, working at the minimum wage, and their net disposable income in two cases, one for a couple without children and one for a couple with children. The countries are ranked on the basis of the level (in euros) of the net disposable income in the case of a couple with two children.

FIGURE 1 ► Net disposable income and gross wage income



Source: CSB MIPI Version 3/2013 (Van Mechelen, N., Marchal, S., Goedemé, T., Marx, I., & Cantillon, B. (2011). The CSB-Minimum Income Protection Indicators dataset (CSB-MIPI) (CSB Working Paper Series CSB WP 11/05). Antwerp: Herman Deleeck Centre for Social Policy, University of Antwerp).

The minimum wage in the UK is lower than in all EU15 Member States, except Greece, Spain and Portugal<sup>6</sup>, but the net disposable income for a couple with two children living on one full-time minimum wage is relatively high when compared with most of the EU15 Member States. For couples with children, the British in-work benefits are very important indeed. Space forbids to elaborate upon the merits and drawbacks of a policy based on in-work benefits. I consider it a sensible policy, with advantages, disadvantages and some pitfalls.<sup>7</sup> For the issue at hand in the UK-EU deal, two observations follow from Figure 1:

- in terms of the net income level for these couples with children, the UK is not (or not much) more generous than Finland, Austria, Ireland, Germany, France, the Netherlands and Denmark; so conceived, the UK is not an exceptional ‘welfare magnet’;<sup>8</sup>
- the British budgetary effort made to achieve the twin goals of attractive net disposable incomes for households with children working on low wages and relatively low labour costs (i.e. the difference between the blue and the yellow bars in Figure 1) is considerable, but it is comparable to the budgetary effort in Austria and Ireland<sup>9</sup>; in Finland and Germany this budgetary effort is also important, though ca. 30% lower than in the UK. One should note that the instruments applied differ from country to country. In the UK the budgetary effort is the combined result of a ‘working tax credit’ and a ‘child tax credit’, i.e. a system of non-contributory

in-work benefits which include a top-up for households with children; traditional child benefits play a minor role in the UK, compared to these in-work benefits. In the other countries, traditional social-security based child benefits are relatively more important.

It follows that there is a certain ‘logic’ in the British position, which seems relatively unconcerned by the posting debate, but wants to safeguard its dual achievement of high net disposable income for low-wage workers with children and relatively low labour costs, yet only for UK citizens. This position is underpinned by the argument that in-work benefits are non-contributory benefits, i.e. should not be submitted to the same rigorous non-discrimination principles as traditional social security benefits. The latter argument is important from a European legal perspective, hence it should be distinguished from the argument on child benefits proper, which we briefly discuss in the next section<sup>10</sup>. However, from a fundamental normative principle, I do not find the fact that the UK’s position concerns non-contributory benefits convincing *per se*. Moreover, if the UK gets its way, it may become very tempting for other Member States, who develop the same ‘budgetary effort’ to support families living on low gross wages, to explore similar ‘solutions’ to avoid ‘too much’ social benefits for working non-nationals. More generally, the principle of non-discrimination will be under increasing pressure. Therefore, in the final section, I will return to the overall debate on posting and social security/social policy coordination.

### 3. Child benefits

To pay less, in net income, to Polish workers in the UK than to British workers, for a period of 4 years, goes against the grain of the non-discrimination principles on which the EU is built. The discussion on the level of child benefits is different and more nuanced. Should UK child benefits be lower for children living in Poland, because the cost of living is less? If the debate could be strictly confined to child benefits, which are supposed to compensate to some extent parents with children for the cost of raising children (i.e. if this debate is not extended to, say, pensions), it can be seen as a largely secondary 'implementation' issue from a European perspective. Discussions on child benefits paid to non-resident children typically create big emotions, although, in the UK and other EU Member States, they concern budgetary peanuts. Hence, this matter should be approached with some pragmatism.

A first pragmatic (and minor) consideration is that linking child benefits to the cost of living in each of the 28 Member States, makes the governance of child benefits more complex, not only because one has to differentiate 28 countries, but also because the cost of living is a rapidly changing parameter (take Poland, in which the standard of living is evolving rapidly, not necessarily on a par with what happens elsewhere). Presumably, this would require a specific European coordination mechanism, in order to avoid differences in adjustment parameters across countries that cannot be justified.

The second pragmatic consideration is more important: it is about the kind of discussion on cross-border mobility the representatives of 'mature' welfare states in the EU (say, the EU15) may wish to have with the representatives of less developed welfare states (say, the EU12): should representatives of the most advanced welfare states focus on issues such as lowering child benefits for non-resident children living in less developed welfare states, or should they focus on other questions? I address this question in the next section.

### 4. On the basis of which principles should EU Member States discuss cross-border mobility?

New Member States such as Poland typically want as little limitations as possible on posting of workers (since a liberal posting regime is economically beneficial for them); simultaneously, they want as little limitations as possible on the principle of non-discrimination in social policy (since such limitations imply a social relapse for Polish citizens). Thus, they apply two principles that are, in terms of rationale and justification, fundamentally at odds with each other, but that seem to serve their short-term interests best. The Dutch government, to take an opposite example, has launched a campaign against what it considers to be excessive and uncontrolled freedom in the realm of posting, and has put this very high on the EU agenda during the recent Dutch EU Presidency. Simultaneously, the Dutch Prime Minister voiced sympathy with Cameron's agenda, notably on child benefits, and signalled that they would like to apply a differentiated scale for child benefits too. Just as the Polish, they apply two contradictory rationales, motivated by what they think is their short-term interest. But is this really their interest?

In fact, in a European negotiation on these matters, the Dutch government should address the Polish government in the following way: "We are not in favour of discriminating Polish citizens in the Netherlands, and we are even not in favour of diminishing Dutch child benefits for children living in Poland. But, please, understand that we do not want to see our social system undermined by excesses in the application of posting."<sup>11</sup> If such would be the principled approach of representatives of mature welfare states, they may strike a better deal with representatives of less developed welfare states on both issues (posting, non-discrimination), compared to a situation in which deviations from the non-discrimination principle and uncontrollable posting proliferate. If deviations from the non-discrimination principle and uncontrollable posting thrive, we will ultimately settle for an equilibrium with less social protection than in the opposite case. Everybody would lose in the end, in an archetypal example of how certain types of coordination yield Pareto-inferior solutions, compared to other types of coordination. Even for a country like the UK which seems, currently, not very concerned by abuses of posting, it may ultimately be better - in terms of its national regulatory capacity - to have a controllable system of posting, rather than

a free hand in the application of its in-work benefits for non-British citizens and lower British child benefits for children living elsewhere.

In other words, the compass of our principles may, in the end, be important for the practical results we achieve. Although the debate about the coordination of social security and the debate on posting are now separated (the former being postponed until after the British referendum, the latter currently blocked by

resistance in a significant number of Member States) Member States would be well advised to consider them from the same, principled perspective. The challenge is to find a balance between, on one hand, the need for an integrated market in services (for which posting is necessary) and the foundational principle of the EU that mobile workers should be integrated into the ‘solidarity circle’ of the Member State in which they work, both in terms of wages, working conditions and social security contributions and social policy entitlements.

1. I thank Sofia Fernandes for useful exchanges on this Tribune.
2. Sofia Fernandes, “Access to social benefits for EU mobile citizens: “tourism” or myth?”, *Policy Paper No. 168*, Jacques Delors Institute, June 2016.
3. For key data and a useful synthesis of the debate on posting, see Kristina Maslauskaitė, “Posted Workers in the EU: State of Play and Regulatory Evolution”, *Policy Paper No. 107*, Jacques Delors Institute, March 2014.
4. Space forbids to elaborate on other dimensions of this challenge, such as the correct treatment of frontier workers.
5. I am grateful to Natascha Van Mechelen (Center for Social Policy Herman Deleeck, University of Antwerp) for making available these data.
6. Sweden is not included in the comparison.
7. As Lane Kenworthy emphasizes in *Social Democratic America*, Oxford University Press, 2014, it must be combined with a sufficiently generous general minimum wage scheme, which means that employers have to do ‘their part’ of the income protection of low-productive workers.
8. Cf. an argument developed by Declan Gaffney, “Are in-work benefits in the UK a magnet for EU migrants?”, *Touchstone Blog* 9.12.2014. I should add that the impact of the UK system on its attractiveness for low-skilled workers from other countries should be assessed with regard to both the supply of non-UK workers and the demand for low-skilled labour by UK companies. With regard to the supply of workers, the comparative generosity of the net income provided is the key determinant; with regard to demand for low-skilled labour, the comparatively low level of wage costs is the key determinant. A priori, it is plausible to argue that the combined impact of supply and demand should boost the low-wage segment of the UK labour market, and thus boost the inflow of non-British citizens in that segment in absolute numbers. Whether that impact occurs in practice would require further research. I am grateful to Bea Cantillon for pointing this out.
9. And lower than in Luxembourg.
10. The legal discussion is complex. The UK in-work benefits are social benefits in the sense of art. 7 (item 2) of Regulation 492/2011 on the free movement of workers; the UK ‘child tax credits’ are subject to regulation 883/2004 on the coordination of social security rights, but non-contributory and residence-based. Child benefits, discussed in the next section, are subject to regulation 2004/883. I am grateful to Herwig Verschueren for discussing this.
11. Obviously, neither the level of child benefits nor the regulation of posting are matters for bilateral negotiations between the Dutch and the Polish government. I am describing requirements for coalition-building in these EU debates. The example is not purely theoretical. For a reconstruction of earlier discussions on posting, in which the debate on benefits for mobile workers interfered, see Martinsen, D.S., *An Ever More Powerful Court? The Political Constraints of Legal Integration in the European Union*, Oxford: Oxford University Press, 2015, and forthcoming research by Dorte Martinsen.

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