



Recent Developments in Social Security Coordination and Free Movement of Workers

Ana-Lucia Crisan & Gillian More
DG Employment, Social Affairs and Inclusion

FreSsco Seminar Helsinki, 26th September 2014



PART I – FMOW - Overview

- 1. The New European Commission: what direction for FMOW?**
- 2. Legislative Developments: the new Directive on facilitating the FMOW**
- 3. Ongoing work in the Technical and Advisory Committees on the FMOW**
- 4. Legal Questions on FMOW before the Court**



THE NEW EUROPEAN COMMISSION: WHAT DIRECTION FOR FMOW?



President-Elect Juncker, Political Guidelines for the New Commission (15 July 2014)



"Free movement of workers has always been one of the key pillars of the internal market, which I will defend, while accepting the right of national authorities to fight abuse of fraudulent claims. I believe that we should see free movement as an economic opportunity and not as a threat. We should therefore promote labour mobility, especially in fields with persistent vacancies and skills mismatches..."



European
Commission

PRESIDENT JEAN-CLAUDE JUNCKER

First Vice-President

Frans Timmermans

*Better Regulation,
Inter-Institutional Relations,
Rule of Law & Charter of Fundamental
Rights*

High Representative

Federica Mogherini

*High Representative of the Union
for Foreign Policy & Security
Policy/Vice-President*

Vice-President

Kristalina Georgieva

Budget & Human Resources

Vice-President

Andrus Ansip

Digital Single Market

Vice-President

Alenka Bratušek

Energy Union

Vice-President

Jyrki Katainen

*Jobs, Growth, Investment
& Competitiveness*

Vice-President

Valdis Dombrovskis

*The Euro
& Social Dialogue*

Commissioner

Věra Jourová

*Justice, Consumers
& Gender Equality*

Commissioner

Günther Oettinger

Digital Economy & Society

Commissioner

Pierre Moscovici
*Economic and Financial
Affairs, Taxation and
Customs*

Commissioner

Marianne Thyssen

*Employment, Social Affairs,
Skills & Labour Mobility*

Commissioner

Corina Crețu

Regional Policy

Commissioner

Johannes Hahn

*European Neighbourhood Policy
& Enlargement Negotiations**

Commissioner

Dimitris Avramopoulos

Migration & Home Affairs

Commissioner

Vytienis Andriukaitis

Health & Food Safety

Commissioner

Jonathan Hill
*Financial Stability,
Financial Services &
Capital Markets Union*

Commissioner

Elżbieta Bieńkowska

*Internal Market, Industry,
Entrepreneurship & SMEs*

Commissioner

Miguel Arias Cañete

Climate Action & Energy

Commissioner

Neven Mimica

*International Cooperation
& Development*

Commissioner

Margrethe Vestager

Competition

Commissioner

Maroš Šefčovič

Transport & Space

Commissioner

Cecilia Malmström

Trade

Commissioner

Karmenu Vella

*Environment, Maritime Affairs
& Fisheries*

Commissioner

Tibor Navracsics

*Education, Culture, Youth
& Citizenship*

Commissioner

Carlos Moedas

*Research, Science
& Innovation*

Commissioner

Phil Hogan

*Agriculture
& Rural Development*

Commissioner

Christos Stylianides

*Humanitarian Aid
& Crisis Management*

**The HRVP may ask this
Commissioner (and other
Commissioners) to deputise
for her in areas related to
Commission competence.*



Legislative Developments: the new Directive on facilitating the Free Movement of Workers (FMOW)

Legal Framework FMOW

Article 45 TFEU

Regulation (EU) No 492/2011 on freedom of movement for workers *(formerly Regulation EEC 1612/1968)*

(Parts of) Directive 2004/38/EC on the right of EU citizens to move and reside freely in the territory of the Member States



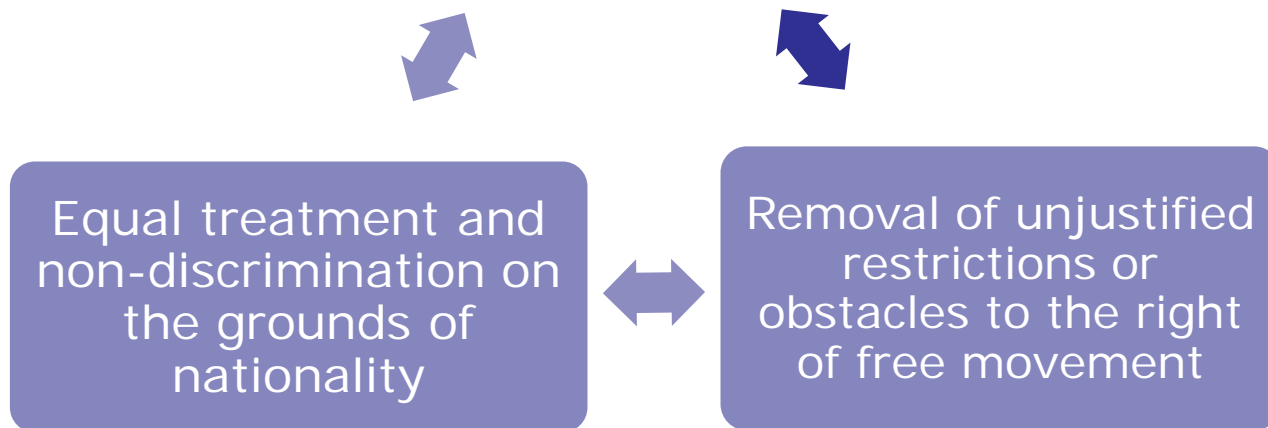
Main Features of new Directive 2014/54/EU on facilitating the exercise of rights in the context of free movement of workers

(to be implemented by 21 May 2016)


1. Specific measures to ensure effective protection of rights conferred by Art 45 TFEU and Regulation (EU) No 492/2011.
2. National body or bodies must exist to provide assistance to Union workers (including jobseekers) and their family members;
3. Promotion of dialogue in combating restrictions on FMOW and nationality discrimination;
4. Better information provision at national level.

FMOW Body (1) – Awareness-raising role (Article 4(1))

A national body for the "promotion, analysis, monitoring and support of...Union workers and their family members", in particular to promote



FMOW Body (2) – Art. 4 – Tasks -Each Member State shall designate "one or more structures or bodies" to:



Provide or ensure provision of independent legal and/or other assistance to Union workers...and their family members in pursuing their complaints



Conduct independent surveys and publish independent reports



Publish relevant information on application at national level of the EU rules on free movement of workers

Art. 4: FMOW Body (3) – cooperation and coordination duties

Make use of and cooperate with existing information and assistance services at EU level

Act as a contact point vis-à-vis equivalent contact points in other Member States

Cooperate with existing information and assistance services provided by social partners and... other entities at national level (Recital 20)



ONGOING WORK IN COMMITTEES ON THE FMOW



Technical Committee on the Free Movement of Workers

Art. 29 of Regulation
492/2011

- *Discussion in 2015 between European Commission and the Member States on the implementation of Directive 2014/54/EU*
- *Presentation of DG EMPL 2014 Report on Labour Mobility*



Advisory Committee on the Free Movement of Workers *(Article 21 of Regulation 492/2011)*

November 2014

- *Discussion of Report on the particular problems faced by frontier workers*
- *Update on the progress of the negotiation of the proposal for a new EURES Regulation*



LEGAL QUESTIONS ON FMOW BEFORE THE COURT OF JUSTICE

Pending Legal Questions

Case C-140/12 Brey: how to interpret?

Preliminary References on entitlement to jobseeker's allowances

Case C-333/13 Dano

Case C-67/14 Alimanovic

Case C-308/14 Garcia-Nieto

In the case of benefits for jobseekers, how do the EU free movement instruments relate to each other?

Article 45(2) TFEU

- Case C-138/02 Collins
- Equal treatment for (a) benefits designed to facilitate access labour market where (b) a genuine link to the labour market of the host state


Article 4 of Regulation 883/2004


- Gives entitlement to the same benefits according to same conditions as nationals under the legislation of the Member State

Article 24(2) of Directive 2004/38/EC

- No obligation for Member States to give access to social assistance during the whole of the job-seeking period
- Cases C-22/08 & C-23/08 Vatsouras

Conclusions FMOW

- 
- Free Movement of Workers remains a cornerstone of the Single Market

- 
- Work to remove barriers to free movement and facilitate intra-EU labour mobility continues

- 
- Continued exchange of information and cooperation between Commission and Member State authorities a practical way to realise these goals

PART II - SSC - Overview

1. Reflection Forum
2. Revision of social security coordination rules
3. WP on posting issues
4. Residence issues
5. Recent case-law of the CJ
6. External Dimension
7. Electronic Information Exchange (EESSI)



1. REFLECTION FORUM: EU SOCIAL SECURITY COORDINATION 2020 AND BEYOND

Follow-up of the trESS Think Tank Report on key challenges for the social security coordination regulations in the perspective of 2020 (available here http://www.tress-network.org/tress2012/EUROPEAN%20RESOURCES/EUROPEANREPORT/trESSIII_ThinkTank%20Report%202013.pdf)

*Vehicle to make the discussion within the Administrative Commission (AC) more visible
AC approved the creation of the Forum in June 2014*



REFLECTION FORUM - FIRST MEETING

WHEN – second day of the AC in October

HOW - a brainstorming without any taboos

WHAT – working methods, timing, topics

2. Revision of social security coordination rules

Aim

- Improved social security protection for migrant citizens
- Enhanced effectiveness of the coordination regime
- Legal certainty for all stakeholders
- Simplification

Revision of the social security coordination rules

The first draft could include:

- Coordination of long-term care benefits (LTC)
- Coordination of unemployment benefits





3. Working Party of the AC on posting issues

FreSSCO report on the "Procedures related to the granting of Portable Document A1: an overview of country practices"

- Administrative procedures for issuing the Portable Document A1
- Difficulties arising after Portable Document A1 was issued



WP on posting issues

Meeting in June 2014 – main conclusions

Setting-up an Ad-Hoc Group for

- Elaboration of a non-mandatory standardised set of questions to be clarified before a PD A1 is issued;
- Simplification of the procedure laid down in Article 16 of Regulation (EC) No 987/2009 in case of activities pursued in two or more Member States;
- Prevention of replacement of one posted worker by another;
- Establishment of procedural rules and criteria for the withdrawal of incorrectly issued PD A1 entailing a retroactive change of the applicable legislation;
- Review of the conciliation procedure.

4. Residence issues

- Practical Guide on the applicable legislation of 18 December 2013:
<http://ec.europa.eu/social/main.jsp?langId=en&catId=868>
- Study on the impact of mobility of non-active persons on residence based social security benefits:
<http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=1980&furtherNews=yes>
- Surveys and reports on challenges and opportunities of socio-economic inclusion of migrant EU workers in four selected European cities.

5. Recent ECJ case-law

Sickness benefits

- Judgment of 5 June 2014, Case C-255/13, **I**

Family benefits

- Judgment of 11 September 2014, Case C-394/13, **B**
- Judgment of 8 May 2014, Case C-347/12, **Wiering**



Judgment in Case C-255/13, I

For the purpose of Article 19(1) or Article 20(1) and (2) of the Regulation 883/2004, where an EU national who was resident in one MS suffers a sudden serious illness while on holiday in a second MS and is compelled to remain in the latter State for 11 years as a result of that illness and the fact that specialist medical care is available close to the place where he lives, such a person must be regarded as 'staying' in the second MS if the habitual centre of his interests is in the first MS.



Judgment in Case C-394/13, B

A MS cannot be regarded as the competent State for the purpose of granting a family benefit to a person on the sole ground that the person concerned is registered as being permanently resident in its territory, where neither that person nor the members of his family work or habitually reside in that MS.



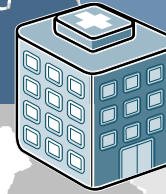
Judgment in Case C-347/12, Wiering

For the purpose of calculating the supplementary allowance to which a migrant worker may be entitled in his or her MS of employment, it is not possible to take account of all the family benefits received by the worker's family under the legislation of the MS of residence since, subject to verifications to be carried out by the referring court, 'Elterngeld', provided for under German law, is not a benefit of the same kind as 'Kindergeld', provided for under German law, or the family allowances provided for under Luxembourg law.



6. External Dimension of EU Social Security Coordination

- Adoption of 2nd package of EU negotiation positions - 2012 (Albania, San Marino, Montenegro and Turkey)
- Ongoing negotiations with associated countries: Decisions on Morocco, FYROM, Israel and Montenegro finalised
- Open question of Legal Basis - Turkey (Articles 48, 79(2)(b) or 217 TFEU) – 26/09/2013: Judgement in Case C-431/11 *the UK v Council of the EU*
- Negotiations of new Association Agreements with Caucasus Countries
- New Ad Hoc Group of the Administrative Commission
- Follow up to 2012 Communication (Forums March 2013/14)



7. EESSI Highlights

14.1 million EU citizens living in another Member State, all insured persons potential beneficiaries of social security coordination rules

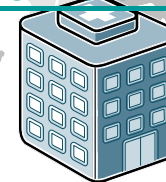
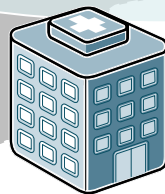
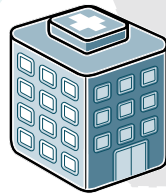
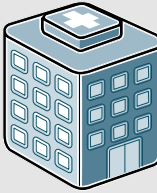
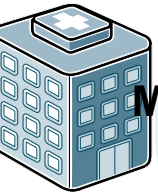
More than 15,000 institutions connected through Access Points (approximately 60)

Several million messages are likely to be exchanged each year

Approximately 400 Structured Electronic Documents (SEDs) defined and agreed for the exchanges

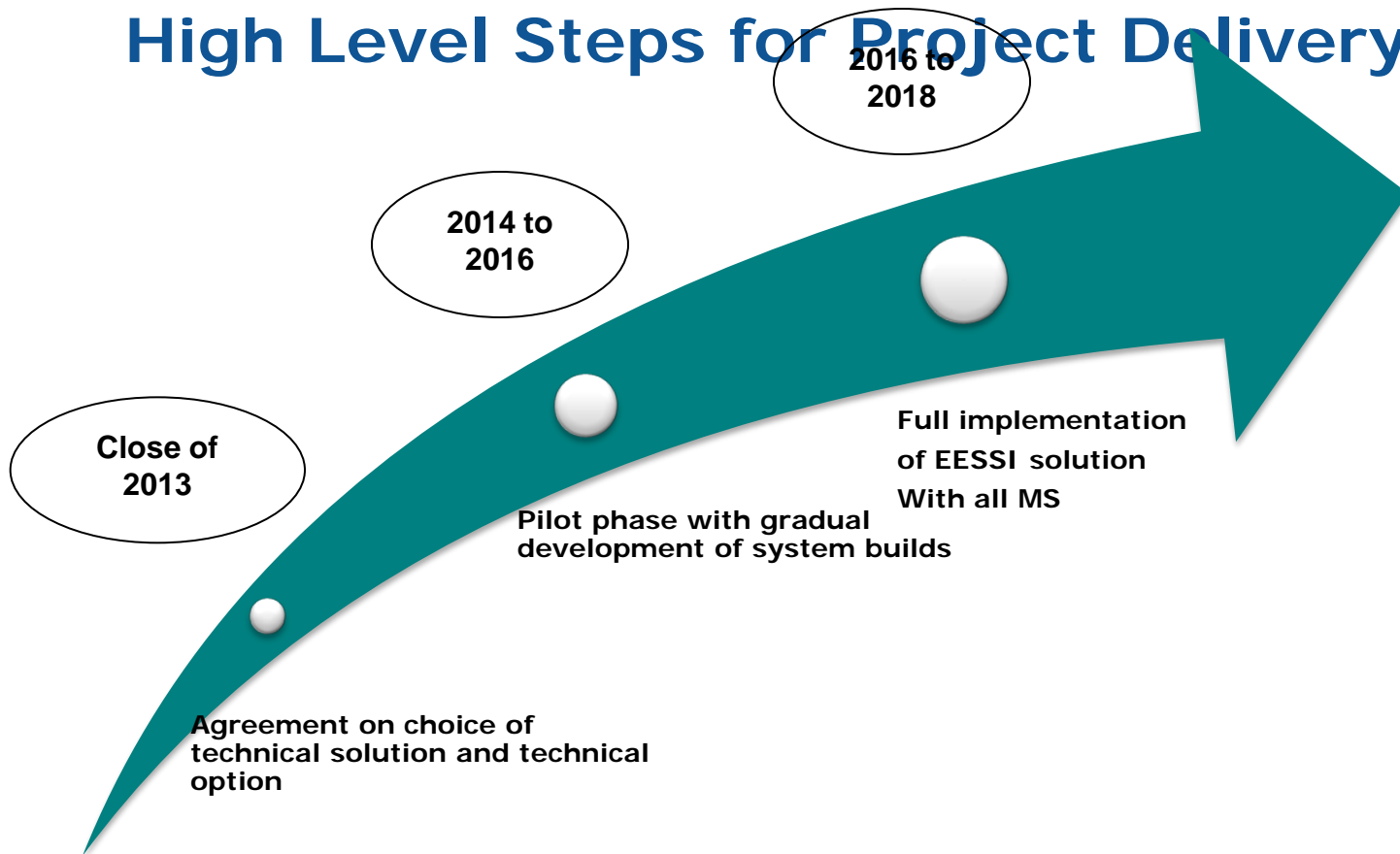
Directory with contact details of institutions already available

<http://ec.europa.eu/social/main.jsp?catId=1028&langId=en>



EESSI

High Level Steps for Project Delivery





EESSI

Current status

June 2014 - the AC confirms the Project has completed the initiation phase, and is ready to launch the planning phase.



Visit us @

<http://ec.europa.eu/social-security-coordination>

<http://www.facebook.com/#!/socialeurope>