

Posting of workers in EU social security coordination law - recent developments

Prof. Dr. Grega Strban

MoveS seminar in the Czech Republic, Free movement of workers 50 years after, interaction with social security, Prague 24 September 2018, Charles University - Faculty of Law

Introductory thoughts

- Promotion of movement in the EU
 - Coordination of social security systems
- Modifications in:
 - Patterns of movement
 - Organisation and nature of work
- Posting (secondment) of workers
 - Social security law

Determining applicable legislation

- One of the basic principles of social security coordination
- Unity of applicable legislation
 - Positive and negative conflicts of law
 - General principle *lex loci laboris /lex loci domicilii*
- This principle
 - is applied exclusively
 - has overriding effect

Posting

- Exception from *lex loci laboris* rule
- Member States involved
 - Sending MS („the posting State“, „vysílající stát“)
 - Host MS („the State of employment“, „stát zaměstnání“)
- Purpose of posting?
- Limitations?

Posting - limitations

- Work for the employer
 - Also during the time of posting
 - Employer normally carries out its activities in the sending MS?
 - Worker pursues activity on employer's behalf?

Posting - limitations

- Prior subject to social security legislation
 - Worker shall „continue“ to be subject to the legislation of sending MS
- How long before posting?
- At the same employer?
- What about national rules?
- Proposal of amending the implementing Reg.

Posting - limitations

- Time limits
 - 24 months
 - No prolongation
 - Host MS has no active role, but has to be informed
 - How to act, if:
 - Foreseen time of posting exceeds 24 months?
 - Work unexpectedly lasts longer than 24 months?
 - Flexibility clause
 - Reducing posting time?

Posting - limitations

- Prohibition of chain posting
 - Preventing permanent work in the host MS
 - Is replacement of posted worker admissible?
 - Is new posting of the same worker possible?

Posting – sincere cooperation

- Administrative cooperation
 - Portable document (PD) A1
 - Is it necessary for a worker to have it?
 - A1 constitutive element of posting?
 - National law?
 - Proposal for amending the Regulation
 - Doubts in validity/accuracy of A1?
 - Principle of sincere cooperation of (sending and host) Member States

Posting – sincere cooperation

- Host MS may require verification
 - Annulment of A1
 - No agreement – Administrative commission...
- Recent CJEU judgments
 - C-620/15 *A-Rosa*, EU:C:2017:309
 - C-359/16 *Altun*, EU:C:2018:63
 - Sincere cooperation implies mutual trust
 - Suspicion of fraud and sending MS does not react
 - The court of law in the host MS may annul PD A1!
 - C-527/16 *Alpenrind*, EU:C:2018:669

Concluding remarks

- Tense relationship between
 - Coordination of social security systems and
 - Freedom to provide services in the internal market
- Posting is regulated by
 - Labour law
 - Social security law
 - Tax law

Concluding remarks

- Social security aspect of posting are regulated in
 - National law and
 - Regulation 883/2004
 - Unwanted paradox of a Regulation?
- Modifications of posting rules are necessary
- If posting rules cannot be applied, work can still be performed in another Member State 😊

MoveS project presentation

Elisa Giacumacatos
MoveS assistant coordinator
Eftheia - Brussels

September 24, 2018

MoveS

EU-wide network
of independent legal experts
in the fields of
free **movement** of workers (FMW) &
social security coordination (SSC)

- Funded by the European Commission (DG EMPL units D1 'FMW' and D2 'SSC')
- 32 countries covered (EU/EEA/CH)
- Implemented by Eftheia, Deloitte Advisory & Consulting, University of Ljubljana, University of Poitiers
- Four-year project (2018-2021)

Objective 1

- To provide high-quality legal expertise in the areas of FMW and SSC
 - by means of **Legal Reports**
 - by means of monthly **Flash Reports**
 - by means of **replies to ad hoc requests**

Legal Reports (2018)

▪ Social Security Coordination

- 'Consequences and possible solutions in cases of lump sum payments of pensions, reimbursement of contributions and waiver of pensions'
- 'Social security coordination and non-standard forms of employment and self-employment - interrelation, challenges and prospects'

▪ Free movement of workers

- 'The legal situation of third country workers in the EU as compared to EU mobile workers'

Flash Report

- Provided to the EC on a monthly basis
- Covering national developments impacting FMW and SSC
- Based on the inputs of the 32 countries of the network

Ad hoc support

- When the investigation of specific issues requires a detailed analysis of the national legal framework

Objective 2

- To disseminate expertise and increase experts' and practitioners' knowledge
 - by organising **seminars**
 - by **sharing information**
 - by **building networks between stakeholders**

Seminars

- Ca. 10 one-day seminars a year
- Audience: Representatives of competent authorities and institutions, social partners, NGOs, judges, lawyers and academics

2018 MoveS seminar calendar

Date	Country
25/5	Italy
11/6	France - SSC
15/6	France - FMW
3/7	Poland
24/9	Czech Republic
28/9	Cyprus
15/10	Belgium
17/10	Romania
26/10	Latvia
15-16/11	Austria

Cooperation and networking

- **MoveS webpage (EUROPA)**

<http://ec.europa.eu/social/main.jsp?langId=en&catId=1098>

- **MoveS LinkedIn group:**

MoveS – free movement and social security coordination

<https://www.linkedin.com/groups/4291726>

Thank you for your attention!

Contact us at:

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Network structure and organisation

MoveS

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Steering Group Members

Flash Reports	Information tools	Legal reports	Ad hoc requests	National seminars
Gabriella Berki, University of Szeged	Filip Van Overmeiren Lega (Deloitte)	Jean-Philippe Lhernould University of Poitiers	Gabriella Berki University of Szeged	Kristina Koldinska' Charles University

POOL OF NATIONAL EXPERTS
POOL OF ANALYTICAL EXPERTS

MoveS Project Activities

- 1 Legal Reports
- 2 Flash Reports
- 3 Ad hoc requests
- 4 National seminars
- 5 Information sharing



Novela koordinačních pravidel pro dávky v nezaměstnanosti „český pohled“

Vít Holubec

oddělení koordinace sociálního zabezpečení

Ministerstvo práce a sociálních věcí

Obsah

Klady a zápory změn tří hlavních institutů:

- 1) Přeshraniční pracovníci
- 2) Sčítání dob pojištění
- 3) Export dávek v nezaměstnanosti

Přeshraniční pracovníci

+ Pozitiva:

- Příklon k principu státu pojištění – obecně férovější pro státy i pracovníky
- Odpadá rozdílný režim příhraničních pracovníků
- Jasně vymezení situací, kdy dávky poskytuje stát bydliště a zmírnění dopadu posouzení bydliště
- Odpadají refundace
- Export do státu bydliště bez čekání

Přeshraniční pracovníci

- **Negativa:**
 - Možný tvrdý dopad na uchazeče, kteří nemohou plnit součinnost s ÚP ve státě činnosti
 - Krátké trvání exportu dávek do státu bydliště (3 měsíce) – pak odkázanost na sociální pomoc státu bydliště a jeho finanční zdroje
 - Zachování kategorie přerušovaně nezaměstnaných (kdo to je?)
 - Nejasná kontrolní úloha státu bydliště (čl. 56 PN)

Sčítání dob pojištění

+ **Pozitiva:**

- Vyloučení sčítání dob, které ve státě činnosti nezakládají nárok na dávky (čl. 60a ZN)
- Zamezení případných snah o manipulativní využívání koordinačních pravidel
- Minimalizace dopadů speciálního pravidla

Sčítání dob pojištění

- **Negativa:**

- Nekoncepčnost a nesystémovost nové spec. úpravy
- Nejednoznačnost možnosti registrace ve státě předchozí činnosti
- Možný tvrdý dopad na některé migranty
- Komplikovanost – nepřiměřená administrativní zátěž a prodloužení řízení
- Změny v příslušnosti a dopady na další odvětví



Export dávek v nezaměstnanosti

+ **Pozitiva:**

- Možnost prodloužení doby exportu na celou podpůrčí dobu

- **Negativa:**

- Na prodloužení není nárok, ani nejsou daná kritéria či mantinely pro uvážení
- Export mohl být řešením tvrdých dopadů ostatních ustanovení, ale tento potenciál nebyl naplněn



Děkuji za pozornost





Coordination of family benefits EC view

MoveS Seminar
Prague- 24 September 2018

Els Vertongen
Unit D2 – Social Security Coordination
Directorate-General for Employment, Social Affairs and Inclusion

Overview

- 1. Current rules*
- 2. Problem issues*
- 3. Future developments*



Regulations (EC) Nos 883/2004 and 987/2009

- *Article 1 (z) BR : definition of family benefits*
- *Article 1 (l)BR : definition of member of the family*
- *Article 67 BR: principle of export of FB*
- *Article 68 BR: priority rules in case of overlapping entitlements – differential supplement*
- *Article 60 IR: procedures*



Decisions of the Administrative Commission

- *Decision F1 concerning the interpretation of Article 68*
- *Decision F2 concerning the exchange of date between institutions for the purpose of granting FB*

Definition of family benefits

- *All benefits in kind or cash intended to meet all kind of family expenses*
- *Excluding:*
 - *advances of maintenance payments*
 - *special childbirth and adoption allowances mentioned in Annex I*

Definition of members of the family

- *All person recognised as such or designated as a member of the household by the legislation under which the benefits are provided.*
- *If legislation of the MS concerned does not make a distinction: minor children and other dependent children.*
- *Children who are mainly dependent of the insured person*

Export of family benefits

- *Entitlement to family benefits for family members residing in another Member State as if they were residing in that Member State.*
- *Article 7 BR: waiving of residence clauses and prohibition to submit cash benefits to any reduction, amendment, suspension, withdrawal or confiscation.*

Priority rules

- *anti-overlapping rules: no multiple entitlements for the same children for the same period.*
- *Designation of the primary competent Member State*
- *Differential supplement*

Procedure : Article 60 IR

- *Who can claim family benefits?*
- *Quid when there is an entitlement to FB in more than one MS?*
 - *Decision on the primary competence by the MS to which the application was made*
 - *Different situation: paragraph 3 and paragraph 4*
 - *recovery*

Problem issues

- *Definition of member of the family*
- *Delays in the treatment of applications*
- *Cooperation between institutions*

Definition of members of the family

- *Definition of Article 1 (i) BR not sufficient to address situation of patch work families, divorce, separation etc*
- *No harmonised definition*
- *Recent case-law of the CJEU: Slanina and Trapkowski*

The treatment of applications by the national institutions

- *No clear deadlines in the Regulations*
- *Information of the person concerned*



Cooperation between Member States

Article 60 IR

- *Provisional decision by the institution to whom the application is made*
- *If no reply of the other institution within 2 months deadline, provisional decision shall apply → quid? No payment of the FB?*
- *No agreement on the provisional decision → Article 6 IR applies: person concerned can claim benefits on a provisional basis*

Future developments

- *Revision of social security coordination Regulations*
- *Follow-up of the report of the Ad Hoc Group on Family benefits*



Revision of the SSC Regulations

Commission's proposal

- *New provisions regarding FB in cash intended to replace income during periods of child raising:
Article 68b BR*
 - *personal right of the person subject to the legislation of the competent MS when listed in Part 1 of Annex XIII*
 - *no derived rights*
 - *no application of Article 68a*
 - *only claims of the insured person will be taken into account*
 - *MS can award parental benefits in full in case of overlapping (Part II of Annex XIII)*



Revision of the SSC Regulation General Approach of the Council

Application of the Wiering Jugdement:

- *overlapping rules only apply when benefits of the same kind*
- *Two baskets of family benefits of the same kind*



Work of the AHG on family benefits

- *Short overview of the topics assessed by the AHG*
- *Follow-up of the final report of the AHG*

Topics assessed by the AHG on FB

- *The application of the Wiering judgement*
- *Methods of calculating the differential supplement*
- *Definition of family member*
- *Determination of competence and priority payment for FB in complex cross-border situations*

Follow-up to the report

- *Application of Wiering judgement dealt with in the framework of the revision of the Regulations in the General Approach of the Council*
- *Adoption of a roadmap and timetable in the 354th AC meeting in June 2018 as regards:*
 - Definition of family member
 - Determination of competence and priority payment
 - Methods of calculation of the differential supplement

Thank you for your attention!

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<http://ec.europa.eu/social/main.jsp?catId=849&langId=en>

MoveS Seminar Czech Republic

*Unemployment benefits – new coordination rules -
problems and challenges*

Prague, 24 September 2018

Charles University

Essi Rentola, MoveS visiting expert

Legal basis EU regulations

- Art. 48 TFEU.
- Aim: ensure that people making use of free movement are not penalized in field social security.

Principles of social security coordination (883/2004 & 987/2009)



Equal treatment

(Title I, art. 4 reinforced
by art. 5)

One country

(Title II, main rule *lex
loci laboris*)

Aggregation of periods

(Title I, Art. 6)

Export of cash benefits

(Title I, Art. 7)

Good

Administrative
Cooperation

(Reg. 987/2009, Title II)

Current special rules on unemployment

- **Aggregation** (art. 61), derogation from art. 6
- **Export** (art. 63, 64, 65 and 65a), derogation from art. 7
- **Competence** for granting unemployment benefits (art. 65) derogation from main rule of Title II (lex loci laboris)

Challenges of the current rules

- Interpretation on aggregation of periods varies between MSs
- Provisions for cross-boarder workers provisions complex and contribute to uncertainty from the individuals perspective
- Provisions on cross-boarder workers administratively burdensome

Commission proposal 2016

- **Aggregation:**
- Contributes to legal clarity and more uniform application of aggregation rules
 - Art. 6 also applies to chapter unemployment.
- Reflects degree of integration of unemployed person in insurance system of host MS
 - Minimum qualifying period of three months insurance in MS of most recent activity
 - Requiring MS of previous activity to provide benefits when this condition is not fulfilled

Council general approach (June 2018)

Aggregation (art. 61)

1. Condition of "... having most recently completed **an uninterrupted** period of at least **one month** ...in accordance with the legislation...under which benefits are claimed"
2. If not: the legislation of **the penultimate** MS...provided that such a **period was an uninterrupted period of at least one month**"
3. If unemployed has not completed an uninterrupted period of one month the MS of most recent insurance shall become competent. After applying art. 6 and 60a.

Council general approach (June 2018)

- **Aggregation**
- *Additional art. 60a* "only periods which are taken into account under the legislation of MS in which they were completed **for the purpose of acquiring and retaining the right to unemployment benefits shall be aggregated** in the competent MS"

Commission proposal 2016

- **Export**
- **Art. 64:** Extend the minimum period from ***three to six months*** while providing possibility to export
- **Art. 55(4) Reg. 987/2009** is amended to strengthen the control procedure by rendering the monthly follow-up reports mandatory
- **Art 64a:** for persons moved to another MS without fulfilling the conditions the minimum qualifying period in last MS of activity

Council General approach June 2018

- **Export**
- Minimum period of export reduced from six months to *three months*
- Art. 64a : Explicit fraise that registration in last MS of insurance will have the same effect as registration in the competent MS.

Additional point 2 of alternative wish to seek work in other MS.

Commission proposal 2016

- **Art. 65**
- No differentiation between frontier workers and non-frontier workers.
- Decrease of number of cases of derogation from *lex loci laboris*. MS of last employment is competent for granting unemployment benefits.
- The unemployed person must register as a person looking for work in the same MS
- MS of residence is competent to grant unemployment benefits only if person has not completed at least *12 months* of unemployment insurance in MS of last employment.
- No reimbursement provisions necessary

Council general approach

- **Art. 65**
- 12 month requirement of work in the last country of employment reduced to *three months*

...good to note

- Competence for unemployment benefits determines legislation applicable
 - family benefits, sickness
- EESSI system
- New! Clear legal base for permitting competent institutions to exchange personal data
 - 987/2009 art. 2. **2a** *"shall be possible concerning either individual cases or comparing the data on multiple persons simultaneously"*

Problems and challenges

- Historic change in the unemployment chapter
- The overall aim and logic blurred
 - . Which situations will be cross-boarder situations (art. 65) and which lex loci laboris situation (art. 61)
- Administrative implementation will be laborious
- A need for well planned efforts to facilitate good cooperation between MSs
- Reliable statistical data on cross-boarder benefit matters becomes increasingly important



Seminář Moves 24.9.2018

**Rodinné dávky – minulost,
současnost a budoucnost?**

**Gabriela Pikorová, odd. koordinace systémů
sociálního zabezpečení, MPSV**

Minulost:

Nařízení 3/1958

Zaměstnanec (nebo osoba jemu na roveň postavená) zaměstnaný na území členského státu, který má děti, které bydlí na území jiného členského státu, má na tyto děti nárok na rodinné přídatky podle ustanovení právních předpisů prvního státu až do výše přídatků, které poskytuje legislativa druhého členského státu.

Nařízení 1408/71

- 1971 - Nárok od státu zaměstnání rodiče + výjimka pro FR – na děti bydlící v jiných ČS FR dávky neplatí.
- 1975 –návrh Komise s cílem sjednocení pravidel (závazek přímo v přechodných ustanoveních)



Minulost:

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- 1975 –návrh Komise s cílem sjednocení pravidel (závazek přímo v přechodných ustanoveních) – v Radě nebylo dosaženo shody (jednomyslnost)
- 1986 – zrušení výjimky FR ze strany SD EU , Komise předložila novelizaci nařízení 1987– sjednocení pravidel

Současnost:

Nařízení 883/04 – převzalo principy úpravy 1408/71

- **Možná působnost více států**
- **Pravidla priority (dle místa výkonu práce, následně bydliště).**
- **Dávky exportované na děti bydlící v jiných státech nejsou kráceny.**



Budoucnost:

Novelizace obsahuje:

- **Zrušení odvozených nároků na rodičovské dávky**
- **Implementace rozsudku Wiering (druh dávek)**

Snahy některých členských států a členů EP:

- **Zavedení možnosti indexace rodinných dávek poskytovaných na děti bydlící v jiných členských státech.**
 - **Indexace x rovnost zacházení (fair migration)**
 - **Indexace na úrovni členských států?**



Diskuse.



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