



Posting of Polish workers and the current cooperation of administrations

MoveS seminar, Helsinki, 13.09.2019

Anna Matyska, anna.matyska@kuleuven.be

Interculturalism, Migration and Minorities Research Centre (IMMRC),
University of Leuven

Research supported by the Marie Curie Fellowship (2017-2019)

Content

1. Introduction of the project, methodology & analytical framework
2. Administrative cooperation and the codification of (a)symmetrical power relations
3. Power relations in practice: Poland as a sending country & Polish institutions as the “requested” institutions
4. Concluding remarks

Research project

- Posting from Poland
- The relationship between Polish posted workers, their employers and Polish state administration.
- Workers posted to Belgium (2017-2019)
- Polish state administration: The Social Insurance Institution (ZUS) as a “competent institution”
- Interviews in ZUS Headquarters and the special unit responsible for the A1-coordination in the Siedlce branch.
- Still to be conducted: interviews in Kielce branch (“special agreement” unit)

Administrative cooperation and the Coordination of Social Security Systems

- Administrative cooperation – **How policy works in practice?** → **power relations** between **institutions** (composed of **particular individual actors** – **lower and higher-level bureaucrats**)
- Social security coordination (Regulations (EC) 883/2004 and (EC) 987/2009, decisions A1 and A2):
 - **part of European biopolitics/biopower** (Foucault 1978) - aims to ensure the welfare and security of EU population and through this to legitimize its claim to power.
 - establishes **particular bureaucratic procedures** to regulate **power relations** between institutions located in different members states.
 - affects the **prerogative/sovereign power** and biopower of MSs.
 - **bureaucratic procedures** - elements of **disciplinary power** (over bureaucrats and regular citizens) which help to achieve the overall goal of Ssco.

Administrative cooperation and the Coordination of Social Security Systems

- **Policies often do not work as intended;** they cannot be disembedded from the practice of everyday life

*Anthropology does not treat policy as an unproblematic given but rather as something to be problematized... It asks **How do people engage with policy and what do they make of it?** (Shore and Wright 2011, 8).*

Administrative cooperation and the codification of (a)symmetrical power relations

- ❑ Central issue – the legal validity of A1 document
- ❑ Any state can make **a request or ask** regarding the validity of A1 document (10 days - 3 months – 3 months – 6 months)
- ❑ Presumption of certain **power balance** between actors as states, and between particular institutions of these states
 - neutral or/and positively charged language suggesting **communal and partnership relationship**:
 - **mutual cooperation, dialogue, negotiation, solidarity, sincerity** → reciprocity
 - **Any state** can make *a request*
- ❑ In practice, **only certain states get to be the requesting party** (due to posted work mobility flow)
- ❑ Procedure implies **an asymmetrical relationship: *the requesting institution and the requested institution***
- ❑ → ability to exercise a **disciplinary power** – ability to initiate social action, put bureaucracy of the request state into work (even though the final decision belongs to the requested institution, yet possibility for disagreement).

Power relations in practice: “request” or complain?

- Poland – predominantly a sending country/“requested” state; ZUS issued **605 710** A1 in 2018
- “Request” or “complain”? Analogically, for the receiving state: **an act of challenging** the decision of another institution

O1 [*The special unit*] deals with answering **the requests** (*zapytania*) of foreign institutions, which are often difficult. In reality, these are often **complaints** (*pretensje*).

O2 *Requests.*

O1 *Yes, requests. That’s how they’re called.*

- **Difference between official policy discourse and everyday discourse**

Power relations in practice: “request” or complain?

A. How do you feel about it [the requests]?

*O1 **We treat it as a standard procedure.** That's our job. It has never crossed my mind to treat it otherwise.*

*O2 When the request comes, other branches verify it. But I have issued A1 documents for 10 years and I have been always **afraid** of this [“the request”].*

→ **Who speaks matters.** Not institutions but particular people make the decision, while language of the policy is depersonified.

Inspection: from upper-level to lower-level bureaucrats

O2 I talked to the local branches myself. They didn't know how to approach the matter. I explained to them, ‘Look, you didn't know half of the facts.’

Power relations in practice

- The institution has the possibility to maintain its original position on the validity of A1; **in 50%** of the cases ZUS agrees with the “request”, **621 A1 withdrawn** in 2017 (*Fraud and error* report, 2018)
- **Unclear regulations** complicate bureaucrats’ ability to make decision based on objective administrative “proofs”; a matter of interpretation of key concepts (residence, turnover etc.)
- & can enhance the receiving state’s disciplinary power to make a request

Power relations in practice

Policy and politics

- Only several destination countries are active in making “requests”, including Belgium and France (and increasingly Czech Republic)
- Policy and politics

O4 ...the French institution had reservations regarding the procedure of posting of several Polish workers even though the same workers were also posted to Germany and Sweden, and the latter institutions made no requests. Its rare but it happens.

Power relations in practice:

We don't know what happens next

Another indicator of power asymmetry:

- **Coordination ends with the withdrawal of A1**; no procedures which would allow the sending/requested state to follow-up on the situation of the worker in the receiving/requesting state → “The least coordinated aspect of Ssco.”
- Suggested as deficient in relation to workers' welfare – **“the person concerned”**
- Limits the ability of sending state to exercise **disciplinary power** over the receiving state and **the ability to exercise biopower** over its mobile population

Power relations in practice:

We don't know what happens next

- “When we conclude that the employer is not legible to pay contributions in Poland, we don't have the means to force him to pay the contributions in another member state. And at that moment the employee may be unaware that he is without any coverage ... In all the cases where we agreed that the employee should fall under the legislation of another member state, we didn't have any reaction (from the requesting institution) other than the lack of refusal.... We don't know whether the employee is included there or not. We don't know what happens next...”.

Power relations in practice

- Some exceptions - negotiation “**so as not to act against the welfare of the person**” seen as a matter of a good will and consideration for the worker; not a matter of executing the procedures of Ssco
- Self-employed:

O4: After 2-3 days we received a response, ‘Please verify your position because too much time has passed and we are unable to [retroactively] cover the person under our insurance scheme. We suggest to make an exception.’ And that’s a great [attitude].

Power relations in practice: Who gets to speak?

- *Our employees suggested the topic....*
- **Legitimacy of knowledge**; lower and higher-level bureaucrats → the importance of grassroots knowledge about coordination
- **Communication with the “persons concerned”** – asymmetry of information exchange and the lack of continuous clarifications that A1 is about the cooperation of administrations and can be withdrawn.
- **The Counseling Days of ZUS (*Dni Poradnictwa*)** – direct communication with Polish diasporic audience regarding Ssco (but little on the A1 procedure)

Conclusion

- To increase the effectiveness of Ssco, we should **recognize and acknowledge power relations** underpinning the coordination.
- Sincerity difficult to achieve due to the **discrepancy between the apparently “neutral” logic of policy and everyday (politicized) practice.**
- The importance of communication with and consideration for the **“persons concerned”** in the process of coordination. **Sincerity as an instrument of power – to what end?**
- EESSI and the procedure regarding the consequences of the revocation of A1 (data protection issue?)
- **Cooperation in more informal spaces**, which are more accessible to the public, in dialogue with “persons concerned” - EU mobiles and street-level bureaucrats. Counseling days as a first step?
- Crucial to **avoid the objectification of the subjects of policy** (both the bureaucrats and the mobile citizens).
- “He is seen, but he does not see; he is the object of information, never a subject in communication” (Foucault 1977/1995, 200)



Regional State
Administrative Agency

Cooperation Between Estonian and Finnish Labour Inspectorates – Good Practices

Senior Inspector Joonas Heinilä

MoveS Seminar, Helsinki 13.9.2019



Bilateral Agreement

- Cooperation agreement between Labour Inspectorate of Estonia and Division of Occupational Health and Safety of the Regional State Administrative Agency for Southern Finland (Regional Labour Inspectorate) was concluded on the 3rd of December 2014
<http://ti.ee/en/organisation-contacts/the-labour-inspectorate/international-agreements/>
- **The main aims of cooperation:**
 - 1) to ensure that Estonian companies posting workers to Finland are obeying statutory legislation
 - 2) to improve general the working conditions (both in labour law and OSH matters) of Estonian posted workers



How do we cooperate?

■ Four main pillars of cooperation

- 1) Sharing of Information
 - on inspection activities and other relevant issues (for example changes of both countries internal legislation that has strong impact to the other countries´employers and employees)
- 2) Biannual meetings
- 3) Exchange of Inspectors
 - Joint inspections in Finland and in Estonia usually during biannual meetings (labour law, OSH and Act on Contractors´Obligations and Liability)
 - Mainly inspections to such cases that has cross-border dimension
 - Some cases point of view is on sharing good practices
- 4) Raising awareness of Estonian workers posted to Finland
 - Using media as a tool in raising awareness



Benefits from collaboration

- Better understanding of both parties' competence, tasks and key persons
- More understanding in which kind of situations we can and should cooperate so that it is effective
- Valuable background information before but also during inspections
- More effective inspections in both countries – pressure from both Finnish and Estonian authorities
- Cross-border cooperation reduces the abuse of regulation
- Fast and effective sharing of information – the faster the information moves, the faster we can limit activities of fraudulent companies
- Cooperation has encouraged some Estonian companies to obey legislation better in Finland → the fraudulent companies haven't got so much free space to operate as before



Benefits from collaboration

- Effective results concerning delivering administrative documents from Finland to Estonian companies in such cases where the company cannot be contacted in Finland or the post office cannot deliver documents in Estonia
 - Using IMI-system → Estonian Labour Inspectorate delivers (first case in september 2017)
 - If they cannot contact the company, then using Bailiffs in Estonia (first cases 2019)
- Information that one cannot anymore avoid for example negligence fees from Finnish Labour Inspectorate spreads also "through the grapevine"



Questions?

Thank You!

The principle of sincere cooperation

Legal and theoretical framework

Pr Jean-Philippe Lhernould, University of Poitiers
MoveS, Helsinki, 13 September 2019

I - Legal background

An ancient principle

- Sincere cooperation has been a constant element of consideration since the 1950s'
 - European Coal and Steel Community (ECSC), 1951: "The **MS bind themselves to take all general and specific measures which will assure the execution of their obligations** under the decisions and recommendations of the institutions of the Community, and facilitate the accomplishment of the Community's purposes. The **MS bind themselves to refrain from any measures which are incompatible** with the existence of the common market."
 - Article 5 EEC: « **MS shall take all appropriate measures**, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. **They shall facilitate the achievement** of the Community's tasks".
 - Then Article 10 EC (wording unchanged)

+ CJEU case-law

Reshaped by Article 4(3)TEU (Lisbon treaty)

“Pursuant to the principle of sincere cooperation, the Union and the **MS shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.**

- = new synthetic principle that cover not only MS but also EU institutions
- = incorporation of CJEU case-law
- = duties between MS are not so apparent

The **MS shall take any appropriate measure**, general or particular, **to ensure fulfilment of the obligations arising out of the Treaties** or resulting from the acts of the institutions of the Union.

- = see former Article 10 EC

The **MS shall facilitate the achievement** of the Union's tasks and **refrain from any measure which could jeopardize the attainment of the Union's objectives”.**

- = see former Article 10 EC

Other expressions of the principle of sincere cooperation in primary law

- Art. 325 TFEU prescribes that the Union and the MS shall counter fraud and any other illegal activities affecting the financial interests of the Union
- Art. 288 TFEU: duty of the MS to take all measures required to implement Union directives
- Art. 106 (1) TFEU on public undertakings and undertakings to which MS grant special or exclusive rights expresses a special duty of loyalty addressed to the MS
- Art. 49 TFEU on the duty of mutual recognition...

**Article 4(3) TFEU is subsidiary
to these specific loyalty-related provisions**

Expressions of principle of sincere cooperation in secondary law

- Eg. Article 1(1) of Reg. 987/2009: « 'liaison body' means any body designated by the competent authority of a Member State (...) to respond to requests for information and assistance for the purposes of the application of the basic Regulation and the implementing Regulation...”

Intermediate conclusions

- a) Sincere cooperation is a **fundamental EU** “constitutional” principle
- b) Sincere cooperation is a **transversal principle** governing all EU-related matters
- c) Sincere cooperation is **multi-dimensional**: applies between MS, between MS and EU institutions, at political/admin level...
- d) Sincere cooperation is a **legally binding principle** despite its abstract wording in the Treaty, subject to judicial control
- e) Sincere cooperation implies **positive and negative obligations**

II - Principle of sincere cooperation

Core objectives

Actors

Sincere cooperation takes various shapes

- Duty of genuine cooperation
- Duty of loyal cooperation
- Obligation of mutual assistance (technical approach)
- Obligation of fidelity
- Obligation of solidarity (political approach)
- Useful effect principle
- Acting in good faith
- Acting in due time
- ...

...Fight against fraud!

Protection of a wide range of interests of the EU

- Avoid contradicting treaty commitments
- Prevents the undermining of the jurisdiction of the CJEU
- Safeguards the common market objective
- Take account interests of individual MS
- ...

But does not force MS to reach political compromises
along the EU regulatory process!

Uniform application of EU law: national courts tasks

- National courts must exercise their powers in a way to avoid any significant risk of conflict in relation to decisions by the Union courts
 - **Preliminary reference procedure** “is based on cooperation, established with a view to ensuring the proper application and uniform interpretation of Community law in all the MS, between national courts, in their capacity as courts responsible for the application of Community law, and the Court of Justice” [case 283/81]
 - Not to submit a dispute concerning the interpretation or application of the Treaties to any method of settlement other than those provided for by the treaties [case C-459/03]

Useful effect of EU law: MS' tasks

- The principle of sincere cooperation is a **key element of the EU system of competence**
 - MS must take all measure **to ensure effectiveness of EU law** (eg. Adoption of adequate remedies at national level)
 - MS must act in a way to **respect the distribution of powers** and the **EU institutional structure**

Protection of general interest of the EU at all costs

- **Sincere cooperation applies to the MS even when they act within their own competences**
 - It binds the MS within their own sphere of sovereignty, **obliging them to act in a manner to further the interests of the Union**
 - “there is a duty not to take measures which are likely to interfere with the internal functioning of the institutions of the Community » [case 208/80]
 - « this duty of genuine cooperation is of general application and does not depend either on whether the Community competence concerned is exclusive or on any right of the Member States to enter into obligations towards non-member countries” [CJEU, C-246/07]
 - If needed, **MS must act instead of EU institutions** when their inaction jeopardizes the general interest
 - « national measures must not be regarded as involving the exercise of the MS own powers, but as the fulfilment of the duty to cooperate in achieving the aims of the common organization of the market which, in a situation characterized by the inaction of the Community legislature, Article 5 of the Treaty imposes on them” [CJEU case C-47/83].

= **once EU interests are affected, sincere cooperation applies irrespective of whether the matter belongs to the reserved powers of the MS**

= conversely, sincere cooperation does not apply when national measures do not run counter to EU interests

Intermediate conclusion

“the principle of loyal or sincere cooperation between Member States and the EU institutions is at the core of ‘the proper functioning of the system of governance as a whole”

D. Halberstam, ‘The Political Morality of Federal System’, Virginia Law Review (2004) 101

III - Sincere cooperation duties

Multiple duties

- Positive duties and negative obligations
 - duty for **EU institutions** to adopt implementing measures
 - duty for **MS** to transpose EU directives
 - duty for **national courts** to cooperate through the preliminary ruling procedure
 - duty for **MS** from **abstaining to take measures** affection the good functioning of the internal market
 - duty for country A to **recognize decisions** made by country B (eg. *Cassis de Dijon*)
 - duty **to exchange administrative information** in due time and in good faith between local institutions...

“Loyalty is not only a rule on conflicts between Union norms and MS norms, but beyond that, a rule to protect the Treaty objectives” (M. Klamert, *The principle of loyalty in EU law*, Oxford studies, point 4.4)

Vertical (both directions) duties

- Once limited to MS duties (**bottom-up vertical relationship**)
 - Inspired by Article 10 EC: « **Member States** shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community's tasks. They shall abstain from any measure which could jeopardize the attainment of the objectives of this Treaty”
- Now extended to EU duties (**top-down vertical relationship**)
 - « That principle not only requires the MS to take all the measures necessary to guarantee the application and effectiveness of Community law, but also **imposes on the Community institutions reciprocal duties of sincere cooperation with the MS**” [CJEU, case 230/81] = sincere cooperation is equally strong when it applies to the Union institutions as when it binds the MS

Vertical (both directions) duties

- **Bottom-up: MS must provide support** in so far as their cooperation is necessary in order to give effect to measures that need to be taken or have taken by other institutions [CJEU case 186/85]
 - MS are required to cooperate *bona fide*
 - MS must facilitate the achievement of the Communities' tasks and abstain from any measure which could jeopardize the attainment of the objectives of the Treaty. That obligation includes the duty not to take measures which are likely to interfere with the internal functioning of the institutions of the Community [CJEU case 208/80]
- **Top-down: EU institutions must provide support to MS** for the achievement of their EU related tasks
 - It includes the obligation to provide support to national courts

Focus: duty imposed on the Commission vis a vis national judicial courts

- “This duty of sincere cooperation imposed on Community institutions is of particular importance *vis-à-vis* the **judicial authorities of the MS**, who are responsible for ensuring that Community law is applied and respected in the national legal system » [case C-2/88]
- **“The CJEU, which is responsible (...) for ensuring that in the interpretation and application of the Treaty the law is observed, must have the power to review, at the request of a national judicial authority and by means of a legal procedure appropriate to the objective pursued by that authority, whether the duty of sincere cooperation, incumbent on the Commission in this case, has been complied with”.**
 - Expression of the “rule of law” community: “The Protocol therefore does not permit the Community institutions to neglect the duty of sincere cooperation with the national authorities, and in particular the judicial authorities,” [CJEU, case C-2/88]

Horizontal duties

- **Horizontal relationship between EU institutions - between MS**
 - “Each institution shall act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them. The institutions shall practice **mutual sincere cooperation** » (Art. 13(2) TEU)
 - « ...the operation of the budgetary procedure, as it is laid down in the financial provisions of the Treaty, **is based essentially on inter-institutional dialogue**. That dialogue is subject to the same mutual duties of sincere cooperation which, as the Court has held, govern relations between the MS and the Community institutions » [case 230/81]
 - [case C-65/93: the EP failed to discharge its obligation to cooperate sincerely with the Council]

Intermediate conclusion

The principle of sincere cooperation refers to the need to establish [multi-dimensional] necessary contacts and information exchanges

FreSsco (Yves Jorens (ed.), Carlos Garcia de Cortázar, Martin Meissnitzer, Simon Roberts and Bernhard Spiegel), Analytical Report 2017 on mutual assistance and sincere cooperation

IV - Which levels of application?

All Member States levels

- Legislative level
- Governmental level
- Central administration/institutions level
- Local administration/institutions level
 - Exchange of data...
- Judiciary level
 - « any national court, hearing a case within its jurisdiction, has, as an organ of a MS, the obligation pursuant to the principle of cooperation set out in Article 10 EC, fully to apply the directly applicable law of the Union and to protect the rights which the latter confers upon individuals, disapplying any provision of national law which may be to the contrary, whether the latter is prior to or subsequent to the rule of law of the Union” [CJEU, case C-409/06]

« not only the *executive* and *legislative* authorities of the Member States are bound by loyalty vis-à-vis the Union, but the national *judiciary* is bound as well” [case C-261/07]

All EU institutions levels

- Legislative powers
 - Council
 - European Parliament
- Executive powers
 - European Commission: « Under Article 5 of the Treaty, the Commission is bound by a duty of sincere cooperation with the judicial authorities of the MS, who are responsible for ensuring that Community law is applied and respected in the national legal system” [Case C-234/89]
 - DGs
- All EU institutions
 - Agencies...

Loyalty in the EU Treaties



Figure 1.1 Union and National Actors Bound by the Union Interest

Øresunddirekt

Øresunddirekt

A crossborder information service in Greater Copenhagen

Sandra Forsén, Head of office



What is Øresunddirekt?

It all started with a bridge in
2000....

A Swedish/danish crossborder
information service

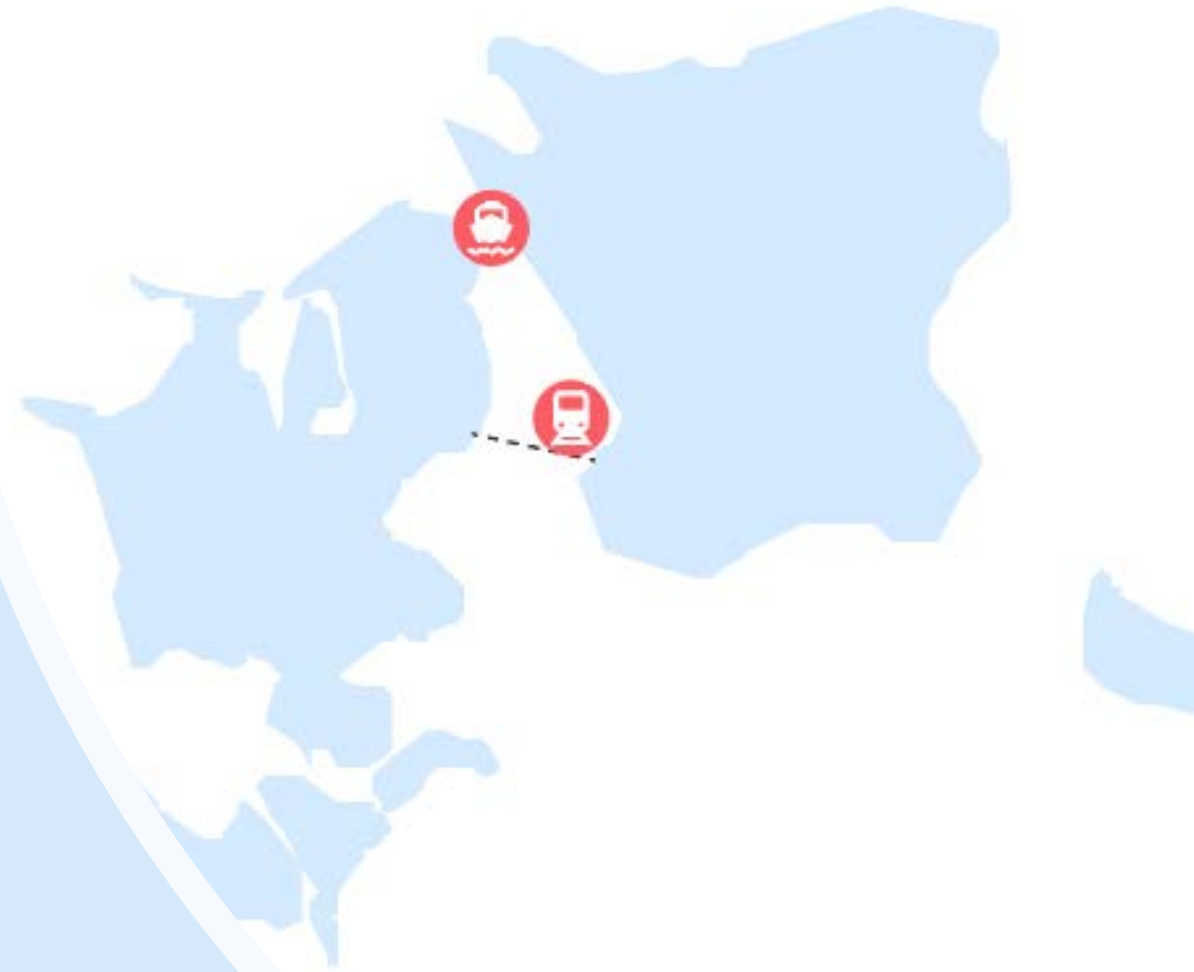
- Information
- Integration
- Crossborder Obstacles



Which geography do Øresunddirekt cover?

4 million inhabitants in:

- One common labour market
- Two countries



Commuters in Greater Copenhagen

18.582 commuters

16.892 from Sweden to Denmark

1.690 from Denmark to Sweden

* Source: Örestat, 2015



Briefly on

Øresunddirekt Sweden

Information centre in Malmö

- Open weekdays
- Teamwork
- Phone, e-mail and personal meetings
- 1 question – at least 10 answers!
- External activities



Briefly on Øresunddirekt Danmark

Web office in Copenhagen

- Oresunddirekt.com
- Oresunddirektbusiness.com

Social media:

- Facebook
- Twitter
- LinkedIn

Digital newsletter

GREATER
CoPENHAGEN



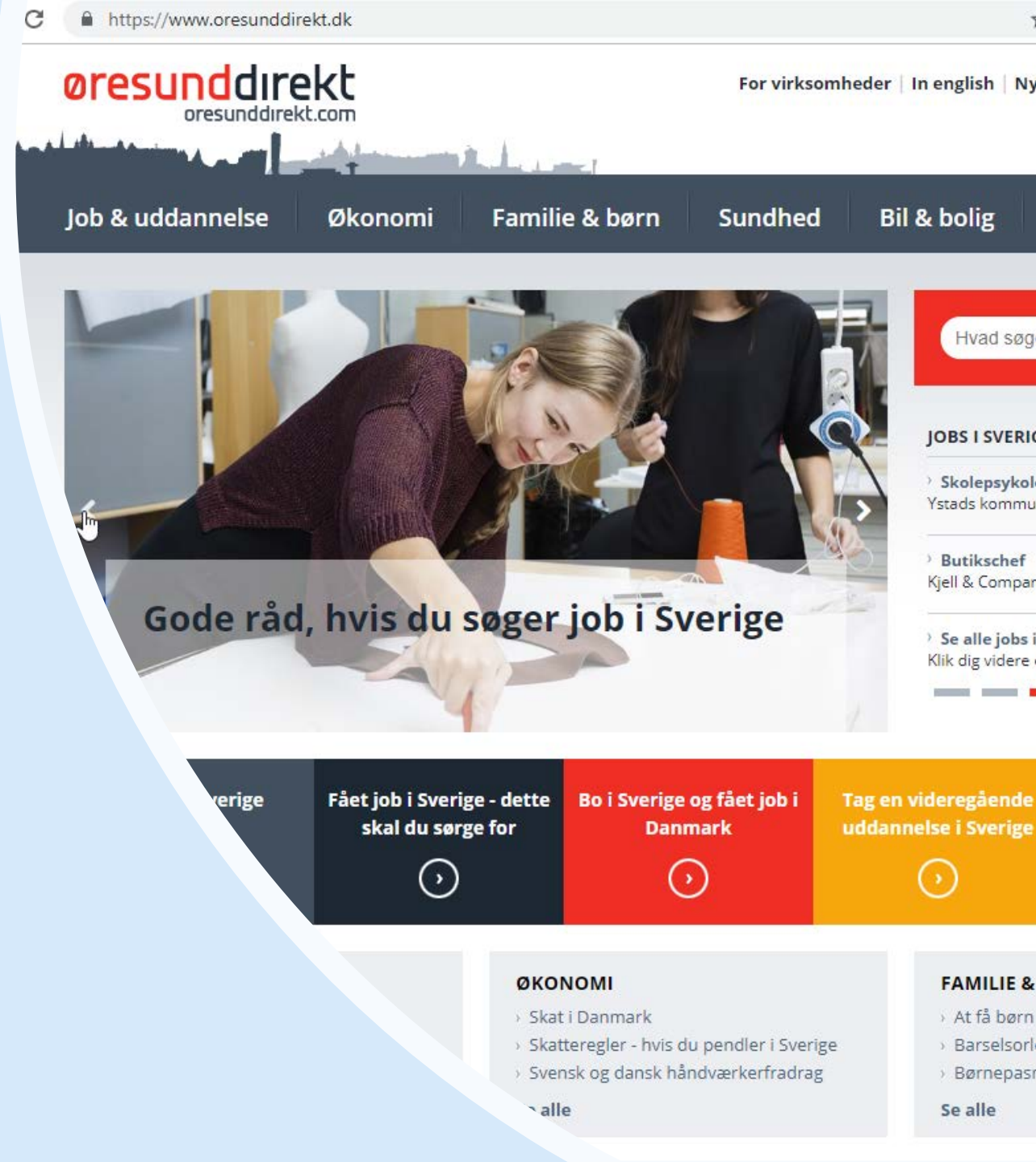
Popular questions

- **Who?**
- **Which** industries?
- **Employment** contract?
- **Unemployment** benefits?
- **Social** insurance?
- **Child** benefits?
- **In case** of illness?
- **Working in** two countries?
- **Taxes?**
- **Deductions?**
- **Pension?**



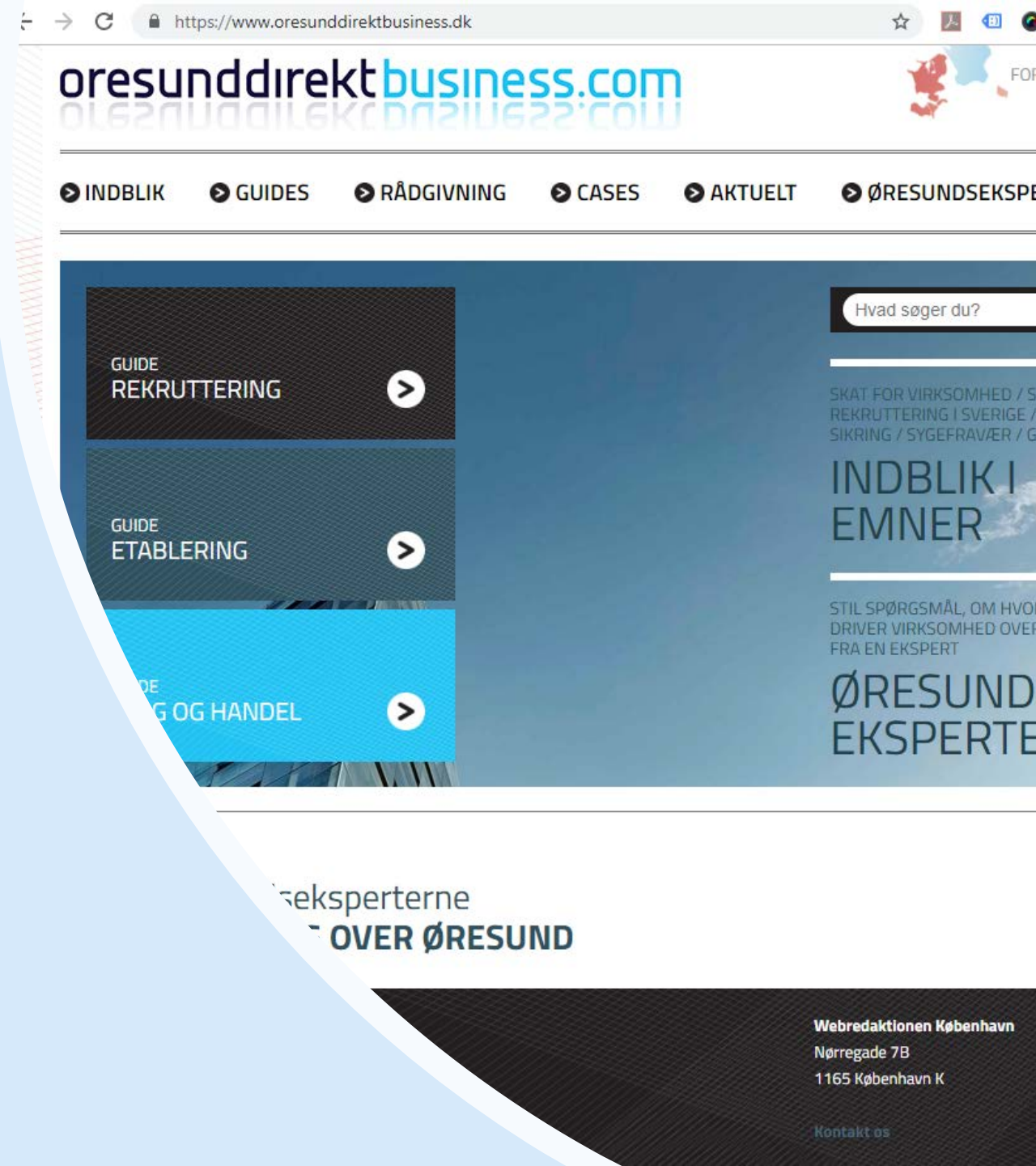
For commuters – oresunddirekt.com

- Three languages
- Social insurance test
- 836.967 visits in 2018
 - Roughly 69.700 visits a month
- Brand new website in September



For businesses – oresunddirektbusiness.com

- Two languages
- On-line business advisors
“Øresundsexperterna”
- Brand new website in September



How do Øresunddirekt work with Cross border obstacles?

- In cooperation with the Nordic Council of Ministers
- Reports obstacles to the Freedom of Movement Council
- In cooperation with the Greater Copenhagen Committee



Cross border obstacles in Greater Copenhagen

- **Labour practice** across the border
- **Difficulties for** non EU-citizens
- **Working in** two countries
- **The digital** exclusion
- **Bank accounts** and loans
- **Long** processing times



Thank you!

✉ sandra.forsen@lansstyrelsen.se

☎ +46 (0) 10 224 13 28



Sincere cooperation - legal and practical challenges

MoveS seminar Finland: Sincere
cooperation – from principle to practice

13.9.2019 Helsinki

Suvi Rasimus
Head of Centre of Expertise in
International Affairs
The Finnish Social Insurance Institution
(Kela)

Kela|Fpa 



Legal challenges

1. Exchange of information
 - Data matching
 - Use of secure e-mail
 - Other methods
2. Various interpretations of EU law
 - Data protection
 - Case law on social security coordination
3. Effect of national legislation on others/cross-border situations
 - Incl. national case law
 - E.g. the determination of residence, changes in national legislation/interpretations
4. Data protection and fraud & error
 - E.g. certain situations where benefits are received for the same child by both (divorced) parents because of lack of information in the institutions

Practical challenges

1. Answers to requests for information and taking action based on information received
 - Sometimes speed of responding slow or no response at all
 - Finding the right contacts / competent institutions sometimes difficult
 - SEDs not always filled out completely or they are unclear
 - Comprehensiveness of responses requested
 - Willingness to discuss national interpretations in light of difficulties in cross-border situations
 2. Methods for exchanging information
 - Knowledge at case-handler level of existing possibilities of secure exchange of information
 - Technical possibilities to facilitate discussions
 3. Finding resources for development
 - Cross-border cases usually not matters of priority nationally/on institution level
 - Leads to difficulties in securing resources to ease the handling of these cases electronically
 - Securing resources simultaneously in MSs involved
 - Development takes a longer time in cross-border cases because of e.g. national priorities and processes
-

Some solutions?

A. Legal challenges

- Bilateral/multilateral agreements among Member States on the exchange of information
- Possible discussions bilaterally on different interpretations of e.g. residence in order to find a common understanding?
- Flexibility in interpretation of national legislation in certain situations?

B. Practical challenges

- Institutions should strive to answer requests as swiftly as possible
 - It's necessary to have adequate resources for answering other MSs, not only for own case-handling
- Agree on information items to be requested and their purpose (basis for the request)
 - Also agree on information available on the request which is necessary in order to answer it (e.g. PIN in receiving MS)
 - Make sure that information is requested only and to the extent which is necessary (not just to be sure...)
 - If possible, inform beforehand of upcoming requests if they are large and would require additional resources
- Other solutions?

Thank you!

Suvi Rasimus
Head of Centre of Expertise in International Affairs
The Finnish Social Insurance Institution (Kela)
@Rasisuv

Kela|Fpa 

Good Practices Estonia — Finland

Karoliina Nurmi



Eläketurvakeskus
PENSIONSSKYDDSCENTRALEN

Need for Close Co-Operation: Practical Example of a Finnish/Estonian Case

- Estonian person lives with his family in Estonia
 - Works for a Finnish employer in Finland
 - Starts an additional work for an Estonian employer in Estonia
 - ➡ Should only be covered by one State's legislation according to EU Social Security Regulation's Title II
 - It often happens that the authorities in one of the countries find out about the situation years after.
 - By that time, pension contributions (for example) have been paid to both countries instead of applying Title II of the Regulation.
- What could be done to prevent these situations to happen?
 - How would the employee know about the rules?
 - How could the employers know about the need for an A1?

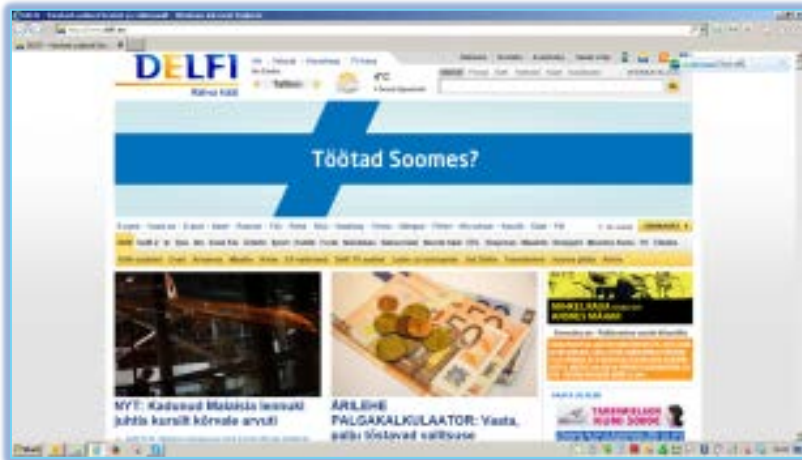


Information Campaign in Estonia and in Finland, 2014 - >

When you work abroad, sort out your social security.

Avoid double insurance.

The earnings-related pension is your right, and part of your salary.



How Co-Operation Helps Us Further?

- We made a Robot which registers Estonian A1's based on pre-formated and mutually agreed information provided by Estonia. Robot
 - Checks if there are overlapping periods with Finnish pension insurance
 - Creates tasks to our case handling, when errors or overlapping periods occur
 - Cases then solved between Estonia and Finland by using e-mail. Need to understand
 - The overall picture of the other country's insurance scheme
 - How the scheme works, who are insured
 - Who are the counterparts, and how they are organized
-  Our case handlers avoid asking multiply questions and going back and forth



- It is good to know each other and have multiply communication channels;
 - Emails,
 - Phonecalls,
 - Skypes and
 - Meetings.
- We recognize the cases where our interpretations differ and we try to find ways to tackle them
- It is easy going and awarding to work with our Estonian counterparts – **Thank You!**





Posting of Workers Administrative cooperation

Carita RAMMUS

DG EMPL D.1 Unit – Free Movement of Workers, EURES

EU Legal framework

- **Directive 96/71/EC (the Posting of Workers Directive)**
- **Directive 2014/67/EU (the Enforcement Directive on Posting)**
- **Directive 2018/957/EU (revision of the PWD)**

Directive 96/71/EC

Scope

- Applies to undertakings that post workers through:
 - a contract of services
 - intra-corporate transfer
 - temporary agencies
- Cross border element: applies to workers that “for a limited period” carry their work in another MS
- Employment contract throughout the period of posting

Directive 96/71/EC

Terms and conditions of employment of the host MS applicable to posted workers:

- (a) maximum work periods and minimum rest periods;
- (b) minimum paid annual holidays;
- (c) the minimum rates of pay, including overtime rates; this point does not apply to supplementary occupational retirement pension schemes;
- (d) the conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings;
- (e) health, safety and hygiene at work;
- (f) protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people;
- (g) equality of treatment between men and women and other provisions on non-discrimination.

provided by law or by universally applicable collective agreements.



Directive 2014/67/EU

Main provisions

- Criteria to determine genuine posting
- Improved access to information – single official national websites
- Improved administrative cooperation
- Administrative requirements and control measures
- Subcontracting liability
- Cross-border enforcement of financial administrative penalties or fines

Directive 2018/957/EU – main changes

- Remuneration (instead of “minimum rates of pay”)
- Collective agreements
- Extension of the core of rights
- Stricter rules for temporary work agencies
- Special rules for long-term posting
- Synchronisation clause with *lex specialis* on transport
- Application only from 30 July 2020.

Administrative cooperation - bodies

- *Nomination of liaison offices and/or competent authorities*
- *obligation to respect each MS's choice of competent authorities*

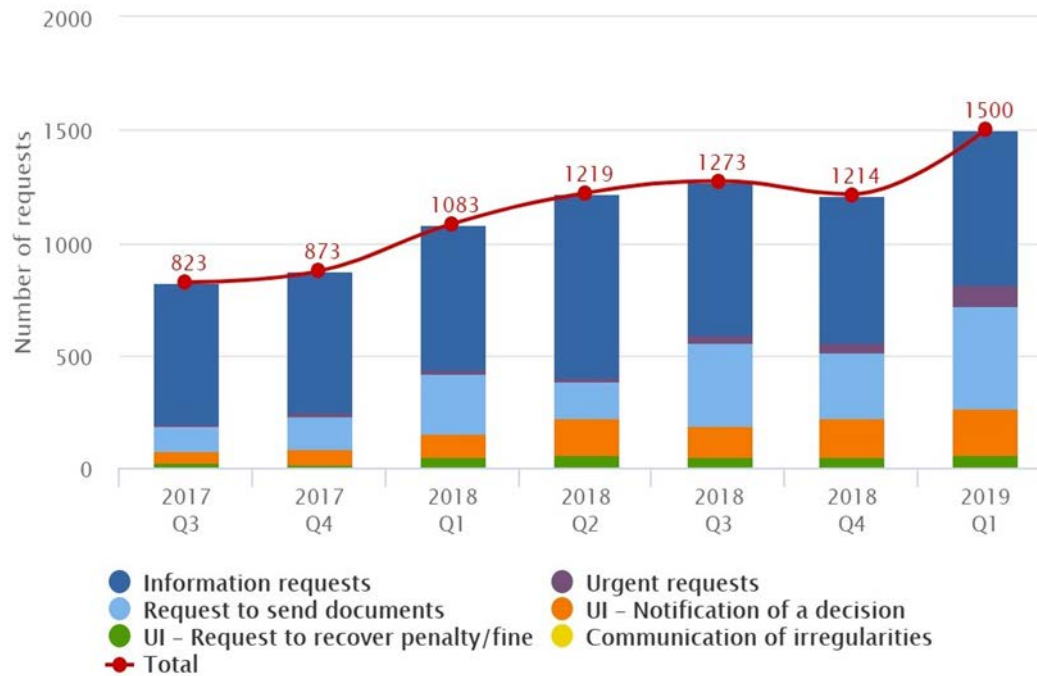
Administrative cooperation - substance

- Replying to reasoned requests from competent authorities
- Carrying out checks, inspections and investigations with respect to posting situations, including the investigation of any non-compliance or abuse of the applicable rules
- May also include sending and service of documents

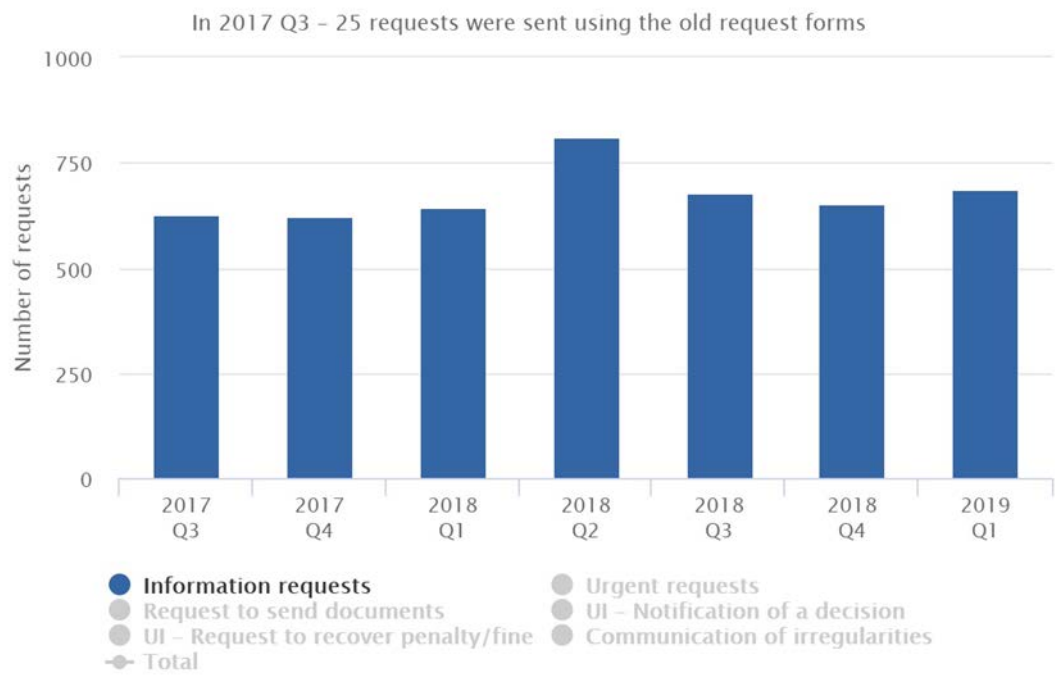
Internal Market Information System

- *Main tool for the administrative cooperation*
- *2011 pilot Project, 2014 formal start*
- *4 modules:*
 - **posting of workers request,**
 - **communication of irregularities,**
 - **requests to notify a decision imposing a penalty/fine,**
 - **request to recover a penalty/fine**

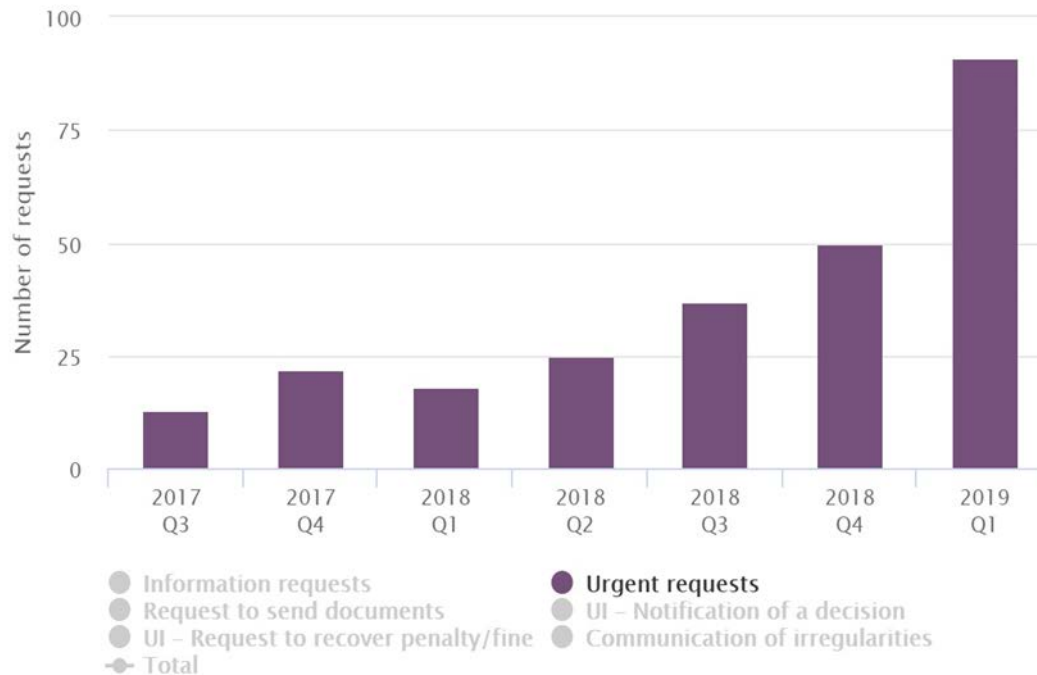
Total number of exchanges from Q3 2017 – Q1 2019



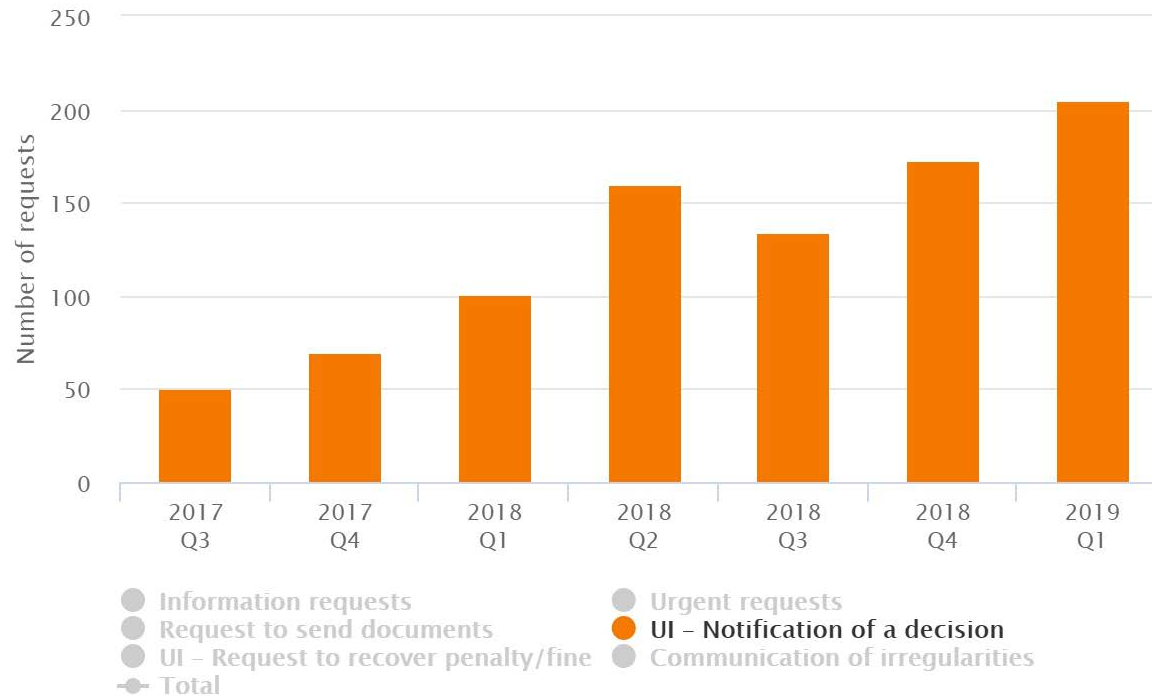
Information requests from Q3 2017 – Q1 2019



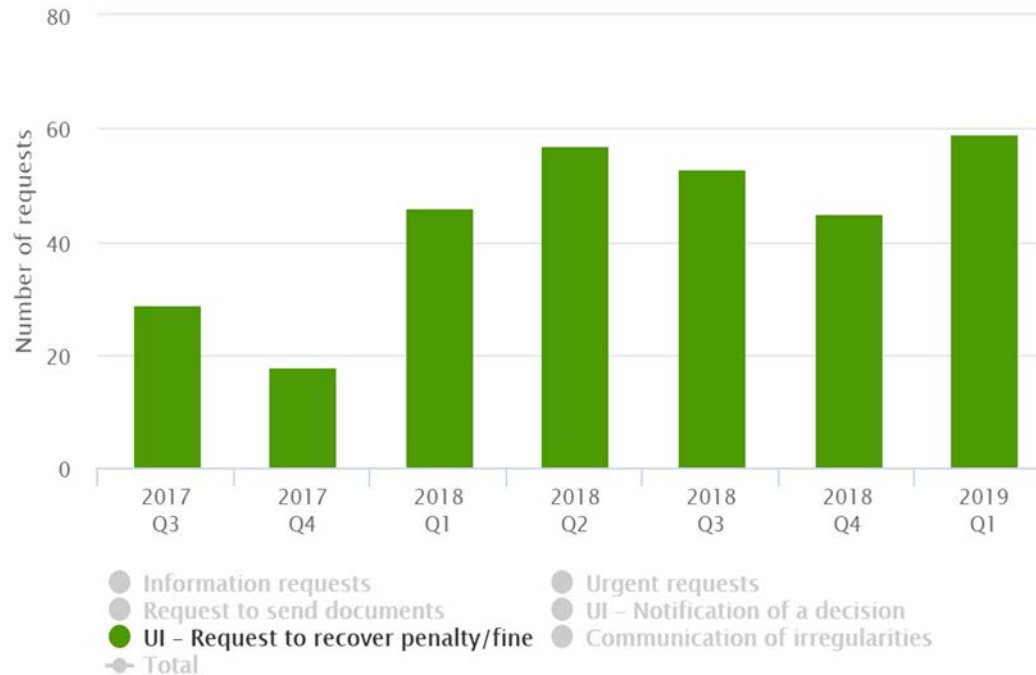
Urgent requests from Q3 2017 – Q1 2019



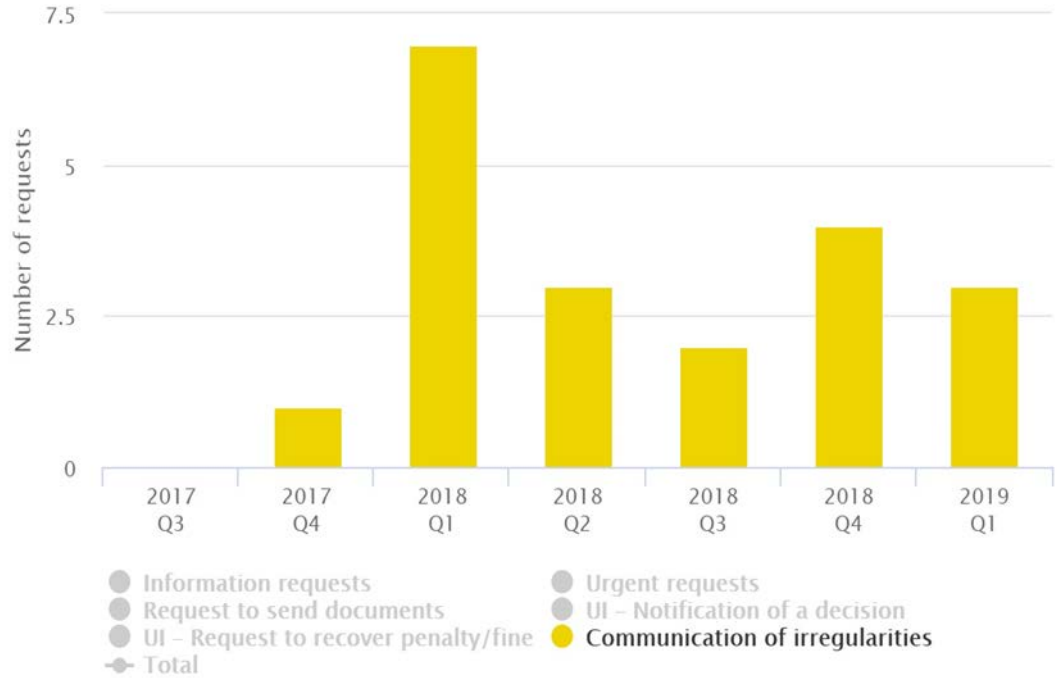
Requests to notify a decision (Chapter VI) from Q3 2017 – Q1 2019



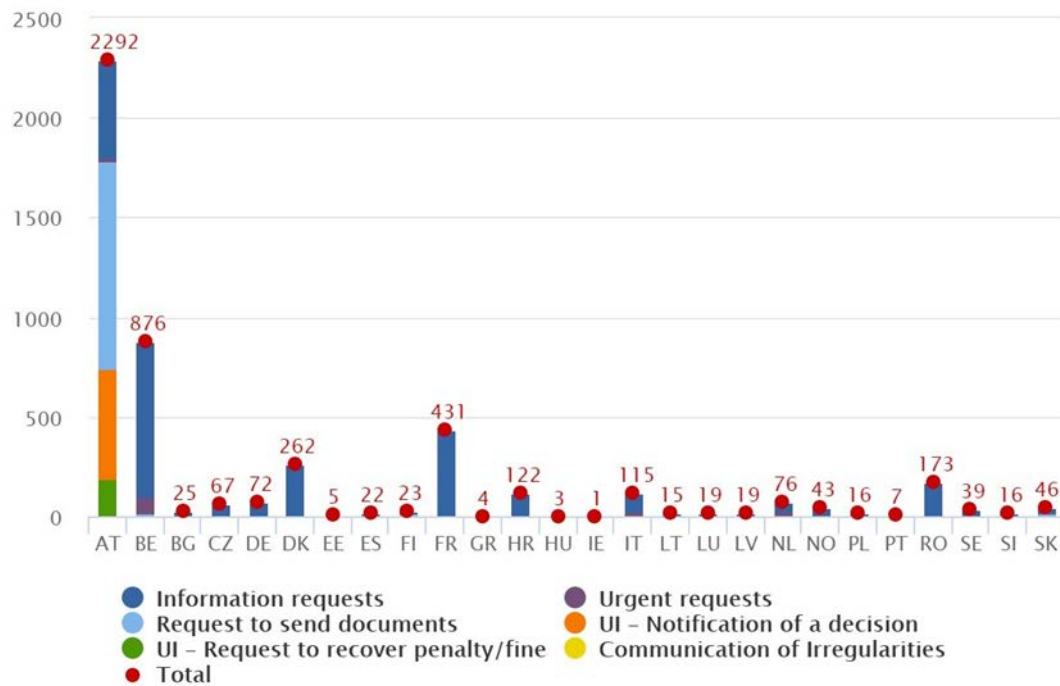
Requests to recover an administrative penalty or fine (Chapter VI) from Q3 2017 – Q1 2019



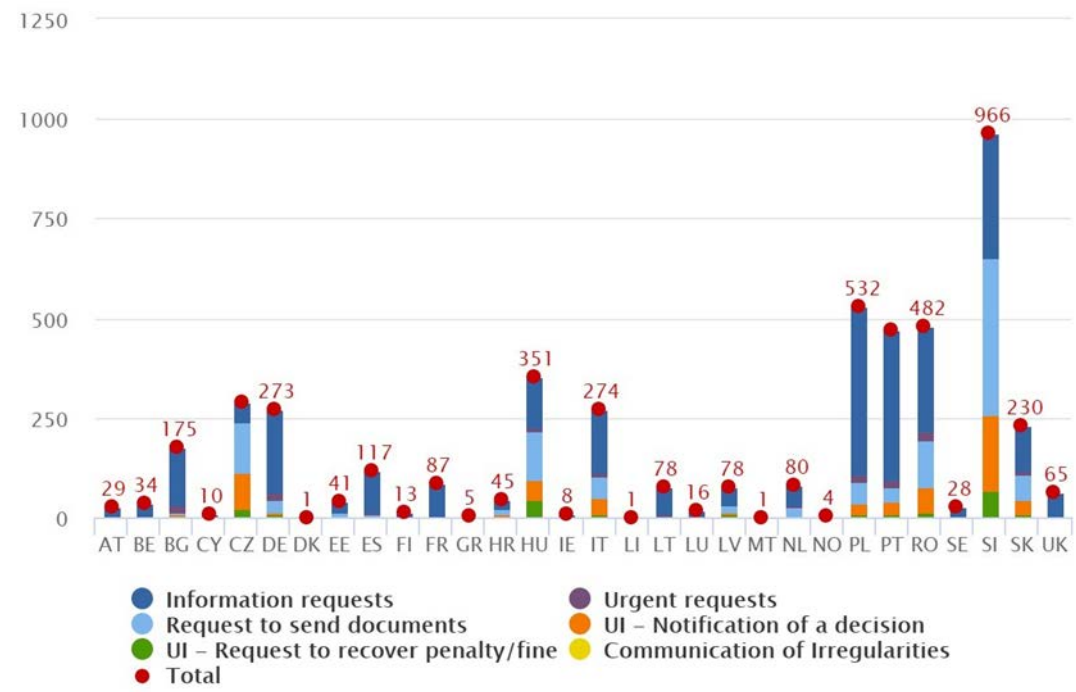
Communications of irregularities from Q3 2017 – Q1 2019



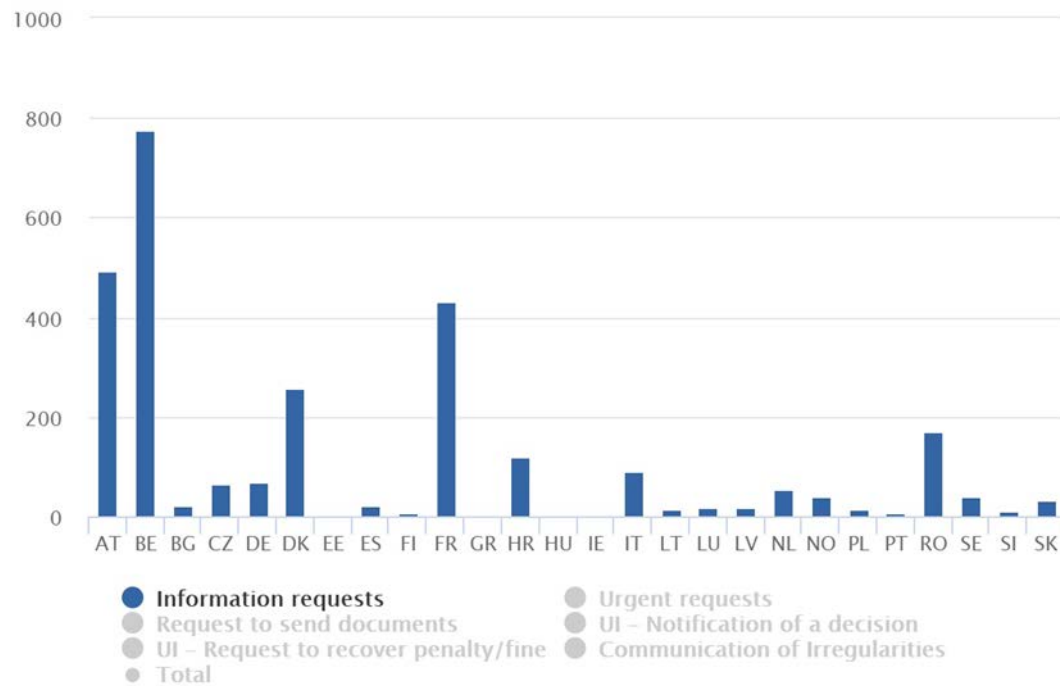
Information Exchange by sending MS



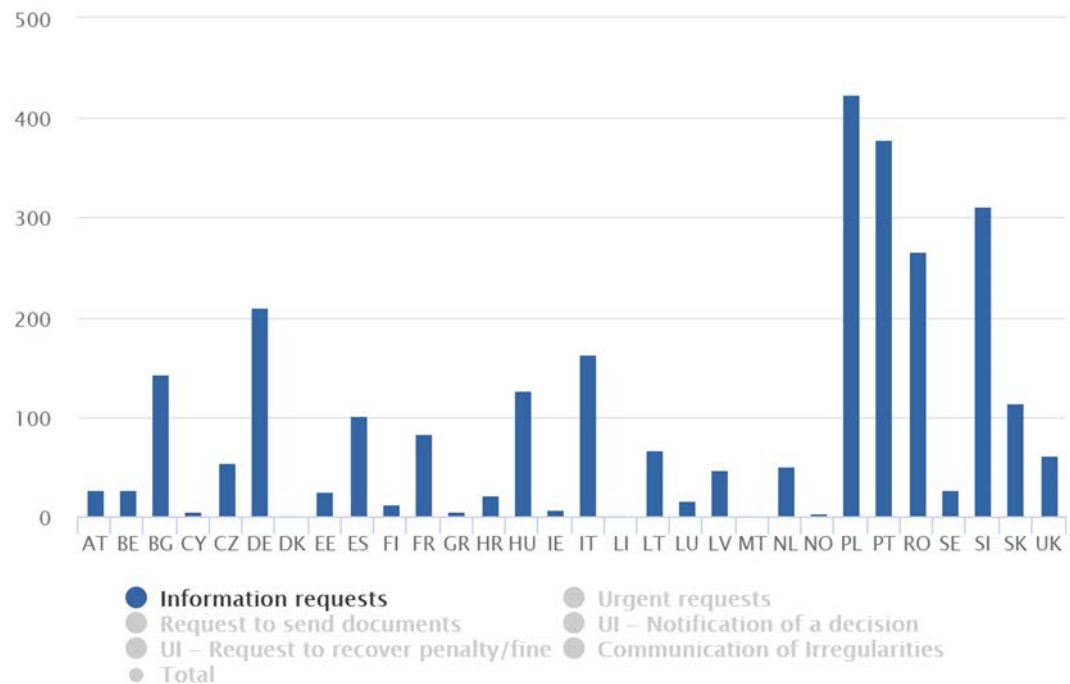
Information exchanges by recipient MS



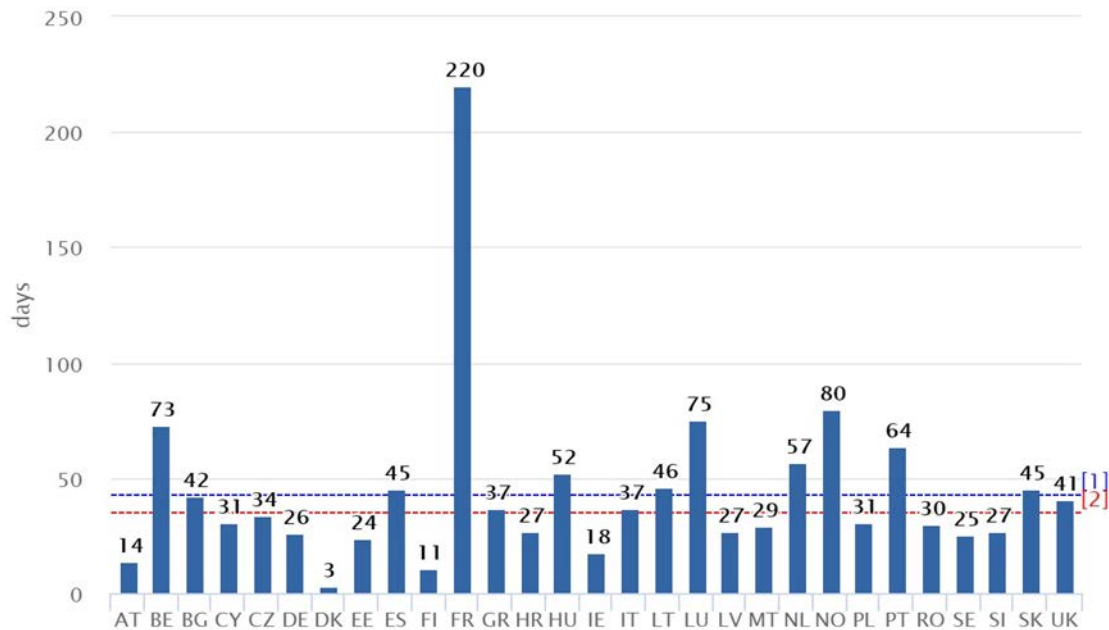
Information requests by sending MS



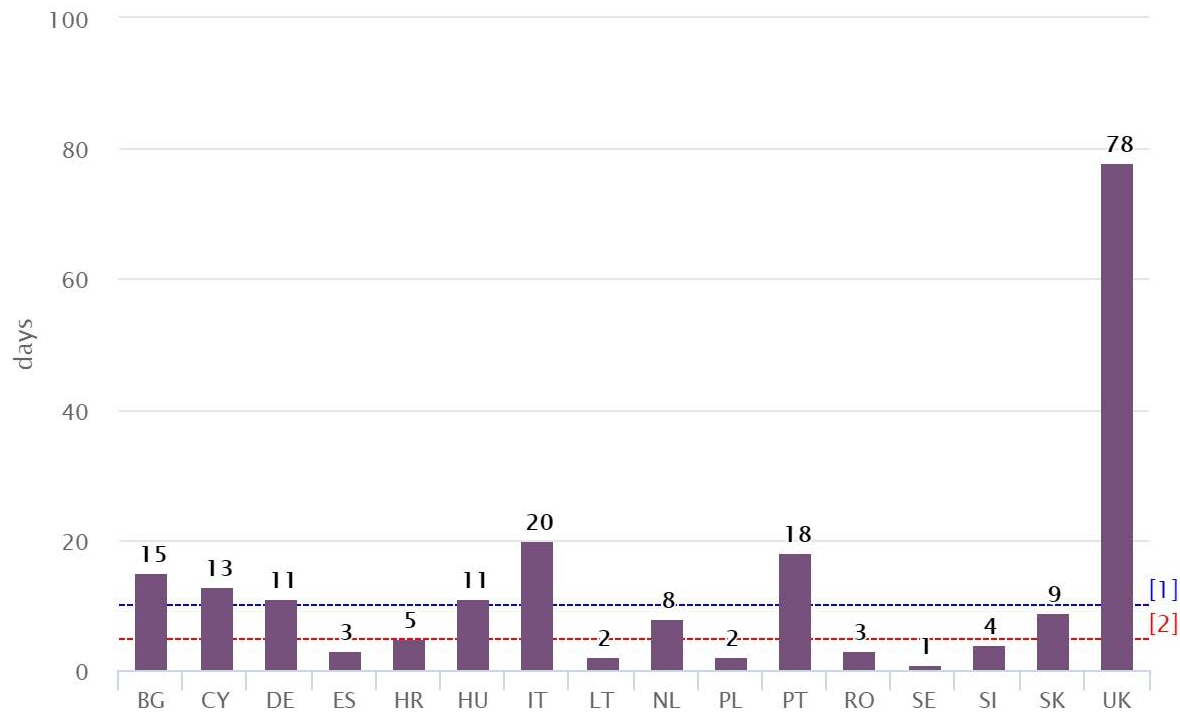
Information requests by recipient MS



Average response time to requests



Average response time to urgent requests



Next steps

- *Transposition group to help MS to take over the directive into their national law*
- *Implementation Report on the Enforcement Directive*
- *Guidance on Posting*



Thank you!

Questions?



MoveS seminar Helsinki

Sincere cooperation – from principle to practice

Current developments at EU level

Axel SPECKER

European Commission, DG EMPL

Unit D2 – social security coordination



Overview

1. Revision of Regulations 883/2004 and 987/2009
2. European Labour Authority
3. BREXIT contingency measures for a 'no-deal' scenario
4. EESSI
5. Fraud and error platform



Revision of the social security coordination Regulations





Main changes

- Applicable legislation
- Unemployment benefits
- Family benefits
- Long-term care
- Equal treatment
- Miscellaneous amendments



State of play – formal steps

- Commission proposal adopted in December 2016
- Provisional agreement achieved between the European Parliament, the Council and the European Commission (March 2019)

<https://data.consilium.europa.eu/doc/document/ST-7698-2019-ADD-1-REV-1/en/pdf>

- No qualified majority in Council (March 2019) and postponement of first reading vote in European Parliament (April 2019)
- Legislative process to resume



Applicable legislation

- Improved rules on cross-border cooperation (see next slides)
- Period of prior affiliation of 3 months
- Period of interruption of 2 months
- Replacement prohibition extended to self-employed persons
- Prior notification in all cases of sending in advance (except business trips)
- Criteria for location of registered office/place of business (Article 13)



Applicable legislation (i)

- Institutions need to carry out a proper assessment of the facts and confirm that the information in the PD A1 is correct



Applicable legislation (ii)

- Where not all sections indicated as compulsory are filled in, the institution of the Member State that receives the document shall without delay notify the issuing institution of the defect in the document.
- The issuing institution shall either rectify the document as soon possible or confirm that the conditions of issuing the document are not fulfilled.
- If the mandatory information missing is not provided within 30 working days the requesting institution may proceed as if the document had never been issued and shall in that case inform the issuing institution thereof



Applicable legislation (iii)

- Separate procedure for contesting the validity of a PD A1, including legally binding deadlines
- Where the issuing institution detects an error, it shall withdraw or rectify the PD A1 within 30 working days
- Where the issuing institution is unable to detect any error, it shall forward to the requesting institution all available evidence within 30 working days (10 days in urgent cases)
- Possibly further request and reconciliation by Administrative Commission



Applicable legislation (iv)

- General queries: Member States need to respond within 35 working days
- If a person pursues an activity without a PD A1, Member States can be requested information within 35 working days. If no information is provided, the person may be made provisionally subject to the legislation of the Member State of activity. If PD A1 is issued, it has retroactive effect



Unemployment benefits

- Aggregation: Minimum qualifying period of 1 month
- Export: Increase to a minimum of 6 months with possible extension to whole period of entitlement
- Frontier workers: Change of competence after 6 months of activity



Unemployment benefits - export

- Mandatory monthly reporting from Member State where the person is looking for work to the Member State paying the benefits



Unemployment benefits – frontier workers

- Stronger cooperation mechanisms between Member States to inform each other about changes of circumstances e.g. person found employment
- Reimbursements of unemployment benefits abolished
- Possibility for Member States to conclude bilateral agreements



Long-term care

- Common definition of long-term care benefits and Annex listing benefits in each Member State

Family benefits

- Distinction between family benefits intended to replace income due to child-raising (individual right), and all other family benefits
- Two calculations for differential supplement

Equal treatment

- Recital referring to CJEU judgments (*Brey*, *Dano*, *Alimanovic*, *Garcia-Nieto*, *Commission v UK*)

Miscellaneous amendments

- Procedures for recovery of unduly paid social security benefits aligned to Directive 2010/24/EU
- New legal basis to facilitate the identification of fraud and error by way of periodic exchange of personal data between Member States to facilitate data-matching



European Labour Authority





Legal basis

- Regulation 2019/1149
- Decision on seat: 13 June 2019
- Publication in OJ: 11 July 2019
- Entry into force: 31 July 2019



First steps

- ELA Establishment Group
- Interim Executive Director
- Appointment of Management Board members: August 2019
- First Management Board meeting: 16/17 October 2019
- Second Management Board meeting: Early December 2019 (one day – date tbc)



Main activities

- Facilitating access to information on rights and obligations in cases of cross-border mobility for employees, employers and national administrations
- Supporting cooperation between Member States in cross-border enforcement of relevant Union law, including facilitating concerted and joint inspections
- Supporting cooperation between Member States in tackling undeclared work
- Supporting Member States authorities in resolving cross-border disputes



Impact on social security

- Social security included in the scope of ELA
- No transfer of Technical Commission, Audit Board, Conciliation Board
- For disputes related to social security, case may be referred to the Administrative Commission
- Administrative Commission may request ELA to transfer cases to it
- Cooperation Agreement to be concluded between ELA and Administrative Commission to set out work methods

EU contingency measures 'no-deal' scenario





Contingency measures 'no-deal' scenario

- Who is affected?
 - 4.5 million EU & UK citizens residing/working in the UK/EU before Brexit
- Scenario 1: DEAL - Withdrawal Agreement
 - EU law on SSC will continue to apply to persons falling within the personal scope of the WA



- Scenario 2: NO DEAL – Contingency measures
 - **Regulation (EU) 2019/500** establishing contingency measures in the field of social security coordination following the withdrawal of the United Kingdom from the Union (adopted on 19 March 2019)
- Personal scope:
 - EU-27 and UK nationals who exercised free movement before Brexit
- Principles covered:
 - Equality of treatment, assimilation and aggregation as regards all branches of social security covered by Article 3 of Reg. 883/2004
- Entry into application only in case of no-deal Brexit



EC Guidance note

- Proposed by the EC to EU-27
- Complements the contingency Regulation by recommending Member States to continue to apply certain rules of SSC related to free movement exercised before Brexit (e.g. continue to export old-age pensions; finalisation of medical treatment ongoing on the withdrawal date; finalisation of pending claims)
- Member States can decide to go further (e.g. by continuing to export to the UK other cash benefits)



EC Communications no-deal

- Communication of 10 April 2019 - Addressing the impact of a withdrawal of the UK from the Union without an agreement: the Union's coordinated approach

https://ec.europa.eu/info/publications/communication-10-april-2019-addressing-impact-withdrawal-united-kingdom-union-without-agreement-unions-coordinated-approach_en

- State of play of preparations of contingency measures for the withdrawal of the UK

https://ec.europa.eu/info/brexit/brexit-preparedness/other-preparedness-activities_en#communications-of-the-european-commission

Electronic Exchange of Social Security Information (EESSI)





What is EESSI?

An IT system that helps social security institutions across the EU exchange information more rapidly and securely, as required by the EU rules on social security coordination.

Benefits of EESSI

- Faster and more efficient message exchange between social security institutions
- More accurate data exchange between national authorities
- Secure handling of personal data



State of play

- The central EESSI central system was successfully delivered by the European Commission to the Member States in July 2017.
- The first exchange of an electronic message regarding a concrete case involving the social security situation of citizens, between Austria and Slovenia, took place on 10 January 2019.
- More than 20 countries have already started live exchanges between institutions. Two countries are now ready to exchange messages in all Business Cases.
- All 32 countries plan to start the exchanges by January 2020.



Fraud and error platform

- Decision H5 of the Administrative Commission established network of national contact points (NCPs)
- European Platform to combat social security fraud and error launched in 2016
- Platform supported by Steering Committee for the Platform on Fraud and Error



EMPL-D2-UNIT@ec.europa.eu

Visit us @ <http://ec.europa.eu/social>

The principle of sincere cooperation

Development of the concept in the coordination of social security

Bernhard Spiegel, Austrian Federal Ministry for Labour, Social Affairs,
Health and Consumer Protection and University of Salzburg

MoveS, Helsinki, 13 September 2019

I - Introduction

Importance for social security coordination

- Coordination without cooperation is not possible
- Regulations 883/2004 and 987/2009 contain the legal framework for coordination
- BUT:
 - „sincere cooperation“ nowhere mentioned
 - „cooperation“ mentioned 7 times in Regulation 883/2004 and 5 times in Regulation 987/2009; must be „sincere“?
- CJEU has applied the principle in several cases to the social security field

Development (?) of the different aspects of sincere cooperation in social security

- (Administrative) Cooperation between institutions
- Application of national legislation in conformity with the aims and fundamental principles of the TFEU
- Functioning of the national administration to safeguard the correct application of Union law

II – (Administrative) Cooperation between institutions

Principle aim: Safeguard the rights of the citizens (and their employers) under Regulation 883/2004 – tension which needs sincere cooperation

- On the side of the **citizens:**

- Correct decisions
- Decision respecting the interests of the person concerned
- As quickly as possible
- Without involving the citizen in the decision as far as possible

- On the side of the **institutions:**

- Correct decisions
- Lowest (administrative) costs – cross-border communication takes time and resources
- Smallest possible efforts

Principles in the Regulations (for eternity)

Article 76 of Regulation 883/2004 (cooperation)

- Between competent authorities, authorities and institutions
- Principle of “good administration” to answer requests of citizens (para. 4) – fundamental right (Article 41 of EU Charta on Fundamental Rights)
 - Dealing with the issues impartially, fair and within reasonable time
- Difficulties in interpretation or application which could jeopardize the rights of the citizens shall be solved via direct contact in between the institutions; the Administrative Commission (AC) can be asked to decide (para. 6)

Involvement of the Administrative Commission - 1

- Search for bilateral solutions or a Union-wide solution?
- In the past: attempt to find solutions which are applied by all Member States in a synchronized way – results sometimes disappointing!
 - Example: Maternity and sickness allowances during the **protective period** (issue raised by SK/CZ in 2005)
 - Entitlement to these benefits also if the contingency arises after the end of the insurance (e.g. during 42 days)
 - Problems in case of change of competence during this period
 - Various attempts to find a solution (AT Presidency 2006 tried to reconcile, meetings of the Administrative Commission; project of conclusions of the AC)
 - No solution found (binding for all Member States, including all benefits etc.) – CJEU?

Involvement of the Administrative Commission -2

- Getting decisions in the AC became more and more complicated
 - Example: Revision of Decision F1 (competence during parental leave)
- Way out - Search for bilateral solutions – tension with the principle of sincere cooperation
 - Is the bilateral solution always in line with Union law? Which impact does it have on third Member States?
- Does the principle of sincere cooperation oblige to respect Decisions of the AC?
- Have Decisions of the AC now a higher legal value? – CJEU in case C-473/18, **GP**, has stated that Decision H3 is a legal instrument which can be interpreted by the CJEU

III - Application of national legislation in conformity with the aims and fundamental principles of the TFEU

National legislation must be applied in such a way that a solution in line with the principles of the TFEU is achieved - 1

- CJEU case C-165/91, *van Munster*:
 - NL legislation: pension is increased to 100 % of net minimal wage if spouse has not yet reached pensionable age (50 % + 50 %); when the spouse reaches pensionable age every spouse receives 50 %
 - BE legislation: pension is 75 % of wages if spouse has no old age pension, in the other cases 60 %.
 - When the wife of Mr van Muster reached pensionable age in the NL the NL pension was split (same amount for the couple) and the BE pension was reduced from 75 % to 60 %

National legislation must be applied in such a way that a solution in line with the principles of the TFEU is achieved - 2

- CJEU case C-165/91, *van Munster* (continued):

“32. Where such a difference in legislation exists, the principle of cooperation in good faith laid down in Article 5 of the EEC Treaty [Article 4(3) TFEU] requires the competent authorities in the Member States to use all the means at their disposal to achieve the aim of Article 48 of the Treaty.

33. That requirement implies that those authorities should ascertain whether their legislation can be applied literally to migrant workers, in exactly the same way as to non-migrant workers, without ultimately causing migrant workers to lose a social security advantage and, consequently, discouraging them from actually exercising their right to freedom of movement”

- No solution for the case!

National legislation must be applied in such a way that a solution in line with the principles of the TFEU is achieved - 3

- CJEU case C-262/97, *Engelbrecht* (van Munster continued):

Again the same NL and BE legislation

“40. Where application in accordance with those requirements [sincere cooperation] is not possible, the national court must fully apply Community law and protect the rights conferred thereunder on individuals, if necessary disappling any provision in the measure application of which would, in the circumstances of the case, lead to a result contrary to Community law ...

44. In those circumstances, it is contrary to Article 48 of the Treaty [Article 45 TFEU] for the competent authorities to content themselves with merely reducing the worker's pension without ascertaining whether the pension granted to the spouse actually increases the couple's total income.”

- National legislation (which one?) must not be applied even if the Regulations would allow it!

National legislation must be applied in such a way that a solution in line with the principles of the TFEU is achieved - 4

- CJEU case C-3/08, *Leyman*:
 - In case of longer incapacity to work:
 - BE legislation: 1 year of sickness allowance (coordinated under sickness chapter); in case of longer work incapacity, invalidity allowance (coordinated under pension chapter)
 - LU legislation: immediate entitlement to invalidity pension
 - Ms Leyman was first in BE and then in LU insured (last competent Member State). LU invalidity pension was paid from the start and BE invalidity allowance only after 1 year

National legislation must be applied in such a way that a solution in line with the principles of the TFEU is achieved - 5

- CJEU case C-3/08, *Leyman* (continued):

“49. Where such a difference in legislation exists, the principle of cooperation in good faith laid down in Article 10 EC [Article 4(3) TEU] requires the competent authorities in the Member States to use all the means at their disposal to achieve the aim of Article 39 EC [Article 45 TFEU](...).

50. In the light of all the foregoing, the answer to the questions referred is that Article 39 EC [Article 45 TFEU] must be interpreted as precluding application by the competent authorities of a Member State of national legislation which, in accordance with Article 40(3)(b) of Regulation No 1408/71, makes acquisition of the right to invalidity benefits subject to the condition that a period of primary incapacity of one year has elapsed, where such application has the result that a migrant worker has paid into the social security scheme of that Member State contributions on which there is no return and is therefore at a disadvantage by comparison with a non-migrant worker.”

- Neither national legislation nor the Regulations can be applied!

National legislation must be applied in such a way that a solution in line with the principles of the TFEU is achieved - 6

- Another case in which sincere cooperation was mentioned Case C-293/03, *My*):

47 It is plain that national legislation such as that at issue in the main proceedings is likely to impede and therefore to discourage employment within an institution of the European Union, inasmuch as, by accepting employment with such an institution, a worker who was formerly a member of a national pension scheme risks losing the right to benefit under that scheme from an old-age pension to which he would have been entitled had he not accepted that employment.

48 Such consequences cannot be accepted in the light of the duty of genuine cooperation and assistance which Member States owe the Community and which finds expression in the obligation laid down in Article 10 EC [Article 4(3) TEU] to facilitate the achievement of the Community's tasks."

- Obligation of aggregation of periods for EU civil servants!

National legislation must be applied in such a way that a solution in line with the principles of the TFEU is achieved - 7

- Further development possible? Problems always when national legislation differs and coordination of these legislations is necessary
- E.g.: Can national prescription periods still be applied if they lead to a result contrary to the principles of Union law (e.g. payment of contributions in more than one Member State during a specific period)?
- Case C-543/13, *Fischer-Lintjens* could be read in such a way that the application of national prescription periods (e.g. in case of retroactive change of competence) is not allowed
- National legislation cannot be applied!
- In which other cases could this principle play a role? Are there possible limits?

IV - Functioning of the national administration to safeguard the correct application of Union law

Sincere cooperation as the precondition for the binding effect of the A1 form

- Various judgements of the CJEU (e.g. cases C-178/97, *Banks*, C-202/97, *Fitzwilliam*, ... C-527/16, *Alpenrind*)
- Member State of work can rely on the examination of all preconditions (e.g. of the posting conditions) by the Member State issuing the A1 form.
- High value of this “trust” in other Member State – no binding effect only if the employer has committed fraud and this has been established by a court (case C-359/16, *Altun*), not if the examination of the issuing Member State was “careless” or this Member State did not cooperate (case *Alpenrind*)
- Examination of the issuing Member State has to be intensified (questionnaire annexed to Recommendation No. A1 of the AC) – could this be seen as sufficient for sincere cooperation?

Institutionalized sincere cooperation in case of disputes

- Dialogue-procedure under Decision A1 of the AC:
 - In case of disputes between Member States (e.g. about competence under rules on applicable legislation)
 - Different steps, involving also the AC
 - Experience shows that this procedure cannot always lead to satisfactory results:
 - Even if finally a Decision by the AC is taken this has no binding effect for Member States (CJEU case *Alpenrind*)
 - National courts usually ignore it
 - Takes too long, deadlines are not respected

Does sincere cooperation oblige also to amend/ignore national procedural law (e.g. concerning the possibility for an institution in another Member State to fight a decision on competence in the A1 issuing Member State)?

EESSI and sincere cooperation

- EESSI (Electronic Exchange of Social Security Information) could contribute to achieve sincere cooperation
- Depends on how EESSI is used and implemented
- Code of conduct for clerks would be an improvement
 - As a receiving Member State: Decision E6 concerning the delivery of messages
 - Keeping the Institution Repository simple; forward messages if they are addressed to the wrong institution and not reject them
 - Safeguard that messages are not lost ... etc.

Final remarks and conclusions

- Sincere cooperation is a fundamental pillar of coordination of social security systems, nevertheless:
 - There is a constant lack of clarity
 - How shall Member States proceed – bilaterally or via the AC?
 - What is the role of the AC in the future (e.g. competition with ELA)?
 - Do we need more Guidelines or Codes of Conduct for the cooperation between Member States
 - If national legislation has to be disapplied, how legally safe is that? Which Member State has to disapply its legislation?

Thank you for your attention!



REPUBLIC OF ESTONIA
SOCIAL INSURANCE BOARD

Sincere cooperation Good practices: Estonia — Finland

Merle Trufanova

Adviser of Business Services Unit

13 September 2019, Helsinki

Context

- Current bilateral agreements EE-FI
- How we operate cross-border
- Changes in practice and fast communication
- Future cooperation and challenges

Current bilateral agreements EE-FI

- Agreement to use the secure e-mail between institutions (2004)
- Procedure for application of Article 16 of Regulation 987/2009 and Article 19 of Regulation 883/2004 – truck drivers (2011)
- Retroactive cases and Article 16 of Regulation 883/2004 agreements - The general policy on how to handle incorrect insurance (2014)
- PD A1 information through secure e-mail in excels (2016)
- Agreement on 2 months working breaks – not to change priority state in case of family benefits – (2018)
- Life certificates (pensions) – Exchange of information between population registers (2019)
- Annual bilateral meetings between liaison officers

How we operate cross-border

- Kela secure e-mail
 - etelainenvp.skannaus@kela.fi – F SEDs
 - inter.helsinki@kela.fi - additional information
- sTesta secure e-mail and network
- Web meetings - case by case settlements

Changes in practice and communication

EXAMPLE

- As of 18.03.2019 Estonia will no longer add to electronically issued PD A1 a manual signature or ink stamp
- Consequently, the Social Insurance Board will no longer mail any paper forms to people
- Legal base - Recommendation A1
- Communication to all Liaison Body's who in turn, shared this information with the local Labor Inspectorates
- The backlash was only in one case, but this case was resolved bilaterally really quickly

Future cooperation and challenges

- Reviewing and updating existing agreements
- X-road - Electronic exchange of data
- EESSI deployment



REPUBLIC OF ESTONIA
SOCIAL INSURANCE BOARD

Thank you!

☎ +372 5390 3691 📧 merle-t
merle.trufanova@sotsiaalkindlustusamet.ee

MoveS

project presentation

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**

MoveS Legal Reports (2019):

- *'Report on the preliminary assessment of the national transposition measures of Directive 2014/50/EU on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights'*
- *'The application of FMW and SSC by national courts'*
- *'The Application of the Social Security Coordination rules on modern forms of family/patchwork families'*

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

2019 MoveS seminar calendar

Date	Country
26/4	Lithuania
18/6	Poland
13/9	Finland
23/9	Netherlands
4/10	Spain
10/10	Estonia
25/10	Croatia
5/11	Romania
6/11	Malta
15/11	Sweden

Cooperation and networking

- **MoveS webpage (EUROPA)**

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

MoveS LinkedIn group:

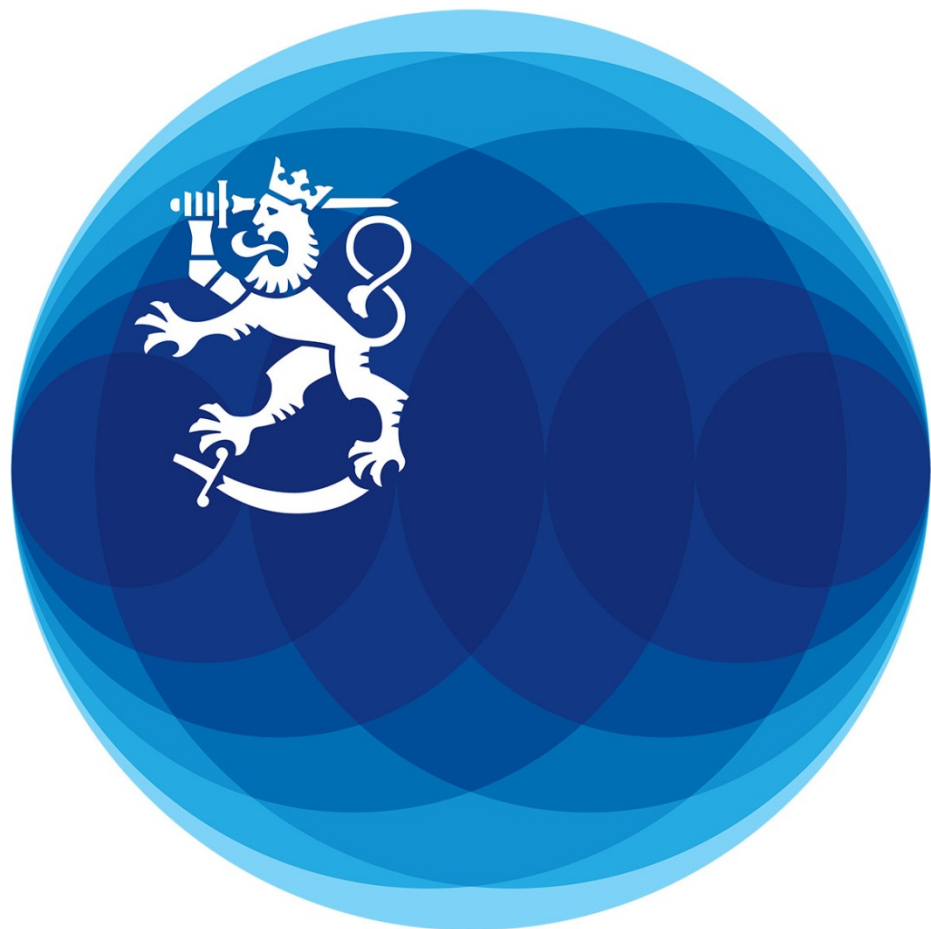
MoveS – free movement and social security coordination

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

Thank you for your attention!

Contact us at:

MoveS@eftheia.eu



Sincere cooperation – legal perspectives

MoveS seminar Finland:
Sincere cooperation – from
principle to practice

13.9.2019 Helsinki

Mira Saloheimo
Legal Officer
Unit for EU Litigation
Ministry for Foreign Affairs



Sincere cooperation – From principle to practice

- A constitutional principle TEU 4(3) has taken its practical shape in social security coordination.
 - No coordination without cooperation.
- Explicit f. ex. in article 76 of the basic regulation, but implicit throughout the regulations.
 - Calculation of family benefits, aggregation of periods, fraud and error
- The obligation to cooperate binds every level
 - Member states, institutions and individuals



Case law of the CJEU – A1 certificates, sincere cooperation and doubt of fraud

- **C-620/15 A-Rosa Flussschiff** – a certificate is binding both on institutions and courts
- **C-359/16 Altun** – national courts may disregard certificates in some cases
- **C-356/15 Commission v. Belgium** – national legislation in conflict with EU cooperation rules is clearly forbidden
- CJEU clarifies the steps of cooperation when there is doubt of fraud
- Infringement procedure against a Member State is an option
- Compare to EU rules on taxation and judicial cooperation



Case law of the CJEU: filling the gaps of social security rules for EU civil servants with sincere cooperation

- **Case C-293/03 *My***
 - Coordination rules do not apply – EU civil servant
 - Free movement of workers doesn't apply – purely internal situation
 - Sincere cooperation and the obligation to facilitate Union tasks
- **Following case law f. ex.**
 - C-647/13 *Melchior* – unemployment benefits and periods of work
 - C-408/14 *Wojciechowski* – pension rights
 - C-179/18 *Ronny Rohart* – period of compulsory military service

Questions for the future



- Relationship and cooperation between ELA and the administrative commission?
- Will there be cooperation through ELA also between institutions?
- EESSI – How much will it ease cooperation and data exchange?
- Other ways for deepening cooperation, bilateral arrangements, big data exchange?
- Is sincere cooperation so strong that the social security coordination rules could be radically simplified?



Thank You for listening!