MoveS seminar Netherlands

Freedom of movement in the Euregion Meuse-Rhine

Maastricht, 23 September 2019

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Institute for Transnational and Euregional
cross border cooperation and Mobility / ITEM

A glance at ITEM

Scientific contributions to cross-border cooperation and mobility

Anniversary edition 2015-2019

The Institute for Transnational and Euregional cross border cooperation and Mobility / ITEM is the pivot of research, counselling, knowledge exchange and training activities with regard to cross-border mobility and cooperation.

Maastricht University

A glance at ITEM. Scientific contributions to cross-border cooperation and mobility

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ITEM is an initiative of Maastricht University (UM), the Dutch Centre of Expertise on Demographic Changes (NEIMED), Zuyd University of Applied Sciences, the City of Maastricht, the Euregio Meuse-Rhine (EMR), and the Dutch Province of Limburg.

Content

Prof. Hildegard Schneider

During the last months, we have reflected on the achievements ITEM has reached in the past years. I think we can look back on a very intensive and fruitful period.

ITEM has been conducting scientific research since 2015 with the clear goal to contribute to the improvement of cross-border cooperation and to decrease barriers for cross border mobility and frontier workers. ITEM also stimulates awareness for the economic potential of border regions, the challenges they are facing due to legislation and administrative practices but also the chances and opportunities they have when border regions are cooperating together. In this period from 2015-2019, ITEM has developed a large network with regional, national and European partners. ITEM has shown that its original mission as formulated in 2015 has been achieved. Based on these results the institute can grow, intensify its research and develop further the specific instruments, such as the ITEM cross-border impact assessment methodology as well as the ITEM cross-border knowledge portal, which can help policy makers in the decision making process.

We are very proud that an external independent Commission of Experts has evaluated ITEM and its achievements very positively during the past months. The Evaluation Commission specifically underlined the scientific but also the societal relevance of ITEM's research and its activities. The Evaluation Commission also recognized and praised the important network function ITEM has taken up on many levels: regional, national and European. The various forms of activities and co-operations have all been very fruitful.

This positive reaction encourages us to intensify our work also in the upcoming period 2020-2024.

I herewith present you a selection of ITEM blogs written during the last 5 years on cross-border cooperation and mobility. These blogs show a good and understandable representation of the research and work ITEM has conducted during the last 5 years.

This is of course just a small section of the research ITEM has conducted. Please have a look at the ITEM website, www.maastrichtuniversity.nl/item, and the ITEM cross-border portal, itemcrossborderportal.maastrichtuniversity.nl, for the most recent information on ITEM research and contributions to cross-border mobility and cooperation. We are also very proud that the first ITEM-PhD will defend his research results on November 8th, 2019.

Maastricht, August 2019

Introduction

The Institute for Transnational and Euregional cross border cooperation and Mobility / ITEM of Maastricht University is an interdisciplinary institute that conducts interdisciplinary research within the scope of cross-border mobility and cooperation issues.

Among the ITEM Expertise Centre's scientific staff are researchers and PhD candidates with expertise in various fields. In addition to scientific output in the form of publications, ITEM researchers and PhD candidates write blog contributions and news articles that are featured on the Maastricht University website. Blogs make academia more available for society and contribute to our goal of bringing science and practice together. This anniversary volume comprises of a collection of short pieces in English (some are translated from Dutch) about some contemporary cross-border issues and output of ITEM during the period 2015-2019.

The themes include:

- Cross-border social security
- Cross-border education & the labour market
- Cross-border mobility
- Cross-border pensions
- Cross-border taxation
- European Union citizen
- Cross-border crime

Cross-border Social security

How Dutch cross border workers also can benefit from the export of Unemployment benefits

Published on 16 April 2019 Saskia Montebovi

At the end of March and the beginning of April, the media again published some disturbing reports about the planned changes to the unemployment schemes in the European regulation on social security and the possible misuse of Dutch benefits by foreign workers.

In this report, we briefly set out the facts regarding the unemployment proposals. What changes are on the European table? What determines Dutch unemployment legislation? Are the headlines right and do the (Dutch) politicians tell the whole story?

Revision of EU Coordination of Social Security

In December 2016, the European Commission submitted a revision proposal for the coordination regulations on social security systems (EC 883/2004 and EC 987/2009). Since then, negotiations have been ongoing on the amendments relating to unemployment, long-term care and family benefits. In this contribution, we focus on two parts of the revision, namely the unemployment export scheme and the minimum waiting period in the event of unemployment.

Unemployment export scheme

Under the current system, an unemployed person can take his benefit to another member state for three months in order to seek work there. The proposed scheme extends this period to six months. It is up to the authorities of the host country to monitor the search for another job and to ensure that the eligibility conditions are met.

The Netherlands is not in favour of extending the export scheme because, in practice, it appears that some EU citizens, more than others, make use of this scheme and the Netherlands seems to lose control of this group of unemployed people as well as of the budget. This is partly due to the fact that in some EU member states, wages are much lower than the unemployment benefits from the Netherlands. The incentive to look for work is therefore minimal. Also, the control in and by the host country is less than what is expected in the Netherlands. In recent weeks, unrest has flared up in Dutch politics and society following reports about the current 3-month export option. For example, it appears that for employees from Poland - who have worked in the Netherlands and (temporarily) return to Poland with a Dutch unemployment benefit - a job in Poland is financially less attractive than the Dutch unemployment benefit that they are allowed to take with them on a temporary basis on the basis of the export scheme. The fact that the export scheme also applies to other EU citizens *is not clearly stated* in the reports. Any EU citizen who is unemployed and believes that he has a better chance of finding a job abroad may temporarily export his unemployment benefit to a foreign country (subject to certain conditions) in order to look for work there

Minimum Work Period

The Regulation makes it possible to add up insurance periods if one only has been insured for a short time in another country and is eligible for benefits. Under the current Regulation rules, this means that one day's work can be sufficient to include work periods in other countries. The proposed new rule introduces a waiting period of one month. Therefore, only employees who have worked in a country for at least one month and who become

unemployed there can invoke the aggregation rule and include their insured periods from former countries of employment. However, this does not mean that the insured years from former countries of employment influence the length of the unemployment benefit. The duration of the unemployment benefit is entirely determined by the last country of employment, that is responsible for the unemployment benefit. However, the unemployment benefit is determined on the basis of the last-earned salary. As a result, as long as the wage gap in Europe persists, the use/abuse of this rule will be attractive. This applies, for example, to Polish employees who come to work temporarily in the Netherlands and then possibly return to Poland with a Dutch benefit for the duration of the benefit. However, this also applies to workers working in other member states where unemployment benefits are higher than the wages in the former country of residence and employment.

Multiple perspectives

The media, the politicians and the authorities involved have made no secret of their indignation at situations of abuse. This is partly justified. Abuse or fraud should indeed be counteracted vigorously. However, simply pointing the finger at those who make use of their right to the free movement of workers is too short-sighted. There are several points of attention that also need to be highlighted in the reports. We will mention some of them here.

Firstly, Polish workers who can take Dutch unemployment benefits with them for a long time is only possible if they have also worked for a long time, in the Netherlands and/or Poland. The simple statement that Dutch unemployment benefit is granted after just one day's work gives a distorted picture. Dutch unemployment benefits are only granted if a sufficient number of weeks and/or years have been worked.

Secondly, the inclusion of foreign periods in the determination of entitlement to benefits is a correct application of the Regulation and is part of the free movement of persons.

Thirdly, Polish workers are not the only ones who are responsible for the temporary export of Dutch unemployment benefits to Poland without control from the Netherlands. This is a combination of the Regulation rules and the Dutch policy with (too) little control and enforcement by the UWV (through austerity operations by the government).

Fourthly, as a result of the Dutch legislation and policy, employers in the Netherlands to a large extent - and more so than in other member states - offer temporary, short-term employment contracts instead of long-term or permanent contracts. In this way, many temporary labour migrants are recruited in certain sectors. In periods of unemployment, these workers temporarily return to their homes and come back later to take up work again, often with a temporary contract...

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Will the European Social Model become a reality at last?

Published on 18 March 2019 Nina Büttgen

More than 17 million workers living or working in another Member State are exposed to possible violations of their rights, either because of poor implementation of EU rules, disinformation or lack of coordination among Member States. Therefore, the EU plans to set up a new authority that will support fair labour mobility within the EU, allowing citizens and businesses to seize the opportunities offered by the Single Market while supporting the cooperation between national authorities, including in preventing and tackling social fraud and abuse. ITEM cooperates with authorities and societal actors on all levels to make fair mobility a reality, in particular for frontier workers. ITEM research

supports common endeavours to remove obstacles that hinder cross-border labour mobility in everyday life. Considering the longstanding critique on the EU's "social deficit", this new European Labour Authority (ELA) may help blow new life into the long untended European Social Model.

The new European Labour Authority (ELA)

Commission President Juncker first announced such an authority in September 2017 as one of the priorities for rolling out the European Pillar of Social Rights. After the legislative proposal in March 2018, an unusually speedy procedure followed. The European Commission, the European Parliament (EP) and the Council reached a provisional agreement on the proposal on 14 February 2019. The EP Committee on Employment and Social Affairs adopted the trilogue outcome shortly after. Momentarily, once the Member States' Permanent Representatives (Coreper) confirm the agreement, it will be awaiting the vote of the EP plenary (expected for end March/beginning April). The intention is to complete the whole process before the upcoming EP elections in May.

Working towards contributing to clear, fair and enforceable rules on labour mobility, the Commission considers the ELA instrumental in improving the enforcement of EU law. The ELA is to organise "joint or concerted" labour inspections of potential abuses with national authorities. It also ought to address social security issues to bolster a well-functioning EU labour market. Furthermore, the unions achieved a crucial addition to the Commission proposal: They will gain the right to file complaints directly to the ELA instead of having to pass through the national authorities to help workers whose rights have been violated. However, a drawback is that some critical sectors like transport are – as yet – to be excluded from the ELA's scope.

Fair Mobility Tool

The application of labour and social security rules in cross-border situations never ceases to cause difficulties. ITEM has therefore researched the added value of developing a "Fair Mobility Tool" for cross-border workers in the framework of the EU Programme for Employment and Social Innovation. At the request of three Interregional Trade Union Councils (ITUCs), ITEM conducted an exploratory study on "fair mobility" for the cross-border worker and the feasibility of such a tool. The study concluded that the tool could be an important means to address obstacles and reduce abuses in cross-border employment with flexible contracts. It might thus also be of use to the ELA in terms of assembling relevant information in the long term.

With these research results, the unions will work together during all of 2019 to realise the fair mobility tool. ITEM and the three ITUCs will present and discuss the results in a common event in mid-June.

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Combat social dumping more successfully with a renewal of the posting of workers directive?

Published on 15 December 2016 Marjon Weerepas

Social dumping is a difficult issue at present in political institutions, both national and European. In short, social dumping, workforce in most cases are working under appalling conditions by being seconded in other countries.

To combat social dumping, EU Commissioner Thyssen launched a proposal in the spring of 2016 to change the current Posting of Workers Directive 96/71/EC. After invocation of the so-called yellow card procedure, particularly by Eastern European Member States, Thyssen decided to retain the original text. It is important that, among other things, the free movement of services and the free

movement of workers are promoted, but just naming these two freedoms immediately exposes the contradiction between them. After all, the optimal implementation of the free movement of services will not always benefit the free movement of workers or vice versa.

One of the spearheads of the proposal is that the same labour-law regulations should apply regarding payment for the same work in the same place, regardless of whether a local or a posted worker does the work. A positive point is that the proposal considerably expands the minimum conditions outlined in the current Posting of Workers Directive, even though that raises new questions of its own. The proposal advocates equal remuneration, for instance, but what exactly can be considered 'remuneration'? Would this include continued wage payments in case of illness, for example? An important point in the proposal is that the applicable labour law becomes that of the work state after 24 months of work in this work state. Even though this does not become clear from the draft Directive, it seems that this period of 24 months is based on the maximum posting period as outlined in Regulation No 883/2004 on the Coordination of Social Security Systems. Since the introduction of the proposal, there have been calls, however, for reducing the 24-month period to six months (see e.g. a recent note by Dutch labour union CNV). This term seems to refer to the period of 183 days laid down in the fiscal posting of workers regulation. It is to be welcomed that not only labour law, but also social security and tax law are taken into consideration. And, admittedly, the aim for coordination between premium and tax liability is a noble one, but the question is whether a reduction of the term to six months is of help to posted workers. According to Art. 57 of Regulation 883/2004, for example, a Member State is not required to provide old-age benefits if the insured periods do not exceed one year. The Regulation does require, however, that Member States add up short periods that together comprise more than a year for the granting of these benefits and, for example, unemployment benefits. See further CVA Explanatory Note. In addition to these issues, it is also cumbersome for the workers concerned to switch to a different system of social security after six months and then to have to leave that system again in the foreseeable future.

The question, however, is whether this is the right time to adapt the Posting of Workers Directive. I refer here to the Enforcement Directive that should have been implemented in June 2016. The Netherlands did, even though reporting duties have been suspended until the digital notification system is operational, probably in 2018. A number of Member States have not yet completed the implementation, however. The Enforcement Directive provides more opportunities for checks than the current Posting of Workers Directive. Given that combating social dumping is largely about performing checks, it raises the question whether we should not first await the effects of the implementation of this Directive and its inherent checking tools. It does not make much sense, after all, to embellish new rules that are not being properly enforced in the first place. In addition, the average posting lasted for 103 days in 2014. This would mean that the inclusion of the 24-month term will not have the desired effect in many cases, which is not to say that the 183-day proposal is the ultimate solution. One possible checking mechanism might be the introduction of a licensing system for employment agencies, like in Belgium.

It is clear that the issue of social dumping should be addressed. The relevant authorities in the field of labour, social security and tax law must jointly combat the phenomenon of social dumping. One of the questions that has to be answered in this context is whether the terms should be the same in all areas of law, all while considering the interests of the workers concerned!

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Cross-border education & the labour market

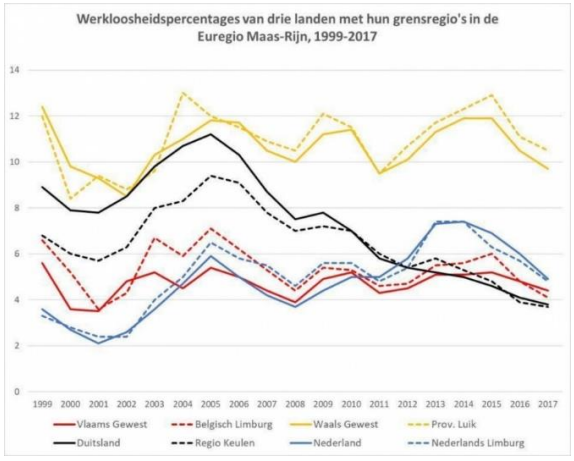
Foreign Surprises just across the border

Published on 10 April 2019 Frank Cörvers

If you live or work in a border region, there are both advantages and disadvantages. Let me start with the most important drawback: for national events, you are a long way away from where the most happens. These are the major Randstad conurbations: if you're unlucky in The Hague, if you're lucky you just have to travel to Utrecht. Something similar applies to the supply of jobs, which is simply larger and more diverse in the Randstad. The provision of information about events and jobs is mainly nationally oriented. Many, including those from the border regions of the Randland, are better informed about the vacancies, exhibitions and offers of supermarkets in their own country than in the regions a few kilometres across the border. Where there is a different world, different rules and laws, different shop chains and opening hours, different news, different customs and a different language. Have you ever met a Fleming in the morning or in the afternoon? I have often experienced miscommunication about this, because in Flanders it means before and after 12 noon respectively.

Main advantage in the border regions of the Randland: If you are willing to make an effort, the potential of people and events is much more diverse on the other side of the border than within the Netherlands. There are often big differences. For example, a full tank of petrol across the border in Belgium can easily be 10 euros cheaper than in our country. So tank tourism pays off, although apparently not everyone finds it worthwhile since there are still Dutch petrol stations at the border with Belgium. Furthermore, the cultural offer is much more diverse just across the border, as well as the offer of products and services. Be surprised by the differences!

For the economy and the labour market in the border regions, national developments are leading and there is no such thing as a Euroregional labour market, with shared trends in economic growth or unemployment. In other words, the developments in the border regions are much more synchronous with their own country than with the neighbouring border regions. This is illustrated by the accompanying figure on unemployment developments in the Meuse-Rhine Euroregion. The continuous lines show the unemployment rate of the Flemish Region, the Walloon Region, Germany and the Netherlands. The dotted lines of the same colour in the region or country show the unemployment rate in the respective border regions of the Meuse-Rhine Euroregion. In terms of unemployment development, the border regions are not in sync with each other, but with their own country. The conclusion is that there is no Euroregional labour market.



Source: Eurostat

Here, too, there is an advantage: surpluses and shortages on the regional labour markets on both sides of the border can offset each other. Sometimes the oversupply of professionals or care personnel is somewhat greater in Germany or Belgium with a shortage of personnel in the Netherlands, and sometimes the opposite is true. Jobseekers and employers can benefit from this, although they continue to focus primarily on the domestic supply of jobs and the labour potential in their own country. Good information about the oversupply of jobseekers and the bottleneck professions in the labour markets of the border regions is necessary to be able to benefit from the differences.

Unfortunately, there is little to be gained when it comes to personnel for care and education in the border regions of the Netherlands and Flanders. There are major shortages on both sides. For example, I recently learned from a reliable Flemish source that the number of students in nursing courses in Flanders has fallen dramatically in recent years, due to a lack of interest among young people and the attractiveness of other sectors where the economy is booming. This is very bad news for Maastricht University Hospital because it employs a lot of Flemish staff. Would the Board of Directors of the university hospital already know that the labour potential of new Flemish recruits is drying up – I couldn't find it so easily on the internet – or is one surprised?

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The Professional Qualifications Directive: Still No Compliance?

Published on 28 March 2019 Lavinia Kortese

In the EU, the mobility of many professionals is governed by the Professional Qualifications Directive. The instrument was introduced in 2005 and adapted in 2013. Due to be implemented on 18 January 2016, the directive's transposition apparently leaves much to be desired. On 7 March 2019 the Commission issued a large number of infringement proceedings against the Member States for having incorrectly transposed the directive.

Making use of qualifications across Member States is an important aspect related to transnational and cross-border mobility. Of course, labour market access is, in principle, free due to the free movement articles enshrined in the EU Treaties. Nevertheless, one group of professionals may be restricted in their mobility. Some professions are regulated, meaning that requirements related to diplomas and work experience (i.e. qualifications) are laid down by law. In order to prevent national laws containing qualification requirements from forming too much of an obstacle to mobility Directive 2005/36/EC was adopted.

Directive 2005/36/EC, also known as the Professional Qualifications Directive, underwent extensive modernisation through Directive 2013/55/EU. Although the deadline for its implementation already passed over three years ago, the Member States are apparently still not in compliance. On 7 March the European Commission initiated infringement proceedings against almost all EU Member States. Whereas 24 Member States received reasoned opinions, two Member States received letters of formal notice. This means that Member States will have two months to reply. Should the reply prove unsatisfactory, 24 Member States may be referred to the Court of Justice while the remaining two Member States may receive reasoned opinions.

It is not the first time that such proceedings were initiated against a large number of Member States in the context of the Professional Qualifications Directive. In 2016, 14 Member States, among which the Benelux countries and Germany, received reasoned opinions. Back then, the procedures mainly concerned the lack of communication about the transposition of the directive into national law. Ultimately, the infringement cases initiated for the Benelux countries and Germany were closed between February 2017 and March 2018.

The present infringement proceedings concern a wide array of topics under the Professional Qualifications Directive. According to the Commission, the Member States have failed to implement correctly some core

aspects of the modernisation of Directive 2013/55/EU. In particular, the proceedings concern the European Professional Card, the alert mechanism, principle of partial access, proportionality of language requirements, setting up of assistance centres, and the transparency and proportionality of regulatory obstacles.

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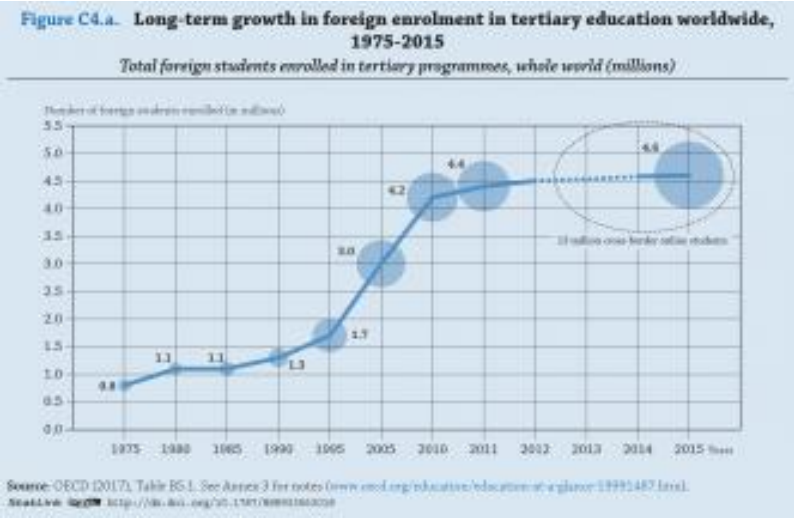
The Benefits of the Internationalisation of Higher Education

Published on 4 June 2018 Julia Reinold

The internationalisation of higher education (IoHE) relates to sensitive topics of public concern. Considering the ongoing debate in the Netherlands regarding the challenges related to the internationalisation of higher education, it is time to take a step back and remember the many benefits as identified by the existing academic literature.

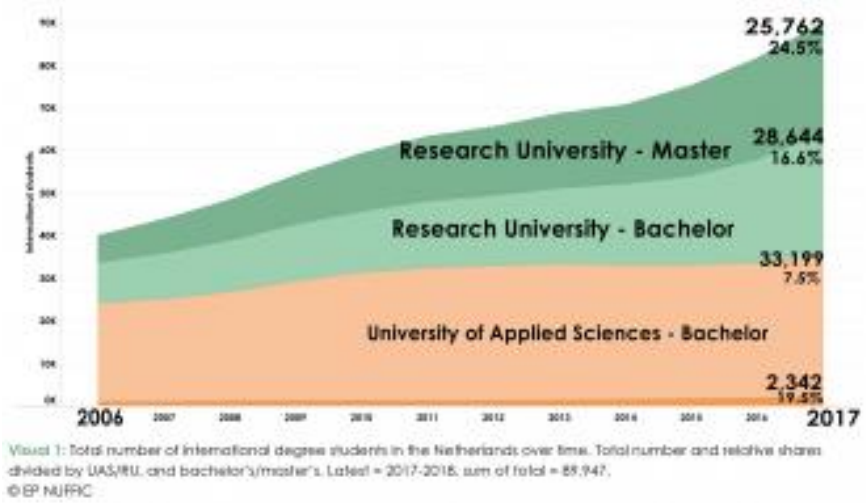
International students around the world and in the Netherlands

Migration for education is not a new phenomenon. As the number of individuals enrolled in higher education increased, so did the number of international students. To be precise, the absolute number of international students enrolled in higher education world-wide increased from 0.8 million to 4.6 million between 1975 and 2015. The share of international students, however, remained relatively stable over time.



(OECD - Figure C4.a. Long-term growth in foreign enrolment in tertiary education worldwide, 1975-2015)

According to EP Nuffic, around 90,000 international students were enrolled in Dutch higher education degree programmes in the academic year 2017/18, excluding students, who came to the Netherlands for parts of their degrees only (e.g. semester abroad). While programmes at universities of applied sciences (HBO) are rarely taught in English, research universities (WO) teach 23% of bachelor and 74% at master level exclusively in English. In addition, 12% of bachelor and 11% of master programmes are taught in multiple languages. One should note, that this does not apply to all fields of study. In particular, programmes that are directly linked to the domestic labour market like health care, law and education are mostly taught in Dutch.



Visual 1: Total number of international degree students in the Netherlands over time. Total number and relative shares divided by UAS/RU, and bachelor's/master's. Latest = 2017-2018, sum of total = 89.947.
© EP NUFFIC

(EP Nuffic - Incoming student mobility in Dutch higher education 2017-2018 - Visual 1: Total number of international degree students in the Netherlands over time)

What is in it for whom?

Various stakeholders can benefit from the internationalisation of higher education, including international and domestic students, higher education institutions (HEIs), companies, home and host countries.

Students

Studying abroad is a way for students to gain international experience and to develop both personally as well as professionally, for instance, by getting to know different cultures, improving language skills and developing a more cosmopolitan identity. In addition, it can be a strategy to improve one's career prospects, especially if the required knowledge and skills cannot be obtained in the student's home country. International classrooms lead to improved learning outcomes, foster intercultural skills and create international networks preparing both international and domestic students for living and working in a globalised world.

Higher Education Institutions

HEIs can benefit from the IoHE both financially and academically. In the context of declining financial contributions of governments, international students (from outside the EU) are an additional funding opportunity. Moreover, internationalisation can improve HEI's reputation and the quality of education programmes because of increased international competition for the best students and academics. In addition, attracting international students is vital for many HEIs to survive, especially in countries where the population of young adults is expected to decline drastically in the coming decades.

Host Countries

Host countries can benefit from the IoHE economically. In the short term, international students bring additional revenue through general living expenses. In the long term, international students can add to the domestic pool of highly-skilled workers and thereby help strengthening the domestic knowledge economy. This is especially important for countries that experience demographic change, negative population developments and growing skills shortages. EP Nuffic estimates that international students who stay in the Netherlands contribute €1.57 billion to the Dutch economy each year. International students who do not remain living in the host countries can become ambassadors for HEIs and the industry of the country in which they studied which can contribute to international cooperation and trade.

Challenges

Despite the benefits of the IoHE, many challenges remain. For instance, international students are confronted

with many challenges upon arrival in the host country, including issues of adjustment, integration, discrimination, financial costs, restricted access to the labour market and other administrative and legal hurdles. If these can be dealt with, the benefits for all stakeholders will increase even more.

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Crossing borders in search of education? Not for schoolchildren!

Published on 30 October 2017 Alexander Hoogenboom

Can Member States of the EU prohibit pupils from attending education abroad, simply on the belief that it might hamper the integration of these children into society? This contribution shows that educational mobility for schoolchildren is still fraught with obstacles in an area supposedly without internal frontiers, but that the restrictive measures of such mobility likely do not comply with EU law.

Primary and secondary education have an important role to play to ensure that new members of society are taught certain basic knowledge and skills, but also to induct them into the values, norms and principles that society holds dear. Such education is thus simultaneously the foundation of personal development and emancipation, as well as a process of socialisation and integration.

In recent times, however, some states are seeking to exert more control over the ideological development of the young. In the US, Trump stresses that his policy of 'America First' requires having schools teach 'patriotism'. Similarly, the Dutch coalition agreement, specifies that schoolchildren must now learn the national anthem and its context – an idea of the Dutch Christian Democrat leader Buma meant to counter the perceived threat of multiculturalism. And in Germany, a multicitizenship (German, Dutch and New Zealand) family was recently forced to sell their house and business, and to leave the country so that the children would be allowed to attend an international school in the Netherlands.

If that sounds extreme, read on.

A sad story

After the closure of the St. George's international school in Aachen, several of the parents sought to have their children attend education at the United World College in Maastricht. This was, however, prohibited by the NRW Schulamt, which is tasked with the supervision of the schulpflicht in Nordrhein-Westfalen (Article 88 jo. 37 Schulgesetz NRW). The reasoning was that this would hamper the integration of the child(ren) into German society. The consequence of this policy is that this particular family, with deep roots in Germany, had no choice but to move countries in order for their children to be enrolled in the desired school.

The point of this contribution is to assess whether this NRW policy is legal in the EU context. The Premable to the Treaty on the European Union after all reminds us 'the historic importance of the ending of the division of the European continent and the need to create firm bases for the construction of the future Europe'. The behaviour of the NRW Schulamt in this case goes against this very basic principle and, as will be argued, violates EU law.

Can Member States prohibit their citizens from attending education abroad?

Two points must be made clear at the outset.

First, the United World College is a Dutch state-subsidised ('bekostigd') school, subject to the *Wet op het primair onderwijs*, and supervised by the *Onderwijsinspectie*. The most recent report indicates that the United World College is an 'example for other schools' due to the fact that it scored very well on a relatively large amount of the quality indicators.

Secondly, where it concerns a Union citizen residing in Germany but attending education in the Netherlands, EU law is *a prima facie* applicable. Since the United World College is state-sponsored, it can be debated – based on the Wirth case - whether it provides 'services' within the meaning of Article 49 TFEU and thus whether the measure could be challenged under that heading. However, in any case the child may rely on Article 21 TFEU with a view to exercise her free movement rights for the purpose of attending education elsewhere. This was

confirmed in the case of *Schwarz*. The situation examined here goes one step further: The *Schulamt* is prohibiting the child in question from attending education in another Member State *tout court*. This constitutes a breach of what is now Article 21 TFEU (former Article 18 EC) following the case *Jipa*.

But what of possible justification grounds?
Such restrictions may only be justified if it is 'based on objective considerations of public interest independent of the nationality of the persons concerned and if it is proportionate to a legitimate objective pursued by the provisions of national law. It follows from the case-law of the Court that a measure is proportionate if, while appropriate for securing the attainment of the objective pursued, it does not go beyond what is necessary in order to attain that objective.'

As seen above, the United World College has near-examplary scores as to the quality of the education provided. It follows that any argument with respect to the lack of quality of education abroad must fail out at the outset.

The *Schulamt* has primarily invoked that the pursuit of education in Germany is crucial to ensure the integration of resident children in German society. Case law of the Court of Justice also indicates that Member States can in certain circumstances invoke the need to protect the national identity in this respect, as education is an integral part thereof.

It may however be wondered whether this is a legitimate argument in this context. After all, the Court has indicated that access to education abroad is a core element to the free movement of students within the European Union, which the EU actively seeks to promote. In that light it may be wondered whether it is legitimate for a Member State to prohibit its nationals from pursuing education abroad at all.

Alternatively, even if the aim would be accepted as legitimate, there are several reasons to consider that it still fails the test of proportionality.

First, it may be wondered whether the policy employed seeks to attain this aim in a systematic and consistent manner. The relevant *Schulgesetz NRW* provides in Article 34(5) that the *Schulplficht* may also be fulfilled in recognised/approved international schools situated within Germany. Children may attend this school without special leave to do so by the *Schulamt*. This is somewhat strange. Seeing as the curricula of international schools are, indeed, international, it seems the Schulamt is simply concerned with the place of establishment. Somehow following an international curriculum in Germany safeguards integration into German society whereas this is not the case if that same or similar curriculum is pursued in the Netherlands. As such the integration criterion not pursued systematically and consistently: this constitutes a breach of the principle of proportionality.

Secondly, the Court of Justice has made clear that when a Member State is to assess the degree of integration of a person, it cannot base this assessment simply on a single criterion such as, in casu, school attendance in Germany. From the case of *Martens*, it follows that the personal circumstances of the child must be taken into account, such as her nationality, her language abilities, the situation of her parents and other social and economic factors. The *Schulamt* may not simply reject an application on the stated grounds without a thorough examination of these factors. When looking at the facts of this 'case': both the mother and the father worked in Germany, the children spoke German, and the family lived in Germany. It can hardly be doubted that the children are sufficiently integrated into German society.

Conclusion
There are several reasons to consider that the Schulamt's decision and overall policy to prohibit education attendance in another Member State of the EU breaches EU law. Neither the lack of quality of education abroad nor the supposed 'danger to the integration of the child' can justifiably invoked to justify a restriction of free movement for education purposes. Considering the Schulamt's strictness in this, it is likely that a procedure before a national court is necessary to change the policy in this regard. Until such time, the Schulamt should take note of the lengths parents will go, and justifiably so, for their children to receive the education they think is in their best interest. In that light, one could seriously wonder whether in the case of the family who left house, job and country, integration into German society was achieved…

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Cross-border mobility

Cross-border cooperation: North Sea Port

Published on 13 August 2019 Pim Mertens

On 12 July 2019, State Secretary Knops of the Interior and Kingdom Relations (BZK) sent a letter to Parliament containing information on the progress of cross-border cooperation. In this letter the progress of cross-border cooperation is explained in four themes: cross-border initiatives, preconditions and border barriers, governance and EU & Benelux. ITEM has made several scientific contributions that make a solid basis for some of the different themes. For example, after an initial inventory done by ITEM, the Dutch and Flemish government decided to further look into possible solutions for border barriers for the cross-border North Sea Port.

Building cross-border cooperation and information

The Dutch government is committed to cross-border cooperation in which obstacles are removed by means of tailor-made solutions, European resources are deployed in a targeted manner and good preconditions are created.

Several cross-border initiatives, such as youth events, (academic) collaborations and Regio Deals, will be actively supported. At the governance level, structural cooperation is also being worked on by means of, among other things, an annual Border Country Conference between North Rhine-Westphalia and the Netherlands, with the associated Border Country Agenda. This will explore the possibilities for physical cooperation within a *one-stop shop* or network cooperation between border regions and expand the provision of information and advice on the valuation of diplomas and professional qualifications. The latter is done within the B-solutions project, financed by the European Union and the Ministry of Education, Culture and Science, 'Roadmap and fact sheet for the recognition of qualifications for promising professions'. ITEM is the project leader for this project, which will be completed this autumn.

North Sea Port

Despite a 'borderless Europe', border barriers can still be experienced many times over. This also applies to North Sea Port, the combined port of Ghent and Terneuzen as of 1 January 2018. Commissioned by the Province of Zeeland and the Ministry of the Interior and Kingdom Relations, ITEM has made an inventory of bottlenecks for the cross-border port area between the Netherlands and Belgium. The border bottlenecks arise from differences in legislation and regulations in various policy areas.

For example, a border worker has to administer his hours in order to avoid double charges, there are difficult differences for the employer in pension schemes, dismissal protection and health insurance, and the harbour masters in the two countries have different powers, despite the fact that it is one port area. These are hampering economic growth and hampering day-to-day practice. Attempts to make it more sustainable are also hampered by the fact that, for example, cross-border railway lines and pipelines are subject to different procedures, permits and provisions relating to the environment and town and country planning.

ITEM's inventory forms a solid basis for solving these border bottlenecks, which will happen after the report has been delivered. In the letter, Knops states that both the Dutch and the Flemish sides are willing to legislate on

the obstacles. In the next phase, an upcoming analysis of the bottlenecks will be provided under supervision of The Governor of the Province of Antwerp, Mrs. Berx, and the former Vice President of the Council of State, Mr. Donner, after which a system will be developed that will offer a solution.

Conclusion: Preconditions and border barriers

The letter from the House of Representatives has shown that many projects and studies are already underway to remove border barriers and create the right conditions for cross-border cooperation. These include the Knops statements that Border Infopoints (BIPs) will continue to be supported by structural funding, that German fast-tracked teachers will be able to work as teachers in the Netherlands more quickly and, finally, that future legislation and regulations will be better geared to border regions. After the summer of 2019, the Border Effects Guide will be added to the Integrated Assessment Framework (IAK) as a tool for policymakers and legislative lawyers, so that the effects of policy for border regions and border barriers can be detected and prevented at an early stage.

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Border Obstacle when Renewing Driving Licences

Published on 7 February 2019 Lavinia Kortese

ICD carrier and resident in the border region? In that case, it is possible that the treating cardiologist is located in a neighbouring country. It follows from European law that EU citizens have the opportunity to receive cross-border care. However, the provision of such care does not appear to be widely accepted. For example, the Central Office of Driving Certification (CBR) does not accept statements from foreign cardiologists. Such action can be considered in conflict with current European law.

Persons with an Implantable Cardioverter Defibrillator (ICD) must report to the CBR to demonstrate that they are fit to take part in traffic. This requires a note from a cardiologist. If the cardiologist is based abroad, this note will not be accepted. Arguments put forward? It is not possible to check whether the foreign doctor meets Dutch requirements.

Such a justification cannot be accepted in the light of the applicable European law. It follows from the groundbreaking Kohll judgment that health care in the EU also falls under the free movement of services. As a result, restrictions on that free movement are in principle not permitted, but can be justified. It is clear that in this case there is an obstacle to the free movement of services. An EU citizen cannot go to his or her regular cardiologist in the neighbouring country for the medical examination, but must instead use the services of a cardiologist established and BIG-registered in the Netherlands.

Is this obstacle justified? In the light of the Kohll case, this question must be answered in the negative. The case revolved around the question of whether it was permitted for social security institutions to demand permission before persons could receive care abroad. Luxembourg, the home country of the case, argued that the reimbursement of services provided abroad should be subject to the authorisation of the social security institution in the home country. The underlying reason was related to the protection of public health: the authorisation served to guarantee the quality of medical services in the neighbouring country.

The Court of Justice of the EU has put an end to this argument. The conditions for access to and exercise of the profession of doctor are harmonised at European level. Such conditions are indeed laid down in the Professional Qualifications Directive. Therefore, the Court argued that doctors in all EU Member States offer guarantees equivalent to those offered by nationally established doctors. Thus, assesments as to the quality of medical

services from other Member States must be regarded as an unjustified restriction on the free movement of services.

The CBR's actions should also be considered as assessment of quality. In the light of the Kohll case, it must be concluded that this is contrary to the European legislation in force. However, the solution is simple: accept the statement of the foreign cardiologist. If the CBR wishes to confirm that the foreign cardiologist has been trained according to European standards, it can consult to the available medical registers of the neighbouring countries.

Read the full analysis in the Case Database of the ITEM Cross-border Portal , Case 1007.

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'Ontgrenzer' Martin Unfried: 'Moderate public transport links hinder labour mobility'

Published on 16 March 2018 Martin Unfried

Stimulating cross-border labour mobility? Provide an adequate supply of information, uniformity in laws and regulations, language education and infrastructure, suggests 'ontgrenzer' Martin Unfried in an interview with EurekaRail. This blog was originally posted on EurekaRail on 15 March 2018.

With the increasing scarcity of the labour market, employers are increasingly orienting themselves across borders. They meet willing employees there, but it rarely happens. The barriers often turn out to be insurmountably high. Differences in legislation and social security, lack of clarity about the mutual recognition of diplomas; they hinder the development of a Euroregional, cross-border labour market. "Not to mention the poor connections in public transport," says Martin Unfried, international cooperation expert in an interview with EurekaRail.

Detacher. That's how Martin Unfried was once called by the Province of Limburg. A nickname that he will never lose again, but that is appropriate. He wrote the report Van stilstand naar Verandering; an analysis of the labour market in the Meuse-Rhine Euroregion, including a large number of recommendations for opening up the market. "Written on behalf of the province in 2013", says the native German at the headquarters of the European Institute of Public Administration (EIPA) in the heart of Maastricht, where he guides new civil servants through the complex organisation called the European Union. "I was then asked to put the solutions into practice. Since then, I have spent a large part of my time breaking down borders."

Information
Good information is the first step towards a more international labour market. Certainly important in the border regions of Limburg where many bottlenecks in supply and demand could be solved with more labour mobility.

And not without success. "Together with a large number of parties, we have set up the Border Information Points in Kerkrade and Maastricht. Employers and employees can go here with all their questions. Unbeknownst to them and uncertainty prevent both employers and jobseekers from taking the step across the border. Good information is the first step towards a more international labour market. Certainly important in the border regions of Limburg where many bottlenecks in supply and demand could be solved with more labour mobility.

Transport
The train and bus connections between South Limburg and cities such as Aachen, Liège and Hasselt are not optimal. It's serious when you know that we're talking about a city metropolis with two million inhabitants within a radius of 50 kilometres. As a result, employees without a car have little or no chance of working across the border.

And then there's public transport in the border regions. "It is also a barrier and not the slightest one. The train and bus connections between South Limburg and cities like Aachen, Liège and Hasselt are not optimal. It's serious when you know that we're talking about a city metropolis with two million inhabitants within a radius of

50 kilometres. As a result, employees without a car have little or no chance of working across the border. It also stops those who are interested in a job in childcare, just like the nurses, the employees of VDL NedCar or other jobs. Poor public transport also hinders people on benefits or people returning to work. And what about interns? Most students, especially Mbo'ers, depend on public transport. If you live in Heerlen, go and do an internship in Jülich. Or at the Chemelot Campus in Geleen if you live in Aachen. Not to be done. It is clear that we wholeheartedly support a project such as Eurekarail. It is high time for a regular train connection between these cities. Not an easy task, by the way. Paradoxically, digitisation is also a barrier. The various ticketing systems and chip cards cannot communicate with each other. This appears to be difficult to solve. There are also complications with the various privacy provisions. There is still a way to go."

English
But how is it possible that almost half of the students at Maastricht University are German? "University education is a story of its own. Maastricht has opted for English as the official language. This makes UM an international university. Typical for the Euregion, however, is that so few Dutch students find their way to the RWTH in Aachen, although this is one of the best universities of technology in Germany. This has to do with the Euroregional language 'German', which is too big a barrier for many Dutch youngsters. And a real obstacle to labour mobility on a regional scale. It is a combination of more information, standardisation of rules and laws, language teaching and infrastructure. This is what we are working towards with ITEM. In this context, I hope that the management of the Meuse-Rhine Euroregion will have a stronger position, as will the Benelux Parliament. These are issues that need to be addressed regionally."

Linkage
Martin Unfried has another important argument for better public transport. "The link with high-speed trains and airports. This will make the Meuse-Rhine Euroregion more easily accessible from other European countries and the rest of the world. At EIPA I even notice that course participants and visitors complain about the connections from Brussels, Düsseldorf or Schiphol. Do they still have to travel for hours by train with the necessary changes and waiting times? Not convenient."

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The German Autobahn toll scheme: its effects on the border regions

Published on 23 June 2017 Barbara Hamacher, Martin Unfried

Amidst the public debate on the potentially discriminating impact of the German toll scheme for passenger cars and the expected revenues, border regions are raising their voice about the potentially negative impacts on cross-border interaction. A closer look reveals that the impacts could be economical, ecological and social in nature. As part of its annual cross-border impact assessment, the ITEM Expertise Centre does research on the expected effects in the Meuse-Rhine Euregion.

With the implementation of the toll scheme now adopted by the German Government and Parliament, what are the potential effects for the German-Dutch border regions? And what does the toll instrument mean for European integration and the harmonization of future toll systems in the EU?

Many EU Member States have toll systems for passenger cars in place. One prominent system is the Vignette system, e.g. in Austria or Slovenia, where car drivers buy a vignette for a certain period of time, which has no relation whatsoever to the number of kilometres driven. The other prominent system is distance-related toll on sections of motorway, like in France or Italy. The German federal Government decided to implement an infrastructure charging system, i.e. toll, for passenger cars in line with the first model. As a consequence, foreign car drivers will have to buy a *Vignette* in order to drive on the German *Autobahn*. Although both foreign and domestic car owners will have to pay the toll charge, the latter will obtain tax relief through a deduction from the national vehicle tax of at least the same amount as the toll charge.

Current debate
The introduction of toll has been causing major controversy in Germany for years. Initially, only one smaller regional party of the present coalition, the CSU from Bavaria, advocated the instrument. Meanwhile, two issues are still being pushed by the many sceptics: whether the toll scheme will actually generate substantial revenues at all, given the intended tax compensations to German citizens; and whether the German toll scheme will not be seen as a breach of EU law due to its discriminatory effect on foreign car owners.

Surprisingly, however, the European Commission suspended the infringement procedure after recently agreeing with the German government on two main changes in the governing piece of legislation, the Infrastrukturabgabengesetz: firstly, a further differentiation of the vignette system from three to five vignettes, emphasizing the environmental impact of the toll; and secondly, lower prices for short-term vignettes, which are typically bought by foreign car owners.

Meanwhile, the accusation that the toll scheme would have a discriminatory effect on foreign car drivers persists in other forums: the European Parliament as well as several law professors in Germany and other European countries maintain their criticism and refuse to recognize in these changes a termination of the scheme's discriminating effect.

In addition, there is still the broad expert discussion inside Germany about the estimated revenues and whether there will be any net revenues for German infrastructure at all.

Potential impacts on border regions
A closer look at Germany's planned road toll scheme for private cars reveals that many negative impacts threaten the border regions:

Economically, German entrepreneurs close to the borders fear financial losses due to a declining number of customers from the neighbouring countries.
Ecologically, the toll system is likely to affect the environment negatively by deflecting traffic from the motorways to secondary roads.

Socially, there is a real risk of relaunching the barrier effect on the internal European borders, of restricting cross-border interaction and of creating a sense of discrimination on the other side of the border. It could also spark the introduction of similar toll systems in the Netherlands or Belgium. The introduction of the German system certainly makes a European harmonization of toll systems, as recently advocated by the European Commission, more difficult. For citizens and companies in the Meuse-Rhine Euregio, this could mean having to deal with many different toll systems in the future.

Addendum to article;

In 2019 the Court of Justice of the European Union stopped the planned tax. In the judgment (C-591/17 Austria/Germany), the Court found that the combination of the infrastructure charge and the exemption from car tax enjoyed by holders of vehicles registered in Germany constitutes indirect discrimination on grounds of nationality and is contrary to the principles of the free movement of goods and services.

This confirms the conclusions of ITEM. ITEM researchers Martin Unfried and Barbara Hamacher had not only identified the legal problems at the time, but also, and above all, the adverse effects on the border regions. It was noted that the proposed toll would penalise the inhabitants of border regions in particular, not only in neighbouring countries (e.g. commuters and companies), but also in Germany itself. For example, people living on roads with a sudden increase in traffic and entrepreneurs would have to bear the negative consequences of tolls. In addition, the study described a fundamental drawback of the German plan: the German toll would slow down the introduction of an EU-wide, kilometre-dependent solution, as proposed by the European Commission years ago, rather than help it forward. The current ruling of the European Court of Justice now offers the opportunity to find integrated solutions. This is particularly good news for border regions.

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Cross-border pensions

Belgian Royal Decree brings unemployment benefit for frontier workers into line with Dutch pension

Published on 28 January 2019

Sander Kramer
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With the Royal Decree of 12 December 2018, Belgium has solved the problem for the cross-border worker where the unemployment benefit does not match the Dutch pension. The new decision states that Belgian unemployment benefit for frontier workers does not stop at the age of 65 but continues until Dutch (foreign) pensions take effect. Because the Royal Decree has created some uncertainty in pension circles and among (near) pensioners, the most important facts are summarised here.

Problem sketch: creation of an income gap
According to the European Regulation (EC) No 883/2004 of 29 April 2004 on the coordination of social security systems, with regard to workers residing in Belgium and working in a country bordering on Belgium, such as the Netherlands, the country of employment is responsible for pensions, but the country of residence is responsible for unemployment. If this worker becomes unemployed, he is entitled to an unemployment benefit in Belgium ending at the age of 65. Only at a later age will he be eligible for AOW under Dutch law. In the intervening period, this frontier worker is confronted with an income gap. This is caused by the different pension ages for statutory pensions between the Netherlands and Belgium, and the lack of flexibility.

Example
Someone was born in 1955 and has been working for a Dutch employer since 1974, but lives in Belgium and is a frontier worker. He will be dismissed at the age of 64 in 2019. The frontier worker is eligible for Belgian unemployment benefit, which ends when he reaches the age of 65. The AOW only takes effect at 67 and 3 months, which in any case creates an income gap of 2 years and 3 months.

Solution = Royal Decree of 12 December 2018
The published Royal Decree - which entered into force retroactively on 1 January 2018 - attempts to provide a solution for this group of frontier workers. On the basis of this decree, the employee can receive unemployment benefit after 65 years in Belgium until he can claim a pension awarded by or pursuant to a foreign law, such as the Dutch AOW.
However, the scope of the new decision is no longer limited to workers employed in the Netherlands, but is extended to persons employed in a country bordering on Belgium. Furthermore, persons who live and work in Belgium but have in the past lived and worked for a long time in another country are not covered by this measure. According to the Council of State, this restriction of the circle of beneficiaries leads to a twofold difference in treatment between categories of persons, and the Royal Decree - and the explanation given herein - does not contain any elements that can reasonably justify the distinction.

Conditions for application
The revised provision does not take into account the age condition (i.e. 65 years) in order to remain entitled to Belgian unemployment benefit. Depending on the nature of the unemployment, different conditions apply. The following cumulative conditions apply to a temporary unemployed person:

1. The employee does not receive a pension within the meaning of Article 65 of the Royal Decree of 25 November 1991 on the regulation of unemployment; Article 65 stipulates that the unemployed person who can claim a full pension cannot receive benefits;
2. the employee applies for benefits as a temporary unemployed person after the month in which he reaches the age of 65;

3. temporary unemployment is not the result of a suspension of the execution of the employment contract due to force majeure caused by the employee's incapacity for work.

The following cumulative conditions apply to the wholly unemployed:
1. It concerns an employee who claims benefits as a wholly unemployed person (as a full-time or as a voluntary part-time employee);
2. the employee cannot claim a pension awarded by or pursuant to a foreign law;
3. the employee was usually employed as a blue-collar worker, employee or miner in a country adjacent to Belgium, and has kept his main residence in Belgium, and in principle returns there every day;
4. the employee provides proof that during a continuous period of at least fifteen years, and while he had his main residence in Belgium, he was linked to an employment contract with an employer established in the Netherlands.

If these conditions are met, the unemployed worker can continue to receive unemployment benefits after the age of 65, while for all other beneficiaries, entitlement to such benefits ends when that age is reached. However, under the scheme, there is no choice, after reaching the age of 65, between a pension or unemployment benefit.

Conclusion and remaining concrete problems
With the publication of the Royal Decree of 12 December 2018, the Belgian legislator seems to have complied with European case law. As of 1 January 2018, it will be possible for former frontier workers to continue to receive unemployment benefits after the Belgian maximum age of 65, provided that certain conditions are met.

Although the Royal Decree provides for the solution of a concrete problem for a targeted circle of people, a number of elements remain uncertain; the tenability of the restriction of the circle of eligible persons, the cumulation of old-age pension and unemployment benefits after the age of 65 and the interpretation of the concept of "pension" in terms of cumulation of Belgian unemployment benefits and foreign pensions. These problems require further Belgian guidelines to clarify the concrete implementation of unemployment benefits after the age of 65 when the above conditions are met.

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Mixed pensions: civil servants pension up for revision

Published on 20 April 2018 Pim Mertens

The statutory pension of civil servants in Belgium is on de verge of a reform. The legislative proposal 'mixed pension' will soon be introduced by law, after being the centre of intense debate for nearly a year. What exactly does 'mixed pension' mean?

Many pension systems make a distinction between civil servants and the private sector, including in Belgium. What if you have worked both as a civil servant and as a civil servant? How does the pension system deal with the granting of public and private pensions?

Under Belgian law, there is a special pension applicable for permanently appointed civil servants: the statutory pension of civil servants. This statutory pension is financed on a pay-as-you-go basis, whereby the working civil servants finance the pension benefits of the retired civil servants. The right to a statutory pension is accrued over the course of working years. In addition to permanently appointed civil servants, contract staff also work in the public sector (non-permanent employees). Contract staff are not covered by the statutory pension, but by the supplementary pension in the second pillar. When a contractually appointed person is appointed at a later date, the question posed above arises: how to deal with the years as a contractually appointed person? To date, in the case of permanent appointments, previous contractual years have been converted into statutory pensions. Any pension entitlements in the second pillar will lapse. In this way, the contractual years do not make any difference to the final pension, as the past contractual years have been converted into entitlements to statutory pension.

As a result of the coalition agreement, the mixed pension bill of 19 October 2017 puts an end to this automatic conversion. The law ensures that years of service as contractual are no longer taken into account for the statutory pension after permanent appointment. This results in a mixed pension: the (possibly) accrued occupational pension during the contractual years and the accrued statutory pension. There is a transitional arrangement for civil servants who were permanently appointed before 1 December 2017; they will only receive a statutory pension.

The introduction of the mixed pension is based on a number of arguments. In addition to the increase in life expectancy, and hence in the level of pension benefits, pay-as-you-go financing is also coming under pressure due to the declining wage bill. The number of permanent appointees is falling in comparison with the number of contract staff (non-permanent appointees). The result: a declining group bears an increasing burden. This pressure is exacerbated by Belgium's closed system, which means that the civil servants of the local communes/administrations pay the pensions of their retired civil servants. The last argument put forward is that the distinction between the treatment of permanent and contractual employees in the area of pensions is undesirable, as many of the same jobs are carried out.

Mixed pensions increase the importance of the second pillar in the public sector. However, Belgium has one of the lowest employee pensions in Europe. Within the public sector, too, not every local government has a supplementary pension scheme. A major effort is still to be made to facilitate an adequate pension payment for civil servants with a mixed pension. The law seeks to make a start by providing a financial incentive in the form of a reduction in pension contributions.

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Life certificates: a barrier to the free movement of pensioners

Published on 6 February 2017 Sander Kramer

Have you ever considered enjoying your retirement elsewhere, perhaps in a sunnier European destination? Based on the European Citizenship and the freedom of movement you are free to reside elsewhere in Europe. But are you truly free or are you obstructed in your freedoms?
One of these obstacles of the European freedoms of movement is the life certificate.

Pensioners continue to receive their Dutch pensions after emigration. This includes their AOW pensions and any supplementary pensions. One of the conditions is the annual submission of a Life Certificate. This obligation exists because no data exchange takes place between the Sociale Verzekeringsbank SVB (Social Insurance Bank) or Dutch pension funds on the one hand and the foreign municipalities, administrations, social insurance banks or pension funds on the other. This implies that the SVB or pension funds are not automatically informed by the foreign authorities of the life and death of the beneficiary living outside the Netherlands. This type of information exchange does take place for pensioners living in The Netherlands. Note that this obligation also applies to German or Belgian pensioners enjoying their pensions outside Germany or Belgium, respectively.

Life certificates are sent to foreign pensioners by the SVB or the relevant pension fund, usually digitally. The foreign pensioners are then obliged to fill out the document and have it signed by the foreign competent authority, e.g. the Dutch embassy or the foreign municipality, which typically incurs a legal fee or cost reimbursement. If the certificate is not completed and returned, the pension benefit will be suspended, thus ending the guaranteed Europe-wide export of pension benefits. Despite certain harmonisation measures, such as the 'Agreement on the issuing of Life Certificates', which was joined by the Netherlands on 3 August 2011, there are still differences in submission methods and times.

The established case-law of the European Court of Justice, including, for example, the Kohll, Martens, Turpeinen or Pusa cases, shows that national systems that harm certain individuals with the nationality of that country for the sole reason that they have exercised their right to move and reside freely in another Member State constitute a restriction of the freedoms that every citizen of the Union enjoys. The life certificates prevent

the free movement rights from taking full effect, as the pensioners are hindered in the exercise of these rights by legislation in their state of origin, i.e. The Netherlands, that harms them for having exercised their rights to free movement. In the light of European citizenship and the European freedom of people, and bearing in mind all the elements involved, this obligation to submit a life certificate can be considered an obstacle to the European rights of free movement.

Although the European integration and unification process can be seen as one of the major achievements of the Treaty of Maastricht, it is hindered by national administrative obligations. The initiative to resolve these bureaucratic and administrative obstacles to cross-border mobility and the exercise of the European freedoms lies with the Member States. Cross-border checks of 'being alive' can be performed in collaboration with external partners, such as social insurance banks, pension funds and (local) authorities, thus setting a good example for others to follow.

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The importance of a flexible AOW commencement date

Flexible retirement age as a solution for unemployed cross-border workers

Published on 5 October 2017 Bastiaan Didden

Last week, the Dutch and Belgian ombudsmen called on their governments to take action in the context of pensions problems for unemployed cross-border workers, aged 65, and living in Belgium. In response to this call, a possible solution by Expertise Centre ITEM is elaborated in this blog.

Making the statutory retirement age more flexible is a subject that has attracted a great deal of attention in recent times. The discussion focused in particular on people with heavy professions. However, a group of people who also benefit, as advocated several times by ITEM (see, among other things, this opinion paper on the Pension Pro website), from a flexible AOW retirement age, are the frontier workers.

Last week, this emerged once again from an appeal by the Belgian and Dutch ombudsmen to the Belgian and Dutch governments to come up with a solution for frontier workers aged 65 and living in Belgium who have worked in the Netherlands and have become unemployed. Unemployed Belgian workers who have not worked as frontier workers in the Netherlands will receive their Belgian statutory pension from that age. However, an unemployed frontier worker resident in Belgium who has worked in the Netherlands will receive his accrued (Dutch) statutory pension with effect from the applicable Dutch statutory retirement age, which is currently 65 years and nine months, 66 years from 2018 and from 2022, 67 years and three months.

As a result of the different statutory retirement ages in Belgium and the Netherlands, the aforementioned unemployed frontier worker ends up in a state of disarray. This is an undesirable situation, as it is estimated that 2,000 former frontier workers will be affected this year, which is why both ombudsmen are calling on the governments to take action.

As far as ITEM is concerned, this action could consist in further exploring the possibility of making the state pension age more flexible so that the Belgian and Dutch statutory retirement ages can be aligned. Certainly with a view to the future, as a result of the way in which the increase in the statutory retirement ages is regulated in both countries, a flexible AOW age could be an adequate solution for the unemployed 65-year-old Belgian frontier worker.

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Cross-border taxation

European Court of Justice allows Dutch tax credit reduction

Published on 13 March 2019 Pim Mertens

As of 1 January 2019, the tax part of the tax credit will no longer be automatically granted to frontier workers who work in the Netherlands but do not reside in the Netherlands. This constitutes an obstacle for frontier workers. ITEM has already questioned this before. Recently, the European Court of Justice (ECJ) issued an interesting ruling regarding the other part of the tax credit, the premium part: in this case, the Netherlands may proportionally reduce this part over time.

Case

The case concerns Zyla, a Polish national who worked and lived in the Netherlands from 1 January to 21 June 2013. After ending her job, she moved back to Poland. There she remained unemployed for the rest of 2013.

The European basic regulation for social security stipulates that Zyla, through her activities in the Netherlands, had been socially insured in the Netherlands in the period 1 January - 21 June 2013. Because of her activities, she was also liable to pay taxes in the Netherlands. Furthermore, she is entitled to the general tax credit, which consists of a tax part (for taxes) and a premium part (for social contributions). At the time, Zyla chose to be treated as a domestic taxpayer for the entire calendar year, with which the full tax credit can be obtained. However, in assessing income tax and social contributions, the Dutch Tax Authority reduced the premium part of the tax credit proportionally in time with the period that she did not live and work in the Netherlands.

In Europe, the free movement of workers applies, which means that foreign workers are entitled to the same social and fiscal advantages as domestic workers. Also, according to European case law, Member States must take into account the personal and family situation of foreign persons, who have earned the largest part of their income in the Member State concerned and who cannot make use of tax or social advantages in the Member State of residence. According to Zyla, the reduction made by the Tax Authority violates this European case law, resulting in discrimination based on the place of residence. Because Zyla's entire annual income is earned in the Netherlands and she has no income in Poland, she cannot get a similar benefit in Poland.

Judgment

Ultimately, the ECJ did not agree with Zyla. The Netherlands has opted for a social security system in which contributions must be paid. A number of other Member States finance social security from general tax revenues. The contribution part of the tax credit is designed to motivate people to continue working. To this end, the rebate is linked to the size of the premiums paid. Because Zyla no longer paid contributions, the ECJ initially ruled that there was no disadvantage. Even if there was a disadvantage, Zyla's situation, in which she was only socially insured in the Netherlands until 21 June 2013, is not the same as and comparable to the situation of someone who is socially insured in the Netherlands throughout the year. In conclusion, there is no question of unequal treatment.

The reduction of the premium part of the tax credit was applied on a time-proportional basis. In this way, the reduction was in line with the insured period. According to the ECJ, due to the different financing methods of social security systems within the EU, EU law cannot prevent movements between Member States in the social

field from being neutral and benefits from being lost. EU law only ensures equal treatment of foreign workers who pursue an activity in a Member State other than their State of residence compared to resident workers.

Consequence

It is, therefore, not only the tax part of the general tax credit that is the subject of discussion. In the case of the premium part of the general tax credit, this judgment shows that the Dutch Tax Authority may reduce it proportionately in time to the period insured. The different national systems and the national powers with regard to social security mean that cross-border activities do not have to be neutral. These do not constitute unjustified border obstacles.

Want to know more?

This ruling, just like other leading ECJ rulings, is further elaborated on the ITEM Cross-border Portal.

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Reducing administrative burdens through joint action!

Published on 14 June 2018 Kilian Heller

Current developments in the area of cross-country joint audits could reduce administrative burdens and enhance legal certainty. But, what are joint audits? This contribution shortly elaborates on the concept and the current developments of joint audits that could facilitate a cross-country concept of joint audits.

Have you ever wondered why different auditors are conducting inspections on work conditions, tax returns and proper payments of social security contributions?

Supply of labour to other companies nationally or across borders involves careful observation of several areas of law. Companies must comply with rules of each area and depending on the state involved, enforcement is often carried out by distinct authorities. Each of them following their own procedures and conducting their own form of controls.

Satisfying the demands of all administrations individually can be time-consuming, costly and cumbersome. In cross-border situations the matter becomes even more complex: More people are involved, and each country follows its own approach, when enquiring frequently overlapping information. Known ways to reduce administrative burdens and costs already exist and are currently explored. New developments at European Union (EU) level could be on the brink to provide further tools to improve the current situation. One way of improvement may be joint audits. But, what are joint audits? This contribution shortly elaborates on the concept and the current developments of joint audits that could facilitate a cross-country concept of joint audits.

What are joint audits, and why should we use them?

Joint audits offer a possible remedy for time and quality inefficiencies of traditional audits as they operate at a deeper level of cooperation among administrations. Instead of two or more teams of auditors, in a joint audit only one team composed of auditors of both administrations works on a case and produces one final report. Thus, the one-sided information gathering of traditional cooperation is replaced by a joint-information gathering and evaluation team.

Breaking unintentional 'Chinese walls' between social security, tax and labour law enforcement in domestic as well as cross-border situations to reduce administrative costs, save time and increase quality!

In cross-border tax conflicts and EU Social Security Coordination situations, there are various tools administrations can use to obtain information for the assessment. The most prominent tool is Exchange of Information (EoI), which is laid down in international conventions, EU directives, regulations and decisions. EoI represents a one-sided approach of administrative cooperation where one administration asks the other for information pertaining to the same area. The audits however, are conducted separately in each state, even though both countries are eager to determine whether tax or social security has properly been paid to the right administration. As a consequence, the company will have to report to each administration and can become the intermediary between administrations. A lack of direct communication between the administrations can lead to conflicts of interpretation which in turn leads to slow progress and uncertain outcomes.

In practice

Especially in the field of international tax law, joint audits have gained more and more attention ever since the OECD Joint Audit Report was published in 2010. Various countries launched pilot projects to conduct joint audits, one of which was carried out between Germany and the Netherlands. The project started in 2013 and ended in 2014. During that time five joint audits were conducted following the OECD principles for joint audits. Another pilot project was conducted between Germany and Italy, with similar results. Even though not all went according to the book, auditors concluded that cooperation was definitely enhanced, but that these projects represent only the first steps. Thus, cross-border joint audits have a great potential for all tax areas as well as non-tax areas. For international tax law purposes joint audits are also a way to avoid lengthy Mutual Agreement Procedures, which are the last resort to solve an unclear tax situation.

Advantages and challenges

Joint audits are pro-active, can increase the quality of the assessment, reduce the contact necessary between party under scrutiny and authorities, and prevent conflicts arising between administrations. Additionally, the existing 'Chinese walls' between social security, tax law and labour law crack open when auditors start looking over the fence and directly communicate with each other. The current legal framework in many countries however does not foresee such an interaction at this point.

Despite the many advantages cross-border joint audits might have, they do not come without difficulty. Different information or interaction standards of the countries involved might conflict. Language can become a challenge for a proper assessment and other potential obstacles include timing mismatches in procedures or logistics and resource constraints.

However, I am convinced once established, joint audits may have many more advantages apart from the ones mentioned above. Joint audits could lead to common practices, jurisdictions having the possibility to learn from each other and identify best practices. Direct interaction between inspectors can greatly enhance communication among the authorities, also in light of future joint assessments. Pilot projects as mentioned above are proof of that.

Current EU Developments with great potential

For social security and labour law great potential lies in the recent proposal for a European Labour Authority (ELA), which shall come into being in 2019. The ELA may become a promising tool to encourage administrative cooperation through cross-border joint audits in social security and labour law. Whether or not tax falls within the competences of the ELA remains to be seen but is unlikely. Currently, the objectives of the ELA encompass the support of cooperation between national authorities to protect compliance with EU law and prevent fraud.

Therefore, one way ahead could be the introduction of joint audits between Member States. As the concrete tasks of the Agency are still unclear, the future will show how influential the new entity is going to be.

Ultimately, what would be desirable is not only having cross-border joint audits in one area of law but having one joint audit for all the three areas to solve a situation of conflict as efficient, timely and accurately as possible. The concept of a joint audit may however not only be interesting for cross-border situations, also cross-administrative joint audits may yield great results. This however is still a utopian idea and the momentum for such a move forward is yet to come. Nonetheless, joint audits are a promising new approach, which should be explored not only between authorities in cross-border tax audits, but also amongst authorities responsible for the other areas of law.

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Limitation of tax credit for frontier workers working in the Netherlands: tested for border effects?

Published on 23 October 2018 Marjon Weerepas

In the Bill on Other Fiscal Measures 2018, it is proposed that from 2019 onwards, only the tax part of the tax credits to which non-qualifying foreign taxpayers from the country concerned are entitled in the income tax will be applied in the payroll tax for all foreign frontier workers. On the basis of the proposed measure, only the tax part of the labour tax credit will be applied to foreign taxpayers from the circle of countries (to which Belgium and Germany belong) as from 2019 in the payroll tax. In the case of foreign taxpayers from third countries, the tax portion of any tax credit will not be applied. For taxpayers who belong to the so-called 'country circle', they are only entitled to the tax part of the labour rebate in the payroll tax.

In short, the measure means that the foreign taxpayer - i.e. the frontier worker working in the Netherlands from Belgium and Germany - can no longer use the payroll tax to make tax credits available. This should, if possible, be done afterwards by means of the personal income tax assessment.

This measure raises a number of questions. Belgian and German border workers in particular are likely to be adversely affected by this measure. It is feared that by introducing this measure, these border workers will no longer be willing to work across the border. As a result, it becomes more difficult for Dutch employers in the border region to find personnel. In addition, the question arises as to whether Dutch employers will now have to solve all problems relating to pay slips for foreign workers. If that is the case, the administrative burden on these employers and their frontier workers will increase.

Another question is what incomes will be affected by the measures in particular. Are these particularly low incomes? After all, a large number of tax credits depend on taxable income or labour income. For example, the general tax credit depends on the amount mentioned in the first column (€ 19,982 (figures for 2017)). For taxable income from work and housing above this amount, the general tax credit will be reduced. For taxable incomes above € 67,068, there is no longer a general tax credit. Finally, how long will it take for a frontier worker to cash in on his tax credit? After all, he has to do it afterwards via the IB assessment.

In short, it seems that no border effect test has been carried out with respect to this proposal.

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Abolishing the 30%-facility? Look before you leap!

Published on 12 April 2017 Marjon Weerepas

The 30%-facility is regularly discussed in both case-law and politics. The facility is currently under pressure and facing turbulent times. With a potential abolition, which may become reality, particular attention must be paid to the effects and possible alternatives.

The 30% scheme currently faces turbulent times and is under pressure. The 30% tax ruling is a facility within payroll tax that allows for 30% of the salary to be enjoyed free from tax. Both incoming and outgoing employees can use the scheme for up to eight years, under certain conditions. The conditions for incoming employees include, among other things, having specific expertise and having resided in The Netherlands at more than 150 km from the Dutch border for more than two-thirds of the period of 24 months prior to previous employment. In addition to businesses, Dutch universities make regular use of the 30% scheme to attract sufficient numbers of specialised staff.

The scheme is regularly invoked in case law. There was an important ruling, for instance, on the 150 km limit: the Sopora ruling. (*ECJ 24 February 2015, Case C-512/13, ECLI:EU:C:2015:108, BNB 2015/133, m.nt. G.T.K. Meussen, NJ 2015/316, with notes by J.W. Zwemmer*) Knowledge workers who live and work in the Netherlands within the 150 km zone from the border are not allowed to use the 30% scheme. A further distinction is made between foreign taxpayers who live within the 150 km zone and those who live outside. The Court of Justice considers that the requirement is not contrary to Article 45 TFEU, unless the limit is set in such a way that the exemption systematically leads to clear overcompensation of the extraterritorial costs actually incurred. The Supreme Court caused turbulence with its judgement after the Sopora ruling, holding that the scheme does not cause systematic overcompensation. This does not apply to individual overcompensation but systematic overcompensation. (*ECJ 24 February 2015, Case C-512/13, ECLI:EU:C:2015:108, BNB 2015/133, with notes by G.T.K. Meussen, NJ 2015/316, with notes by J.W. Zwemmer*)

Not only for magistrates, but also in the political arena, the 30% scheme is the object of discussion. At this moment there are calls for abolishing the 30% scheme, including, for example, in the election programmes of political parties SP, PvdA, Groenlinks, DENK, SGP and VNL. D66 proposes a task-setting limit by € 0.5 billion to the 30% scheme of limit the tasks, while CU and SGP advocate limiting the use of the 30% scheme to salaries lower than or equal to the Prime Minister's salary, the so-called *Balkenendenorm* (after former Dutch Prime Minister Jan-Peter Balkenende who introduced the concept). In addition, the CU wants to limit the use of the scheme to five years. (*Sjaak Janssen, De fiscale ideeën in de verkiezingsprogramma's, WFR 2017/49*) Of course, this depends on the outcomes of the formation process and the subjects outlined in the coalition agreement. We can only hope that all the pros and cons and all the consequences have been weighed and taken into account before the decision to abolish is made. Another option is to explore possible alternatives, such as altering the percentage, having employers reimburse the actual extra-territorial expenses, and adjusting the period of eight years.

One might also look abroad in the search for alternatives. It is remarkable that many European countries have facilities for specialized staff that are similar to the 30% scheme. Some are directly comparable to the Dutch facility, such as those in Italy and Sweden, while others may consist of a tax exemption for certain sources of income, like in Belgium, or offer a reduction in the applicable tax rate, e.g. in Denmark, among others. Many such schemes include the specific expertise requirement (Belgium, Denmark, Finland, Sweden and Portugal), and they are generally limited in time. Sweden, for example, has set a period of three years. *(Kamerstukken* II, vergaderjaar 2011/12, 33 003, no. 10, p. *69-70*) Germany is the great exception; it does not have such a scheme.

The consequences for the staffing policy of universities are unknown should the Netherlands indeed abolish the 30% scheme. It is to be hoped that the legislator explicitly pays attention to the consequences of abolition for universities and other educational institutions in the discussion of the amendment of the 30% scheme.

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European Union citizens

Brexit and citizenship I: retention of EU citizenship

Published on 22 October 2018 Anne Pieter van der Mei

The entire structure of Article 50 TEU implies that it is up to a Member State to withdraw from the Union without there being any limitation imposed by EU law as to the reasons for the withdrawal, how this decision is taken or the extent to which that Member State takes into consideration the interests of its own nationals. If a Member State decides to exit the EU, and thus to strip their nationals of EU citizenship, it is perfectly entitled to do this. The EU, including its highest court cannot and should not alter this.

The UK's decision to withdraw from the European Union has triggered much debate on the legal status of UK nationals living in an EU-27 Member State and EU citizens living in the UK. Fearing a Hard Brexit, politicians, NGOs as well as academics have suggested diverging options for ensuring that all EU citizens who, prior to Brexit-day have exercised their free movement rights, will be able to retain their residence and equal treatment rights.

The various ideas and proposals all seem to be based on the presumption that Brexit will imply loss of EU citizenship for UK nationals. This is logical. The wording of Article 20 TFEU – "[E]very person holding the nationality of a Member State shall be a citizen of the Union" - makes clear that to be an EU citizen one must a Member State national. Loss of a Member State nationality implies automatic loss of this privileged status. When a Member State withdraws from the EU its nationals become third country nationals.

Earlier this year, however, an Amsterdam court expressed doubts about this reading of Article 20. This court was faced with a case that was initiated by UK nationals living in the Netherlands who claimed that the Dutch State and/or the city of Amsterdam had to take measures to ensure that they could continue to enjoy EU citizenship rights after Brexit.

Referring to case law of the Court of Justice, and *Rottmann* in particular, the Amsterdam court observed that EU citizenship now constitutes an own autonomous source of rights and that decisions implying loss of Member State nationality must be proportional. In the court's view, it is far from sure that loss of national citizenship implies loss of EU citizenship. The Amsterdam stated its intention to ask the Court of Justice whether a hard Brexit indeed implies that UK nationals will become 'ordinary' third country nationals.

In the end, however, no preliminary question was send to Luxembourg. It is not clear to me why the Amsterdam court thought that UK nationals might keep EU citizenship after Brexit. It may very well be that EU citizenship has evolved to become a fundamental status that may constitute an autonomous source of EU rights, and that the Treaty demands that EU citizens can genuinely enjoy EU citizenship rights. From that, however, no conclusion can be drawn about a possible retention of EU citizenship itself. The Dutch court suggests that EU citizenship can possibly be retained because of *Rottmann*.

In this ruling the Court of Justice held that Member States must, before taking a decision withdrawing "their" nationality, consider the consequences of such a decision for the person concerned as regards the loss of the rights he/she enjoys as an EU citizen. It is hard to understand, however, why or how the Court's line of reasoning in *Rottmann* can be extended to situations in which a Member State national loses his/her nationality as a result of the decision of his/her Member State to step out of the Union. A decision to withdraw nationality in individual cases and a decision to withdraw as an entire State from Union are not in any serious manner comparable. The entire reasoning of the Court was clearly geared towards the specific individual situation in which Mr Rottmann found him. It simply does not make much sense to draw from this reasoning conclusions for the entirely different

situation of Brexit in which millions could lose EU citizenship as a result of collective decision adopted in accordance with their own democratic rules to exit the EU. Article 20 TFEU makes it patently clear that EU citizenship is derivative in nature. In *Rottmann* nor in any other ruling did the Court cut through EU citizenship's exclusive and absolute link with Member State nationality. From existing case law one, arguably, can only draw one logical conclusion: for UK nationals, Brexit implies loss of EU citizenship.

Of course, (some) UK nationals might hope for an activist Court that in a next case will be willing to change its position. The Court is well advised, however not to do so if it does not wish to be accused of acting contrary to the Treaty drafters' goals. In Maastricht the drafters made it patently clear that it is the Member States that decide on nationality and thus on who possesses EU citizenship. In Lisbon, by including Article 50 in the TEU, and thus by ordering the EU to negotiate and conclude an agreement with the exiting Member State governing the arrangements for withdrawal, the Treaty drafters made it clear that a possible retention of EU citizenship and the rights linked to it is a task for the political EU institutions, not for the Court. The entire structure of Article 50 TEU implies that it is up to a Member State to withdraw from the Union without there being any limitation imposed by EU law as to the reasons for the withdrawal, how this decision is taken or the extent to which that Member State takes into consideration the interests of its own nationals. If a Member State decides to exit the EU, and thus to strip their nationals of EU citizenship, it is perfectly entitled to do this. The EU, including its highest court cannot and should not alter this.

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Brexit and citizenship II: Associate EU citizenship

Published on 23 October 2018 Anne Pieter van der Mei

Why would the EU at all consider unilaterally offering a new status to British (or other former EU) citizens without there being any reciprocal status or legal protection for EU citizens living in the UK (or any other exiting Member State)?

As stated in a previous blog ("Brexit and Citizenship I: Retention of EU Citizenship") politicians, non-governmental organisations as well as academics have made proposals on how to protect the rights of in particular UK nationals living in an EU-27 Member State post-Brexit. The most interesting one among the suggested proposals are those calling for the introduction of an associate EU citizenship. The original idea, if I am correct, stems from the mind of the European Parliament's Brexit coordinator, Guy Verhofstadt. In December 2016, Verhofstadt suggested a form of EU 'associate citizenship' status that would allow individuals to "keep free movement to live and work across the EU, as well as a vote in European Parliament elections". MEP colleague Goerens supported the idea and added that "[f]ollowing the reciprocal principle of 'no taxation without representation', these associate citizens should pay an annual membership fee directly into the EU budget."

The idea of an associate EU citizenship has proven to be controversial, with some indeed advocating it and others (strongly) opposing it. Discussions on this status are not always easy to understand, partly because it is not truly clear what associate European citizenship would actually entail. To be sure, associate European citizenship would differ from EU citizenship itself. Those who favour it do not seem to call for a retention of the status established by Article 20 TFEU but rather for the creation of a new status. Further, it would be a status to be granted or offered to nationals of former Member States and not, for example, to third country nationals who have acquired long-term residence status. Third, in terms of substance, the new status would encompass the most important EU citizenship rights: free movement rights (presumably including equal treatment) and active voting rights in European Parliament elections.

Numerous aspects, however, still remain unclear. For example, will paying a fee into the EU budget be a requirement, as MEP Goerens suggested? The issue certainly is relevant for the legitimacy of Associate citizenship and reminds us of the 'citizenship-by-investment' of Malta, and a few other Member States. The Maltese programme has proven quite controversial *inter alia* because of a free rider problem. By buying Maltese citizenship, a country with which they may have no genuine link, third country nationals could acquire EU citizenship and, subsequently, move to other Member States, which otherwise would never have admitted them. This free rider problem would not exist if one were to introduce associate citizenship at EU level. Yet, is it desirable to ask a price for a citizenship-like status, to commercialise it? Will it be a new status based on a genuine link that its holders have with the EU or one of its Member States, or will associate EU citizenship be a tradable good?

A next question that then arises is who would be the beneficiaries of this new associated citizenship? Concretely in the case of Brexit: will only the Brits who have moved to another Member State and have lived there for a given period of time be given the right or option to become associate EU citizens, or also those who have never done so and find themselves in 'purely internal British situation'? The answer to this question is relevant because it triggers the subsequent question of what the actual aim of associate citizenship would be: is it just a means to ensure the continuation of rights for nationals of exiting Member States living in other EU Member States, or does it have an own intrinsic or more deeply motivated aim? If the former is the case, why would UK nationals who have never settled across the Channel still need to have a right to vote for the EP? Those who wish to include EP election rights for this category of UK nationals must have something else or more in mind. Yet, what exactly? Even though the term 'associate citizenship' is used, is it not that this is meant as a covert way to make sure that Brits, and potential other future ex-Member State nationals, can nonetheless retain EU citizenship?

It is of course perfectly possible that advocates of associate European citizenship themselves do not exactly know what they are proposing or what the implications of their proposal might be. As noble as their motives may be, if these advocates have more in mind than merely freezing the legal status of UK nationals living in 'Europe', one must be cautious. Critical questions must be addressed. If this envisaged status is meant as a status separate from EU citizenship, yet encompassing the same or very similar rights as the latter, does it not undermine EU citizenship? Even if it were established that the EU can formally confer all rights that it offers to its own citizens to third country nationals, does the very existence of EU citizenship not command restrictions? Further, and recalling what has previously been said about Article 50 TEU, why is there at all a need for the EU to consider introducing a new status to the benefit of people who have collectively, and fully in accordance with their own internal constitutional norms and procedures, decided to step out of the Union and decided to give up their EU citizenship? Apparently, the majority who voted in favour of Brexit did not consider EU citizenship important enough. And whatever others may think of this choice, the choice to leave the EU made was entirely legally. Those who voted to remain simply have to accept that they, as a result of UK constitutional rules, lost the battle and, with that, EU citizenship and all rights flowing from this status. In fact, by offering one-sidedly associate citizenship to those UK nationals who wish to remain part of the European integration project, the EU is meddling in the internal affairs of a former Member State in which it arguably should not meddle.

Finally, and perhaps most importantly, why would the EU at all consider unilaterally offering a new status to British (or other former EU) citizens without there being any reciprocal status or legal protection for EU citizens living in the UK (or any other exiting Member State)? The number of EU citizens in the UK far exceeds the number of UK nationals living in 'Europe'. As noble as it may be to show legal and political compassion with UK nationals in EU-27 Member States, the EU's main commitment does not, or at least should not, lie with them but rather with EU citizens living in the UK. The EU should not give in to the pressure of all those who – often quite annoyingly – place so much emphasis on the negative implications of Brexit for UK nationals living in the EU without giving equal (if any at all) attention to the rights and interests of EU citizens residing in the UK. Reciprocity is a must. Without it, introducing associate European citizenship is an idea that is doomed to be rejected by EU citizens. ∞

Who is a spouse for the purpose of EU free movement law?

Published on 22 January 2018 Alexander Hoogenboom

Union citizens have the right to be accompanied by their 'spouse' when exercising their mobility rights. But what if your spouse is denied right of residence because the destination Member State does not recognise your marriage? A battle in which the stakes ride high

Suppose you, a Union citizen, legally married your non-EU partner in an EU Member State. Subsequently you decide to move to another EU Member State to take up an exciting employment opportunity. When registering with the immigration authorities, however, you are told that your marriage will not be recognised. As a consequence, your spouse is denied a right of residence. As you see your dream collapse around you, you ask yourself the following question: what is the point having the right to move freely in the EU if you cannot bring your family?

In the case of Coman, the Court of Justice is faced with the question whether mr. Hamilton, the same-sex US national partner of mr. Coman, a Romanian national, can be denied the status of 'spouse' by Romania despite a legal marriage concluded in Belgium, with the result that the former cannot benefit from a right to work and reside in Romania.

Advocate-General Wathelet in his Opinion in the case is clear. Under the relevant legislation, Directive 2004/38 (applied here by analogy due to a peculiarity of EU law), Union citizens have the right to be accompanied by their 'spouse' when exercising their mobility rights. This term was deliberately chosen to be neutral and does not intrinsically refer to heterosexual couples only.

Taking due regard to the evolving context in which EU law operates, Wathelet eventually finds that the combination of the need to protect and respect family life and the principle of non-discrimination on grounds of sexual orientation requires the interpretation that 'spouse', for the purpose of EU free movement law, includes same-sex partners whose marriage has been concluded in accordance with the laws of a Member State of the EU. It follows that mr. Hamilton must thus be recognised as a 'spouse' of mr. Coman by Romania.

One can only agree with this conclusion. There are indeed a plethora of human rights-related arguments that could be made: from the right to family life, to non-discrimination on grounds of sexual orientation to simply invoking the right to human dignity to argue that a society must recognise and respect deep relationships formed by consenting adults. However, the outcome of the Court of Justice is perhaps of significance beyond even this.

We have seen that the Commission has finally been willing to intervene and defend the *Rechtsstaat* against the machinations of the Polish government. We have seen that the EU negotiation team has given no ground on the matter of protecting Union citizen's rights in the Brexit negotiations. The Court of Justice of the EU now has the duty to show that the EU is able to take a stand on controversial issues without there being a clear consensus among the Member States. To show that the EU treats, within its legal framework, with equal concern and with equal respect the legal bonds formed between two human beings, irrespective of their gender.

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Cross-border crime

Tackling drug-related problems in Maastricht should be continued and deepened

Published on 4 October 2018 Hans Nelen

The approach of drugs related problems in Maastricht, with the help of a specially equipped project Frontière, based on the decrease of visible nuisance in the city over the recent years, has so far been successful.

Many reports from citizens and shopkeepers have resulted in enforcement actions. The tried and tested communication strategy in the project, consisting of extensive feedback to reporting agents and intensive and well-considered communication about drug related events in the districts of Maastricht, has paid off without a doubt. Nevertheless, Maastricht should not rest on its laurels. A deepening of the approach to gain a better understanding of the underlying structures and networks of drug traffickers would be an advantage. Integrity can also be strengthened by allowing other partners such as the municipality and the police to put their stamp on the approach.

These are the main conclusions and recommendations from the evaluation study of the Frontière project carried out by Prof. Hans Nelen - Professor of Criminology at Maastricht University's Faculty of Law - and researcher Kim Geurtjens. Frontière refers to the integrated approach to drug nuisance in Maastricht, as it has been designed since 2012.

From the outset, Frontière relied on three pillars: information and monitoring, an enforcement strategy and a communication strategy. The research makes it clear that Frontière's main objective, to reduce the visible drug-related nuisance in the city of Maastricht, has been achieved. Although this result cannot be attributed exclusively to Frontière, the project did make a substantial contribution to it. The administrative measures taken in the context of the project - such as area denunciations, gathering bans, property closures, etc. - were particularly important in this respect. The criminal and financial approach was not as effective as intended.

A second important conclusion is that the communication strategy has resulted in more appreciation from citizens and entrepreneurs, a broader public support base and an improved information position. The systematic feedback of information from the project to citizens and entrepreneurs who had contacted the drugs hotline is regarded as one of the most highly developed parts of the project.

Based on the available quantitative data, it appears that the drug problem in the city of Maastricht will have diminished in size and severity from 2015/2016 onwards. The report does, however, make an important reservation in this regard, as it is likely that - partly as a result of the digitisation of society - the drug trade is less visible today than it was a number of years ago. The possibilities offered by the Internet have had a significant impact on the dynamics of drug trafficking. Apart from these social developments, Frontière's activities were primarily aimed at reducing the visible nuisance and, in most cases, there were no opportunities for further research into the underlying structures and networks of drug traffickers. As a result of the reorganisation between 2015 and 2017, the police's commitment and involvement in the project declined, so that in recent years there has been a greater rather than a greater understanding of the nature and seriousness of the underlying problem.

At the end, the final Frontière evaluation report explores the possibilities of obtaining a better picture of drug-related nuisances and crime in Maastricht and the surrounding area. It also considers the preconditions that need to be met in order to be able to speak of a truly integrated approach to the drugs problem.

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Is a ban on outlaw motorcycle clubs effective?

Published on 3 March 2017 Kim Geurtjens

In Germany, various chapters of outlaw motorcycle gangs have been prohibited over the last decades. The Netherlands are currently working on a case to effectuate a ban. However, the effectiveness of a ban to tackle (organised) outlaw biker crime remains to be seen.

These days, motorcycle clubs such as the Hells Angels are associated with disturbances of public order, e.g. public drunkenness, intimidating presence and assault on the one hand, and with cross-border organised crime such as the trafficking of drugs, arms, and people on the other. For these reasons, governments often refer to them as criminal motorcycle clubs or outlaw motorcycle gangs.

In Germany the Minister of Internal Affairs of a Federal State (Bundesland) can prohibit organisations whose objectives and activities violate criminal law, the constitutional order or go against the peaceful coexistence of nations. Such a prohibition may, among other things, lead to the seizure of the organisation's assets; non-compliance with the prohibition can be sanctioned through criminal law.

In the Netherlands, the Public Prosecutor can request the court to prohibit organisations whose actions violate public order. Previous attempts to prohibit local Hells Angels chapters in this way have failed. According to the judiciary, the facts, which included intimidation, drugs and arms trafficking and inexplicable cash flows, were not evidence of the commission of organised, large-scale criminal offences of such a serious nature to justify a ban. In addition, the courts emphasized that the right of association is a great good within a democratic society, only to be curtailed in exceptional cases. In November 2016, the Public Prosecutor requested the Utrecht court to ban the Bandidos motorcycle club.

While the Dutch courts emphasised the right of association in previous cases, the German Bundestag instead tightened the Association Act in January 2017 to prevent abuse of the right of association. The amendment provides for a ban on the use of club symbols related to already prohibited clubs.

As recent as 2012 and 2015 Germany saw a ban on the Aachen chapter of the Bandidos and the Cologne chapter of the Hells Angels, respectively, as well as on their various supporting clubs, i.e. clubs that are subordinate to a prominent club. In addition, 2015 marked the first nationwide ban of an entire motorcycle club: Satudarah from the Netherlands. But does a ban aid the fight against criminal motorcycle clubs?

In Germany, members of prohibited motorcycle clubs have been known to simply switch clubs in some cases, or a support club takes over when the prominent club has been dissolved. In addition, members of prohibited motorcycle clubs who have not switched clubs will no longer be identifiable to police and justice by their group symbols. This is particularly problematic with respect to members engaged in organised crime, of whom it is suspected that they go underground to continue their activities. In addition, there is fear of a relocation of criminal activities.

Proponents, however, point to the potential of a ban for closing down clubhouses, clamping down on individual members and banning group symbols. This would especially benefit the enforcement of public order and safety, since the presence of the prohibited club through its group symbols could no longer be used as a means of intimidation. It also sends a clear signal: criminal motorcycle clubs will not be tolerated.

In short, while a ban on criminal motorcycle gangs may provide leads for resolving public-order issues, it will probably change little to the involvement of criminal club members in organised crime.

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Maastricht University

Cross-border Impact Assessment 2018

Summary

The *Institute for Transnational and Euregional cross-border cooperation and Mobility / ITEM* is the pivot of scientific research, counselling, knowledge exchange, and training activities with regards to cross-border cooperation and mobility.

ITEM is an initiative of Maastricht University (UM), the Dutch Centre of Expertise on Demographic Changes (NEIMED), Zuyd University of Applied Sciences, the City of Maastricht, the Euregio Meuse-Rhine (EMR), and the Dutch Province of Limburg.

Table of Contents

1. Introduction

The Institute for Transnational and Euregional cross border cooperation and Mobility / makes a scientific contribution to cross-border mobility and cooperation. One of its core activities is to analyse border effects in its annual Cross-border Impact Assessments. Since its foundation in 2015, ITEM has conducted three such impact assessments. The present report is the latest edition of the Cross-border Impact Assessment.[1]

Through its Cross-border Impact Assessment, ITEM offers additional insight into European and national legislative and policy initiatives. ITEM's impact assessment intends to provide a valuable resource for policy makers at the regional, national and European level when they make decisions concerning border regions. In particular, these annual impact assessments support the identification of existing or future border effects and thereby contribute to the political debate. Moreover, the results of the individual dossier research also allow timely adjustments to be made to legislative proposals during their adoption phase.

The ITEM Cross-border Impact Assessment serves a dual purpose, namely to recognise potential negative or positive effects of planned legislative or policy initiatives *ex ante* and to identify negative or positive cross-border effects of existing policy or legislation (*ex post*). By fulfilling this purpose, the report can contribute to a better *ex ante* and *ex post* evaluation of legislation and policy for the Member States and regional legislators. Furthermore, the method employed in these impact assessments may be of added value to the European Commission's ex ante impact assessment and the evaluation of existing legislation. In this context, the European Commission's Directorate-General for Regional and Urban Policy (DG Regio) considered the Cross-border Impact Assessments carried out by ITEM a good practice in its Communication 'Boosting growth and cohesion in EU border regions'.[2] In that same Communication, the Commission stressed the importance of the identification of cross-border impacts in legislative and policy processes and made it an explicit action point.[3] Awareness of the relevance of cross-border impact assessments is also growing at the national level. For example, the Dutch Secretary of State Knops recently recognised the importance of assessments related to potential cross-border effects during a debate of the House of Representatives.[4]

Various instruments aimed at the assessment of cross-border effects exist at the European and national levels. Examples of such initiatives include the European Commission's Regulatory Impact Assessment, the ESPON Territorial Impact Assessment, and the Impact Assessment Toolkit for cross-border cooperation of the Euroinstitut and the Centre for Cross Border Studies. Each of these initiatives has a different focus and objective. ITEM's Cross-border Impact Assessment is complementary to such existing evaluations. This complementarity of ITEM's report mainly consists of its particular focus on a designated border region.

[1] All ITEM Cross-border Impact Assessments may be consulted via the following link: https://www.maastrichtuniversity.nl/research/institutes/item/research/item-cross-border-impact-assessment.
[2] Communication from the Commission to the Council and the European Parliament – Boosting growth and cohesion in EU border regions, COM(2017) 534 final, p. 8.
[3] Ibid.
[4] *Kamerstukken II* 2017/18, 32851, 47, p. 18-21.

Conducting in-depth and border-specific impact assessments may be difficult at the European and even at the national level due to the great differences that exist among European border regions. A 2016 study commissioned by the European Commission highlights the needs of border regions according to their particular features and shows the extent to which border regions differ from one another.[5] Therefore, the existing differences in border regions complicate the exercise of European level cross-border impact assessments. At the same time, suggesting that in-depth and border specific impact assessments be carried out at the national level by line ministries may also be a difficult proposition, as the diversity of border regions may also be large at the national level. Germany, for example, has nine neighbouring countries comprising numerous cross-border territories.

Despite these challenges, plenty of action is undertaken at the European and the national levels to tackle them. For example, ITEM experts are currently involved in DG Regio and ESPON projects, which aim at improving the methodologies for EU level Territorial Impact Assessments focused on cross-border territories. When looking at the national level in the Netherlands, the Dutch government is currently discussing how to improve its own policy assessments with regard to border effects with ITEM.

The idea is that cross-border effects should ideally be assessed at all levels: European, national and regional. Considering the large number of border regions and the diversity of their characteristics, there is only so much European and national level impact assessments can map. This gives rise to the need for supplementary small-scale and bottom-up cross-border impact assessments conducted by actors in specific border regions. These in-depth border specific impact assessments could, in turn, contribute to national and European evaluations identifying the cross-border impact of legislation and policy.

ITEM's annual Cross-border Impact Assessment therefore seeks to cater to the existing need for in-depth and border specific impact assessments by evaluating cross-border effects for a wide variety of topics. The present document contains a summary of the results of the 2018 ITEM Cross-border Impact Assessment. This year's impact assessment consists of seven dossiers covering very different topics and researching both existing as well as prospective legislation and policy. Topics ranged from the *ex ante* assessment of the proposed German *Baukindergeld* and the evaluation of the proposed Dutch pilot project on legal cannabis cultivation to the *ex post* assessment of the social security position of the non-standard worker and the analysis of different existing national regulations on retirement age.

2. Creating the ITEM Cross-border Impact Assessment: Process and Method

2.1 The Impact Assessment Process

Despite the differences in topic, researchers of the Cross-border Impact Assessment each apply the methodology developed by ITEM. The research for the impact assessment comprises three stages. In the first stage, the topics to be included in that year's impact assessment are identified by means of a survey which allows stakeholders and other interested parties to inform ITEM about legislation and

[5] SWECO et al., Collecting solid evidence to assess the needs to be addressed by Interreg cross-border programmes (2015CE160AT044) Final Report 2016, European Commission.

policy having potential cross-border effects. Apart from this survey, topics are also identified following ITEM's core activities, among others, when conducting scientific research, undertaking counselling activities, knowledge exchange and trainings. During the second stage, the ITEM Cross-border Impact Assessment Working Group assesses the suggested topics. During this assessment phase, the working group (consisting of representatives of partner organisations) focuses on the topicality of the issue, the relationship to ITEM's research focus, the number of requests submitted and the frequency of the issue. Once the topics have been identified, the third step may commence meaning researchers initiate their research. This research is documented in separate dossiers which together form the ITEM Cross-border Impact Assessment of that year.

2.2 Applying the Method

Demarcating the Research – What is a Border Region?

Researchers taking part in the Cross-border Impact Assessment follow the same methodology developed by ITEM, which begins with the definition of the border region. As mentioned above, ITEM aims to fill the existing gap calling for more border specific impact assessments. The borders forming the topic of analysis of the ITEM Cross-border Impact Assessment are the cross-border areas surrounding the borders of the Netherlands, Belgium and Germany. This concerns a broad definition relating to the whole of the impact assessment. Different topics may call for a different definition of the border. Therefore, this definition will be refined further in the individual dossiers of this report, as appropriate to the subject. The idea underlying this dossier-based definition of the border is that general observation reveals few if any generic causes of the cross-border effects. These issues are rooted in the national implementation of European law, the level of coordination between the neighbouring countries and the way in which certain national legislation or policy is shaped.

Furthermore, it is important to stress that ITEM strives to maintain a truly cross-border perspective in relation to the border region (as opposed to a national one). The choice for such a perspective is a deliberate one, as it avoids the focus being placed on the national perspective. Doing so may result in a bias favouring one nation's perspective on a certain matter as opposed to representing a genuinely cross-border perspective. In order to represent this perspective as much as possible the starting point for the ITEM Cross-border Impact Assessment is not only the border region of the Netherlands, Belgium and Germany, but especially the cross-border Euregions located within that area.

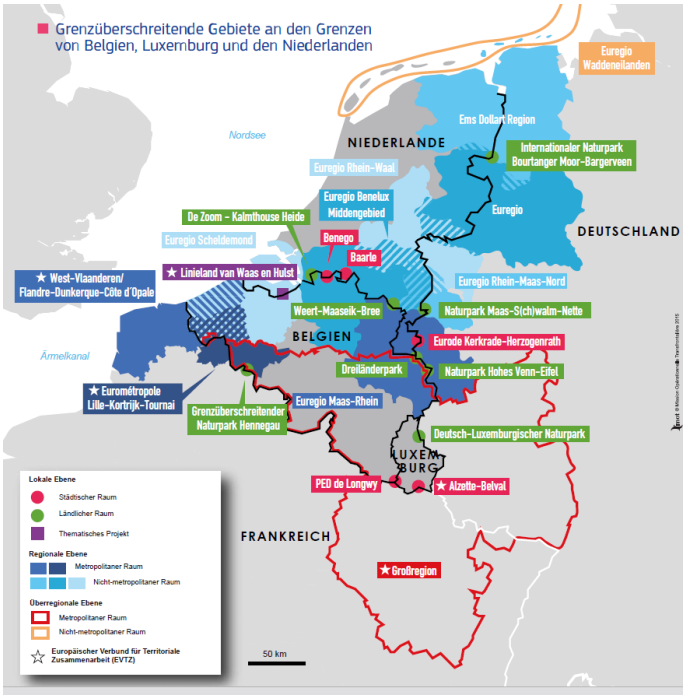

Figure 1 Cross-border partnerships BE/NL/DE/LU
Source: DG Regio

Following this cross-border dossier-based definition of the border region, we may see that this year's Cross-border Impact Assessment indeed focuses on a number of different borders within the Netherlands, Belgium and Germany border region. For example, the student team researching the Dutch pilot project on the legal cannabis cultivation looked at the Meuse Rhine Euregion as well as the Rhine-Meuse-North Euregion. The dossier on the qualifying foreign taxpayer obligation (90% rule) instead defined the border region as the Dutch NUTS3/COROP areas located directly along the Dutch-Belgian and Dutch-German borders. The dossier on the social security position of the non-standard worker in turn interprets the term 'border region' broadly. The dossier is therefore aimed at any part of the Netherlands with which cross-border employment activities are possible. In the *Baukindergeld* dossier, the focus was placed on political entities located along the German border such as municipalities, *Landkreise* or districts.

Apart from this territorial demarcation of the border region, researchers also apply any other demarcation relevant to their research.

Identifying the Central Research themes, principles, benchmarks, and indicators
Cross-border effects come in many shapes and forms. The ITEM Cross-border Impact Assessment focuses on three overarching themes for which cross-border effects are analysed:

1. European integration: the cross-border impact of certain legislation and policy from the perspective of individuals, associations, and enterprises correlated with the objectives and principles of European Integration (i.e. freedoms, citizenship, and non-discrimination);
2. Socioeconomic/sustainable development: the cross-border impact of legislation and policy on the development of the economy in the border region;
3. Euregional cohesion: the cross-border impact of legislation and policy on cohesion and cross-border governance structures in border regions (e.g. cooperation with governmental agencies, private citizens, the business sector, etc.).

The first theme concerns the potential impact of legislation on individuals living and working in border regions. Dossiers focused on European integration consider questions such as the extent to which certain legislative or policy measures violate the principles of non-discrimination and free movement. The dossier on the *Baukindergeld* is an example of a dossier focusing on European integration and non-discrimination. Another example is the question of different retirement ages and the consequences for cross-border workers. A third example is the dossier examining the situation of cross-border workers with non-standard contractual situations. These measures refer to the general question of non-discrimination within a cross-border labour market.

Researchers focusing on the socioeconomic/sustainable development of certain measures adopt a different angle. Their research focuses on questions related to the functioning of the cross-border and Euregional economy. This year's assessment of the tax scheme for workers employed in the Netherlands but living outside the country (90% ruling) is case in point. Another example in the current impact assessment is the ex ante assessment of the intended increase of the Dutch Low VAT rates. Striking questions relate to the possible consequences of the increase for consumers and companies, whether Dutch stakeholders will be confronted with a potentially unfair competitive situation and what this means for investments and employment. The dossier on the Dutch pilot project on legal

cannabis cultivation is another example. In this dossier, researchers evaluated the potential effects of the pilot on socioeconomic and sustainable development by focusing on the impact of the policy on employment and taxation.

Finally, researchers may also ask what cross-border effects a certain measure has for Euregional cohesion, meaning cooperation between institutions, business, contacts, and the mindset of cross-border activities amongst citizens. Such aspects play an important role in the assessment of the relationships between the creation and governance of Euregions and the Euregional mindset of citizens. For example, the team assessing the effects of the pilot project on legal cannabis cultivation assessed the effects of the decriminalisation of the cultivation and sale of cannabis on cohesion in the Euregions Meuse-Rhine and Rhine-Meuse-North. Moreover, the dossier on the social security position of non-standard workers assessed the effects of the existing EU social security regulations on Euregional cohesion.

Dossiers may focus on one of these themes, or all of them, depending on the relevance of the theme for their topic, the scope of their research and the availability of necessary data. The research for the 2018 Cross-border Impact Assessment not only focused on sources stemming from legislation and policy, but also on empirical data gathered by specialised institutions and the researchers themselves. For example, the dossier on the qualifying foreign taxpayer obligation (“90% rule”) based their research on data from Statistics Netherlands (CBS).

After selecting the research themes pertaining to their dossier, researchers identify the principles relevant to their dossier. These principles subsequently provide the basis for the development of benchmark criteria and ultimately indicators used to review whether legislation or other rules might facilitate or impede best practices. Table 2 below provides examples for principles, benchmarks and indicators for the three research themes of the ITEM Cross-border Impact Assessment.

Table 2: Examples of principles, benchmarks, and indicators

Research themes	Principles	Benchmark	Indicators
1. European integration	European integration, European citizenship, Non-discrimination	No border controls, open labour market, facilitated recognition of qualifications, adequate coordination of social security facilities, taxes	Number of border controls, cross-border commuting, duration and cost of recognition of diplomas, access to housing market, etc.
2. Socioeconomic /Sustainable development	Regional competitive strength, Sustainable development of border regions	Cross-border initiatives for establishing companies, Euregional labour market strategy, cross-border spatial planning	Euregional: GDP, unemployment, quality of cross-border cluster, environmental impact (emissions), poverty
3. Euregional cohesion	Cross-border cooperation/Good Governance, Euregional cohesion	Functioning of cross-border services, cooperation with organizations, coordination procedures, associations	The number of cross-border institutions, the quality of cooperation (in comparison to the past), development of Euregional governance structures, quantity and quality of cross-border projects

2.3 The Dossiers of the 2018 ITEM Cross-border Impact Assessment

The survey for this year's impact assessment was conducted between November 2017 and January 2018 and was set out among ITEM stakeholders and other interested parties. ITEM received 12 responses to this questionnaire from various partners. Additionally, a number of topics were proposed in the context of ITEM's day-to-day activities and two topics were identified following a quick scan conducted by ITEM. After the dossiers and subjects submitted were screened, six dossiers were ultimately selected by the Cross-border Impact Assessment Working Group. The final dossiers are the result of a fruitful cooperation of ITEM, its researchers and its partners. As was the case for the 2016 and 2017 impact assessments, the research in some dossiers was rendered possible by the efforts of several students. Table 3 below provides an overview of the topics and research of the ITEM Cross-border Impact Assessment 2018 dossiers.

Table 3: Themes of the ITEM Cross-border Impact Assessment 2018

No.	Subject	Specification
Dossiers		
1.	Exploration of the cross-border impact of an increase in the low VAT rate	The dossier explores the potential cross-border effects of the increase of the low VAT in the Netherlands. The research focused on providing an *ex ante* estimation of the economic consequences of the increase.
2.	The qualifying foreign taxpayer obligation ("90% rule"): A preliminary *ex-post* impact assessment	Researchers aimed at examining trends over the 2013-2016 period to see if notable changes occurred in the number and composition of non-resident employees in the Netherlands after the 90%-rule came into force.
3.	Schemes relating to retirement ages in NL/BE/DE: a multidisciplinary analysis	The dossier consists of an analysis of the border effects of different national regulations on retirement age. The analysis is multidisciplinary in that it includes several perspectives (taxation, social security and pensions).
4.	*Baukindergeld*	*Ex ante* research on the proposed German *Baukindergeld*. The dossier examines the cross-border effects of the measure in-depth and explores possible solutions to improve the legal regime for frontier workers.
5.	Social security of non-standard workers: a challenge at the national and European level	The dossier assesses the position of the non-standard worker by analysing existing legislation on social security (*ex post*).
Student dossier		
6.	The potential effects of the 'Experiment gesloten cannabisketen' on the Euregions Meuse-Rhine and Rhine-Meuse-North	The dossier comprises an *ex ante* assessment of the cross-border effects connected to the proposed Dutch pilot project on legal cannabis cultivation.

3. Dossiers

3.1 Exploration of the cross-border impact of an increase in the low VAT rate

Prof. dr. Frank Cörvers
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The coalition agreement of the Rutte-III government sets out the intention to raise the low VAT rate from 6% to 9% with effect from 1 January 2019. The rate increase relates to sales of products including fruit, vegetables, and many other foodstuffs, medicines, books, and repair services for clothing, footwear, and bicycles. Such a VAT increase would make the low VAT rate in the Netherlands higher than the lowest VAT rate in Belgium (6%) and the low rate in Germany (7%). In this dossier, we explore the potential cross-border impact of this proposed VAT increase. Our main focus is on an ex ante assessment of the economic consequences, and the consequences for the EU's integration of regulations and Euregional cohesion are also discussed though to a lesser extent.

At the insistence of the European Parliament and the European Council, the European Commission is currently developing plans to switch to a system of taxation in the country of purchase instead of the country of sale. This change of direction will make it possible to liberalize the existing rules on VAT harmonization and will give national governments more scope to set their own rates in the future. It is therefore to be expected that decisions on VAT rates will increasingly be considered national issues. This may result in greater VAT rate differences between countries, whereby, as promised by the current Dutch context, little account is taken of the cross-border impact.

In order to estimate the cross-border impact of the planned increase in the low VAT rate, the scientific literature on cross-border impacts and the consequences of previous changes in indirect taxation in the Netherlands were first examined. The focus then shifts to the specific case in hand, the situation in the Dutch border regions. For example, we discuss some key data on the number of inhabitants and entrepreneurs in the Dutch border region and their contributions to VAT revenues. We also discuss the current price differences, both between the Netherlands and its neighbouring countries and the differences within the Netherlands between border regions and non-border regions. We use secondary data sources supplemented with our own analyses. On the basis of purchase behaviour studies and additional information from a discount chain, we look at the extent to which residents in the Dutch border region are currently prepared to do their shopping abroad, partly because of price advantages. On the basis of this information, we will then make an ex ante assessment of the specific consequences of the VAT increase on the economic situation in the border region, including the competitiveness of businesses, price levels, tax revenues, and cross-border purchase behaviour.

The literature review shows that the question of how entrepreneurs and consumers respond to an increase in indirect taxes cannot be answered unambiguously, especially in the case of border regions. The question is: to what extent the VAT increase will lead to higher prices for consumers and consequently to reduced sales and turnover for businesses? The Netherlands Bureau for Economic Policy Analysis (CPB) assumes that three quarters of the tax increase for the Netherlands as a whole will be paid by consumers and one quarter by companies. If the increase in the low VAT rate is passed on in full to consumers, it will lead to price increases of almost 3%. However, studies of previous rate

changes show that such a price increase is very uncertain and highly dependent on the type of product or service concerned. In some cases there may be hardly any price increase for consumers, while in other cases there may be a price increase greater than that justified by the increase in VAT.

The impact of the forthcoming VAT increase on border regions is particularly uncertain. The literature studied shows that price increases in border regions could be both greater and smaller than national price increases. On the one hand, existing literature suggests that price increases at the border will be smaller than in central regions because competition on the other side of the border does not have to pass on any VAT increase to the consumer. On the other hand, competitors in the border regions of Belgium and Germany currently apply higher prices to a number of products and services, which may give the Dutch border regions more scope to raise prices. In other words, there are extra major uncertainties for consumers and businesses in the border regions compared to the rest of the country due to the VAT increase. This relates not only to the prices that consumers will have to pay, but also to the impact on the turnover and profits of businesses, the incomes of entrepreneurs, and employment and economic growth in the border regions.

The scale of the cross-border impact depends on the differences in prices between regions on either side of the border and on the willingness to travel greater distances to make purchases. It appears that the willingness to make purchases further afield in another country is greatly dependent on the context. Factors that play a role in this include the geographical conditions at the border in question, the perception of price differences by consumers, and the degree of substitutability between goods abroad and Dutch goods, which is more pronounced in the case of identical goods that have a long shelf life and are easy to transport. As consumers like to buy goods from a single location, a change in indirect taxation may also affect goods not affected by this rate but sold in the same shops or locations. All this may mean that traders in the border region have more scope in some cases or less scope in other cases to pass on an increase in indirect taxes to consumers.

For 13% of the Dutch population, the border is a stone's throw away, within 10 km, while almost a third of the Dutch population lives within 30 km of a national border. Despite the lack of precise data, we estimate that the planned increase in VAT will increase tax revenue from the low VAT rate by more than €800 million to €2.4 billion in the wider border region, of which almost €1 billion will be generated in the region up to 10 km from the border. Because of the large number of people living in border regions in a general sense, even a relatively small deterioration in competitiveness and a small shift in spending could lead to the loss of many millions of euros in turnover for entrepreneurs and in tax revenues for the Dutch state. There are extra major uncertainties for consumers and businesses in the border regions compared to the rest of the country due to the VAT increase.

In the case of foodstuffs, which account for a large proportion of the revenue under the low VAT rate, price differences between the Netherlands and other countries appear to vary considerably between products. On average, however, the price level for food is considerably lower in the Netherlands than in Belgium (more than 10% cheaper). The price difference with Germany is smaller, but again the Netherlands seems on average to be cheaper (approx. 5%). It is possible that prices in the border region are somewhat higher than in the rest of the Netherlands due to relatively little competition from abroad. For example, the Jumbo supermarket chain charges relatively high prices in branches close to the border and lower prices in municipalities far away from the border.

Purchase behaviour studies show that price differences in the border region are large enough to trigger cross-border purchase behaviour. For instance, a quarter of Dutch households spend an average of €50 euros a month on grocery shopping abroad, which amounts to a total of €1 billion a year. Conversely, Belgians and Germans spend even more in the Netherlands. In Limburg, the region with by far the most cross-border purchasing, people from outside the Netherlands spend much more in the Netherlands (€473 million) than Limburg citizens spend abroad (€228 million). Additional information from one of the discount supermarkets shows that it is primarily Germans (and to a lesser extent Belgians) making cross-border purchases in Limburg, possibly because of certain store preferences and geographical circumstances.

If any cross-border impact is seen anywhere, it is clear that Limburg – especially on the border with Germany – will be the most affected because the most cross-border purchases take place here due to the geographical circumstances. The cross-border impact is usually much greater right at the border than further away. Very locally along the border, especially along the border with Germany, there may be small and medium-sized enterprises (e.g. supermarkets, chemist's shops, bakers, butchers, and greengrocers) that are greatly affected by the VAT increase due to a loss of turnover in response to price increases, and a loss of profit or income if they do not raise prices. Moreover, Dutch and European VAT policy means it is likely that national VAT rates will diverge further in the future, and the resulting cross-border impact will increase. For entrepreneurs and citizens in European border regions, this means that the national border remains a relevant dividing line, especially for everyday activities such as shopping.

3.2 The Qualifying Foreign Taxpayer Obligation ("90% rule"): A Preliminary Ex-Post Impact Assessment

Prof. dr. Maarten Vink
Johan van der Valk
Sem Duijndam

The qualifying foreign taxpayer obligation (hereafter: QFTO), which entered into force on 1 January 2015, establishes that non-resident taxpayers in the Netherlands may benefit from the same deductions and tax credits as resident taxpayers only if they earn at least 90 per cent of their global income in the Netherlands. Under this new system, these non-resident workers, if they neither earn 90% of their world income in the Netherlands, nor have a sufficient taxable income in their country of residence, risk forfeiting tax benefits (e.g. mortgage-interest deductions for owner-occupied dwellings). Moreover, the rule may especially impact frontier workers and have detrimental economic effects if such non-resident workers decide against employment in the Netherlands and prefer to work in another country. In such a scenario, employers in border regions should be concerned, given that the majority of non-resident workers are employed in areas along the Dutch border. In this inventory of the potential impact of the QFTO, we focus on the group of persons who are employed in the Netherlands, but reside outside of the Netherlands, as they are likely the largest group affected by the rule. The objective of this preliminary ex-post analysis is to examine trends over the years from 2013 to 2016 in the number of non-resident employees in order to see if notable changes occurred in the number and composition of non-resident employees in the Netherlands after the 90%-rule came into force.

Table 1 shows the number of non-resident workers in the Netherlands for the years 2013-2016, as well as the nationalities and countries of residence of the non-resident employees. The number of non-resident employees has increased considerably over this period. Where in 2013 the number of non-resident employees was a little more than 130.000, this number increased to over 185.000 in 2016. This increase, however, is mainly due to the large influx of Polish non-resident workers in this period. The number of non-resident workers living in Belgium or Germany increased just slightly. When we look at Dutch non-residents we see that they mostly live in Belgium or Germany, and that their number increased slightly since 2013.

Looking at employment sector, we see that most non-resident workers work in commercial services. These non-resident workers mainly have the Polish nationality. It is therefore not surprising that the number of non-residents employed in the commercial sector increased sharply since 2013 (from 85.800 in 2013 to 133.300 in 2016), corresponding with the large increase in the number of Polish non-residents over the same period. The number of non-residents working in the industrial sector or public and social services remains fairly constant around 20.000 for the years 2013-2016. Both these sectors mainly employ Dutch nationals, although they also employ a considerable number of Belgians and Germans. Few non-residents work in agriculture, forestry, and fishery and there are also no notable changes visible.

More than half of the non-resident employees work in the cross-border regions. Most of these non-resident workers live in either Belgium or Germany. This is also clearly depicted in Figure 1, which

shows the number of non-resident workers residing in Belgium or Germany as a percentage of the total working population for the year 2016 (only this year is shown, because there is not much change over time). Unsurprisingly, most non-resident workers in cross-border regions at the German border are German, whereas those at the Belgian border are Belgian. Some border regions share a border with both Belgium and Germany (Midden-Limburg and Zuid-Limburg). In Midden-Limburg 3.6% of the working population in 2016 lived in either Belgium or Germany, while in Zuid-Limburg this was 5.6%. For most (border) regions the shares remained almost constant over the period 2013-2016, and no common trend is visible. The share of non-resident workers residing in Belgium or Germany over the total working population remains constant at 1% from 2013-2016.

Table 1: Number of non-resident employees by country of residence and nationality, 2013-2016 (x1000)

Country of residence			2013	2014	2015	2016
Belgium	Nationality	BE	13.9	14.1	14.2	14.7
		DE	0.2	0.2	0.2	0.2
		NL	20.9	21.1	21.0	21.1
		PL	0.3	0.3	0.3	0.4
		Other	1.2	1.4	1.4	1.5
	Total		36.6	37.1	37.2	37.9
Germany	Nationality	DE	15.4	14.2	14.3	13.9
		NL	15.8	16.1	16.3	16.4
		PL	2.7	2.8	4.1	4.6
		Other	1.8	1.9	2.0	2.8
	Total		35.8	35.1	36.9	37.8
Poland	Nationality	DE	0.9	0.9	0.9	0.8
		NL	0.9	0.9	1.1	1.2
		PL	42.8	53.9	71.5	77.2
		Other	0.5	0.6	0.4	0.4
	Total		45.0	56.3	73.9	79.5
Other	Nationality	NL	3.4	4.2	4.1	4.4
		PL	0.1	0.1	0.1	0.1
		Other	11.8	16.7	21.4	26.0
	Total		15.4	21.2	25.9	30.8
Total	Nationality	BE	14.1	14.2	14.4	14.9
		DE	16.6	15.5	15.5	15.1
		NL	41.0	42.4	42.6	43.1
		PL	45.8	57.0	76.0	82.3
		Other	15.3	20.5	25.2	30.7
	Total		132.8	149.6	173.8	186.1

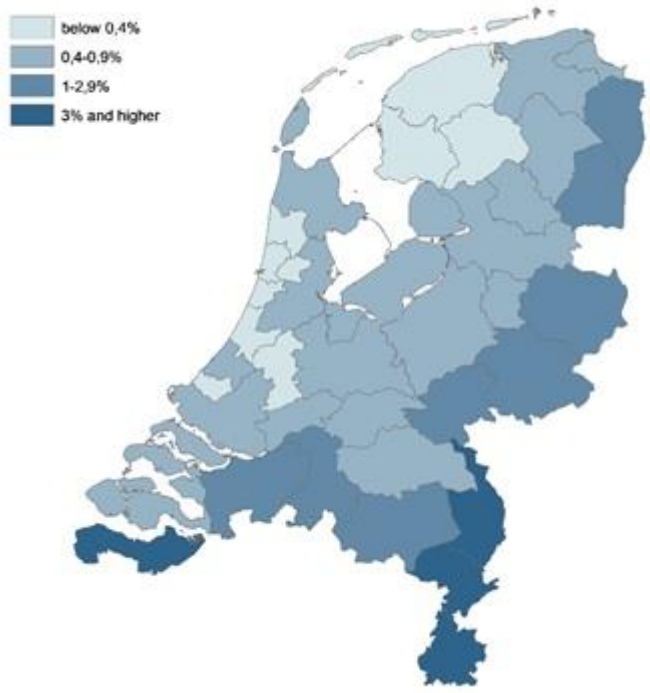
Source: Statistics Netherlands

Overall, the preliminary ex-post analysis does not seem to show any compelling effects of the QFTO on the number and composition of non-resident workers in the Netherlands and the Dutch cross-border regions. When we look at the total number of non-resident workers we see an increasing trend, which is persistent over time and does not seem to have been altered since the implementation of

the QFTO. For the nationality and work sector of non-residents we also observe a solid trend over the whole period 2013-2016; the number of Polish and "other" nationals increases, as well as the number of non-resident workers working in commercial services. For the border regions there are also no significant changes visible. However, this analysis does not allow us to focus on those individuals that are most likely affected by the QFTO (those who do not earn 90% of their world income in the Netherlands). Furthermore, the possible delayed effects of the rule cannot yet be assessed, as data is only available until 2016.

For future work, income data from the Dutch Tax Authority will become available, which makes it possible to assess which non-resident workers do not earn 90% of their world income in the Netherlands, and hence which non-resident workers are most likely to be affected by the QFTO. For future inquiries individuals can also be followed over time to research their exact labour and housing mobility. With the use of regression and/or time-series techniques it can be shown if the QFTO has a significant effect on the housing and labour mobility of non-resident employees.

Figure 1: Non-resident employees living in Belgium or Germany by all NUTS3/COROP regions, in percentages of the total working labour force for the year 2016



Note: For around 25%-30% of the workers it is not known in which COROP region they work. These percentages, however, are similar for both resident workers and non-resident workers. Therefore, the percentages will most likely approximate the real percentages, although they must be considered with caution.

Source: Statistics Netherlands

3.3 Schemes relating to retirement ages in NL/BE/DE: a multidisciplinary analysis

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There is no standard European retirement age within the European Union. The different European member states all have their own retirement ages for both statutory and supplementary pensions, and they differ considerably from one another. Because of this lack of coordination at the European level, a cross-border worker who has worked in different member states is faced with different start dates and a wide range of options and impossibilities for making these start dates more flexible. The start date of the full pension of a cross-border worker – which is composed of a number of different pensions, each with its own start date – is determined by the highest retirement age. As a result, depending on their personal income situation, cross-border workers may face a shortfall in income in the period between leaving the labour market and the pension stage, which may jeopardize the adequacy of the pension as a provision for old age. An estimated 2000 former cross-border workers are affected by this. In addition, the existing flexible options are inadequate. The former legislative proposal for the flexibilization of the state old-age pension start date could have worked out positively as this would have offered the cross-border worker the option to synchronize the start of his or her state old-age pension in the Netherlands with the start date of the statutory pension abroad.

Cross-border worker: a need for overview and insight
In addition to this fragmentation of pension entitlements, cross-border workers are faced with a lack of an overview of and insight into their statutory and supplementary pensions, including the various retirement ages. This could mean cross-border workers are left in the dark as to the age at which they can start taking their pension. In addition, due to the lack of a comprehensive overview, cross-border workers are unable to determine whether they will receive a sufficient level of pension payments upon their retirement to maintain their standard of living after retirement. The person concerned also faces a high degree of uncertainty – including legal uncertainty – regarding the net pension income resulting from pension contributions in one member state and tax payments in another. A cross-border or European pension register is therefore necessary in order to enable this cross-border worker to gain a clear and accurate overview of his or her accrued cross-border pension, to offer perspectives for action, and to guarantee an adequate income after retirement. Such a pension register is a positive incentive for the labour mobility of workers.

People receiving two pensions: provision of more information as a first step
One of the main consequences of the differences in retirement ages – and the main reason for a multidisciplinary analysis – is the discoordination of the tax and social security levy in the case of people receiving two pensions. In essence, the conflict rules in the bilateral tax treaties are not aligned with the conflict rules in Regulation (EC) 883/2004 and the authorization to tax is not always granted to just one member state. This obligation to pay double contributions is particularly problematic in the European internal market. In some cases, the tax levy is charged in the state of residence and the social security levy in the state of retirement, or vice versa. In addition, pensioners may be contributing to financing care in more than one member state. They are therefore put at a disadvantage in the form of double economic charges. The obligation to pay double contributions means that the equal

treatment of current and retired cross-border workers is not guaranteed. In many cases, cross-border workers are not aware of the fact that they are switching between social security systems ('driving against the traffic'). This problem can be solved by means of information and advice provided by tax authorities and other organizations (such as the *GrensInfoPunten* (border info points) and the *Grensoverschrijdend Werken en Ondernemen* team (cross-border work and business team) of the Tax and Customs Administration in Maastricht).

Pensions: coherence of tax and social security charges

One possible way of improving coherence in taxation and social security levies relating to pensions is to abolish the special provisions for pensioners in the Regulation along with the exclusive application of the main rule on taxation of pensions (Art. 18 of the OECD model tax convention) and to assign the obligation to insure to the state of residence (Art. 11, section 3, part e of the Regulation (EC) No 883/2004). Both tax and social security contributions would then be subject to taxation in the state of residence, which would lead to 'equality in the street' as guaranteed under the Treaty on the Functioning of the European Union (TFEU). In this case, the arguments for and against the taxation in the state of residence are weighed up. A less far-reaching solution could also be considered for an adjustment and improvement of the current regime. One suggestion could be to use the duration of insurance as a starting point when designating the competent pension state. In addition, cross-border workers could opt for a tailor-made solution, such as accepting a fragmented pension and/or a small employment position. However, if a Dutch or Belgian pensioner takes on a part-time job across the border, this would have an impact on his or her social security position. A single-pension pensioner can switch their social security position by working in their country of residence. This may affect rules relating to matters such as health insurance, which may bring advantages or disadvantages.

Pro rata right to levy tax between the state of residence and the source state

One alternative is a proportional (pro rata) right to levy tax, divided between the state of residence and the source state. However, this is not a solution if it is not linked to the exclusive levying of social security contributions. On the other hand, from a Dutch perspective this does not seem to be a very realistic option in view of the international efforts made during treaty negotiations to impose taxation in the source state on tax-facilitated pensions. In addition, a non-affiliated agreement could be reached on the grounds of Article 17 of Regulation (EEC) No 1408/71 or Article 16 of Regulation (EC) No 883/2004 in which the social security levy is linked to the tax levy. In theory at least, there is also the possibility of limiting the power of the pension state to collect contributions or limiting the taxation powers of the state of residence. In addition, the right of the country of residence to levy tax could be restricted. Although this option would contribute to the equal treatment of cross-border workers, some questions could be raised regarding the technical implementation aspects and the administrative burden for the implementing bodies.

Care financing by pensioners: discount scheme

In addition, health care in some member states is financed either by general resources (tax), by tax and social security charges, or by a combination of means. Pensioners may therefore contribute to the financing of care in more than one member state, resulting in economic double taxation which is at odds with the freedom of movement. This problem can be solved unilaterally, for example by means

of a discount on the tax assessment (equivalent to the proportion of the tax used by the state of residence to finance health care) as permitted by a state of residence.

Disparities in retirement ages: impact on application of national legislation

The lack of harmonization of retirement ages between member states also affects national legislation, for example with regard to insurance periods in other member states. For example, if an employee can take their statutory pension in the Netherlands or Germany, this not automatically also the case in Belgium. If the employee opts to take his Dutch pension and stops working, this may result in the option of retiring in Belgium being postponed. In addition, the differences in retirement ages lead to a lack of income continuity for cross-border workers residing in Belgium who have had a long period of employment in the Netherlands and become unemployed after the age of 65.

New legislation: cross-border impact to be assessed preventively

The above makes it clear that it is necessary to take account of the effects of new legislation on cross-border workers and border regions in the process of preparing legislation and regulations because this will prevent existing legislation from having to be adjusted and corrected at a later stage. In addition to making savings in terms of administrative tasks and time, this also prevents inconvenience being caused to the people affected. New legislation and regulations concerning cross-border workers and border regions still do not generally receive the attention they deserve; in other words, national legislators still underestimate the cross-border impact. We support the need for preventative research into the cross-border impact at an early stage of the legislative process, and the incorporation of the findings into the IAK (the integrated impact assessment framework for policy and legislation). A preventative cross-border impact assessment should form part of new Dutch and European legislation and should be multidisciplinary in its nature. This assessment could be made even more concrete if statistical offices were able to use coherently-collected data on cross-border employment and pensions. This will make it possible to identify more specifically the scale of the current problems and their impact on the sustainable economic development of the border regions and the business climate.

3.4 *Baukindergeld*

Dr. Hannelore Niesten

Within the framework of the *Wohnraumoffensive* (the Merkel government's national building scheme), the *Koalitionsvertrag*[6] (Coalition Agreement of the German Federal Government) between the political parties CDU, CSU, and SPD includes an agreement to a form of child benefit aimed at promoting home ownership among young families. The *Baukindergeld* is a child-dependent benefit that can be made available over a period of ten years to assist with the purchase of an existing dwelling or a dwelling that has yet to be built in Germany. The benefit amounts to €1,200 per child per year (up to 25 years of age).[7] The condition for receipt of the benefit is that the annual taxable family income does not exceed €75,000, with €15,000 added to the limit per child. The income limit is calculated by taking the average of the annual income of the past two calendar years. So far, there is no legal basis for the benefit.[8] The law is expected to be passed in the autumn of 2018. The scheme would apply retroactively from 1 January 2018.[9] The *Baukindergeld* is only for people who live in Germany. It is therefore necessary to examine whether the *Baukindergeld* constitutes a restriction on free movement and freedom of establishment laid down in Articles 21, 45, and 49 of the Treaty on the Functioning of the European Union (TFEU).

Residence requirement of the benefit is not EU-proof

The proposed scheme as it stands today means that cross-border workers do not meet the conditions of eligibility for the *Baukindergeld,* as it requires the person concerned to be resident in Germany. Making the *Baukindergeld* conditional on the dwelling being located on German territory is contrary to EU law (see in this context the condemnation pursuant to European law of the *Eigenheimzulage* [grant for building owner-occupied property], below*)*.

The requirement for the home to be located in in Germany would mean that resident tax payers under German law (*unbeschränkte Steuerpflicht*) (including non-residents with more than 90% German-source income) who are owners of their home which is located outside Germany would not be eligible for the *Baukindergeld* in Germany. There is often also no right in the country of residence to tax benefits that encourage home ownership. In most cases, incomes in the country of residence are too low to be able to benefit from mortgage interest relief. These people therefore fall between two stools.[10]

Under the proposed scheme, cross-border workers are not eligible for the benefit, even though persons who are in the same situation from an income-tax perspective and who live or intend to live on German territory by building or acquiring a dwelling are eligible for the benefit. In such a situation,

[6] Can be viewed (in German) at: https://www.cdu.de/system/tdf/media/dokumente/koalitionsvertrag_2018.pdf?file=1.
[7] In 2018, €263 million is budgeted for construction costs. The sum of €3 billion will be set aside for the coming financial years. See (in German): https://www.vergleich.de/baukindergeld.html.
[8] http://www.aktion-pro-eigenheim.de/haus/news/baukindergeld-2018-ein-update-zur-baufoerderung-fuer-familien.php.
[9] http://www.faz.net/aktuell/wirtschaft/kompromiss-beim-baukindergeld-flaechenbegrenzung-aufgehoben-15661576.html.
[10] As far as the Netherlands is concerned, the taxpayer can transfer a surplus of foreign 'box 1' income (taxable income from employment and homeownership) to a subsequent year (the so-called *doorschuifregeling* or "storage scheme" (*stallingsregeling)*). See article 11 'Double Taxation (Avoidance) Decree 2001'.

the benefit therefore has a dissuasive effect on cross-border workers working in Germany, who enjoy the right to free movement pursuant to Articles 45 and 49 of the TFEU and who wish to build or acquire a dwelling in another member state in order to take up residence there. It follows that making the *Baukindergeld* benefit conditional on the dwelling that is being built or acquired for the purpose of living in it being situated on German territory infringes the freedom of movement of workers and the freedom of establishment, as guaranteed by Articles 45 and 49 of the TFEU.[11]

Designation of the benefit: social or tax advantage

Pursuant to Article 7(2) of Regulation (EU) No 492/2011 of 5 April 2011 on freedom of movement for workers within the Union[12], migrant workers enjoy the same 'tax and social advantages' as workers with the nationality of the host member state. Cross-border workers are entitled to equal treatment in terms of fiscal and social advantages. Whether the *Baukindergeld* is to be regarded as a 'fiscal' benefit or as a 'social' benefit is therefore ultimately not important. The German method of directly promoting the purchase of an existing dwelling or one yet to be built can be regarded as an acute negative tax in terms of its function: a grant. On the one hand, it can be argued from the name *'Baukindergeld'* that this benefit is taken care of via the *Einkommensteuergesetz* (Income Tax Act) (as is the standard *Kindergeld* [child benefit]). The *Baukindergeld* benefit is not specifically granted to workers but to everyone. The *Baukindergeld* benefit is a general incentive scheme for home ownership. On the other hand, the German *Baukindergeld* benefit may also be designated as a so-called social benefit.[13] The *Baukindergeld* benefit should also be granted in cases in which the cross-border worker and/or his or her spouse are fully exempt from tax in Germany. After all, the notion of 'social benefit' also offers advantages that are granted simply because the beneficiary is resident in the national territory. Cross-border workers are, as a rule, in the same position as workers established in their own national territory. The German scheme, under which cross-border workers are excluded from the benefit, therefore creates a disguised form of discrimination and is therefore contrary to the free movement of persons and Article 7(2) of Regulation (EU) No 492/2011. After all, cross-border workers are entitled to the same fiscal and social advantages as their German counterparts. Equal treatment in the workplace applies to Belgian, Dutch, Luxembourg, Polish, French, Swiss, and Czech cross-border workers in Germany.

However, there is no entitlement to *Baukindergeld* under Regulation (EC) No 883/2004. Unlike the German *Familienleistungen* (Family benefits*,* e.g. *Kindergeld* [child benefit])[14], the German *Baukindergeld* cannot be designated as a social security benefit within the meaning of the European Regulation (EC) No 883/2004 on the coordination of social security systems.

[11] Compare with ECJ, 26 October 2006, C-345/05, *Commission/Portugal*, *Jur.* 2006, I-10633, point 25.

[12] Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union, *OJ.* L 141/1.

[13] See article expressing the views of G. Essers, 'Heeft een grensarbeider aanspraak op het Duitse Baukindergeld? Ja!' (in Dutch), available at https://aha24x7.com/heeft-een-grensarbeider-aanspraak-op-het-duitse-baukindergeld/.

[14] Pursuant to the European Regulation (EC) No 883/2004 on the coordination of social security systems, a cross-border worker is entitled to the German *Familienleistungen* (Family benefits*,* e.g. *Kindergeld* [child benefit]). If one parent works in the Netherlands and the other parent works in Germany, the Dutch child benefit ranks first for payment. Germany must then supplement (*'aufstocken'*) the Dutch child benefit to the applicable German level. Equal treatment in the country of residence and equal treatment in the country of employment.

Eligibility of cross-border workers to receive Baukindergeld in Germany pursuant to EU law

The *Baukindergeld* can be regarded as an advantage in terms of personal and family life, as referred to in the judgment of the European Court of Justice in the *Schumacker* case. In most cases, cross-border workers working in Germany find themselves in a 'Schumacker situation'.[15] In most cases, resident tax payers under German tax law who live outside Germany earn almost their entire income or family income in Germany (90%) and should therefore be treated in the same way as German residents as regards personal and family benefits. Refusing to grant financial assistance to persons resident outside Germany but who under German tax law are deemed a resident tax payer constitutes indirect discrimination and is contrary to EU law.[16] After all, under EU law, migrant cross-border workers are entitled to the same treatment as comparable workers (i.e. in the 'Schumacker situation') who are nationals of the country in question. Consequently, Germany must also grant the *Baukindergeld* for owner-occupied dwellings situated outside German territory if the cross-border worker working in Germany has income of which more than 90% is subject to German taxation (and is therefore a resident tax payer under German tax law). On the other hand, it also follows from EU law that whether or not the country of residence can take into account the personal and family circumstances of the tax payer is an important factor.[17] If the country of residence is unable to do so due to the person in question having an insufficient taxable income, while Germany as the country of employment can take this into account because the person concerned receives sufficient income there, Germany will have to grant the benefit even if the 90% income limit has not been met.

Moreover, even in non-Schumacker situations, cross-border workers working in Germany are entitled to German *Baukindergeld* pursuant to Regulation (EU) No 492/2011 of 5 April 2011 on freedom of movement for workers within the Union.[18] As stated above, pursuant to Article 7(2) of Regulation (EU) No 492/2011 migrant workers enjoy the same 'tax and social advantages' as workers with the nationality of the host member state. As the *Baukindergeld* is to be considered as a benefit within the meaning of article 7(2) of Regulation (EU) No 492/2011, cross-border workers employed in Germany are entitled to it.

Lessons from previous European rulings on the former German 'Eigenheimzulage'

The *Baukindergeld* is the successor to the former *Eigenheimzulage* (grant for building owner-occupied property) in Germany.[19] The *Eigenheimzulage* was a large-scale building grant for families between the years 1995 and 2005. This benefit was granted to families (with children) who wanted to acquire property. Approximately €800 per child was granted per year. This German tax-free grant scheme for the promotion of home ownership was abolished in 2005.[20] People who were resident tax payers in

[15] Amongst others ECJ, 14 February 1995, C-279/93, *Schumacker*, *Jur.* 1995, I-225. See also H. Niesten, *Belastingvoordelen van de grensoverschrijdende EU-persoon. Een onderzoek naar de behoefte aan en de mogelijkheden van het minimaliseren van fiscale belemmeringen van het vrije personenverkeer in de Europese interne markt*, PhD thesis Hasselt and Maastricht, 2017.

[16] Amongst others the free movement of workers in Articles 18 and 45 of the TFEU; freedom of establishment in Article 49 of the TFEU for self-employed persons.

[17] See ECJ 9 February 2017, C-283/15, X, ECLI:EU:C:2017:102, point 42.

[18] Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union, *OJ.* L 141/1.

[19] The *Eigenheimzulage* was set out in the first sentence of Paragraph 2(1) of the Law on subsidies for owner-occupied dwellings (*Eigenheimzulagengesetz*) in the version published in 1997, as amended by the Accompanying Budget Act of 2004 (*Haushaltsbegleitgesetz* 2004).

[20] The law abolishing the grant for building owner-occupied property *(Gesetz zur Abschaffung der Eigenheimzulage*) of 22 December 2005, *BGBl.* 2005 I, p. 76.

Germany under German tax law and who had acquired a dwelling in Germany were eligible to claim the *Eigenheimzulage*.[21] However, Germany refused to pay the *Eigenheimzulage* to cross-border workers working in Germany. The *Eigenheimzulage* was abolished after the European Commission was asked by the European Parliament in 2003 whether Germany's refusal to pay the *Eigenheimzulage* to cross-border workers was in breach of EU law.[22] The then European Commissioner Frits Bolkestein was of the opinion that a 'cross-border worker who was a resident tax payer in Germany under German tax law' could claim the German *Eigenheimzulage*.[23] Following infringement proceedings by the European Commission, the Court of Justice ruled against the German government in 2008.[24] Cross-border workers who had applied for the *Eigenheimzulage* received the payment after all with retroactive effect.

Possible solutions

It is clear from the above that the *Baukindergeld* cannot be limited to homeowners in Germany. Cross-border workers living outside Germany and working in Germany are also entitled to it. The rules on the free movement of persons and on European citizenship do not allow any distinction to be made between places of residence in this respect.[25] It is recommended that a coherent analysis of the impact of the new legislation on cross-border workers be included in the parliamentary debate on new legislation, which could be included in a separate section of the Explanatory Memorandum. However, in so far as analyses of the cross-border impact of new legislation have taken place, such analyses are often not carried out in a coherent manner, i.e. the method of investigation varies. In general, the cross-border impact of new legislation on cross-border workers and border regions is still not being adequately examined, i.e. the cross-border effect is still underestimated by national legislators.[26]

[21] paragraph 1 of the *Einkommensteuergesetz* (Income Tax Act), in the version of the BGBl (Federal Law Gazette). 2002 I, page 4210 (hereinafter: 'EStG').

[22] Written question E-3846/02 by Ieke van den Burg (PSE) and Wilfried Kuckelkorn (PSE) to the Commission. See (in German): J. Feijen, 'Bolkestein: Duitsland moet Eigenheimzulage verlenen aan grensarbeiders', *NTFR* 2003, edition 16, p. 679.

[23] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A92002E003846.

[24] ECJ 17 January 2008, C-152/05, *Commission v Germany*, *Jur.* 2008, I-39, *V-N* 2008/10.6.

[25] ECJ 17 January 2008, C-152/05, *Commission v Germany*, *Jur.* 2008, I-39.

[26] On the positive side, however, two studies on the position of cross-border workers were published in 2017:
- Report by the Commissie grenswerkers (Committee for cross-border workers), *Grenswerkers in Europa; Een onderzoek naar fiscale, sociaalverzekerings- en pensioenaspecten van grensoverschrijdend werken* (Geschriften van de Vereniging voor Belastingwetenschap no. 257), Vereniging voor Belastingwetenschap (Association for taxation studies) 2017.
- H. Niesten, *Belastingvoordelen van de grensoverschrijdende economisch actieve EU-persoon* (PhD thesis Maastricht and Hasselt), 2017.

3.5 Social security of non-standard workers: a challenge at the national and European level

Dr. Saskia Montebovi

> '*Offering access to social protection is crucial for the economic and social safety of the workforce and well-functioning labour markets that create jobs and sustainable growth. Nevertheless, there is a growing number of people who, due to their type of employment relationship or form of self-employment, are left without sufficient access to social protection.*'[27]

Now that increasing numbers of workers, both in the Netherlands and in other Member States, can no longer be regarded as standard workers, it is useful to investigate the social security protection of this growing group of non-standard workers.[28] Who are they? What protection do they have, what protection do they lack, and what happens in a cross-border work situation?

One can no longer ignore the increase in new forms of work and contracts including on-demand work, part-time work, intermittent work, voucher-based work, platform work, and work as a self-employed person (including pseudo self-employment).[29] The evolution towards this type of working relationship over the last twenty years will – in the long run – affect and threaten the social, economic, and financial sustainability of our social security systems.[30] But even now, the workers, their employers, and governments are reaching the limits of the current systems. As defining the employment relationship can be so complex, the social-security position of the non-standard worker is often already up for discussion. On the basis of current legislation as well as the lack thereof, platform workers who offer and carry out their services via Uber, Deliveroo, Helpling, Werkspot, Foodora, etc. are generally classed as self-employed. This has a direct impact on their social-security protection, as this is much more limited for the self-employed compared with employees. It has also become apparent that workers with high levels of labour mobility often have insufficient social security rights and entitlements, precisely because of their changing work pattern, sometimes performed in multiple countries.

In addition to freedom and economic gain, this lack of a comprehensive and transparent legal framework for platform workers and workers with high levels of labour mobility leads to abuses, legal uncertainty, legal inequality, insufficient legal protection, etc.[31] In the Netherlands, Wouter Koolmees, the Minister of Social Affairs and Employment, has promised to propose a solution by 2020. Furthermore, initiatives are being implemented at a European level, though they are non-binding.[32]

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[27] European Commission: Proposal for a Council Recommendation on access to social protection for workers and the self-employed, 13 March 2018, COM(2018) 132 final, page 1.
[28] For the description and definition of the non-standard worker as well as the standard working relationship, please refer to the Cross-border Impact Assessment on which this summary is based.
[29] European Commission, Proposal for a Council Recommendation on access to social protection for workers and the self-employed, 13 March 2018, COM(2018) 132 final, page 2.
[30] For more information, please refer to the European Commission Proposal for a Council Recommendation on access to social protection for workers and the self-employed, 13 March 2018, COM(2018) 132 final, pages 1 and 2. Please also refer to page 4 of the same document for percentages relating to the different types of employment relationships.
[31] Examples include the situation of workers at Deliveroo, Uber, Helpling, etc.
[32] For examples at the Dutch national level, please refer to documents such as the coalition agreement dated 10 October 2017, pages 22-26 (only available in Dutch). For EU-level examples, please refer to documents including European Pillar of

In the absence of new legislation and sufficient jurisprudence, we will have to define and regulate the *new* employment relationships with the *existing* rules. The main bottlenecks are: firstly, the limited hours or income from non-standard working relationships and the associated limited social security contributions and accrual; secondly, the diffuse separation between employees and the self-employed, which also increases pseudo self-employment; thirdly, the digital revolution, which is drastically changing the nature of work and working relationships; and fourthly, the European rules contained in the Regulations on the coordination of social security systems (EC Regulations 883/2004 and 987/2009). These European rules are still based on physical presence at a workplace. This is inflexible regarding workers in new forms of employment such as teleworking as well as hybrid workers – those who sometimes function as employees, self-employed individuals, or civil servants and sometimes combine several statutes and jobs – and with regard to temporary contractors who, whether voluntarily or not, enter into alternating short-term, temporary working relationships and who, in the meantime, sometimes find themselves in a legal vacuum. Moreover, those who work alternately in their country of residence and the country of employment are bound by the coordination rules specified in European regulations written during the period when workers had one job with one employer for a sustained period of time.

The Cross-border Impact Assessment further analyses European integration, sustainable development, and Euregional cohesion regarding non-standard workers such as teleworkers, homeworkers, and workers who have multiple short-term employment relationships, whether they are chosen deliberately and voluntarily or not.[33]

The themes of European integration and Euregional cohesion refer to the current complex or overly complex work and employment relations that cannot be addressed by the current coordination regulations. As the current designation rules of the Regulations still apply the country of employment principle as the main rule, while relying on the physical presence of the worker, teleworking or a combination of several jobs in several countries is difficult to classify and leads to undesirable and impractical changes to the applicable legislation. For example, one week a teleworker would be covered by social insurance in the Netherlands as that is where most of their working hours are spent, whereas during another week German social security legislation should apply because the teleworker works more hours at their home in Germany.[34] This is unattractive for both workers and employers. As such, employers are not encouraged to make use of the free movement of persons. Moreover, the issue of equal treatment also plays a role, as employers who wish to treat all their employees equally and place them all under the Dutch social security provisions and labour law rules must take the 25% rule of the regulation into account. As a result, workers who work from home for one out of three or two out of five days will no longer be covered by social insurance under the legislation of the 'main workplace' or where the employer is established but will be insured under the social security legislation of their place of residence. This means that equal treatment in legislation and regulations,

Social Rights, A European agenda for the collaborative economy, 2018 Commission work programme, White Paper on the Future of Europe, Proposal for a Council Recommendation on access to social protection for workers and the self-employed, and Proposal for a Directive on transparent and predictable working conditions in the European Union.

[33] Please refer to the Social Security dossier from paragraph 2.3.2 onwards of the ITEM Cross-border Impact Assessment 2018.

[34] This is a simplified view since multiple factors play a role over a longer period of time. For more information, please refer to EC Regulations 883/2004 (Articles 11 and 13) and 987/2009 (Articles 6, 14, and 16).

as employers also often pursue, is now practically impossible despite the fact that the working conditions at home and at the employer are almost identical via teleworking.

In short, the increase in non-standard working relationships and the gig economy definitely do not contribute to the legal certainty or clarity of non-standard workers. Moreover, it often does not contribute to a decent legal position for non-standard workers, most certainly not in cross-border working relationships. Both the current national legislation and the European regulations need to be refined or adapted, which would be beneficial to workers, employers, and governments.

3.6 Student dossier: The potential effects of the 'Experiment gesloten cannabisketen' on the Euregions Meuse-Rhine and Rhine-Meuse-North

Saskia Marks
Gaia Lisi
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Calumn Hamilton
Castor Comploj

On October 10 2017, an unprecedented Pilot Project with the name "Experiment gesloten cannabisketen" was presented in the Netherlands. The coalition agreement introduces the Pilot Project to address the current backdoor-problem. It comes with the scope of studying the effects of a potential legalization of the production of cannabis in particular on the reduction of crime and on decreases in adverse health effects from consuming low-quality marijuana. The Pilot Project consists of an experiment in which the cultivation of cannabis will be decriminalised within strict parameters and a finite, prespecified timeframe. This will take place in 6-10 municipalities in the Netherlands in a time-span of 4 years. The precise wording of the coalition agreement, in English, is as follows:

> *"The government will introduce legislation, if possible within six months, on uniform experiments with tolerated cultivation of cannabis plants for recreational use. The experiments will be carried out in six to ten large and medium-sized municipalities, with the aim of determining whether and how controlled cannabis can be legally supplied to coffee shops and what the effects of this would be. After these experiments have been independently evaluated, the government will consider what action to take."*

This study provides an ex-ante impact assessment of this Pilot Project on two Euregions. The geographical focus of the demarcated Euregions is formally known as Meuse-Rhine and Rhine-Meuse-North. The main findings can be categorized under three different themes, which are respectively European Integration, Sustainable/ Socio-economic development and Euregional Cohesion.

With regard to the theme of European Integration, it can be put forward that the Pilot Project will not further the goals of free movement under European Union law. The fact that specific municipalities will be selected into the Pilot Project could be regarded as a form of indirect discrimination among individuals providing services, as protected by European Law under Articles 49 and 56 TFEU. However, because there appears to be valid reason for the violation of EU law (i.e. reducing organized crime and improve the quality sold in coffeeshops), the new legislation could be justified upon the rule of reason. The cultivated cannabis cannot be exported freely and the selection of cultivators could therefore potentially infringe on the freedom of establishment and the freedom to provide services.

The analysis of potential impacts such a policy could have on a Euregional macroeconomic level is crucial to the scope of this impact assessment. While decriminalizing the production of cannabis itself could already at the national level have a strong impact on employment trends and tax revenue, the effect could be further amplified in the Euregion Meuse-Rhine and Rhine-Meuse-North due to its proximity to the neighbouring countries Germany and Belgium. In the Euregion in particular, a

decrease in drug tourism and nuisance deriving from these countries' nationals is being aimed at by participating in the pilot project. Although drug nuisance in the city of Maastricht has been decreasing over time from 58 to 39 percent, it still remains relatively high in the Netherlands.

At the level of Socio-Economic development, the new legislation is likely to be beneficial. In 2015 alone, almost 6000 illegal cannabis plantations have been seized all across the Netherlands which according to the Dutch police was estimated to be only one fifth of the total. Since 6.55 percent of the population in the Netherlands live in the Euregion, this would imply that almost 2000 cultivators are operating in the Meuse-Rhine and Rhine-Meuse-North Euregions, assuming that the level of illegal cannabis cultivation and associated revenues in the Netherlands is independent of the geographic location. This, together with a CBS estimate of €450m for illegally produced marijuana in the Netherlands, or proportionally €29.5m in the Euregion, would imply that an upper bound estimate of €100m per annum is set for potential tax revenues from the decriminalisation of marijuana production in the Netherlands, proportionally €6.55m in the Euregion. Additionally, were the cultivation of cannabis to become tolerated under Dutch law, this would make a yearly contribution of €6000-8000 for every worker active in the cannabis production industry, provided that these currently produce a value added which is close to average in the Dutch economy.

With regard to the theme of Euregional cohesion it was established that in the jurisdictions concerned (the Netherlands, Germany and Belgium) the cultivation, trade, sales and consumption of cannabis are illegal, although all of these jurisdictions tolerate the possession and cultivation of cannabis in small amounts. The discrepancies between the different legal frameworks will now only become larger due to the Pilot Project. In addition, the Pilot Project tests the limits of obligations under the international legal framework by enabling the cultivation of cannabis on a larger scale. However, the potential incompatibility with international obligations is mitigated by the experimental and temporary character of the experiment. Finally, the paper identified an increased likelihood that Belgium and Germany step up border controls to combat illegal cultivation and trade of cannabis.

It is therefore clear that, although it forms only a national cannabis policy, the Pilot Project has the potential to impact the Meuse-Rhine and Rhine-Meuse-North Euregions both in terms of European Integration, Sustainable/socio-economic development, and Euregional Cohesion.

Annex – The ITEM Cross-border Impact Assessment as a Basis for Action: Looking Back at the Follow-up Activities of the 2016 and 2017 ITEM Cross-border Impact Assessments

One of ITEM's core tasks is to carry out yearly cross-border impact assessments. With these assessments, ITEM strives to give insight into the effects of new legislation and policy on border regions and how existing law and policy affect border regions. Since its inception in 2015 ITEM has successfully concluded three such impact assessments, the latest of which you are now reading. The successful completion of these Cross-border Impact Assessments is for the most part due to the efforts of the Maastricht University researchers involved resulting in valuable research on the effects of legislation and policy on border regions.

However, the impact and success of the ITEM Cross-border Impact Assessments is not exclusively limited to providing a useful contribution to the scientific debate surrounding border regions. ITEM's impact assessment targets policy makers at the regional, national and European level who make decisions concerning border regions. The Cross-border Impact Assessment contributes to the political debate by supporting the identification of existing or future border effects. In this context, the 2016 and 2017 reports have proven to be able to provide a solid basis for further action and research aimed at improving cross-border mobility.

For example, the 2016 ITEM Cross-border Impact Assessment Dossier on Social Security led to the organisation of an Employer Symposium in cooperation with the Holland Expat Centre South, Grensinfopunt Maastricht and City Deal Eurolab. The same dossier also resulted in an expert workshop on the Commission's proposal amending Regulations 883/2004 and 987/2009 in Brussels. At the same time, Dossier 2 of the impact assessment led ITEM to initiate a feasibility study for a cross-border professional recognition card.

The 2017 assessment has proven to be able to form an even broader basis for action. Again, the Dossier on Social Security led to follow-up actions. ITEM provided input to the European Parliament rapporteur on the Posted Worker's Directive. The Dossier on the German car toll for passenger cars was picked up by the media and led to a radio interview with Dutch radio program *'BNR Spitsuur'*. Moreover, the dossier was also mentioned in the impact assessment conducted by Ecorys that was commissioned by the Dutch Ministry of Infrastructure and Water Management. The legal analysis included in the ITEM Cross-border Impact Assessment Dossier on the German car toll partly contributed to the decision of the Netherlands to join Austria in a claim against Germany before the Court of Justice of the European Union.

Nevertheless, not only the dossiers of the ITEM Cross-border Impact Assessments have been cause for follow-up actions, the methodology employed in the impact assessment also gained publicity. For example, the methodology employed by ITEM and its researchers was labelled as a best practice by the European Commission's Directorate-General for Regional and Urban Policy (DG Regio) in its communication *Boosting growth and cohesion in EU border regions (september 2017)*. The recognition gained by ITEM led to further cooperation between the Expertise Centre and the European

Commission. In particular, ITEM is cooperating with DG Regio on the development of a European cross-border impact assessment methodology.

Furthermore, the methodology employed in the ITEM Cross-border Impact Assessment as well as the findings emanating from its individual dossiers were presented at several events throughout 2017. Presentations were provided, among others, at the conference of the European Council of Spatial Planners in Budapest, at a meeting of the Dutch GROS Network, at a gathering of Euregion directors, at the launch of the European Commission's boosting growth initiative, at a conference organised by the Euroinstitut, at a meeting for representatives of the Belgian Province of Limburg, at a meeting with the German Ministry of foreign affairs, and at meetings with members of the Dutch Senate and the Provincial Council of Limburg (NL).

Apart from presentations on the ITEM Cross-border Impact Assessment methodology and content, ITEM also promotes the exercise of impact assessments in general. Being an avid supporter of regular, border-specific, bottom-up impact assessments, ITEM has voiced its support and expressed the need for more cross-border impact assessments to be carried out in the Netherlands at several Dutch Ministries.

Finally, ITEM is increasingly devoting attention to the ex-ante identification of border effects of proposed legislation and policy. In order to determine whether a rule or measure has a certain effect on border regions, ITEM has introduced a quick scan. This initiative employs its own methodology and may be applied to estimate to what extent a certain topic will require further assessment as far as border effects are concerned. In 2017, two quick scans were conducted by ITEM. Whereas one of these quick scans focused on examining the Dutch Coalition Agreement, the other explored the border effects of the increase of the low VAT tariff in the Netherlands. As this year's Cross-border Impact Assessment shows, two themes from these quick scans (i.e. the increase in the low VAT tariff and the experiment concerning legal cannabis cultivation) were indeed taken up in dossiers.

Looking to the future, ITEM is dedicated to continue to map the effects of international, European, national and regional legislation and policy in its Cross-border Impact Assessments. The Expertise Centre furthermore intends to develop its impact assessment and quick scan methodologies further and is looking forward to doing so in cooperation with its partners, stakeholders and researchers.

List of Researchers

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The researchers would like to acknowledge the Cross-border Impact Assessment working group:
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Jan Schliewert – Euregio Meuse-Rhine
Martin Unfried – ITEM
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Concise information brochure

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EUREGIO MEUSE-RHINE MAAS-RHEIN

Cross Border Cooperation

The countries of the European Union are confronted with great challenges following the increasing globalisation of the economy and the internationalisation of the current and future society. Cross border work mobility, the international provision of services and the improvement of the investment and business climate hence are high priorities of the European Union and within the Benelux in particular. To accept these challenges, international and regional cross border cooperation is crucial.

Solve Problems

Public cross border cooperation is often difficult because of different rules and jurisdictions. Also employees and companies experience difficulties when they engage in international and cross border activities. The complaints of migrant workers which the European Commission receives on a yearly basis prove that there are still many obstacles that are at odds with the optimal use of cross border rights and possibilities. Differences in tax law and social security law, slow procedures in recognising professional qualifications, differences in the implementation of European guidelines, division of competences, and government structures result in additional administrative burdens and hence also hinder the economic growth. Furthermore, the demographic development in the Euregion requires good and inviting arrangements in order to attract international knowledge workers and their families. Also, the supply and demand in the work environment need to be brought together. A good exchange of information between the different governments, the business life and private persons hence is essential.

Coordinated Approach

According to the Meuse–Rhine Euregion, a coordinated approach within the Euregion is needed to improve the connection of supply and demand on the labour market, to better utilise the available schooling and educational capacity and to reduce and where possible abolish (EMR2020) the differences in fiscal and social security and pension plans.
In the fields of cross border health care, environment, penal law/crime, spatial planning and culture big problems also often arise that urgently require solutions.

In the Euregion, already a variety of advisory bodies for cross border problems with a proven track-record exists. The Euregion, however, still lacks a supportive body to examine coordinating issues with regard to cross border mobility and cooperation; a body which can stimulate the debate and the discussion on cross border issues and which could bring practical solutions in consultation with the existing advisory bodies.

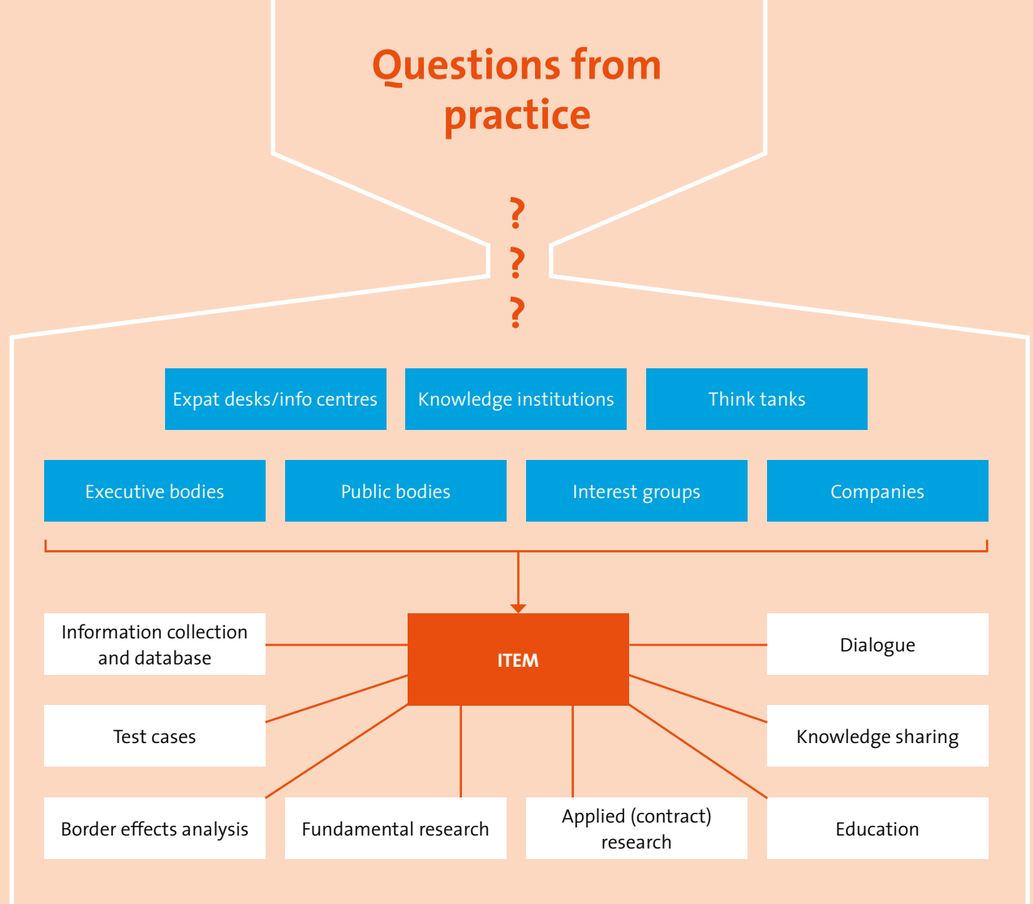


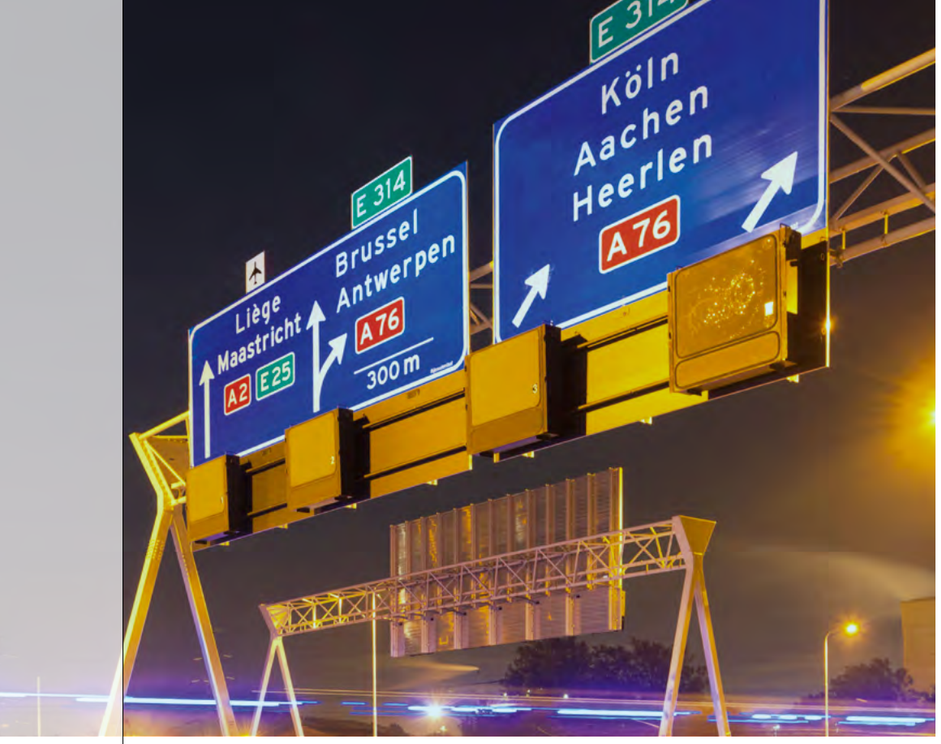
Figure 1: ITEM procedure

Tackling Bottlenecks

To stimulate the economic growth in the Euregion, the aforementioned problems need to be examined, solutions need to be developed, and bottlenecks need to be tackled quickly. Broad knowledge and provision of services need to be united in one expertise centre; an expertise centre where all partners learn from each other and where constantly new and relevant knowledge is acquired; a centre that shares its output with the advisory bodies that are in direct contact with citizens/employees and where the parties concerned determinedly are guided to the correct information in an effective manner.

Expertise Centre ITEM

The Institute for Transnational and Euregional Cross Border Cooperation and Mobility (hereafter: ITEM or the Expertise Centre), founded in 2015, is the pivot of research, counselling, knowledge exchange and training activities with regard to cross border mobility and cooperation.



Support and Stimulate

ITEM was founded to support and stimulate the cross border and international functioning of the Euregional and transnational society. In the first place, this calls for the support of the development of a well-functioning cross border agglomeration. In addition, it concerns the reinforcement of the international functioning of the Euregion in a globalising economy.

Reducing the Barriers of Borders

ITEM, in view of the ambitions of the Meuse–Rhine Euregion, its partner regions, and the Benelux in cooperation with North Rhine-Westphalia (NRW), considerably contributes to the development of an international and cross border labour market. The development and further expansion of the Euregional cooperation call for a transparent and attractive Euregional labour market with as few border barriers as possible. Lowering these border barriers also plays a role at the European level and at the level of third countries outside of Europe. ITEM hence does not only approach the cross border issues from a Euregional perspective, but also from a transnational point of view.

Activities

The activities of ITEM concentrate on the simplification of cross border mobility and cooperation from a legal, economic, cultural, and administrative approach. ITEM's strength is the scientific and interdisciplinary approach that allows to provide concrete and practical solutions to advisory bodies, politics and interested parties.

To this end, ITEM will develop the following activities:

- conduct (fundamental and applied) **research** on current themes;
- execute **test cases** to make a concrete contribution to the abolishment of impediments caused by borders;
- stimulate the **international scientific and political discussion** on cross border issues by providing a factual context and solution propositions;
- (permanent) **counselling and information exchange** with existing border information points, expat desks, The Bureaus for Belgian and German Affairs of the Sociale Verzekeringsbank (the organization that implements national insurance schemes in the Netherlands) and other institutions, companies and advisory bodies;
- organise **conferences, training sessions and workshops** to bring together the local, regional and international partners;
- create a **database** with information on regulations, jurisprudence and best practices;
- analyse **border effects** and the future development of the cross border labour market.

Partners

ITEM is an initiative of Maastricht University (UM), the Dutch Centre of Expertise and Innovation on Demographic Changes (NEIMED), Zuyd University of Applied Sciences, the City of Maastricht, the Meuse–Rhine Euregion (EMR), and the Open University in the Netherlands, and the (Dutch) Province of Limburg.

Initially, the Expertise Centre ITEM is set up by the Faculty of Law of Maastricht University. In the field of research, the faculties of Arts and Social Sciences (FASoS), Humanities and Sciences (FHS; specifically the School of Governance/UNU- Merit) and the School of Business and Economics (SBE; specifically the Research Centre for Education and the Labour Market (ROA)) collaborate. This cooperation warrants the interdisciplinarity of ITEM.

Furthermore, the researchers of Maastricht University participate in large international research networks. They particularly collaborate within the framework of big EU research projects in the fields of migration, work mobility and social security, citizenship, and security. The partner institutions are universities, research institutes and think tanks within the Euregion and the EU as well as in Asia, Africa, Australia, Canada, and the United States. These international and regional contacts can be utilised in the set-up and development of ITEM as an expertise centre. Also, the close collaboration with the Benelux and the German public bodies is crucial for the efficiency and future of ITEM.

Besides its partners, ITEM has a number of organisations with which it actively collaborates on the basis of specific knowledge and expertise. Among others, ITEM will be collaborating with the *Centraal Bureau voor de Statistiek* (CBS) (Statistics Netherlands).

State of the Art

ITEM builds on the activities of MACIMIDE, the interfaculty Maastricht Centre for Citizenship, Migration and Development of Maastricht University. Within the scope of MACIMIDE, researchers of various faculties collaborate closely in the research fields of migration and development issues, citizenship, nationality and integration, international family relationships, European and international immigration law and right of asylum, work mobility, social security, tax law, and pensions.

On the basis of the existing experience, built over the years in the various concerned faculties of Maastricht University and at NEIMED, the Expertise Centre has immediately taken off by setting up concrete topical research projects, by creating and filling the database, by strengthening the contacts with knowledge institutions in the Euregion and the public authorities in the Benelux and Germany/NRW as well as other interested parties such as companies, information points, expat centres and advisory bodies.

> "ITEM was founded to support and stimulate the cross border and international functioning of the Euregional and transnational society.

Research Topics

On the basis of the dialogues with concerned parties, the next ten research topics are prioritized for the first four years (starting from 2015):

1. Recognition of (partial) job qualifications.
2. Cross border work and contradictions in conflict law.
3. Cross border chain liability and recipient's liability.
4. Qualification problems: between social security and supplementary pension.
5. The attraction of Limburg for international knowledge workers: the strong and weak points of the European and national immigration policy for international knowledge workers.
6. Work, living conditions and linking immigrants to Limburg.
7. Cross border formal and informal social security.
8. Limburg: experimental field for sustainable employment and new forms of working.
9. Active youth, tied to the region.
10. The effects of the administrative approach of capital crime in Limburg and the Meuse-Rhine Euregion.

Financing

ITEM will be permanent and will continue on its own account after the provincial subsidy period has expired (2025). The sources of income will thereafter be: research subsidies (on the basis of various national and European programmes of among others NWO, FWO, *Deutsche Forschungsgesellschaft* and Interreg), subscriptions to the rendering of services and the underlying database, compensations for contract research and assessment studies/evaluations, and participation fees for training and dialogue activities.

For the next 10 years (starting from 2015), an investment volume of 20.6 million EUR is bugeted, of which in first instance Maastricht University and the Province of Limburg (NL) are the main sponsors with 43% and 33% respectively. Furthermore, Zuyd Hogeschool, the City of Maastricht and the EMR each contribute financially and/or in kind. The remaining funds have to be acquired through third parties.

Impact without Boundaries

ITEM does not only contribute to the solution of cross border issues on a Euregional level but also in the international arena. ITEM hence will also become a member of international networks in the field of border studies. The Expertise Centre initiates the creation of a 'region without borders' that will facilitate and attract private persons, companies, and authorities to invest in this region.
Solving cross border issues will lead to effects whereof not only the individual migrant worker will profit but also, and in particular, authorities, the business world, education and research institutions, and hence the economy and the society as a whole. This also has an effect on the Meuse-Rhine Euregion. The services of ITEM will furthermore have a beneficial impact on the Benelux and neighbouring countries. In short: the focus of the Expertise Centre is on regional problems and international solutions.

Colophon

Design Zuiderlicht

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Maastricht University

Institute for Transnational and Euregional
cross border cooperation and Mobility / ITEM

Cross border pensions: some qualification issues

MOVES Maastricht,
23 September 2019

Bastiaan Didden LL.M.

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Pensions

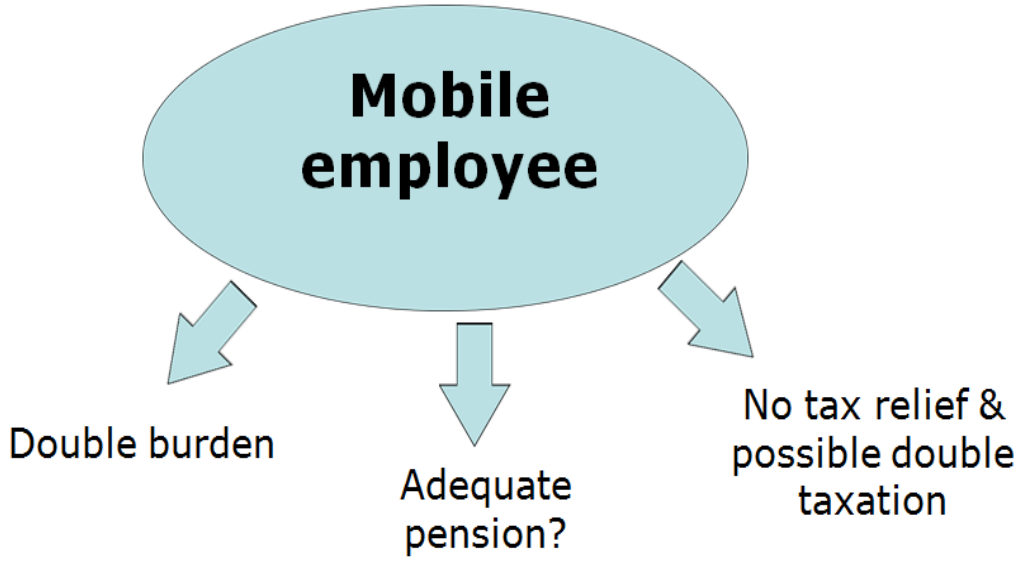
World Bank Three pillar model – Conceptual framework of a pension system

	First pillar	Second pillar	Third pillar
	Social security	**Supplementary pension**	**Individual**
Character-istics	State pension	Occupational pension	Private pension
	Mandatory public pension (social security)	Employment-related pension plans	Personal savings plans
Aim	Securing a minimum standard of living	Maintenance of current standard of living	Individual supplement

Qualification issues in international context?

1. Which?
   - (Non-)recognition for tax purposes of foreign supplementary pensions
   - (Re)characterisation of social security and supplementary pensions
   - Tax or social security premium: socially earmarked tax?

2. Relevance?
   - Consequences?
   - Accrual & payment ('EET')



Cross border context - qualification problems: how come?

1. The wide variety of the design of pension systems in EU

- Pensions = HR-related, social protection, savings product

- National focus: history, cross border mobility, role of the government & employers, way of funding of social security system, pension ambition

- Clear role of the pension pillars within the pension system: pillars are mostly attuned to each other → international context?

Cross border context - qualification problems: how come?

2. Applicable legislation

- Which legal instrument is applicable? Scope?
  - ¬ i.e. EU Regulation 883/2004, EU Directives, EC communication, but also bilateral tax treaties

- Coordination / synchronisation between the relevant fields & levels of law
  - ¬ Fiscal sovereignty of MS: apply own conditions regarding the recognition of a pension scheme
    i.e. statutory limits, retirement age, type of pension, redeem, alienate, pledge or waive of pension rights?

Cross border context - qualification problems: how come?

3. Choices in pension policy-making

- Focus on mobile employees in design of tax policy?
  - ¬ Leading role of First pillar pensions in country
  - ¬ Focus on facilitation of cross border pension institutions (IORPs)

Current solutions?

- Approach
  - Case law?
  - Tax related
    - Unilateral
      - ¬ Corresponding qualifying tax elements
    - Bilateral
  - Coordinated?
    - Level
    - Areas of law

Solutions / points to discuss

- 'Principle based approach': adequate pension (based on pillars) + promoting cross border labour mobility
- PEPP?
- World Bank's multi-pillar model as a guideline, also for tax purposes? → 'Labelling'?
- Sychronisation + definition of relevant legal concepts (e.g. mobile employee): which area of law should be leading? Consequences are tax related!
- One *overall* solution for the 3 qualification problems? ⇔ cross border work: tailor-made solutions?
- Form & level of implementation? EU-wide? Unilateral / bilateral / multilateral / combination?

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?

Recent developments at EU level in the area of social security coordination: revision of social security coordination regulations and the Contingency Brexit Regulation

MoveS Seminar
Maastricht, the Netherlands
23 September 2019

Els Vertongen
European Commission
DG EMPL – D2

Employment, Social Affairs and Inclusion

Overview

1. Revision of Regulations (EC) No 883/2004 & 987/2009

2. BREXIT contingency measures for a ‘no-deal’ scenario

Revision of the social security coordination Regulations

Employment, Social Affairs and Inclusion

History & State of play

- Proposal of the Commission of 13 December 2016, COM(2016) 815
- General Approach of the Council in July 2018
- EP EMPL Committee report adopted in Nov. 2018 as well a mandate to engage in trilogues
- 8 Trilogues under RO Presidency

- Provisional agreement following trilogues between the Council, the EP and the Commission on 19 March 2019

- Provisional agreement , rejected by Committee of Permanent Representatives in the European Union (Coreper) on 29.03.2019

- Postponement of first reading vote in EP on 18.4.2019

- Legislative process to resume

Main changes

- Applicable legislation
- Unemployment benefits
- Family benefits
- Equal treatment

Applicable legislation

- Period of **prior affiliation** of 3 months for both employed and self-employed persons prior to a period of 'sending'
- **Period of interruption** of 2 months for both employed and self-employed persons following a period of 'sending' of total 24 months
- **Prior notification** in all cases in advance, with the exception of **business trips** & of **evidence** of prior notification if work starts without PD A1
- Reinforcement of **cooperation** between institutions
- **Art. 13**: rules to determine the **location of the registered office**

Unemployment benefits

- **Aggregation:** principle not changed, but a minimum period is set in the Regulation, namely 1 month, for the Member State of last activity to aggregate insurance periods in other Member States.
- **Export:** increase from the current minimum of 3 months to a minimum of 6 months with possible extension to whole period of entitlement.
- **Frontier workers:** change of competence after 6 months of activity, no reimbursements between the Member States, person may export unemployment benefits for 15 months, possibility for bilateral agreements.

Family Benefits

- The new rules distinguish between **family benefits intended to replace income due to child-raising** (parental leave benefits) and all other family benefits.
- Member States may decide to grant parental leave benefits exclusively to the insured person him/her self (individual right).
- New **Annex XIII**
- Implementation of the **Wiering Judgment**: two different baskets for the calculation of the differential supplement (parental leave benefits – classic FB)

Equal treatment

Two new recitals:

- In applying the principle of equal treatment, reference to CJEU judgments that need to be respected in a recital (*Brey, Dano, Alimanovic, Garcia-Nieto, Commission v UK*).
- Non-active EU migrants should be allowed by Member States to contribute in a proportionate manner to their statutory health scheme if otherwise they are not able to fulfil the requirements of Article 7 (1)(b) of Directive 38/2004/EC (new recital 5b)

European Commission

EU contingency measures 'no-deal' scenario

Employment, Social Affairs and Inclusion

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 MS 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)
- MS 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/citizens-rights_en#socialsecurityentitlementsintheeu27

Els.VERTONGEN@ec.europa.eu

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European Commission

European Citizenship and Access to Social Benefits

Prof. Dr. Ferdinand Wollenschläger

MoveS seminar Netherlands

Freedom of movement in the Euregion Meuse-Rhine

Maastricht, 23 September 2019

Funded by the

Outline

1. Position of economically active persons (workers)

2. Position of economically inactive persons

3. Position of jobseekers

Funded by the European Commission

1. Position of economically active persons (workers)

a) Far-reaching position of workers

- Residence right and equal access to national social systems for migrant workers

- Comprehensive entitlement to access to social benefits and virtually unconditional solidarity

    - Residence requirement (minimum period of residence) is not justifiable

Funded by the European Commission

- Financial interests of the host Member State are no justification for putting foreign nationals at a disadvantage

- Justification: Sufficient integration of economically active persons contributing to productivity and tax revenue in the host Member State (cf. e.g. CJEU, Aubriet)

- Moreover: Free movement not a mass phenomenon (although controversies: Eastern enlargement, child benefits)

Funded by the European Commission

- Further possibilities of justification in case of (children of) frontier workers: sufficient integration into the labour market (certain duration of work)

- Yet (in case of study grants): uninterrupted duration of work of 5 years (CJEU, Bragança) as well as 5 years out of 7 years (CJEU, Aubriet) disproportionate

Funded by the European Commission

- (P) Brexit-Deal 1 & current discussion: “alert and safeguard mechanism” ⇔ temporary exclusion from access to in-work benefits topping up wages to minimum level of subsistence

  - In Case of “inflow of workers from other Member States of an exceptional magnitude over an extended period of time” so that social security system is adversely affected

  - “Avoiding a significant risk to the sustainability of social security systems” is a ground for justification (cf. patient and student mobility)

  - BUT: only acceptable as ultima ratio – when is this fulfilled?

Funded by the European Commission

- (P) Brexit-deal 2 & current discussion: Reduction of child benefits for EU workers with children living abroad?
  - Indirect discrimination justifiable (diverging costs of living)
  - Challenge: Coherent application
    (Higher costs of living abroad to be taken into account? Uniform calculation in the host member state?)

Funded by the European Commission

b) Fragility of the market logic

- Due to a broad interpretation of the concept of worker
  - Performing "genuine and effective work" required
  - BUT: Requirements relative to productivity, remuneration and working hours low

    Inclusion of employees working 12h/week, relying on in-work benefits topping up wage to minimum level of existence or pursuing university education)

Funded by the European Commission

- Retention of worker status after the economic activity has ended/unemployment [Art. 7(3) Directive 2004/38; CJEU, Alimanovic]

  - Retention for at least six months if employment < 1 year

    no additional proportionality test required (para. 58 ff.; different view of AG)

  - Retention if employment > 1 year (cf. b); possibility of temporal restrictions excluded by CJEU, Tarola, 11.4.2019, para. 27, 44)

  - Requirement of re-integration into the labour market within reasonable time (CJEU, Prefeta, 13.9.2018, para. 37 ff.)

Funded by the European Commission

- Cases of retention not conclusive (CJEU, Saint Prix, para. 27 ff.: parental leave)

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2. Position of economically inactive persons

- Maastricht (1993): Introduction of free movement rights for all Union citizens, even for economically inactive persons, into EU-Treaties
- (P) Risk of economically motivated migration
- Therefore: Economic residence conditions in secondary law
  - Sufficient means of subsistence
  - Comprehensive health insurance cover

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- CJEU: Relativisation by applying the principle of proportionality to residence conditions

- Immaterial:

  - Temporary reliance of a student on social assistance (Grzelczyk)

  - Health insurance which does not cover all risks (Baumbast)

- Despite all criticisms from the Member States: Codification and extension in the Free Movement Directive 2004/38/EC

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a) Residence: Three-stage-model of Directive 2004/38/EC

- Up to 3 months: No economic conditions, but expulsion if unreasonable burden on the social assistance system of the host Member State [Art. 6(1), 14]

- Beyond this: Economic conditions, but no automatic expulsion in case of reliance on social assistance [Art. 7(1)(b) and (c), Art. 14(3)]

- Recital 16: Unreasonable burden to be assessed in view of: Temporary difficulties? Duration of residence? Personal circumstances? Social assistance sums provided?

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- Right of permanent residence

  Acquired after five years of legal residence; unconditional (Art. 16 f.)

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b) Access to social benefits (claim to equal treatment)

- CJEU: (Limited) access of economically inactive persons to social benefits (Sala, Grzelczyk, Bidar cases)
- Codified in Art. 24 Directive 2004/38
- Requirement: Residence right
- Unconditional right of residence for stays up to three months,

  BUT: no claim to social assistance [Art. 24(2) Directive 2004/38], confirmed in García-Nieto case (in line with primary law; no individual assessment required)

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- Unconditional right of residence and claim to social assistance after acquisition of right of permanent residence (five years)

- In between: to be considered on a case-by-case basis (unreasonable burden test)

  - Confirmed in Brey (19 September 2013)

  - No paradigm shift in Dano (14 November 2014)

    Particular circumstances of the case / contrary secondary law [cf. also Alimanovic: Claim to equal treatment if protected from expulsion according to Art. 14(4) – must also apply to (3)]

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Alimanovic, para. 46 (further Rendón Marín, para. 45 f.):

"[although] the Member State [must] take account of the individual situation of the person concerned before it adopts an expulsion measure or finds that the residence of that person is placing an unreasonable burden on its social assistance system [*Brey*], no such individual assessment is necessary in circumstances such as those at issue in the main proceedings."

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3. Position of jobseekers

- (P) Janus-faced position: potential market participants
- First: Residence right, ...
- … but no equal access to social benefits (CJEU, Lebon)
- Situation with regard to the latter improved following introduction of Union citizenship (CJEU, Collins, Ioannidis)

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- Free movement of workers includes “a benefit of a financial nature intended to facilitate access to employment in the labour market of a Member State” (CJEU, Collins, para. 63)

- However: A link with the employment market in the State concerned may be required (CJEU, Collins, para. 69)

- Collins case: Reasonable minimum residence period (para. 69 ff.; even broader approach in Prete case, para.50)

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- (P) Conflict with Art. 24(2) Directive 2004/38: Exclusion of jobseekers from social assistance

- Recent jurisprudence more restrictive ⇔ Alimanovic: If provision of means of subsistence prevails, no Collins benefit, but social assistance (para. 45 f.; cf. also Vatsouras and Koupatantze, para. 45)

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(P) Permanent exclusion in Art. 24(2) in line with EU primary law?

- Former workers (Alimanovic, para. 58 ff.): Differentiated system of Art. 7(3)(b) and (c) Dir. 2004/38/EC in line with EU primary law (disagreeing: AG Wathelet)

- First-time jobseekers

  - Problematic in view of the gradual inclusion of economically inactive persons

  - Disagreeing AG Wathelet, Alimanovic case (para. 98) and García-Nieto case (para. 73 ff.)

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4. Conclusions

- Workers: Far-reaching position, but under pressure
- Non-market actors: Dynamics of Union citizenship
- Induced by case law, but codified and further developed by the Union legislator
- Legal uncertainty (e.g. no automatic expulsion; proportionality test; relationship between coordination and export regime)

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- Improvements in recent case law
  - Clear regime for former workers seeking work in Art. 7(3)(b) and (c) Directive 2004/38 (Alimanovic)
  - Exclusion during the first three months (García-Nieto)

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- Moreover in Dano, Alimanovic and García-Nieto:
  - Exclusion of (other) economically inactive persons and access to social benefits subject to proportionality test
  - However: Rule/exception relationship with respect to economic conditions is stressed
- Still open: First-time jobseekers

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THANK YOU
FOR YOUR ATTENTION!

QUESTIONS & SUGGESTIONS:

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Recent developments in the field of free movement of workers at EU level

MoveS Seminar
Maastricht, 23 September 2019

Francisco Pérez Flores
Directorate-General for Employment, Social Affairs and Inclusion
Unit D1 – Free movement of workers, EURES

Labour mobility - EU

Type of mobility	Extent
'Long-term' EU-28 moverEurostat demography figures)s (all ages) living in EU-28* (	17 million
'Long-term' EU-28 movers of working age (20-64 years) living in EU-28* (Eurostat demography figures)	12.4 million
(as share of the total working-age population in the EU-28)	4.1%
EU-28 movers of working age living in EU-28** (EU-LFS figures)	11.5 million
...of which active EU-28 movers (employed or looking for work) **	9.5 million
(as share of the total labour force in the EU-28)	4%
EU-28 movers of working age who were born outside the country of residence (EU-LFS figures)	10.8 million
Cross-border workers (20-64 years) **	1.4 million
(as share of the total employed in the EU-28)	0.7%
Number of postings (of employed and self-employed), (no. of PDs A1) ***	2.8 million
= approximative number of persons	1.8 million

Labour mobility - The Netherlands

Stocks of working age foreigners (20-64) in 2017: Total 703,000 of which 389,000 from EU + EFTA and 313,000 from Third countries,

Compared to the total population they represent 7,0 %, 3,8% and 3,1 % respectively

By citizenship: PL (62,000), DE (45,000) UK (28,000) and BE (24,000)

Dutch of working age in the EU: 316,000 of which

95,000 in DE; 80,000 in BE and 60,000 in the UK

European Commission

FREE MOVEMENT OF WORKERS

Social Europe

Directive 2014/54 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers

Specific measures to ensure effective protection of rights conferred by Art 45 TFEU and Regulation (EU) No 492/2011 (defense of rights).

National body or bodies must exist to provide assistance to Union workers (including jobseekers) and their family members;

Promotion of dialogue

Better information provision at national level (also about EU rights)

Directive 2014/54 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers

The Directive does not create new "substantive" rights for mobile workers

the list of the FMW bodies is available at

http://ec.europa.eu/social/main.jsp?catId=1277&langId=en

Report on Directive of 4/12/2018 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018DC0789

EURES

EURES (European Employment Services) aims at facilitating and promoting the freedom of movement for workers within the EU notably by exchanging information on employment opportunities

It is a cooperation network within the EU 28 countries plus Switzerland, Iceland, Liechtenstein and Norway.

EURES Regulation 2016/589

EURES will be transferred to the European Labour Authority

Directive 2014/50/EU on minimum requirements for enhancing worker mobility between MS by improving the acquisition and preservation of supplementary pension rights

Waiting + vesting period = max 3 years

Employee contributions vest immediately

Minimum age for vesting = max 21 years (no limit age for scheme member)

Right to retain dormant pension rights in former employer's pension scheme

Preservation may vary depending on the scheme

- E.g. indexation, capital returns…

Basic principle: dormant members treated on par with active members

Payment as capital sum possible subject to:

- national ceilings

- informed consent of the worker

Information standards

- Impact of mobility on pension rights

Directive 2014/50/EU on minimum requirements for enhancing worker mobility between MS by improving the acquisition and preservation of supplementary pension rights

The Directive came into force on 21 May 2014.

Deadline for transposition by MS: ***21 May 2018.***

Further to the opening of infringement proceedings against 10 MS in July 2018 and the sending of reasoned opinions to 4 MS in January 2019, currently all MS have transposed the directive

Ongoing conformity check of the transposition by Member States

European Commission

POSTING OF WORKERS

Social Europe

Directive 2014/67/EU
Enforcement of PWD rules

-increases the awareness of posted workers and companies about their rights and obligations

-improves cooperation between national authorities in charge of posting

-defines Member States' responsibilities to verify compliance with the rules on posting of workers

-ensures the effective application and collection of administrative penalties and fines across the Member States if the requirements of EU law on posting are not respected

Directive 2014/67/EU
Enforcement of PWD rules

Article 24 of the Directive requires the Commission to review the application and implementation of the Directive to present a report and propose, where appropriate the necessary amendments. The report is being finalized

Ongoing conformity check of the transposition by Member States

Directive 2018/957/EU-Revision of Posting of Workers Directive

Remuneration (instead of "minimum rates of pay")

Collective agreements

Extension of the core of rights

Special rules for long-term posting

Monitoring, control and enforcement

Posting by temporary employment undertakings and placement agencies

Directive 2018/957/EU-Revision of Posting of Workers Directive

The Directive was officially adopted on the **28 June 2018**

Deadline for transposition and application: 2 years ***30 July 2020.*** *Until that date, Directive 96/71/EC remains applicable in its wording prior to the amendments introduced by this Directive*

A report on its transposition and application is foreseen by 30 July 2023

European Commission

EUROPEAN LABOUR AUTHORITY (ELA)

Social Europe

The Authority's Tasks (1 to 3)

1) Facilitate **access to information by individuals and employers** on rights and obligations and **to relevant services** in cross-border labour mobility situations

2) Facilitate **cooperation and exchange of information** between national authorities → through National Liaison Officers within ELA

3) Coordinate and support **concerted and joint inspections** by national authorities (governed under law of MS concerned, possible presence of ELA staff)

The Authority's Tasks (4 to 7)

4) Carry out **analyses and risk assessments** on issues of cross-border labour mobility

5) Support **capacity building national authorities** through guidance, mutual learning and training

6) Mediate in disputes between Member States on the application of EU law concerning labour mobility

7) Support Member States in **tackling undeclared work**

Functioning and governance

- Established as a new EU Agency A Management Board and an Executive Director.
- EU-level social partners represented in Stakeholders Group
- Size at cruising speed:
  - ✓ Staff of 144 (incl. national liaison officers and other seconded national experts)
  - ✓ Budget of 51M€

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European Commission

Applicable Legislation: the importance of habitual residence

- Concept
- Exclusive effect of the rules on applicable legislation

Henk van der Most
Sociale verzekeringsbank

23 September 2019
Maastricht, the Netherlands

Regulation 3/58 72 references to residence/ 0 in preamble

Article 1

(h) ‘place of residence’ means the normal place of residence;

Regulation 1408/71 120 references to residence / 4 in preamble

Article 1

(h) 'residence’ means habitual residence;

(i) ‘stay’ means temporary residence;

Regulation 883/2004 158 references to residence / 9 in preamble

Article 1

(j) ‘residence’ means the place where a person habitually resides;

(k) ‘stay’ means temporary residence;

Interpretative Case Law

"permanent residence", (…), in the case of a business representative (…), the place in which he has established the permanent centre of his interests and to which he returns in the intervals between his tours.

Judgment of 12 July 1973, case C-13/73 (Angenieux), ECLI:EU:C:1973:92

The concept of the Member State where the worker resides, appearing in Article 71(1)(b)(ii) of Regulation No 1408/71, must be limited to the State where the worker, although occupied in another Member State, continues habitually to reside and where the habitual centre of his interests is also situated;

Account should be taken of the length and continuity of residence (…), the length and purpose of his absence, the nature of the occupation found in the other MS and the intention of the person concerned as it appears from all the circumstances.

Judgment of 17 February 1976, C-76/76 (Di Paolo), ECLI:EU:C:1977:32

Interpretative Case Law

Miss Knoch was employed for two academic years as a university assistant in the UK. Afterwards she received unemployment benefits and sought employment in the UK.

<u>'Di-Paolo-Test'</u>

1. Length and continuity of residence before the person concerned moved
2. The length and purpose of his absence
   - Employment lasted for 21 months. But (i) there is no precise definition of the criterion of length of absence and (ii) it is not an exclusive criterion.
3. The nature of the occupation found in the other Member State
   - No stable employment. Attempts to find work proved unsuccessful.
4. The intention of the person concerned as it appears from all the circumstances.
   - The intention to reside cannot be established. Miss Knoch sought employment in the UK but this, at most, indicates that she might have transferred her residence to that State had she found work there.

Judgment of 8 July 1992, Case C-102/91 (Knoch), ECLI:EU:C:1992:303

Interpretative Case Law

Article 10a(1) Regulation No 1408/71:
(…) persons to whom this regulation applies shall be granted the special non-contributory cash benefits (…) exclusively in the territory of the Member State in which they reside, in accordance with the legislation of that State (…).

Article 10a of Regulation No 1408/71, read together with Article 1(h) thereof, precludes the Member State of origin — in the case of a person who has exercised his right to freedom of movement in order to establish himself in another Member State, in which he has worked and set up his habitual residence, and who has returned to his Member State of origin, where his family lives, in order to seek work — from making entitlement to [a non-contributory benefit] conditional upon habitual residence in that State, which presupposes not only an intention to reside there, but also completion of an appreciable period of residence there.

Judgment of 25 February 1999, Case C-90/97 (Swaddling), ECLI:EU:C:1999:96

Interpretative Case Law

(…) for the purposes of the application of the regulation, a person cannot have simultaneously two habitual residences in two different Member States.

Judgment of 16 May 2013, Case C-589/10 (Wencel), ECLI:EU:C:2013:303

(…) where a European Union national who was resident in one Member State suffers a sudden serious illness (…) in a second Member State and is compelled to remain in the latter State for 11 years as a result of that illness (…), such a person must be regarded as 'staying' in the second Member State if the habitual centre of his interests is in the first Member State. It is for the national court to determine the habitual centre of such a person's interests by carrying out an assessment of all the relevant facts and taking into account that person's intention, as may be discerned from those facts, the mere fact that that person has remained in the second Member State for a long time not being sufficient in itself alone for him to be regarded as residing in that Member State.

Judgment of 5 June 2014, Case C-255/13 (I), ECLI:EU:C:2014:1291

Regulation 3/58

Article 12: workers in one MS shall be subject to the legislation of that State, even if they reside in another MS.

Article 13: working in more than one MS

- including MS of residence -> legislation of the MS of residence
- more than one employer and employers located in different MS -> legislation of the MS of residence

Article 13: Seafarers on board a ship flying the flag of a MS where they do not reside

- If they are paid by an entity or a person domiciled in the MS of residence they are subject to the legislation of that MS.

Regulation 1408/71

New provisions

Article 13(1): A worker to whom this Regulation applies shall be subject to the legislation of a single Member State only.

Article 13(f): a person to whom the legislation of a Member State ceases to be applicable, without the legislation of another Member State becoming applicable to him in accordance with one of the rules laid down in the aforegoing subparagraphs or inaccordance with one of the exceptions or special provisions laid down in Articles 14 to 17 shall be subject to the legislation of the Member State in whose territory he resides in accordance with the provisions of that legislation alone.

Regulation 883/2004

Article 13(f) of Regulation 1408/71 does not reappear in the new Regulation. Instead a new rule – Article 11(3)(e) is introduced to incorporate the extension of the personal scope to persons that are not and perhaps have never been a part of the economically active population.

Article 11(3)(e): any other person to whom subparagraphs (a) to (d) do not apply shall be subject to the legislation of the Member State of residence, without prejudice to other provisions of this Regulation guaranteeing him/her benefits under the legislation of one or more other Member States.

Regulation 987/2009

Elements for determining residence

1. Where there is a difference of views between the institutions of two or more Member States about the determination of the residence of a person to whom the basic Regulation applies, these institutions shall establish by common agreement the centre of interests of the person concerned, based on an overall assessment of all available information relating to relevant facts (…)

Paragraph 2 contains a non-exhaustive list of elements to be taken into consideration

Non-exclusivity

Petroni principle -> purely national rights are not set aside by the Regulations

Article 12 Regulation No 3 does not prohibit the application of the legislation of a Member State other than that in which the person concerned works, except to the extent that it requires that person to contribute to the financing of a social security institution which is unable to provide him with additional advantages in respect of the same risk and of the same period

judgment of 9 June 1964, Case 92/63 (Nonnenmacher), ECLI:EU:C:1964:40

Full exclusive effect

Both article 12 of Regulation No 3 and Article 13 of Regulation No 1408/71 prevent the state of residence from requiring payment, under its social legislation, of contributions on the remuneration received by a worker in respect of work performed in another Member State and therefore subject to the social legislation of that state .

Judgment of 5 May 1977, Case 102/76 (Perenboom), ECLI:EU:C:1977:71

‘the Member States are not entitled to determine the extent to which their own legislation or that of another Member State is applicable 'since they are’ under an obligation to comply with the provisions of Community law in force’.

The Petroni principle applies not to the rules for determining the legislation applicable but to the rules of community law on the overlapping of benefits provided for by different national legislative systems

Judgment of 12 June 1986, Case 302/84 (Ten Holder), ECLI:EU:C:1986:242

confirmed in judgment of 10 July 1986, Case 60/85 (Luijten), ECLI:EU:C:1986:307

Full exclusive effect ? Yes, but, no, but

Article 13(2)(a) of Regulation No 1408/71 does not preclude a migrant worker, who is subject to the social security scheme of the Member State of employment, from receiving, pursuant to the national legislation of the Member State of residence, child benefit in the latter State.

Judgment of 20 May 2008, Case C-352/06 (Bosmann), ECLI:EU:C:2008:290

Confirmed in judgment of 12 June 2012, Case C-611/10 (Hudzinski), ECLI:EU:C:2012:339

However these cases were not about Title II !!!

Full exclusive effect ? The whole world, kick me

Working outside the EU without a conflict rule

According to the scheme of the regulation, the application of the legislation of the Member State in which the worker resides appears to be an ancillary rule which applies only where that legislation has a link with the employment relationship.

Judgment of 29 June 1994Case C-60/93 (Aldewereld), ECLI:EU:C:1994:271

61 (…) in the situation of a worker such as Mr Kik, the applicable legislation is that of the Member State, or the State treated as such, in which his employer has its registered office or place of business.

63 If, pursuant to Regulation No 1408/71, the legislation of the State in which the employer is established does not provide for an employee such as Mr Kik to be insured under any social security scheme, the legislation of the Member State of residence of the employee will apply.

Judgment of 19 March 2015, Case C-266/13 (Kik), ECLI:EU:C:2015:188

Lex domicilli as a residual rule ?

Working outside the EU with a conflict rule: Article 11(3)(e) of Regulation No 883/2004

It follows from a literal analysis of that provision that the EU legislature used general terms, in particular the words ‘any other person’ and ‘without prejudice to other provisions of this Regulation’, in order to make Article 11(3)(e) a residual rule which is intended to apply to all persons who find themselves in a situation which is not specifically governed by other provisions of that regulation.
Furthermore, the wording of that provision does not make any provision for limiting its scope to economically non-active persons.

A restrictive interpretation of Article 11(3)(e) of Regulation No 883/2004 limiting its scope solely to economically non-active persons may deprive persons who do not come under the situations referred to in subparagraphs (a) to (d) of Article 11(3) or other provisions of Regulation No 883/2004 of social security cover because there is no legislation which is applicable to them.

Judgment of 8 May 2019, Case C-631/17 (SF), ECLI:EU:C:2019:381

Exclusive effect: questions to the ECJ about minijobs

Germany has the phenomenon of the a so-called minijob – previously known as the geringfügige Beschäftigung. This job affords little social security protection. At the relevant time only insurance under the German legislation on accidents at work (Unfallversicherung).

In 2013 the Centrale Raad van Beroep asked a number of questions.

1. Were persons with a minijob indeed subject to German legislation ?
2. If yes, was this for the entire period or only for the periods in which they worked ?
3. If yes, would this stand in the way of insurance in the Netherlands ?
4. Could persons with a minijob be excluded from Dutch insurance, precisely because they were subject to German social security legislation ?
5. Are the possibility of voluntary insurance and the possible application of Article 17 of Regulation 1408/71 relevant ?

Exclusive effect in the case of minijobs. Answers from the ECJ

- the amount of time devoted to employment is irrelevant in determining whether Regulation No 1408/71 is applicable to the person concerned.
- a person who is employed for two or three days per month and who satisfies the conditions laid down in Article 1(a) and Article 2(1) of Regulation No 1408/71, namely that that person is subject to the legislation of one or more Member States, will fall within the scope of application of that regulation.
- Furthermore, a person who works for several days per month on the basis of an on-call contract is subject to the legislation of the State of employment both on the days on which he performs the employment activities and on the days on which he does not.
- Periods during which the activities of casual employment are not pursued cannot be regarded as a temporary suspension of the activity as long as the employment relationship continues.

Exclusive effect in the case of minijobs. Answers from the ECJ

The referring court clarifies that it is for the referring court to disregard the exclusion clause and to apply the hardship clause provided for in the 1989 BUB and the 1999 BUB in order to remedy any unacceptable unfairness which might arise from the insurance obligation or the exclusion therefrom.

It appears that the substantive conditions for granting (…) benefits under the legislation of the Member State of residence are fulfilled.

It was maintained at the hearing before the Court that the condition of residence is sufficient for affiliation in the Netherlands to the statutory old-age pension scheme, even if the person concerned is unemployed for a given period of time.

Article 13(2)(a) of Regulation No 1408/71 does not preclude a migrant worker, who is subject to the legislation of the State of employment, from receiving, by virtue of national legislation of the Member State of residence, an old-age pension and family benefits from the latter State.

Judgment of 23 April 2015, Case C-382/13 (Franzen), ECLI:EU:C:2015:261

Exclusive effect in the case of minijobs. Answers from the ECJ

Exclusive effect in the case of minijobs. The story continues . . .

Questions by the Hoge Raad

Do the Articles 45 and 48 TFEU preclude a national rule excluding a resident of the Netherlands from social insurance if that resident works in another Member State and is subject to the social security legislation of that State on the basis of Article 13 of Regulation No 1408/71 when under that legislation the persons concerned do not qualify for an old-age pension because of the limited scope of their work there.

Is it significant that there is no obligation to pay contributions ? Regard has to be had to the fact that, for the periods during which that resident falls exclusively under the social security system of the State of employment, Netherlands national legislation does not provide for an obligation to pay contributions either.

For the purpose of the answer to the previous questions, is it significant that the possibility existed for the parties concerned to take out voluntary insurance under the AOW, or that the possibility existed for them to request the Svb to conclude an agreement as referred to in Article 17 of Regulation No 1408/71 ?

Exclusive effect in the case of minijobs. The story continues . . .

Questions by the Hoge Raad concerning the period before 1989

Does Article 13 of Regulation No 1408/71 preclude someone, who, prior to 1 January 1989, was insured under the AOW solely on the basis of the national legislation in her country of residence, when she was subject, by reason of work carried out in another Member State, to the legislation of that State of employment?

Or must entitlement to a benefit under the AOW be regarded as an entitlement to a benefit which, under national legislation, is not subject to conditions relating to paid employment or to insurance within the meaning of the Bosmann judgment, with the result that the line of reasoning followed in that judgment can be applied in her case?

Exclusive effect in the case of minijobs. The story continues . . .

Conclusion by Advocate General Sharpston

Articles 45 and 48 TFEU preclude the application of provisions of national law of a Member State under which a migrant worker residing in that Member Stateis not insured for the purposes of social security and is therefore not entitled to an old-age pension or to family allowances, when that migrant worker is subject to the social security legislation of the Member State of employment but this legislation does not give him any right to social benefits other than protection, during his periods of employment, against accidents at work.

Article 13 of Regulation No 1408/71 does not preclude a person who was considered to be an insured person in his Member State of residence, under national provisions, being granted a right to old-age benefits for a period during which that person was working in another Member State. It is for the referring court to verify that the grant of the benefit in question is based on the legislation of that Member State and that the worker fulfils the necessary conditions.

Exclusive effect and minijobs. The story ends

The ECJ refers in its judgment to the case law on the levying of contributions.

It recalls that primary EU law cannot guarantee to a worker that moving to a Member State other than his Member State of origin will be neutral in terms of social security, since, given the disparities between the Member States' social security schemes and legislation, such a move may be more or less advantageous for the person concerned.

Article 45 TFEU does not give a worker in another Member State the right to rely on the same social insurance schemes as those for which he was eligible in his home Member State.

Article 45 TFEU also does not entitle a migrant worker to claim the same social insurance in his Member State of residence as the insurance he would be entitled to if he worked there, when he actually works in another Member State but does not qualify for social insurance there.

Judgment of 19 September 2019, Cases C-95/18 & 96/18 (Van den Berg), ECLI:EU:C:2019:767

Exclusive effect and minijobs. The story ends

If Article 48 TFEU were to be interpreted as meaning that a Member State which is not competent is obliged to grant social insurance to a migrant worker who is employed in another Member State, this may result in only the law of the Member State with the most favorable social security scheme being applied. Such a connecting criterion is practically very difficult to implement, in view of the many potential benefits under the various branches of social security referred to in Article 4 (1) of Regulation No 1408/71.

Moreover, that solution may disturb the financial balance of the social security system of the Member State with the most favorable social security scheme.

Article 17 allows for a derogation from Article 13. This is particularly relevant in cases such as the ones at hand.

Judgment of 19 September 2019, Cases C-95/18 & 96/18 (Van den Berg), ECLI:EU:C:2019:767

Exclusive effect and minijobs. The story ends

Concerning the period before 1989

Article 13 of Regulation No 1408/71 must be interpreted as precluding a Member State where a migrant employee resides and who is not competent under that article, from making the right to an old-age pension for that migrant worker dependent on an insurance obligation and therefore on compulsory premium payment.

L'article 13 du règlement no 1408/71 doit être interprété en ce sens qu'il s'oppose à ce qu'un État membre sur le territoire duquel réside un travailleur migrant et qui n'est pas compétent au titre de cet article conditionne l'octroi d'un droit à une pension de vieillesse à ce travailleur migrant à une obligation d'assurance, impliquant le paiement de cotisations obligatoires.

Judgment of 19 September 2019, Cases C-95/18 & 96/18 (Van den Berg), ECLI:EU:C:2019:767

Exclusive effect and residence – some conclusions

- Establishing (the occurrence of) residence remains a problem for citizens and institutions.
- The old case law on the exclusive effect of the conflict rules is alive and kicking.
- If the *Lex domicilii* has encroached on the *Lex loci laboris* than the encroachment has stopped (at least for now).
- SF has laid bare a shortcoming in Regulation 883/2004 since it is unable to guarantee equal treatment of workers in an identical employment relationship that happen to reside in different Member States.
- Kik ???

Applicable Legislation: the importance of habitual residence

- Concept
- Exclusive effect of the rules on applicable legislation

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Sociale verzekeringsbank

23 September 2019
Maastricht, the Netherlands

Third Country nationals
Recent developments

Herwig VERSCHUEREN
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Moves Seminar Netherlands
Maastricht
23 September 2019

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Overview

- Which legal sources?
- Recent legislative initiatives
- Recent relevant case law
  - Including pending cases

Legal sources

- Free movement law
  - Members of the family of EU nationals
  - Posted workers (*Vander Elst*)
  - EU social security coordination
    - Regulation 1231/2010
- EU migration directives
  - Equal treatment provisions
- EU external relations
  - Agreements concluded with third countries
- National law

Legislative initiatives

- Revision of the coordination regulations
  - New Article 14(12) IR on the application of Article 13 BR on persons residing outside the territory of the Union
    - Residence shall be deemed to be in the MS where the person pursues the major part of his/her activities in terms of working time (trilogue agreement)

Legislative initiatives

- Pending proposal on the revision of the Blue Card Directive
  - Blocked in Council

- Draft decisions on social security coordination of various Association Councils
  - Blocked in the relevant Association Councils

Recent case law
Balandin (C-477/17)

Facts:

- Third-country ice skaters working for 'Holiday on Ice' touring in various Member States
- 'Holiday on Ice': company registered in Amsterdam with main place of business in Utrecht
- Employees:
  - Periods of training in NL
  - Performances in various MSs
  - Dispute on employees who stayed and worked temporarily in the EU, but resided outside the EU
    - 'stay' was covered by a Schengen visa and national visas
  - SVB refused A1 certificates and the application of the EU regulations for those employees

Balandin (C-477/17)

Regulation 1231/2010

- Extends the social security regulation to third-country nationals provided they '*are legally resident in the territory of a Member State*'
- What is '*legally resident'?*
- Compare the concepts of '*residence'* and '*stay*' in Article 1 of Regulation 883/2004

Balandin (C-477/17)

- AG's opinion (27 September 2018)
  - The term 'legally resident' must be interpreted in a uniform way
  - See legal basis of Reg. 1231/2010: Article 79(2) TFEU
    - Reference to 'residing legally'
    - Objective of guaranteeing fair conditions under which third-country nationals are working in the EU
  - Reg. 1231/2010 does not give any entitlement to enter, stay or reside in a MS (see recital 10)
  - 'Legal residence' in Reg. 1231/2010 refers to the legal qualification of the presence whereas 'residence' in Reg. 883/2004 refers to factual circumstances

Balandin (C-477/17)

- AG's opinion (27 September 2018)
  - The persons involved in this case cannot be considered as being 'legally resident' in a MS
  - They do not hold a residence permit on the basis of EU law or national law
    - Visas are not residence permits
  - Place of business of employer is not relevant
  - What about '*Vander Elst*'?
    - not applicable: requires legal residence and employment in the sending State

Balandin (C-477/17)

- CJ's judgment of 24 January 2019
  - Refers to recital 7 of Reg. 1231/2010:
    - Objective of promoting a 'high level of social protection'
  - Term 'legal residence' requires an autonomous and uniform interpretation
    - No reference in Reg. 1231/2010 to national law
    - In the case of different language versions (for instance in Dutch 'verblijven'): look at the purpose of the applicable rule,

Balandin (C-477/17)

- CJ's judgment
  - Concept 'legal residence' in Reg. 1231/2010 differs from the concept of 'residence' in Reg. 883/2004
    - The latter is intended to determine the connection with a MS and not to determine the personal scope (as Reg. 1231/2010 does)
  - See also recital 10 to Reg. 1231/2010
    - *'must not give them any entitlement to enter, to stay or to reside in a Member State or to have access to its labour market'*

Balandin (C-477/17)

- CJ's judgment
  - Refers to *'travaux préparatoires'* (Commission's proposal)
    - *'temporary or permanent right of residence'*
    - legal 'presence' in second MS is enough
  - Length of residence in the EU or having the centre of interest in a third country is not relevant
  - See also the equal treatment provisions of the Single Permit Directive (2011/98)
    - Also applies to those temporarily admitted for work in a MS
  - So: Reg. 1231/2010 is applicable to these situations and consequently also Article 13 Reg. 883/2004

Shah Ayubi (C-713/17)

- Directive 2011/95 on international protection of refugees and those with subsidiary protection status
- Article 29: grants equal treatment for the 'necessary' social protection
  - MS may limit it to 'core benefits' for the beneficiaries of subsidiary protection
- Austrian law grants lower assistance benefits to (recognized) refugees with a temporary right of residence

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Judgment in *Shah Ayubi* (C-713/17) 24 January 2019

- CJ confirms that for refugees MSs may not make a distinction between temporary and permanent residence
  - No justification accepted for a difference in treatment
  - Including reference to the financial burden
- Refers to Article 23 of the Geneva Convention
- Confirms direct effect of Article 29 of Directive 2011/95

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Çoban (C-677/17)

- Next step in the saga on export of special non-contributory benefits (SNCBs) to Turkey

- Decision 3/80:
  - Article 6(1) provides for export of benefits, also to Turkey
  - Does not include a special coordination regime for SNCBs based on residence
    - No export under Reg. 883/2004

Çoban (C-677/17)

- Previous judgments
  - *Akdas* (2011):
    - export allowed
    - main reason: loss of right to reside in the NL and therefore not in a situation comparable to that of an EU national
  - *Demirci* (2015):
    - export denied
    - main reason: double nationality (including EU citizenship), so no loss of right to reside in the NL or even in the EU

Çoban (C-677/17)

- Facts:
  - Mr Çoban entitled to Dutch Invalidity benefit and a supplementary benefit under the Toeslagenwet (TW)
  - Holder of a long-term residence permit under Dir. 2003/109
    - Entitled to return to NL within a year of relocating
  - Returned to Turkey and supplementary benefit was terminated (by Uwv)
    - New application rejected
  - Initial judicial appeals dismissed

Çoban (C-677/17)

- Preliminary questions of Central Raad van Beroep:
  - What is the impact of Article 59 of the Additional Protocol?
    - Not more favourable treatment compared to EU citizens
  - What is the impact of having a long-term residence permit and the possibility to return to NL?

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Çoban (C-677/17)

- AG's opinion of 28 February 2019
  - Has doubts on whether the supplementary benefits falls under the scope of Decisions 3/80
    - But refers to *Akdas*
  - Mr Çoban's position can not be compared to that of a Dutch national or even an EU citizen
    - Long-term residence status limits the right to return to the former host State to one year
  - Therefore Article 59 of the Additional Protocol cannot be used to deny export of this supplementary benefit
  - Adaptation of Decision 3/80 to the SNCB's regime in Reg. 883/2004 can only be decided by the Association Council
    - See pending proposal

Çoban (C-677/17)

- Judgment of 15 May 2019
  - The supplementary benefit is an invalidity benefit within the meaning of Decision 3/80: Article 6(1) applies
  - Could lead to a situation in which a Turkish national is treated more favourably than an EU citizen
    - Problem with Article 59 Additional Protocol
  - *Akdas* had lost his right to remain in the NL
  - Which is not the case with Mr Çoban
    - Because of his long-term resident status
    - Which is approximate to that of EU citizens
  - No legal obstacle to withdraw this benefit upon returning to Turkey

Pending cases: the *saga* continues

- Case C-257/18 (Güler)
  - Again on export of supplementary invalidity benefit (Toeslagenwet - SNCB)
  - Mr Güler returned to Turkey when he had dual TR and NL nationality
    - Was not yet entitled to the SNCB
  - Subsequently renounces his NL nationality
  - Applies some years later for the SNCB when still residing in TR
    - Because he only then fulfilled the income threshold

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Pending cases: the *saga* continues

- Case C-257/18 (Güler) questions to the CJ:
  - Can this person still rely on Article 6 of Decision 3/80?
    - Considering his renouncing the NL nationality
  - If so, is the moment of renouncing the NL nationality relevant?
    - In this case after having returned to TR
  - Is Article 6 Decision 3/80 also applicable if the SNCB is requested some period after the return to TR?

Pending cases: the *saga* continues

- Case C-258/18 (Solak)
  - Mr Solak had dual NL and TR nationality when he was, as a resident in the NL, entitled to the invalidity benefit and its SNCB supplement
  - Renounced the NL nationality (in order to be entitled to 'remigratievoorzieningen') and returned to TR
  - Claims export of SNCB

Pending cases: the *saga* continues

- Case C-258/18 (Solak), questions to the CJ:
  - Can this person still rely on Article 6 of Decision 3/80?
    - Considering his renouncing the NL nationality
  - Is Article 6 Decision still applicable even if the recipient has voluntarily left the MS and voluntarily renounced its nationality
    - and whilst it has not been found that he is no longer registered as belonging to the labour force of that MS

Pending cases

- Case C-303/19 (VR)
  - On Article 11 long-term residence Directive 2003/109
    - Equal treatment for social benefits (limited to core benefits)
  - Means tested family benefit refused to a Pakistan national with long-term residence permit for his children residing in Pakistan
    - Would not be refused to an Italian national
  - Question to CJ:
    - Is this in breach of Article 11 Directive 2003/109?

Recognition of Qualifications for Health Professionals

Balancing Mobility and High Quality Healthcare

Lavinia Kortese

23 September 2019

The Professional Qualifications Directive (PQD)

- Directive 2005/36/EC as amended by Directive 2013/55/EU
- Codifies over 60 years of legal history
- Focused on regulated professions
  - Professions for which qualification requirements are laid down in laws, regulations or administrative provisions
- Professional qualifications
  - Diplomas, certificates, attestations of competence, and professional experience
- Primarily applicable to EU citizens with EU professional qualifications

Structure of the PQD

- Two regimes for recognition depending on the duration of the exercise:
  - Service provision
    - Temporary and occasionally
    - No recognition required
  - Establishment
    - Long-term exercise
    - Recognition required

Regime for Establishment

- Recognition required → before the start of activities

- 2 Systems for automatic recognition
  - Minimum training requirements
    - 7 Sectoral professions
    - Doctors, nurses, veterinarians, midwives, pharmacists, dentists & architects
  - Professional experience
    - Commerce, industry, small crafts
- 1 General system
  - Majority of regulated professions
  - Back-up system

Focus on the General System

- Substantive evaluation by authority
  - No differences in duration or level
  - Equivalent, not equal

- **Recognition is presumed**

- *Unless*
  - Substantial differences
  - Differences in the range of activities

- Compensation measures:
  - When the required knowledge is really missing
  - When proportionate
  - When motivated by the authority

Health Professions in the EU

- Most heavily regulated sector in the EU
  - Over 40% of regulated professions
- Most mobile sector under the PQD
  - Ca. 59% of decisions
- Prominent tension
  - High quality healthcare vs. Free movement
- Difficulties in recognition:
  - Regulation of a profession differs per Member State
  - Law vs. Practice
    - ITEM casuistry & research

Physiotherapists

- Requirement for a declaration of hours of study
  - PQD only allows *substantive* evaluations, no evaluation of level or duration

- Recognition depends on language knowledge
  - Only 1 certificate accepted
    - ≠ allowed under the PQD and CJEU case law

Dentist

- Qualifies for automatic recognition
  - *However*, no automatic recognition in this case
  - Missing certificate

- Automatic recognition if:
  - Diploma in PQD Annex
  - Possible additional certificate

- Too strict an interpretation of the directive or compliance?

Paediatric Surgeons

- Creation of a Tri-Member State Euregional Centre for Paediatric Surgery
- Differences in national regulation hinder automatic recognition
  - Paediatric surgery is not an independent specialty NL/BE
- Consequence: no automatic recognition for the Centre's paediatric surgeons
- Solutions:
  - EGTC + European Cross-border Mechanism
  - Recognition of the Specialisation in BE

Intensive Care (IC) Nurses

- Two-step qualification:
  - Bachelor nursing
  - Additional specialisation

- Specialisation ≠ regulated in NL
  - *However*, no free access
  - Quality standard with qualification requirement

- European law?
  - Art. 45 TFEU free movement & non-discrimination
  - *Angonese* & *Vlassopoulou*
  - Legal certainty

Conclusion

- Recognition of qualifications is challenged by multitude, complexity, and fragmentation

- Need for:
  - Targeted action for specific cases
  - Focus on mutual recognition
  - High quality information provision
    - B-solutions Project Roadmap & Factsheet

Thank you!

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Some Issues of Taxation:

More Coordination of Tax law and Social Security Law wanted?

prof.dr. M.J.G.A.M. Weerepas

ITEM/ Maastricht University/ Provincie Limburg/ NEIMED /Zuyd Hogeschool/ Gemeente Maastricht / Euregio Maas-Rijn (EMR)

Agenda

- 1. Introduction
- 2. Examples discoordination
- 3. WNRA (public servants)
- 4. Proposals

1. Introduction

Cross border employment and social security and tax law: conflicting rules?

- Conflict tax-tax
- Conflict social security contributions-social security contributions
- Conflict tax-social security contributions

Cross border situations in Europe

taxation: double tax treaty (conflict tax-tax)

- resident State: taxes worldwide income
- source State: taxes only what is earned in source State
- resident State supplies for relief double taxation

social security contributions: Reg. 883/2004 and Reg. 987/2009 (conflict social security contributions-social security contributions)

- exclusive rule: only one national social security scheme is applicable (art. 11(1) Reg. 883/2004 (also ‘strong’ application))

Performing activities in two or more MS

- Conflicting rules, Art. 13 Reg. 883/2004, Art. 14 Reg. 987/2009
- E.g. employed-employed:
- > 25% in residence State (Art. 13(1) Reg. 883/2004 and Art. 14(8) and (10) Reg. 987/2009) -> residence State
- < 25% in residence State

    a. 1 employer -> State employer

    b. employer outside EU/EEA/CH -> residence State

    c. 2 employers, one in residence State -> other State than residence State

    d. multiple employers, at least two employers not in residence State -> residence State

(Dis)coordination

- coordination: taxation State X
  social security contributions State X

- discoordination: taxation State X
  social security contributions State Y
  or the other way around

continue

- high income tax rate – low social security contributions
- low income tax rate – high social security contributions
- high income tax rate - high social security contributions
- low income tax rate – low social security contributions

2. Examples discoordination

a. Example, but solvable

- Teacher living in Belgium, working in the Netherlands
- International truck driver

b. Example, incoherently coordination, solvable

- ‘Swedish’ pensioner

c. Example, not solvable

- Living in the Netherlands and working in Germany and Belgium

Example, but solvable

Belgium teachers

- Art. 20 Treaty Nl-B 2001: attribution tax law to residence State for the first two years
- Art. 11 (3)(a) Reg. 883/2004: social security in work State from day 1
- Resident Belgium -> higher income tax rate and higher social security contributions compared to his Dutch colleague

Solution: abolish Art. 20 Treaty Nl-B 2001

International truck drivers

- Tax: Art. 15 OECD

  -> 183 day-rule (counting days)
- Social security contributions: Art. 13 Reg. 883/2004 and Art. 14(8) and (10) Reg. 987/2004

  -> 25% or more in residence State or not etc.

Administrative burden for employer and employee

Solution: introduce special provision in tax treaty and Reg. 883/2004 to coordinate this problem

Example, incoherently coordination, solvable

Resident Sweden
NL 2nd pillar pension
Taxation Sv
Zvw/Wlz (health insurance) Nl

Resident Netherlands
Swedish 2nd pillar pension
Taxation NL
Health insurance Sv

Solution: inventory of the financing of social security by taxes and make a provision, e.g. a deduction

Example, not solvable

A person lives in the Netherlands and works for a German employer in Germany and for a Belgium employer in Belgium

- Taxation: taxable in three countries (Nl, G and B)
- Social security contributions: just one State

3. Wet normalisering rechtspositie ambtenaren (transforming civil servants into employees)

In case of performing activities in two or more MS

Taxation

- -> “paying” state
- -> one works at a government institution -> valid reason? -> will foreign administration recognize?

Social security contributions

- Employee -> > 25% of working time and/or salary in residence state-> residence State -> no coordination

(until 2020 now: employed – civil servant: Art. 13(4) Reg. 883/2004 -> State civil servant)

- New ‘schizofrenic’ employee (civil servant and employee)? New discoordination

More coordination tax law/social security

- History
- More equal interpretation of terms -> at least discuss
- Avoid administrative burden employee/employer
- Increase coordination tax law-social security contributions in one state

4. Proposals

I. Regarding coordination:

- Active performances: work State principle
- Inactive performances: residence State principle

II. Regarding tax/social security contributions:

- EC should (art. 4(3) TEU and art. 45 TFEU) investigate which possibilities there are to settle the EU MS taxation in case it is used for financing the benefits of health care and the pensioners have to pay similar contributions in other MS for these benefits
- Add a new § to art. 30 Reg. 883/2004

Thank you for your attention!

MoveS
FREE MOVEMENT OF WORKERS & SOCIAL SECURITY COORDINATION

MoveS
project presentation

Eftheia
Deloitte.
Université de Poitiers
University of Ljubljana

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MoveS

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

Eftheia Deloitte. Université de Poitiers University of Ljubljana

Funded by the European Commission

- 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)

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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**

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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'***

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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

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Objective 2

- To disseminate expertise and increase experts' and practitioners' knowledge

  - by organising **seminars**
  - by **sharing information**
  - by **building networks between stakeholders**

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Seminars

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

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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

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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

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MoveS
FREE MOVEMENT OF WORKERS & SOCIAL SECURITY COORDINATION

Thank you for your attention!

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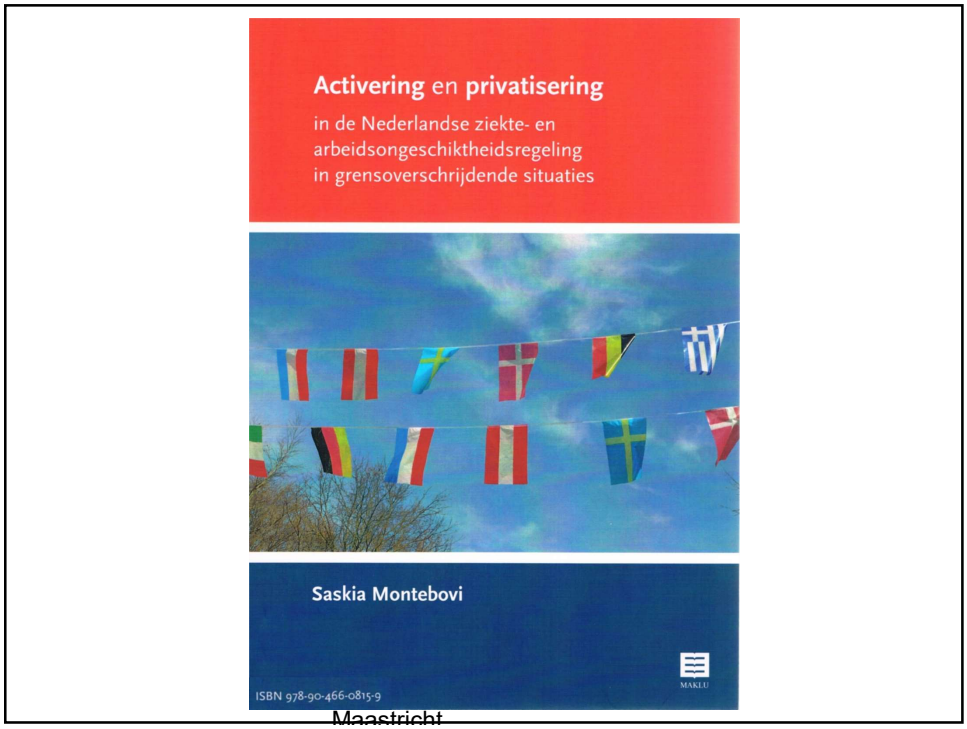
(Dutch) Sickness & Invalidity schemes–
in cross border situations
23 September 2019, Maastricht
Dr. Saskia Montebovi, Tilburg & Maastricht University
TILBURG UNIVERSITY
Understanding Society


Activering en privatisering
in de Nederlandse ziekte- en
arbeidsongeschiktheidsregeling
in grensoverschrijdende situaties
Saskia Montebovi
ISBN 978-90-466-0815-9
MAKLU
Maastricht

To start with …

The Dutch Sickness Acts (a) and the Invalidity Act (b)

NL	An aligned and balanced system …
EUR	… but not in cross border situations

Agenda today

NL EUR

1) Sickness (short, max.104 weeks)
2) Invalidity (long)
3) Activation
4) Privatization

} NL

5) Cross border } Reg (EC) 883/2004 & 987/2009
6) Bottlenecks ←→ free movement, social cohesion
7) Developments and solutions

Incapacity for work according to Dutch law

Being absent is out, activation is in .

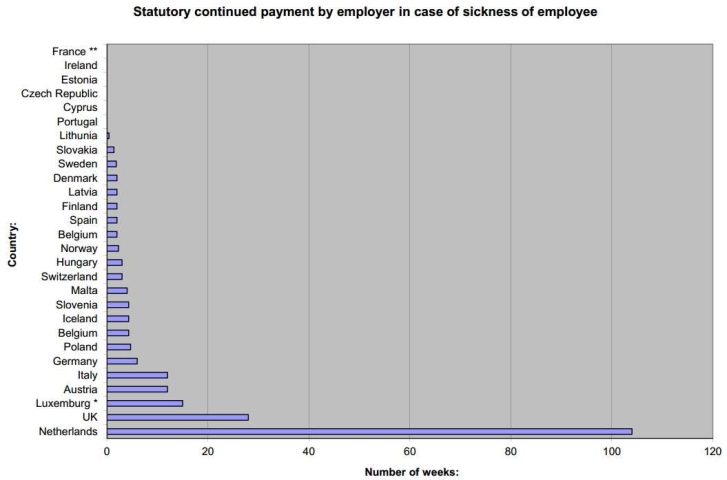
Sickness

- Max.104 weeks
- 1) Article 7:629 Civil Code (sickness = labour law)
- 2) Sickness Benefit Act = safety net
- art.7:629; 7:629a, 7:658a, 7:658b, regeling procesgang 1e en 2e ziektejaar, beleidsregels beoordelingskader poortwachter; sancties

Invalidity

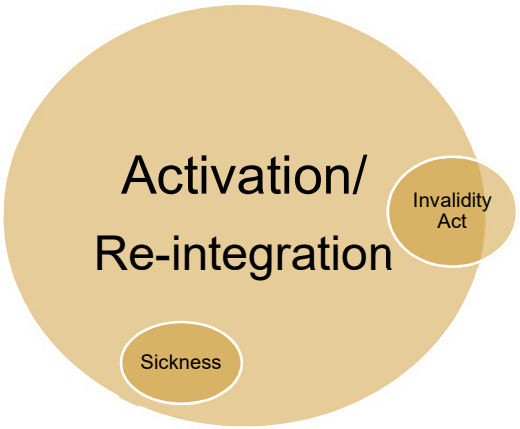
- After sickness, partly capable for work; incl. unemployment
- Wet WIA: ~~IVA (art.4) en~~ WGA (art.5)
- Wet WIA; beleidsregels (arbeidsinschakeling); controlevoorschriften (buitenland) arbeids-ongeschiktheidswetten 2006

Sickness, short-term: NL obviously deviant

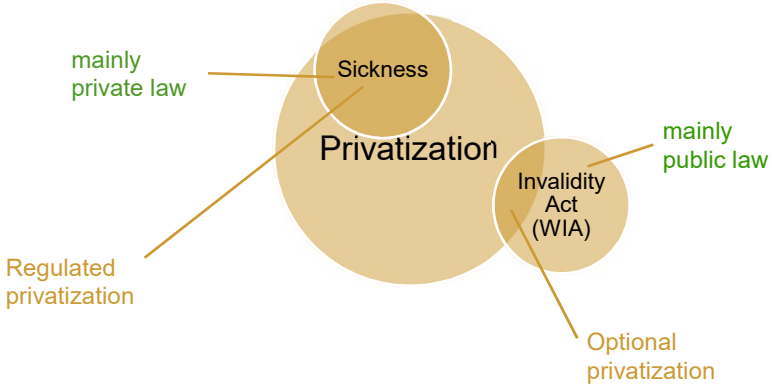


Bron: R. Knegt & M. Westerveld, 'Sickness and Disability: Going Dutch as a Cure for a 'Dutch Disease", in het boek: R. Knegt (ed.), *The Employment Contract as an Exclusionary Device: An Analysis on the Basis of 25 Years of Developments in The Netherlands*. Antwerp-Oxford-Portland: Intersentia, 2008, p. 82.

Activation in Dutch Sickness & Invalidity Acts



Privatization in Dutch Sickness & Invalidity Acts



Agenda today

NL EUR

1) Sickness (short, max.104 weeks)
2) Invalidity (long)
3) Activation
4) Privatization

NL

5) Cross border — Reg (EC) 883/2004 & 987/2009

6) Bottlenecks ←→ free movement, social cohesion
7) Developments and solutions

Incapacity for work in Reg.(EC) 883/2004 & 987/2009

Re-integra-tion??

Sickness	Invalidity
Chapter Sickness, benefits in cash + kind; (sickness = social security)	Chapter Invalidity; cash benefits
Public or private (art.3)	Public law
1 competent state	pro rata (art.46 and 50)
Paletta case	Voeten & Beckers-case; Leyman-case

Problem?

NL:
- many rules: extensive, strict
- lots of attention for activation/re-integration
- privatization: since 1994 ↗

EUR (REGUL.):
- sickness/invalidity: limited rules
- mainly benefits, not re-integration
- re-integration: 2 references: art.27,4 en art.87,5 Implementing Reg.
- privatization: —

Bottlenecks?

- **Example 1 for sickness:**
  - Employer from DE/BE/… has an employee in NL;
    → Dutch social security (unemployment, old age, sickness, …)
  - Accident/ill → continued wage payment max. 104 weeks
  - Foreign employer: problem: (how exactly to) comply with the Dutch rules?

- **Example 2 for long-term incapacity for work (partly invalidity)**
  - (German) teacher: lives in Germany, works in NL
  - Accident/ill → after 104 weeks: Invalidity-benefit (WGA-benefit)
  - Including the obligation to re-integrate, looking for (part-time) work in NL, in Germany?

Bottlenecks

- On the one hand: actual
  - Yes or no continued wage payment by the foreign employer
  - Yes or no new medical examination abroad (for invalidity)
  - Yes or no part-time job in Belgium/Germany with a WIA-benefit
  - Yes or no exclusively Dutch expert decision for the Dutch judge

- On the other hand: abstract
  - Legal insecurity
  - Legal inequality
  - Hindering of free movement for workers & social cohesion
  - Less credits for a European labour market

Some bottlenecks with Sickness / Invalidity

1) Medical report of residence state does not (always) fit in the Dutch system
2) Employer and/or employee do not know (enough) the complex Dutch rules
3) Combination Dutch soc.sec.law and foreign labour law contract (between two stools)
4) Where to re-integrate: living or working state?
5) More employers or more working states
6) …

---

1) Report of re-integration art.65 WIA
2) Determination of invalidity (%)
3) Capacity (NL) ←→ incapacity (others)
4) In NL: invalidity = benefit in cash + in kind + re-integration ←→In Reg.: invalidity = cash benefit
5) Waiting period invalidity: different in member states (Leyman)
6) Where to re-integrate: living or working state?
7) ...

Solutions? Hope? Recommendations

NL

- Shorten the max.104 weeks
- Transparant/clear policy of UWV for cross border situations
- Impact Assessment new laws
- More bilateral / multilateral agreements / (in)formal networking

EUR

- Concept re-integration: definition, rules, conflict rules
- Modernization of law: new patterns of work

Developments?

NL

- Continued Wage Payment: easier and cheaper for small employers
  - Kamerbrief minister Koolmees, 20 dec.2018
  - Kaderconvenant MKB verzuim-ontzorgverzekering
  - Productconvenant MKB verzuim-ontzorgverzekering
- Bilateral cooperation NL – B:
  - Agreement UWV-VDAB, 29 okt.2018
- More & better information for employer and employee

EUR

- Revision Regulations COM(2016)815: a lost opportunity ?!
- Judges (national and European): slowly but surely …?
  - Case Vester (C-134/18), 14 March 2019

Information

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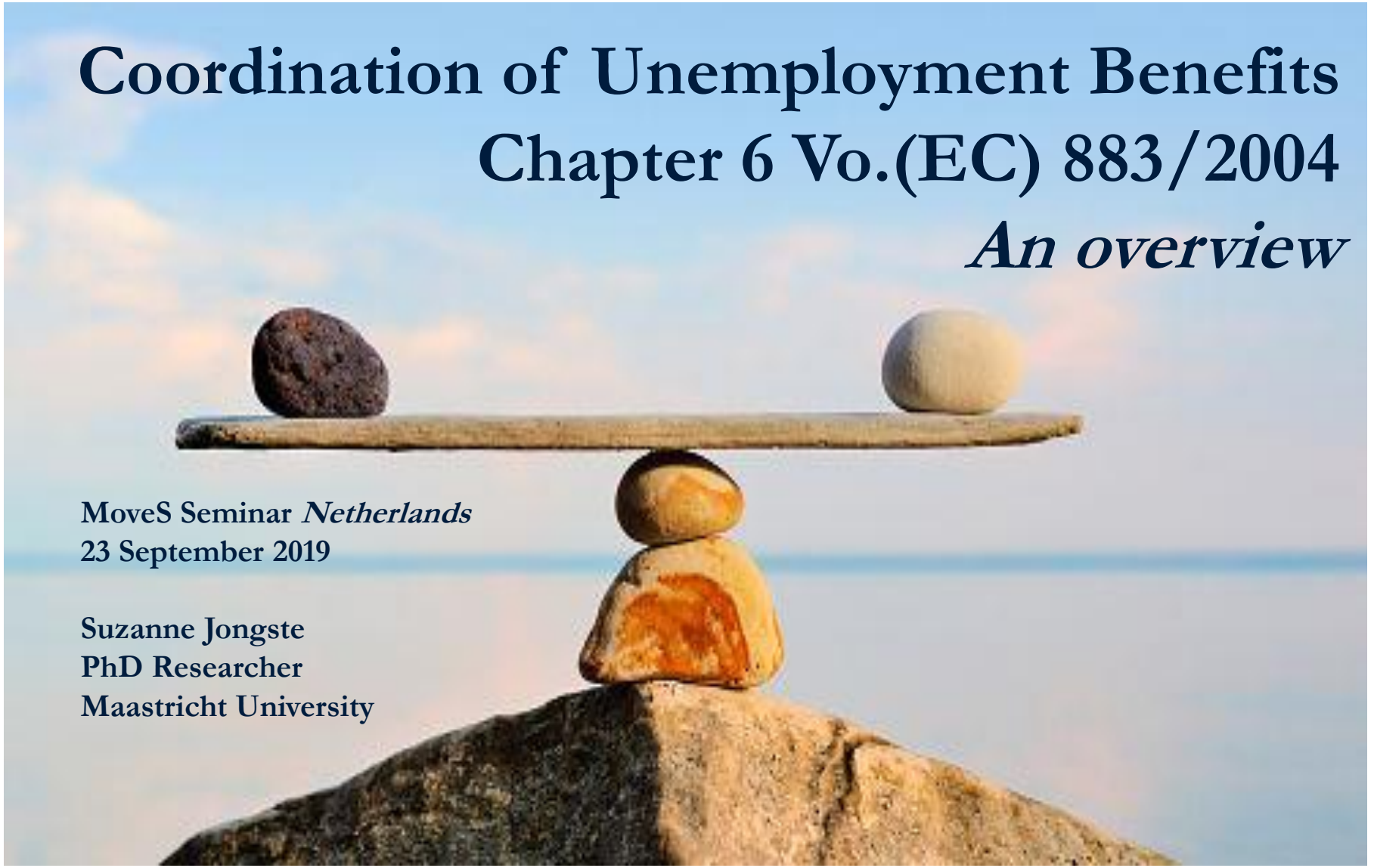
Dissertation:

Activering en privatisering in de Nederlandse ziekte- en arbeidsongeschiktheidsregeling in grensoverschrijdende situaties, Uitgever: Maklu Apeldoorn/Antwerpen, 2016, 469 p.
ISBN:978-90-466-0815-9

Articles about sickness en invalidity in cross border situations:

- Montebovi, S., 'Ziek en toch aan het werk. Re-integratie bij arbeidsongeschiktheid. Hoe ver reiken onze Nederlandse en Europese regels?', *Nederlands Juristenblad (NJB),* 2018, afl.29, issue 1510.
- Dijkhoff, T. en Montebovi, S., 'Grensarbeider tussen wal en schip', *Tijdschrift Recht en Arbeid (TRA)* 2015/12, afl.2 (feb.).
- Montebovi, S., 'Werk boven ziekte. Een vergelijking van de re-integratieregels tijdens ziekte in België en Nederland. En wat met grensoverschrijdende (platform)arbeid?', *Belgisch Tijdschrift voor Sociale Zekerheid (BTSZ),* 1e trimester 2018, p.121-174.
- Travailler plutôt qu'être malade. Une comparaison des règles de réintégration pendant la période de maladie entre la Belgique et les Pays-Bas. Et quid du travail transfrontalier (via des plateformes)?, *Revue Belge de Sécurité Sociale,* 1e trimestre 2018, p.121-178.

Coordination of Unemployment Benefits
Chapter 6 Vo.(EC) 883/2004
An overview



MoveS Seminar *Netherlands*
23 September 2019

Suzanne Jongste
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The coordination rules on unemployment benefits are peculiar:

- General coordination principles are not fully implemented
- Tight link between the payment of the unemployment benefit and the availability for the labour market (registration with employment services and active participation in employment promotion measures)
- Remain available for monitoring & control

Current special rules on Unemployment Chapter 6 Regulation (EC) No 883/2004

- **Aggregation rules** (**art. 61**): "*Most recently completed* periods *(…)*"
- **Calculation** (**art. 62**): Income Member State last activity
- **Export** (**art. 64**): 3 months *(*possibility of prolongation to 6 months) / Specific rules for job seeking activities / Compliance with the control procedure host Member State
- **(Non-) frontier workers** (**art. 65**): MS of Residence; derogation from the main rule of Title II (*lex loci laboris principle*) / Reimbursement between institutions (art. 65 (6) (7))

Drawbacks current rules

- Unfair distribution of costs between the State of (last) activity and the State of residence
- No uniform application of art. 61 (2) and art. 64 (1) c.
- Fraud and abuse
- Complex provisions for (non-) frontier workers and administratively burdensome (*reimbursement scheme*)

Commission's proposal
Aggregation (art. 61)

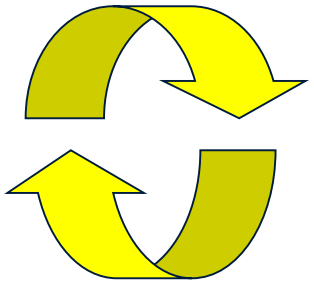
- Simplification aggregation rules (art. 6)
- Uniform application aggregation rules
- Minimum qualifying period of **three months** in the Member State of most recent activity
- 61 (2): The Member State of previous activity provides benefits when this condition is not fulfilled (*art.64a*)

Commission's proposal
Export (art. 64)

- Art. 64 (1) (c): minimum export period of **six months** (possibility of prolongation entire period)
- Amendment art. 55(4) Reg. 987/2009 to strengthen the control procedure by rendering the monthly follow-up reports mandatory
- New art. 64a complementing Article 61(2)

Commission's proposal
(Non-)Frontier workers (art. 65)

- Member State last activity is competent for granting unemployment benefits (*lex loci laboris principle*)
- Member State of residence is competent if **less than 12 months** of employment/insurance have been completed under the legislation of the Member State last activity
- No differentiation between frontier workers and other cross border workers
- No reimbursement provisions



Chapter 6 Unemployment	EC proposal December 2016	Council June 2018	EP December 2018	Agreed proposal March 2019
Aggregation of periods	3 months	1 month	1 day	1 month
Export	6 months, possibility of prolongation until end of entitlement	3 months, possibility of prolongation until end of entitlement	6 months, possibility of prolongation until end of entitlement	6 months, possibility of prolongation until end of entitlement
Frontier Workers	Member State of Last Activity is competent after 12 months of employment in that MS; export to MS of Residence min.6 months; Abolishment reimbursement rules	Member State of Last Activity is competent after 3 months of *uninterrupted* employment in that MS; Export to MS of Residence 6 months; Abolishment reimbursement rules	Immediate choice between Member State of Last Activity and Member State of Residence; Reimbursement to MS of Residence 4/8 months (*new 65-1a close cooperation MSs*)	Member State of Last Activity is competent after 6 months of *uninterrupted* employment in that MS; export to MS of Residence min. 15 months (art. 65-3); Abolishment reimbursement rules
Special rules on aggregation of periods for unemployment benefits	Aggregation under Article 6	Aggregation only with periods which count for ***the right to unemployment benefits*** in the MS in which they have been completed *(new 60a)*		Aggregation only with periods which count for the ***right to unemployment benefits*** in the MS in which they have been completed *(new 60a)*

Some reflections…

What's next…?