

MoveS seminar Romania

*Family benefits in the context of free
movement of workers*

Bucharest, 5 November 2019

Hotel Intercontinental, Rapsodia Hall
Languages: Romanian/English



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

**MoveS Seminar
Bucharest, 5 November 2019**

Radek CASTA

Directorate-General for Employment, Social Affairs and Inclusion

Unit D1 – Free movement of workers, EURES



Free Movement in the EU

Art 21 TFEU gives all **EU CITIZENS** the right to move and reside freely, including **non-actives, pensioners, students** (subject to restrictions in secondary legislation)

Free Movement of Workers (Art 45 TFEU)

EMPLOYED
plus
jobseekers,
family
members

Freedom of Establishment (Article 49 TFEU)

SELF-EMPLOYED
plus family
members

Freedom to Provide Services (Article 56 TFEU)

POSTED WORKERS

2018 Report on intra-EU mobility

Facts and figures of 2017:

- 17 million EU-28 movers among which 12,4 of working age
- Around 83% (9,5 mil) of working-age movers were active in 2017 (employed or looking for work)
- In addition 1,4 frontier workers in the EU
- Ca. 1 million a year moving abroad and 680.000 returning to MS of origin
- Ca. 2.8 million posting situations (PD A1) - workers temporarily posted or self-employed carried out cross-border services in 2018

The number of EU movers doubled between 2010 and 2017

Labour mobility – legislative framework

Free movement of workers

- 1) Regulation No 492/2011 (ex-Regulation 1612/68)
- 2) Directive 2014/54 (Enforcement of Free Movement of Workers Rights)
- 3) Directive 2014/50 (supplementary pension rights)

Temporary mobility in the framework of provision of services (Posting of workers)

- 1) Review of Directive 96/71 (Directive 2018/957)
- 2) Transposition of Directive 2014/67 (Enforcement Posting of Workers)



Enforcement of FMW rights

- Practice shows that it is difficult for EU workers to enforce their rights at national level
- Directive 2014/54 aims to facilitate the exercise of rights on Union workers and members of their families in the context of the freedom of movement for workers
- Report on the implementation of Directive 2014/54 (COM(2018) 789 final of 4.12.2018)



Main Features of the Directive 2014/54

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

FMW bodies

the list with contact details is available at

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

*so-called **bodies**, are **empowered** to*

- promote equal treatment,
- analyse the problems faced by Union workers and members of their family,
- study possible solutions,
- provide specific assistance.



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



Posting of Workers

The Enforcement Directive 2014/67:

- Report from the Commission on the application and implementation of the Directive (COM(2019) 426 final of 25.9.2019)

Practical Guide on posting (2019)

- Published on COM website

Directive 2018/957 amending Directive 96/71

- The same wage for the same work at the same place
- Transposition deadline 30 July 2020



European Labour Authority

- **Established by Regulation No 2019/1149 of 20 June 2019**
- **Seat of ELA is Bratislava, SK**
 - EP's legal action against Council's decision on ELA's seat
- **Role of the ELA:**
 - contributes to ensuring that EU rules on labour mobility and social security coordination are enforced in a fair, simple and effective way
 - makes it easier for citizens and businesses to reap the benefits of the internal market
 - assists national authorities in cooperating for the effective enforcement of the rules



Challenges to FMW in the EU

- 1) Enforcement of EU workers' rights**
- 2) Poverty migration, benefit tourism**
- 3) Brain drain, youth drain**
- 4) Huge socio-economic differences among MSs**
- 5) Limited EU competence in social field, education, taxation**



Thank you for your attention!

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http://europa.eu/youreurope/citizens/index_en.htm

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

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



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
Bucharest, Romania
5 November 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
3. EESSI



Revision of the social security coordination Regulations





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)

EU contingency measures 'no-deal' scenario





Contingency measures 'no-deal' scenario

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



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



EC Guidance note

- Proposed by the EC to EU-27
- Complements the contingency Regulation by recommending 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

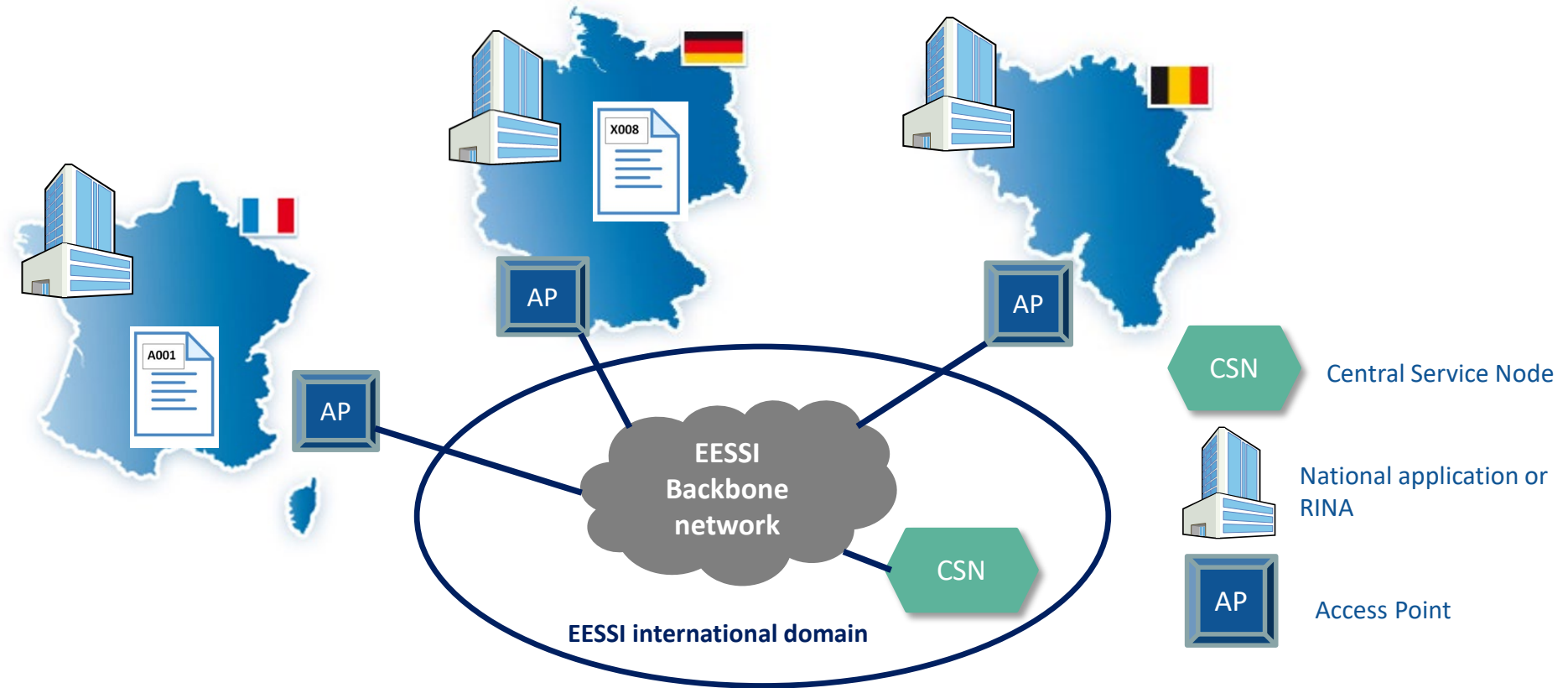
https://ec.europa.eu/info/publications/communication-10-april-2019-addressing-impact-withdrawal-united-kingdom-union-without-agreement-unions-coordinated-approach_en

- 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

Electronic Exchange of Social Security Information (EESSI)



What is EESSI?





What is EESSI?

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

Benefits of EESSI:

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



State of play

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

EESSI – date of final deployment*

Jan. 2019 - Jul. 2019	Aug. 2019 - Dec. 2019	Jan. 2020 - Jul. 2020	Aug. 2020 - Dec. 2022
15 Countries	9 Countries	2 Countries	6 Countries

* Information provided by the Member States and updated monthly.



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Coordination of Family Benefits :

Export, Recent Caselaw, Perspectives



Bucharest, 5 November 2019



- I. Introduction
- II. Overview on Coordination Rules
- III. Recent Case-law
- IV. 'Policy' Questions: Challenges and Reforms
- V. Final Remarks



II. Overview on Coordination Rules

1. Particularities of Family Benefits

a) Purpose



Art. 1 (z) Reg. 883/2004:

“family benefit’ means all benefits in kind or in cash intended to meet family expenses, excluding advances of maintenance payments and special childbirth and adoption allowances mentioned in Annex I’



II. Overview on Coordination Rules

1. Particularities of Family Benefits

a) Purpose



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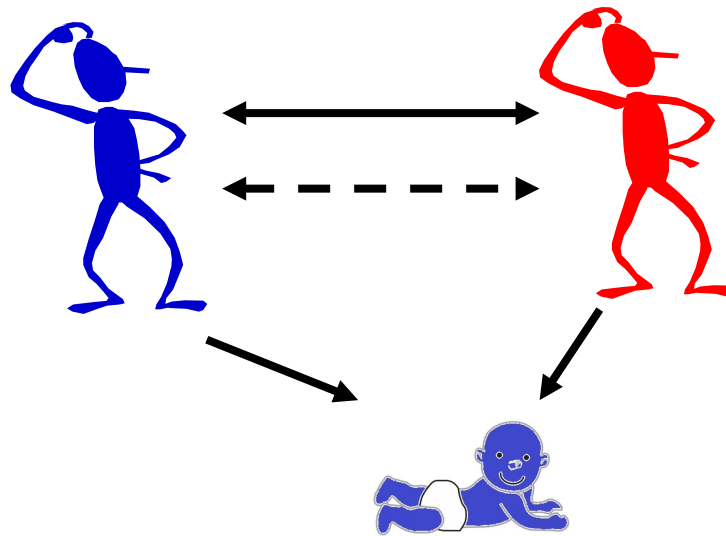
- ~~family allowances: ‘periodical cash benefits granted exclusively by reference to the number and, where appropriate, the age of members of the family’~~



II. Overview on Coordination Rules

1. Particularities of Family Benefits

b) Personal Relationships





II. Overview on the Existing Coordination Rules

2. Competent State and Family Members

- **Art. 67 Reg. 883/2004:**
'A person shall be entitled to family benefits in accordance with the legislation of the competent Member State, including for his/her family members residing in another Member State, **as if they were residing in the former Member State.**
However, a pensioner shall be entitled to family benefits in accordance with the legislation of the Member State competent for his/her pension.'

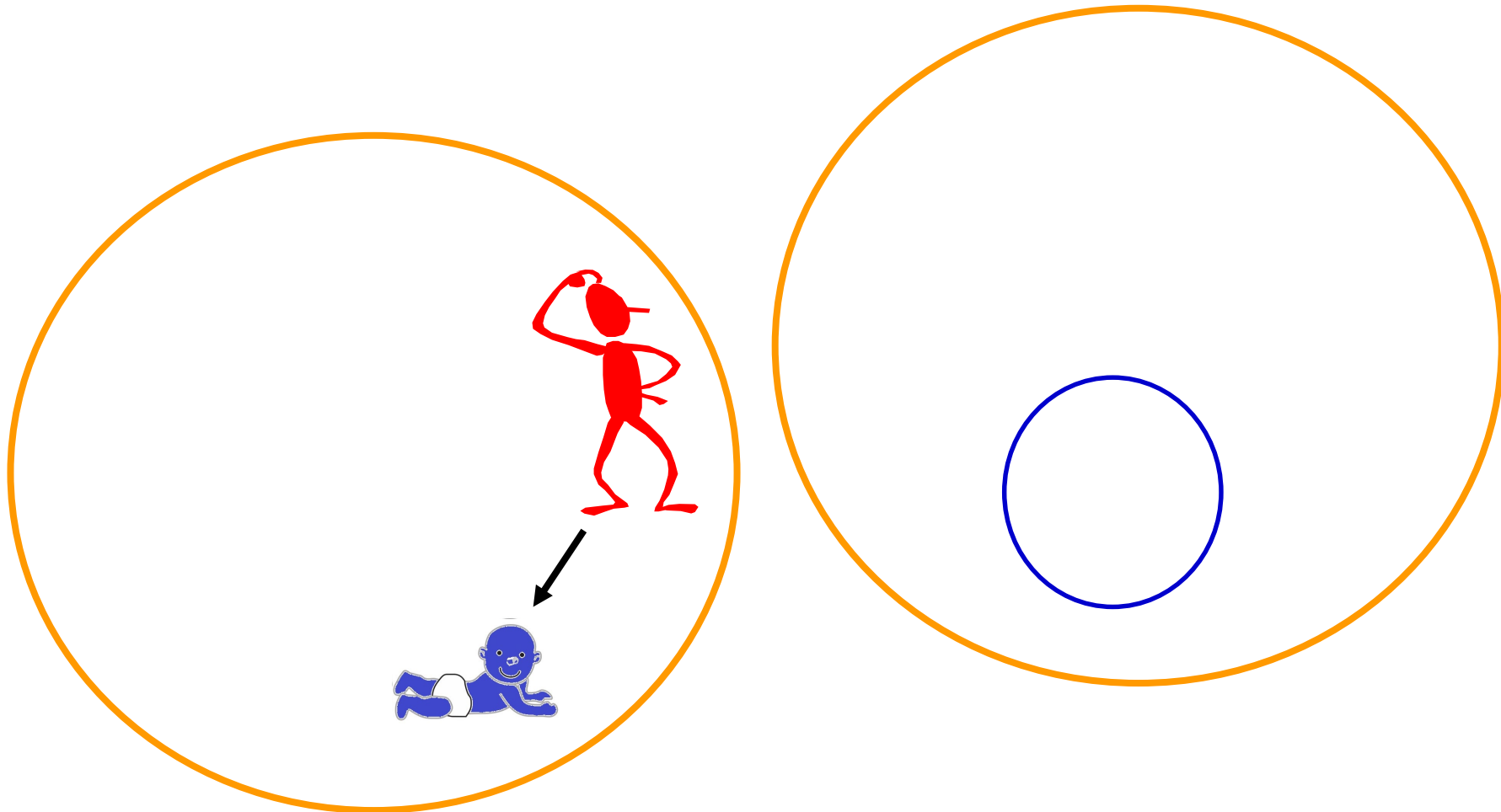
Family Member: Art. 1 (i) Reg. 883/2004

Pensioner: ECJ of 27 February 2014, **C-32/13 – Würker**



II. Overview on the Existing Coordination Rules

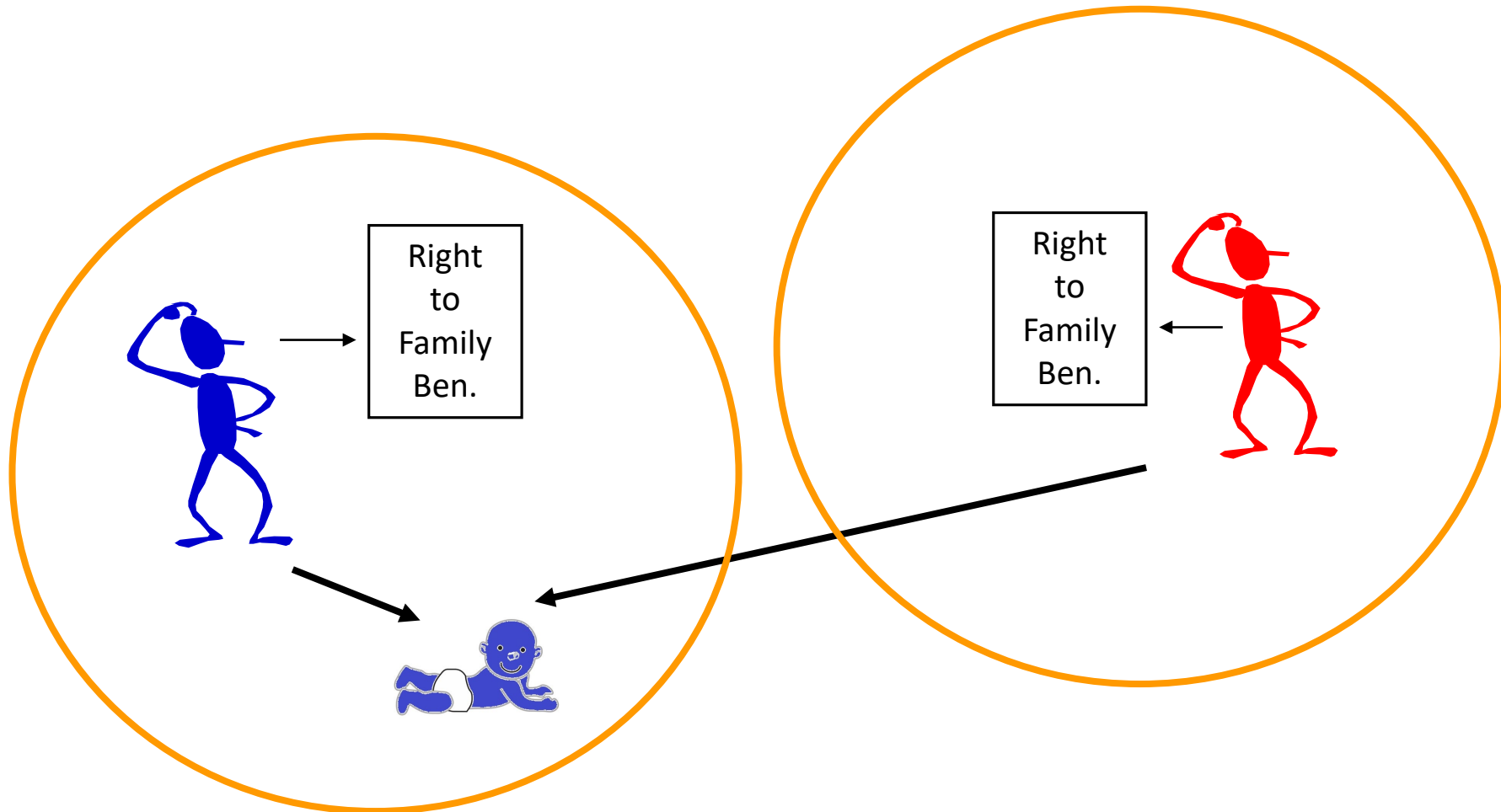
2. Competent State and Family Members





II. Overview on the Existing Coordination Rules

3. Multiplicity of Rights and Priority Rules





II. Overview on the Existing Coordination Rules

3. Multiplicity of Rights and Priority Rules

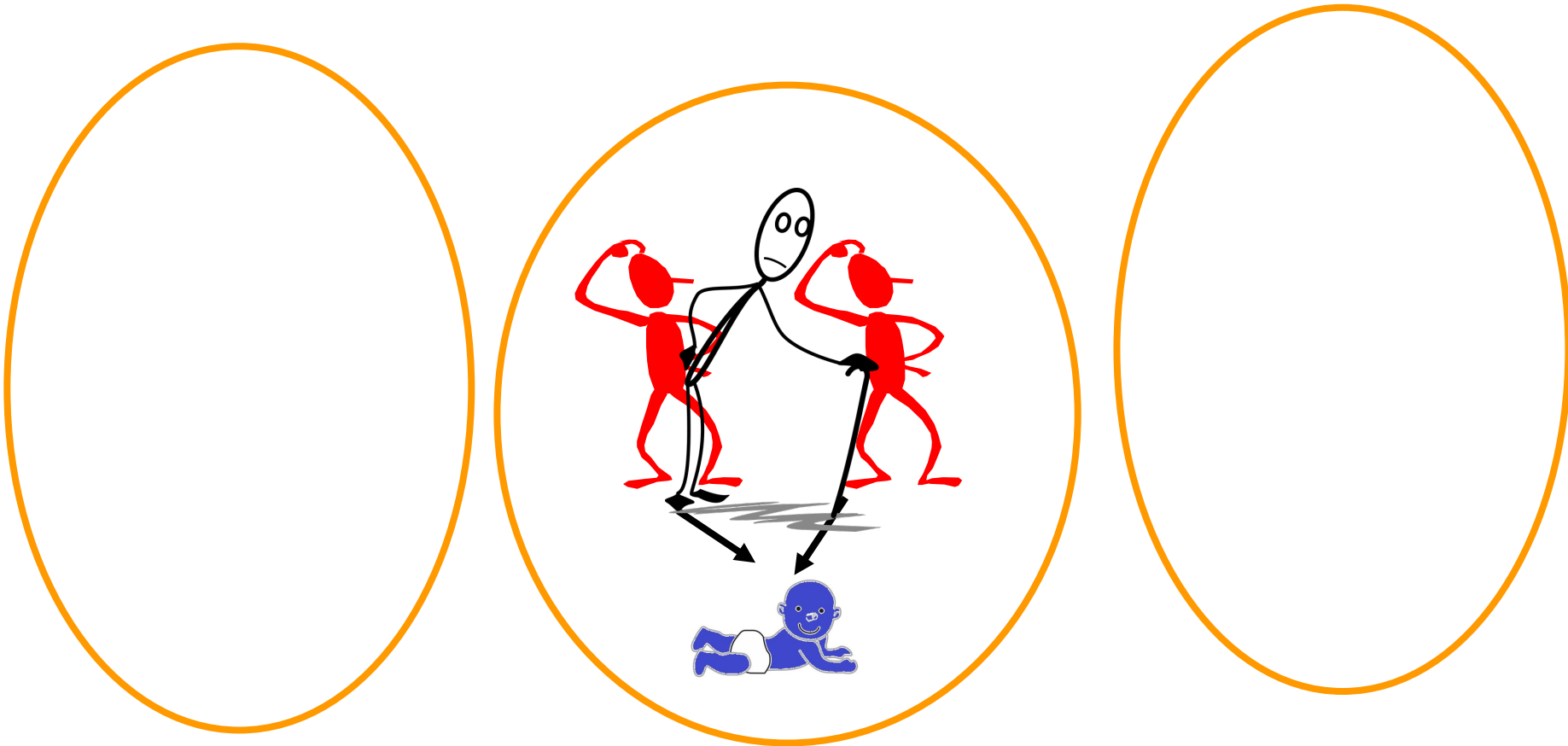
➤ **Art. 68(1) Reg. 883/2004**

- | | | | |
|-----|--------------------------|-----------------------------------|--|
| (1) | <i>Economic Activity</i> | $\xrightarrow{2 \text{ or more}}$ | a) <i>(active) Residence of Child</i>
b) <i>Highest Amount of Benefit</i> |
| (2) | <i>Pension</i> | $\xrightarrow{2 \text{ or more}}$ | a) <i>(active) Residence of Child</i>
b) <i>Longest Period of Insurance</i> |
| (3) | <i>Residence</i> | $\xrightarrow{2 \text{ or more}}$ | <i>Residence of Child</i> |



II. Overview on the Existing Coordination Rules

3. Multiplicity of Rights and Priority Rules



Note: Art. 58 of Reg. 987/2009 applies



II. Overview on the Existing Coordination Rules

3. Multiplicity of Rights and Priority Rules



Art. 68(2) Reg. 883/2004:

‘In the case of overlapping entitlements, family benefits shall be provided in accordance with the legislation designated as having **priority** in accordance with paragraph 1.

Entitlements to family benefits by virtue of other conflicting legislation or legislations **shall be suspended up to the amount provided for by the first legislation and a differential supplement shall be provided, if necessary, for the sum which exceeds this amount.**

However, such a differential supplement does not need to be provided for children residing in another Member State when entitlement to the benefit in question is based on residence only.’



II. Overview on the Existing Coordination Rules

3. Multiplicity of Rights and Priority Rules

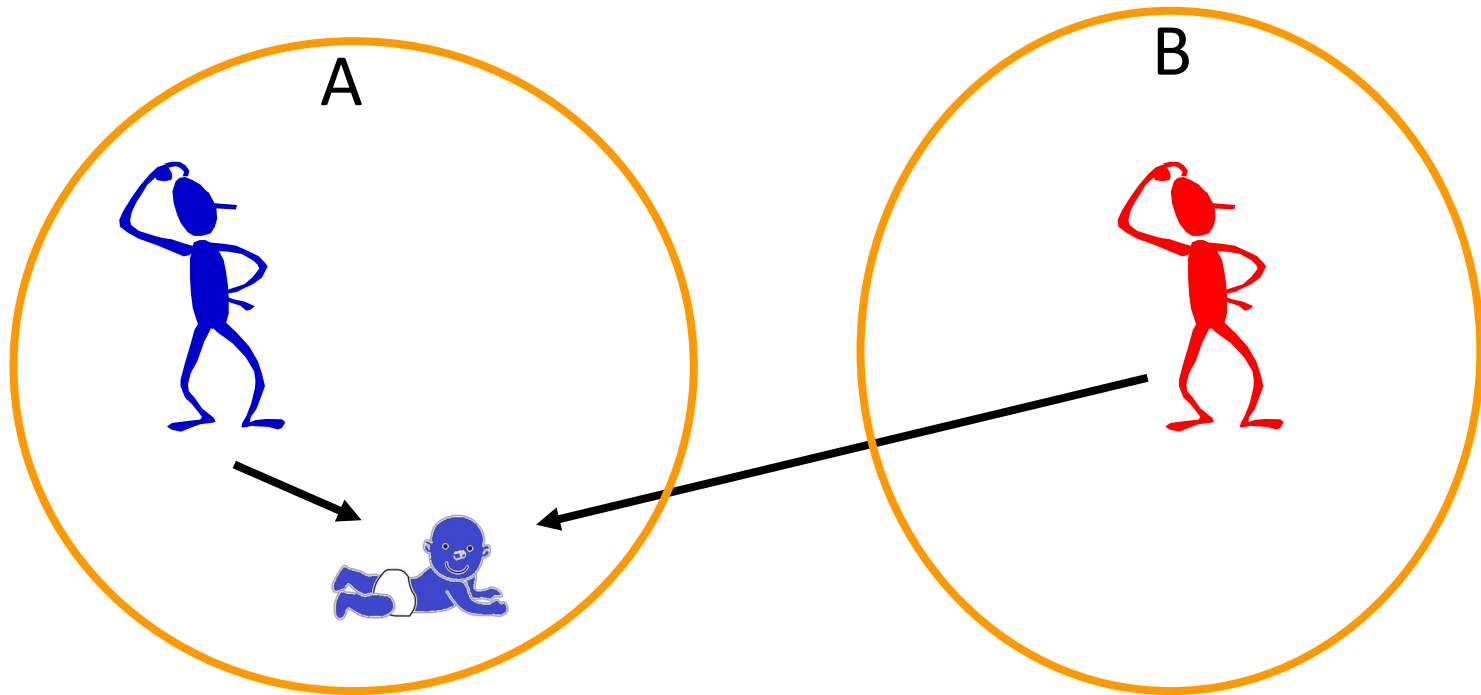
MS A: Child Benefit: Children up to 18 years = 150 €

MS B: Child Benefit: Children up to 25 years = 100 €



II. Overview on the Existing Coordination Rules

3. Multiplicity of Rights and Priority Rules



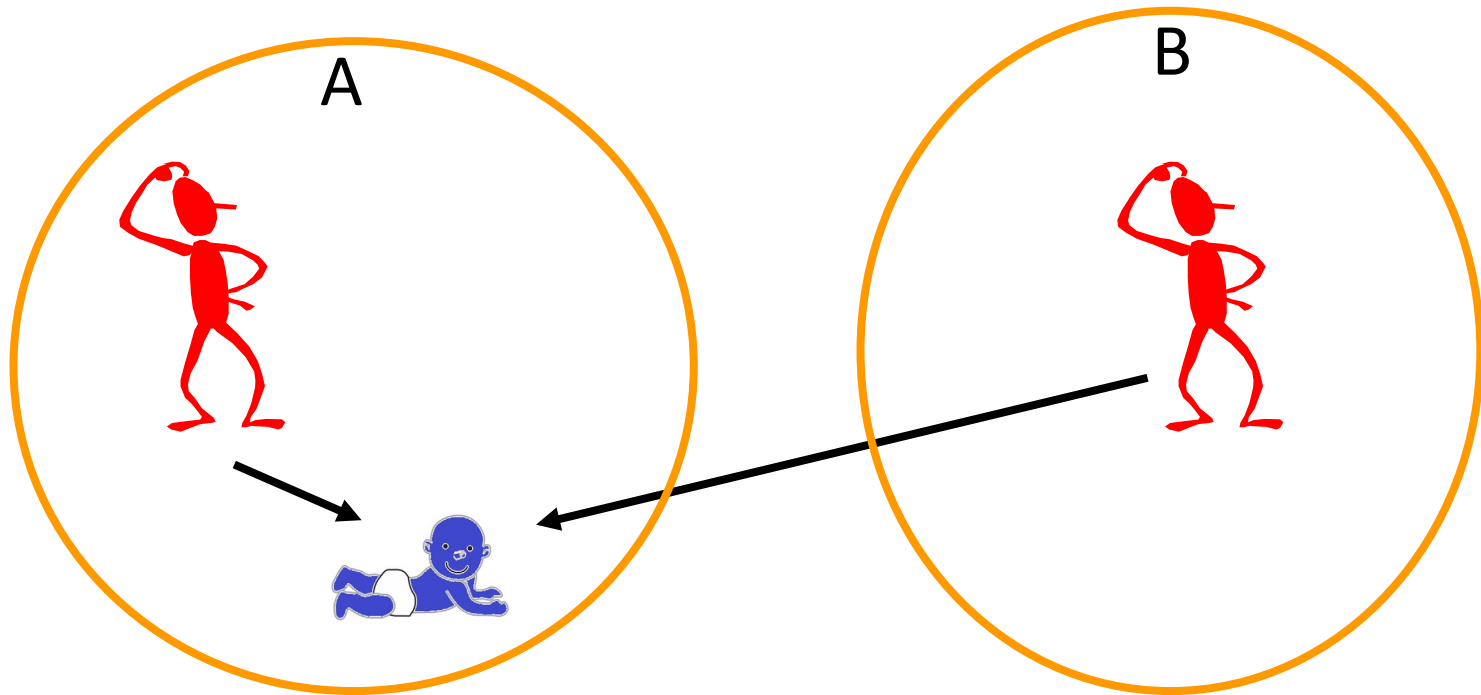
MS A: Supplement: 50 €

MS B: Priority: 100 €



II. Overview on the Existing Coordination Rules

3. Multiplicity of Rights and Priority Rules



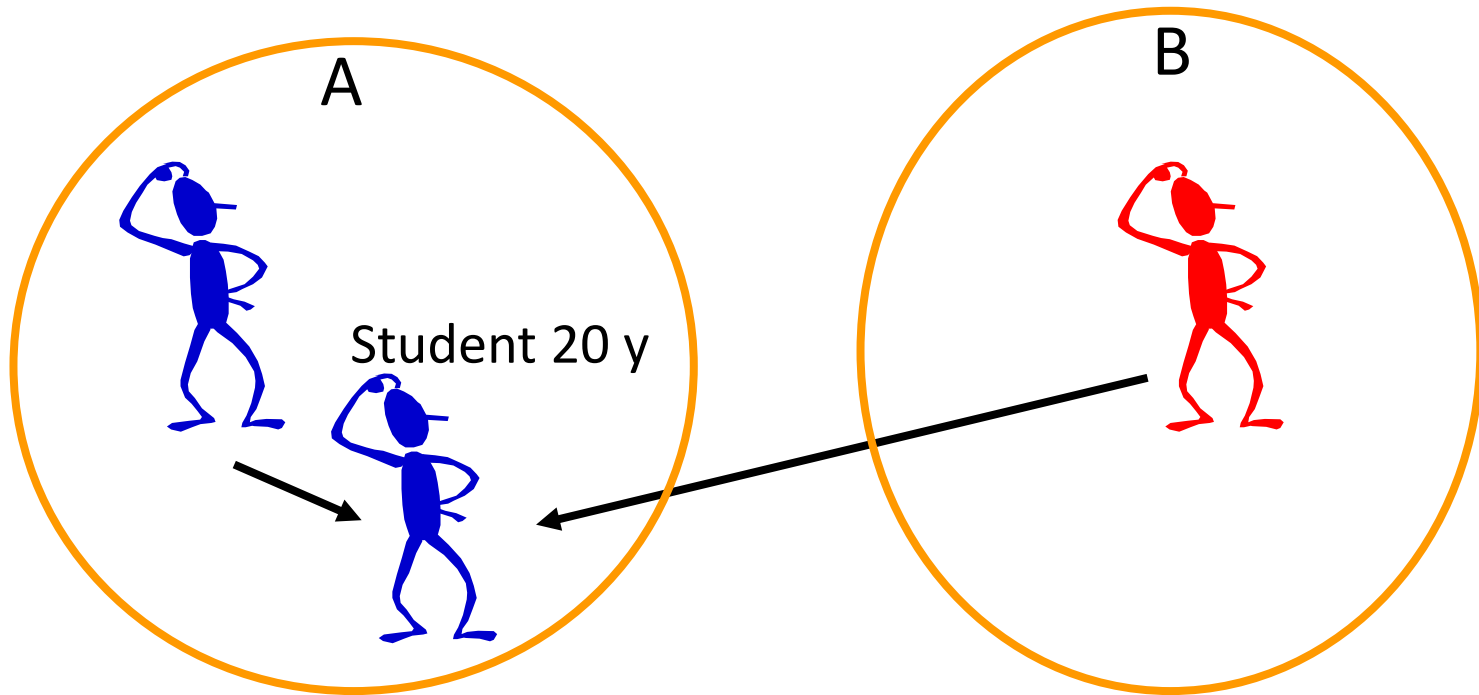
MS A: Priority: 150 €

MS B: Supplement: none



II. Overview on the Existing Coordination Rules

3. Multiplicity of Rights and Priority Rules



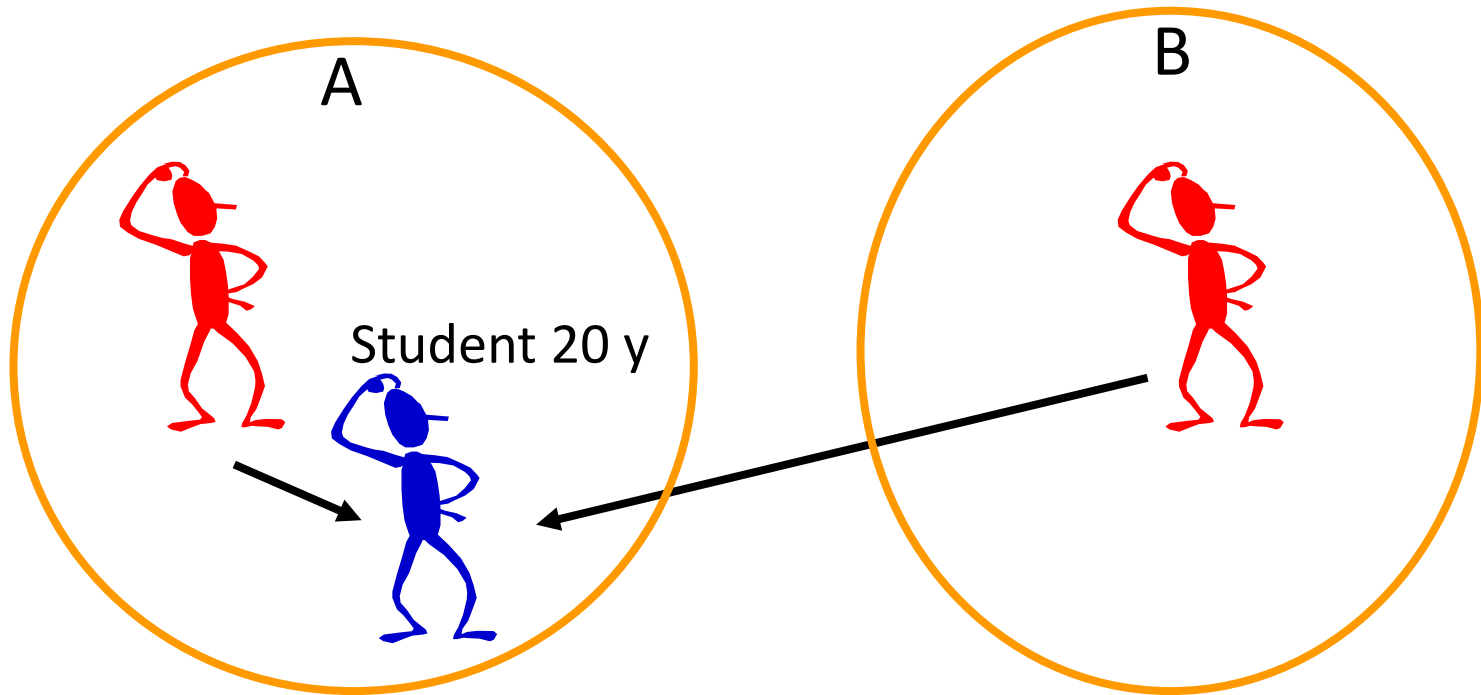
MS A: Supplement: none

MS B: Priority: 100 €



II. Overview on the Existing Coordination Rules

3. Multiplicity of Rights and Priority Rules



MS A: Priority: 0

MS B: Supplement: 100 €



II. Overview on the Existing Coordination Rules

3. Multiplicity of Rights and Priority Rules

Note: A non-competent MS **may** grant benefits

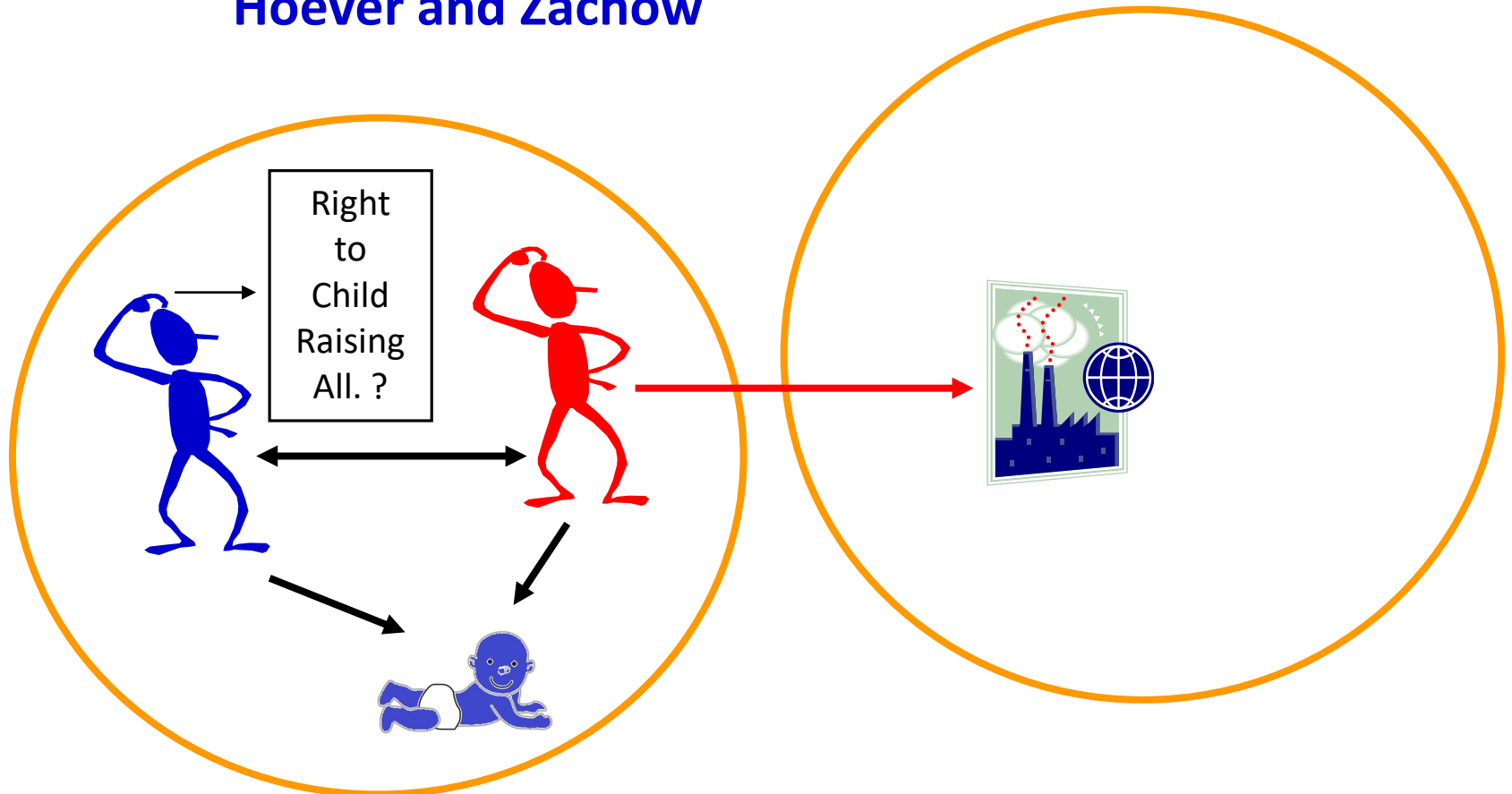
- ECJ of 20 May 2008, C-352/06, *Bosmann*
- ECJ of 12 June 2012, C-611/10 and C-612/10, *Hudzinski and Wawrzyniak*



II. Overview on the Existing Coordination Rules

4. The Case of Child Raising Benefits

ECJ of 10 October 1995, C-245/94 and C-312/94 –
Hoever and Zachow





II. Overview on the Existing Coordination Rules

4. The Case of Child Raising Benefits

ECJ of 10 October 1995, C-245/94 and C-312/94 –
Hoever and Zachow

- Child Raising Allowance = Family Benefit?
- Who has the Right?



II. Overview on the Existing Coordination Rules

5. Lessons

a) Family Unit

Art. 60(2) Reg. 987/2009:

‘The application for family benefits shall be addressed to the competent institution.

For the purposes of applying Articles 67 and 68 of the basic Regulation, the **situation of the whole family** shall be taken into account as if all the persons involved were subject to the legislation of the Member State concerned and residing there, in particular as regards a person’s entitlement to claim such benefits.

Where a person entitled to claim the benefits does not exercise his right, an application for family benefits submitted by (others) ... shall be taken into account by the competent institution of the Member State whose legislation is applicable.’



II. Overview on the Existing Coordination Rules

5. Lessons

a) Family Unit

Art. 68a Reg. 883/2004:

‘In the event that family benefits are not used by the person to whom they should be provided for the maintenance of the members of the family, the competent institution shall discharge its legal obligations by providing those benefits **to the natural or legal person in fact maintaining the members of the family**, at the request and through the agency of the institution in their Member State of residence or of the designated institution or body appointed for that purpose by the competent authority of their Member State of residence.’



II. Overview on the Existing Coordination Rules

5. Lessons

b) Types of Family Benefits

Child Benefit
Child Raising All.
Child Care All.
Birth + Adopt. Grants
Single Parents
Child with Disab. ?
Adv. on maintenance
others



II. Overview on the Existing Coordination Rules

5. Lessons

b) Types of Family Benefits

2-Steps-Test

(1) Social Security

(2) Specific Function

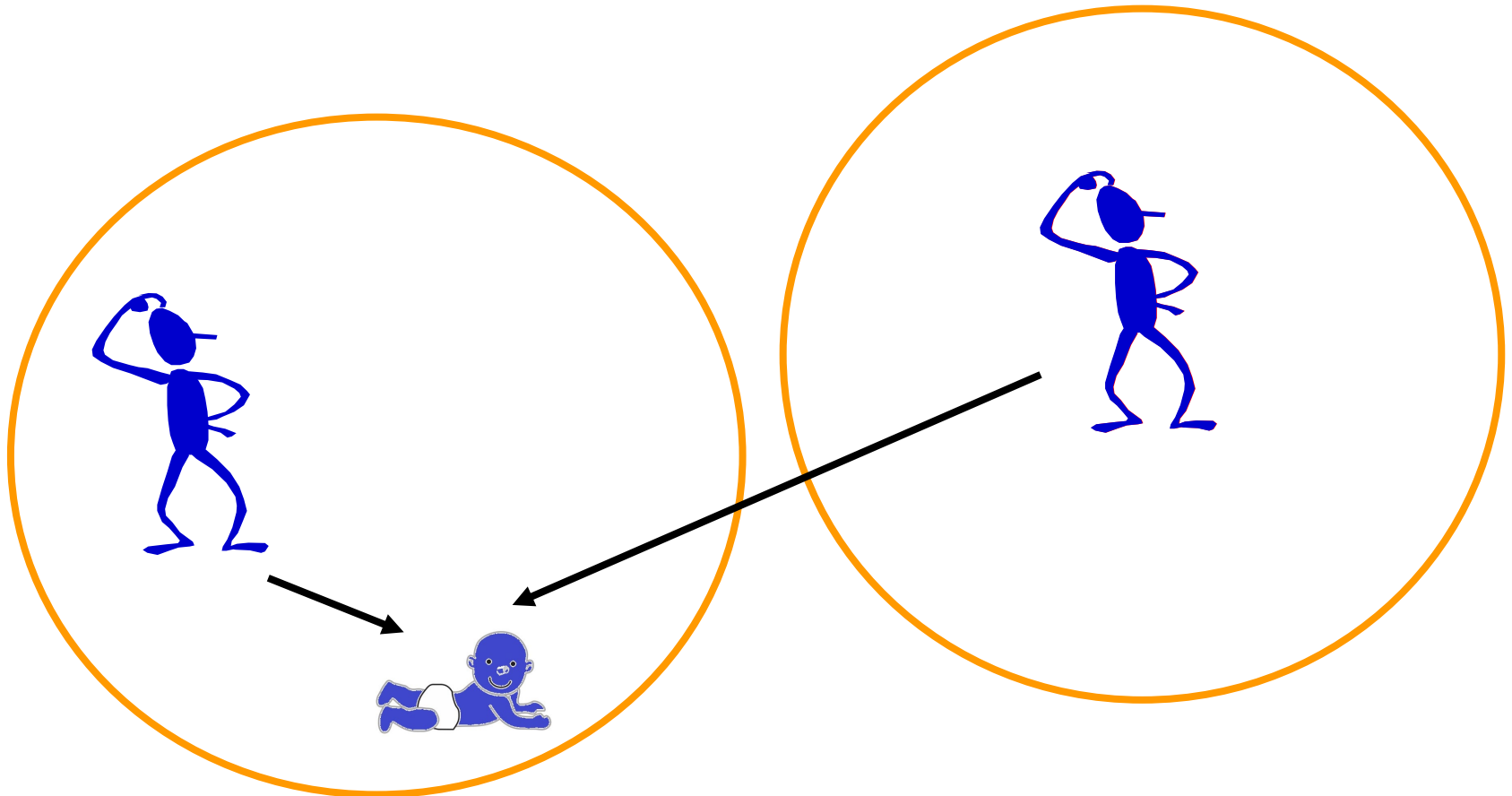
- **No:** Italian financial aid for higher education studies (ECJ of 14 December 2006, C-238-05, Bragança Linares Verruga)
- **Yes:** LUX child bonus granted by way of automatic rebate in the tax reduction (ECJ of 24 October 2013, Case C-177/12, Lachheb)



III. Recent Case-law

1. Status and Benefits

a) ECJ of 7 February 2019, C-322/17 – **Bogatu**





III. Recent Case-law

1. Status and Benefits

a) ECJ of 7 February 2019, C-322/17 – **Bogatu**

- Art. 67 Reg. 883/2004 – Status?
- Art. 11(2) Reg. 883/2004



III. Recent Case-law

1. Status and Benefits

b) ECJ of 21 June 2017, C-449/16 – **Martinez Silva**

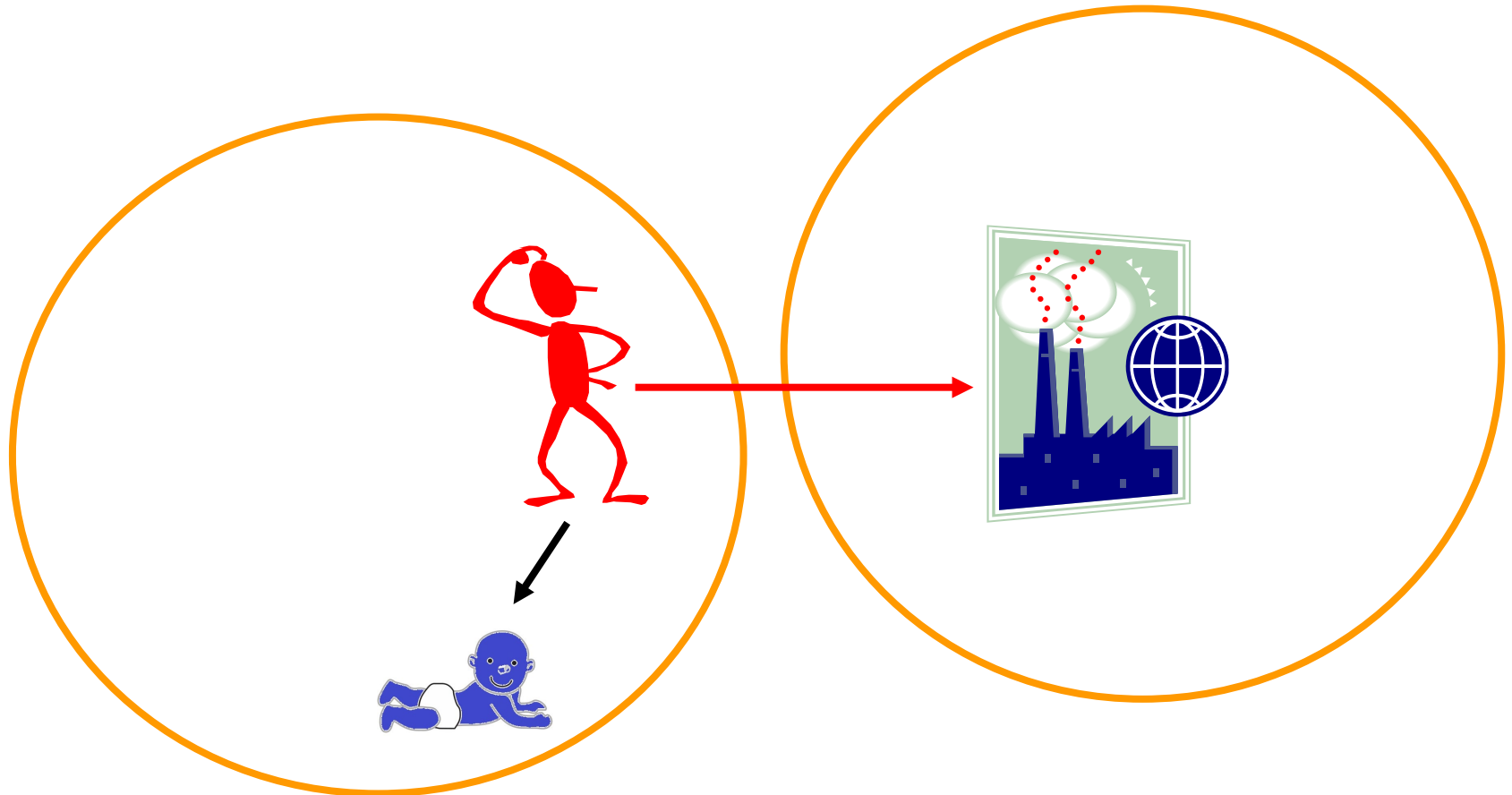
- ANF = social assistance?
- ANF = family benefit?
- Third Country National, Dir. 2011/98



III. Recent Case-law

2. Conditions and Contributions

a) ECJ of 23 April 2015, C-382/13 – **Franzen** and others





III. Recent Case-law

2. Conditions and Contributions

a) **ECJ of 23 April 2015, C-382/13 – Franzen and others**

- Art. 13(2) Reg. 883/2004
- Additional National Benefits of Non-competent MS



III. Recent Case-law

2. Conditions and Contributions

b) **ECJ of 19 September 2019, C-95/18, C-96/18 – van den Berg and others**

➤ Art. 45 TFEU

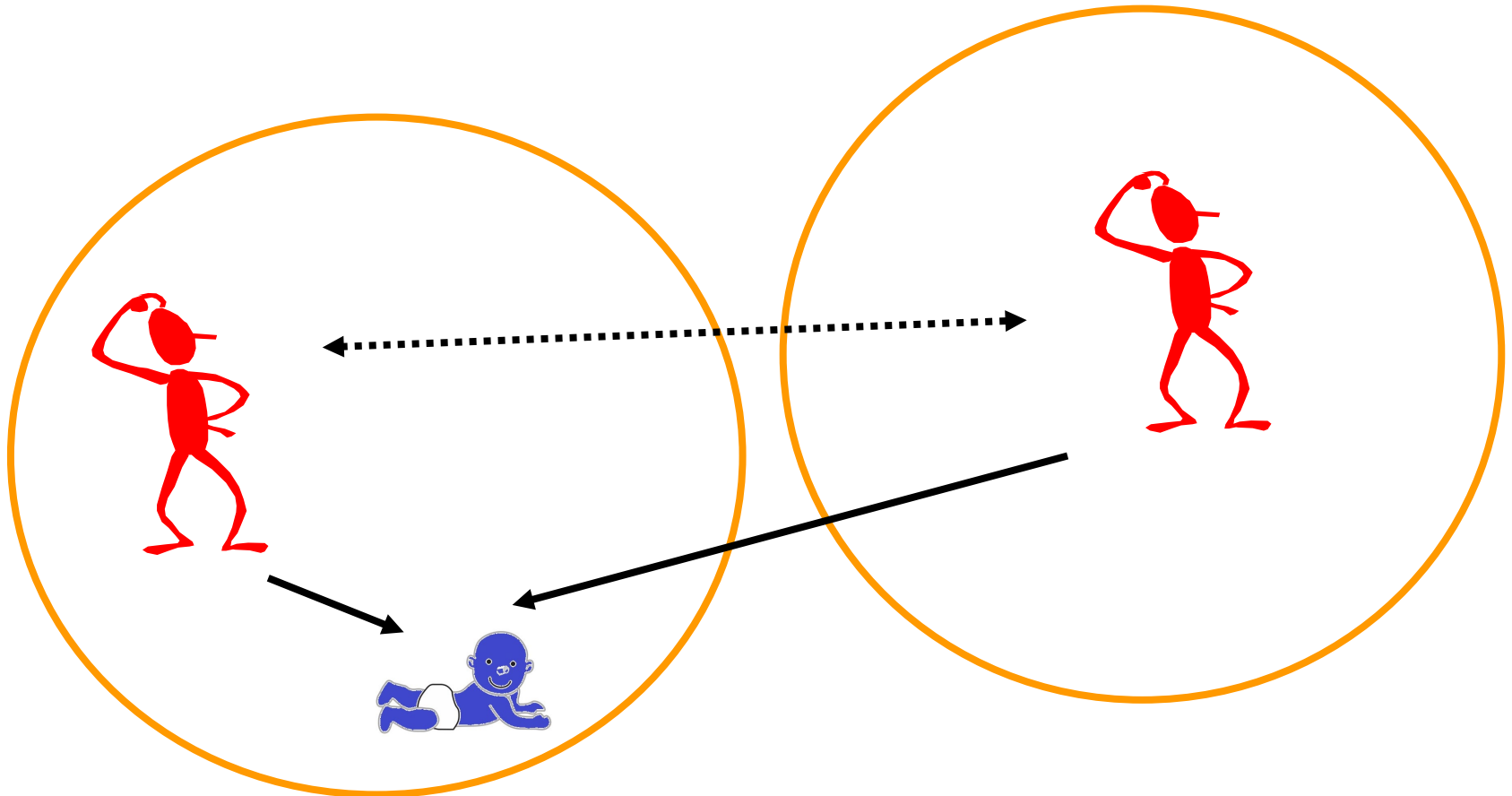
➤ Art. 48 TFEU



III. Recent Case-law

3. Family Unit

a) **ECJ of 22 October 2015, C-378/14 – Trapkowski**





III. Recent Case-law

3. Family Unit

a) **ECJ of 22 October 2015, C-378/14 – Trapkowski**

➤ Art. 67 Reg. 883/2004

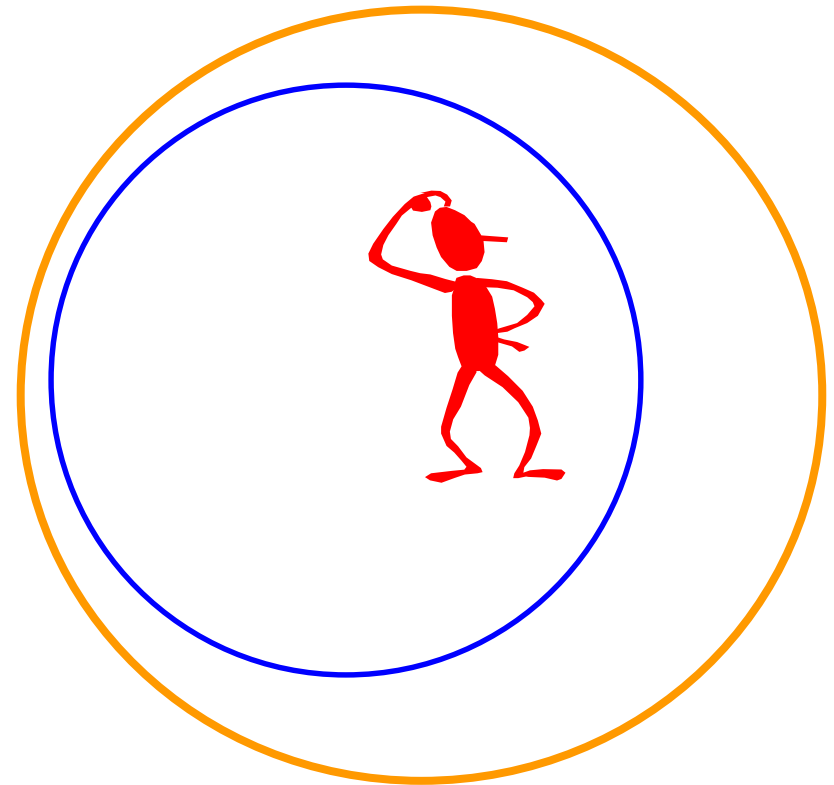
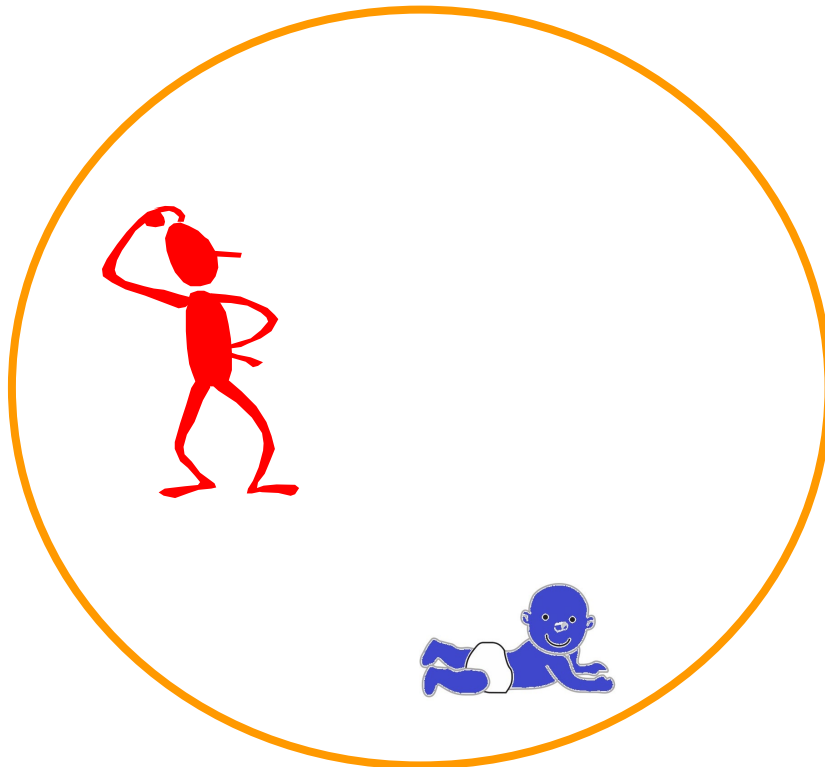
➤ Art. 60 Reg. 987/2009



III. Recent Case-law

3. Family Unit

a) ECJ of 22 October 2015, C-378/14 – **Trapkowski**

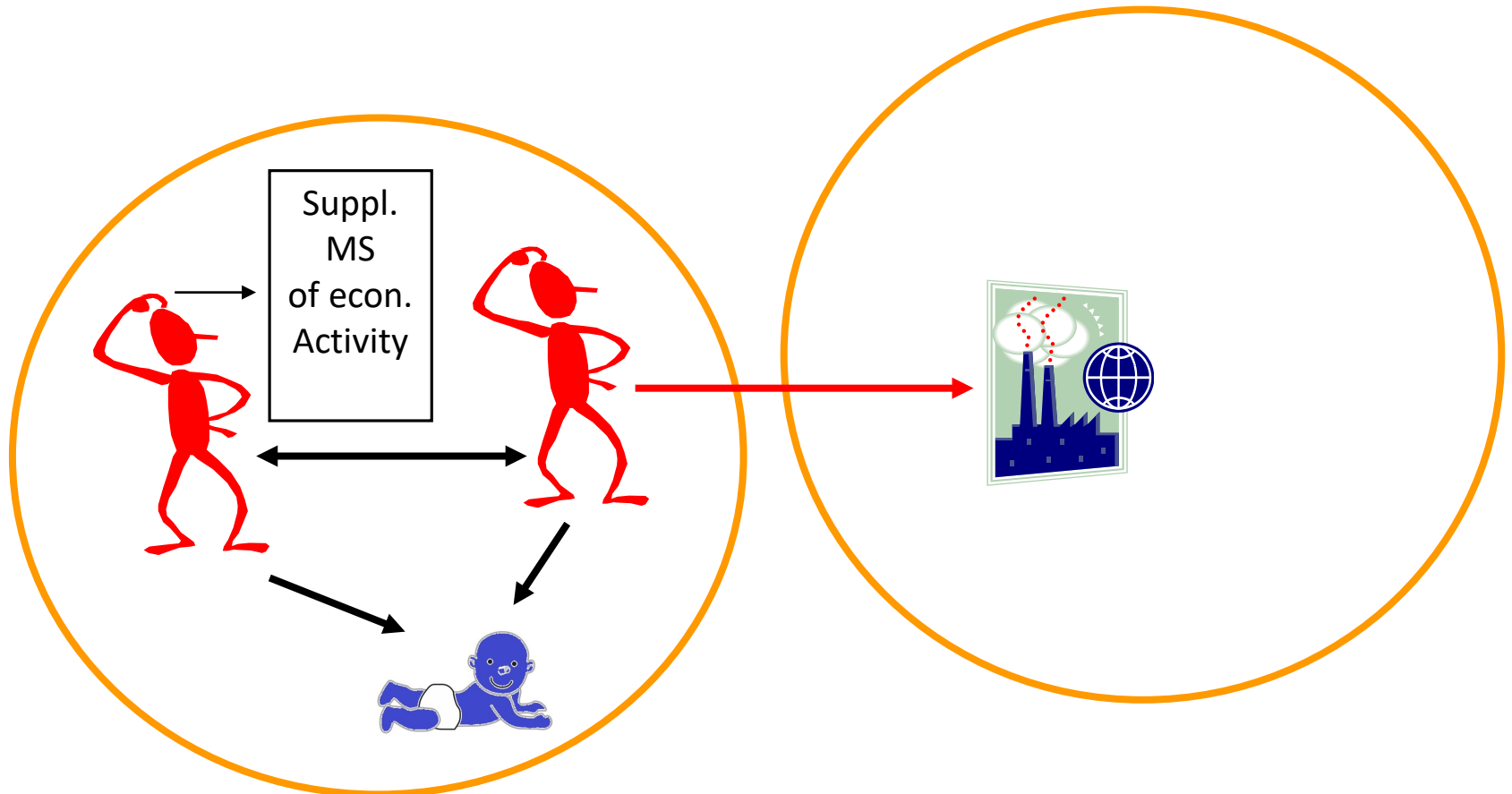




III. Recent Case-law

3. Family Unit

b) ECJ of 18 September 2019, C-32/18 – Moser





III. Recent Case-law

3. Family Unit

b) ECJ of 18 September 2019, C-32/18 – **Moser**

➤ Art. 60 Reg. 987/2009

➤ Calculation



III. Recent Case-law

3. Family Unit

c) Unsolved Problems

- All Benefits / 'Baskets' ??
 - Mode of Financing?
 - Function?
 - Individualisation?

ECJ of 8 May 2014, **C-347/12 – Wiering**



III. Recent Case-law

3. Family Unit

c) Unsolved Problems

➤ All Family Members / each Child ??

	Child 1	Child 2	Child 3
MS A*	100	100	100
MS B	50	100	150



IV. 'Policy Questions'

1. Right to Stay and Right to Benefits

ECJ of 14 June 2016, C-308/14 – **Commission/UK**



IV. 'Policy Questions'

2. Proposal for Reform

- **COM(2016) 815**
 - Art. 4(2) Reg 883/2004 new
 - Art. 68b Reg 883/2004 new



IV. 'Policy Questions'

3. Indexation

➤ **Austria**



V. Final Remarks

Provocări în aplicarea regulilor de coordonare în domeniul prestațiilor familiale

Agenția Națională pentru Plăți și Inspecție
Socială

- Aplicarea regulilor de coordonare în domeniul prestațiilor familiale în România a început la 1 ianuarie 2007, Ministerul Muncii fiind autoritatea competentă responsabilă de toate regimurile de securitate socială, cu excepția celor din domeniul sănătății și organismul de legătură în domeniul prestațiilor familiale;
- Începând cu data de 1 martie 2009, Agenția Națională pentru Prestații Sociale devine organismul de legătură pentru domeniul prestațiilor familiale;
- Instituțiile competente la nivel teritorial în ceea ce privește plata, pe teritoriul României, a prestațiilor familiale sunt agențiile județene pentru prestații sociale.

Prestațiile familiale din România care intră sub incidența regulilor de coordonare :

- Alocația de stat pentru copii
- Indemnizația pentru creșterea copilului
- Stimulentul lunar de inserție

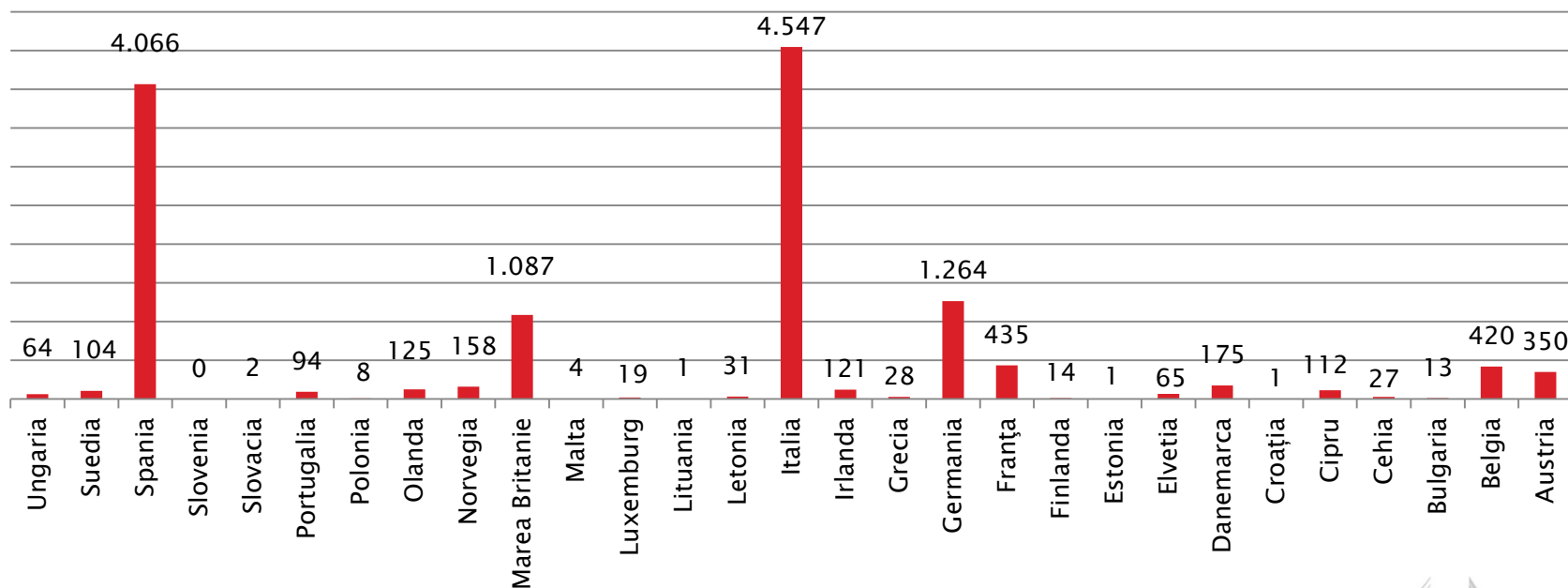
SITUAȚIA STATISTICĂ A FORMULARELOR EUROPENE PENTRU ANUL 2018



Formulare europene completate în partea A

În anul 2018 au fost inițiate un număr de 4.547 formulare către *Italia*, 4.066 formulare către *Spania*, 1.264 formulare către *Germania* și 1.087 formulare către *Marea Britanie*, ceea ce ne indică faptul că, cei mai mulți lucrători migranți români, și-au încetat activitatea și implicit le-a fost încetat dreptul la beneficii familiale în aceste state membre.

Distribuția pe State Membre a formularelor europene completate în partea A – 2018

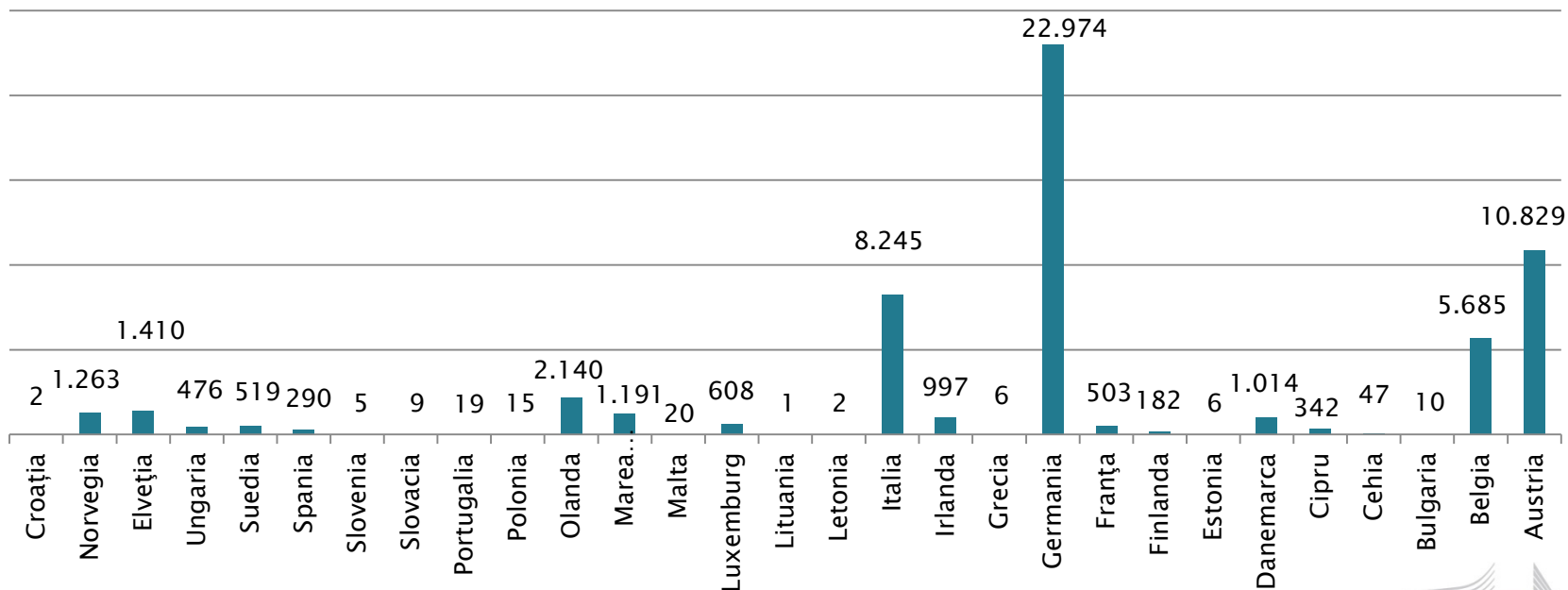


SITUAȚIA STATISTICĂ A FORMULARELOR EUROPENE PENTRU ANUL 2018

Formulare europene completate în partea B

- Cele mai multe formulare europene au fost transmise de: *Germania* – 22.974, *Austria* – 10.829, *Italia* – 8.245 și *Belgia* 5.685, ceea ce ne indică faptul că, cei mai mulți lucrători migranți români, au început o activitate în aceste state membre și au depus o cerere de beneficii familiale în aceste state.
- Din totalul național de 58.810 formulare europene primite, 12.019 au fost adeverințe eliberate de către agențiile județene, conform procedurii ANPIS de comunicare de informații către instituțiile de legătură din alte state membre UE și către lucrătorii migranți, conform prevederilor reg. CE 883/2004.

Distribuția pe State Membre a formularelor europene completate în partea B – 2018



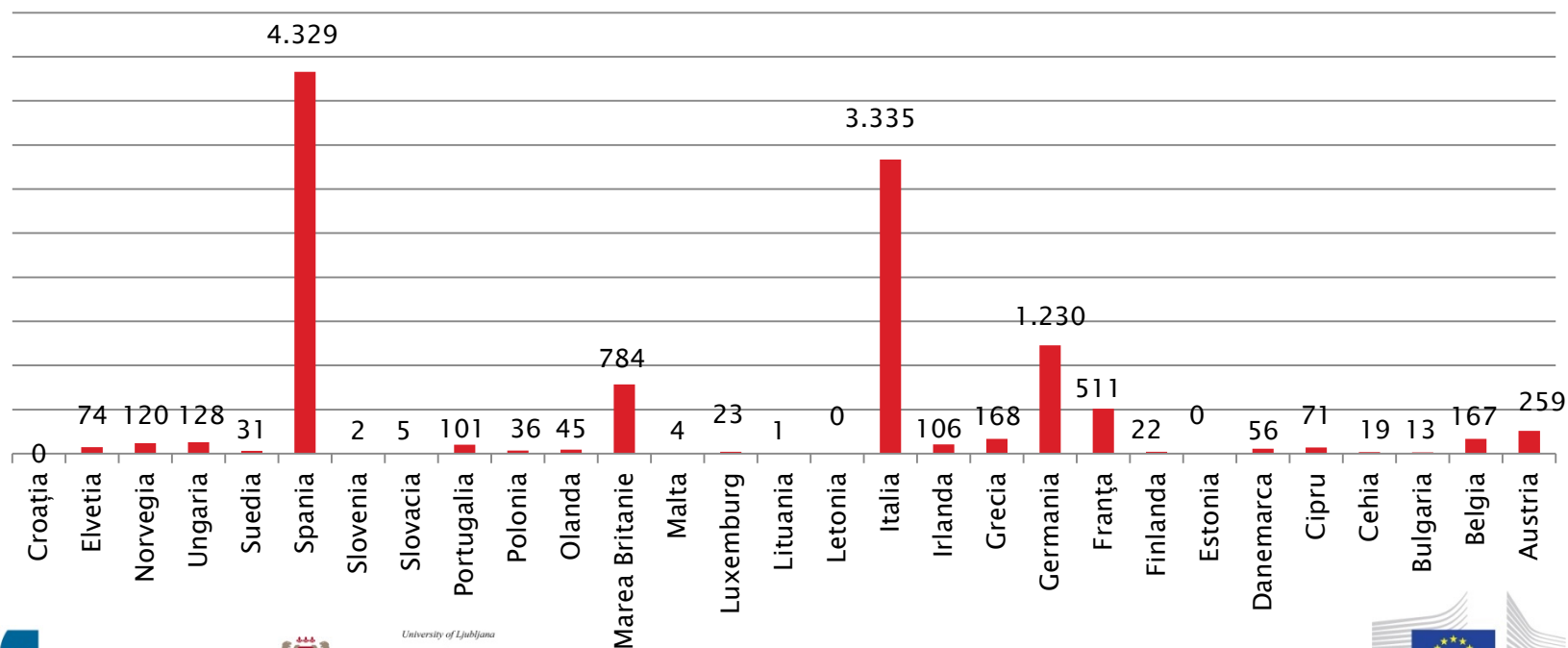
SITUAȚIA STATISTICĂ A FORMULARELOR EUROPENE PENTRU ANUL 2018



Deschideri de drepturi de beneficii sociale

În cursul anului 2018 au fost repuse în plată, la nivel național, un număr total de 11.640 de beneficii familiale. Din numărul total de persoane care au solicitat în anul 2018 repunerea în plată în România și implicit și-au încetat activitatea în celelalte state membre, cele mai multe s-au înregistrat pentru: *Spania - 4.329 persoane, Italia - 3.335 persoane și Germania - 1.230 persoane.*

Distribuția formularelor europene pe State Membre (deschideri de drepturi de beneficii sociale) – 2018



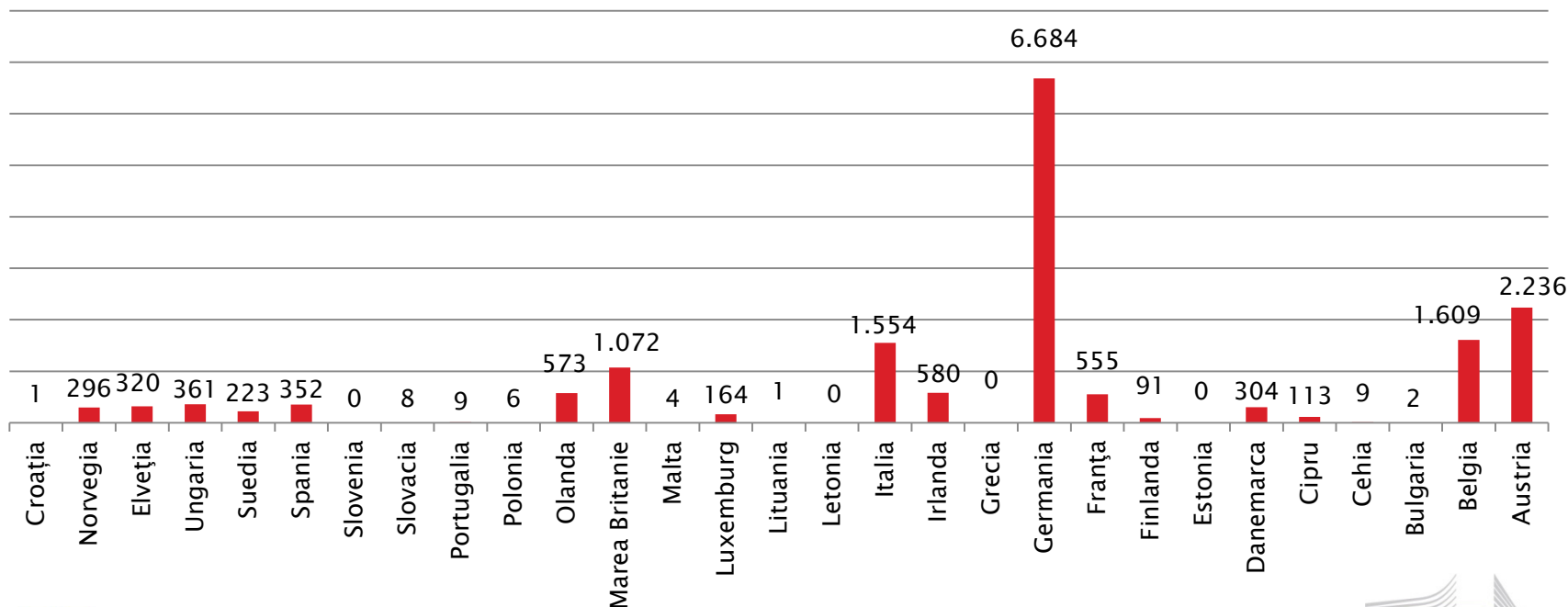
SITUAȚIA STATISTICĂ A FORMULARELOR EUROPENE PENTRU ANUL 2018



Suspendări de drepturi de beneficii sociale

În cursul anului 2018 au fost suspendate la nivel național 17.127 beneficii familiale, aceste suspendări de drepturi în România s-au operat ca urmare a deschiderii de drepturi în: *Germania – 6.684, Austria – 2.236, Belgia – 1.609, Italia – 1.554 și Marea Britanie – 1.072.*

Distribuția formularelor europene pe State Membre (suspendări de drepturi de beneficii sociale) – 2018

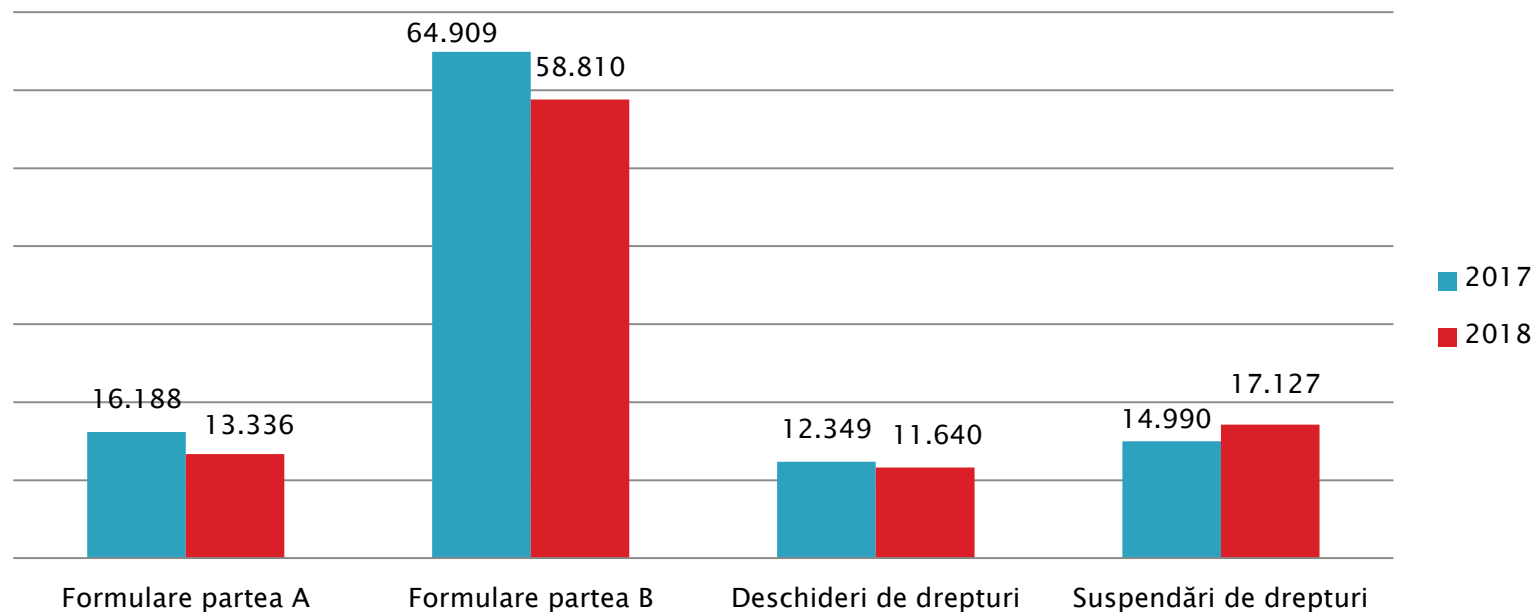


SITUAȚIA STATISTICĂ A FORMULARELOR EUROPENE PENTRU ANUL 2018

Comparație anul 2018 cu anul 2017

Comparativ cu anul 2017, se înregistrează o *scădere* a numărului de formulare primite și emise de fiecare agenție județeană către alte state membre, în care lucrătorii migranți români își desfășoară activitatea și o *creștere* a numărului de suspendări de drepturi. Astfel, prin compararea celor două perioade, avem următoarele rezultate:

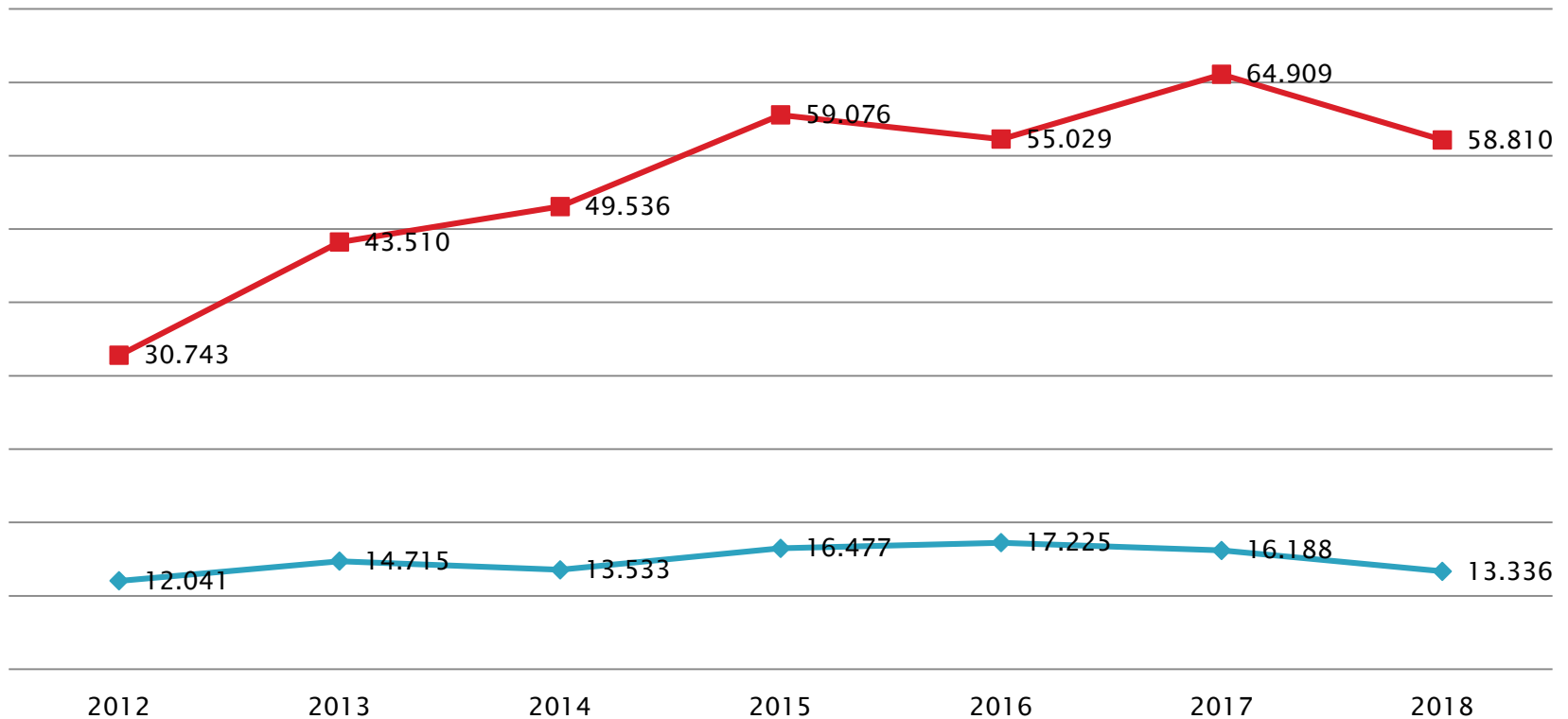
Comparație anul 2018 cu anul 2017



EVOLUȚIA FORMULARELOR EMISE/PRIMATE ÎN PERIOADA 2012-2018

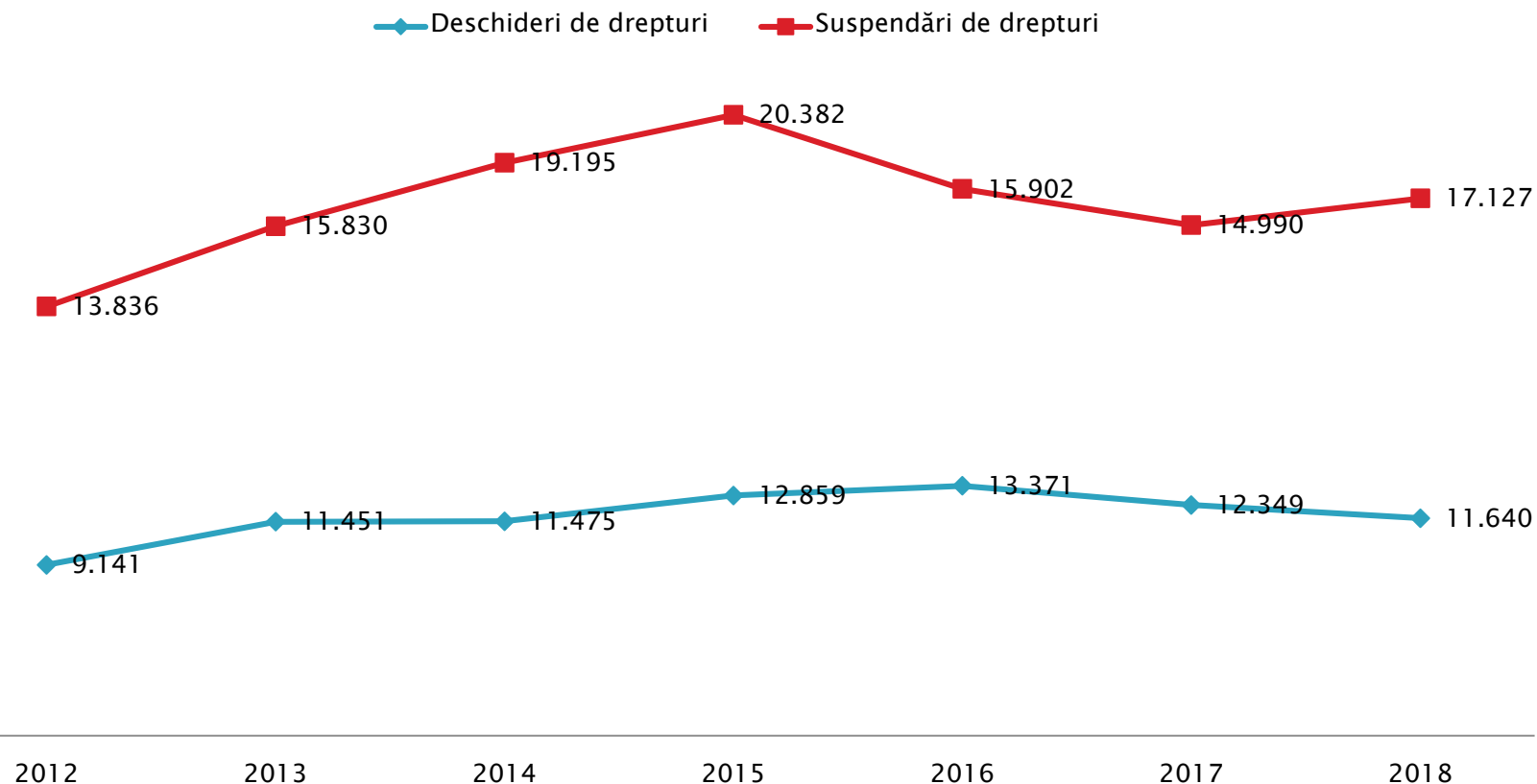
Număr de formulare emise / primite 2012-2018

◆ Formulare completate în partea A ■ Formulare completate în partea B



EVOLUȚIA FORMULARELOR EMISE/PRIMITE ÎN PERIOADA 2012-2018

Suspendări și Deschideri de drepturi 2012-2018



Principalele dificultăți întâmpinate în aplicarea regulilor de coordonare:

- Durata mare de timp necesară schimbului de date cu instituțiile din Statele Membre:
 - termenul de răspuns la formularele pe hârtie excede 3 luni în peste 50 % din cazuri;
 - formulare incomplete, identificarea persoanei este imposibilă.

- Determinarea legislației aplicabile
 - dificultăți în determinarea statului de reședință al copiilor și al membrilor de familie ai lucrătorilor migranți;
 - completarea formularelor cu date eronate sau neclare;
 - situațiile familiale complexe și diversitatea tipurilor de prestații familiale din Statele Membre.

Dificultăți legate de plata prestațiilor familiale pentru lucrătorii sezonieri:

- Perioade scurte și dese de activitate în alte State Membre
 - schimbul de date durează mai mult decât perioada de activitate

Dificultăți legate de depunerea cererii de către lucrătorul migrant în statul competent cu plata prestațiilor familiale:

- Slaba informare in ceea ce privește regulile de coordonare;
- Necunoașterea limbii statului de angajare;
- Birocrația și dificultatea constituirii dosarului cu documentele necesare obținerii dreptului;
- Comportamente discriminatorii și de tergiversare a plății.

Provocări prezente și viitoare

- Implementarea EESSI – proiect în derulare în România – întârzieri semnificative;
- Personal insuficient la nivelul agențiilor teritoriale raportat la volumul de activitate;
- Dificultăți în atragerea și păstrarea personalului specializat necesar gestionării EESSI.

Revizuirea Regulamentelor privind coordonarea sistemelor de securitate socială (883/2004 și 987/2009)

- Reguli noi de coordonare pentru prestațiile familiale acordate cu scopul compensării veniturilor acordate părinților care își întrerup activitatea pentru creșterea copiilor.

Muḡumim!

The European Labour Authority (objectives, tasks, challenges)

Professor Sophie Robin-Olivier
La Sorbonne School of Law
(University Paris 1)

HISTORY

President Juncker 2017 State of the European Union address

A European Labour Authority (ELA) to ensure that EU rules on labour mobility are enforced in a « ***fair***, simple and effective way »

Delivering on the promise that Europe is protecting social rights and combats abuses of mobility ?

European Pillar of Social Rights (Nov. 2017)

=> ELA initiative

=> REGULATION 2019/1149 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 June 2019

BEGINNINGS

Inauguration and first meeting of the ELA Management Board
(16/10/2019)

ELA ***work program 2019*** established

Seat: Bratislava

(start-up phase: at the Commission in Brussels, until permanent location in Slovakia is ready)

Website: ela.europa.eu

(full operational capacity by 2024)

STRUCTURE AND GOVERNANCE

- Permanent structure
A Union body with legal personality (Article 3 (1) Reg. 2019/1149)
- 140 staff members including National Liaison Officers
(full operational capacity)

Chapter III of Reg. 2019/1149:
« Organisation of the Authority »

T TYPOLOGY OF ELA INTERVENTIONS

1/ Reorganisation within the European Commission

ELA replaces *EURES*

ELA replaces the *European Platform to enhance cooperation in tackling undeclared work* (Decision 2016/344)

2/ Cooperation between Member States

3/ Cooperation between Member States and the European Commission

SCOPE OF ACTIVITIES (Reg. 2019/1149, Article 1)

« Labour mobility across the Union and the coordination of social security systems within the Union »

The Authority acts « within the scope of the Union acts listed in Article 1 § 4, including all directives, regulations, and decisions based on those acts, and of any further legally binding Union act which confers tasks on the Authority »

Reg. 2019/1149, Article 1 § 4

The scope of activities of ELA covers:

- (a) Directive 96/71/EC
- (b) Directive 2014/67/EU
- (c) Regulation (EC) 883/2004 and Regulation (EC) No 987/2009, Regulation (EU) 1231/2010 and Council Regulation (EC) 859/2003
- (d) Regulation (EU) 492/2011
- (e) Directive 2014/54/EU
- (f) Regulation (EU) 2016/589
- (g) Regulation (EC) 561/2006
- (h) Directive 2006/22/EC
- (i) Regulation (EC) 1071/2009

OBJECTIVES

« fair, simple and effective application and enforcement of Union law »
(Preamble of Reg. 2019/1149)

« effectively enforcing EU rules across the Member States requires structured cooperation and exchange between competent national authorities, as well as resources for common activities, such as organising joint inspections or training national staff to deal with cross-border cases »

Objectives (Reg. 2019/1149, Article 2)

Fair labour mobility across the Union and assistance to Member States and the Commission in the coordination of social security systems within the Union

(a) facilitate **access to information on rights and obligations** regarding labour mobility across the Union as well as to relevant services;

(b) facilitate and enhance **cooperation between Member States** in the enforcement of relevant Union law across the Union, including facilitating concerted and joint inspections;

(c) **mediate and facilitate a solution in cases of cross-border disputes between Member States**

(d) support cooperation between Member States in **tackling undeclared work**

TASKS

(Reg. 2019/1149, Article 4)

- (a) facilitate access to information and coordinate EURES
- (b) facilitate **cooperation and the exchange of information between Member States** with a view to the consistent, efficient and effective application and enforcement of relevant Union law
- (c) coordinate and support **concerted and joint inspections**
- (d) carry out **analyses and risk assessment on issues of cross-border labour mobility**
- (e) support Member States with capacity building regarding the effective application and enforcement of relevant Union law
- (f) support Member States in **tackling undeclared work**
- (g) **mediate disputes between Member States** on the application of relevant Union law, in accordance with Article 13.

COOPERATION AND EXCHANGE OF INFORMATION BETWEEN MEMBER STATES (Reg.2019/1149, Article 7)

- Supports cross-border enforcement procedures relating to penalties and fines (upon request of one or more Member States)
- Reports to the Commission twice a year about unresolved requests between Member States and consider whether to refer those to mediation

Use of new technologies in cooperation

Article 7(3): insists on the use of electronic tools and procedures for message exchange between national authorities, including the IMI system

Article 7(4): encourages the use of innovative approaches to effective and efficient cross-border cooperation, and of electronic exchange mechanisms and databases to facilitate the access to data in real time and detection of fraud

CONCERTED AND JOINT INSPECTIONS (Reg.2019/1149, Article 8)

Concerted inspections: take place *in two or more Member States simultaneously* in related cases, with each national authority operating on its own territory

Joint inspections: take place *in one Member State* with the *participation of the national authorities of one or more other Member States*

Condition: agreement of the Member States concerned

The staff of the Authority can support concerted and joint inspections

Social partners (at national level) can bring cases to the attention of the Authority

Follow-up when a Member State decides not to participate in a concerted or joint inspection

The reluctant Member state must provide the Authority and the other Member States concerned, in writing, including by electronic means, without undue delay, with the ***reasons for its decision*** and indicate the ***measures it plans to take*** to resolve the case, as well as, once known, about ***the outcomes of such measures***

Arrangements for concerted and joint inspections (Reg.2019/1149, Article 9)

- The Authority establishes a model agreement
- Law or practice of the Member States in which the inspections take place must be respected
- ELA can provide conceptual, logistical, technical support, and legal expertise, including translation and interpretation services
- Staff of ELA can attend the inspection as observers, and participate in a concerted or joint inspection (prior agreement of the Member State where inspection takes place needed)
- Reporting by the authority of a Member State participating to the ELA: outcome and overall operational running (within 6 months)
- Information collected can be used as evidence in legal proceedings (in accordance with the law or practice of that Member State)
- If the ELA becomes aware of suspected irregularities in the application of Union law: can report to the Member State concerned and to the Commission

LABOUR MOBILITY ANALYSES AND RISK ASSESSMENT (Reg. 2019/1149, Article 8)

Field: labour market imbalances, sector-specific challenges and recurring problems...

+ in-depth analyses and studies to investigate specific issues

+ collection of statistical data compiled and provided by Member States in the areas of Union law within the Authority's competence (in relation with Eurostat)

EUROPEAN PLATFORM TO ENHANCE COOPERATION IN TACKLING UNDECLARED WORK (Reg. 2019/1149, Article 12)

- Supports cooperation between Member States' relevant authorities and other actors involved on various forms of undeclared work and falsely declared work associated with it, including bogus self-employment
- Focuses on action of member states concerning cross-borders cases
- Strives to increase public awareness

Role of the Platform

- Exchange of best practices and information
- Development of expertise and analysis
- Sharing innovative approaches

...

Structure of the platform

Composition

- 1 senior representative appointed by each Member State;
- 1 representative of the Commission
- 4 representatives of cross-industry social partner organisations at Union level, appointed by those organisations, with an equal representation of trade union and employer organisations

Chair

- a representative of the Authority

Stakeholders participation

as observers (contributions are taken into consideration):

- a) Max. 14 representatives of social partner organisations in sectors with a high incidence of undeclared work (equal representation of trade union and employer organisations)
- b) 1 representative of each of Eurofound, EU-OSHA and the ILO;
- c) 1 representative of each of the third countries in the European Economic Area

Other observers can be invited (their contributions are taken into consideration)

MEDIATION BETWEEN MEMBER STATES (Reg. 2019/1149, Article 13)

Purpose

Reconciling divergent points of view between the Member States

Outcome

Non-binding opinions

Conditions

- dispute **between two or more Member States** regarding **individual cases** of application of Union law
- in areas covered by Reg. 2019/1149
- direct contact and dialogue between the Member States is unsuccessful
- request of one or more of the Member States concerned or, alternatively, initiative of the Authority (agreement of all Member States involved in the dispute is required)

First stage

- Involves Member States that are party to the dispute and a mediator
- The mediator adopts a non-binding opinion by common agreement
- Experts from the Member States, the Commission and the Authority can intervene (« advisory capacity »)

Second stage

- Involves the « Mediation Board » of the Authority (experts from Member States other than those involved)
- Condition : agreement of all Member States involved in the dispute
- Experts from the Member States, the Commission and the Authority can provide advice
- The « Mediation Board » adopts a non-binding opinion

Follow-up

- Member States involved in the dispute must inform the Authority of measures taken (or indicate reasons why they have not taken measures) within three months of the adoption of the non-binding opinion
- The Authority informs the Commission twice a year of the outcome of the mediation cases and on cases not pursued

Procedural rules

- To be determined by the Management Board
working arrangements and appointment of mediators, applicable deadlines, involvement of experts from the Member States, the Commission and the Authority, possibility of the Mediation Board to sit in panels composed of several members...
- Participation of the Member States involved in the dispute = voluntary
- If a Member State decides not to participate, it must inform ELA and the other Member States involved, in writing, including by electronic means, of the reasons for its decision (within a period determined by the rules of procedure)

Mediation and Courts

- Role of the ECJ explicitly preserved
- Case not admissible for mediation if court proceedings are ongoing (national or Union level)
- Mediation suspended when Court proceedings are initiated during mediation

Mediation and the Administrative Commission for the coordination of social security systems

- Role of the AC explicitly preserved
- Mediation must take into account decisions of the AC
- When a dispute relates, fully or in part, to matters of social security, ELA must inform the AC
- Cooperation agreement to be concluded between the AC and ELA
- On request of the AC and in agreement with the Member States concerned (or on request of one of the Member state concerned), ELA refers the issue concerning social security to the AC (Mediation can continue on the issues not concerning social security)

CONCLUSION

- A new Union body to make **EU labour mobility rules more effective and ensure better enforcement**

Not a European labour inspection to enforce **EU social legislation**

- A new authority to **help combat frauds and abuses** related with workers mobility

Not **the competent authority** in charge with enforcement of rules concerning free movement of workers

- Development of **new instruments to solve disputes between MS** concerning workers' mobility

Not a new Court deciding cases but a **mediation system** resulting in non-binding opinions