

Представяне на проекта MoveS

MoveS

Експертна мрежа на ЕС от независими
правни експерти в областта на
свободното движение на работници
(СДР) и координацията на социалната
сигурност (КСС)

- Финансирана от Европейската комисия (DG EMPL units D1 'FMW' and D2 'SSC')
- Включени 32 държави (ЕС/ЕИО/Швейцария)
- Ръководена от Eftheia, Deloitte Advisory & Consulting, Университета в Любляна, Университета Поатие
- Четиригодишен проект (2018-2021)

Задача 1

- Предоставяне на висококачествена правна експертиза в областта на СДР и КСС
 - чрез **by правни анализи**
 - чрез **месечни информационни доклади**
 - чрез **отговори на въпроси ad hoc**

Правни анализи на MoveS 2021 г.

- 1 *Възможност за създаване на 33та схема на социална сигурност в ЕС (и нейното влияние върху съществуващите правила за координация на социалната сигурност)*
- 2 *Връзка между координацията на социалната сигурност и данъчното право*
- 3 *Предварителна оценка на съответствието на националните мерки за прилагане на Директива (ЕС) 2018/957 за изменение на Директива 96/71/ЕС относно изпращането на работници и служители за предоставяне на услуги*

Актуална месечна информация

Предоставяне месечно на ЕК

- Относно националното развитие на мерките относно СДР и КСС
- Основан на докладите на 32-те държави от мрежата
- **Допълнение ad hoc**
- Когато изследването на специфични въпроси изисква подробен анализ на националната правна система

Задача 2

- Разпространение на опит и повишаване на знанията на специалистите и практиците
 - чрез организиране на **семинари**
 - чрез споделяне на **информация**
 - чрез създаване на **мрежи между заинтересувани**

Семинари

- Около 10 едnodневни семинара годишно
- 2 дистанционни семинара
- Участие: представители на компетентните власти и институции, социалните партньори, обществени организации, съдии, адвокати и учени

	Дата	Държава (град)
1.	22/04	Словакия (Братислава)
2.	30/4	Швейцария (Лозана)
3.	27/05	Чешка република (Прага)
4.	2/6	Словения (Любляна)
5.	11/6	Франция (Париж)
6.	10/9	Испания (Мадрид)
7.	24/9	България (София)
8.	7/10	Гърция (Атина)
9.	27/10	Кипър (Никозия)
10.	1-12/11 (tbc)	Норвегия (Осло)

Сътрудничество и работа на мрежата

- **Електронна страница на MoveS (EUROPA)**

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

- **Група на MoveS в Linked:**

MoveS – free movement and social security coordination

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

Благодарим ви за вниманието!

Връзка с нас:

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Recent developments in the field of social security coordination at EU level

Els Vertongen and Dita Collinsová (Legal officers)
European Commission, DG EMPL
Unit E2 – social security coordination



Overview

1. Revision of Regulations 883/2004 and 987/2009
2. Digitalization of Social Security Coordination (EESSI/ESSPASS)
3. EU-UK relations



Revision of the social security coordination Regulations





State of play – formal steps

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

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

- No qualified majority in Council (March 2019) and postponement of first reading vote in European Parliament (April 2019)
- Decision to continue the file (October 2019) and resumption of trilogues



Applicable legislation – open topics

- Period of **prior affiliation**
- **Period of interruption**
- **Prior notification before sending**
- Reinforcement of **cooperation** between institutions



Unemployment benefits - open topics

- Aggregation: Minimum qualifying period
- Export of unemployment benefit
- Frontier workers and competent Member State



Provisional agreement: Long-term care benefits

- Common definition of long-term care benefits
- Annex listing benefits in each Member State
- Member State of insurance will provide LTC benefits in cash and reimburse the cost of benefits in kind provided by the Member State of residence

Provisional agreement: Family benefits

- Distinction between parental leave benefits (cash benefits intended to replace income due to child-raising) and all other family benefits
- Two calculations for differential supplement (implementation of the Wiering judgment C-347/12)

Provisional agreement: Equal treatment

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

Provisional agreement: Miscellaneous amendments

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

Electronic Exchange of Social Security Information (EESSI) – European Social Security Pass





What is EESSI – Electronic Exchange of Social Security Information?

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

Benefits of EESSI

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



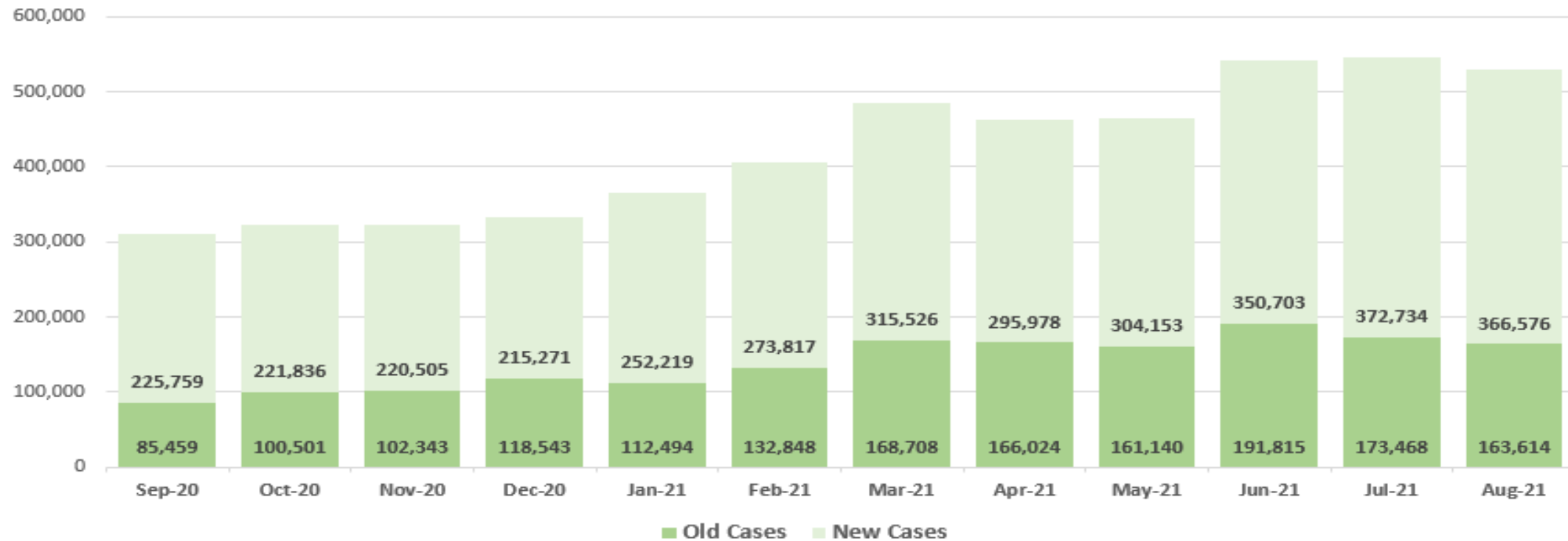
State of play

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

EESSI Status

Monthly Active Cases Last 12 Months

Since EESSI start
12,757,353 SEDs
4,424,177 Cases

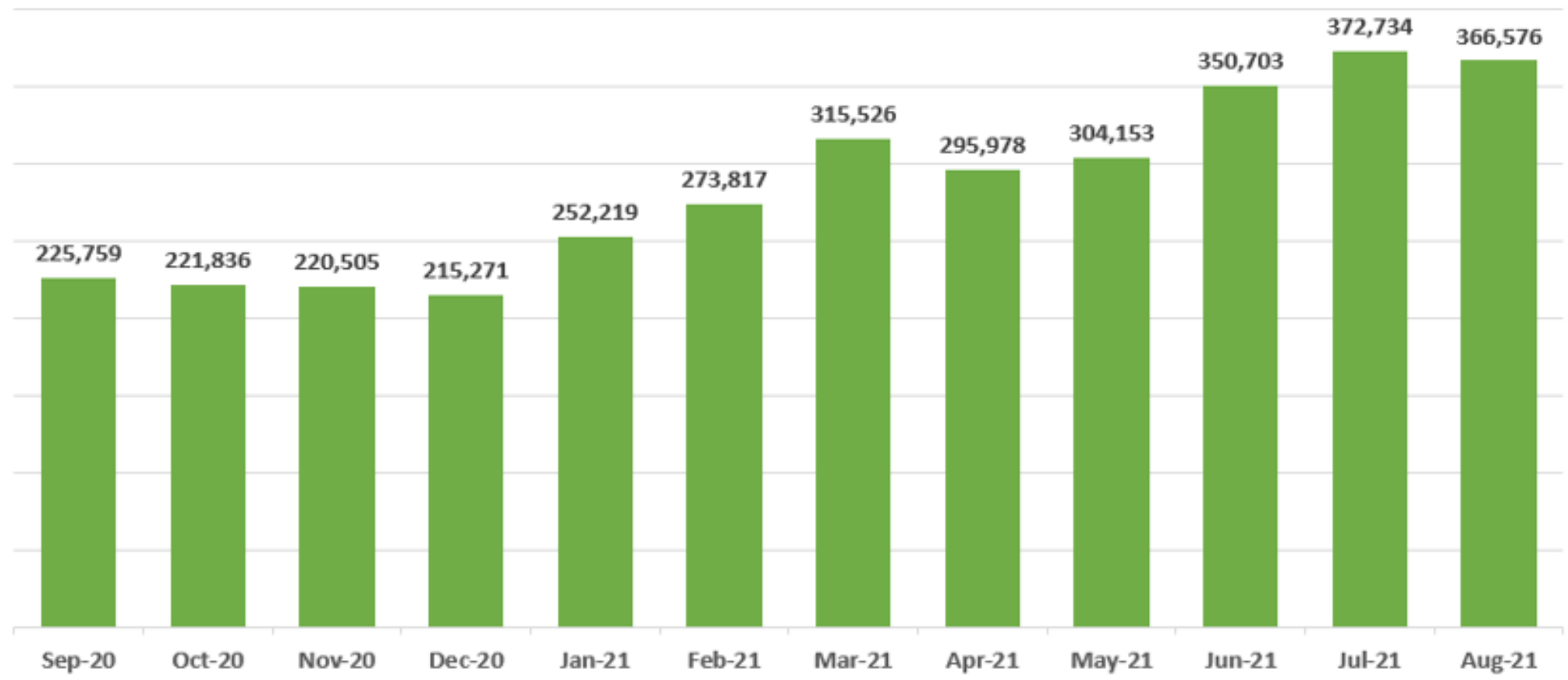


99 Business Use Cases (BUC), 300 Structured Electronic Documents

EESSI Production Volume

New Cases Last 12 Months

Since EESSI start
12,757,353 SEDs
4,424,177 Cases

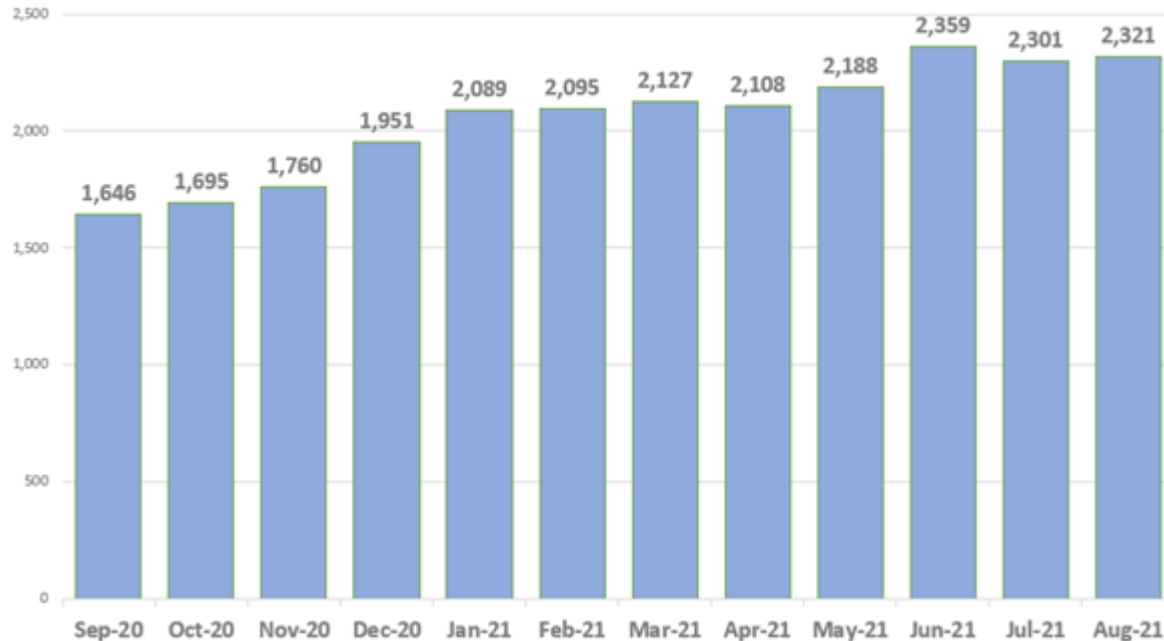


EESSI Production Volume

Total New Cases by Sector per Month



Active institutions each month



- 2940 institutions exchanged so far
- 15 BUCs are now deployed by all countries
- Legislation Applicable sector now fully deployed by all institutions
- All countries 100% operational in 2022

European Pillar of Social Rights Action Plan

Pillar 12: Social Protection



“ Social protection across national borders is a pre-condition of a well-functioning internal market. Existing and new forms of labour mobility facilitated by digitalisation, from generalised teleworking across borders to digital nomads working remotely across the EU, require seamless interactions between mobile workers and administrations, while reducing the risk of errors and fraud. Innovative solutions, notably digital ones, can facilitate the physical and virtual mobility of citizens, support the portability of social security rights and the cross-border verification of social security coverage by administrations, and address challenges in the identification of people for social security coordination purposes.

In the context of the European Pillar of Social Rights Action Plan, the Commission will:

Start a pilot in 2021 to explore a digital solution to facilitate the interaction between mobile citizens and national authorities and improve the portability of social security rights across borders (European Social Security Pass).



What is the European Social Security Pass?

- Blueprint for the end-to-end digitalisation of the social security coordination procedures
- Leverages on existing EU and national digital initiatives such as the Single Digital Gateway (SDG), EESSI, European eID Framework (eIDAS)
- Focuses on the following three main areas:
 1. Digitalising the processes for the request and issuance of portable documents;
 2. Improving the identification of mobile citizens and workers when performing activities or accessing public services abroad; and
 3. Introducing real-time mechanisms for the cross-border verification of the social security entitlements of mobile citizens and workers



What?

Procedures linked to the request, issuance and verification upon request of the PD A1 (social security coverage for persons performing activities in another Member State) – extension to further procedures (e.g. EHIC, pensions, ...) in a second stage

Why?

- Prove the viability of the technical option
- Fine tune costs
- Early identify and assess legal and organisational requirements
- Mitigate and reduce risks (e.g. Fraud)

Who?

- Two co convenors:
 - INPS, largest Italian Social Security Institution
 - EC DG EMPL

How?

- Set up the pilot organisation together with interested Member States
- Target digitalisation of the request, issuance, identification and verification processes
- Perform analysis of financial, legal aspects, as well as community building and coordination activities



Posted Worker's To-Be Journeys

Georgios is an employee of a construction company in Greece. His company is sending him to a site in Belgium for a duration of 1 year.

LIFE EVENT

WORKING ABROAD

MEMBER STATES
IN THIS SCENARIO

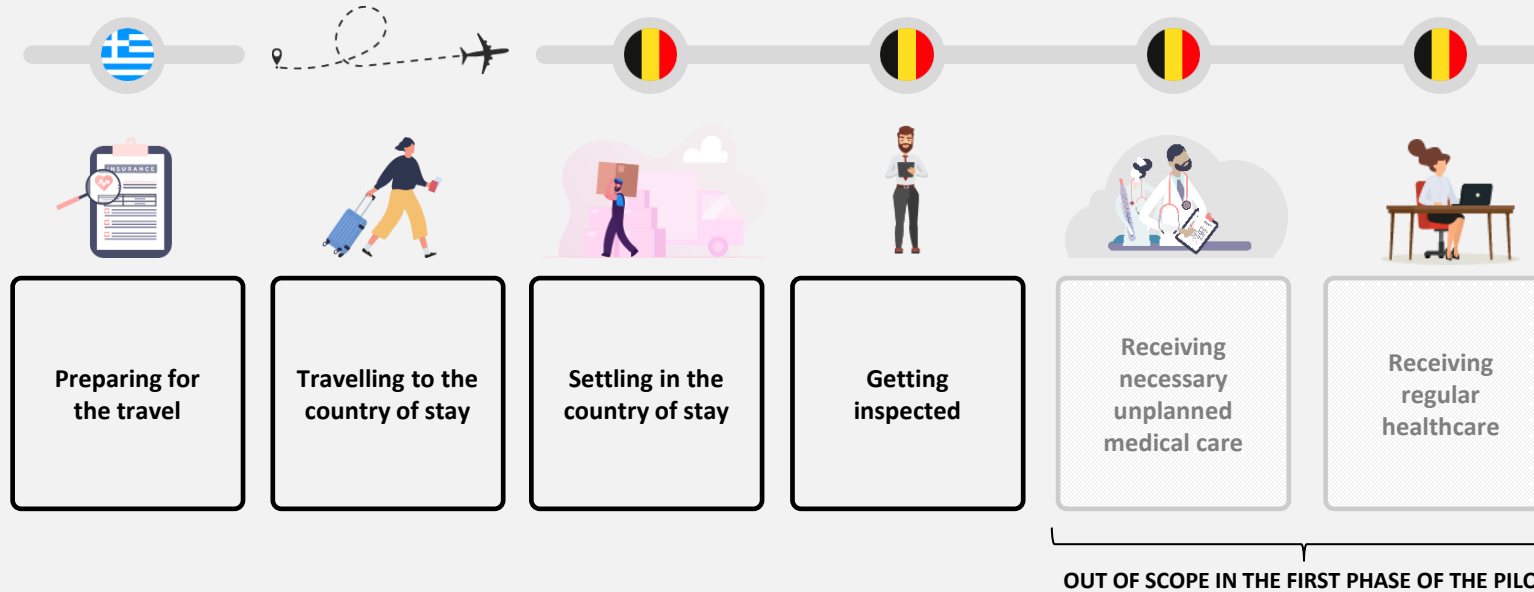


BELGIUM



GREECE

USER EXPERIENCES



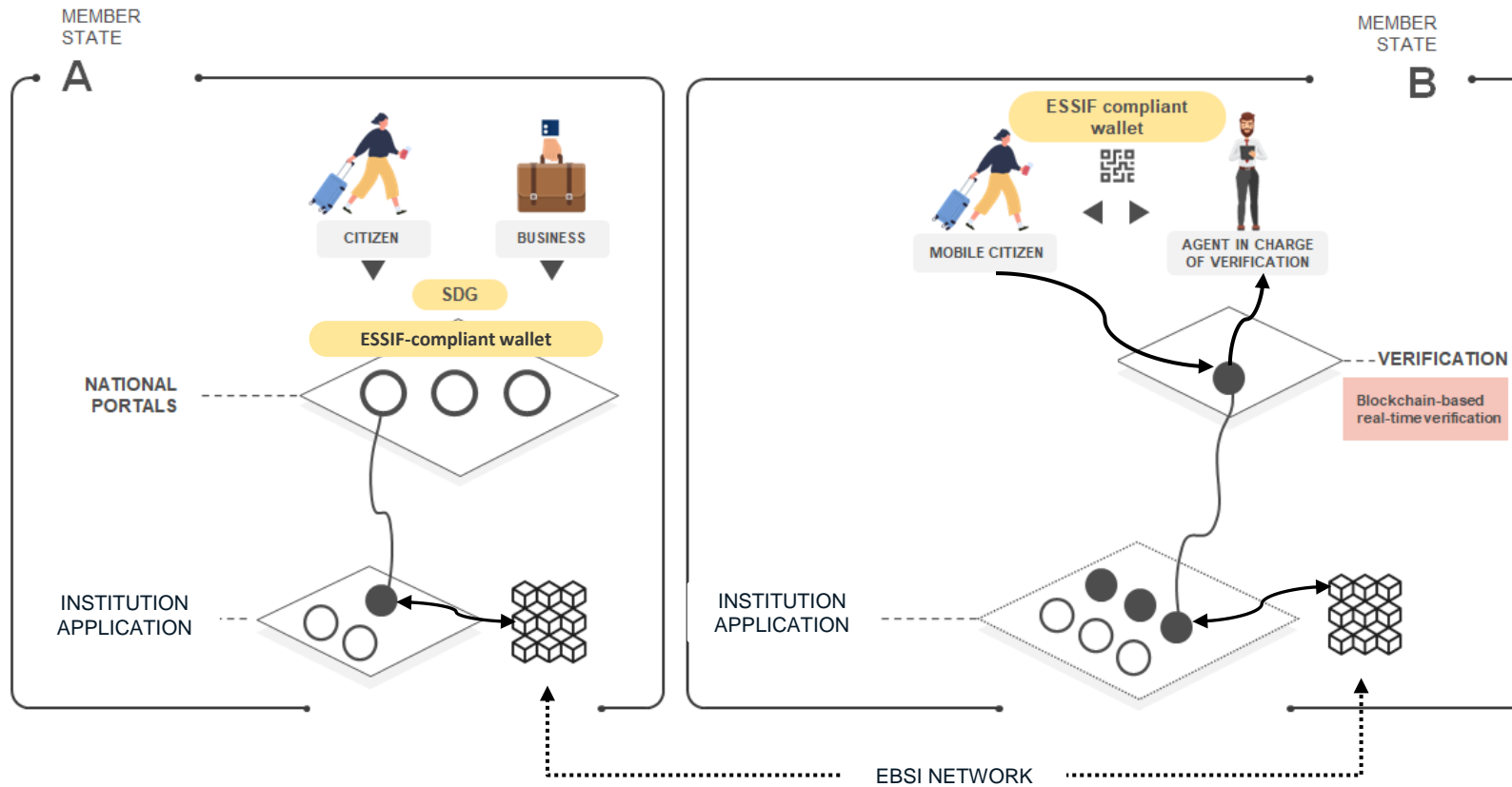
Focus on:

1. Issuance of PDA1

2. Verification of PDA1

Solution blueprint

DIGITALISATION PRINCIPLES AND BLUEPRINT



KEY PRINCIPLES

- **Identification** fully relying on ESSIF compliant wallet
- No need to introduce a unique (pseudo) number
- **Verification** fully leveraging verifiable credentials and verifiable attestations
- No need to identify the person based on the minimum dataset. The verifiable attestation will be shared upon consent using QR-codes, or equivalent techniques

EBSI : European Blockchain Services Infrastructure
 ESSIF: European Self Sovereign Identity Framework
 SDG: Single Digital Gateway

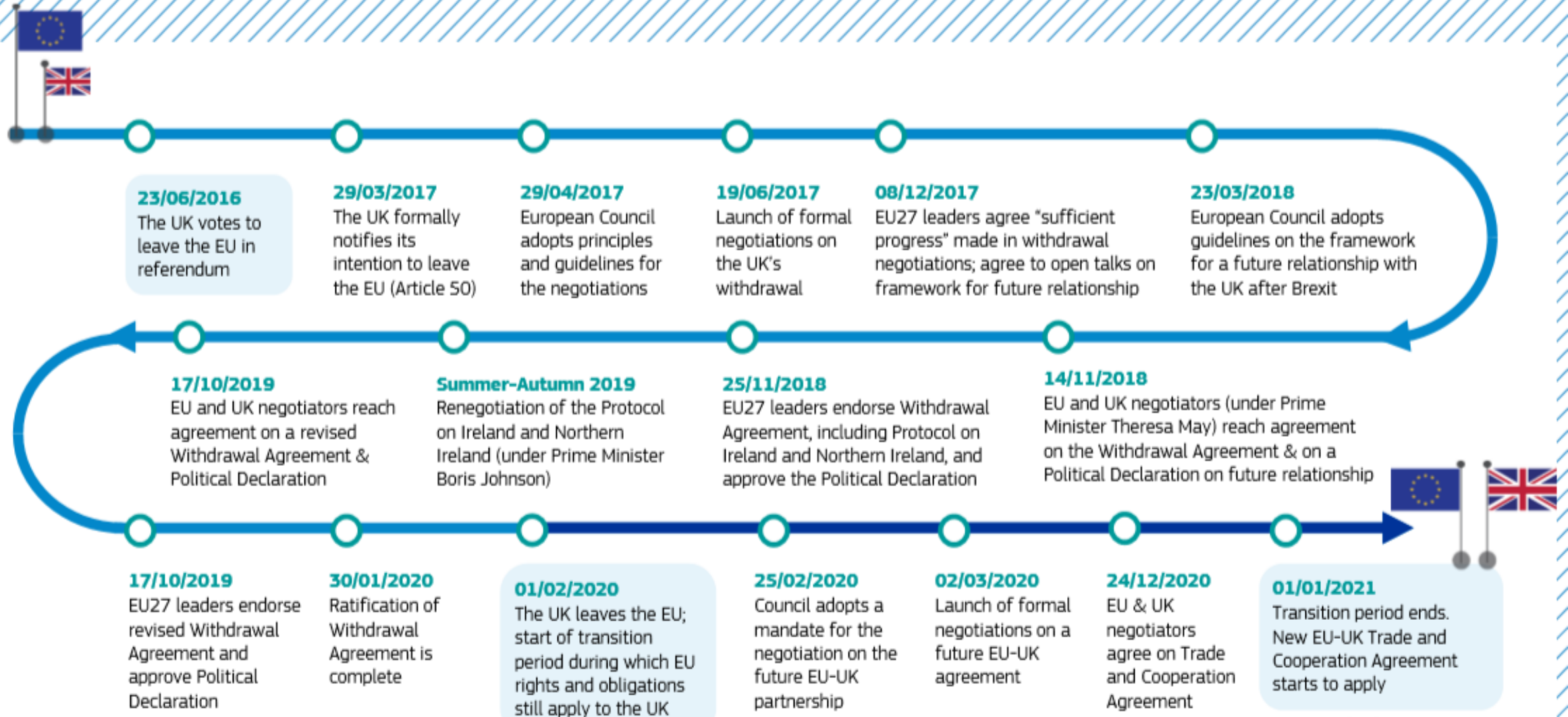
EU-UK: a new relationship



EU-UK Withdrawal Agreement
EU-UK Trade and Cooperation Agreement

EU-UK RELATIONS:

From the UK referendum to a new Trade and Cooperation Agreement





The EU-UK Withdrawal Agreement

- Entered into force on 1 February 2020
- Transitional period until 31 December 2020
- Part Two: Citizens' rights contains a chapter on social security coordination

Full Coordination (Art. 30)

Who benefits?

- Those who have continuously been in a cross-border situation involving the EU and the UK since before the end of the transition period and their family members / survivors
 - E.g. EU nationals residing or working in the UK since 2020 or earlier

Which rules apply?

- The complete social security coordination acquis (Regulations (EC) Nos 883/2004 and 987/2009)



Partial Coordination (Art. 32)

Who benefits?

- Persons who are not covered by Art. 30 but have been subject both to UK / EU social security legislation before the end of the transition period

Which rules apply?

- EU rules concerning the aggregation of periods, rights and obligations deriving from such periods
- EU rules regarding the coordination of sickness and family benefits
- General principles of the EU Regulations, such as equality of treatment



Other Aspects

- Triangulation: EU and UK have concluded agreements with Switzerland & the EEA EFTA States to protect persons in triangular situations
- UK has observer status in the Administrative Commission for the Coordination of Social Security Systems
- UK participates in the Electronic Exchange of Social Security Information for cases covered by the WA and bears the related costs
- Dynamic alignment in case the relevant EU Regulations are amended or replaced

EU-UK Trade and Cooperation Agreement (TCA)

- Agreed between the EU and the UK on 24 December 2020
- Entered into force on 1 May 2021 (already applied since 1 January 2021)



Main issues covered:

- Free Trade Agreement
- Framework for law enforcement and judicial cooperation
- Horizontal agreement on governance



Protocol on Social Security Coordination

Who is covered?

All persons who

- are or have been covered by the social security legislation of an EU Member State or of the UK
- are residing in an EU Member State or the UK
- are or have been in a cross-border situation between an EU Member State and the UK as from 1 January 2021

Protocol on Social Security Coordination

What is covered?

- Full coordination of all branches of social security coordination that are currently coordinated under Regulation 883/2004 except:
 - Family Benefits
 - Long-term care
 - Special non-contributory cash benefits
 - Assisted conception services
- Partial coordination: invalidity benefits and unemployment benefits



Protocol on Social Security Coordination

- Principle of non-discrimination between Member States
- Principle of equal treatment of persons covered
- Unicity of legislation
- Aggregation of periods of insurance/work/residence
- Waiving of residence clauses
- Sunset clause

Protocol on Social Security Coordination

- The Protocol does not apply to:
 - Situations involving a UK national moving between two or more Member States → Regulation 1231/2010 applies
 - Cross-border situations involving Switzerland, Norway, Iceland and Liechtenstein
- The Protocol applies without prejudice to the Withdrawal Agreement
- The Protocol does not provide a right to reside and to work in respectively the UK or the EU
 - Only persons fulfilling the national requirements regarding visa/residence/access to the labour market can benefit from the Protocol



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Co-Ordination of Pension Rights and Information between Member States by Eberhard Eichenhofer

MoveS Seminar

Sofia September 24th 2021

Co-Ordination of Pension Rights

- Safeguards protection in cases of **invalidity** , **old age** and for **survivors** (spouses or children)
- by **pensions** = periodical payments for life time , recovery or the status of economic independence ;
- **legal basis**: articles 44 et sequ. , 51 et sequ. BR = reg (EC) 883/2004;
- main feature: **totalization** = **accumulation** of beneficiaries' rights.

Totalization

- The concept refers to determine the **entitlement** for benefits;
- if the entitlement to a pension depends on periods of coverage ,spent under a social security system of **a** Member State, periods spent in **all** Member States are to be totalized;
- periods of coverage are based on **residence, employment or insurance.**

Pension Entitlement vs. Amount

- The concept of totalisation is relevant to determine the **entitlement** for benefits;
- an entitlement is given , **if** a person has a **right for a pension**;
- pension rights depend on **preliminary coverage under the social security system** of the competent state (e.g. 5 years , 180 months , or 45 years);
- totalization deals with the question, **if** a person gets a pension and does not refer to the question: **How much** ?.

Totalization and Transborder Lives

- If X worked and lived 10 years in France (F), 15 years in Belgium (B) and 20 years in the Netherlands (NL)
- And the pension laws of F, B and the NL demand for a pension a coverage of 25 years, X would **not qualify** for one pension despite she/he worked for 45 years.
- No pension right despite the guarantee of the **freedom of movement** (Article 45 TFEU)
- can this result **concur** with **EU-Law**?

Article 48 TFEU

- As the **freedom of movement** should **not harm social security rights**, under article 48 TFEU a **system of social security coordination** has to be established by the EU; this system was established in the BR;
- it provides for **totalization of pension rights**;
- totalization **safeguards social security rights – acquired in different Member States.**

How does totalization work ?

- Take the example of X, who worked in F for 10 years , in B for 15 years and in the NL for 20 years: What does totalization bring about in this case?
- When determining the qualifying period of X's work life, the **administrations of F, B and the NL** have to **take into account** the periods of coverage under all laws as one;
- Effect: a 45 years work life **counts** in F, B and NL as such and **not only** the **national share!**

Effects of totalization on work life

- Totalization makes a **transborder work life under EU law a unity** - acknowledged by all **Member States**;
- X` s work life – spent in F, B and the NL – brings about **three** pension rights: a **French**, a **Belgian** and ,finally, a **Dutch** one.
- **Totalization does not replace** Member States` rights, but **alter** their content!

Three steps to determine the amount

- Totalization **upholds** Member States' commitments and **alter their contents**;
- Each Member State has to **calculate** the **amount** according to **EU-law**;
- Which principles? Three principles!
- Two methods of calculation and, finally, the commitment to pay the comparatively higher pension!

Method 1 - the „national“ one

- Method 1 is called the „**national**“ one;
- The calculating Member State's authority figures out the **pension** on the basis of credits **solely earned** under its system.
- E.g. matures from one year of residence, work or insurance for the beneficiary a pension of **23 €** per year – a 10 years period of coverage brings about a **230 €** pension.

Method 2 – the „European“ one

- The second calculation method is called the „European“ one; it operates by **aggregating** and **apportioning** of periods of **coverage**:
- **Aggregation** means the competent authority takes the **entire work life** and figures out the fictional **outcome** under the applicable legislation;
- **Apportioning** means ,it identifies the Member State's share.

Method 2 – exemplified

- If in the given example of X's 45 years work life – spent in F, B and the NL – the F authority calculates the pension amount for X by method 2,
- it identifies **fictionally** a **45 years work history** under F Law; the result might be **900 €**;
- on this basis a **10/45-share** is to be determined: its outcome is **200 €**.

Method 3 Compare and find best

- Finally, the calculating body has to **compare** the outcomes identified by the **two** calculating methods,
- if method 1 brings **230 €** and method 2 **200 €** the result of method 1 is higher than the one of method 2;
- so, the **better pension** – 230 € - is payable.

What is the rules' rationale?

- Also the **methods** for **calculation** of the amount safeguards acquired rights;
- the two methods guarantee that transborder work **counts** for pensions in **any respect**;
- the ultimate **comparison** of the two methods' **outcomes** satisfies the demand for protecting migrant workers' against any **loss of rights**!

Information of administrations

- Art. 76 BR states, that **cooperation** is based on **responsible institutions** – to be named by the Member States;
- Article 53 IR reverberates this obligation for **pension administrations**;
- **Cooperation** is to be built on **principles** (Art. 2 IR): public service , efficiency , active assistance , rapid delivery , accessibility – also e-accessability , in particular for the elderly and the disabled persons.

Information commitments

- Data **exchange without delay** (Art. 3 IR);
- **data protection** in collecting, transmitting or processing personal data (Art. 4 IR);
- the Administrative Commission (Art. 71 BR) sets **standards** for **format** and **methods** (Art. 4 IR);
- **documents** – issued by other Member States' institutions – are to be **accepted** (Art. 5 IR);
- **provisional decisions** (Art. 6 IR).

Information of pension authorities

- **Notification** of decisions and remedies (Art.48 IR);
- **independent determination** of invalidity (Art. 49 IR);
- **payments without delay**(Art. 50 IR);
- **exchange of information** among all the Member States' institutions (Art. 50 IR) and **accelerated** pension calculation (Art. 52 IR).

Thank you very much

- for your interest in the subject matter and
- your questions!
- email - contact:

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Координация в областта на пенсиите съгласно Регламент (ЕО) № 883/2004 и Регламент (ЕО) № 987/2009

Основни принципи на координацията и прилагането им в практиката

- Равно третиране на лицата
- Равно третиране на факти, събития и доходи
- Сумиране на осигурителни периоди
 - дублиране на периоди
 - преобразуване на периоди
- Приложимост на законодателството на една единствена държава-членка
- Износ на обезщетения или отпадане на правилата за пребиваване

Трудности и проблеми от практиката

- Пребиваване и сумиране на периоди за право на пенсия – връзка, значение, трудности
- Различия в удостоверяване на осигурителните периоди за пенсия – формуляр E 205/СЕД Р 5000;
- Последващи промени в удостоверени осигурителни периоди
- Забавяне в удостоверяването на осигурителните периоди и обработването на заявления за пенсия от страна на чужди компетентни институции, спиране и забавяне на плащанията
- Трудности при установяване на факти или обстоятелства, настъпили в друга държава-членка от значение за българската пенсия;
- Измами с “декларации за живот”

Системите за социална сигурност в условията на пандемията от КОВИД-19 – мерки и решения

- удължаване на законоустановените срокове
- продължаване сроковете на експертните решения на ТЕЛК/НЕЛК
- месечна добавка към пенсиите
- увеличение на минималния размер на пенсиите
- служебно преизчисляване на пенсиите
- зачитане за осигурителен стаж в по-голяма продължителност периода на неплатен отпуск

Благодаря за вниманието!

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Coordination dimensions of the protection of the unemployed in the EU

Prof. Dr. Ferdinand Wollenschläger

MoveS seminar Bulgaria

*Coordination of Pensions and Unemployment
Insurance in the EU*

Sofia/online, 24 September 2021

- “Regulation No 883/2004 does not set up a common scheme of social security, ...
- ... but allows different national social security schemes to exist and its sole objective is to ensure the coordination of those schemes.
- It thus allows different schemes to continue to exist, creating different claims on different institutions against which the claimant possesses direct rights by virtue either of national law alone or of national law supplemented, where necessary, by EU law”

(Brey, para. 43)

- Free movement of unemployed persons in the EU and their social protection has two dimensions to be distinguished and co-ordinated:
 - 1) access to benefits in the host Member State &
 - 2) export of benefits from the home (“competent”) state
- Issues
 - Access to social benefits in the host MS during the first three months? (García-Nieto)

- After three months
 - if moving to another MS without intention to seek employment? (Dano)
 - if an employment has been exercised? (Alimanovic)
 - if entry “in order to accompany her partner, the father of her young children, from whom she is separated on account of domestic violence.” (CG)
 - if person seeks work? (Collins etc.)

- Is it possible to export benefits from the home (“competent”) state if entitlement exists?

Outline

I) Access to benefits in the host Member State

1. Unemployed persons as former workers
2. Unemployed persons as economically inactive persons
3. Unemployed persons as jobseekers

II) Export of benefits from the home (“competent”) state

I) Starting point: Co-ordination regulation (Brey, para. 39 ff.)

- Unemployment benefits qualifying as non-contributory cash benefits (Art. 70 Reg. 2004/883)
- Art. 70 (4) Reg. 2004/883: Such benefits “shall be provided exclusively in the Member State in which the persons concerned reside, in accordance with its legislation.”
- “conflict rule” to determine applicable legislation, ...
- ... but „not intended to lay down the conditions creating the right to special non-contributory cash benefits”

- Thus: MS may stipulate criteria such as requirement of a legal right of residence ...
- ... if in line with EU law, notably Directive 2004/38/EC

I.1. Unemployed persons as former 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

- 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)

b) 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.)

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

I.2. Unemployed as 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

- 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

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?

- Right of permanent residence

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

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)

- 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)
 - Paradigm shift in Dano (14 November 2014)?
no residence right and claim to equal treatment under Directive if economic residence criteria are not fulfilled, no relativization in terms of proportionality

- But: 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)]
- Reference to Brey-jurisprudence in 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.”

- Ambivalent approach in CG (15 July 2021; C-709/20)
 - On the one hand: Confirmation of strict reading of Dano (no residence right and claim to equal treatment under Directive if economic residence criteria are not fulfilled, no relativization in terms of proportionality; again no discussion of Art. 7 (1) lit. b („burden“) and Art. 14 (3)).
 - On the other hand: acknowledgment of a claim to social assistance based on EU fundamental rights for a EU citizen who “resides legally, on the basis of national law, in the territory of a Member State other than that of which he or she is a national” (para. 93).

I.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)

- 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)

- (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)

(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.)

- Consequences of fundamental rights approach in Case CG (15 July 2021; C-709/20)? Jobseeker enjoys a right to residence on the basis of EU law!

II. Export of benefits

- Provided for under the conditions of Art. 64 Reg. 883/2004 if seeking work in another Member State
- For a period of three months, which may be extended to six months

4. Conclusions

- Unemployed persons as workers: far-reaching access
- Non-market actors: Dynamics of Union citizenship
- Legal uncertainty (e.g. no automatic expulsion; proportionality test)

- 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)
 - Rule/exception relationship with respect to economic conditions is stressed

- Still open: First-time jobseekers, role of proportionality test after Dano & CG judgments, consequences of fundamental rights approach (CG)

THANK YOU
FOR YOUR ATTENTION!

QUESTIONS & SUGGESTIONS:

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Проблеми на координацията на общественото осигуряване при безработица в България

24 септември 2021 г.

Правни разпоредби

Регламент (ЕО) № 883/2004 – дял III, глава 6, чл. 61-65 – три сфери

- удостоверяване на периоди/доходи/пребиваване и изчисляване на обезщетения
- износ на обезщетения
- възстановяване на изплатени обезщетения за безработица

Регламент (ЕО) № 987/2009 – дял III, глава V, чл. 54-57 и дял IV, глава II, чл. 66 (5) (6) и чл. 70

- процедурни правила за прилагане на основния регламент
- финансови разпоредби за възстановяване на обезщетения за безработица

Проблеми при координацията

Проблеми при координацията при обезщетенията за безработица:

- във всяка от трите сфери на координация на обезщетенията за безработица - свързани със същността на координационните правила
- от различен характер – технически, тълкувателни, правоприлагащи
- липса на ясен механизъм за преодоляването им – взаимно разбирателство и разумни срокове

Удостоверяване на периоди, доход и пребиваване

Удостоверяване на периоди/доходи/пребиваване - чрез структурирани електронни документи и преносими документи U1

- всяка държава членка има различни изисквания по националното си законодателство за вида на документите, необходими за удостоверяване на стаж/доход
- липса на информация за факти, от значение в другата държава за преценка на правата (напр. причината за освобождаване от работа)
- различна оценка на периодите, съгласно националните законодателства (напр. самостоятелна заетост в едната държава, която в другата е период на заетост)
- затруднения при определяне на пребиваването.

Изчисляване на обезщетения

Изчисляване на обезщетения - изключително от последния доход, получаван от заинтересованото лице

- игнориране на националните правила за изчисляване на обезщетенията (24 месеца) - за безработни лица, които пребивават в държава членка, различна от компетентната държава членка се взима предвид изключително дохода от другата държава членка, независимо от продължителността на периода
- промяна на държавата по месторабота единствено с цел приложимост на правилата на регламентите за изчисляване на обезщетения.

Износ на обезщетения

Износ на обезщетения – за период от 3 месеца, с възможност за удължаване до 6 месеца

- периода на износ на обезщетения е кратък
- затруднения при регистрацията като безработни лица в другата държава
- забавяне във времето на ежемесечното потвърждаване, че лицата все още са регистрирани и търсят работа в другата държава членка

Възстановяване на обезщетения

Възстановяване на изплатени обезщетения – за период от 3 до 5 месеца от държавата членка по последна работа на безработните лица, които са пребивававали в държава членка, различна от компетентната държава членка и са получили обезщетения за безработица от държавата по пребиваване

- продължителна процедура (18 месеца)
- незачитане на решенията на АКСС на работниците-мигранти (Решение U4 от 1 април 2012 г.) - Великобритания
- различно тълкуване на разпоредбите за възстановяване – Гърция

Благодаря за вниманието!

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