

MoveS

project presentation

MoveS

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

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

Objective 1

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

MoveS Legal Reports 2021

- 1 *'The possibility of creating a 33rd /EU social security scheme (and its influence on the existing social security coordination rules)*
- 2 *'The relationships between social security' coordination and taxation law'*
- 3 *'Preliminary assessment of the conformity of national measures implementing Directive (EU) 2018/957 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services'*

Flash Report

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

Ad hoc support

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

Objective 2

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

Seminars

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

	Date	Country (City)
1.	22/04	Slovakia (Bratislava)
2.	30/4	Switzerland (Lausanne)
3.	27/05	Czech Republic (Prague)
4.	2/6	Slovenia (Ljubljana)
5.	11/6	France (Paris)
6.	10/9	Spain (Madrid)
7.	24/9	Bulgaria (Sofia)
8.	7/10	Greece (Athens)
9.	27/10	Cyprus (Nicosia)
10.	1-12/11 (tbc)	Norway (Oslo)

Cooperation and networking

- **MoveS webpage (EUROPA)**

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

MoveS LinkedIn group:

MoveS – free movement and social security coordination

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

Thank you for your attention!

Contact us at:

MoveS@eftheia.eu



MoveS seminar Norway

12 November 2021

Recent developments at EU level on social security coordination

**Tomasz Karpowicz & Hanna Schoels
European Commission, DG EMPL
Unit E2 – social security coordination**



Overview

1. Revision of Regulations 883/2004 and 987/2009
2. Digitalisation of Social Security Coordination
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 MS



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)





What is EESSI?

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

Benefits of EESSI

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



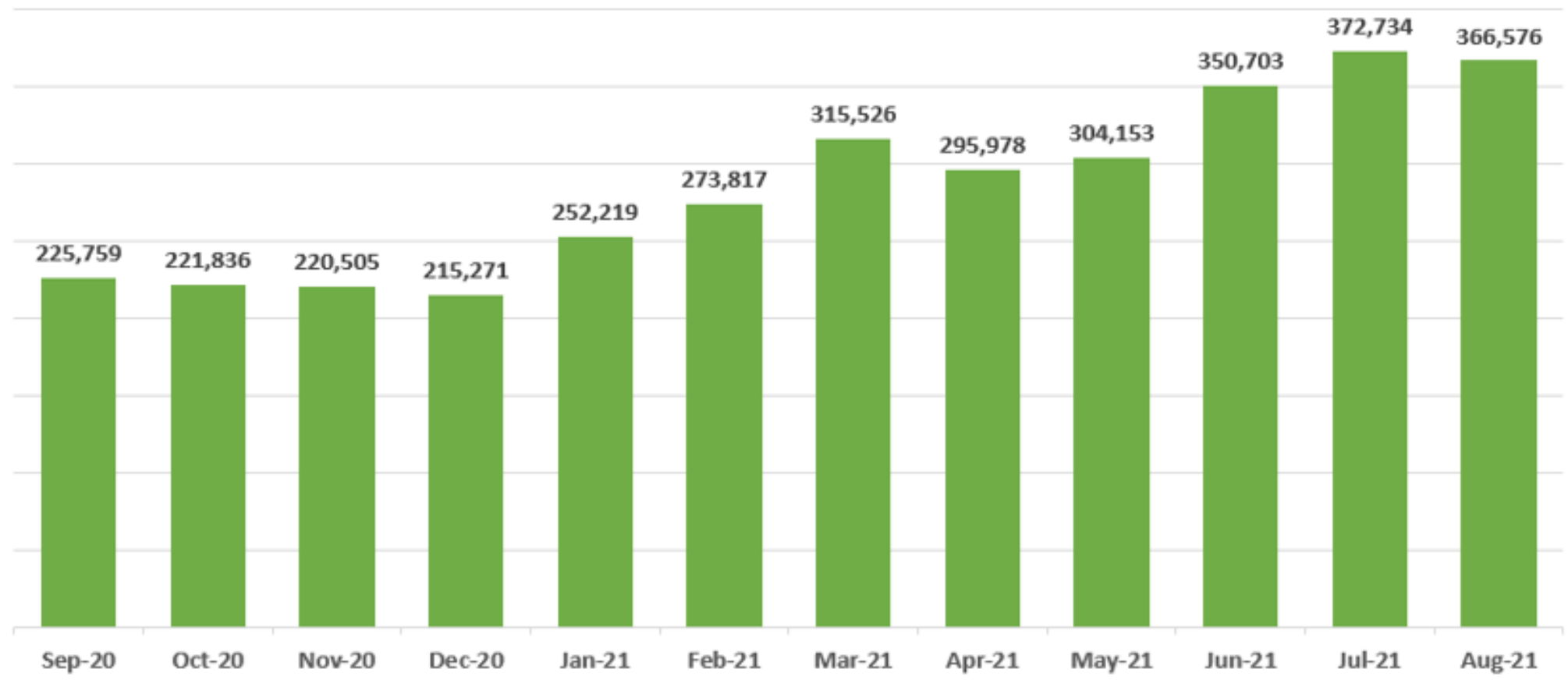
State of play

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

EESSI Production Volume

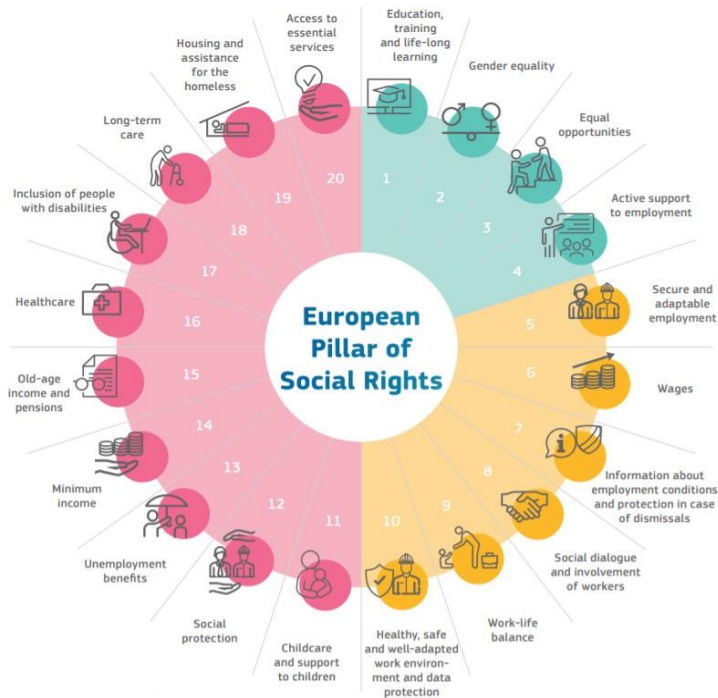
New Cases Last 12 Months

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



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?

The European Social Security Pass is a **blueprint for the end-to-end digitalisation of the social security coordination procedures**. It leverages on existing EU and national digital initiatives to facilitate the interactions between mobile citizens, workers, businesses and public or private social security institutions. The Pass 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.



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

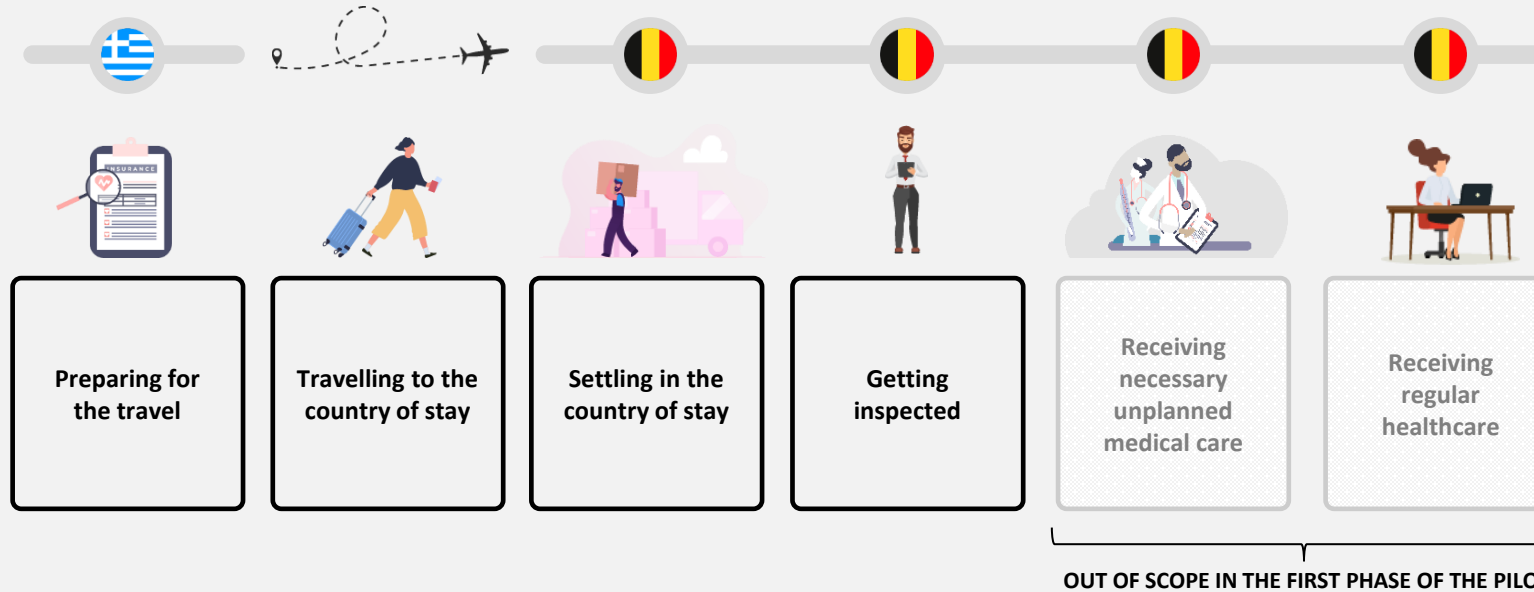


BELGIUM



GREECE

USER EXPERIENCES

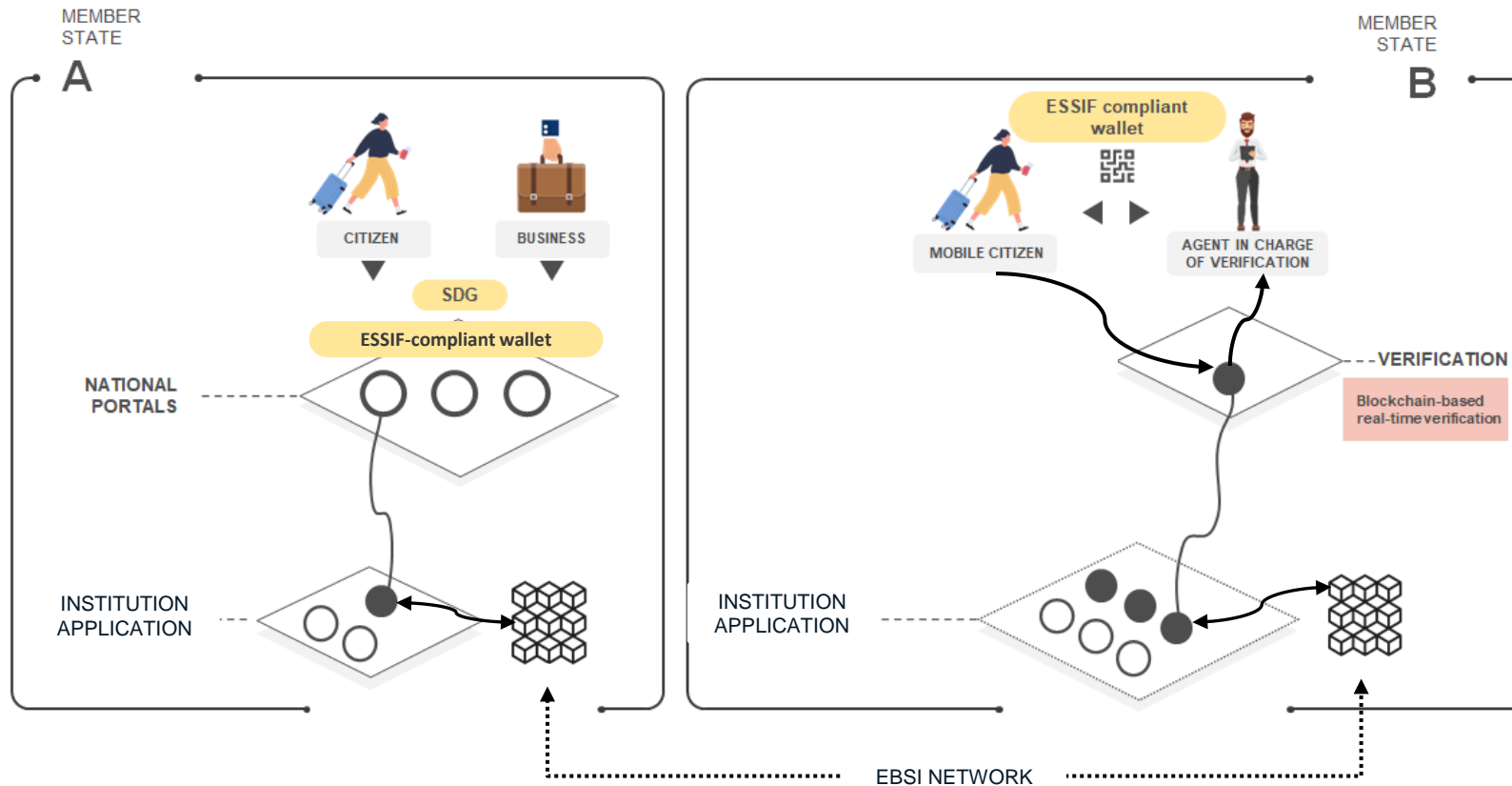


Focus on:

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

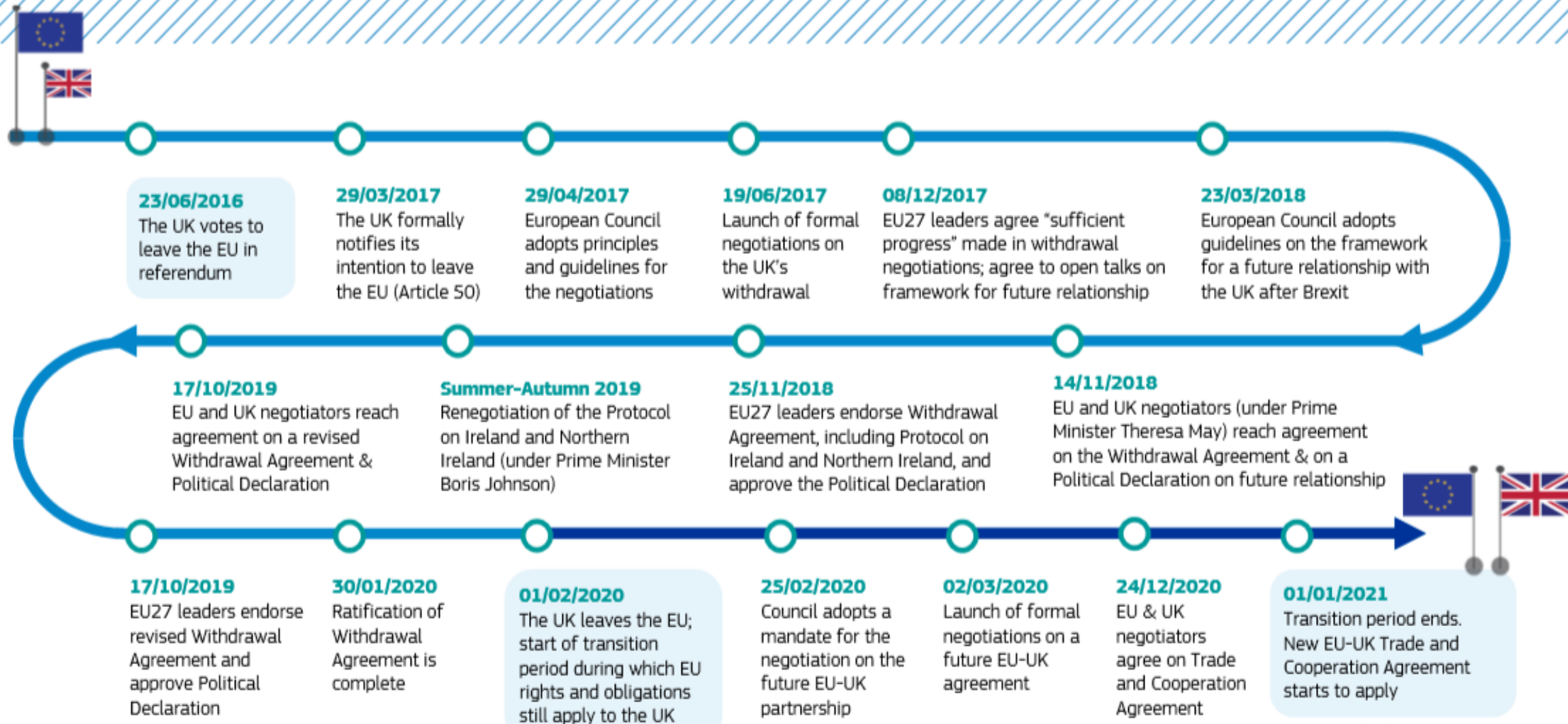
EU-UK: a new relationship



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 (WA)

- 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 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 legally 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 of 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 883/2003 except:
 - Family Benefits
 - Long-term care
 - Special non-contributory cash benefits
 - Assisted reproduction 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

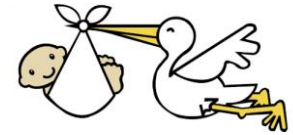
- The Protocol does not apply to:
 - Situations involving an UK national moving between two or more Member States → Regulation 1231/2010 applies
 - Cross-border situations involving Switzerland, Norway, Iceland and Liechtenstein
- The Protocol applies without prejudice to the Withdrawal Agreement
- The 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/labour market access can benefit from the Protocol



EMPL-E2-UNIT@ec.europa.eu

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

Maternity and paternity benefits and the Work-Life balance for cross-border workers



Social security coordination vs. increased flexibility in national schemes: Disadvantages for cross-border workers?

Martin Andresen, MoveS national expert Norway

Parental leave and parental benefits

- Parental leave: Labour law
 - Relationship employer / employee
- EEA Law on parental leave: Directives
 - 2010/18/EU (Parental leave)
 - 2019/1158/EU (Work-Life Balance) - Under implementation
 - Impact of the Equal Treatment Directive?
 - For cross-border workers: “Social advantages”, Regulation 492/2011. art. 7.2?
- Maternity, paternity and parental benefits: National Social Security legislation

EFTA Court, E-1/18 - ESA vs. Norway

Directive 2006/54/EC (Equal Treatment)

Background: Differences in conditions between the father's and the mother's entitlements to parental benefit.

The EFTA Court upheld the distinction between the right to parental leave and parental benefits, dismissing the notion that such benefits should be qualified as employment and working conditions.

EU law and the right to *benefits*?

Directive 92/85/EEC (Pregnant workers):
Maternity benefits for min. 14 weeks

Directive 2010/18/EU (Parental Leave):
Leaves the question of paternity and
parental benefits to MS “and / or social
partners”

Directive 2019/1158/EU (Work-life
balance), under implementation: Yes
Differs between “paternity benefits” vs.
“parental benefits”

Maternity and paternity benefits, vs parental benefits?

- All MS: Maternity benefits
- Paternity benefits – still optional in MS?
- Parental benefits: A “package”, or separate benefits?
- Work-life balance Directive:
 - Requires min. 4 months, min. 2 months for each parent
- SME's?
- Flexible benefit outtake
 - combining parental leave and part-time work

Coordination of parental benefits: Sickness or family benefits?

- Sickness benefits: Individual rights
 - Individual rights, one MS only
 - Covers costs due to absence from work
 - Mostly based on income or contributions, can also be flat-rate
- Family benefits: A “Big Basket”
 - Two or more MS may be responsible
 - Covers costs related to raising a family
 - Cost compensation or income support
 - Benefits in cash and in kind
 - Social assistance, tax credits etc
- Is there a blurred distinction between parental benefits and child-raising benefits?
 - C-245/94 *Hoefer and Zachow*
 - C-347/12 *Wiering*

Applicable legislation and competence

- **Sickness benefits:** The parent as primary subject
- **Family benefits:** The child / family as primary subject
- **Most parental benefits are coordinated as sickness benefits**
 - **Notable exception:** Sweden (C 275/96 Kuusijärvi)

Temporal aspects

- Cross-border workers: Parental benefits for the mother in one MS, for the father in another MS
 - Can both parents take parental leave and receive benefits for an overlapping period of time?
 - A case for national legislation, not for SSC
- Flexible parental leave
 - Art. 5 (6), Directive 2019/1158/EU
 - Postponing (parts of) parental leave – working in another MS in the meantime. Consequences for the parental benefit?

Applicable legislation and flexibility (I)

- Part time work in one MS, combined with part time parental benefit from another state
 - Continued payment of benefits - reg. 883/21, art. 21
 - Applicable legislation: Art. 11.2 vs. art. 11.3.a
 - Solution: art. 13 to determinate applicable legislation

Applicable legislation and flexibility (II)

- Postponing (parts of) parental leave, while working in another MS
 - Period with parental benefits: “Continuation of work”, Reg. 883/2004 art 11.2
- Starts working in another MS:
 - Change of applicable legislation, reg. 883/2004 art. 11.3.a
- Still eligible for the postponed (part of) the parental benefit?
- If so – which country is competent for collecting contributions from the benefit – under which legislation?

Cross-border workers at disadvantage?

- Social Security schemes are different, and Cross-border workers do not have automatic access to the “best” scheme
- However: Is it possible to lose entitlement to an already earned benefit, *solely* because of Regulation 883/2004?
 - This *might* be an unintended consequence of the coordination rules.

Suggestions for a solution

- Regulation 883/2004 art. 7 and 21 provides for the benefits to be exported
- Recommendation from the AC on the application of art. 11 in cases where a mother or father is eligible for a parental benefit from his or her former MS of work?
 - ... or other forms of agreement / soft law?

Sick or unemployed? Lessons from three recent judgements of the EFTA Court: Challenges for the coordination of “hybrid benefits” that combine elements from sickness and unemployment insurance

Essi Rentola

Oslo

12 November 2021

Overview

- Overview of three recent cases from the EFTA Court
 - E-8/20 from 5 May 2021
 - E-13/20 from 30 June 2021
 - E-15/20 from 30 June 2021
- How can free movement be supported when a national benefit system combines cash benefits with services?

Case E-8/20, N *Facts

- N was granted rehabilitation allowance/work assessment allowance due to poor health and also made redundant from his former employment
- N and spouse stayed in a house in Italy a total of 14 times (2008 – 2012) he informed NAV of two stays
- N was considered to have misled NAV by not informing of all periods spent abroad and was convicted of fraud

Case E-8/20, N *Question 1 & 12

Is work assessment allowance (arbeidsavklaringspenger) a sickness benefit within the meaning of Art. 4(1)(a) of R 1408/71 and Art. 3(1) of R 883/2004?

The Court:

- Sickness benefit covers risk connected to a state of ill health involving temporary suspension of the concerned persons activities
- Disability benefit covers the risk of disability of a stipulated degree, probably permanent or long-term
- Unemployment benefit covers the risk of loss of income when a worker loses employment even though still able to work and the benefit is no longer payable when again in in paid employment.

- The work assessment allowance is granted to persons who are incapable of obtaining or retaining gainful employment due to illness, injury or another impairment.
- A basic requirement for qualifying for the work assessment allowance is that the person concerned suffers from 'sickness, injury or impairment' which may involve 'a need for active [medical] treatment.
- The person receives regular follow-ups to ascertain if there is still a need for assistance to gain employment. If assistance is no longer needed, the benefit is suspended or terminated.
- The benefit in question is intended to cover the risk of temporary incapacity as opposed to permanent or long-term invalidity .
- ... **and must therefore be regarded as a sickness benefit.**

Case E-8/20, N *Questions 2, 3 & 4

Does Article 22, possibly Art. 19, apply only to situations residence (bosetting) in an another EEA state or are also shorter stays (oppholds) covered by the provisions?

May competent state make entitlement to bring the work assessment allowance along subject to the condition that that person must have applied for and obtained authorisation to stay (oppholde seg) in another EEA State?

If 1408/71 does not confer entitlement to bring the benefit along during stay in another EEA State, or not without authorisation pursuant to national rules, must it be determined if national rules come within the scope of other EEA rules?

... the Court:

- The provisions only relates to situations when an insured person resides in another EEA State (not the case of N who only had short-term stays in Italy).
- The situation does not come within the scope of Article 19 or Article 22 of Regulation 1408/71. However, that finding does not have the effect of removing national rules such as a presence requirement in the case at hand from the scope of the provisions of the main part of the EEA Agreement or another legal act incorporated into the EEA Agreement.

Case E-8/20, N *Questions 5 & 8

- Are the conditions laid down national law limiting entitlement to benefits compatible with Articles 28 and 36 EEA?

... the Court

- Any EEA national who exercises the right of freedom of movement to seek employment or has been employed in an EEA State other than that of residence falls within the scope of Article 28 EEA.
- a person such as N who has exercised his freedom to move and to receive services in an EEA State other than his home State comes within the scope of Article 36 EEA.
- A system of prior authorization represents an additional burden for individuals choosing to stay in another EEA State compared to those staying in Norway and entails restriction within the meaning of Art. 36 EEA.

The objective of encouraging recruitment

- *The Norwegian Government* argues that the work assessment allowance, similar to unemployment benefits in the narrow sense, occupies a special place in social security systems. Unemployment benefits are not only social security benefits, but also important instruments of labour market and employment policy with the aims of integrating persons excluded from the labour market and ensuring a high level of employment. (101.)

The objective of encouraging recruitment

The Court :

- The mere generalisations concerning the capacity of a specific measure to encourage recruitment, are not enough to show that the aim of that measure is capable of justifying derogations from one of the fundamental freedoms of EEA law and do not constitute evidence on the basis of which it could reasonably be considered that the means chosen are suitable for achieving that aim. (104.)
- While a benefit awarded to a person whose reintegration into employment life is difficult and to that extent impacts employment policy to a certain degree, the main objective of granting sickness benefits is the improvement of the state of health and the quality of life of insured persons. Thus, considerations devised to fit the specific purposes of the employment policy of re-integrating persons into the labour market cannot justify the restriction in question.(106.)

E-8/20 N, *Question 7

The time limit

The Court:

- It has not been sufficiently demonstrated why a general control system is unsatisfactory with regard to insured persons on shorter stays in another EEA State compared to insured persons physically present in Norway, but travelling away from their residence or home municipality, for example for leisure or for other purposes.
- A maximum of four weeks outside of Norway per year does not take the individual needs of persons sufficiently into account, the condition goes beyond what is necessary.
- Unjustified restriction to Art. 36 EEA.

E-8/20 N, *Question 8

- Can the conditions requiring that stays abroad are compatible with the performance of defined activity obligations and do not impede follow-up and control, and requiring prior authorization by the competent institution be justified on the basis of the considerations, namely preserving the financial balance of the national social security system and monitoring compliance with the requirements for social security benefits?

... the Court

- The need to monitor compliance with the requirements for social security benefits is a legitimate objective.
- For travels within Norway, the fortnightly reporting requirement is regarded as sufficient, and no similar assessment of non-scheduled activities or offers of other relevant activities take place.
- A system of prior authorisation must be considered disproportionate.

-

E-8/20 N *Question 13

- Should the term “staying” in Article 21(1) of Regulation 883/2004 be interpreted as encompassing each and every short-term stay in another EEA State not constituting residence, including stays?

The Court:

- The term “staying” in Article 21(1) of Regulation 883/2004 must be interpreted as encompassing short-term stays in another EEA State not constituting “residence” within the meaning of point (j) of Article 1 of that regulation.

E-8/20 N *Question 15

- Is Article 21 of Regulation 883/2004, in particular its wording “in accordance with the legislation it applies”, to be interpreted as meaning that the competent EEA State may maintain conditions that: (i) the benefit may be provided only for a maximum of four weeks per year outside of Norway; (ii) the stay abroad is compatible with the activity obligations and does not impede follow-up and control by the competent institution; and (iii) the person concerned must obtain authorisation and comply with the notification duty through the use of a notification form.

... the Court

- Article 21(1) of Regulation 883/2004 must be interpreted as precluding conditions such as (i) that the benefit may be provided only for a maximum of four weeks per year outside of Norway; (ii) that it must be demonstrated that the stay abroad is compatible with the activity obligations and does not impede follow-up and control by the competent institution; and (iii) that the person concerned must obtain authorisation and comply with the notification duty through the use of a notification form.

E-13/20 O *Facts

- E-13/20: O resided and worked in Norway until 2012, when he became unemployed and started to receive unemployment cash benefits. In January 2016 he registered as having moved to Germany.
- He had staid in Germany several times before registering as having moved there but hadn't informed NAV about this.
- He had a one – man firm with some activities in 2013 – 2014.
- The appeal body concluded that O was not entitled to unemployment benefits during his stays in Germany on the ground that he didn't fulfil the condition of staying in Norway.

E-15/20 P, *Facts

- P resided in Norway when he became unemployed in 2014 and started to receive unemployment benefits.
- He got the information of having to inform of absence from Norway.
- In 2016 NAV discovered that P had staid in Denmark and Spain.
- He had ticked the box 'holiday' or 'absence' in some of the electronic notifications.
- The national court delivered a judgement convicting P of fraud.

E-13/20 E, *Question 1

- Is the requirement that the unemployed person must stay in Norway compatible with the Regulation in cases where the conditions of Articles 64, 65 or 65a of the Regulation are not fulfilled?

... the Court

- Article 63 of the Regulation derogates from the main rule in Article 7 and allows EEA States to impose residence rules, including presence requirements, for entitlement to unemployment benefits in cases other than those provided for by Articles 64, 65 and 65a.
- The requirement to stay in Norway to be entitled to unemployment benefits in cases where the conditions of Articles 64, 65 or 65a are not fulfilled is compatible with the Regulation, including Article 5(b) thereof.

The sickness benefit encouraging recruitment – Remaining questions

- Cash benefit from the competent State and part-time work in State of residence
 - Article 11(2) -> work in two MSs
 - Article 16 Exceptions
- How to combine services and activation with the aims and conditions regulated in the law concerning the cash benefit

Nordic solutions

Cross border rehabilitations

- *An individual who lives in one country and works in another and is injured or otherwise incapable of work for a longer period may, following medical treatment, find it difficult to receive vocational rehabilitation in their country of residence. He/she may need to travel daily to the country of work to undergo rehabilitation, which can be a heavy burden for an individual who is unwell.*

Nordic solution

- Nordic Convention on Social Security states that the relevant institutions in the countries concerned should co-operate on support and activation measures with a view to providing opportunities for entry into or return to work. The proposal also provides that if such efforts involve the transfer of insurance cover, the countries involved should, as far as possible, resolve the situation to the advantage of the individual concerned.

Bilateral Nordic agreements

- Nordic countries have bilaterally agreed on administrative routines for rehabilitation where the rehabilitation circumstances in a particular country affect entitlements to pension or other benefits in another country, the latter country should be informed of measures that have commenced. Countries should work together, as far as possible, to resolve the situation to the advantage of the individual.

The Social Security reform in Finland

- Ageing population and a need for longer working careers.
- Sustainability of the social security system.
- Inclusion of people who face obstacles to join the labour market.
- The interplay between cash benefits and services/measures/activation becomes increasingly important.

Looking into the future

- Will the traditional risk categories begin to deviate ?
- More hybrid benefits ?
- How will services in one country and cash benefits from another be coordinated in a way that support free movement of people?

• *Thank you for your attention*

National activation measures in cross-border situations. Reach and limits of Union law.

Rob Cornelissen

Oslo

12 November 2021

Overview

- I. Introduction
 - 1. Nature and purpose Reg. 883. Matters covered
 - 2 Increasingly important role activation measures hardly mirrored in Reg. 883.
- II. Reach and limits Reg. 883 and other Union law on application activation measures
 - 1. Notion “*unemployment benefit*”
 - 1.1. illustration impact Reg. 883 on activation measure

Overview

- 1.2. impact other Union law on activation measures concerning “*unemployment*” benefits
- 1.3. discrepancy between ECJ and EFTA court
- 2. Notions “*sickness*” and “*invalidity*”
 - 2.1. Limits Reg. 883. Reach other Union law
 - 2.2. Do rehabilitation measures fall under scope Reg. 883?
 - 2.3. Qualification rehabilitation measures
 - 2.4. Reach and limits Reg. 883 on rehabilitation measures. Assessments and reassessments
 - 2.5. Art. 87(5) Reg. 987/2009
- III. Conclusions

I. Introduction. 1. Nature and purpose Reg. 883

- **Hybrid** character of regulations based on Art. 48 TFEU (now: Reg. 883/2004 and 987/2009)
 - Modest: only coordination: does **not** affect disparities between MS
 - Ambitious: remove all barriers in sphere social security impeding free movement of workers
 - Purpose regulations based on Art. 48 TFEU: overrule, at least partially, application of principle of territoriality

Four pillars Reg. 883

- Determination applicable legislation (only one!): no conflicts of law (Title II: Art. 11-16)
- Principle of equal treatment: no discrimination based on nationality (Art. 4 and 5)
- Principle of maintenance rights in process of being acquired: aggregation of periods (Art. 6)
- Principle of maintenance of acquired rights: export of **cash** benefits (Art. 7). (But no export of benefits in kind!). Exceptions: “special non-contributory” benefits and unemployment benefits)

Matters covered by Reg. 883

- Reg. 883/2004 applies to all **legislation** concerning one of the branches of social security listed in Art. 3.
- List is exhaustive: benefits not listed are **not** covered (Valentini, 171/82; Otte C-25/95)
 - Commission proposal 1998 proposing 'open' list rejected by Council

Reach of **other** Union law on application MS' social security systems

- ECJ: MS are free to organise own soc. sec. schemes. But in exercising that power they have to respect Union law as a whole, in particular:
 - Art. 45 TFEU (free movement of workers)
 - Affects in particular requirements laid down in national legislation concerning “stay” or “residence” or any other provision which could deter a person from making use of right of free movement
 - 2 judgments EFTA court of 30 June 2021 (E-13/20 and 15/20 on unemployment benefits) **derogate** from this consistent case-law ECJ!
 - Principle of sincere cooperation (Art. 4(3)TEU)

2. Last two decades: activation policies reflected in MS' social security schemes.

- Amsterdam Treaty:
 - Open Method of coordination. Coordinated employment strategy
- Employment guidelines
 - Increase level of population in active employment
 - Modernise **social protection** systems by encouraging people to actively participate in labour market

Activation policies

- Shift emphasis from person's **incapacity** to their capability and responsibility
- Extension in conditionality
 - Recipient is expected to do a lot more or to cooperate more in order to be entitled to benefits
- 1997 Commission Communication *"Modernising and Improving **Social Protection** in EU"*
 - *"Turning unemployment insurance into an **employability** insurance"*

Activation policies continue to be decided at national level

- Some MS are very advanced in activating people. In other MS only in limited way
- Activation measures in particular “*unemployment*”, “*sickness*” and “*invalidity*” benefits
- Carrot
 - Reduced social security contributions for employers recruiting certain jobseekers
 - Bonusses for employers hiring long-term or old unemployed
 - Income guarantee for unemployed persons who take up a part-time job by supplementing their income from that job

Activation measures

- Stick
 - Entitlement to sickness or invalidity benefit subject to conditions: participate in work related activities, training programs and active job searching. Rehabilitation or reintegration measures.
 - Interest is focused not on how much disability, but how much **ability** person still has.
 - Objective: ensure that these persons remain in work to greatest possible extent

Activation measures: country related elements

- Activation measures pursue **national** objectives. Therefore, conditions such as to:
 - Residence in national territory
 - Training in national territory or at providers established in national territory
 - Bonusses only if new job is subject to national social security
 - Reimbursement of training costs only if persons has worked in national territory for certain period of time

Role activation measures hardly mirrored in social security regulations

- Has legislature been dynamic enough?
- Reg continue to be focussed on **cash** benefits
- Only very few provisions explicitly referring to activation measures:
 - Art. 27(4) Reg. 987/2009 (sickness benefits)
 - Art. 87(5) Reg. 987/2009 (invalidity, accidents at work, sickness and unemployment benefits)
 - Art. 55 (6) Reg. 987/2009 (unemployment benefits for persons looking for a job in another Member State)

II. Reach and limits Reg. 883 and other Union law on activation measures

- Reg. applies to “***all legislation concerning following branches of social security***”:
 - Sickness benefits
 - Maternity and equivalent paternity benefits
 - Invalidity benefits
 - Old-age benefits
 - Survivors’ benefits
 - Benefits in respect of accidents at work and professional diseases
 - Death grants
 - Unemployment benefits
 - Pre-retirement benefits
 - Family benefits

Qualification of “*benefits*”

- Decisive elements for legislation being covered by Reg. 883:
 - Constituent elements, in particular purpose and conditions for entitlement
 - There must be a **link** between national provision in question and **one of risks** listed in Art. 3 (C-517/16, Czerwinski)
 - That link must be **direct** and sufficiently **relevant** (C-327/92, Rheinhold Mahla)

Qualification of “*benefits*”

- No definition of “*unemployment*”, “*sickness*”, or “*invalidity*” in Reg.
- ECJ (C-517/16, Czerwinski): qualification depends on objective criteria:
 - Purpose
 - Conditions for entitlement

1. “Unemployment benefits”

- ECJ: essential criteria:

- Intended to replace remuneration and thereby provide for maintenance of unemployed (C-102/91, Knoch)
- Benefit no longer payable if risk (loss of employment) ceases to exist as a result of the claimant’s engaging in paid employment (C-406/04, De Cuyper)
- Payable to persons having ceased economic activities (C-66/92, Acciardi) and who are available to employment services (C-406/04, De Cuyper)
 - In very exceptional circumstances obligation to be available to employment services may be lifted (C-228/07, Petersen). Case concerned an unemployment benefit granted to an applicant for an invalidity benefit whose capacity and availability for work was uncertain: points 33-35 Petersen judgment)

Reg. 883. Notion “*unemployment benefits*”

- Chapter “*unemployment benefits*” in Reg. 883 and 987 focussed on **cash** benefits.
- Does this mean that all benefits in kind are excluded?
- No. ECJ:
 - “*Unemployment benefit is not merely pecuniary but **includes the assistance in finding new employment** which the employment services provide for workers who have made themselves available to them*” (Miethe, 1/85, point 16)

Notion “*unemployment benefits*”

- However, until 2009 (insertion of Art. 55(6) in Reg. 987) **no provision** in regulations concerning measures to facilitate job-seeking activities
- Commission proposal 1998:
 - *“an unemployed person who goes to another MS in order to look for work shall be entitled to unemployment benefits other than cash benefits whose aim is to facilitate access to work under the same conditions as...”*
 - Proposal rejected by Council. Reason: no added value compared with Art. 5 (predecessor of) Reg. 492/2011

Explicit reference to activation measure: Art. 55(6) Reg. 987/2009

- *“The competent authorities or competent institutions of two or more Member States **may agree amongst themselves** specific procedures and tim-limits concerning the follow-up of the unemployed person’s situation as well as other measures **to facilitate the job-seeking activities** of unemployed persons who go to one of those Member States under Article 64 of the basic Regulation”*

Notion “*unemployment benefit*”

- ECJ: notion also covers benefits intended to prevent possible unemployment, such as financial assistance during vocational training, but only for people who are actually threatened by unemployment (Campana, 375/85)
- If established that measure is an “*unemployment benefit*”, the provisions of chapter “*unemployment*” can be applied (e.g. aggregation for entitlement to benefits)

1.1. Illustration application Reg. 883 on activation measure

- Belgian law: income guarantee benefit
 - Encourages recipient of unemployment benefit to take up part-time work
 - Income from part-time employment is supplemented by unemployment benefit
 - Benefit guarantees recipient a net income exceeding a full time unemployment benefit so as to avoid inactivity trap
 - Person concerned must be available to full time labour market

Illustration application Reg. 883 on activation measure. Results may vary!

- Person receives unemployment benefit in MS **A** after having worked in **this** MS. He then starts working part-time in MS **B** as a frontier worker. Does this lead to change of applicable legislation?
- Title II Reg. 883: rules determining applicable legislation.
 - Art 11(2): “***For the purposes of this Title, persons receiving cash benefits because or as a consequence of their activity as an employed ...person shall be considered to be pursuing the said activity. This shall not apply to invalidity...pensions or to pensions...***”.

Title II: rules determining applicable legislation

- Title II: Art. 11-16
 - General rule: Art. 11(3)(a): MS of work
 - Special rule for persons who “*normally*” pursue activities in 2 or more MS (Art. 13)
 - Subject to legislation of MS of residence if he/she pursues “*substantial part*” of activities (25% or more of working time/remuneration) there
 - Detailed rules if no substantial part of activities in MS of residence

Unemployment chapter: derogation from general rule for granting unemployment benefits

- Art. 65 applies to persons who resided in a Member State other than competent State (e.g. frontier workers)
 - Art. 65(1): part-time unemployed frontier workers shall receive unemployment benefits from MS where they work.
 - Philosophy behind rule: institution of MS of work is best placed to assist person in finding additional employment on terms compatible with part-time work (C-655/13, Mertens)

Change in applicable legislation? Two possible approaches

- First approach: working part-time in other MS leads to change in applicable legislation because of special rule Art. 65(1).
- Second approach: in principle no change of applicable legislation because of Title II.

Second approach

- Art. 65 (1) does **not** apply. Provision envisages situation where a person becomes part-time unemployed while working in a MS other than MS of residence
 - “A *person who is partially....unemployed and who, **during his/her last activity as an employed ..person** resided in a Member State other than the competent Member State, shall...*”
- Provision does not apply to people who do already receive unemployment benefit and who **start** working part-time in a Member State other than Member State of residence

Second approach

- The question which is “*competent Member State*” is decided by **Title II** (Cochet, 145/84)
 - Fiction of Art. 11(2) applies to sickness and unemployment benefits (C-285/20, “K”)
 - By virtue of Art. 11(2) jo Art. 13 person continues to be subject to legislation of Member State providing him unemployment benefit on basis of activities in this MS.
 - Only if part-time work becomes so important in value and time that person no longer pursues “*substantial part*” in MS of residence : change of legislation. In that case: Recommendation U1

Not same result for frontier workers

- Person receives unemployment benefit in MS **A** after having worked as a frontier worker in MS **B** (on basis of Art. 65 Reg. 883). After a couple of months he starts working again, this time part-time, in MS B. Does this lead to change of applicable legislation?
- Title II Reg. 883: rules determining applicable legislation.
 - Art 11(2): “***For the purposes of this Title, persons receiving cash benefits because or as a consequence of their activity as an employed ...person shall be considered to be pursuing the said activity. This shall not apply to invalidity...pensions or to pensions...***”

Not same result for frontier workers

- Person receives unemployment benefit from MS **A** but *“as a consequence of their activity as an employed person”* in MS **B**!
- Therefore, art. 13 does **not** apply to him
- A person who works part-time is no longer a *“wholly unemployed”* person within meaning art. 65.
- Art. 11(3)(c) no longer applies
- Working part-time in MS B leads to change in applicable legislation (Art. 11(3)(a).
Recommendation U1

Art. 11(2) does not apply to pensions

- The fiction of Art. 11(2) does not apply to recipients of an invalidity pension.
 - Beneficiaries of an **invalidity** pension are subject to the legislation of Member State of residence (Art. 11(3)(e))
 - When person starts working part-time in another Member State, there will be change of applicable legislation: Art. 11(3)(a).

Lot of activation measures **not** covered by Reg. 883 (given case-law ECJ)

- Reduction social security contributions for employers who recruit specific categories of unemployed (long-term, older, migrants, etc)
- Other supportive measures for employers who recruit unemployed people
- Bonusses for unemployed persons when they reintegrate labour market
- Bonusses for recruitment agencies when they find a job for an unemployed person.

1.2. Impact other Union law on activation measures in the field

- ECJ: applying a provision of **national** law (even if in line with or even identical with Reg. 883), is not always compatible with the Treaties (such as Art. 45 TFEU)
 - Prof. Eleanor Spaventa: 'binary' approach of ECJ
- Mere fact that Reg. 883 authorises a conduct on part of a MS (such as a requirement of asking prior authorisation for cross-border health care or requirement of **residence** or **stay** as condition for entitlement to benefits!) no longer shelters the national rules from further scrutiny

ECJ on reach Union law on national social security systems

- Case-law ECJ concerns **all** kinds of social security benefits
 - Kohll (C-158/96) and Decker (C-120/95): national rule submitting reimbursement of cross-border health care to condition of prior authorisation was identical with Art. 22 Reg. 1408/71
 - Leyman (C-3/08): national rule on invalidity benefit was identical with Art. 40(3)(b) Reg. 1408/71
 - De Cuyper (C-406/04) and Petersen (C-228/07): national rule on unemployment benefit was in line with Reg. 1408/71

1.3. Discrepancy between ECJ and EFTA Court: judgments E-13/20 and 15/20

- **EFTA** court: *“Unemployment chapter Reg. 883 allows EEA States to impose residence rules”*
 - Is correct!
- **EFTA** court: *“outside situations mentioned in Art. 64, 65 and 65a Reg. 883, a condition to stay in competent EEA State for entitlement to unemployment benefit does **not fall to be assessed under Art. 28, 29, 31 or 36 EEA agreement**”*

EFTA judgments derogate from ECJ

- ECJ (C-406/04, De Cuyper): residence clause laid down in national legislation is **not** waived away by Reg. 1408/71
 - In other words: is compatible with Reg. 1408
- ECJ: but residence condition in **national** legislation is obstacle to free movement required by (predecessor) Art. 21 TFEU
- Such restriction may be justified if two conditions are fulfilled
 - Pursues legitimate goal of public interest
 - Does not go beyond what is necessary to attain that goal

ECJ De Cuyper

- ECJ: in **this** case the two conditions are fulfilled
- Therefore: residence requirement laid down in national legislation not incompatible with Treaty
- It is in this context of examining the compatibility of national residence condition with Treaty that ECJ says (point 45):
 - *“monitoring to be carried out concerning **unemployment** benefits is of a specific nature which justifies the introduction of arrangements that are more restrictive than those imposed for monitoring in respect of other benefits”*

Reach of Free movement law for activation measures

- Art. 45 TFEU and Reg. 492/2011 guarantee that a **worker** who is a national of a MS is not treated in another MS differently because of nationality as regards any condition of employment.
- **Jobseekers** receive same assistance as that given by employment services in host State to own nationals seeking employment (Art. 5 Reg. 492/2011)

Country related elements of activation measures and Free movement law

- ECJ: national provisions which preclude or deter a national of a MS to exercise right to free movement constitute obstacle to that freedom forbidden by Art. 45 TFEU (Terhoeve, C-18/95)
- Such activation measure is allowed only if:
 - It pursues a legitimate objective in public interest
 - It is appropriate to ensuring attainment of that objective
 - Does not go beyond what is necessary to attain that objective (proportionality test)

Reach Free movement law

- It is for national court to interpret and to apply, in each individual case, domestic law in conformity with requirements Union law.
- Illustration: ICT case (C-208/05)
 - German legislation: fee granted to recruitment agencies helping unemployed people in Germany to find a job.
 - Condition: job found must be subject to social security contributions in Germany
 - Agency found job in NL. Fee refused

ICT case

- ECJ:
 - Rights to free movement laid down in Art. 45 TFEU benefit not only workers, including jobseekers, but also others such as employers
 - Condition requiring the job found to be subject to German social security legislation deters jobseekers as well as recruitment agencies from looking for work in another MS.
 - Condition did not stand proportionality test

2. Notions “*Sickness*” and “*Invalidity*” benefits

- Do benefits relate to “*sickness*” or to “*invalidity*”
 - No definition of notions in Reg.
 - ECJ (C-517/16, Czerwinski): qualification by national law is not relevant. Qualification depends on objective criteria:
 - Purpose of benefit
 - Conditions for entitlement

Qualification benefits

- Regulations never contained provisions on benefits in kind in chapter "*invalidity*".
- Chapter "*sickness*" always contained provisions on benefits in kind.
- ECJ (69/79, Jordens-Vosters): therefore, benefits which are of **medical** nature are "*sickness*" benefits within meaning regulations based on Art. 48 TFEU, even if they are treated as "*invalidity*" benefits under national legislation

Qualification benefits by ECJ

- “*sickness*”: (C-503/09, Stewart)
 - Covers risk of a morbid condition involving **temporary** suspension of person’s activities
- “*invalidity*”:
 - Covers risk of disability of a certain degree which is likely to be **permanent** or **long-term** (C-503/09, Stewart)
 - Must be related to “**earning capacity**” (14/72, Heinze; 15/72, Niedersachsen; 16/72, AOK)

2.1. Limits Reg.883. Reach other Union law

- Reg. 883 only coordination: does not affect disparities between MS' systems
- Leyman case (C-3/08)
 - Person starts working in Lux after 30 years of work in B. After 1 year: incapable for work.
 - Lux legislation: if person is deemed permanently incapable to work: immediately invalidity pension
 - B legislation: even if it's clear that person is permanently incapable to work: first 1 year sickness benefit. Invalidity pension only after 1 year.

Leyman

- Reg:
 - for “sickness” benefits: only **one** MS is competent: MS where person is insured on moment risk occurs (Lux)
 - For “*invalidity*”: pro-rata system. Lux pays 1/31 theoretical amount, B pays 30/31.
 - Result: Leyman receives during first year of incapacity only a very small Lux pension and receives **nothing** from B
 - B legislation in line with Reg 1408.

Leyman

ECJ:

- Application of national legislation to a migrant worker in same way as to a non-migrant worker gives rise to unforeseen consequences which are incompatible with aims of Art. 45 TFEU
- In such cases **principle of sincere cooperation** (Art. 4(3)TEU) requires competent authorities in all MS to use all means at their disposal to achieve aim Art. 45 TFEU.
- In this case: B 1 year waiting period for invalidity pension could not be applied

2.2. Do rehabilitation measures fall under scope Reg. 883?

- Activation measures: Shift emphasis from person's incapacity to their capability and responsibility
- Extension in conditionality
 - Recipient is expected to do a lot more or to cooperate more in order to be entitled to benefits
 - Entitlement to sickness or invalidity benefit subject to conditions: participate in work related activities, training programs and active job searching. Rehabilitation or reintegration measures.

Rehabilitation measures

- Interest is focussed not on how much disability, but how much **ability** person still has.
- Objective: ensure that these persons remain in work to greatest possible extent
- Do these measures fall under scope Reg. 883 and if so, to which benefits do they relate?

Under scope Reg. 883?

- Scholars are devided.
- Regulations contain only provisions concerning benefits in kind in chapters "*sickness*" (and "*accidents at work*").
- Since 1 May 2010: definition of "*benefits in kind*". Refers only to **medical** care
- But: that does not mean that non-medical measures would be outside scope of Reg. 883.

Covered by Reg. 883?

- Reg. 1408/71 explicitly indicated that measures “intended for the maintenance or improvement of earning capacity” were *“invalidity”* benefits (Art. 4(1)(b))
- Explicit reference to these measures not repeated in in Reg. 883.
 - Why? Opinions vary

Under scope Reg. 883?

- Moreover, legislature has acknowledged that rehabilitation measures **are** covered by Reg. 883
 - Art. 27 (4) Reg. 987/2009 on sickness benefits: *“the employer and/or competent institution may call upon employee to participate in activities designed to promote and assist his return to employment”*
 - Art. 87 (5) Reg. 987/2009 on sickness and invalidity: *“the competent authorities or institutions may agree specific provisions or procedures to improve ..labour-market readiness of claimants and recipients and their participation in any schemes or programmes available...”*

2.3. Qualification rehabilitation measures

- ECJ (C-517/16, Czerwinski): decisive elements for legislation being covered by Reg.883:
 - Constituent elements, in particular **purpose** and **conditions for entitlement**.
 - In addition, there must be a link between the national provisions in question and one of the risks expressly listed in Art. 3(1) Reg. 883
 - That link must be **direct** and sufficiently **relevant** (C-327/92, Rheinhold Mahla)

Qualification rehabilitation measures

- Such **direct** and **relevant** link certainly exists where entitlement to "*sickness*" or "*invalidity*" (or "*unemployment*") benefits is subject to condition of participating into measures aimed at re-integration into labour market.
- However, the current regulations only contain some very vague and general provisions related to activation measures
 - Art. 27(4), 55(6) and 87(5) Reg. 987/2009

2.4. Reach and limits Reg. 883 on activation measures

- Reg. 883 only coordinates. MS are sovereign to organise their own schemes.
- Meanings of “*sickness*” and “*invalidity*” vary between MS
- “*Sickness*” presumes illness **and** incapacity of work.

Disparities between MS' systems

- MS A: capacity is judged in relation to **own** work for 90 days, then 90 days to **all** kinds of work with **employer**, and after 180 days in relation to **whole labour market**.
 - Idea: capitalize rapidly on any remaining work capacity!
- MS B: capacity is judged all the time in relation to **own** work

Assessment and re-assessments

- Could lead to problems in cross-border situations
 - Person working in MS A while residing in MS B falls ill. Procedures to be followed: Art. 27 and 87 Reg. 987/2009. This means:
 - Certificate on incapacity for work to be delivered by doctor in MS of **residence** (B). Element of mutual recognition (Art. 27(8): certificate drawn up in MS of residence has same legal value as certificate drawn up in competent MS, even when notion of “*sickness*” varies between MS.
 - Does not help re-integration process in MS A!

Assessments and reassessments

- Competent MS has right to have person examined by doctor of its choice. However, person may be asked to return to competent MS only if travel does not harm his health and if travel costs are paid for.
- Problem:
 - What happens if institution place of residence says that person cannot travel without jeopardizing his health and second opinion comes to opposite conclusion? Question not solved by Reg.

Assessments and reassessments

- Art. 87(1) second par Reg. 987/2009:
potentially powerful tool for
reintegration:
 - The competent institution “*shall inform the institution of place of residence of any special requirements, if necessary, to be followed and points to be covered by the medical examination*”

“Invalidity”. Limits Reg. 883

- Reg. 883 only coordinates. MS are sovereign to determine own schemes.
- Notion “*invalidity*” varies between MS.
 - A person having worked in 3 MS may be declared 100% disabled in one MS, 50% in another and fit for work in the third MS.
 - Mutual recognition of “incapacity for work”(Art. 46(3) jo Annex VII) limited to 3 MS (B, F, IT).

Disparities between MS

- In some MS beneficiary of “*invalidity*” benefit is presumed not being capable doing any work
- In other MS emphasis is on capitalizing on any remaining earning capacity
 - NL: low threshold for benefit. When earning capacity is reduced 35%, person receives “*invalidity*” benefit. But person is expected to transform remaining earning capacity into gainful employment. If not: reduction of benefit. Possible that same person is considered by other MS as an “*unemployed*” person.

Assessments and reassessments

- Relevant provisions: Art. 49(2) and 87 Reg. 987/2009. Art. 87 is *lex generalis*; Art. 49(2) is *lex specialis*. If divergent: priority to *lex specialis*.
- Case-law: Voeten-Beckers (C-279/97)
 - **First** assessment: competent MS examines claimant by doctor or expert of its **own** choice without prior examination by institution of MS of residence. Competent MS must take into consideration information from MS of residence

Assessment and reassessments

- **Re-assessment:** can be done by competent institution provided it is preceded by examination by institution of MS of residence.
- Person may waive right to undergo prior examination by institution of MS of residence
- Problem: Voeten-Beckers judgment based on text of old Reg. 574/72 (Art. 40 and 51(1)). Still valid under Reg. 987/2009?
 - Art. 49(2) Reg. 987 equals Art. 40 Reg. 574
 - However, substantial changes between Art. 87 Reg. 987 and Art. 50(1) Reg. 574

2.5. Art. 87(5) Reg. 987: useful tool for activation measures in some cases

- Overwhelming majority of activation measures are benefits in kind. Thus: not exportable.
 - Can lead to problems in cross-border situations where entitlement to benefits is subject to condition of participating in activation measures
 - Social/economic objectives of MS concerned could be frustrated if cross-border beneficiaries were exempt from obligation to participate in activation measures

Art. 87(5)

- Art. 87(5) makes it possible that authorities or institutions of MS conclude agreement so that beneficiaries can participate in corresponding schemes available in MS of stay or residence.
- But only useful if both competent MS and MS of residence provide for activation measures.
- This illustrates **gap** of EU regulations: lack of specific provisions and legal security concerning activation measures

III. Conclusions

- Activation measures play an increasingly important role in Member States' social security schemes
- Yet, this is hardly mirrored in the EU regulations based on Art. 48 TFEU
- In principle many activation measures fall under scope of Reg. 883, given their direct and sufficient close link with one of the branches of social security listed in Art. 3

Conclusions

- However, the regulations only contain some very vague and general provisions explicitly dealing with activation measures
- These provisions could in some cases be useful tools
 - Bilateral or multilateral agreements between MS who are advanced in developing activation measures.
 - Could 2012 Nordic Convention be source of inspiration?

Conclusions

- In some other cases the general legal framework of Union law offers solutions
- However, there is a great need to rethink several current rules, including those determining the applicable legislation, as well as to include specific rules on activation measures in the EU regulations.

Conclusions

- Inclusion of such rules is necessary to underpin, in cross-border situations, the achievement of the goal of the activation measures, without jeopardizing the aim of the regulations based on Art. 48 TFEU:
- **avoid** that people who make use of their right to free movement would be **penalized** in the field of social security.

• *Thank you for your attention*