

MoveS seminar Estonia

*Posting of workers, cross-border
telework and questions with social
security*

16 June 2023

Ministriumite ühishoone, Suur-Ameerika 1, Tallinn

Language: Estonian- English

MoveS

project presentation

MoveS

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

- Funded by the European Commission (DG EMPL units E1 'FMW' and E2 'SSC')
- 32 countries covered (EU/EEA/CH/UK)
- Implemented by Eftheia, Deloitte Advisory & Consulting, University of Ljubljana, University of Poitiers
- Four-year project (2022-2025)

Objectives:

(1) To provide legal expertise in the areas of FMW, SSC and Posting

- **Legal Reports**
- Bimonthly **Monitoring Reports**
- **Ad hoc requests** and **comparative assessments**

MoveS Legal Reports

- 2023 *'The relationship between the Regulations on the coordination of social security systems and the Directive on the application of patients' rights in cross-border healthcare'*
- 2022 *'Social security and tax law in cross-border cases'*
- 2020 *'The legal status and rights of the family members of EU mobile workers'*
- 2019 *'The application of the social security coordination rules on modern forms of family'*
- 2019 *'The application of free movement of workers and social security coordination rules by national courts' (2020)*
- 2018 *'Social security coordination and non-standard forms of employment and self-employment: Interrelations, challenges and prospects'*
- 2018 *'Consequences and possible solutions in case of lump sum payment of pensions, reimbursement of contributions and waiver of pensions in cross-border situations'*

Objectives:

(2) Disseminate expertise and increase experts' and practitioners' knowledge by means of:

- **National seminars**
- **Webinars**
- **Information tools & communication**
- **Training for EC staff**

Seminars & webinars

- 8 one-day seminars a year
- 3 webinars
- Audience: Representatives of competent authorities and institutions, social partners, NGOs, judges, lawyers and academics

	Date (2023)	Country (City)
1.	23/02	Poland (Warsaw)
2.	21/04	Italy (Turin)
3.	26/05	Switzerland (Lausanne)
4.	16/06	Estonia (Tallin)
5.	29/06	Austria (Salzburg)
6.	12/09	United Kingdom (Nottingham)
7.	13/10	Coimbra (Portugal)
8.	25/10	Bulgaria (Sofia)

	Date (2023)	Topic
1.	31/03	European social security coordination and digitalization
2.	June	Cross-border healthcare
3	October	Seasonal workers

Information tools & Communication

- [A-Z on social security coordination](#)
- [Social Security Coordination Regulations database](#)

A-Z Information tool

Moving & working in Europe

Working in another EU country ▾

EU social security coordination ▾

Network of legal experts (MoveS) ▲

Case law

A-Z on social security coordination (FAQs)

Social Security Coordination Regulations database

Network of experts on statistics

A-Z on social security coordination (FAQs)

 ▾

The '**A-Z of social security coordination (FAQs)**' is a facility setting out the basic principles and frequently raised issues in field of social security coordination.

You are invited to first read the [introduction](#) into the theory of social security coordination and the coordination instruments of the European Union.

You will then find more in-depth information structured in 70 keywords. Each keyword provides answers to specific questions and includes plenty of practical examples and links to further information sources to guide you through this complex topic.

Some keywords provide you with specific definitions (e.g. self-employed person, frontier worker), while others explain the legislative aspects of certain procedures (e.g. cross-border medical care, posting of workers).

You can use this tool to expand your own knowledge or to find the answer to practical questions. All you have to do is click on the relevant keywords below in order to see more detailed information.

A

[Access to social assistance and other benefits not covered by the material scope of Regulation 883/2004](#)

H

[Harmonisation of social security](#)

P

[Paternity benefits](#)

[Pensions](#)

[Personal scope](#)

Social Security Coordination Regulations database

(EC) Regulation No 883/2004	(EC) Regulation No 987/2009	(EC) Regulation No 1408/71	(EC) Regulation No 574/72												
<p>(EC) Regulation 883/2004</p> <p>TITLE 1: GENERAL PROVISIONS</p> <p>Art. 1: Definitions</p> <p>Art. 2: Persons covered</p> <p>Art. 3: Matters covered</p> <p>Art. 4: Equality of treatment</p> <p>Art. 5: Equal treatment of benefits, income, facts or events</p> <p>Art. 6: Aggregation of periods</p> <p>Art. 7: Waiving of residence rules</p> <p>Art. 8: Relations between this Regulation and other coordination instruments</p> <p>Art. 9: Declarations by the Member States on the scope of this Regulation</p> <p>Art. 10: Prevention of overlapping of benefits</p> <p>TITLE 2: DETERMINATION OF THE LEGISLATION APPLICABLE</p>	<p>(EC) Regulation 883/2004: Art. 1</p> <p>For the purposes of this Regulation:</p> <ol style="list-style-type: none"> 'activity as an employed person' means any activity or equivalent situation treated as such for the purposes of the social security legislation of the Member State in which such activity or equivalent situation exists; 'activity as a self-employed person' means any activity or equivalent situation treated as such for the purposes of the social security legislation of the Member State in which such activity or equivalent situation exists; 'insured person', in relation to the social security branches covered by Title III, Chapters 1 and 3, means any person satisfying the conditions required under the legislation of the Member State competent under Title II to have the right to 	<table border="1"> <thead> <tr> <th data-bbox="956 1043 993 1115">Implementing Articles of Reg. 987/2009</th> <th data-bbox="993 1043 1234 1115">Corresponding Articles of Reg. 1408/71</th> <th data-bbox="1234 1043 1476 1115">Administrative Commission Decisions</th> <th data-bbox="1476 1043 1707 1115">Corresponding CJEU Case Law</th> </tr> </thead> <tbody> <tr> <td colspan="4" data-bbox="956 1139 1707 1168">Implementing articles (EC) Regulation 987/2009 Articles</td> </tr> <tr> <td colspan="4" data-bbox="956 1196 1707 1219">Art. 1</td> </tr> </tbody> </table>	Implementing Articles of Reg. 987/2009	Corresponding Articles of Reg. 1408/71	Administrative Commission Decisions	Corresponding CJEU Case Law	Implementing articles (EC) Regulation 987/2009 Articles				Art. 1				
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Implementing articles (EC) Regulation 987/2009 Articles															
Art. 1															

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>






Search for posts in this group






Notif

 MoveS - free movement and social security coordination

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-  European Social Observatory (...)

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-  ESPN-MISSOC
-  European Social Observatory (...)

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Martin Andresen • 2nd

--
6mo • Edited

I have a question regarding the relationship between FMW and SSC for Third Country nationals (TCN), more specific unemployment benefits. As we know, TCN are covered by Regulation 883/2004 in most member states. This includes unemployment benefits. However, the Directive on union citizenship and also Regulation 492/2011 seems to apply only to EU / EEA citizens and their ...see more



1

1 comment



Like



Comment



Add a comment...



Most recent ▾



Filip Van Overmeiren • 1st

Director Global Employer Services / Professor UGent & VUB

5mo

Hi [Martin Andresen](#), pertinent question and happy to discuss! Feel free to send me a message.



1

Reply



Filip Van Overmeiren • 1st

Director Global Employer Services / Professor UGent & VUB

2mo

New CJEU case on unemployment benefits

[#socialsecuritycoordination](#) [#socialsecurity](#) [#unemployment](#) [#residence](#)

Thank you for your attention!

Contact us at:

MoveS@eftheia.eu

Posting: Social Security and Road Transport

Tallinn, 16 June 2023

- I. Introduction
- II. Posting and Social Security
- III. Road Transport
- IV. Place of Business: Conditions and Certificates

II. Posting and Social Security

1. Starting Points

➤ Primary Law:

- Free Movement of Services, Art. 56 TFEU
ECJ C-113/89 of 27 March 1990 – *Rush Portuguesa*
- Not: Free Movement of Workers, Art. 45 TFEU;
but see also Art. 53(1) and 62 TFEU (competences)
and Art. 9 TFEU (general requirement)

II. Posting and Social Security

1. Starting Points

➤ Secondary Law

- Social Security Law (Art. 48 TFEU)
- Labour Law (Art. 53, 62 TFEU)
 - Dir. 96/71 (PWD)
 - Dir. 2014/67 on the enforcement of Dir. 96/71
 - Dir. 2018/957 amending Dir. 96/71
 - ECJ C-620/18 and 626/18 of 8 December 2020
(Hungary v. Parliament and Council; Poland v Parliament and Council)

II. Posting and Social Security

1. Starting Points

- **Social Security:** Reg. 883/2004 + Reg. 987/2009
 - Art. 11(1) Reg 883/2004:
Applicability of *one* jurisdiction
 - Art. 11(3)(a) Reg 883/2004:
state of employment (*lex locis laboris*)
 - ECJ: “complete and uniform system of conflict of laws rules”

II. Posting and Social Security

2. Legal Basis

Art. 12 Reg. 883/2004:

‘A person who pursues an activity as an employed person in a Member State on behalf of an employer which normally carries out its activities there and who is posted by that employer to another Member State to perform work on that employer’s behalf shall continue to be subject to the legislation of the first Member State, provided that the anticipated duration of such work does not exceed 24 months and that he/she is not sent to replace another posted person.’

II. Posting and Social Security

2. Legal Basis

Art. 12 Reg. 883/2004:

‘A person who pursues an activity as an employed person in a Member State on behalf of an employer which normally carries out its activities there and who is posted by that employer to another Member State to perform work on that employer’s behalf shall continue to be subject to the legislation of the first Member State, provided that the anticipated duration of such work does not exceed 24 months and that he/she is not sent to replace another posted person.’

II. Posting and Social Security

2. Legal Basis

Art. 14(2) Reg. 987/2009:

‘For the purposes of the application of Article 12(1) of the basic Regulation, the words ‘which normally carries out its activities there’ shall refer to an employer that ordinarily performs substantial activities, other than purely internal management activities, in the territory of the Member State in which it is established, taking account of all criteria characterising the activities carried out by the undertaking in question. The relevant criteria must be suited to the specific characteristics of each employer and the real nature of the activities carried out.’

II. Posting and Social Security

2. Legal Basis

- **Social Security:** applicability of “home” law
- **Labour Law:** applicability of “host” working conditions

II. Posting and Social Security

3. Recent Case Law

➤ ECJ C-784/19 of 3 June 2021 – *TEAM POWER*

Problem:

Temporary-work agency, registered in one MS, with permission to place staff in another MS; it assigns temporary workers only to user undertakings established in a Member State other than that in which it is established.

- The agency submits that it carries out the substantial activities of selection, recruitment and maintenance of social security cover of temporary agency workers on the territory of the first MS
- Is that sufficient in order to pursue ‘substantial activities’ in this MS?

II. Posting and Social Security

3. Recent Case Law

➤ ECJ C-784/19 of 3 June 2021 – *TEAM POWER*

Par. 50: “It follows that a temporary-work agency which, like Team Power Europe, performs its activities of selecting and recruiting temporary agency workers in the Member State in which it is established can be regarded as performing ‘substantial activities’ in that Member State, within the meaning of Article 14(2) of Regulation No 987/2009, read in conjunction with Article 12(1) of Regulation No 883/2004, only if it also carries out there, to a significant extent, the activities of assigning those workers for the benefit of user undertakings established and performing their activities in the same Member State.”

III. Road Transport

1. Specific Rules and Labour Law

Reg. 1071/2009 of 21 October 2009

establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator

Reg. 1072/2009 of 21 October 2009

on common rules for access to the international road haulage market

Reg. 1073/2009 of 21 October 2009

on on common rules for access to the international market for coach and bus services

➤ based on Art. 91 TFEU (Transport)

III. Road Transport

1. Specific Rules and Labour Law

- and Posting of Workers Dir. 96/71?
based on Art. 56 TFEU (Freedom of Services)
- ECJ C-16/18 of 19 December 2019 – *Dobersberger*
(services on international trains)
- ECJ C-815/18 of 1 December 2020 – *Federatie Nederlandse Vakbeweging*
(drivers in the international road transport sector)

III. Road Transport

1. Specific Rules and Labour Law

- (1) 'Dir. 96/71 on posting of workers does not aim at introducing a specific policy but at protecting employees posted in whatever sector of the economy'
- (2) 'a worker cannot, in the light of Directive 96/71, be considered to be posted to the territory of a Member State if the performance of his or her work does not have a sufficient connection with that territory'
- (3) 'a worker working as a driver in the international road transport sector ... is a worker posted to the territory of a Member State ... where the performance of that person's work has a sufficient connection with that territory for the limited period at issue.'

III. Road Transport

1. Specific Rules and Labour Law

- (4) 'The existence of such a connection is determined in the context of an overall assessment of factors such as the nature of the activities carried out by the worker concerned in that territory, the degree of connection between the worker's activities and the territory of each Member State in which the worker operates, and the proportion represented by those activities in the entire transport service'

III. Road Transport

1. Specific Rules and Labour Law

[Dir. 2020/1057 of 15 July 2020](#)

laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU **for posting drivers in the road transport sector** and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012

[COM Implementing Reg. 2021/2179 of 9 December 2021](#)

on the functionalities of the public interface connected to the Internal Market Information System for posting drivers in the road transport sector:

IMI and RTDP

III. Road Transport

1. Specific Rules and Labour Law

- **Not** posted:
 - Bilateral transport operations
 - Limited additional activities (loading / unloading)
 - Transits
 - Initial or final road leg of a combined transport operation

- **Posted:**
 - Cross trade operations
 - Cabotage operations

- End of Posting: when the driver leaves the host Member State in the performance of the international carriage

III. Road Transport

1. Specific Rules and Labour Law



III. Road Transport

1. Specific Rules and Labour Law

https://transport.ec.europa.eu/transport-modes/road/mobility-package-i/posting-rules_en



III. Road Transport

2. Social Security

- Specific Rule: Art. 14(2)(a) [Reg 1408/71](#):
member of the travelling or flying personnel of an undertaking which, for hire or reward or on its own account, operates international transport services for passengers or goods by rail, road, air or inland waterway

- [Reg 883/2004](#): only specific rules for:
 - Vessels at sea: Art. 11(4)
 - Flight crew or cabin crew: Art. 11(5)

III. Road Transport

2. Social Security

Art. 13 (1)(a) Reg. 883/2004:

‘A person who normally pursues an activity as an employed person in two or more Member States shall be subject:

to the legislation of the Member State of residence if he/she pursues a substantial part of his/her activity in that Member State;’

III. Road Transport

2. Social Security

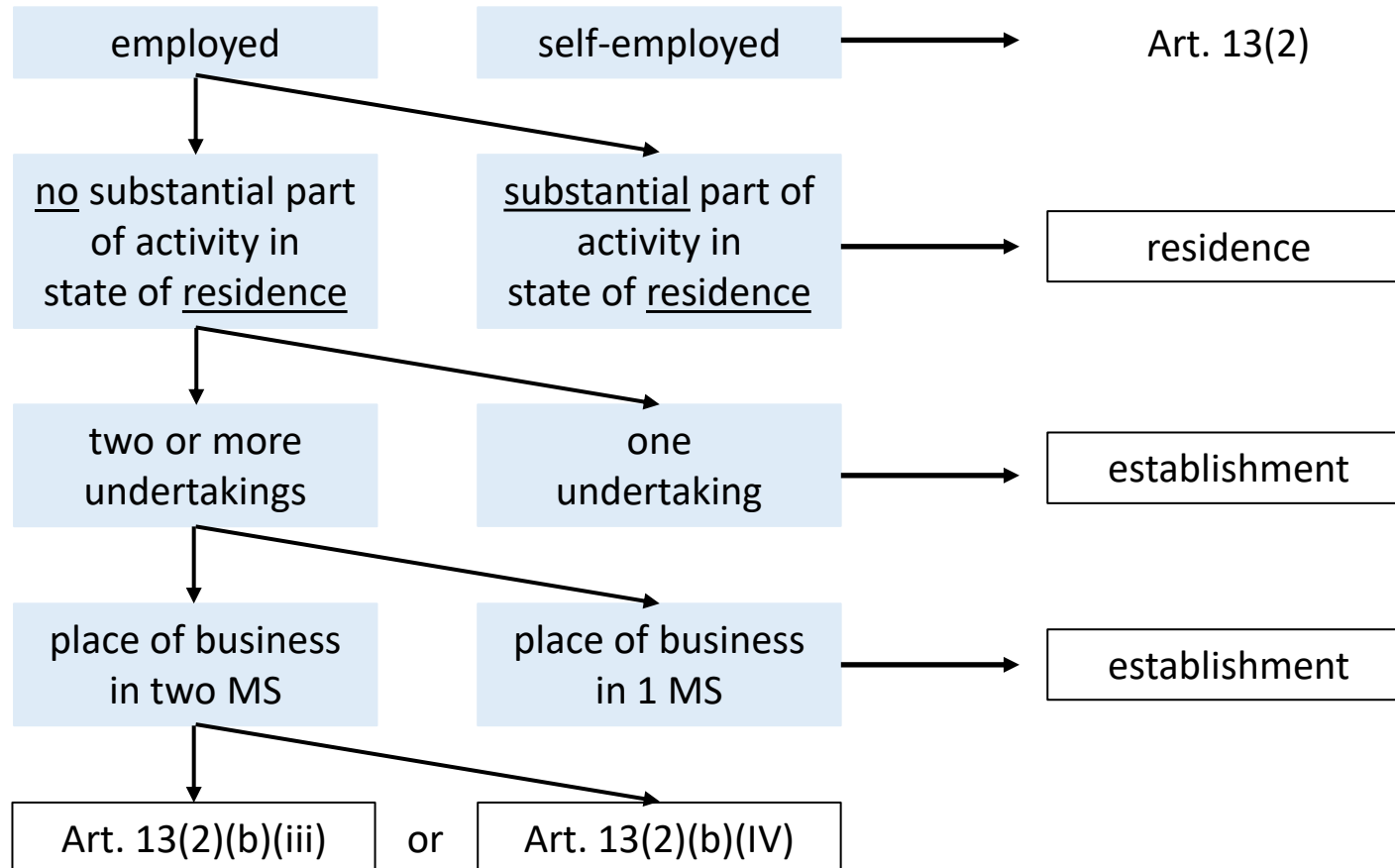
Art. 13 (1)(b)(i) Reg. 883/2004:

‘if he/she does not pursue a substantial part of his/her activity in the Member State of residence:

to the legislation of the Member State in which the registered office or place of business of the undertaking or employer is situated if he/she is employed by one undertaking or employer;’

III. Road Transport

2. Social Security



III. Road Transport

3. Germany

- Law on posted workers (*Arbeitnehmerentsendegesetz*) + Law on minimum wages (*Mindestlohngesetz*)

- Under reform (transposition of Dir. 2020/1057 = February 2022!, and also amendments with view to Dir. 2014/67):
 - Draft law of 24 April 2023
 - Hearing and Deliberations of Parliamentary Committee (May 2023)
 - Decision of Parliament (*Bundestag*) of 15 June 2023

IV. Place of Business

1. Recent Cases

➤ ECJ C-410/21 and C-661/21 of 2 March 2023 – *DRV Intertrans*

Problem:

Belgian transport companies established companies in other ('second') MS for international transports. The latter have transport licenses, hired drivers and posted them to the Belgian companies.

- The authorities of the 2nd MS issued A1 certificates, but suspended them on request of the 1st MS; they did not take a final decision.
- Reg. 1071/2009 requires 'an effective and stable establishment' (for the transport licence); Reg. 13(1)(b)(i) requires a 'registered office or place of business'

IV. Place of Business

2. Transport Law v. Social Security Law

Art. 13 (1)(b)(i) Reg. 883/2004:

‘if he/she does not pursue a substantial part of his/her activity in the Member State of residence:

to the legislation of the Member State in which the registered office or place of business of the undertaking or employer is situated if he/she is employed by one undertaking or employer;’

Art. 14 (5a) Reg. 987/2009:

“registered office or place of business’ shall refer to the registered office or place of business where the essential decisions of the undertaking are adopted and where the functions of its central administration are carried out.’

IV. Place of Business

2. Transport Law v. Social Security Law

Art. 2(8), 3(1) and 5(1) Reg. 1071/2009:

‘Member State of establishment’ means the Member State in which an undertaking is established ...’

‘... in the Member State of establishment an undertaking shall: have premises at which it is able to access the originals of its core business documents ...;

organise its vehicle fleet’s activity in such a way as to ensure that vehicles that are at the disposal of the undertaking and are used in international carriage return to one of the operational centres in that Member State at least within eight weeks after leaving it ‘ ... are registered and pay taxes ...

IV. Place of Business

2. Transport Law v. Social Security Law

Par. 75: “It follows that the element of connection of the ‘registered office or place of business’, referred to in Article 13(1)(b)(i) of Regulation No 883/2004 to designate the Member State whose social security legislation is applicable, is determined by the place from which an undertaking is in fact managed and organised.”

Par. 78: “Therefore, the criteria for determining the place of establishment of a transport undertaking for the purposes of obtaining a Community licence for road transport are different from those used to determine the place of establishment of that undertaking for the purposes of Article 13(1)(b)(i) of Regulation No 883/2004.”

IV. Place of Business

2. Transport Law v. Social Security Law

Par. 81: “In those circumstances, the fact that a company holds a Community licence for road transport may be a factor to be taken into consideration when determining its registered office or place of business, for the purpose of determining the national social security legislation applicable in accordance with Article 13(1)(b)(i) of Regulation No 883/2004, but cannot automatically constitute proof of this, nor, a fortiori, irrefutable proof, nor can it be binding upon the authorities of the Member State in which the work is carried out.”

IV. Place of Business

3. A1 Certificates

- **Prior case law:**
 - ECJ, C-620/15 of 27 April 2017 – *A-Rosa Flussschiff*
 - ECJ, C-527/16 of 6 September 2018 – *Alpenrind and Others*
 - ECJ, C-17/19 of 14 May 2020 – *Bouygues travaux publics and Others*

- Procedure of dialogue and reconciliation is based on principles of ‘legal certainty’ and of ‘sincere cooperation’

- Suspension of A1 certificates does not end their binding effect

IV. Place of Business

3. A1 Certificates

- **But:** If the issuing institutions do not undertake a reconsideration, within a reasonable period? And if there are criminal proceedings concerning fraud?

Par. 68: “a court of the Member State in which the work is carried out ... may find that there has been fraud and consequently disregard that certificate, for the purposes of those criminal proceedings, provided that, first, a reasonable period has elapsed without the issuing institution having reconsidered the grounds for issuing that certificate and having adopted a decision on the specific evidence submitted by the competent institution in the host Member State ... and, second, that the guarantees inherent in the right to a fair trial which must be afforded to those persons have been respected.”

V. Concluding Remarks



Posting of workers – latest developments

Carita Rammus
DG EMPL, Unit E1

Content

- I. Enforcement Directive on Posting of workers**
- II. eDeclaration**
- III. Review of implementation Directive 2018/957**
- IV. Posting study**
- V. ELA Posting 360**

I. Posting of workers - Directive 2014/67

- On 26/01/2023 Reasoned Opinions were sent to 17 Member States.
- The Commission challenged the transposition of Articles 9, 11, 12 and 20, as well as Chapter VI of the Enforcement Directive on Posting of Workers.
- All Member States replied.



II. Posting of workers - eDeclaration

- **Basis: Directive 2014/67/EU, Article 9(1)(a)**

*„an obligation for a service provider established in another Member State to make a **simple declaration to the responsible national competent authorities** at the latest at the commencement of the service provision, into (one of) the official language(s) of the host Member State, or into (an)other language(s) accepted by the host Member State, containing the relevant information necessary in order to allow factual controls at the workplace...“*

- **COM Communication „Updating the 2020 New Industrial Strategy“, 5.5.2021**

The Commission will work with Member States to:

- devise a common form for the declaration of the posting of workers,
 - in an electronic format,
 - on a voluntary basis.
- **Working group of interested Member States (20)**

III. Posting of workers - Directive 2018/957

- Since 04/11/2021, All Member States have notified the full transposition of the Directive.
- The Commission has finished the preliminary assessment of the the transposition measures.
- Implementation report in 2023 (questionnaire)
- Supporting temporary cross-border work study (2022-2023)



IV. Posting of workers - Study supporting the Monitoring of the Posting of Workers Directive (EU) 2018/957 and of the Enforcement Directive 2014/67/EU

- **Geographical scope:** EU27 Member States
- **Time span:** the period from the adoption of the Posting of Workers and Enforcement Directives (Directive 2014/67/EU and Directive 2018/957/EU)
- **Study timeline:** December 2021 – March 2023

Key situations in scope

- 1**
 - Posted workers in **subcontracting chains** (also involving temporary work agencies)
- 2**
 - Temporary cross-border workers in the EU (in posting & non-posting situations) – focusing on employment situations involving **labour market intermediaries**
- 3**
 - **TCNs** posted temporarily to other Member States and the implementation of relevant posting rules

Study focus areas (1)

Key sectors:*

1. Construction
2. Long-term and live-in care
3. Meat processing
4. Agriculture and horticulture
5. Hotel-tourism-catering

**Road transport was not included due to the recent nature of legislative changes, whose impact could not be analysed in the timeline of this study*

Legal provisions and enforcement mechanisms across the EU

- EU legislation
- National legislation
- Non-legislative provisions
- Enforcement mechanisms

Sending & receiving countries analysed in depth:

- BE, DE, DK, ES, FR, LU, NL, PL and SI.

Study focus areas (2)

Typically problematic situations

1. Temporary work agencies and labour market intermediaries in cross-border mobility
2. Non-payment and underpayment
3. Seasonal workers in agriculture
4. Bogus self-employment
5. Posted TCNs in the construction sector
6. Key types of OSH-related violations & enforcement challenges
7. Letterbox companies in complex subcontracting chains
8. Live-in caregivers: working conditions and key enforcement challenges

Promising practices in key areas

1. Cross-border cooperation between relevant authorities in the Member States in enforcing existing regulations
2. The involvement of social partners



Overall assessment

- EU and national actions have strengthened the protection of temporary cross-border mobile workers in the Member States.
- **In practice, differences in the protection** of temporary cross-border mobile workers (relative to local workers) continue to exist.
- **Violations concentrated in specific sectors** (e.g. construction, agriculture and horticulture, live-in care and meat processing).
- **Quantitative data is scarce.** This impedes:
 - a cross-country or cross-sectoral estimation of the extent of violations of working conditions
 - the identification of the key characteristics of non-compliant employers and situations

Most common issues linked to working conditions

- non-payment and under-payment
- illegal wage deductions
- violations of OSH regulations
- poor accommodation
- lack of statutory sick pay
- lack of accident insurance
- missing health and social insurance coverage

Problematic situations are not the norm in posting and other types of temporary cross-border work, **but** they raise concerns about equal treatment and the working conditions of EU workers.

V. The European Labour Authority : focus in 2023

- Focus on the construction sector: specific attention to posting
- ELA will work towards being a fully operational agency by 2024, by further improving and delivering on its core tasks including:
 - Implementation of the Posting 360 Program and Posting Forum
 - First meeting 13-14 March 2023
 - 6 Areas to cover:
 - Implementation of the Directives on posting of workers
 - Effective administrative requirements and control measures
 - Cooperation in the field of social security coordination
 - Digitalisation – tools and opportunities
 - Posted Third Country Nationals
 - Data collection and streamlining of data



Thank you



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Euroopa Tööjõuameti (ELA) roll ja vastutusala

16.06.2023

MoveS seminar, Tallinn

Mariliis Proos
ELA Eesti kontaktisik

ELA pädevus

Sotsiaalkindlustuse
koordinatsioon

Töötajate vaba
liikumine

Lähetatud töötajad

Võitlus
deklareerimata
tööga

Piiriülese
maanteetranspordi
sotsiaalsed
aspektid

ELA 7 ülesannet

ELA

Lihtsustada ligipääsu informatsioonile ja teenustele, kaasa arvatud EURES-e koordineerimine

Parandada koostööd ja infovahetust EL riikide vahel

Koordineerida üheaegseid ja ühiseid inspekteerimisi

Läbi viia analüüse ja riskihindamist

Toetada liikmesriike võimekuse tõstmisel

Toetada liikmesriike võitluses deklareerimate tööga

Vahendada liikmesriikide vahelisi erimeelsusi, mis on tekkinud töötajate piiriülesest mobiilsusest



**Üheaegsed ja
ühised
inspekterimised,
fookusnädalad**



**ELA vaidluste
lahendamise
menetlus**

IMPROVE

**Vastastikuse
õppimise ja
mõistmise
programm**

POSTING360

**Vastastikuse
õppimise ja
mõistmise
programm**



**Koolitused töajõu
mobiilsusest,
järelvalvest,
digitaliseerimisest**



**Liikmesriikide(vahe
lised)
koostööritused**



**Kampaaniad,
selgem info,
tõlkekeskus**



**Õppereisid ja
praktikate
vahetamine**

Koostööpartnerid Eestis

Tööinspeksioon

**Sotsiaalkindlustusamet
Politsei- ja Piirivalveamet
Maksu- ja Tolliamet
Töötukassa**

Sotsiaalministeerium
**Majandus- ja
Kommunikatsiooniministeerium**
Siseministeerium

**Tarbijakaitse ja Tehnilise
Järelevalve Amet**
Soolise võrdõiguslikkuse ja võrdse
kohtlemise volinik
Riikliku Lepitaja Kantselei

ELA üritused Eestis

Toimunud

- Deklareerimata töö platvormi seminar Tallinnas
- ELA järelevalveüksuse külastus
- Soome ja Leedu vaatlejad Eestis maanteetranspordi fookusnädala raames

Tulemas

- Taani Politsei õppereis, mida võõrustab Politsei- ja Piirivalveamet
- Belgia+ vaatlejad maanteetranspordi kontrollpäevale

2023 prioriteet - ehitus

Järelevalve

ELA fookusnädal

24.-30.04 (TI vaatelejana Saksamaal)

16.-22.10 (plaanimisel inspekteerimine koos Soome Tööinspektsiooniga)

Võimalikud koolitused

Informatsioon

Construction Sector Action Plan – peamine fookus lähetamisel

Heade praktikate kogumine

Kampaania teadlikkuse tõstmiseks

Lähetuse teemaliste lendlehtede loomine

Üritused tööandjate ja töötajate teadlikkuse tõstmiseks

Riiklike lähetamise teemaliste veebilehtede hindamine ja harmoniseerimine

Riikide kontaktisikud (NLO)



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Recent developments at EU level in social security coordination

Hanna Schoels
European Commission, DG EMPL
Unit E2 – social security coordination



Overview

1. Recap: social security coordination rules on posting
2. Cross-border telework
3. Revision of Regulations 883/2004 and 987/2009
4. Digitalisation of social security coordination

Social Security Coordination Rules on Posting



Title II of Regulation 883/2004

- Concept of “posting”: Posting of Workers Directive vs. Social Security Coordination Regulations
- Complete and uniform system of conflict rules → workers moving within the EU are subject to the social security system of only one Member State.
- Aiming to prevent double/no coverage

The general principle

- *Lex loci laboris* – the state-of-work principle: the person is subject to the social security legislation of the Member State of employment or self-employment.
 - Even if they reside in another State
 - Even if the registered office of their employer is situated in another State
- Other rules as an exception from this principle → must be interpreted strictly

Special rule (posting): Article 12

Persons remain subject to the legislation of the Member State in which the employer normally carries out its activities:

- if the employer:
 - ordinarily performs substantial activities in that Member State
 - maintains a direct relationship with the employee
- if the employee:
 - is not sent to replace another posted person
 - is posted for an anticipated duration not exceeding 24 months
 - has been subject to that legislation for at least one month

Special rule (posting): Article 12

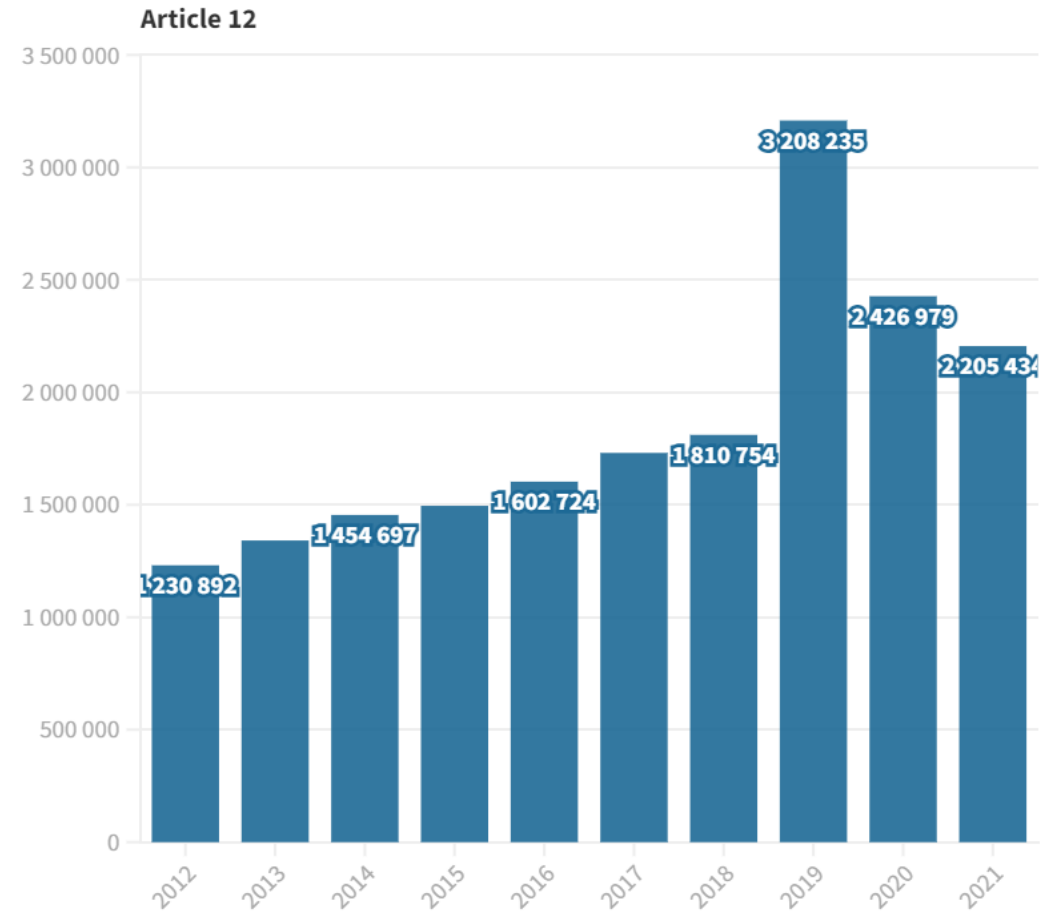
Self-employed persons who:

- Habitually carry out substantial activities in the Member State in which they are established
 - Have been pursuing that activity for at least two months
 - Go to pursue a similar activity in another Member State, for an anticipated duration not exceeding 24 months
- remain subject to the legislation of the first Member State

Procedural aspects / Portable Document A1

- PD A1: 'evidences' a person's affiliation to a given social security system
- In all cases where a person is carrying out an activity outside the competent Member State, the competent institution needs to be notified 'whenever possible in advance'
- Competent institution assesses the case and issues the PD A1

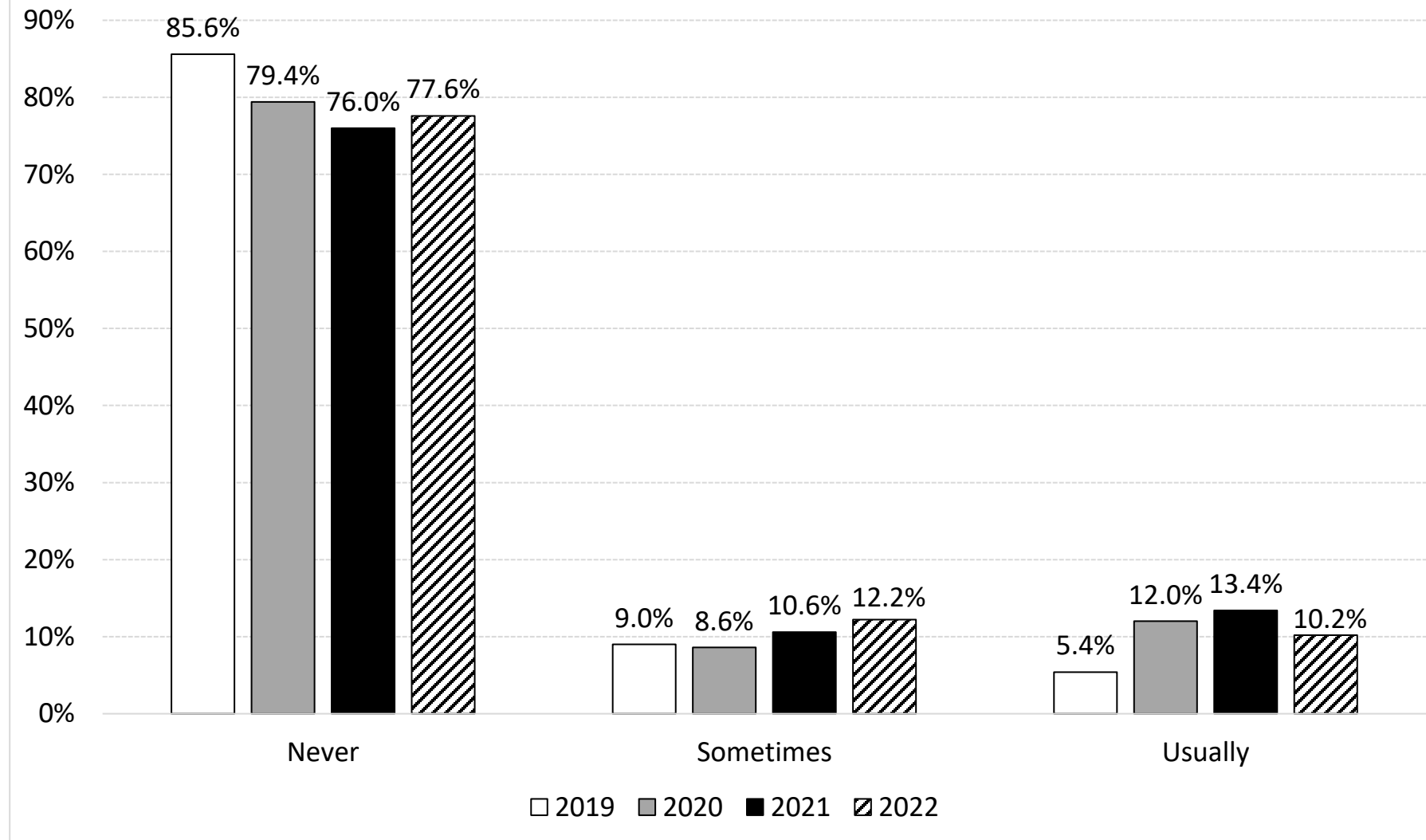
Total number of PDs A1 issued under Article 12





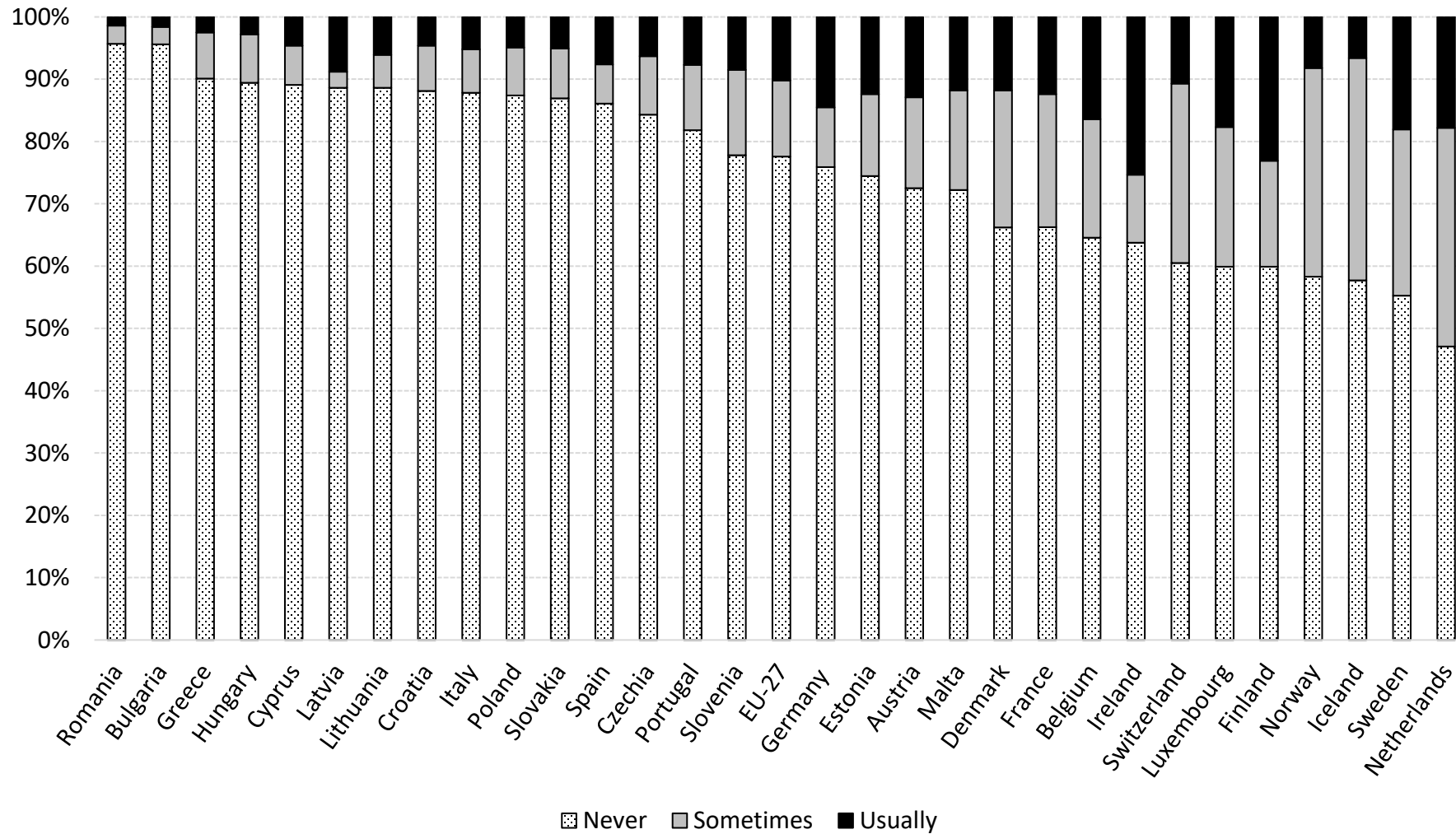
Cross-border telework

Employed persons in the EU working from home, 2019 - 2022



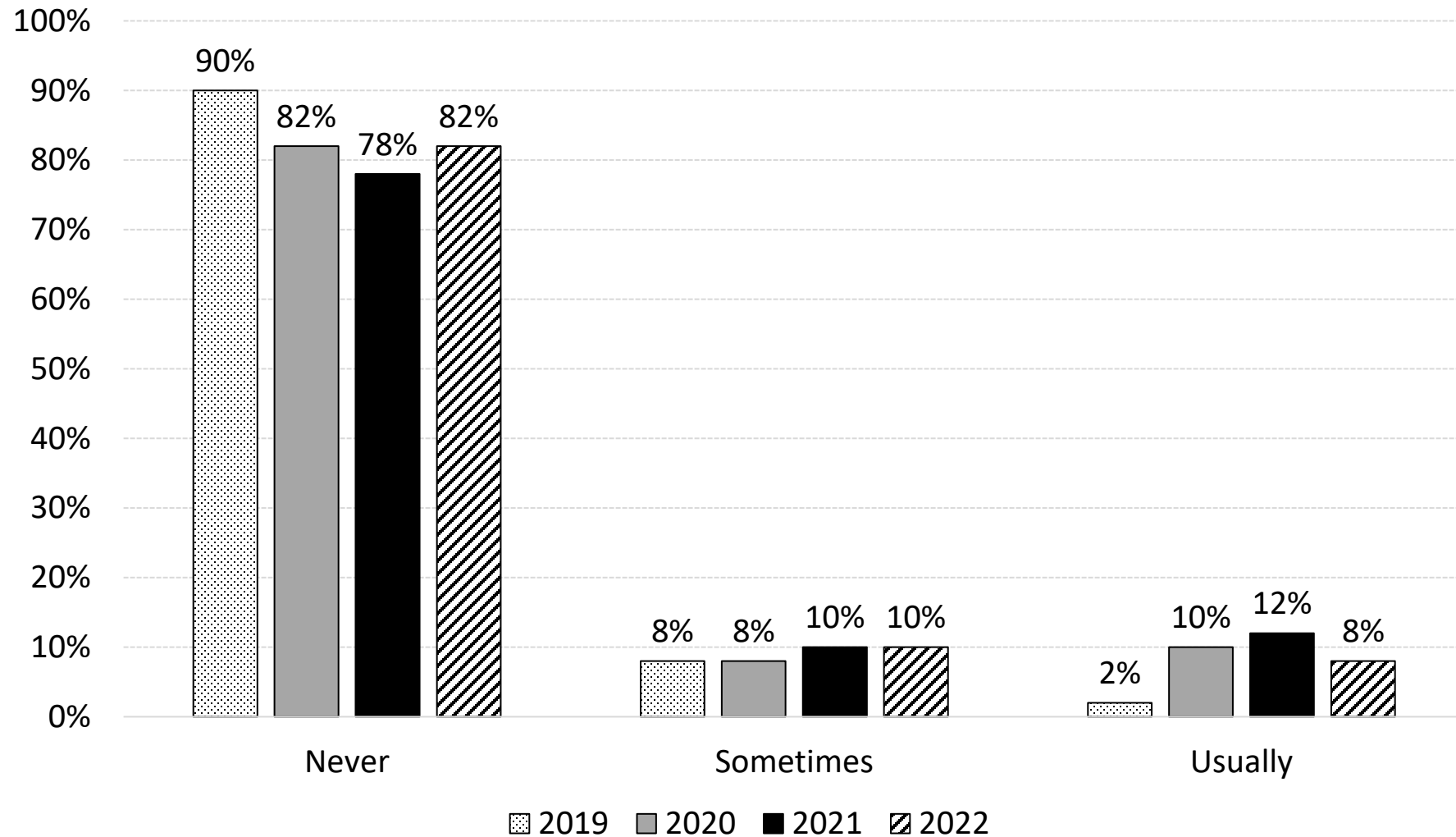
Source: Eurostat [[lfsa_ehomp](#)]

Employed persons in the EU working from home, 2022



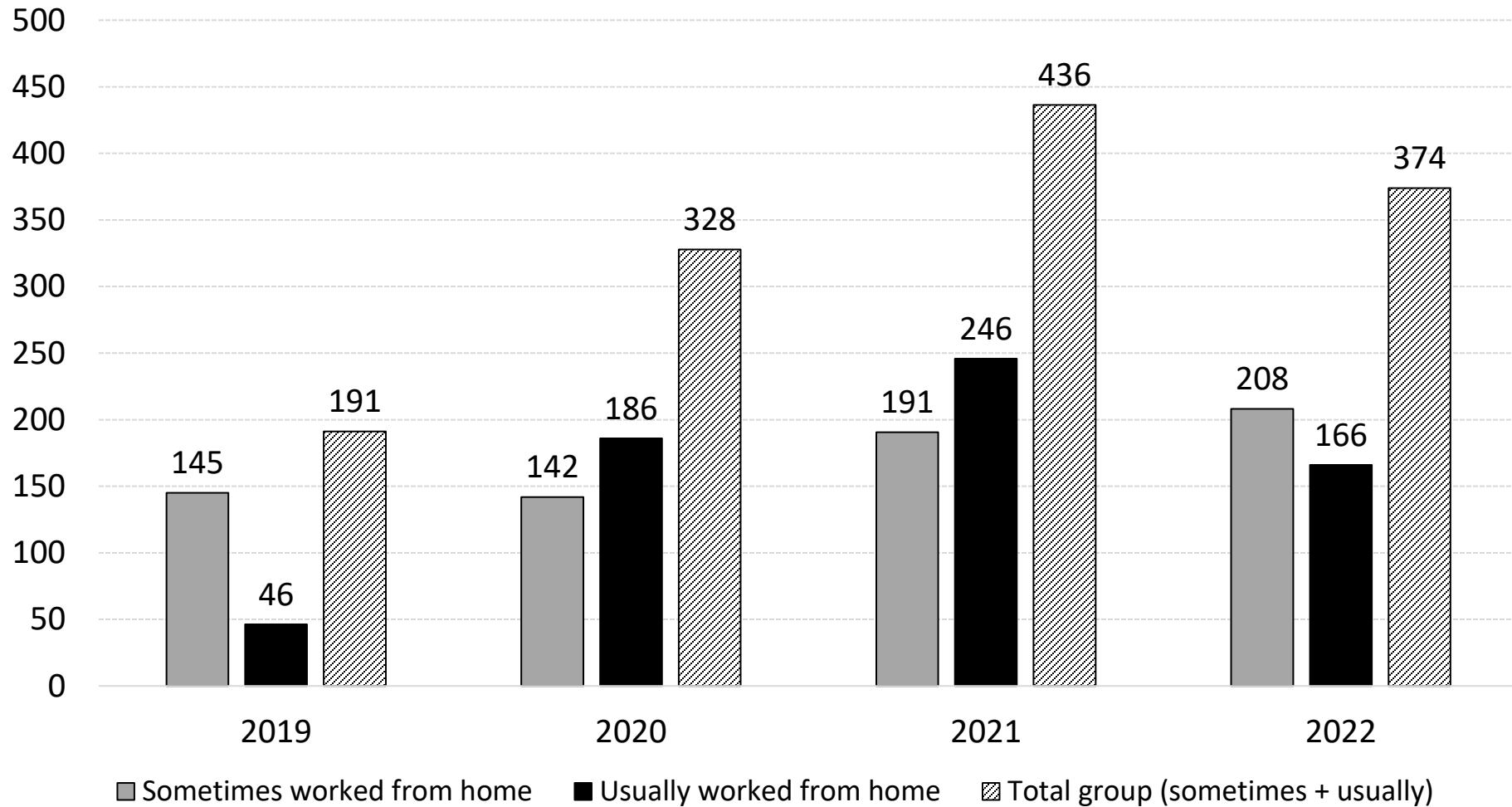
Source: Eurostat [[lfsa_ehomp](#)]

Cross-border workers in the EU working from home, 2019 - 2022



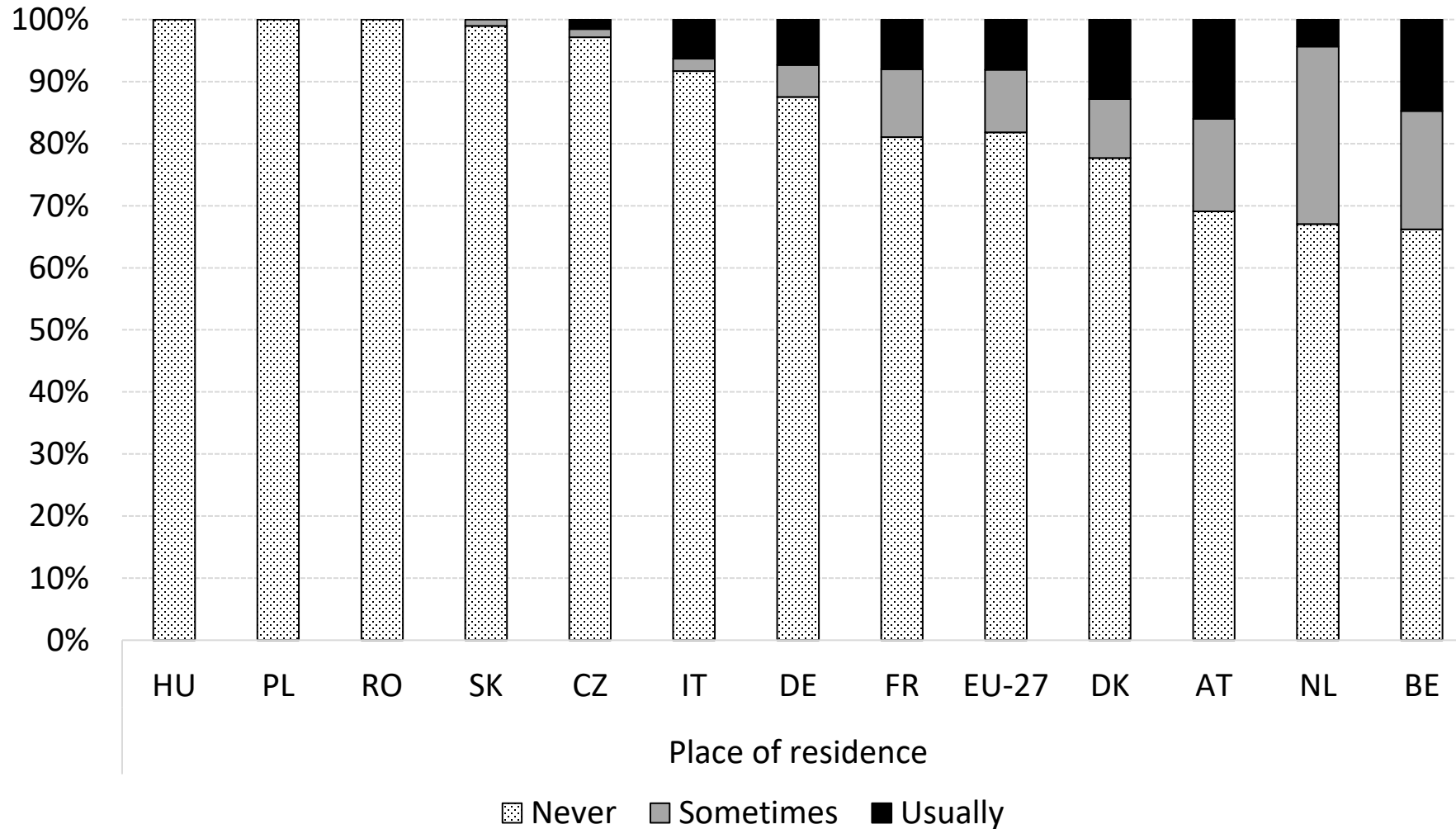
Source: Calculations based on Eurostat EU-LFS data

Estimated number of cross-border workers in the EU working from home (in ,000)



Source: Calculations based on Eurostat EU-LFS data

Cross-border workers in the EU working from home, 2022



Source: Calculations based on Eurostat EU-LFS data

Covid-19 and telework

- Telework was an important instrument to “flatten the curve” of COVID-19 infections.
- Telework in a Member State other than the competent (“usual”) Member State of employment due to COVID-19 did not lead to a change of applicable legislation.
- Telework should not have been hampered/delayed/interrupted (only) due to the application for a PD A1 and/or an exemption agreement during the pandemic.



Flexibility

- Key during COVID-19 pandemic, in a *force majeure* context → pragmatic solution
- The Administrative Commission (AC) adopted a **Guidance Note on COVID-19 pandemic** for competent institutions, which was valid until 30 June 2022.
- Objective: to avoid changes of the applicable legislation due to Covid-related telework.

Telework beyond the pandemic (1)

- Advantages for employers and workers: large-scale telework is here to stay
- In June 2022, the AC endorsed a **new guidance note on telework**:
 - flexible interpretation of the applicable legislation rules (e.g. occasional telework can be considered as posting under Art.12 of Reg. 883/2004);
 - transition period of 12 months (1 July 2022 - 30 June 2023);
 - no abrupt changes of applicable legislation during that period to ensure a smooth transition to full application of the guidance note as of 1 July 2023.

Telework beyond the pandemic (2)

- The Commission and Member States' representatives in the AC set up a dedicated **ad-hoc group** focused **on cross-border telework**.
- As a mid-term solution within the existing rules the group proposed that the interested countries conclude a **multilateral framework agreement** (based on Art. 16 of Regulation (EC) No 883/2004).
- If no multilateral/bilateral arrangement concluded → return to normal rules under the Regulations as of **1 July 2023**.
- Possibly new version of the Guidance note of telework to reflect the findings of the ad-hoc group on the interpretation of Articles 12, 13 and 16 of Regulation (EC) No 883/2004.

Revision of the social security coordination Regulations





State of play – formal steps

- Commission proposal adopted in December 2016
- Provisional agreement achieved between the negotiators of the European Parliament, the Presidency of the Council and the European Commission (March 2019 and December 2021)
- No qualified majority in the Council
- Negotiations on-going



Digitalisation of Social Security Coordination

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



What is EESSI?

EESSI (Electronic Exchange of Social Security Information) connects electronically around 3.500 social security institutions across Europe, allowing for faster and secure exchanges of information, as required by EU social security coordination rules.

Benefits of EESSI

- Faster and secure information exchange → quicker and more efficient handling of social security coordination cases.
- Facilitating the implementation of social security coordination rules
- More accurate exchange and secure handling of data

EESSI: State of Play

- All 32 countries (27 EU Member States + IS, LI, NO, CH and UK) connected to the system
- 13 countries fully in production (with all Business Use Cases)
- Since 2019, more than 47 million messages exchanged, and 14 million cases handled
- Family benefits and Legislation Applicable sectors deployed by all countries
- Full implementation expected by end of 2024

EESSI - Implementation Progress

BUCs types in production on 2nd Jan 2023 plus new ones on 1st May 2023



13 Countries have deployed all BUCs, 30 countries have more than 90 BUCs deployed.

ESSPASS pilot project

WHAT?

- Exploring an EU-wide, standardized, citizen centric digital solution for the cross-border verification of social security entitlements.
- Digitalising procedures related to the Portable Documents and the European Health Insurance Card (EHIC)

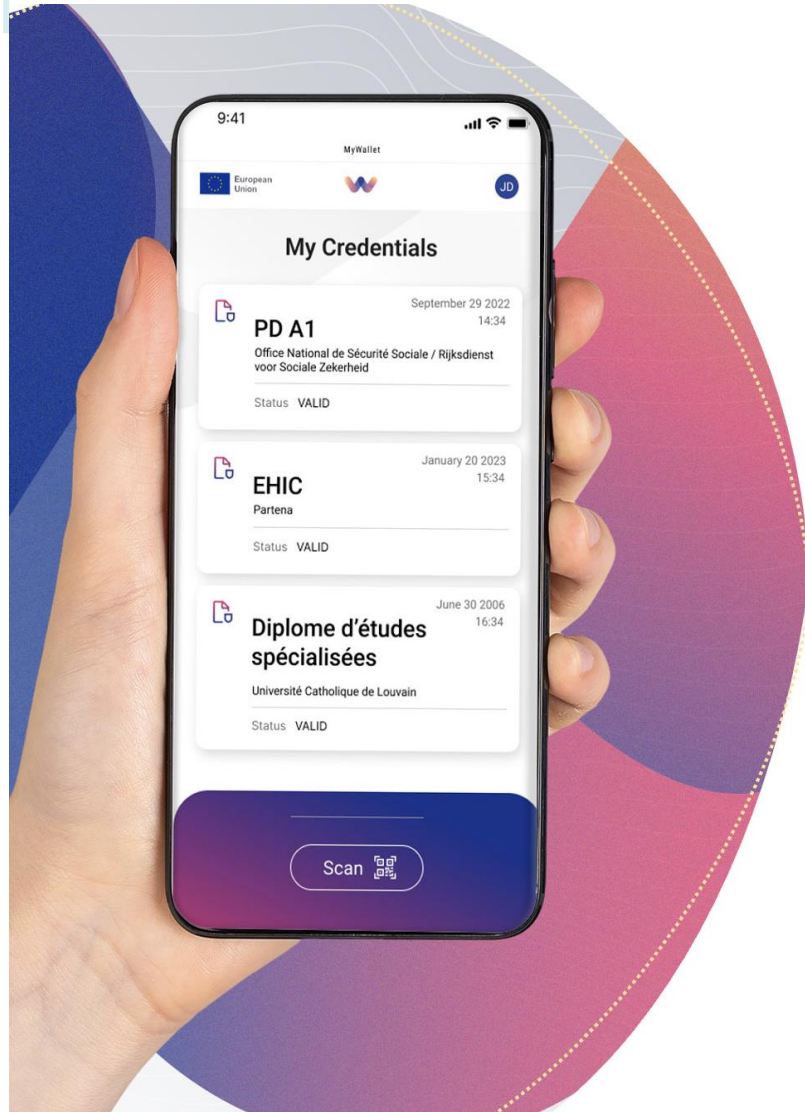
WHY DO WE NEED A PILOT?

- Prove technical feasibility
- Early identify legal and organisational constraints
- Assess costs, benefits and risks
- Verify and gain countries' true commitment
- Build ownership

STATE OF PLAY

- Project was launched with INPS and focused on PD A1
- Consortia of Member States piloting PD A1 and EHIC with the financial support of the Digital Europe programme (started 1st May 2023) – DC4EU & Vector
- 2023 CWP: Communication on digitalisation in social security to support free movement and labour mobility

eIDAS and the EU digital identity (EUDI) wallets



- eIDAS regulation: framework for Electronic Identification, Authentication, and Trust Services
- Revision of eIDAS (ongoing): introduction of a standardised interoperable electronic wallet
- Verifiable credentials will be stored in the EUDI wallet and linked to citizens ID
- Credentials can be the EHIC, PDA1, PDP1, university certificates, driving license,...

The Single Digital Gateway Regulation

- By the end of 2023, citizens should be able to perform fully online a number of procedures in all EU Member States - like requesting a PD A1, EHIC, claiming pension benefits.

Digitalisation of social security procedures

ENVISAGED SOLUTION: REUSING AND LEVERAGING OTHER INITIATIVES



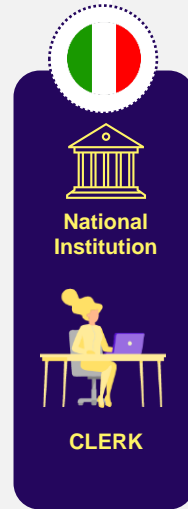
Your Europe

National Portals



Citizen requests a Portable Document*

National Institution assesses the request and approves the issuance of the document



National Institution creates a Verifiable Credential

ESSPASS



Citizen downloads the Verifiable Credential in her/his Digital Wallet



Wallet

future EUDI wallet

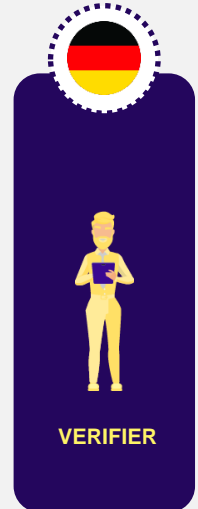


Verification App

Wallet

Citizen presents the Verifiable Credential to the Verifier

Verifier checks the citizen's Verifiable Credential



Trusted Registries

* Portable documents related to the applicable legislation, healthcare, pensions, sickness and unemployment benefits – e.g. EHIC, PD A1, PD S1...

EESSI

(when applicable**)

National Social Security Institution in parallel shares the information with the receiving Institution via EESSI



** When these procedures require an interaction between institutions of different countries, it will take place via EESSI.

High level conference and working party on digitalisation in social security coordination and labour mobility – March 2023

- Digitalisation in this area touches the functioning of the Single Market – free movement
- Progress made, but EU and national actions require scaling up
- High level commitment of Member States is required
- Piloting is crucial to
 - confirm feasibility
 - assess cost/benefit of different technical solutions
 - build ownership

High level conference and working party on digitalisation in social security coordination and labour mobility – March 2023

- Synergies and complementarities between initiatives should be further clarified and coordinated (EESSI, SDG, ESSPASS, EUDI eWallet, EBSI)
- Long-term vision, concrete actions and clear milestones are needed
- Solutions should be driven by political and business requirements, developed jointly by policymakers and IT specialists
- Further convergence between labour and social security domains is required by stakeholders



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Application of Regulation 883/2004 in cases of cross-border remote/telework

MoveS Seminar

16 June 2023, Tallinn

Pr Jean-Philippe Lhernould, University of Poitiers

Full-time telework

- *Lex loci laboris* (Art. 11(3)(a) – general rule)
- How to locate the place where telework activity is pursued?
 - “the concept of the ‘location’ of an activity must be understood, in accordance with the primary meaning of the words used, as referring to the place where, **in practical terms**, the person concerned carries out the actions connected with that activity” (Partena, case C-137/11)
 - “that it is incumbent on the institution concerned, whatever the wording of those contractual documents, to base its findings on the employed person’s actual situation” (Format I, case C-115/11)

Part-time telework

A person who normally pursues an activity as an employed person in two or more MS shall be subject:

- to the **legislation of the MS of residence** if he/she pursues a substantial part of his/her activity in that MS;

or

- to the **legislation of the MS in which the registered office or place of business** of the undertaking or employer is situated [if one employer]”
(Art.13(1)(a))

Part-time telework

- “Substantial part of employed activity’ = **quantitatively substantial part of all the activities**, without this necessarily being the major part of those activities.
- Indicative criteria : **working time and/or the remuneration**
- **Share of less than 25 %** is an indicator that a substantial part of the activities is not being pursued in the relevant MS (Reg. 987/2009, Art.14(8))
- Example: **Telework 2 days/ week in Tallinn where employee resides**, and 3 days in Latvia where employer is located= EE social security law

Posting?

- “ A person who pursues an activity as an employed person in a MS on behalf of an employer which normally carries out its activities there and who is posted by that employer to another MS to perform work on that employer’s behalf shall continue to be subject to the legislation of the first MS, provided that the anticipated duration of such work does not exceed 24 months” (Art. 12(1) BR).
- Does posting require telework is performed on the initiative or with the agreement of the employer (‘sent’ by the employer) and not if it is on the employee’s initiative alone?

COVID-19 period: Overview of MS measures

- Commission guidelines based on *force majeure*: telework in a MS other than the competent (“usual”) MS of employment, due to COVID-19, should not lead to a change of applicable legislation
 - Some MS (BE, CZ, DK, FR, DE, IE, LV, NL, PT, SK, SE) **unilaterally decided to disregard home office for the 25% rule**
 - Extended until 30 June 2023
 - Some MS (BG, HR, CY, FI, IT, LT, LU, PL, RO, SL, ES) have concluded **Article 16 agreements**
 - “Two or more MS (...) may by common agreement provide for exceptions to Articles 11 to 15 in the interest of certain persons or categories of persons“
 - A few MS (such as Estonia) applied the provisions on **posting**
 - during the pandemic, teleworkers remained subject to the legislation of the MS in which they would usually carry out their work
 - Some MS have taken **no ad hoc measure** (eg. AT)

Post-covid period: posting (1)

- Telework in another MS on behalf of the employer, could be considered as covered by Article 12 BR (posting)
 - applies to any telework, which has been agreed upon (formally or informally) between the employer and the employee = no need to differentiate in whose interest or on whose initiative the telework is being performed
 - **Telework must not be part of the habitual work pattern**
 - continuous telework in a MS without any timely limit would be excluded as it is not of an ad hoc or temporary nature and supposed to be longer than the 24 month
 - **+ Teleworker must already be subject to the social security legislation of the “sending state” before starting telework**

[Admin. Commission - Guidance Note on telework - AC 125/22REV3]

Post-covid period: posting (2)

- An employer has to shut down some rooms of the offices building to renovate them. All the employees working in these rooms are sent home to perform teleworking
- Employee works from home, because e.g. s/he has to care for sick children, aged relatives, small children or is the partner of such a person
- Employee agrees with the employer that s/he will telework during the following 4 weeks to better concentrate on a specific project
- Employee stays at the holiday place and starts to telework there for another month before returning home and resuming work in the office

In case of doubt as to whether a concrete case could be subsumed under this category, an Article 16 agreement is advisable

Post-covid period: framework agreement (FA)

- “Cross-border telework” is
 - an activity which can be pursued from any location and could be performed at the employer’s premises or place of business and
 - is carried out in a MS (or MSs) other than the one in which the employer’s premises or the place of business are situated and
 - is based on information technology to remain connected to the employer’s or business’s working environment as well as stakeholders/clients in order to fulfil the employee’s tasks assigned by the employer or clients, in case of self-employed persons
- Applicable legislation
 - a person who carries out habitual cross-border telework will be subject on the basis of Article 16 BR to the legislation of the MS in which the employer has his registered office or place of business, provided that the cross-border telework in the MS of residence is less than 50% of the total working time

Post-covid period: framework agreement (FA)

- FA applies to teleworkers who reside in a signatory MS whereas the registered office or place of business of the undertaking or employer is situated in one other signatory MS
- FA covers persons to whom the legislation of the MS of residence would be applicable as a result of habitual cross-border telework in application of **Article 13 (1) (a) BR** [
 - Applies only to persons **who telework in their MS of residence 25% or more of their total working time** and for whom the Member State of residence thus becomes competent under the normal rules of Title II of the Basic Regulation
 - Applies only employees **who are employed by one single employer** (or several employers all situated in the same MS)
 - Applies only to persons **who habitually work in the MS where the statutory seat of their employer is established and telework in their MS of residence, without pursuing other activities than telework there**

Post-covid period: framework agreement (FA)

- FA **does not cover** teleworkers who
 - (i) habitually **pursue another activity in the MS of residence** and/or
 - (ii) habitually **pursue another activity in another MS**
 - (iii) are **self-employed**

Post-covid period: framework agreement (FA)

L. is teleworking from her residence in BE for 40% of her working time and is working 60% of her working time in AT at statutory seat of her employer

- Provided that both BE and AT are signatory States, the application of the FA can be requested, resulting in the application of Austrian legislation

F. is teleworking from his residence in BE 40% of his working time and is working 60% in the NL at the premises [branch] of his employer which has its statutory seat in DE = not applicable

P. is teleworking from her residence in LU for 35% of her working time and is working 60% of her working time in DE at statutory seat of her employer. She also has a side self-employed activity in LU = not applicable

Post-covid period: framework agreement (FA)

- Procedure (request submitted in accordance with Article 18 IR)
 - “A request by the employer or the person concerned (...) shall be submitted, whenever possible in advance, to the competent authority or the body designated by the authority of the MS, whose legislation the employee or person concerned requests be applied”
 - No request for periods prior to the entry into force of the FA
 - Retroactive requests are allowed if
 - (i) the requested period prior to the date on which the request was submitted **does not exceed 3 months**, or
 - (ii) such request is submitted **no later than 30 June 2024** and the period prior to the date on which the request was submitted does not exceed 12 months
 - An **agreement may be applied for a maximum of 3 years at a time**, with extensions possible upon a new request
 - Competent institution of the signatory State whose legislation is applicable provides a **PD A1**
 - FA does not affect possibility of concluding Article 16 agreements

Post-covid period: framework agreement (FA)

- Will sign the FA
 - DE, AT, BE, EE, IE, LT, LU, MT, NL, SK, CZ, LT, NO
 - After July 1: FI, HU
- Will not sign the FA
 - UK
- Have not expressed their intention yet
 - FR, IT...

Post-covid period: Article 16 agreements

- **Individual Article 16 agreements** that can be concluded for each individual case by the MS involved
- **Group of persons Article 16 agreements** that can be concluded for groups of persons by the MS involved
 - which could cover specific categories of persons, eg. employees of specified employers or all teleworkers who are frontier workers)
- **Multilateral Article 16 agreements** that more than two MS could agree to conclude for specific groups of persons;
- **EU-wide Article 16 parameters** - MS could agree on specific parameters under which Article 16 agreements should/can be concluded

Impact on benefits/contributions

- Competent legislation will determine where contributions will be paid
 - G. habitually teleworks (40%) from home in MS A and works at employer's seat in MS B (60%).
 - Both countries have signed the FA = contributions paid in MS B
 - G. habitually teleworks (40%) from home in MS A and works at employer's seat in MS B (60%).
 - Only MS B has signed the FA = contributions paid in MS A (unless Article 16 agreement)
 - G. teleworks from MS A for a couple of months where she was on holiday. She habitually works at employer's seat in MS B.
 - PD A1 issued by MS B will mean contributions will be paid in that country

Impact on benefits/contributions

- Competent legislation will help determine benefits
 - G. habitually teleworks (40%) from home in MS A and works at employer's seat in MS B (60%). Both countries have signed the FA. G's spouse works in MS A = **affiliation in MS B**
 - For family benefits, MS A (residence) is the "priority state"
 - For healthcare, access to benefits in kind in MS A (residence) and in MS B (competent)
 - For unemployment, MS A (residence) will provide its benefits (with partial reimbursement from MS B to MS A – art. 65(6) BR: frontier workers)
 - G. habitually teleworks (40%) from home in MS A and works at employer's seat in MS B (60%). Only MS B has signed the FA. G's spouse works in MS A = **affiliation in MS A**
 - For family benefits, only in MS A
 - For healthcare, access to benefits in kind in MS A (competent) and MS B (EHIC)
 - For unemployment, MS A will provide its benefits