

# MoveS seminar United Kingdom

*Brexit and social security: Are the  
Withdrawal Agreement and Trade and  
Cooperation Agreement achieving their  
aims?*

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**12 September 2023**

Senate Chamber, Trent Building, University Park, University of  
Nottingham, NG7 2RD, United Kingdom

Language: English

# A brief introduction to social security coordination in the withdrawal agreement and trade and cooperation agreement

PRESENTED BY:

## SIMON ROBERTS

Prof. University of Nottingham and MoveS UK Expert

# What is EU Social Security Coordination?

- Under EU law every citizen of the European Union has the right to move to another member country to work, study and reside.
- The European Union protects the social security rights of people who move within the EU
  - *To prevent people exercising their right to free movement losing benefit entitlement, including pensions and healthcare.*
  - ***Regulation (EC) 883/2004 and Implementing Regulation (EC) 987/2009***
- Coordination does not harmonise countries' social security systems but adjusts them in relation to each other to protect entitlements of mobile workers and citizens without interfering in the national schemes in other respects.

# Principles of social security coordination

- Employs four key principles to coordinate social security in the context of free movement:
  - *Applicable legislation*
    - rules to determine which country is responsible for collecting contributions, determining eligibility and administering benefits and services.
  - *Equal treatment*
    - prohibits discrimination on nationality grounds.
  - *Aggregation*
    - previous periods of insurance, work or residence in other EU member countries are added together to establish entitlement to benefit.
  - *Exportability*
    - territorial boundaries are removed to make some benefits exportable.

# Who is covered by the EU's social security Coordinating Regulations?

- The Coordinating Regulations cover:
  - *Nationals of an EEA member country (EU-27, Iceland, Liechtenstein, Norway), Switzerland who are or have been insured in one of these countries, and members of their family.*
  - *Stateless persons and refugees residing in one of the above countries and their family members.*
  - *Nationals of non-EU countries, who are legally residing within the territory of the EU, and have moved between two or more EU countries, and members of their family.*

# Which benefits are covered?

- The Coordinating Regulations apply to the following branches of social security:
  - sickness benefits including healthcare
  - maternity and equivalent paternity benefits
  - invalidity benefits
  - old-age benefits
  - survivors' benefits
  - benefits in respect of accidents at work and occupational diseases
  - death grants
  - unemployment benefits
  - pre-retirement benefits
  - family benefits

# Benefit classification

- EU member countries' social security benefits are divided into three categories for the purpose of coordination.
- Which category a particular benefit falls into determines which of the coordination principles and mechanisms apply to that benefit.
  - ***Social security***
    - Fully coordinated – All 4 principles apply
  - ***Special Non-Contributory Benefits***
    - Partially coordinated – not exportable
  - ***Social assistance***
    - Not included in coordination

# The Administrative Commission for the coordination of social security systems

- Classification is a matter for the 'Administrative Commission for the coordination of social security systems' based on the characteristics of the benefit and case law.
- The Administrative Commission comprises a government representative of each EU country and a representative of the European Commission.



**BREXIT**



# The Referendum

- On 23 June 2016 the United Kingdom voted in a referendum by 51.9% to 48.1%, on a turnout of 72.2% of the electorate, to leave the European Union
- The UK had been a member of the EEC/EC/EU for over 43 years since 1 January 1973



# The Process of Leaving

- Almost one year later, on 29 March 2017, the UK Government invoked Article 50 of the Treaty on European Union to initiate the process of leaving.
- After six rounds of negotiations, a draft Withdrawal Agreement was published in February 2018. The new Agreement was concluded on 17 October 2019 and signed on 24 January 2020.
- Agreement provided for a Transition period from 31 January 2020 to 23.00 hours on 31 December 2020 during which EU law continued to apply to allow parties to complete preparations for the UK's departure.
- Free movement between the UK and the EU ceased to apply at 23.00 hours on 31 December 2020.

# SOCIAL SECURITY COORDINATION AFTER BREXIT

- The Withdrawal Agreement contains the post-Brexit arrangements on social security coordination for people who had exercised their right to free movement before the end of the Transition period on 31 December 2020.
- The Withdrawal Agreement does not provide protection to people who move from 1 January 2021.
- Coordination of social security for people who move between the EU and the UK from 1 January 2021 is included in the Trade and Cooperation Agreement.

# THE WITHDRAWAL AGREEMENT



# The Withdrawal Agreement

- To prevent loss of rights Part Two, Title III of the EU-UK Withdrawal Agreement protects the rights of EU citizens in the UK and UK citizens in the EU who exercised their right to free movement before the end of the Transition period on 31 December 2020.
- Mirrors the EU Coordinating Regulation 883/2004.
  - *Includes all benefits covered by the EU Coordinating Regulations.*
  - *The principles of social security co-ordination and classification of benefits in EU Coordinating Regulation 883/2004 apply to the Withdrawal Agreement.*

# Who is covered?

- The Withdrawal Agreement covers:
  - *EU citizens and UK nationals within the scope of Coordinating Regulation (EC) No 883/2004 who at the end of the Transition period had been subject to the social security legislation of an EU27 Member State for UK nationals, or UK legislation for EU27 citizens, and their family members and survivors*
  - *EU27 and UK nationals within the scope of the Withdrawal Agreement by virtue of residence, and their family members and survivors*
  - *Stateless persons, refugees, and nationals of third countries who move between two or more member countries in order to stay, live or work.*
- To be covered by the Withdrawal Agreement a person must continue to be in one of the qualifying situations *without interruption*. The question of residence may introduce complications.

# Future amendments

- Future amendments to EU legislation coordinating social security will also apply in and to the UK.
- A Joint Committee enables the EU to inform the UK if the Coordinating Regulations are replaced or amended after the end of the Transition period and the UK to inform the EU of relevant changes to domestic provisions.



# **THE TRADE AND COOPERATION AGREEMENT**



# Trade and Cooperation Agreement

- The Trade and Cooperation Agreement was agreed by EU and UK negotiators on 24 December 2020, a few days before the expiry of the Transition period on 31 December 2020.
- The European Parliament formally approved the Agreement on 27 April 2021 and it entered into force on 1 May after the Council had concluded ratification, four months after the UK had left the EU.

# Who is covered?

- The Protocol to the Trade and Cooperation Agreement on Social Security Coordination applies to persons, including stateless persons and refugees, and third country nationals who enter into a UK-EU cross-border situation from 1 January 2021 and are not covered by the Withdrawal Agreement, as well as to the members of their families and their survivors.
- The principles of social security coordination and classification of benefits in EU Coordinating Regulation 883/2004 and the Withdrawal Agreement apply to the Trade and Cooperation Agreement .

# Which benefits are included?

- The same *categories* of benefits referred to in Coordinating Regulation (EC) No 883/2004 and in the Withdrawal Agreement are included in the Protocol **with the exception of family benefits.**
  - *sickness*
  - *maternity and paternity*
  - *invalidity*
  - *old-age*
  - *survivors*
  - *accidents at work and occupational diseases*
  - *death grants*
  - *unemployment*
  - *pre-retirement benefits*

# Excluded

- Within these categories several benefits are specifically excluded by Art SSC - 3. These are:
  - *special non-contributory cash benefits listed in Part 1 of Annex SSC-1*
  - *social and medical assistance*
  - *benefits in relation to which a State assumes the liability for damages*
  - *long-term care benefits which are listed in Part 2 of Annex SSC-1*
  - *assisted conception services*
  - *payments to meet expenses for heating in cold weather listed in Part 3 of Annex SSC-1*

# UK's Special Non-Contributory Benefits listed in Part 1 of Annex SSC 1 to the Protocol

- State Pension Credit
- Income-based Job Seeker's Allowance
- Disability Living Allowance, mobility component
- Personal Independence Payment, mobility component
- Employment and Support Allowance Income-related
- Best Start Foods payment under The Welfare Foods (Best Start Foods) (Scotland) Regulations 2019
- Best Start Grants (pregnancy and baby grant, early learning grant, school-age grant under The Early Years Assistance (Best Start Grants) (Scotland) Regulations 2018
- Funeral Support Payment under The Funeral Expense Assistance (Scotland) Regulations 2019

# Long-term care benefits listed in Part 2 of Annex SSC 1

- Attendance Allowance
- Carer's Allowance
- Disability Living Allowance, care component
- Personal Independence Payment, daily living component
- Carer's Allowance Supplement under The Social Security (Scotland) Act 2018
- allowances to promote mobility and to compensate for transport costs
- Young Carer's Grant under The Carer's Assistance (Young Carer Grants) (Scotland) Regulations 2019 (as amended)).
  
- Winter Fuel Payment is listed in **Part 3 of Annex SSC 1** as being excluded from coordination under the Protocol.
  
- A Specialised Committee on Social Security Coordination may amend the Annexes and Appendices to the Protocol.

# Thank you

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Thank you for your attention!

# Recent developments in EU law in the field of social security coordination

PRESENTED BY:

**ELS VERTONGEN**  
DG EMPL. Social Affairs and Inclusion  
European Commission



# Recent developments at EU level in social security coordination

**Els Vertongen**  
**European Commission, DG EMPL**  
**Unit E2 – social security coordination**



# Overview

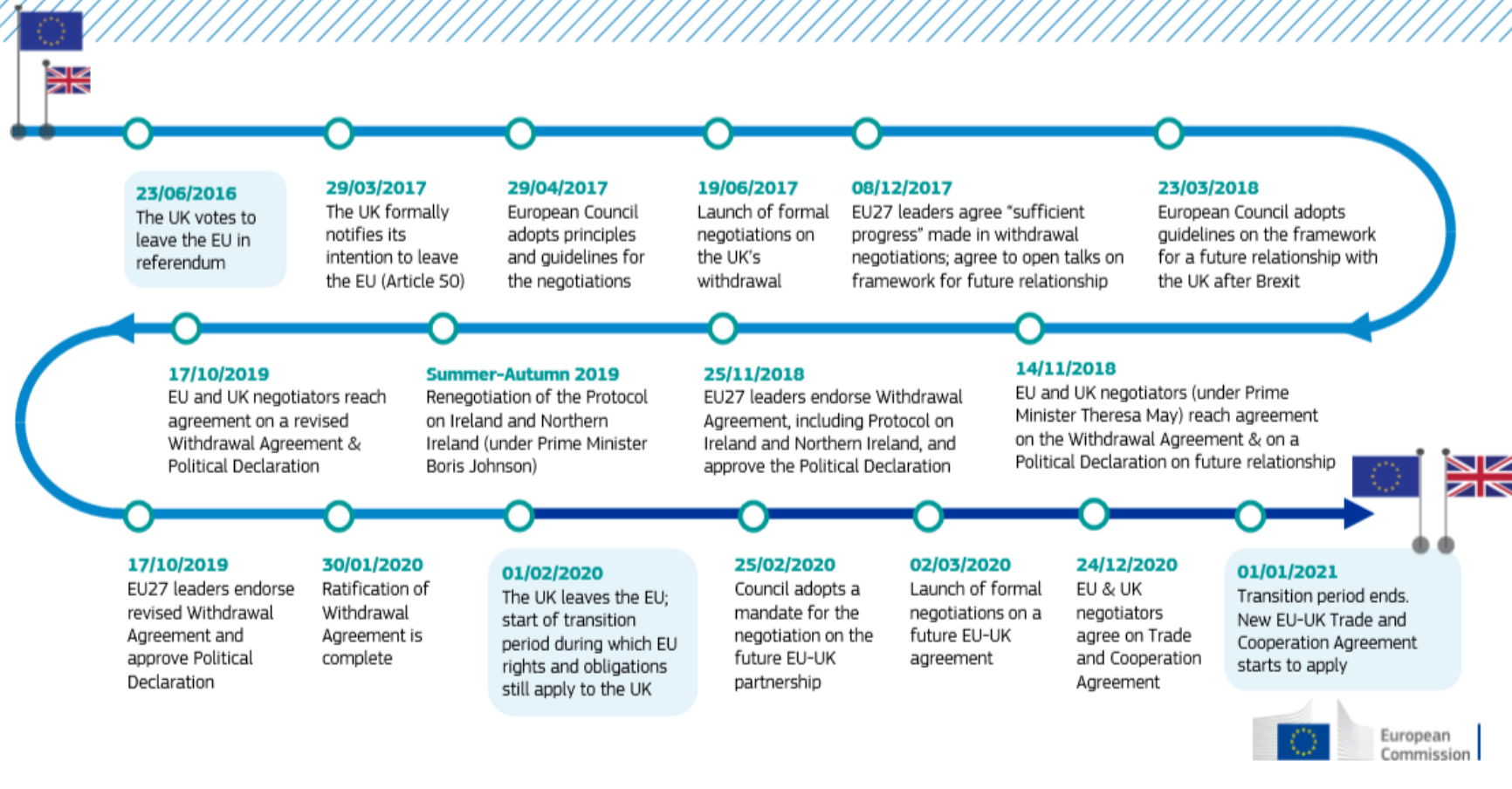
1. Recap: Social Security Coordination in the relation between the EU and the UK
2. Revision of Regulations 883/2004 and 987/2009: latest developments
3. Digitalisation of social security coordination

# Social security coordination in the EU-UK 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 Withdrawal Agreement (WA)

- Agreed between EU and UK in October 2019
- Entered into force upon the UK's withdrawal from the EU on 1 February 2020
- Elements covered include:
  - Transition period until 31 December 2020
  - Citizens' rights
  - Financial settlement

## Part Two: Citizens' Rights

- Concerns millions of EU citizens in the UK and UK nationals in the EU
- Persons covered: broadly speaking, those in a cross-border situation at the end of 2020
- Issues covered:
  - Residence rights, rights of workers/frontier workers, professional qualifications
  - **Coordination of social security systems** (Arts. 30 – 36 WA)





# Full coordination: Arts. 30-31 (1)

## *Who benefits?*

- **EU citizens (and their family members / survivors) who at the end of the transition period**
  - a) Are subject to UK legislation **OR**
  - b) Reside in the UK **OR**
  - c) Work in the UK **OR**
  - d) Are not in such a cross-border situation but have a right to reside / work in the UK under the WA
- **UK nationals (and their family members/survivors who at the end of the transition period)**
  - a) Are subject to the legislation of a MS **OR**
  - b) Reside in a MS **OR**
  - c) Work in a MS **OR**
  - d) Are note in such a cross-border situation but have a right to reside/work in a MS under the WA

## Partial coordination: Art. 32

- Limited coordination in specific circumstances for persons who are not covered by Art. 30, namely who have been in such a situation before the end of the transition period but not currently:
  - Benefits based on periods of insurance, (self-)employment, residence
  - Coordination of sickness and family benefits for recipients of benefits based on such periods
  - Family benefits and derived rights of family members where family members are in a cross-border situation

## Triangulation: Art. 33



- The EU provisions on social security coordination also apply to nationals of Switzerland and the EEA EFTA states
- EU and UK have concluded agreements with Switzerland & the EEA EFTA States to protect persons in triangular situations
- The agreements EU - EEA EFTA States, the UK – EEA EFTA States, EU – CH and the UK-CH mirror the provisions of Art. 30 and Art. 32 WA



## Administrative matters : Articles 34-35

- Since 1 February 2020, the UK has observer status in the Administrative Commission
- The UK continues to use EESSI for the purposes of the WA and bears the related costs

## Future changes of EU law: Art. 36

- References to EU law in the WA: generally understood to refer to EU law as applicable at the end of the transition period (Art. 6)
- In case Regulations 883/2004 and 987/2009 are amended or replaced after that date → dynamic alignment by means of a Decision of the Joint Committee amending Part II of Annex I.
- Exceptions to the dynamic alignment:
  - *Changes to Article 3 of Regulation 883/2004 (the material scope)*
  - *When a cash benefit becomes exportable or when it becomes exportable for an unlimited period*
- Regular updates of Part I of Annex I to include recently adopted AC decisions → so far 3 updates (Joint Committee Decisions 1/2020, 1/2022 and 3/2023)

## 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

## Provisions on social security coordination

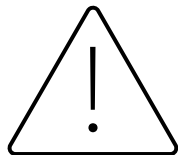
- Body of the TCA: Part Two – Heading Four: social security coordination and visas for short-term visits → general provisions
- Protocol on Social Security Coordination
  - follows the structure of the EU Regulations on Social Security Coordination
    - Basic Part
    - Annexes 1 to 6
    - Implementing Part in Annex 7 + Appendices
    - Annex 8: posting
  - **operates in a different context: no free movement of persons, no jurisdiction of the European Court of Justice**

## Personal Scope

### *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



The Protocol does not apply to persons who are covered by the Withdrawal Agreement as long as they remain covered.



## Material scope

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

## Be aware:

- 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

## Governance

- Article 8(1)(p) TCA: Creation of a Specialised Committee on Social Security Coordination
  - Composed by representatives of the EU and the UK
  - Chaired by 2 co-chairs and a Secretariat
  - Minimum 1 meeting/year
  - May adopt decisions/recommendations necessary for the implementation of the Protocol (where indicated in the Protocol)
- The Protocol is directly applicable in the EU
- Sunset clause: the Protocol shall cease to apply 15 years after the entry into force of the TCA

## Recent developments: Decisions adopted by the Specialised Committee

- So far the Specialised Committee adopted the following Decisions:
  - SC Decision 1/2021 concerning the update of the Annexes and Appendices to the Protocol
  - SC Decision 1/2023 concerning the use of EESSI in the framework of the Protocol
  - SC Decision 2/2023 concerning the designation of the financial institution to serve as reference for the determination of the interest rate for late payments and the exchange for currency conversion (ECB)
- Procedure to be followed by the EU for the adoption of a SC Decision: Article 218(9) TFEU
- Publication of the SC Decisions in the OJEU



# Cross-border telework

## Telework in the framework of the WA

- Telework was an important instrument to “flatten the curve” of COVID-19 infections.
- Measures were taken to avoid that:
  - Telework in a Member State other than the competent (“usual”) Member State of employment due to COVID-19 would lead to a change of applicable legislation.
  - Telework was hampered/delayed/interrupted (only) due to the application for a PD A1 and/or an exemption agreement during the pandemic.

## Telework in the framework of the WA (2)

- 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.
- 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.
- Entry into force of a Multilateral Framework agreement on telework on 1/7/2023 → threshold of < 50% of telework in MS of residence. Only applies when both MS of work and MS of residence are party to the agreement.
- If not: back to the normal rules under Regulation 883/2004

## Telework under the Protocol

- The Protocol applies to all new cross-border employment relations which arose after 1/1/2021.
- The Protocol does not contain special rules regarding the determination of the applicable legislation in case of telework.
- Article SSC.12 (pursuit of activities in more than two States) applies in case of cross-border telework that is part of the person's normal working pattern.



# 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)



# 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
- The UK is connected in the framework of the WA as well as in the framework of the Protocol
- 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

# Thank you for your attention!

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

*Social Security Coordination in the Withdrawal  
Agreement & Trade and Cooperation Agreement:  
The UK Experience*

PRESENTED BY:

**SOPHIA HARRINGTON**

**Head of International Social Security Coordination,  
International Strategy Division, Policy Group, Department for Work and Pensions**



Department  
for Work &  
Pensions



## Social Security Coordination in the Withdrawal Agreement & Trade and Cooperation Agreement: The UK Experience

**Sophia Harrington**

Head of International Social Security Coordination

Department for Work and Pensions, United Kingdom

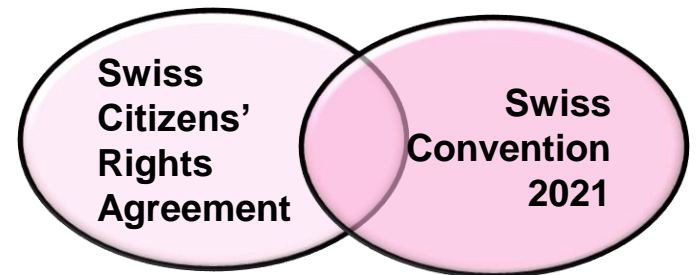
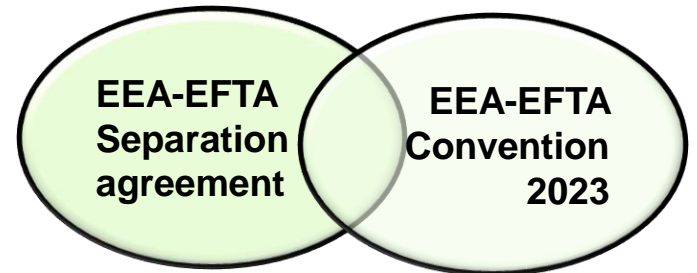
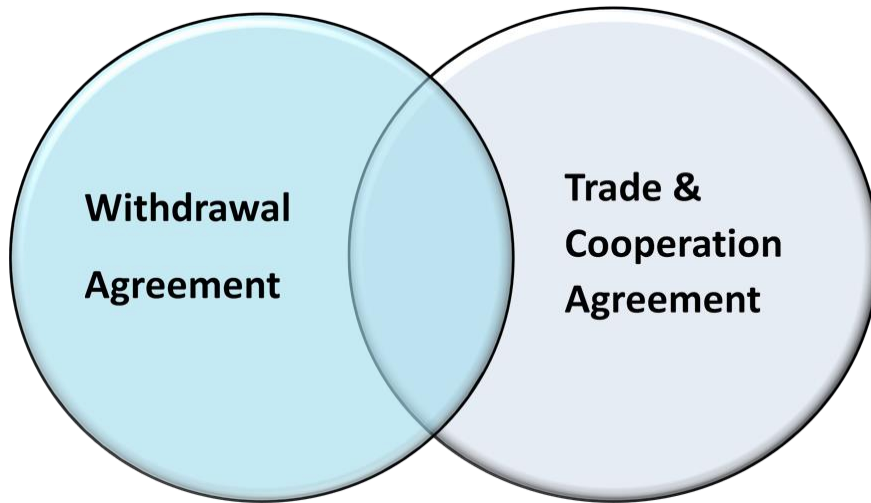
Nottingham, 12 September 2023



- Overview of arrangements
- Overview of UK internal governance
- New and novel governance structures
- Focus on smooth implementation



# Social Security Coordination – Agreements



# UK Government Internal Governance

**Department for Work and Pensions**

**Foreign, Commonwealth and Development Office**

**HM Revenue and Customs**

**Department for Health and Social Care**

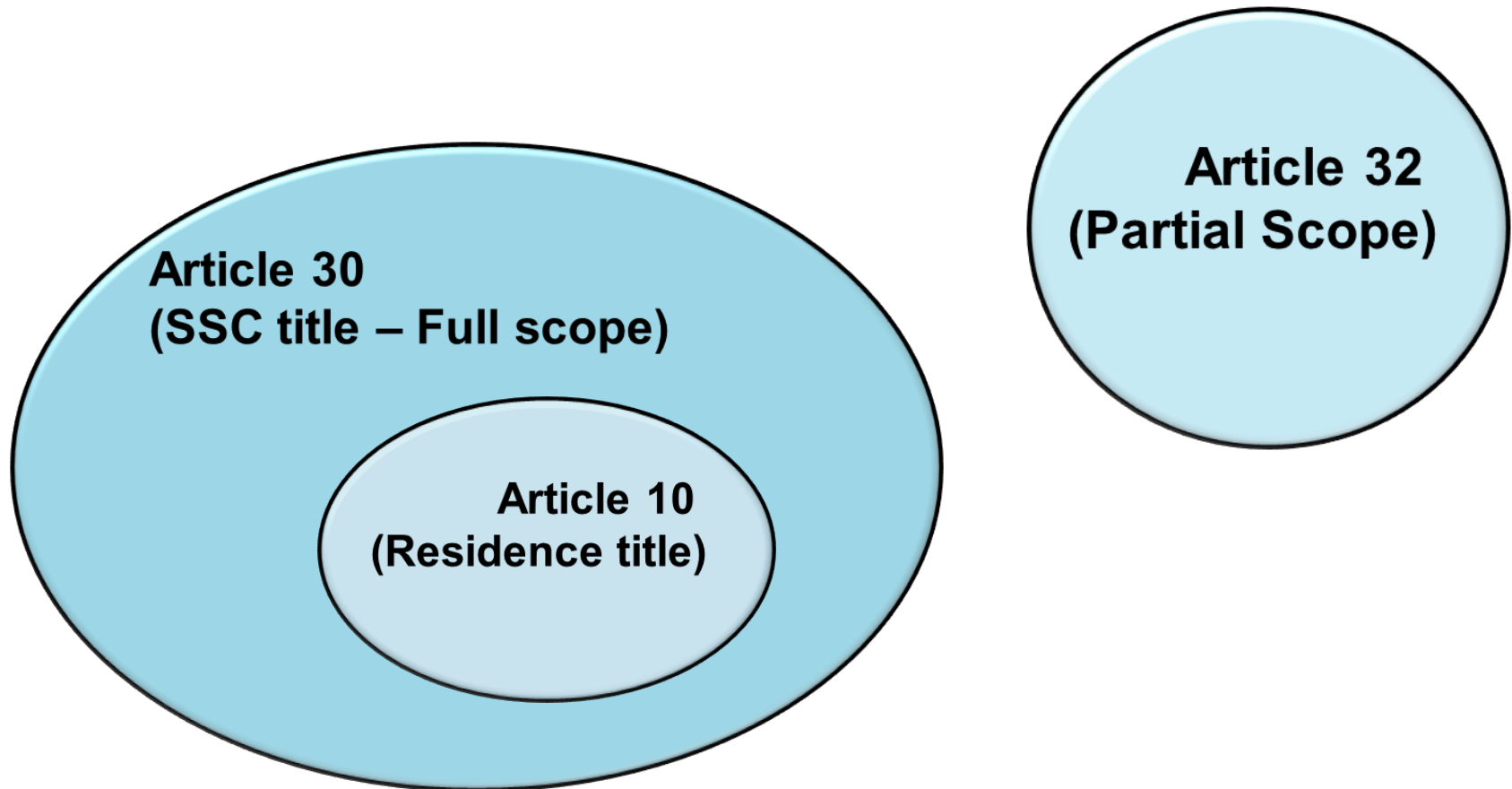
# Focus on Smooth Implementation



## The UK Experience Part I: The Policy Level

- Novel WA provisions and intersection between them (scope)
- Understanding the intersections between WA/TCA
- How this policy process is evolving over time – nature of issues and how we address them

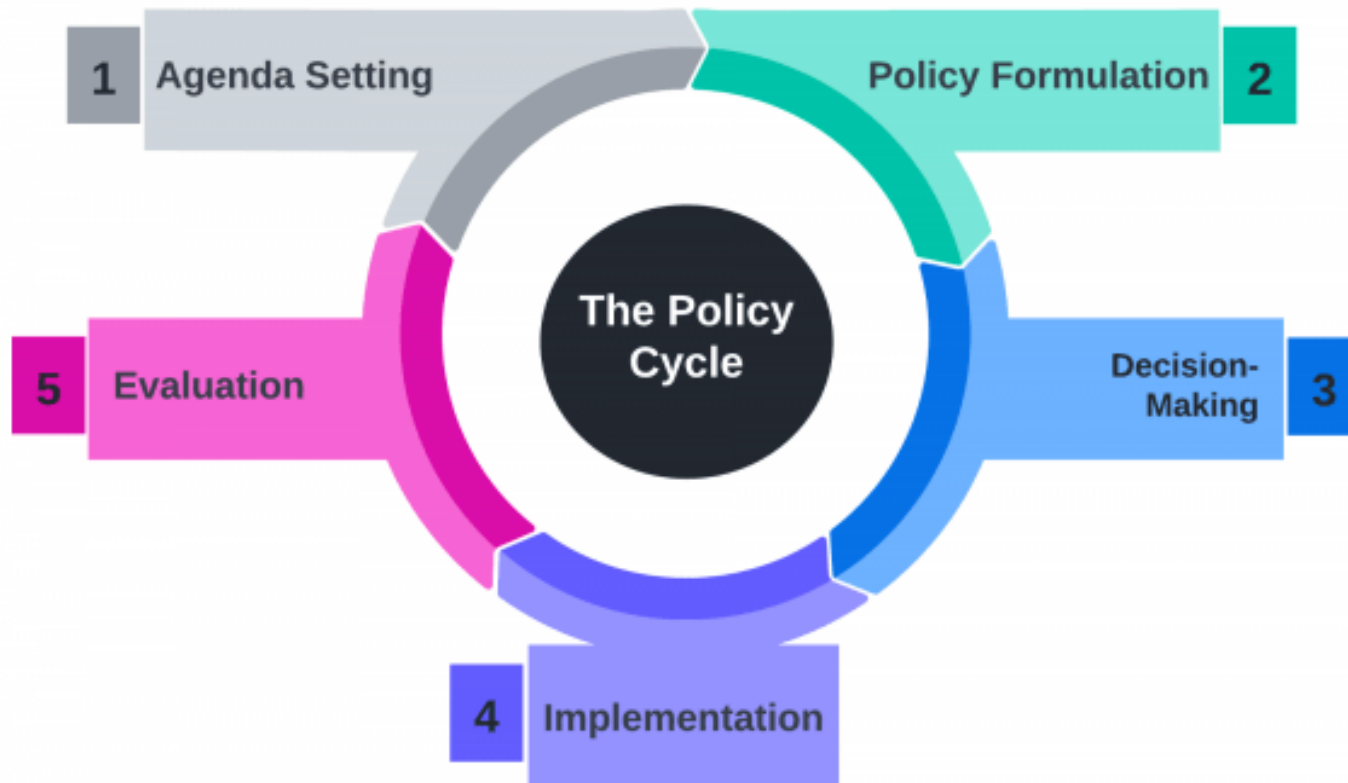
# Withdrawal Agreement – Personal scope



# Benefits under the Withdrawal Agreement and the Trade and Cooperation Agreement

Benefit	Withdrawal Agreement	Trade and Cooperation Agreement
<b>Old age pension</b>	Payable in EU Aggregation	Payable in EU Aggregation
<b>Maternity</b> <b>Survivors' benefits</b> <b>Accidents at work and occupational diseases</b>	Payable in EU Aggregation	Payable in EU Aggregation
<b>Unemployment benefit</b>	Export and aggregation	Aggregation only
<b>Sickness and invalidity benefits</b>	Export and aggregation	Aggregation. No export for invalidity benefit.
<b>Disability and carers' benefits (Long-term care benefits)</b>	Payable in EU	Not payable in EU
<b>Family benefits</b>	Payable in EU	Not payable in EU

# How this policy process is evolving

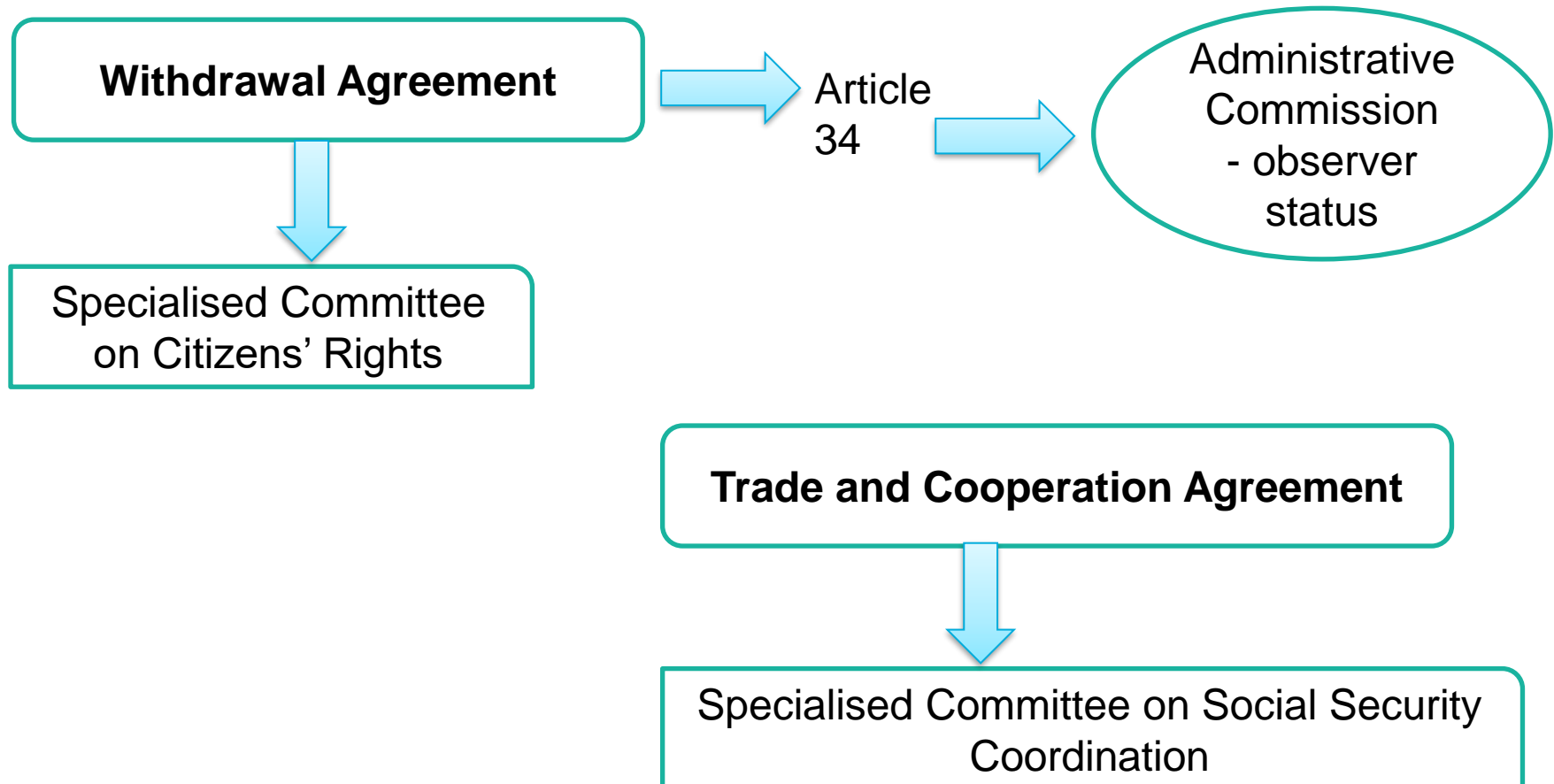




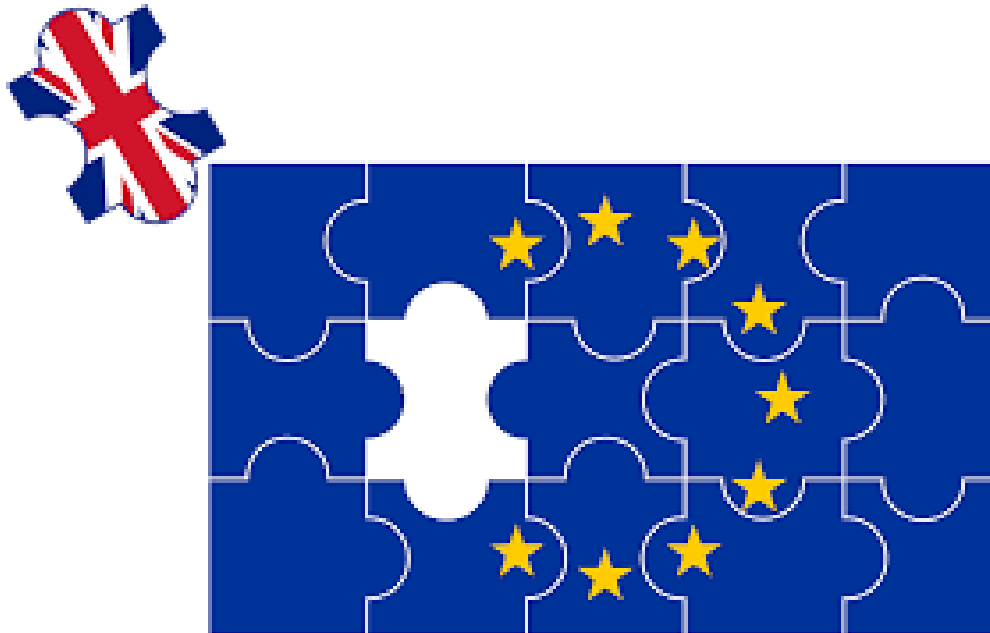
- Recap – Governance structures
- Continued UK participation in the Administrative Commission
- Specialised Committee on Citizens' Rights
- Specialised Committee on Social Security Coordination - GOV.UK: [www.gov.uk/government/groups/specialised-committee-on-social-security-coordination](http://www.gov.uk/government/groups/specialised-committee-on-social-security-coordination)

# Social Security Coordination - Governance

Both EU agreements provide structures for raising and resolving issues



# Novel structures



- Reciprocity and operational insights, including EESSI
- Operational implications of new arrangements
- Escalation routes

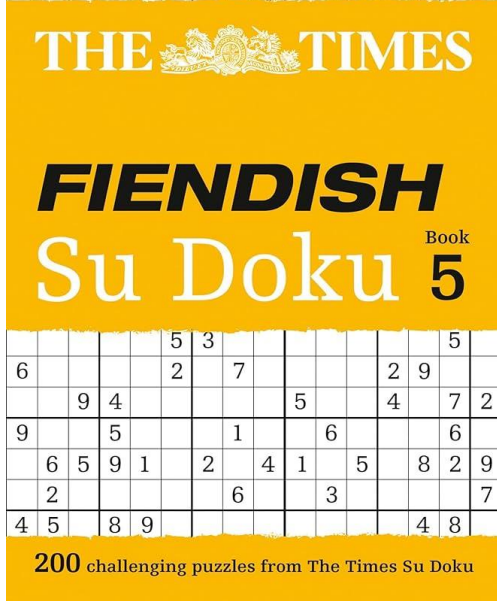
# Reciprocity and operational insights



# Operational implications of new arrangements

## Prior to 1.1.21

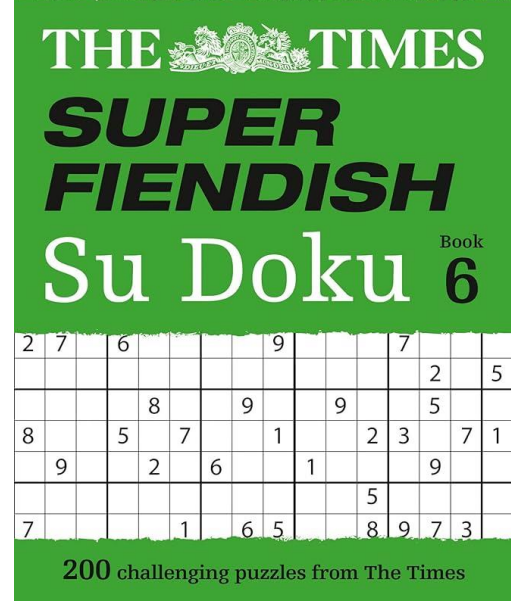
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# Escalation routes

- Within Government departments
- Between Government departments
- Between UK and Devolved Administrations
- Between UK and Member State operational teams
- Between UK and Member State policy teams
- Administrative Commission
- Specialised Committees

# Social Security Coordination and Devolution

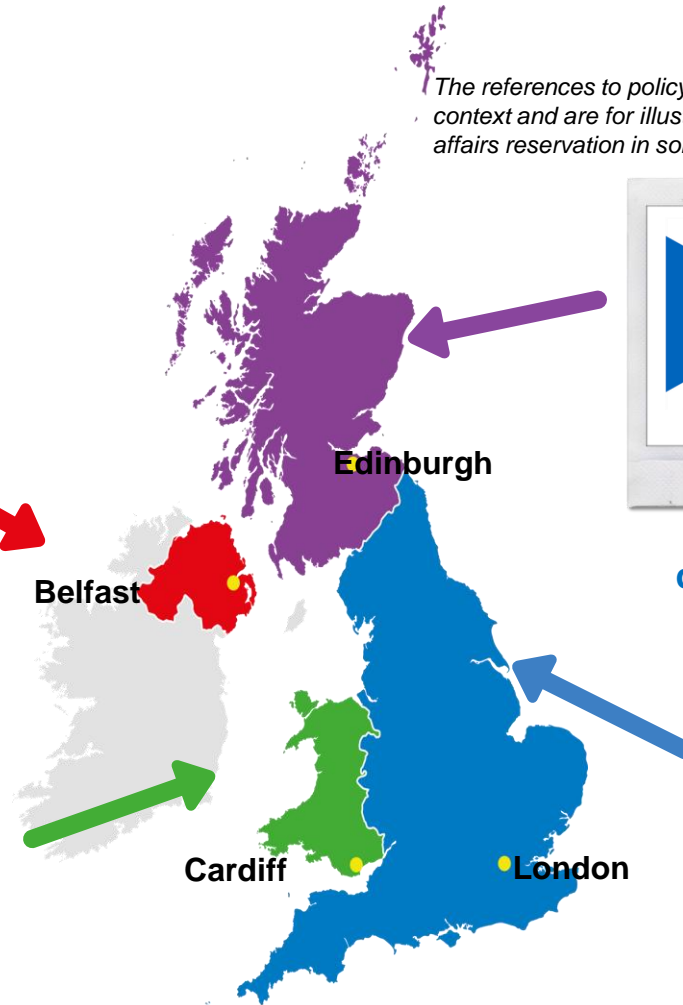
*The references to policy being devolved below apply in a domestic context and are for illustrative purposes. SSC policy engages the foreign affairs reservation in some aspects.*



DWP policy is fully transferred.



DWP policy is reserved



DWP policy Partially devolved





- Continued evolution in SSC arrangements, including Regulation 883
- Digitisation of Social Security and data sharing
- Interpretation by the courts?
- Importance of collaboration, shared interpretation and joint application

# Thank you



# COFFEE BREAK

11.00-11.30

*Scottish Social Security and Brexit: many  
complex moving parts*

PRESENTED BY:

**CAMILLA KIDNER**

**Senior Researcher in Social Security, Scottish Parliament Information Centre**



The Scottish Parliament  
Pàrlamaid na h-Alba



## SPICe academic fellowship scheme.



**The treatment of Scotland's devolved benefits in the EU-UK Trade and ...**  
24 March 2021

This briefing looks at how Scotland's devolved benefits are treated in the EU-UK Trade and Cooperation Agreement. It is the last of three briefings on Brexit and devolved social security.



**The treatment of Scotland's devolved benefits in the Withdrawal Agreement**  
08 February 2021

This briefing looks at how Scottish devolved benefits will be treated by the Withdrawal Agreement. This is the second of three briefings on the impact of Brexit on devolved social security.

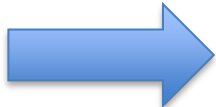



**What is social security co-ordination and why does it matter for Scotland?**  
14 December 2020

This briefing explains what EU social security co-ordination is, who and which benefits are covered, and the four basic principles which underpin the system. It is the first in a series of three briefings on Scottish social security and Brexit being produced under the Parliament's academic fellowship scheme.



# Social Security Devolution

- 2014 Independence Referendum  More devolution
- 2016 Scotland Act
  - Disability, Carer, Industrial Injuries
  - Winter heating, funeral expenses,
  - New benefits, 'top-up' reserved benefits
- 2018 Social Security (Scotland) Act  **Social Security Scotland**  
Tearainteachd Shòisealta Alba
- 2018 to 2025: regulations create
  - 'Scottish versions' of DWP benefits eg ADP replaces PIP
  - 'Scotland-only' benefits eg Scottish Child Payment

More detail: Scottish Government (2021) '[Social Security Slide Pack](#)'  
SPICe (2023) [Social Security in Six Charts](#)



“ social security is one of the largest delivery programmes and transfers of powers under devolution.

By the end of 2024-25, we will deliver 16.5 million payments a year to people in Scotland, worth around £6 billion to an estimated 2 million people”

[David Wallace, Chief Executive, Social Security Scotland, SJSS Committee, 29 June 2023](#)





## Benefits introduced so far:

Date	Benefit
2018	<b>Carers Allowance Supplement</b> Best Start Grant (Pregnancy and baby)
2019	Best Start Foods <b>Best Start Grants ('Toddler' and 'school age')</b> Funeral Support Payment <b>Young Carer Grant</b>
2020	<b>Child Winter Heating Assistance</b>
2021	<b>Scottish Child Payment</b> Child Disability Payment
2022	Adult Disability Payment
2023	Winter Heating Payment





## What's left to do?

	Scottish	DWP
2023	Carer Support Payment	Carer's Allowance
2024	Pension Age Disability Payment	Attendance Allowance
2025	Older People's Winter Heating Payment	Winter Fuel Payment
2025?	<b>Carers Additional Person Payment</b>	n/a
2025?	Employment Injury Assistance	Industrial Injuries Disablement Benefit



## Current Scottish Benefits

<b>SNCB</b>	<b>Social Security</b>
CDP mobility	CDP care component
ADP mobility	ADP daily living
Best Start Foods	<b>Child Winter Heating</b>
Funeral Support Payment	<b>Young Carer Grant</b>
<b>Scottish Child Payment</b>	<b>Carer's Allowance Supplement</b>
?Winter Heating Payment	



## Planned Scottish benefits

When ?	Scottish	DWP equivalent
2023	Carer Support Payment	Carer's Allowance
2024	Pension Age Disability	Attendance Allowance
2025	Pension Age Winter Heating	Winter Fuel Payment
? 2025	Carer Additional Person	n/a
? 2025	Employment Injury Assistance	IIDB



## Protocol exclusions

Part 1: SNCB	Part 2: Long term care
Best Start Foods	Carers Allowance Supplement
Best Start Grants	Young Carer Grant
Funeral Support Payment	Child Winter Heating Assistance
Scottish Child Payment	



## Unlisted benefits

Scottish benefit	Start date	UK version	Protocol heading
CDP mobility	2021	DLA mobility	SNCB
ADP mobility	2022	PIP mobility	SNCB
CDP care	2021	DLA care	Long term care
ADP daily living	2022	PIP daily living	Long term care
Winter heating payment	2023	Cold Weather Payment	Winter heating



## Future Scottish benefits

	Start	UK version	UK category
Carer Support Payment	2023	Carer's Allowance	Excluded Part 2
Pension Age Disability	2024	Attendance Allowance	Excluded Part 2
Pension Age Winter Heating	2025	Winter Fuel Payment	Excluded Part 3
Employment Injury Assistance	? 2025	Industrial Injuries Disablement Benefit	Included in protocol
Carer Additional Person	? 2025	n/a	





## Carer and Disability exceptions to residence rules

**Withdrawal Agreement: 'Protected cohort'** and UK is competent state:

- EU citizen in Scotland: 'past presence rules' don't apply
- UK citizen in EU: residence rules don't apply if: "genuine and sufficient link to Scotland"

**Not in 'protected cohort'** – no co-ordination rights.

- But – Employment Injury Assistance will engage co-ordination.



## In practice?

- Social Security Scotland [guidance for decision makers](#)
- Scottish Government officials decide on ‘competent state’
- 30 to 40 cases in six months
- More in future?





Thank you for your attention!

# Brexit from a Member State's perspective: challenges, unsolved riddles and lessons learnt

PRESENTED BY:

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MoveS visiting expert Austria**

# Content

- Short history of Brexit
- Description of the different legal instruments
- Relationship and differences between the different instruments
- Case studies on some aspects – *Caution! Trying to understand the legal framework can endanger your health!*
- Challenges for the administrations in an EU Member State and the UK



# Short history

- 23.6.2016: UK referendum: 51,9 % for „leave“
- 29.3.2017: withdrawal letter – date of withdrawal: 30.3.2019
- 25.3.2019: Regulation (EU) No 2019/500 for a „no-deal“ scenario in the field of social security
- 24.1.2020: **Withdrawal Agreement (WA)**
- 31.1.2020: withdrawal date – until then the UK was an EU Member State (MS)
- 1.2.2020 – 31.12.2020: transition period under the **WA** (EU law applicable as to a MS)
- 24.12.2020: **Trade and Cooperation Agreement (TCA)**
- 1.1.2021 – future: **TCA** applicable

# Legal instruments applicable for social security coordination

- until 31.1.2020: UK was an EU MS and the full acquis was applicable:
  - Regulation (EC) No 883/2004 and 987/2009; for third country nationals Regulation (EC) No 859/2003 (Regulation (EEC) No 1408/71 declared as applicable – e.g. 12 months posting period instead of 24 months)
- 1.2.2020 – 31.12.2020: EU law continues to apply under the **WA** – same situation as for EU MS
- 1.1.2021 – future:
  - for cases in a cross-border situation before or at the latest on 31.12.2020: EU law continues to apply in full or in part as long as the situation does not change (**WA**)
  - for all other cases the new coordination scheme applies under the **TCA** (Protocol on Social Security Coordination – Articles.SSC or .SSCI)



# Legal techniques

- From 1.1.2021 a parallel application of **WA** and **TCA** is possible
- **WA**: defines the persons to whom it applies (strong link to residence situation)
- **WA**: declares Regulations (EC) No 883/2004, No 987/2009 and 859/2003 or parts of it as applicable including rulings of the CJEU and AC Decisions
- **TCA**: applies to all persons in cross border situation including third country nationals (no exemption for DK)
- **TCA**: provides a detailed legal system comparable to the EU Regulations but not identical; rulings of the CJEU are not automatically applicable, for the interpretation the principles of the Vienna Convention on the Law of Treaties applies, AC Decisions are not relevant, unless they are included in the TCA

# Relationship between **WA** and **TCA**

- **WA** has priority over **TCA** (Article 775 TCA)
- Pragmatic approach: As the **WA** has a very complicated structure and personal scope, **TCA** is much broader and covers all persons and follows the same principles as EU-Regulations, solution under **TCA** could be sought first
- Only if **TCA** does not cover the benefit or has specific rules, **WA** has to be examined
- Nevertheless, for legally sound reasoning, **WA** has to be examined first, and only if it does not apply, **TCA** can be examined (important in case of future diverging developments)

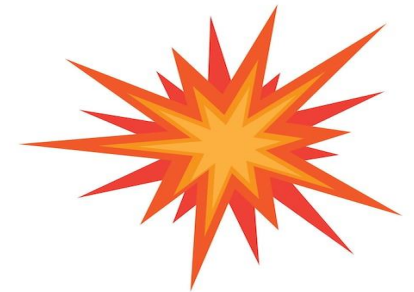
# Personal scope of the **WA** with relevance

- Full application of EU Regulations for the following persons (Article 30 of the **WA**):
  - MS/UK nationals subject to legislation of UK/MS on 31.12.2020
  - MS/UK nationals resident in UK/MS subject to the legislation of MS/UK on 31.12.2020
  - MS/UK nationals exercising a gainful activity in UK/MS and subject to the legislation of MS/UK on 31.12.2020
  - Stateless persons, refugees and third country nationals; family members of all of them
  - Other persons having a right to reside under the WA or a right to return (5 years – “dormant right”)
- Partial application (Article 32 of the **WA**):
  - Rights based on periods of MS/UK nationals in UK/MS before 1.1.2021
  - Family benefits and sickness coverage for MS/UK nationals with residence in a MS/UK, who are subject to the legislation of a MS/UK, when the family members reside in UK/MS



# Aspects not covered by the TCA

- The **TCA** does not cover the following issues
  - Exception agreements (comparable to Article 16 of Regulation (EC) No 883/2004)
  - Long-term care benefits (if [?] they are listed in Annex SSC-1 of the TCA)
  - Family benefits
  - Assisted conception services
  - Special non-contributory cash benefits and winter heating allowances
- The **TCA** has other solution than Regulation (EC) No 883/2004:
  - Special coordination for invalidity benefits
  - Special coordination for unemployment benefits (no export and no provisions for frontier workers (corresponding to Articles 64 and 65 of Regulation (EC) No 883/2004)
  - No provision in cases of “triangulation” – when also an EEA country or Switzerland is involved



# The strange role of “posting”

- Under the **TCA** the “normal” posting provision (comparable to Article 12 of Regulation (EC) No 883/2004) is only applicable if EU-MS opted for that (Article SSC.11) – all EU-MS opted for that; no possibility to prolong a posting with an exception agreement
- Under the **WA** due to Commission: as the WA does not provide any freedom to provide services: Posting only for employees not providing services (EU-MS have another interpretation)
- **Example:** Franz is posted from his AT employer to the UK. Is there a possibility to prolong the posting period?
  - posting started before 1.1.2021: Under the **WA** after 24 months a continuous affiliation to AT social security can be agreed with the UK under Article 16 of Regulation (EC) No 883/2004
  - posting started after 1.1.2021: Under the **TCA** after 24 months the *lex loci laboris* principle applies and the UK legislation becomes applicable without any possibility to change it



# Long-term care (LTC) benefits

- Exemption of benefits in cash or also in kind? What happens to LTC-benefits not listed in Annex SSC-1?
- **Example:** Maria is an AT national who resides in the UK and receives only an AT Pension. Is she entitled to the Austrian LTC-benefit?
  - If Maria has moved to the UK before 1.1.2021, she is covered by Article 30 (1) of the **WA** and AT has to export its LTC-cash benefit, even when the pension starts only after that date
  - If Maria has also worked in the UK before 1.1.2021 but is not yet entitled to a UK pension, AT has to export its LTC-cash benefit even when Maria moved to the UK only after 31.12.2020 (case of Article 32 (1) (a) and (2) of the **WA**)
  - If Maria moves to the UK after 31.12.2020 and has never before worked in the UK it is a case under the **TCA** and AT does not have to export its LTC-cash benefit

# Family benefits

- Family benefits can only be coordinated under the **WA**, in the same way as under Regulation (EC) No 883/2004
- **Example:** John is a UK national and works in AT, his wife Elisabeth and the two children Susan and William reside in the UK. Has AT to grant family benefits for the 2 children?
  - If John started to work in AT before 1.1.2021: yes under Article 30 (1) of the **WA** as long as the situation does not change
  - If John returns to the UK on 1.6.2021 and has already acquired a right to permanent residence in AT, and takes up a new job in AT on 1.1.2026: yes under Article 30 (4) of the **WA** (“dormant right”)
  - If John starts to work in AT for the first time or without a “dormant right” on 1.2.2021: no, as this is a case under the **TCA** only



# SNCBs

- Special coordination (no export) under the **WA**; not covered by the **TCA**
- **Example**: Fiona is an IE citizen who has worked in the UK; she transfers her residence with a small UK pension to AT. Is she entitled to the AT Compensatory supplement, which is a SNCB and tops up (only) AT pensions?
  - If Fiona has worked in the UK already before 1.1.2021 she is entitled to that top-up benefit under Article 32 (1) (a) of the **WA**, even if she transfers the residence to AT after 31.12.2020 and the UK pension becomes payable after that date
  - If Fiona has started to work in the UK after 31.12.2020 it is a case under the **TCA** and she is not entitled (no assimilation of facts)



# Invalidity benefits

- Under the **TCA** no Export (Article SSC.8 (b)) and special coordination (Article SSC.39)
- Only the competent MS/UK has to grant its invalidity benefits and it is not obliged to take into account periods completed in another MS/UK
- **Example:** Otto is a DE national; he has worked in DE, IE and UK, he becomes invalid. Which invalidity benefits are granted?
  - If Otto started to work in the UK before 1.1.2021 under Article 30 or 32 (1) (a) of the **WA** DE, IE and UK have to grant invalidity benefits as under Regulation (EC) No 883/2004
  - If Otto started to work in the UK only after 31.12.2020 under the **TCA** only UK has to grant its invalidity benefit as long as he resides there; if he moves to DE only DE is obliged; is IE obliged to grant its invalidity benefit under Regulation (EC) No 883/2004 (DE and IE are EU MS)? Either **TCA** or Regulation (EC) No 883/2004 by all or both instruments in parallel? But, **TCA** has priority over Regulation (EC) No 883/2004
- Special provision for AT in Annex CSS-6/AT/(6) – same calculation as for old-age pensions





# Unemployment benefits

- Under the **TCA** no export or frontier worker provision
- **Example:** Claire is a FR national, she has worked in the UK and becomes unemployed. Is she entitled to export the UK unemployment benefit to a MS?
  - If she started to work before 1.1.2021 in the UK, she falls under Article 30 of the **WA** and remains subject to the UK legislation also during the receipt of the unemployment benefit (Article 11 (2) of Regulation (EC) No 883/2004) – she can export the benefit to FR, but also to any other MS
  - If she worked previously in the UK and does not work in the UK on 31.12.2020 but has a right to return under the **WA**, comes back to the UK in 2023, starts to work there again and becomes unemployed in 2024 – she can export the benefit to FR, but also to any other MS
  - If she worked previously in the UK and works in FR on 31.12.2020 but has a right to return, becomes unemployed in FR in 2023 during the 5-years period of dormant right – she can export the benefit under the **WA** to UK
  - If she started to work after 31.12.2020 in the UK for the first time and becomes unemployed, there is not right of export of the benefit to any MS as the **TCA** applies



# Impact of the Brexit-package on administrations

- Is the coordination of social security systems under Regulation (EC) No 883/2004 already complex?
- The Brexit-package consisting of the **WA** and the **TCA** added many layers of complexity; for citizens and administrations it is nearly impossible to foresee and apply the correct legal situation
  - The **TCA** tries to follow the same system as under EU-law, but fails in some important aspects, in which new ways of coordination are “tested”
  - If the **WA** has to be applied, the application is confronted with a fragmented and very complex personal scope; usually the residence situation of a person is not relevant for the application of coordinating instruments – how to get the necessary information?
  - EESSI, Portable Documents, AC-Decisions have to be transposed to the **TCA**; although the same text applies, a uniform and synchronized application is not guaranteed



# Lessons to be learned from Brexit

- From a pragmatic point of view: No further leaving of the EU! It leads inevitably to nearly unsurmountable problems for citizens and administrations in the field of social security
- It seems that coordination instruments with third countries are not the strength of the EU:
  - International principles of coordination (e.g. posting, exception agreements) are not included
  - even if the coordination is limited to some core principles, third countries are not willing or interested to conclude such instruments with the EU (association and cooperation agreements e.g. with the Maghreb Countries)
- Better stick to the old bilateral Agreements in relation to third countries?

Thank you for your attention!

# LUNCH BREAK

12.30-13.30

# Application of the Withdrawal Agreement and Trade and Cooperation from the perspective of Spain

PRESENTED BY:

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**MoveS visiting expert Spain**

1. Some ideas on the social origin of Brexit
2. Overview of the two Brexit agreements
3. Mobility under WA
4. SSC under WA
5. Mobility under TCA
6. SSC under TCA
7. Gibraltar

# 1. The social origin of Brexit



1. UK promoted EU **enlargement** in 2004  
no adoption transitional **limitations on**  
FMW
  2. 2013 FMW correction (letter to EU  
Council from Home Affair ministers AT,  
DE, NL & UK)
  3. Nov. 2015. Cameron's letter to  
European Council president (Tusk):  
**control** immigration (single market)
  4. Feb 2016 EU Council Decision "New  
settlement for the UK within the EU"  
**concessions** on basic EU social  
principles of FMW + SSC (Family  
benefits indexation).
  5. June 2016 **judgement** C-308/14 legal  
residence and access to British non-  
contributory family benefits (\*)
- 1. A million of "unexpected"  
migrants in (2008) with the crisis  
+ Public concern
  - 2. Commission communication  
2013 (trying to prove them  
wrong) → limited effect
  - 3. Referendum as electoral  
promise
  - 4. Decision never in force and  
against EU law (CJEU 16-6-2022,  
C-328/20)
  - 5. Directive 2004/38 Art. 24  
limitation only for social  
assistance and residence  
according to the Directive (\*)  
TJUE 6-10-2020 C-181/19 Jobcenter  
Krefeld and TJUE 1-8-2022, C-411/20 S

## 2. Overview of the two Brexit Agreements



### 2021: two Agreements in force ► WA +TCA

- New Trade and Cooperation Agreement, does **not replace** nor supersede any part of the Withdrawal Agreement.
- For the **privileged citizens under the WA ► TCA is not applicable.**

### TCA hard/short negotiation during COVID-19

*“This will be the first negotiation in history where both parties started off with free trade and discussed what barriers to erect”.*

Pascal Lamy, former head of the World Trade Organization

## 2. Overview of the two Brexit Agreements

Agreement	Withdrawal (WA)	Trade and Cooperation (TCA)
Objective	Protect rights of citizens that exercised FMW before Brexit. (* NI Protocol and UK financial obligations)	Trade, fish stocks... only social “level playing field” + social security coordination
Negotiation	2 years & 7 months	11 months
Signed	17/10/2019	24/12/2020 (provisional) 28/4/2021 (definitive)
Published	31/1/2020 (Decision 2020/135)	30/4/2021 (Decision 2021/689)
In force	31/12/2020 (23/24 h) (Transition period until 1/1/2021)	1/1/2021 (provisional version) 1/5/2021 (definitive version)
Length	177 pages	2.500 pages



## 2. Overview of the two Brexit Agreements

Agreement	Withdrawal (WA)	Trade and Cooperation (TCA)
Mobility	<p>No FMW</p> <ul style="list-style-type: none"> <li>– Pre-existing residence/ work rights in host MS</li> <li>– No discrimination</li> </ul>	<p>No FMW</p> <ul style="list-style-type: none"> <li>– TCN status (aliens and immigration laws)</li> <li>– Intra-company posting</li> <li>– Visa-free short travel</li> </ul>
Social security	SSC Title (EU coord. Regulations)	TCA Protocol on SSC (247 pages + sunset clause)
EU law/EUCJ	Yes	No
Monitoring	<p>National Courts UK (IMA) / EU Commission Joint Spec. Committee on Citizens' rights</p>	<p>National Courts Partnership Council SSC Spec. Committee</p>
Gibraltar	Yes	No

### 3. Mobility under the WA



#### Personal scope → Pre-Brexit Citizens

EU and UK citizens who **exercised FMW before 2020** (cross-border situation EU/UK) and had the right to (AND/OR):

- a. **lawful residence** (national transposition of Directive 2004/38/CE) (no need of permanent residence and allowed absences)
- b. **work** (TFUE Art. 45 and 49 directly applicable) (Included frontier workers)

**Maintain these rights** in the host MS after 2020 (for UK nationals only one MS)

Rights also granted to **core/close family members** irrespective of their nationality

- children are protected when and wherever they are born (even if born outside the host MS and/or after 2020)
- undocumented **extended family are excluded** (UK Batool judgement August 2022)

Including **inactive EU UK citizens** lawfully residing in the host MS

“Aporophobia”(\*) **problems**: compliance with temporary residence requirements (having sufficient resources+ comprehensive healthcare insurance)

(\*) Adela Cortina Spanish philosopher.

### 3. Mobility under the WA



#### No more free provision of services?

SSC Posting rules under Regulations  $\neq$  **Directive 96/71**

- (1) Directive is not applicable to **EU undertakings** posting to UK.
- (2) Directive is indirectly applicable to **UK undertakings** posting to EU (Spain) as they cannot have more favourable treatment than EU undertakings (Art. 1(4) of the Directive).
- (3) Directive applicable to **EU undertakings** posting TCN with legal residents + job permit (also British nationals under WA agreement) **to another MS. Not job permit** abroad is needed (Van der Elst).

(\*) Doubtful if employers should be required that posted workers **have a visa for their TCN employees** when posting exceeds the duration of the Schengen circulation right (90 days out of 180). Pending Case C-540/22 regarding freedom to provide services (TFEU Articles 56 and 57)

**EU legislation protection:** Directive 2014/66/EU protects the intra-corporate transferees of UK undertakings posting managers, specialists to EU companies

### 3. Mobility under the WA



**Constitutive residence scheme** <in UK EUSS + 14 MS (Belgium, Denmark, France, Latvia, Luxembourg, Hungary, Malta, The Netherlands, Austria, Romania, Slovenia, Finland, and Sweden)

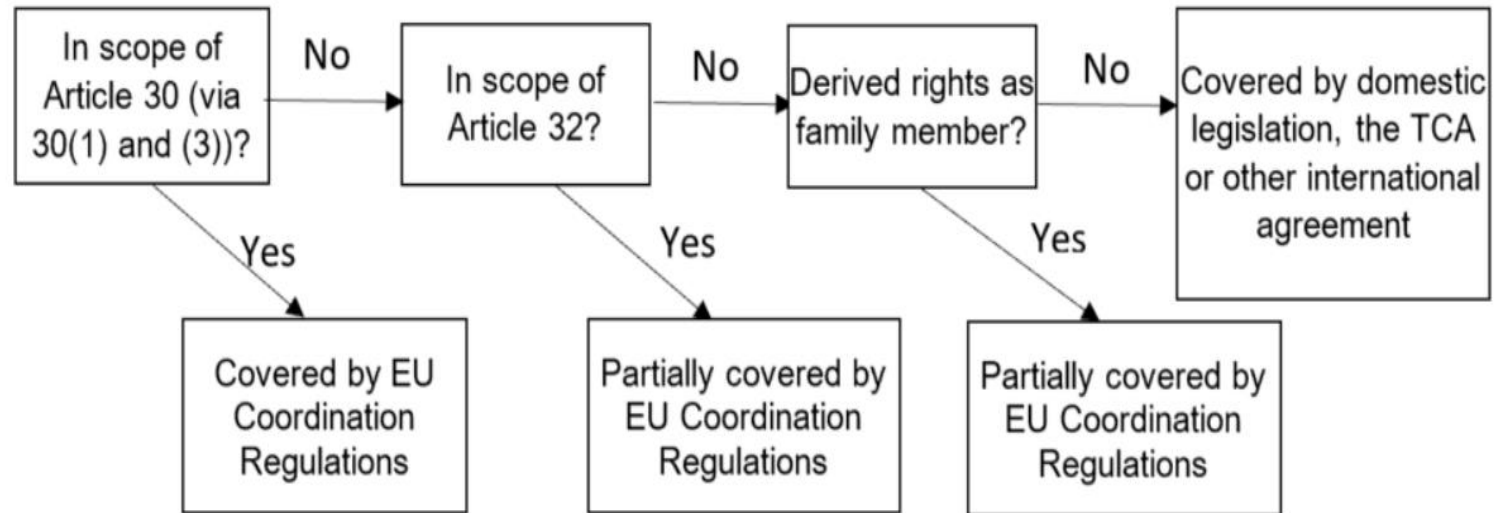
**In Spain a declaratory residence scheme** + 13 MS (Czech Republic, Germany, Estonia, Ireland, Spain, Croatia, Italy, Cyprus, Lithuania, Poland, Portugal and Slovakia)

- Automatic if WA conditions are met (like in the Directive 2004/38)
- It is recommended to apply for a **residence biometric Spanish card** as beneficiary of the WA. **In 2022** (last data available):
  - 420,158 estimated residents ↔ 201,658 documented residents
  - 21,903 applications in 2022: permanent residence granted (13,674) and presettled status (6,609)
- Punctual **problems** (Spanish Courts judgements):
  - Denial of WA status: to alleged workers with a pre-labour contract starting after the transitional period + inactive persons with a late CSI cover after the end of the transitional period...
  - No equal treatment on grounds of nationality WA UK citizens (Spain host MS): access to public employment, Spanish healthcare, non-recognition of professional experience in the UK...

## 4. Social Security under the WA

Two options:

- A. Full application of Regulations (for those under **Art. 30 WA**)
- B. Partial application of Regulations (for those under **Art. 32 WA**)



Source: UK Guidance relating to the UK's operational implementation of the social security coordination provisions of Part 2 of the WA

## 4. Social Security under the WA



### A. Who is under Art. 30 WA? (full application of coordination Regulations)

Those in SSC cross-border situation (Art. 30.1 WA): **EU /UK citizens + stateless persons, refugees** and TCN legal residents

- Subjected to the national SS legislation of the counterpart according to the coordination Regulations **before 2020** (Title II of Reg 883/2004: migrants, posted workers, multi-State workers, frontier workers...)
- *“for as long as they continue without interruption to be in one of the situations set out in that paragraph involving both a Member State and the United Kingdom at the same time”*
- Including their **family members and survivors** (any nationality and not necessarily in a cross-border situation)

Those with residence rights (Art. 30.3 WA): EU/UK citizens that have a right of residence under art. 10 WA

- While they **maintain the right of residence** (absences are allowed)
- Including their **family members**

(\* ) The **SSC status under the WA is not fixed** (circumstances can change)

## 4. Social Security under the WA



### B. Who is under Art. 32 WA? (partial application in special situations)

Those not covered or no longer covered by Art. 30 WA (contribution records before 2021)

What part of the coordination Regulations applies?

- **Aggregation rules** including rights and obligations deriving from such periods in accordance with Regulation (EC) No 883/2004 (for meeting periods and for calculation)
- **Ongoing coordination situations** (that **started before 2020**) regarding:
  - Healthcare benefits:** complete sickness benefits chapter 1 of Reg 883/2004 to persons entitled to healthcare (S1, S2, EHIC) considering the receiving benefits (Art. 32.2 WA)
    - Ongoing planned treatment
    - Unplanned healthcare during a stay abroad
  - Family benefits:** under Art. 67, 68 and 69 of Reg 883/2004 (Art. 32.1 (d) and (e) WA)
    - Family benefits (d) and family member derived rights (e)
    - Beneficiaries entitled under coordination Regulations by the end of the transition period
    - The benefit does not need to be in receipt (but eligibility must exist)

## 5. Mobility under the TCA



### No regulation of **mobility or freedom to provide services** (UK opposed)

- Visa-free 90 days visits within any 180-day period
- No automatic recognition of qualifications
- Only intra-corporate temporary *posting* (mode 4) similar to intra-corporate transfer for TCN (Directive 2014/66/EU)
- Work and residence national permits: alien & immigrant law
- In Spain a [new digital nomad visa](#) and residence permit (2023)
  - **Not insured under Spanish Social Security:** acceptance of a PDA1 (UK and Spain are applying Article 12 BR on posting) or a S1 as CSI coverage.
  - **SSC: the AC telework framework agreement** avoiding the application of residence social security (less than 50%). Spain has signed it, but UK has refused because it is not possible to control where the teleworkers are actually working

(\* **Equal treatment of TCN under EU Law**, protect also British nationals (Directive 2003/109/EC long term residence; Directive 2009/50 high qualified workers, Directive 2011/98/EU single application...))



## 6. SSC under the TCA



### Similarities and differences

- Controversial benefits are **excluded** (Art. 3(4) family benefits, SNCB <disabled persons>, LTC, some sickness benefits in kind (assisted conception), and payments to meet expenses for heating in cold weather)
- Some benefits are **not exportable** TCA Article SSC.8.b (unemployment and contributive invalidity benefits. Spain always exported contributory invalidity pensions worldwide + UK has bilateral agreements with other countries exporting them.
- **Principles:**
  - No discrimination between Member States (Art. 4 SSC protocol);
  - Equal treatment under the applicable SS legislation (Art. 5);
  - Assimilation: equal consideration of benefits, income, facts or events (Art. 6);
  - Totalization: aggregation of periods (Art. 7);
  - Exportation of benefits: waiving of residence clauses. Except for unemployment and invalidity benefits (Art. 8);
  - Preventing overlapping of benefits (Art. 9); and
  - Unicity of applicable legislation (Art. 10).

## 6. SSC under the TCA



### Similarities and differences

- Exception **Posted Workers** (TCA Article SSC.11) = Regulation CE/883/2004 Article 12.
- **No extension beyond 24 months**: no flexibility (no Article 16 Regulation CE/883/2004).
  - . MS cannot negotiate **bilateral agreements** with UK as the Protocol forbids unequal treatment between MS TCA Article SSC. 4).
  - . Decision (UE) 2021/689 allows bilateral agreements on social security but not covering topics already treated under the TCA (this is the case on determination of applicable law under SSC protocol).
  - . Should the SSC Protocol be amended for providing more flexibility and allowing derogation of applicable legislation (beyond the cases of posting)?

## 6. SSC under the TCA



**How long** does the TCA SSC Protocol last? In principle **15 years** (2036)

### *ARTICLE 69. Termination of this Protocol*

*Without prejudice to Article 779 of this Agreement, each Party may at any moment terminate this Protocol, by written notification through diplomatic channels. In that event, this Protocol shall cease to be in force on the first day of the ninth month following the date of notification.*

### *Article 70. Sunset clause*

- 1. This Protocol shall cease to apply fifteen years after the entry into force of this Agreement.*
- 2. Not less than 12 months before this Protocol ceases to apply in accordance with paragraph 1, either Party shall notify the other Party of its wish to enter into negotiations with a view to concluding an updated Protocol*

### *Article 71. Post-termination arrangements*

*When this Protocol ceases to apply pursuant to Article SSC.69, Article SSC.70 or Article 779 of this Agreement, the rights of insured persons regarding entitlements which are based on periods completed or facts or events that occurred before this Protocol ceases to apply shall be retained. The Partnership Council may lay down additional arrangements setting out appropriate consequential and transitional arrangements in good time before this Protocol ceases to apply*

**Is this normal /reasonable for a SS agreement?**

## 7. Gibraltar



*“Gibraltar y sus residentes están hasta los cojones del Brexit y sus consecuencias”*

“Gibraltar and its residents are fed up with Brexit and its consequences”

Fabian Picardo. Chief Minister of Gibraltar. Interview in El País 9/9/2023

- 32.600 inhabitants. **95% Remainers** in Brexit referendum
- Gibraltar **included in WA** **excluded in TCA**
- **NO hard Brexit** because EC and UK are negotiating a specific international agreement considering the New Year’s Eve framework agreement (2020-2021) reached between Spain and UK on Gibraltar (bilateral)
- Current objective: building a kind of **Schengen area** ⇔ Stoppers: **Spanish police control of Passports & Common use of the airport**
- This agreement is no signed yet!

(\* ) Uncertainty: Spanish and Gibraltar Governments to be decided by the end of the year...

## 7. Gibraltar sovereignty problems



- **Utrecht Treaty** (1713) Spain ceded the city, the fortress and the port to England forever + if UK decides to relinquish control of Gibraltar, Spain would get first choice on whether to take Gibraltar back
- **Spain** wants Gibraltar back (decolonization + territorial integrity). Claims that there was not cession of territorial waters and denounces the illegal occupation of the isthmus (in 1938 during Spanish civil war), where the airport was built. It is against the expansion of the Gibraltar territory by building platforms in the sea.
- **UK** wants Gibraltar as a British Overseas Territory (the only one in Europe) and maintain strategic control. Gibraltar has its own Government; Gibraltarians are not always UK citizens. UK is responsible for the territory's defence and international relations
- **Gibraltar** people want to continue being “British” but keeping smooth mobility with Spain (not hard Brexit) (\*)

(\*) After a Gibraltarian referendum refusing Spanish sovereignty, Franco closed the border in 1967. It was only opened it in 1986 as a British requirement to allow Spain enter the EEC.

## 7. Gibraltar



- **SSC under WA**: equal treatment on the grounds of nationality and coordination Regulations apply.
  - (\*) Gibraltar has the same social security system than UK.
- **SSC out of the TCA**: not application of the SSC Protocol to new cross-border situations after the transition period.
  - New Spanish/EU frontier workers
  - Gibraltar citizens, with health problems staying or residing in Spain, or living *de facto* in Cadiz.
- **Spanish transitional measures** based on reciprocity with UK apply (under Royal Decree-law 38/2020 )
  - **in force Article 10** (until 31 Dec 2024): unemployment benefits. Even posting from/to Gibraltar (online PDA1) **Article 9**.
  - **not in force Article 11**(until June 2022): healthcare.

## Some useful information



- **WA Commission Guidance:**  
[https://ec.europa.eu/info/sites/default/files/brexit\\_files/info\\_site/c-2020-2939\\_en.pdf](https://ec.europa.eu/info/sites/default/files/brexit_files/info_site/c-2020-2939_en.pdf)
- **The UK guidance:** <https://www.gov.uk/government/publications/social-security-arrangements-between-the-uk-and-the-eu-from-1-january-2021-staff-guide>
- **EU Declaration MS categories under TCA Article SSC.11:** <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2020:444:FULL&from=EN>
- **Gibraltar situation and the Brexit Adjustment Reserve:**  
[https://www.europarl.europa.eu/doceo/document/E-9-2020-007099-ASW\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/E-9-2020-007099-ASW_EN.pdf)
- Carrascosa, D. “Key Ideas on Mobility and Social Security after Brexit.” ERA Forum 22, 387–406 (2021). <https://doi.org/10.1007/s12027-021-00685-3>

Thank you for your attention!  
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# Informal problem-solving by SOLVIT in UK-related social security coordination cases

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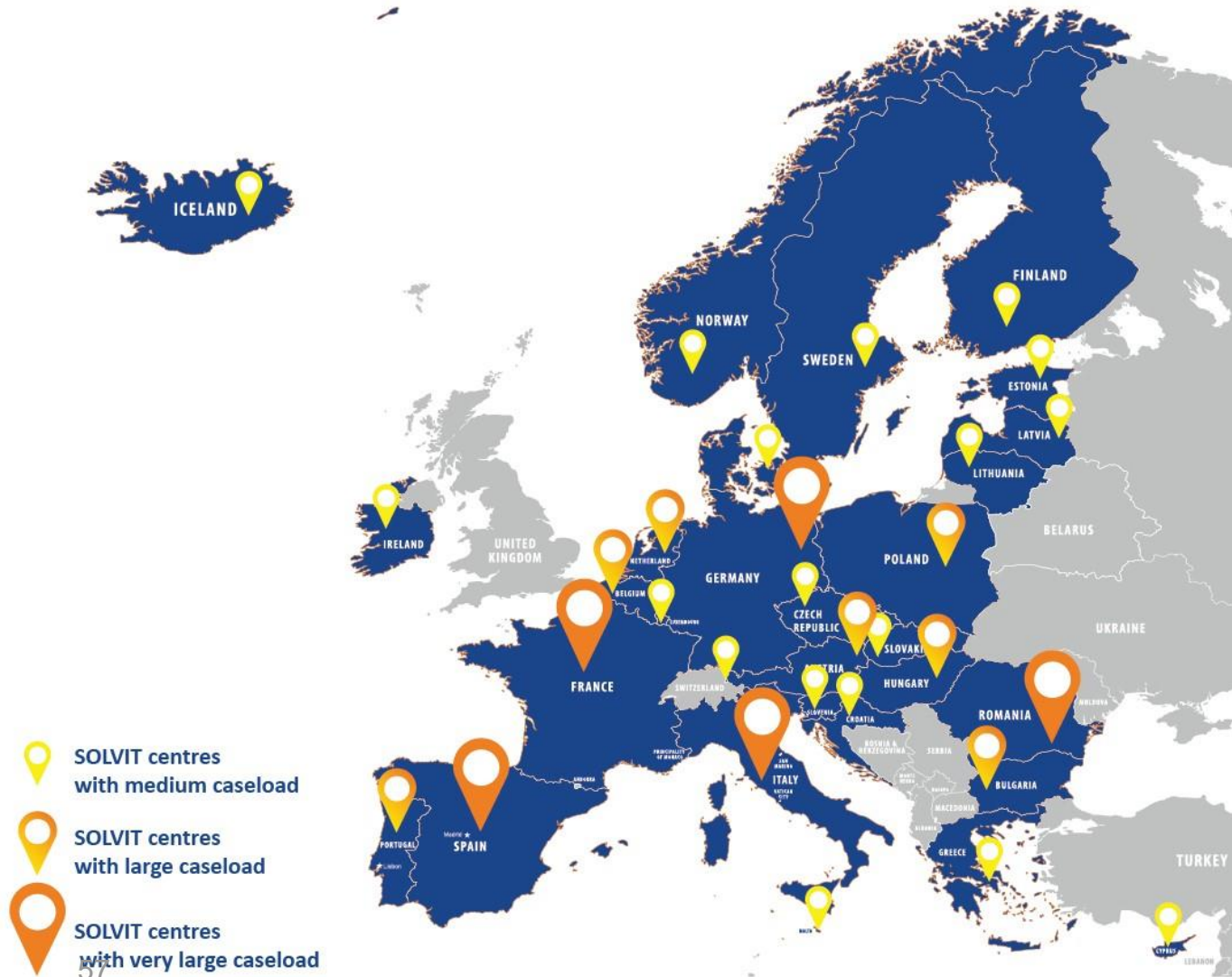
**GILLIAN MORE**

**SOLVIT team, DG GROW - Internal Market, Industry, Entrepreneurship and SMEs  
European Commission**

# Content overview

- ❑ The SOLVIT Network - how it works
- ❑ SOLVIT post-Brexit and UK-related cases
- ❑ UK-related social security coordination problems seen in SOLVIT

# What is SOLVIT?



- A network of **public servants** in EU national administrations & in Norway, Liechtenstein and Iceland
- Online service helping businesses & individuals solve individual problems caused by **incorrect application of EU law in single market** by an authority in another country (=cross-border dimension)
- Legal Basis: Commission Recommendation (soft law)

# Finding SOLVIT – submitting a complaint

## Submit an enquiry or complaint

1/...

### 1. Select the service you need

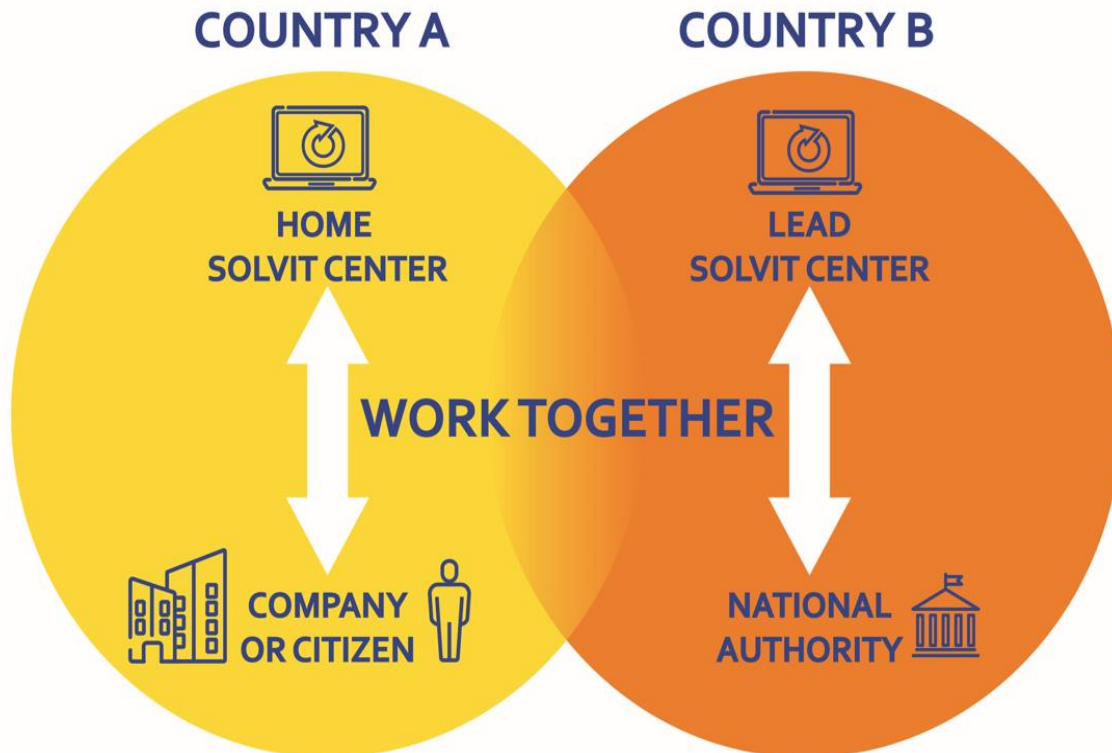
There are different services available depending on your needs.

By answering the following questions, we can direct you to the most appropriate service.

- Information and advice on EU rights (for individuals and businesses)
- Solve problems with a public body regarding EU rights (for individuals and businesses)

- [SOLVIT website](#)
- [Your Europe assistance service finder](#)
- [Online map of EU networks](#)
- [Europa website](#) – means of redress for breaches or misapplication of EU law
- Via referrals from other networks or partners (Europe Direct, Your Europe Advice, Enterprise Europe Network, EURES, European Consumer Network ...)

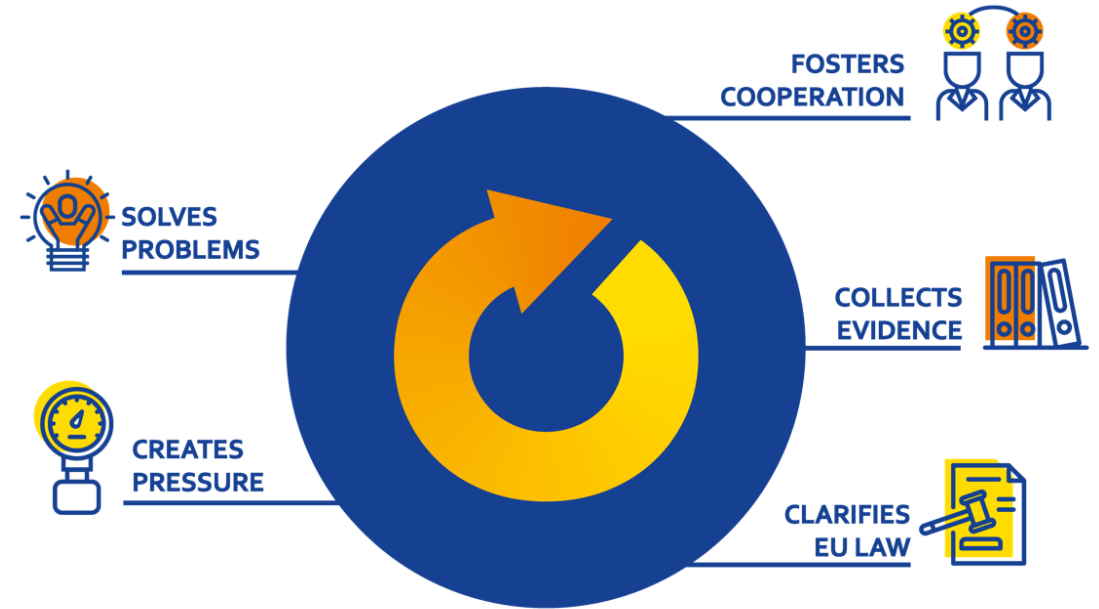
## How SOLVIT works: administrative peer pressure in practice



1. Complaint filed via online form
2. Home Centre checks complaint is eligible;
3. If case is eligible, Home Centre forwards it to SOLVIT Centre in the country where problem occurred
4. Lead SOLVIT Centre works with the responsible national centre to resolve problem;
5. Home Centre keeps the complainant informed about results achieved.

# Role of the European Commission

- Case handling performed by national SOLVIT centres
- Network supported by the European Commission:
  - provision of database (via Internal Market Information System – “IMI”)
  - practical and legal training
  - guidelines and network management
  - informal legal advice from EC experts
  - data from SOLVIT cases feeds into COM policy-making and enforcement work



# Handling UK-related cases in SOLVIT post-Brexit

- SOLVIT Centres have discretion as to whether they accept UK-related cases
- Majority of cases accepted are ones that involve their own national administration
- In some of these cases we have sought informal legal advice from Commission experts

UK-related cases closed in SOLVIT in 2021	UK-related cases closed in SOLVIT in 2022	UK-related cases 2023
112 submitted	84 submitted	Various cases ongoing
24 accepted	34 accepted	
Residence rights, visas for family members and social security coordination	Residence rights, social security coordination, driving licences, recognition of UK academic qualification	Social security coordination, recognition of professional qualifications, recognition of UK professional experience, residence rights.

# Some examples of SOLVIT UK-EU social security coordination problems post-Brexit



# An early example

## SOLVIT case 0955/2021

The applicant, a UK national residing in Spain, was in receipt of unemployment benefit in Spain which she had been claiming since 24th December 2020. As she could not find work in Spain, she wanted to return to UK to register as unemployed and look for work there. She sought to export her UB for 3 months but was told that, as the UK had left the EU, this was not possible.

Case was accepted by SOLVIT Spain. They contacted the unemployment office concerned, explained the relevant part of the EU-UK WA and the applicant was issued with her U2 portable document.

# A more difficult case

## **SOLVIT Case 0271/22**

Hungarian mother living in Germany, whose ex-partner and father of her child lives in UK. She gave up her job to undertake training. German Familienkasse (Bayern) contacted her April 2021 to say UK was now primarily responsible for family benefits and she must ask for these in the UK. It also demanded reimbursement of benefits she had received in DE. She contacted her ex-partner, who made contact with UK authorities – they said they had received nothing from the German Familienkasse.

The mother contacted a German church organisation which in turn contacted SOLVIT.

EC SOLVIT team contacted UK FB authority, HMRC, and asked them to trace – with the international case ID - the EESSI communication sent by the German Familienkasse. It turned out HMRC could not open the EESSI message. In the end, the Familienkasse sent a new request in EESSI and this was received. HMRC also sent forms to mother for her to apply for UK family benefits for child. We don't know the final outcome for definite but think matter was settled.

# Family Benefits Belgium case

## SOLVIT Case 4359/22

Applicant is a UK national living in Belgium, who receives BE family benefits for daughter. Benefits payable for children in education up to age of 25. Daughter starts university in UK and Belgian institution informs applicant it can only pay these benefits in the UK for one year. This is the same rule as applies to Belgian nationals studying in a third country.

SOLVIT Belgium accepted the case and informed EC SOLVIT that the Belgian institution believed it was unequal treatment to pay benefits for the UK national's daughter and not to Belgian nationals' children abroad. SOLVIT Belgium obtained informal legal advice from EC expert.

Recent contact with applicant shows SOLVIT case was a success as, in second year of study, daughter still receives Belgian FB!

# Another difficult/insoluble one

**SOLVIT Case 0167/22** Dutch national, with work record in NL and UK, working in UK falls ill, forced to leave his job and leaves UK in late 2020 before Brexit. He ends up living semi-destitute with friends in Germany. He incurs medical costs due to his illness. At a distance on 29.12.20 he successfully claimed UK Employment and Support Allowance (ESA) which was paid for 365 days as a lump sum. As he is resident in Germany, he is required to pay for German Krankenkasse (health insurance).

SOLVIT NL takes up case and helps applicant make application for pro-rata invalidity benefit in NL. Questions about his additional entitlement to long-term employment and support allowance (“ESA Support”) in the UK based on his long UK work record? Questions about how he can reclaim his healthcare costs from the UK for period when he received ESA? EC SOLVIT tried to refer to UK-based NGO.

# Telework between UK and EU?

**SOLVIT Case 0251/23** German national working as UK university lecturer on a fixed-term contract, returns in July 2022 to Germany and carries out her work remotely (with occasional trips to UK). She requests S1 Portable document from UK but there is no reply and she has problems accessing healthcare. She contacts SOLVIT.

EC SOLVIT contacted UK authorities and facilitated a reply from the UK, which refused the S1 portable document. UK authorities said her remote work was subject to German law. SOLVIT DE contacted DE ministry, which took view applicant could rely on posting rules. SOLVIT DE advised the applicant to ask her employer to apply for an A1 portable document from UK authority and make a new request for S1.

# Some conclusions from UK-related cases seen in SOLVIT

- Many of the problems SOLVIT sees are problems that exist under the EU social security coordination rules e.g. communication of social security information between institutions; procedures where change of competence for family benefits;
- Some cases show, e.g. 4359/22, that the institutions are having some difficulties adapting to the Withdrawal Agreement rules;
- Others show a lack of practical information for both advisers and citizens on how social security coordination between the UK and the EU functions post-Brexit.

# More information available about SOLVIT



- [Report on 20 years of SOLVIT](#) published on 26 September 2022
- SOLVIT website [What is SOLVIT? - European Commission \(europa.eu\)](#)

Thank you for your attention!



# COFFEE BREAK

14.30-14.50

**Roundtable chaired by Simon Roberts with speakers taking questions from the audience:  
Bernhard Spiegel, Camilla Kidner, Els Vertongen, Gillian More, Dolores Carrascosa Bermejo,  
Sophia Harrington and Charlotte O'Brien**

# CLOSING