

# MoveS seminar Bulgaria

*Posting of workers abroad in the framework of provision of services – free movement and social security*

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**25 October 2023**

*Sofia University "St. Kliment Ohridski"*

*New conference hall*

*15 Tsar Osvoboditel Blvd., 1000 Sofia (Bulgaria)*

Language: BG/EN

# WELCOMING WORDS

Professor Krassimira Sredkova

# Представяне на проекта MoveS (Движение и социална сигурност)

# MoveS

Мрежа от независими правни експерти  
в ЕС в областта на свободното  
движение на работници и служители,  
координация на социалната сигурност и  
изпращане в рамките на предоставяне  
на услуги в ЕС

- Финансиране от Европейската комисия (DG EMPL units E1 'FMW' and E2 'SSC')
- Включени 32 държави (ЕС/ЕИО/Швейцария/Обединеното кралство)
- Осъществяване от Eftheia, Deloitte Advisory & Consulting, Университети в Любляна и Поитие
- Четиригодишен проект (2022-2025)

# Предмет на дейност

(1) Предоставяне на правна експертиза в областите на СДРС, СС и изпращане на работници и служители

- **Правни доклади**
- Двумесечни **доклади от наблюдение**
- **Въпроси ad hoc and сравнителни оценки**

## Правни доклади на MoveS

- 2023 *„Връзката между регламентите за координация на системите за соци и самостоятелна заетост“ална сигурност и Директивата за прилагане на правата на пациентите при трансгранична медицинска помощ“*
- 2022 *‘Социална сигурност и данъчно право в трансгранични случаи‘*
- 2020 *‘Правното положение и правата на членовете на семействата на работниците и служителите, които се движат в ЕС‘*
- 2019 *‘Прилагането на системите за координация на правилата за съвременните форми на семейство‘*
- 2019 *‘Прилагането на правилата за свободно движение на работниците и служителите и за координация на правилата за системите на социална сигурност от националните съдилища‘ (2020)*
- 2018 *‘Координация на социалната сигурност и нетипични форми на наемане на работа и самостоятелна заетост‘*
- 2018 *‘Последици и възможни решения в случай на изплащане*

# Предмет на дейност:

(2) Разпространение на експертизата и увеличаване на знанията на специалистите и правоприложителите чрез:

- **Национални семинари**
- **Електронни обсъждания**
- **Средства за информиране и общуване**
- **Квалификация на персонала на ЕС**



# Семинари и електронни обсъждания

- 8 едnodневни семинара годишно
- 3 електронни обсъждания
- Участници: Представители на компетентните власти и институции, социалните партньори, НПО, съдии, адвокати и академични специалисти

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	<b>Дата (2023)</b>	<b>Държава (град)</b>
1.	23/02	Полша (Варшава)
2.	21/04	Италия (Торино)
3.	26/05	Швейцария (Лозана)
4.	16/06	Естония (Талин)
5.	29/06	Австрия (Залцбург)
6.	12/09	Обединено кралство (Нотингам)
7.	09/10	Португалия (Коибра)
8.	25/10	България (София)

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	<b>Дата (2023)</b>	<b>Тема</b>
1.	24/04	Координация на социалната сигурност и дигитализация
2.	07/07	Трансгранична медицинска помощ
3	23/11	Сезонни работници

# Въпроси на информиране и консултане

- А—Я за координацията на социалната сигурност
- Данни за регламентацията на координацията на социалната сигурност

# Информация А--Я

## 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

H

P

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

[Harmonisation of social security](#)

[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><b>(EC) Regulation 883/2004</b></p> <p><b>TITLE 1: GENERAL PROVISIONS</b></p> <p><a href="#">Art. 1</a>: Definitions</p> <p><a href="#">Art. 2</a>: Persons covered</p> <p><a href="#">Art. 3</a>: Matters covered</p> <p><a href="#">Art. 4</a>: Equality of treatment</p> <p><a href="#">Art. 5</a>: Equal treatment of benefits, income, facts or events</p> <p><a href="#">Art. 6</a>: Aggregation of periods</p> <p><a href="#">Art. 7</a>: Waiving of residence rules</p> <p><a href="#">Art. 8</a>: Relations between this Regulation and other coordination instruments</p> <p><a href="#">Art. 9</a>: Declarations by the Member States on the scope of this Regulation</p> <p><a href="#">Art. 10</a>: Prevention of overlapping of benefits</p> <p><b>TITLE 2: DETERMINATION OF THE LEGISLATION APPLICABLE</b></p>	<p><b>(EC) Regulation 883/2004: Art. 1</b></p> <p>For the purposes of this Regulation:</p> <ol style="list-style-type: none"> <li>'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;</li> <li>'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;</li> <li>'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</li> </ol>	<table border="1"> <thead> <tr> <th data-bbox="954 1043 993 1118">Implementing Articles of Reg. 987/2009</th> <th data-bbox="993 1043 1234 1118">Corresponding Articles of Reg. 1408/71</th> <th data-bbox="1234 1043 1476 1118">Administrative Commission Decisions</th> <th data-bbox="1476 1043 1715 1118">Corresponding CJEU Case Law</th> </tr> </thead> <tbody> <tr> <td colspan="4" data-bbox="954 1139 1715 1172"><b>Implementing articles (EC) Regulation 987/2009 Articles</b></td> </tr> <tr> <td colspan="4" data-bbox="954 1193 1715 1220"><b>Art. 1</b></td> </tr> </tbody> </table>	Implementing Articles of Reg. 987/2009	Corresponding Articles of Reg. 1408/71	Administrative Commission Decisions	Corresponding CJEU Case Law	<b>Implementing articles (EC) Regulation 987/2009 Articles</b>				<b>Art. 1</b>				
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<b>Implementing articles (EC) Regulation 987/2009 Articles</b>															
<b>Art. 1</b>															

## Сътрудничество и работа в система

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

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

## **LinkedIn група на**

MoveS – free movement and social security coordination

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

# Благодарим за вашето внимание!

Свържете се с нас на:

[MoveS@eftheia.eu](mailto:MoveS@eftheia.eu)



# Recent developments at EU level in social security coordination

Dana-Silvia Contineanu, DG EMPL, Unit E2



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

**Dana – Silvia Contineanu**  
**European Commission, DG EMPL**  
**Unit E2 – social security coordination**

# Overview

1. Recap: Posting rules under Regulations (EC) no 883/2004 and 987/2009
2. Cross-border telework
3. Revision of Regulations (EC) no 883/2004 and 987/2009
4. Digitalisation of social security coordination



# Posting rules under Regulations (EC) no 883/2004 and 987/2009

# Posting under the social security coordination

## Legal base:

- *Article 12 Regulation (EC) no 883/2004*
- *Article 14 Regulation (EC) no 987/2009*
- *Decision A2 of the Administrative Commission*
- *Practical Guide of the Administrative Commission*

# Posting under the social security coordination

- **Conditions for posting**
  - Maximum period
  - No replacement
  - Prior submission
  - Substantial activities
  - Direct relationship

## Posting under the social security coordination

- *Article 12 Regulation (EC) no 883/2004*
  - *'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'*
  - *'A person who normally pursues an activity as a self-employed person in a MS who goes to pursue a similar activity in another MS'*
- *Broader than the concept of posting under the Posting of Workers Directive 96/71*
- *Not necessary to have a service recipient in the receiving Member State*
- *Also 'business trips'; meetings; seminars*

# Posting under the social security coordination

- **Practical Guide:**

- *The posting provisions do not apply in cases where a person is normally simultaneously employed in multiple Member States.*
  - *Falls under Article 13 BR (multi-state activity)*
- *Art. 14(7) IR: the duration of activity in one or more other MSs (whether permanent or of an ad hoc temporary nature) shall be decisive*
  - *'shall continue to be subject to the legislation of the first Member State'*
- *Concerns both the payment of contributions and the entitlement to benefits*
- *Main objective of the posting rules:*
  - *Promoting freedom to provide services*
  - *Avoiding administrative complications*
- *Posting rules are 'special rules' that derogate from the 'general rule' which is the lex loci laboris, and therefore must be interpreted strictly (CJEU, C-527/16, Alpenrind, paras 93-95)*



# Posting under the social security coordination

- **Maximum period:** 24 months
- *Decisions A2: 'Brief interruption of the worker's activities with the undertaking in the State of employment, whatever the reason (holidays, illness, training at the posting undertaking ...), shall not constitute an interruption of the posting period'*
- *Practical Guide: but the total posting period will not be prolonged*
- **No replacement**
  - *Unless there are good reasons, such as the illness of the previously posted worker*

## **Prior submission to the legislation of the sending state**

- *Article 14 IR: 'provided that, immediately before the start of his employment, the person concerned is already subject to the legislation of the MS in which his employer is established'*
- *Decision A2: one month can be considered as meeting this requirement (for workers); two months for self-employed persons*

# Posting under the social security coordination

- **Substantial activities in sending Member State**
  - The employer 'normally carries out its activities in the sending State'
  - 'A person who normally pursues an activity as a self-employed person'
  - Substantial activities other than purely internal management activities
  - No 'letterbox companies'
- **Criteria employed persons:** Art. 14(2) Regulation (EC) no 987/2009 and Decision A2
  - The place where the undertaking has its registered office and administration
  - The number of administrative staff working in the MS in which it is established and in the other MS
  - The place where posted workers are recruited
  - The place where the majority of contracts with clients are concluded
  - The law applicable to the contracts concluded by the undertaking with its workers, on the one hand, and with its clients, on the other hand
  - The turnover during an appropriately typical period in each MS concerned and the number of contracts performed in the sending State
- **Practical Guide:** turnover of approximately 25% of total turnover in the sending MS could be a sufficient indicator, but cases where turnover is under 25% would warrant greater scrutiny. The length of time an undertaking is established in the sending MS.
  - Not an exhaustive list, as the criteria should be adapted to each specific case

# Posting under the social security coordination

- **Criteria self-employed persons:** Article 14(3) Regulation (EC) no 987/2009 and Decision A2
  - using office space
  - maintain means to be able to exercise his/her activity on return
  - paying taxes
  - having a professional card and a VAT number
  - being registered with chambers of commerce or professional bodies

## **Direct relationship:**

- 'Work being performed for the employer'
- Need for a direct relationship between the worker and the employer that posted him/her
- Worker remains under the authority of the employer
- A number of elements have to be taken into account, such as:
  - Responsibility for recruitment and dismissal
  - Employment contract, which must be applicable throughout the posting period
  - Who pays the remuneration (even if the amount is paid by the user company)
  - Dismissal or disciplinary sanctions • The authority to determine the work

# Posting under the social security coordination

## **Similar activities (self-employed persons) :** Article 14(4) Regulation (EC) no 987/2009

- 'the criterion for determining whether the activity that a self-employed person goes to pursue in another Member State is 'similar' to the self-employed activity normally pursued shall be that of the actual nature of the activity, rather than of the designation of employed or self-employed activity that may be given to this activity by the other Member State'
- Work in the same sector of economic activity

## **Further specifications in Decision A2**

- Posting to different Member States which immediately follow each other: new posting within the meaning of Article 12(1) of Regulation (EC) No 883/2004
- Once a worker has ended a period of posting, no fresh period of posting for the same worker, the same undertakings and the same Member State can be authorised until at least two months have elapsed from the date of expiry of the previous posting period.
- Derogation from this principle is, however, permissible in specific circumstance.

## **Further specifications in Practical Guide**

- Posting provisions are not applicable, when the worker is recruited in one MS by an undertaking situated in a second Member State in order to work in the first MS and when the worker has concluded a labour contract with the undertaking to which s/he is posted.

# Posting under the social security coordination

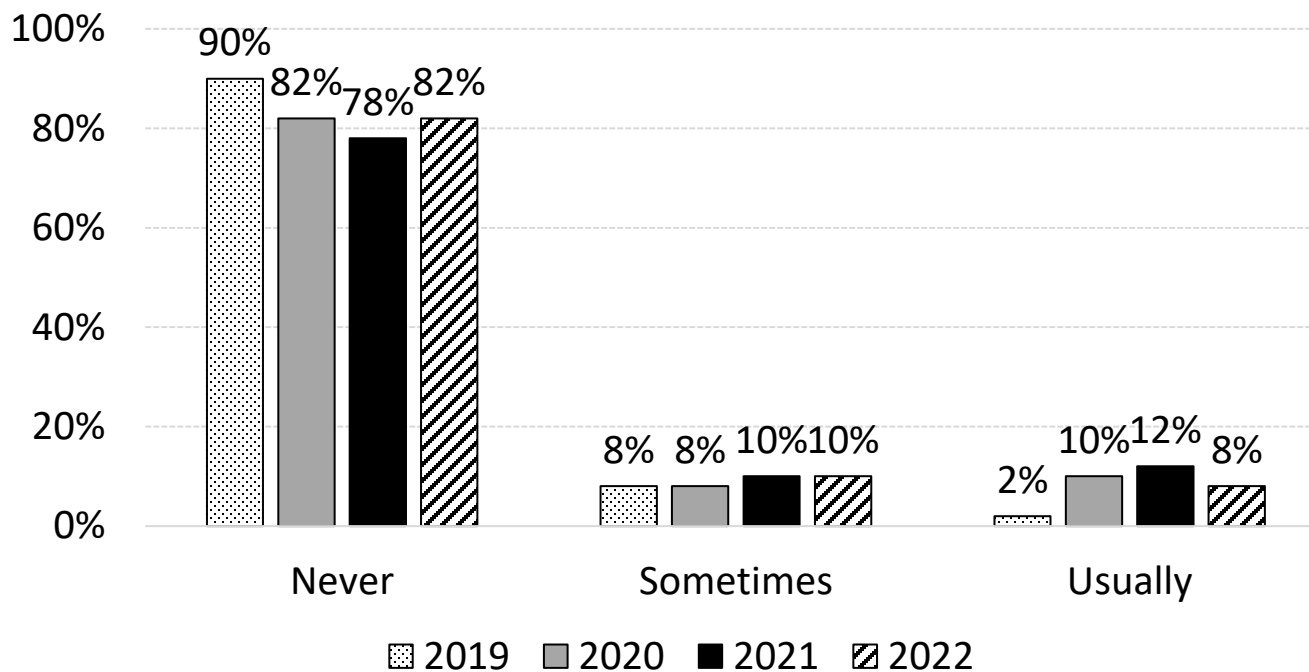
## ***Administrative procedures***

- *Articles 15 and 19 of Regulation (EC) no 987/2009*
  - *Employer or the self-employed person must inform the competent institution of the competent state 'whenever possible in advance'*
  - *That institution shall issue an A1 certificate that its legislation is applicable*



# Cross-border telework

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



Source: Calculations based on Eurostat EU-LFS data

## 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**.
- New version of the Guidance note of telework applicable from 1 July 2023: it reflects 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)



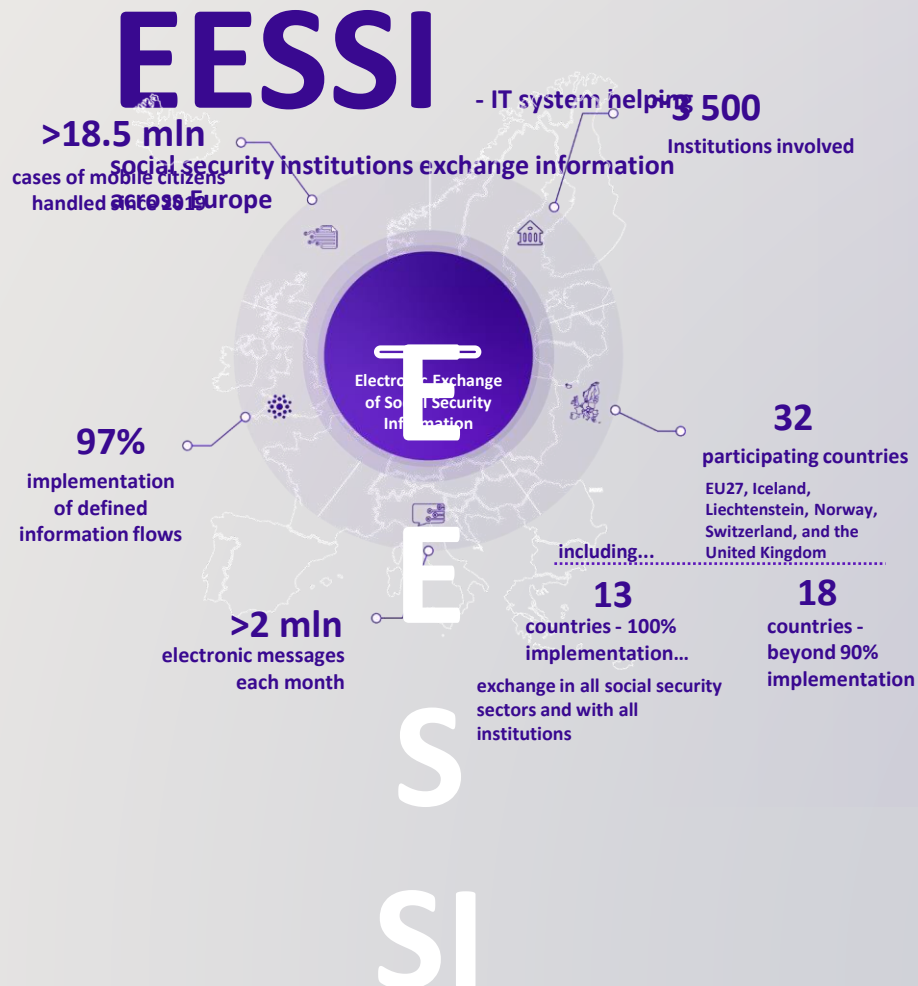
## What is EESSI?

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

# We are working on



# 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 1<sup>st</sup> May 2023) – DC4EU & Vector
- 2023 CWP: Communication on digitalisation in social security to support free movement and labour mobility



# Digitalisation of social security procedures

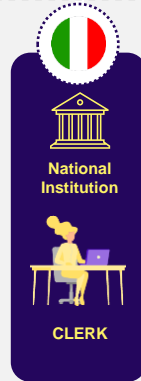
ENVISAGED SOLUTION: REUSING AND LEVERAGING OTHER INITIATIVES



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

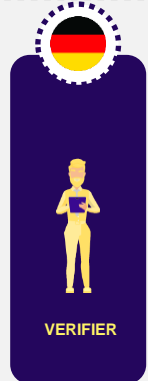


Verification App

Wallet

Citizen presents the Verifiable Credential to the Verifier

Verifier checks the citizen's Verifiable Credential



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.

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

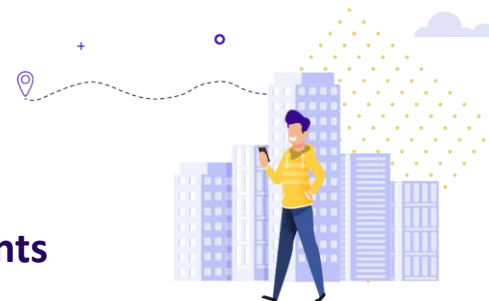
## Towards a more digital social security coordination: Commission proposes steps to make it easier for Europeans to live, work and travel abroad – 06 September 2023

- The Commission has proposed concrete steps to further digitalise the coordination of social security systems in Europe, in a dedicated Communication.
- The Communication lays out actions to **make access to social security services quicker and simpler across borders** by making full
- The Commission calls on Member States to:
- **accelerate the national implementation of the Electronic Exchange of Social Security Information (EESSI)** so that it is fully operational by the end of 2024 across Europe. EESSI digitalises the exchanges among national social security institutions, to move away from paper-based, time-consuming and cumbersome procedures.
- **deliver more social security coordination procedures fully online**, to make it even easier for people to move and work abroad, and ensure they get fast access to their eligible benefits. Member States can build on the Single Digital Gateway Regulation, which foresees a fully online delivery of some important administrative procedures to citizens and businesses by 12 December 2023 at the latest.

# Main Actions

1.

**Full implementation of the Electronic Exchange of Social Security Information by end 2024 at the latest; further improvements of the system and processes**



2.

**Based on input from ELA and Member States, assess the needs, costs and benefits of further interoperability, across borders and sectors**

3.

**Sustained investments in automating processes to handle cross-border social security cases**

4.

**Analysis of the possibilities to further simplify procedures, providing a seamless digital experience in EU labour mobility overall**



## Main Actions

**5. Full commitment of Member States to the European Social Security Pass pilot activities; based on results, decision on potential large-scale deployment**



**6. Digitalisation of additional social security coordination procedures by 2025, building on the Single Digital Gateway Regulation**

**7. Accelerated efforts to meet the Digital Decade's objectives of 100% public services being accessible online by 2030, including in social security coordination**

**8. Yearly high-level meetings with Member States to track and support progress**



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

# Recent developments at EU level about posting of workers

Carita Rammus, DG EMPL, Unit E1



# Posting of workers

*Carita Rammus*  
*DG EMPL, Unit E1*

# Content

- I. Posting of workers: trends and numbers**
- II. Review of implementation of Directive 2018/957**
- III. The eDeclaration project: towards a common electronic form for the declaration of posting of workers**
- IV. ELA Posting 360**



# Key Figures 2021 on Mobility

- ~ 14 million movers (all ages)
- ~ 10 million working age movers
- 3.9 % of EU working age population
- Stagnation of working age movers

- ~ 17 million TCN (working age)

- 3.6 million postings
- 1.7 million cross-border workers

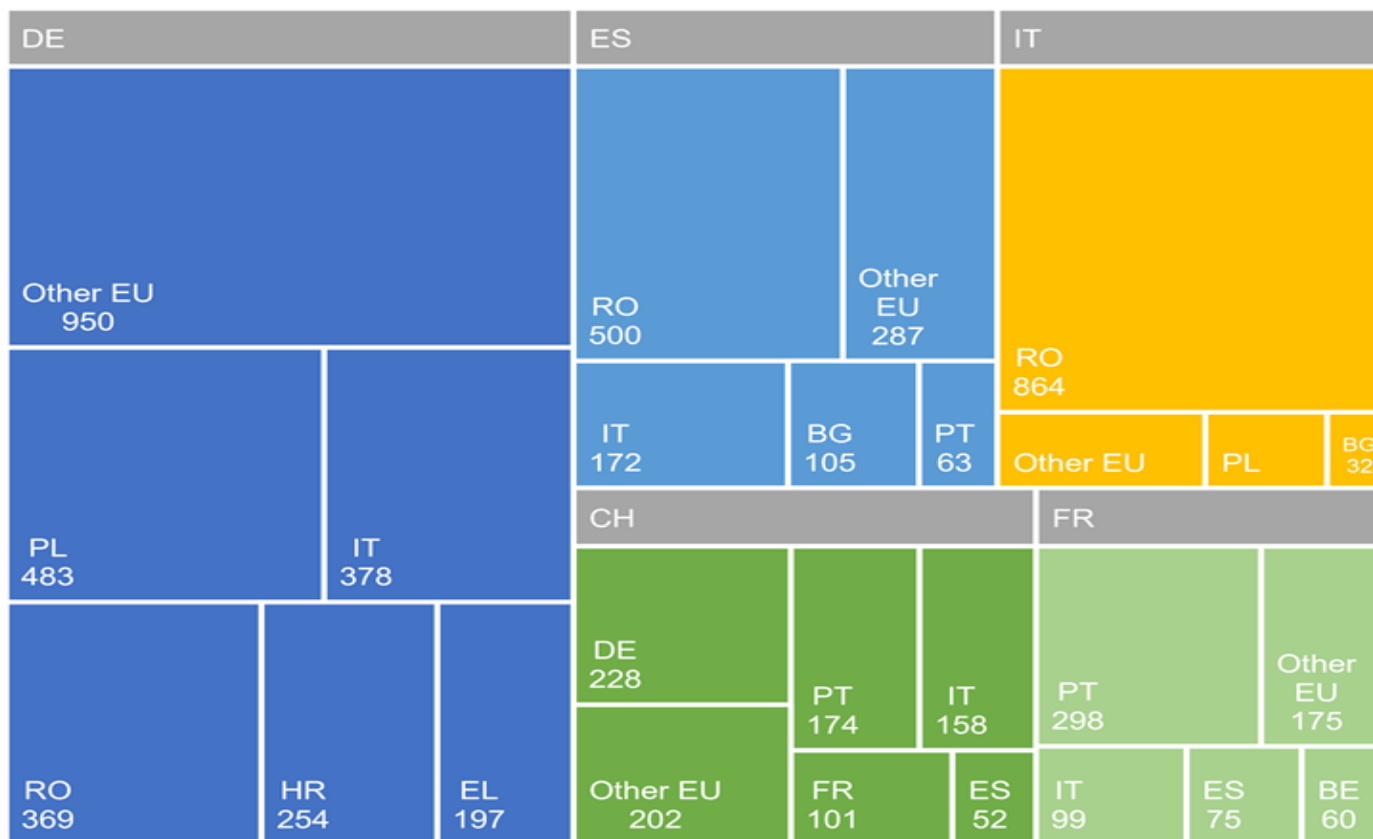
- 804 000 movers (-21%)
- 611 000 returnees (-14%)

# Attitudes towards about mobility

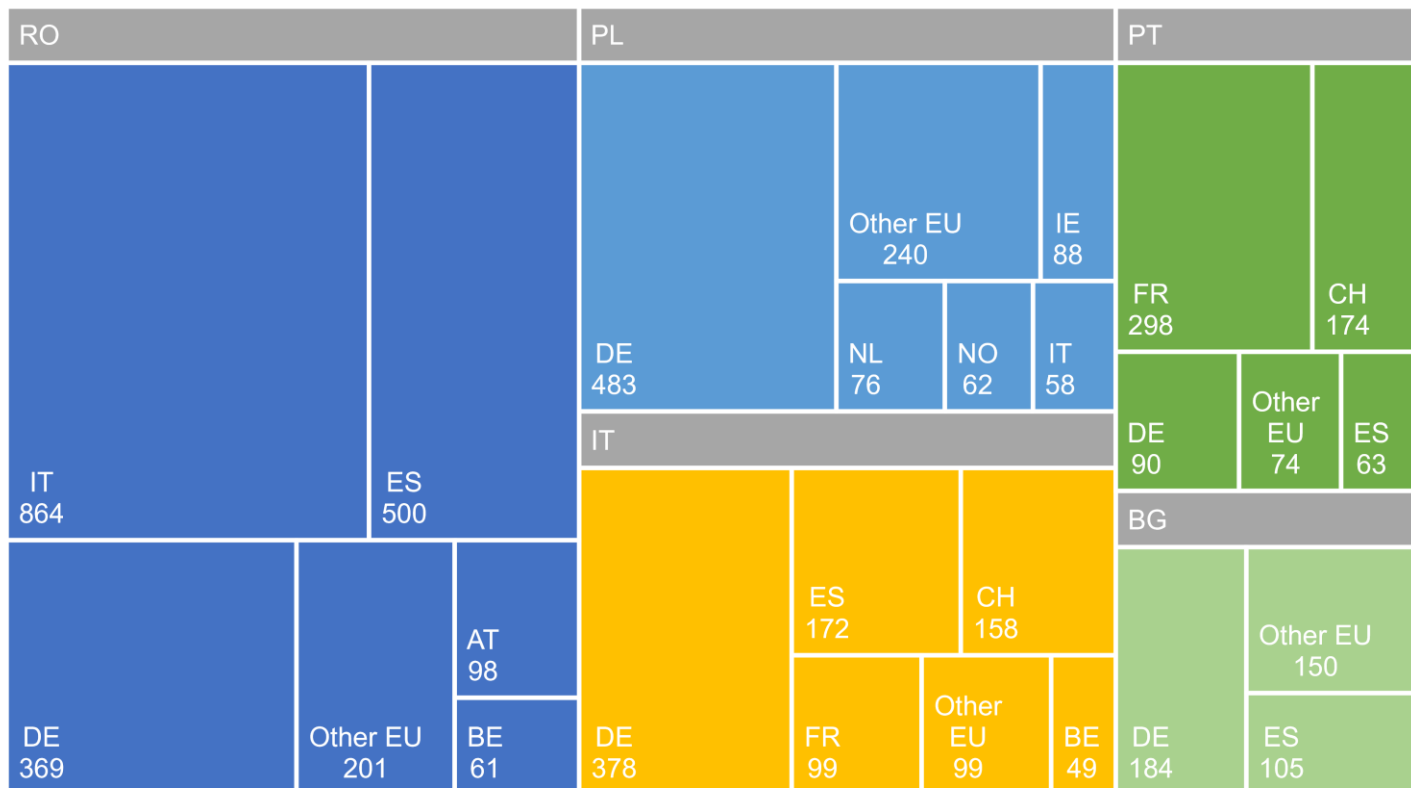
- 58% think labour mobility is good for the labour market and good for European integration – in 2009 only 50% thought it was good for the labour market
- Citizens in Austria (34%) and Greece (45%) are least convinced that labour mobility is good for the labour market
- Citizens in Portugal (81%), Lithuania (79%) and Ireland (76%) are most convinced of its positive effects
- Denmark (65%), Finland (72%) and Sweden (66%) see mobility quite positive.



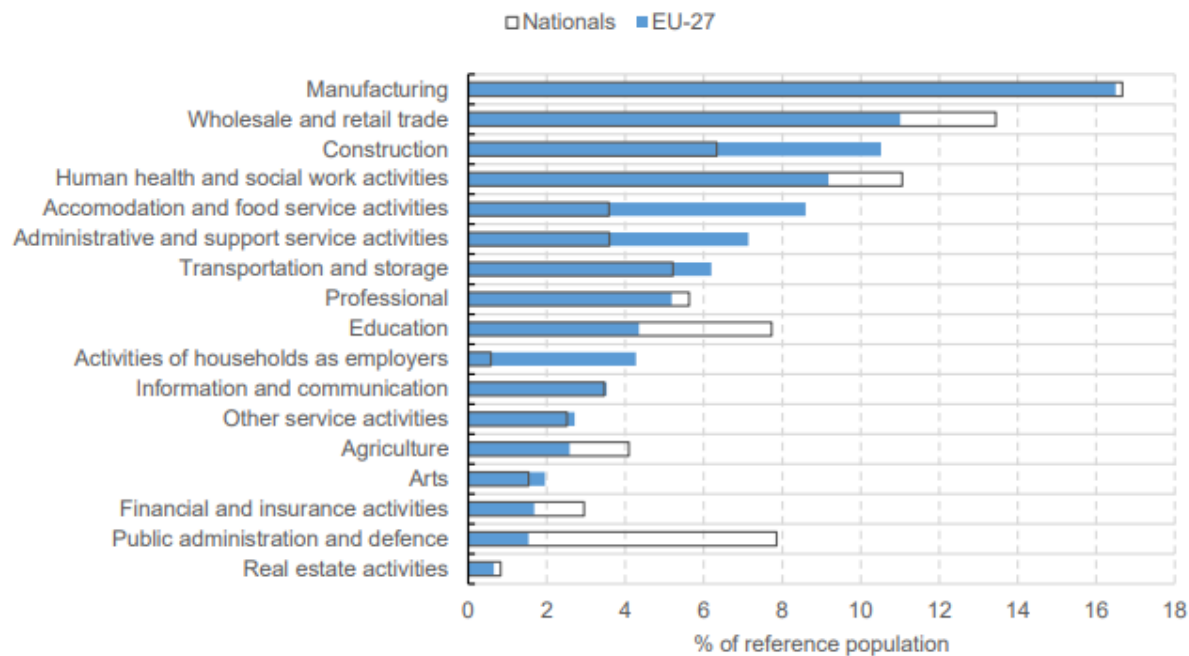
## EU movers in the largest countries of destination by citizenship, 2021



## EU movers from the largest countries of origin by country of destination, 2021



## Sectors of activity among EU movers and non-mobile citizens aged 20-64, 2020



Aggregate: EU-27

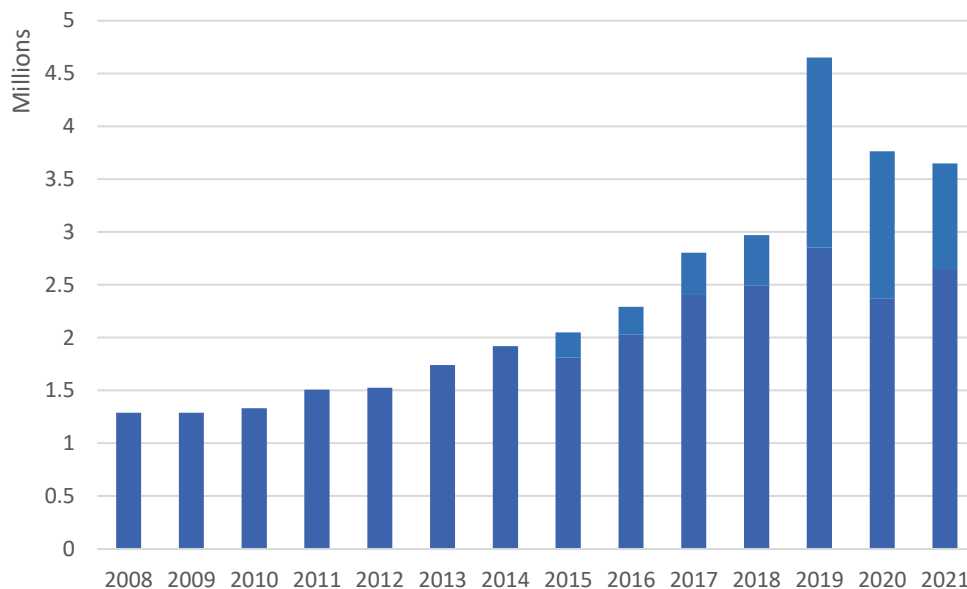
Results exclude movers born in their country of residence.

Sectors are only shown when numbers are above reliability limits<sup>73</sup>.

Source: Eurostat, EU-LFS, specific extractions, Milieu calculations.

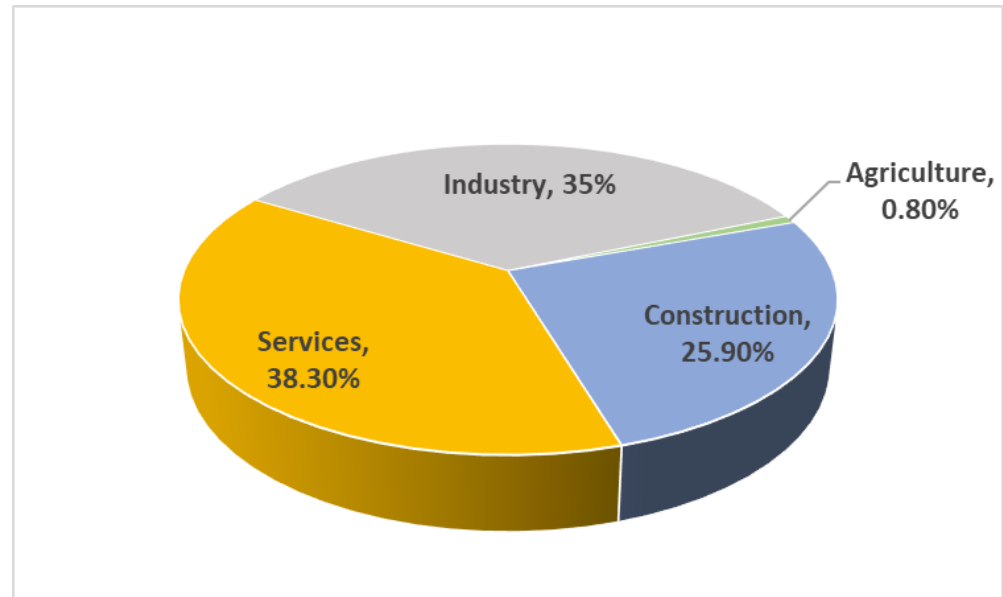
# Number of PD A1 issued

- From around 1.3 million in 2008 to more than 3.5 million in 2021
- Share of PD A1 in national employment of sending MS: per average around 1.5%.
- Revised reporting approach in DE as from 2019 (+1.3 mio)
- Source Posting of Workers: Report on A1 Portable Documents, issued in 2021, HIVA-KU Leuven



# Sectoral distribution of Postings (2021)

- PDs A1 issued according to Art 12, Basic Regulation, from a sending perspective
- Without PD A1 from DE: construction accounting for 42.8%, Services 29%



## II. Review of Posting of workers Directive 2018/957

- Report on the implementation and application of Directive 2018/957 due in 2023
- Report to be submitted to the European Parliament, the Council and the EESC
- Report is to include assessment on subcontracting and propose, where appropriate, necessary amendments.



## III. E-Declaration

- **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 (24)**

## IV. 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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# Posting of workers abroad in the framework of provision of services – free movement

Professor Anne Pieter van der Mei

# Posting of workers abroad in the framework of provision of services – free movement and labour law

Sofia, 25 October 2023

Anne Pieter van der Mei  
Prof. of European social law  
Maastricht University

## Legislative framework

Rome I and the applicable labour law	Art.8(1)	Choice of law, provided objectively applicable labour law is respected	
	Art.8(2)	MS where the work is habitually carried out	
	Art.8(3)	Place of business employer	
	Art.8(4)	Where it appears from the circumstances as a whole that the contract is more closely connected with a another MS the law of that other country shall apply.	
	Art.9	Other MS may apply ‘overriding mandatory provisions’ ⇒ Dir. 96/71	
Directive 96/71 (as amended by Dir.2018/957)	Art.3	MS must protect workers by applying ‘hard core’ of labour standards to posted workers	Host State: working time, remuneration, PAL, health & safety etc.
			Home State: access to labour, law of dismissal
		Hard core must be laid down by (Art.3(8))	Law/statute
			Collective labour agreement that is declared generally applicable
	After 12 (or 18 months) full equal treatment		
Directive 2014/67	Enforcement	European Labour Authority	
Directive 2020/1057	Road transport		

Theme	Cases
Legal base and legality of Dir.2018/957	C-626/18 <i>Poland vs EP/Council</i>
	C-620/18 <i>Hungary vs EP/Council</i>
Posted worker and the requirement of a sufficiently connection	C-16/18 <i>Dobersberger</i>
	C-815/18 <i>FNV</i>
Enforcement and penalties	C-205/20 <i>NE</i>
	C-219/20 <i>LM</i>
Allowances and pay	C-428/19 <i>Rapisped</i>

**C-626/18 Poland vs EP/Council**  
**C-620/18 Hungary vs EP/Council**

Actions for the annulment of Dir.2018/957		Remuneration, reimbursement of expenditures, 12-months rule	
Legal basis (53 TFEU)	Arg: Dir does not facilitate but rather restricts free movement of services (FMOS)	CJEU:	In regulating FMOS EU legislator must protect EU interests in social protection (9 TFEU)
			Aim is to find 'fair' balance between FMOS and worker protection
			The chosen balance may change over time (enlargement)
			Art.153 TFEU cannot be used
Restriction of FMOS	Arg: rules on remuneration and 12-months remove competitive advantage	CJEU:	No, it is only partial harmonization
C-544/20 Bulgaria v EP and Council	Request for annulment of Dir.202/10/57 (Road transport)		



**Case C-16/18 *Dobersberger***  
**Case C-815/18 *FNV***

Posted worker	Dir.: “a worker who for a limited period of time carries out his work in the territory of a MS other than the one in which normally works”.
CJEU in <i>Dobersberger</i>	To be posted the worker in question must have a ‘sufficient connection’ with the host State
CJEU in <i>FNV</i>	In case of transit or bilateral transport the truck driver has no sufficient connection with the MS in question
How to establish the connection for highly mobile workers?	Overall assessment of all relevant factors

Fair balance between free movement and worker protection?

## Enforcement and penalties

C-205/20 <i>NE</i>	Art.20 2014/67: penalties shall be ‘effective, proportionate and dissuasive’.	
	CJEU (C-645/18): Art.20 precludes fines which may not be lower than a given amount, apply cumulatively without upper limit and to which court costs may be added	
	Q 1: does the principle of proportionality produce direct effect?	CJEU: Yes
	Q 2: disapply entire penalties or only the disproportionate part?	CJEU: Only the disproportionate part
C-219/20 <i>LM</i>	Five-year limitation period for administrative offences is in order	

## Allowances and pay

### *C-428/19 Rapisped*

Per diems are allowance specific to posting – and hence – part of the minimum wage - unless they are paid in reimbursement of expenditure actually incurred

A bonus for reduced fuel use is in order provided it does not endanger road safety

A breach of posting rules applicable in the host State may also be relied upon in the courts of the home State

# National aspects of the problem

Nenko Salchev

# Командироване на работници като предизвикателство пред българското законодателство

НЕНКО САЛЧЕВ

## Право на Европейския съюз при командироване на работници

- Договор за функционирането на Европейския съюз (глава 3 „Услуги“)
- Директива 96/71/ЕО относно командироването на работници в рамките на предоставянето на услуги
- Директива 2014/67/ЕС за осигуряване на изпълнението на Директива 96/71/ЕО
- Директива 2018/957/ЕС за изменение на Директива 96/71/ЕО
- Регламент (ЕО) № 593/2008 относно приложимото право към договорни задължения (Рим I)

# Основни цели на правото на Европейския съюз при командироване на работници

- Преодоляване на предпоставките за социален дъмпинг
- Основни (базови) условия на труд и заетост, които се гарантират при командироване на работници
- Осигуряване на възможност за свободно предоставяне на услуги чрез командироване на работници в други държави членки
- Запазване на приложимото трудово законодателство

## Видове командироване според българското законодателство

- Командироване в страната
- Командироване в чужбина
- Командироване в държава – членка на ЕС в рамките на предоставяне на услуги (от 2010 г.)



# Предизвикателствата пред България след 2014 г.

- 1 януари 2014 – трудовият пазар на ЕС е отворен за български граждани без ограничения
- Преосмисляне на концепцията за командироване
- Уреждане на правата на командированите работници в рамките на предоставяне на услуги (от и в България)
- Командироване и/или изпращане
- Изграждане на система за административно сътрудничество с другите държави членки

# Промени в трудовото законодателство от 2016 г.

- Общи изисквания при командироване и изпращане на работници и служители в рамките на предоставяне на услуги (чл. 121a от Кодекса на труда)
- Административно сътрудничество и трансгранично изпълнение на наложени финансови административни санкции и глоби (глава двадесета на Кодекса на труда)
- Наредба за условията и реда за командироване и изпращане на работници и служители в рамките на предоставяне на услуги

## Командироване и изпращане в рамките на предоставяне на услуги

- Командироване на работник или служител на територията на друга държава – членка:
  - за своя сметка и под свое ръководство въз основа на договор, сключен между работодателя и ползвателя на услугите
  - в предприятие от същата група предприятия
- Изпращане от предприятие, което осигурява временна работа в предприятие ползвател на територията на друга държава - членка

## Общи изисквания

- За целия период на командироването или на изпращането да съществува трудово правоотношение
- На работника или служителя се осигуряват най-малко същите минимални условия на работа (минимално ниво на закрила), каквито са установени за работниците и служителите, изпълняващи същата или сходна работа в приемащата държава
- Закрила срещу неблагоприятно третиране при подаване на иск срещу работодателя
- Информирание на работника или служителя за:
  - продължителността на работата;
  - валутата, в която ще се изплаща възнаграждението;
  - Допълнителните трудови възнаграждения, които ще се изплащат в пари или в натура, ако са уговорени;
  - Условиата за завръщане в страната

# Задължение при командироване или изпращане от България

- Не произхождат директно от Директива 96/71/ЕО
- Уреждат се правата на работниците, спрямо които се прилага българското трудово законодателство
- Споразумение за командироване
- Право на минимално ниво на закрила според общоприложимите правила в приемащата държава
- Определяне на финансовите условия (възнаграждение, пътни и квартирни пари)
- Предварително писмено запознаване на работника с условията на работа в приемащата държава

# Споразумение за командироване

- Сключва се преди командироването
- Задължителна писмена форма
- Целта е изменение на съществуващото трудово правоотношение
- За определен срок – за времето на командироването
- В срока на командироването се включват дните за пътуване, почивните и празничните дни
- Могат да се определят условията за настаняване (квартирните пари)

## Документи във връзка с изпращането

- Трудов договор отговарящ на изискванията на:
  - чл. 66, ал. 1 от Кодекса на труда
  - чл. 107р от Кодекса на труда
  - чл. 7, ал. 2, т. 2 от Наредба № 5 от 20 април 2006 г. за осигуряване на здравословни и безопасни условия на труд на работниците по срочно трудово правоотношение или временно трудово правоотношение
  - чл. 3 от Наредба за условията и реда за командироване и изпращане на работници и служители в рамките на предоставяне на услуги
- Акт за изпращане по чл. 107с, ал. 2 от Кодекса на труда

# Командироване или изпращане в България

- Осигуряване на минималните условия на работа (минимално ниво на закрила), установени в българското законодателство
- Подаване по електронен път на заявление до ИА ГИТ за командироването или изпращането на работник или служител преди започване на работата
- Незабавно уведомяване на ИА ГИТ за изменение на обстоятелствата по подаденото заявление
- Предоставяне на местното лице, приело на работа командирован или изпратен работник или служител, документи във връзка с трудовото правоотношение, с превод на български език
- Предоставяне на ИА ГИТ на документите относно трудовото правоотношение при поискване и в срок 1 година след приключване на командироването/изпращането



# Минимално ниво на закрила според българското законодателство

- Установени условия на труд в законодателството или договорени по-благоприятни условия в колективен трудов договор, разпространен по реда на чл. 51б, ал. 4 от Кодекса на труда по отношение на:
  - Работното време;
  - Трудовото възнаграждение;
  - Платения годишен отпуск;
  - Здравословни и безопасни условия на труд;
  - Специална закрила на непълнолетните, жените, включително бременните жени и кърмачките, и лицата с намалена работоспособност;
  - Недопускане на дискриминация.

# Допълнителни изисквания към ИА ГИТ

- ИА ГИТ е компетентен орган по смисъла на Директива 2014/67/ЕС
- Осъществяване на административно сътрудничество чрез Информационната система на вътрешния пазар, вкл. и по отношение на трансгранично изпълнение на наложени финансови административни санкции и глоби
- Поддържане на единен национален уебсайт с българска и английска езикова версия
- Получава заявленията за командироване или изпращане на територията на България
- Извършва цялостна оценка относно действителното командироване или изпращане на работника или служителя
- Извършва оценка на риска, на основата на която извършва проверки в съответните командировващи/изпращащи предприятия

## Промени в българското законодателство след 2020 г.

- Замяна на термина „минималната работна заплата или минималните ставки на заплащане“ с „трудова възнаграждение“
- Включване на условията за жилищно настаняване
- Задължение за изплащане на пътни, дневни и квартирни пари при прекомандироване

# Промени в националното законодателство само по отношение на командированите в България

- Установяване на срок до 12 месеца за прилагане на минималното ниво на закрила
- Регламентиране на възможност за удължаване на срока с 6 месеца чрез подаване на мотивирано уведомление през единния национален уебсайт
- Регламентирани на минималните условия на работа, които се гарантират на командированите работници след изтичане на срока за прилагане на минималното ниво на закрила
- Установяване на задължение за сумиране на периодите на командироване при замяна на командирования работник с друг, който изпълнение на същата задача на същото място
- Установяване на правото на работника при недействително командироване да се ползва от по-благоприятните изисквания на българското законодателство
- Допълване на изискванията към единния национален уебсайт, така че да съдържа информацията за условията на труд, в т.ч. елементите на възнагражданието

## Бъдещите предизвикателства

- Повишаване на мобилността на работната сила
- Увеличаване на конкурентоспособността на предприятията
- Засилване на сътрудничеството с/чрез Европейския орган по труда
- Дигиталните номади

## Повишаване на мобилността на работната сила

- Ефективно правоприлагане на изискванията на европейското и националното законодателство
- Повишаване на информираността на работниците
- Командироване в рамките на предоставяне на услуги на граждани на трети държави

# Увеличаване на конкурентоспособността на предприятията

- Осигуряване на възможности за работодателите да се възползват от единния пазар
- Единна електронна декларация за командироване
- Намаляване на административната тежест
- Повишаване на информираността на работодателите

## Сътрусничество с/чрез Европейския орган по труда

- Подпомагане на държавите членки при разбирането и прилагането на правото на Европейския съюз
- Съвместни и координирани проверки
- Изграждане на единна информационна база за правата на работниците
- Подпомагане на работодателите да се справят с административните бариери



## Дигиталните номади

- Командироване ли е предоставянето на услуга за ползвател, установен на територията на друга държава, когато се работи от разстояние?
- Кое е приложимото законодателство когато се работи дистанционно, за различни работодатели и от различни държави?
- Може ли изкуственият интелект да е работодател и той да отговаря при неизпълнение на изискванията относно командироването?

# БЛАГОДАРЯ ЗА ВНИМАНИЕТО!

# LUNCH BREAK

12.15-13.15

# Welcome to the afternoon session

Prof. Albena Velikova-Stoyanova

# Posting of workers abroad in the framework of provision of services – social security

Prof. Rob Cornelissen

# Posting and other special rules determining the applicable social security legislation

- Rob Cornelissen
- Sofia, 25 October 2023

# I. Introduction

- Title II Reg. 883/2004: Art. 11-16
- One of the main pillars social security coordination
- Objective: prevent conflicts of law, both negative and positive conflicts of law.
- Exclusive effect of conflict of law rules
  - Art. 11(1): *“Persons to whom this Regulation applies shall be subject to the legislation of a **single** Member State **only**”.*

# Applicable legislation. Differences between labour law and social security

- Labour law
  - Worker and employer have freedom to choose applicable legislation (curtailed to some extent): Art. 8 Reg. 593/2008
  - Posted worker can be subject to labour law sending MS **and** to labour law host MS (Dir. 96/71 as amended by Dir. 2018/957)
- Social security
  - Conflict rules are **mandatory** for MS and for workers and employers (C-345/09, Van Delft). No freedom to choose. Applicable legislation depends on objective situation (C-610/18, AFMB)
  - Worker is subject to legislation of **one** MS only!



## Rules Reg. 883/2004 determining the applicable social security legislation

- Main rule: legislation MS of work (*lex loci laboris*): Art. 11(3)(a). Why?
  - Guarantees **equal treatment** of all persons on territory of a MS (C-328/20, Commission v. Austria)
  - Prevents **distortion of competition** between employers hiring national/mobile workers (C-784/19, Team Power)

# Special rules

- Civil servants (Art. 11(3)(b))
  - Subject to legislation MS for which they work
- Seamen (Art. 11(4))
  - Subject to legislation MS flying flag of vessel
- Posted workers: Art. **12**
- Workers normally pursuing their activities in 2 or more MS: Art. **13**

## II. Posted workers: Art. 12

- “*Posting*” within meaning Reg. 883/2004 **differs** from “*posting*” within meaning Directive 96/71
  - Maximum duration period
  - Directive 96/71 applies only in framework transnational provision of services (subcontracting, intra-corporate transfers, temporary employment agencies)
  - Such framework is **not** required for “*posting*” within meaning Reg. 883/2004
    - E.g: business trips, visits of clients, etc

# Objective and result of Art. 12

- Objective: simplification
  - Avoids administrative complications and fragmentation of social security career; guarantees continuity of applicable social security legislation
  - ECJ (35/71, Manpower): serves interests of workers, employers and institutions
- Result:
  - Contributions on level sending Member State
  - No contributions due in Member State of work (exclusive effect of conflict of law rules!)

## Balance sought by Art. 12

- Aim Art. 12: strike a balance between
  - principle of equal treatment between mobile workers and national workers
  - avoiding administrative complications in interests of workers and employers.
- Possible risks if applicable legislation is not Member State of work:
  - Competitive advantage employer
  - Risk of downward pressure on level social security protection state of work (784/19, Team Power Europe)
- Therefore, strict conditions for Art. 12

## Art. 12 subject to strict conditions

- Temporary: max. 24 months
- Continuity: person must have been subject to legislation sending MS before being sent
  - Not necessary having been a worker; person may have been subject to legislation sending MS on basis of residence (C-451/17, Waltopia)
- Replacement ban
- Direct relationship between employer and sent worker during whole period
- Employer must exercise **substantial** activities in MS of establishment

## Recent case-law ECJ: Art. 12 to be interpreted strictly

- ECJ underlines that Art. 12 derogates from main rule. Therefore, it must be interpreted **strictly**
  - Replacement ban applies also if a worker is sent by his employer to another MS to replace a worker who was sent by another employer from another MS (C-527/16, Alpenrind)
  - A temporary work agency established in a MS only fulfills the condition that it exercises “*substantial activities*” in that MS if it carries out a significant part of its activities not only of selecting and recruiting, but also of assigning temporary workers to local user undertakings (C-784/19, Team Power)

## Procedures to be followed in case of posting

- The employer which posts a worker to another MS must inform institution sending MS, *“whenever possible in advance”* (Art. 15 Reg. 987/2009).
- Institution sending MS shall deliver document A1 after having checked whether conditions have been fulfilled
  - ECJ (C-527/16, Alpenrind): document A1 can be issued retrospectively!
- Institution must *“without delay”* inform institution MS of work on applicable legislation (Art. 15 Reg. 987/2009)



## Procedures in case of posting.

- Duty of institution sending MS to inform employers and workers about conditions for posting within meaning Reg and alert them on possibility controls (Practical Guide)
- Duty of workers and employers to inform correctly institution sending MS (Art. 76(4) Reg. 883; Art. 3(2) Reg. 987/2009; Art. 5(b) Decision A2 Adm. Comm.

# The controversy: the **enforcement** and **compliance** gap

- Division of tasks: institution of sending MS has to check whether conditions are fulfilled
  - If so, institution delivers document **A1** (Art. 19(2) Reg. 987/2009)
  - ECJ: document A1 has **binding** effect, both for social security institutions and judiciary of MS of work
    - Even if the judiciary of MS of work has found that the conditions of Art. 12 have not been fulfilled (C-620/15, Rosa Flussschiff)
    - A decision of the institution sending MS to “*provisionally*” suspend an A1 document does not entail the loss of its binding effects (C-410/21, DRV Intertrans)

## The controversy: the enforcement and compliance gap

- In cases of dispute: dialogue and conciliation procedure is compulsory, even in cases of fraud
- Effectiveness of procedure criticized
  - long duration (Decision A1 Adm. Comm)
  - success depends on willingness institution sending MS
  - lack of enforceability decisions Conciliation Board
  - limited possibilities to evaluate facts and problems with exchange of data

## The controversy. Enforcement and compliance gap

- Often A1 documents have been issued without much verification whether conditions have been fulfilled! (rubber-stamping rather than investigation!)
  - Report EUROFOUND: *“Improving the monitoring of posted workers in the EU”*, 2020
- Institutions and judiciary of MS of work cannot unilaterally ignore document A1
- They have to follow dialogue and conciliation procedure

## The controversy. Enforcement and compliance gap

- If no satisfactory solution: they may refer matter to Administrative Commission
- ECJ: Even if Administrative Commission is of opinion that institution of sending MS has issued document A1 incorrectly and that document should be withdrawn, this document is binding for institutions and judiciary MS of work, as long as institution sending MS has not withdrawn document (C-527/16, Alpenrind)

# Binding effect document A1

- Only in cases of **fraud**, judiciary (not institution!) MS of work may, under strict conditions, disregard document A1(C-359/16, Altun).
- Burden of proof "*fraud*" not easy
  - Objective element: conditions are not fulfilled
  - Subjective element: there must be intention to circumvent conditions

# Binding effect document A1

- Even if there is clear evidence of **fraud**, document A1 can only be disregarded by judiciary if:
  - Dialogue procedure has been promptly launched by institution of host MS and the institution of sending MS has failed to review its decision within a reasonable period of time (C-370/71, Vueling)
  - A fair trial is guaranteed for persons concerned: they must have opportunity to rebut evidence that document A1 was obtained fraudulently

# Binding effect document A1

- Case-law is based on:
  - Importance exclusive effect conflict of law rules
  - Principle of loyal cooperation and mutual trust (Art. 4(3) TEU)
    - Principle requires institution sending MS to carry out proper assessment of facts and to ensure that information contained in A1 document is accurate (C-359/16, Altun)
    - Depends on **willingness and capacity** institution sending MS.
    - Has sending MS **incentive and capacity** to monitor compliance with posting conditions? Mission impossible?
    - Problem: the less sending MS verifies compliance with conditions Art. 12, the more problematic is their binding effect!



# Perspectives to address some of the enforcement and compliance gaps

- The creation of the European Labour Authority
  - mandate is supportive, not coercive
  - considerable manpower should ease transnational enforcement
- The 2016 Commission proposal
  - Modified during negotiations
  - Not yet adopted
  - Provisional agreements 2019 and 2021
  - Swedish Presidency compromise text (April 2023)

# European Labour Authority (ELA)

- Main tasks:
  - support Member States' effective compliance with cooperation obligations, including on information exchange
  - encourage use of innovative approaches to effective and efficient cross-border cooperation
  - facilitate access to data in real time and detection of fraud
  - mediate between MS and share good practices
  - improve information available to private actors
  - coordinate and support joint inspections
  - Report to the Commission twice a year on unresolved requests between MS

## 2016 Commission proposal. Modest changes as to conditions Art. 12

- 1. Word "*posted*" replaced by "*sent*")
- 2. Alpenrind judgment reflected in text Art. 12 (replacement ban)
  - No "*sending*" in all cases where a person replaces another person who was previously sent, even if that other person was sent by another employer from another MS
- 3. Softening of replacement ban
  - When a "*sent worker*" does not complete work and is replaced by another person, the other person shall continue to be subject to legislation sending MS, provided the overall duration of work by both workers does not exceed 24 months.

## Modest changes as to conditions Art. 12

- 4. 'Upgrading' of condition now laid down in Decision A2 Adm. Comm in text Art. 14 Reg. 987/2009
  - Minimum time period of two months between consecutive sendings
- 5. Slight sharpening of condition for workers recruited with a view of being sent to another MS
  - Must have been subject to legislation sending MS for at least three months
  - Condition now laid down in Decision A2 Adm. Comm: one month

## More substantial changes concerning **enforcement** of rules

- New Art. 76a Reg. 883/2004 empowers Commission to adopt implementing acts to ensure uniform conditions for applying Art. 12 and 13.
  - Under current rules MS are free to design procedures for issue and reconsideration of A1 documents
  - New rules : standard procedures for issuance, format and content document A1, for elements to be verified before document A1 can be issued and for withdrawal or rectification of document A1 if contested by host State
- Series of provisions aimed at facilitating information flows and at improving dialogue and control mechanism
  - Insertion of deadlines, retro-active withdrawal A1 document in cases of fraud
  - Definition of "*fraud*" (Art. 1 Reg. 987/2009)

# Enforcement of rules

- Compulsory prior notification (Art. 15 Reg. 987/2009)
  - Employer **must** inform institution sending MS in advance
  - Exception for “*business trips*” or activities with a duration of no more than three days with a month
    - Definition “business trips”: “*..temporary activity...limited in time..related to business interests of employer... excluding the provision of services..., but including business meetings, cultural and scientific events, conferences and seminars...*”
  - In exceptional cases: possibility to notify after start activities, but not later than three days

# Prior notification

- Background:
  - Some Member States have decided to impose fines on people working on their territory without being affiliated to their social security scheme, if they do not carry document A1 with them.

# Enforcement of rules

- Towards a new division of enforcement tasks between sending MS and host MS?
  - Compliance with some conditions for application Art. 12 can more easily be checked by institution host MS
    - Replacement ban: worker is sent to MS A by employer established in MS B to replace another worker previously sent by another employer from MS C
    - Direct relationship between employer and sent worker during whole period



## III. Art. 13.

- Number of A1 documents issued on basis Art. 13 increased from 170.000 in 2010 to 1.350.000 in 2021. Represents almost 40% of all A1 documents!
  - Bulgaria: 2021: 10.911 A1 documents issued on basis Art. 12
  - Bulgaria: 2021: 15.034 A1 documents issued on basis Art. 13

## Art. 13

- Covers people “*normally*” working in two or more MS. Therefore, *lex loci laboris* cannot be used to determine applicable legislation.
- Connecting factors:
  - Workers pursuing “*substantial part*” of activities (25% or more) in MS of residence: subject to legislation of that MS.
  - If no “*substantial part*” in MS of residence: worker is subject to legislation of MS where “**registered office or place of business**” of employer is established

## “Registered office or place of business”

- Current definition Art. 14(5a) Reg. 987/2009:
  - “*..place where the essential decisions of the undertaking are adopted and where the functions of its central administration are carried out*”. Rather vague.
  - Indicative list in “Practical Guide” agreed by Adm. Comm. Contains a number of criteria.
- Risk of “forum shopping”
  - Businesses search for most advantageous social security legislation

## Art. 13

- “*Posting*” within meaning Art. 12 subject to strict conditions and limitations
- Art. 13: no such conditions and limitations
  - No requirement for employer to pursue significant activities in MS of establishment
  - No time limit for use Art. 13
  - Workers not required having been subject to legislation of MS where employer is established before Art. 13 is used

## Art. 13

- 2016 Commission proposal was aimed at addressing at least part of this challenge
  - Legislation of MS where “*registered office or place of business*” is located would apply only if the employer carries out **significant** activities there.
  - Still subject of negotiations....
- Recently ECJ underlines the risk of ‘forum shopping’
  - (C-610/18, AFMB and C-784/19, Team Power): “*employers should **not** be able to resort to purely artificial arrangements in order to exploit EU legislation with sole aim*” of choosing the most advantageous social security legislation

# Open questions

- Delineation between Art. 11(3)(a) and 13
  - Nor always easy!
  - Format (C-115/11): successive employment contracts. During each of contracts worked in one MS. Question 2 to ECJ: could person who excercises in alternation for the same employer separate activities in two or more MS be covered by (predecessor of) Art. 13?
  - ECJ: not necessary to rule on that question
    - ECJ saw probably not enough indication of a repetitive pattern

## Delineation between Art. 11(3)(a) and 13

- In particular difficult when dealing with framework contracts
  - Adv-Gen in Bogdan Chain (C-189/14): person should be considered to be a person *“normally pursuing an activity as an employed person in two or more MS”*
  - However, ECJ (C-570/15, X; C-89/16, Szoja and C-610/18, AFMB): *“it is necessary to derogate from the general connection of MS of employment **only** in specific situations which demonstrate that another connection is more appropriate”*.

## IV. Conclusions

- Conditions for using Art. 12 are strict.
- However, the enforcement and compliance gap often leads to situations where A1 documents are delivered without the conditions being met.
- Risks for “*forum shopping*” even greater in relation to Art. 13
- The new European Labour Authority could contribute to a transnational enforcement
- 2016 Commission proposal would be an improvement but would not solve all problems.
- Towards a more radical adaptation of the rules?



• *Thank you for your attention*

## National aspects of the problem

*Stoyanka Jordanova, National Revenue Agency*

*Maria Kasarova, National Social Security Institute*

# Законодателна уредба на ЕС

## Договор за функционирането на ЕС

- Установява правото на свободно предоставяне на услуги в рамките на Съюза

## Директиви за командироване на работници

- Установяват задължителни разпоредби по отношение на условията на труд и защитата на здравето и безопасността на командировани работници в рамките на Съюза

## Координационни регламенти в областта на социалната сигурност

- Установяват правилата за определяне на държавата, в която са дължими задължителните осигурителни вноски за командировани работници в рамките на Съюза

## Координационни регламенти

- Регламент (ЕО) № 883/2004 на Европейския парламент и на Съвета от 29 април 2004 година за координация на системите за социална сигурност
- Регламент (ЕО) № 987/2009 на Европейския парламент и на Съвета от 16 септември 2009 година за установяване процедурата за прилагане на Регламент (ЕО) № 883/2004
- Пряко действие
- Приоритет пред националното законодателство

# Координационни регламенти

## Чл. 11(1) от Регламент (ЕО) №883/2004

- Само едно приложимо законодателство

## Чл. 11(3)(а) от Регламент (ЕО) №883/2004 - основно правило

- Спрямо лице, осъществяващо дейност като наето или самостоятелно заето лице в една държава членка, се прилага законодателството на тази държава членка

## Чл. 12 от Регламент (ЕО) №883/2004

- Специални правила при командироване на заети и самостоятелно заети лица, в изключение от основното правило

# Координационни регламенти Командироване

## Чл. 12, параграф 1 от Регламент (ЕО) №883/2004

- Приложимо законодателство при командироване на заети лица

## Чл. 12, параграф 2 от Регламент (ЕО) №883/2004

- Приложимо законодателство при командироване на самостоятелно заети лица

## Чл. 14 параграфи 1 - 4 от Регламент (ЕО) №987/2009

- Процедурни правила

# Координационни регламенти Командироване

**Чл. 12 от Регламент (ЕО) №883/2004 – цел**

- Избягване на неблагоприятните последици
- Улесняване на свободното предоставяне на услуги в полза на работодателите, които изпращат работници в държави членки, различни от тези, в които са установени

# Координационни регламенти Командироване

Чл. 12 от Регламент (ЕО) №883/2004

- Не регламентира реда и условията за командироване на заети и самостоятелно заети лица
- **Определя кое е приложимото законодателство** спрямо командировани заети лица на територията на друга държава членка и самостоятелно заети лица, временно упражняващи дейност в друга държава членка
- Определя задължителни условия, които следва да бъдат изпълнени, за да продължи да се прилага осигурителното законодателство на изпращащата държава при временно извършване на трудова дейност в друга държава членка



# Координационни регламенти Командироване

## Чл. 15 от Регламент (ЕО) №987/2009

Работодателят и зетото лице или самостоятелно зетото лице информират, при възможност предварително, компетентната институция на държавата членка, чието законодателство се прилага, за обстоятелството, че ще извършват дейност в друга държава, различна от компетентната.

# Командироване Национални аспекти

## Компетентна институция в България - НАП

Въз основа на Приложение 4 от Регламент (ЕО) №987/2009 НАП е компетентна да определя и удостоверява приложимото законодателство по правилата в Дял II от Регламент (ЕО) №883/2004

Приложимото законодателство се удостоверява чрез формуляр А1 - *Удостоверение относно законодателството в областта на социалната сигурност, което се прилага по отношение на притежателя му*

## Издаване на удостоверение А1

- По реда на глава дванадесета от ДОПК (чл. 88, ал. 2 от ДОПК)
- По искане на заинтересованото лице, отправено до компетентната ТД (чл. 89, ал. 1 от ДОПК)
- Искането може да се подаде чрез всяка ТД (чл. 89, ал. 2 от ДОПК)
- Към искането се прилагат доказателства за наличие на условията, въз основа на които лицето може да остане подчинено на българското законодателство (чл. 89, ал. 3 от ДОПК)

# Издаване на удостоверение A1

## Становище

- след преценка на събраната информация се изготвя становище
- въз основа на становището се издава удостоверение A1 или
- въз основа на становището се издава мотивиран отказ да се издаде удостоверение A1

## Връчване

- екземпляр от удостоверението/отказа се предоставя на работодателя и лицето
- екземпляр от удостоверението се изпраща до компетентната институция по месторабота

# Издаване на удостоверение А1

## Срок за издаване:

- 30 – дневен от постъпване на искането (чл. 90, ал. 2 от ДОПК)
- 45 – дневен от постъпване на искането, когато е подадено чрез ТД, различна от компетентната (чл. 90, ал. 2 от ДОПК)

**БЛАГОДАРЯ ЗА  
ВНИМАНИЕТО!**

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## Debate and discussion

## Closing remarks