

Coordination of Social Security (II)

– Supplementary Training Modules –

ILO Decent Work Technical Support Team and
Country Office for Central and Eastern Europe

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Foreword

The ILO has been supporting the Republic of Moldova in building its capacity for planning, negotiating, and implementing bilateral and multilateral social security agreements for migrant workers. Currently, Moldova implements social security agreements with Bulgaria and with Portugal. In 2010, Moldova signed social security agreements with Romania and Luxembourg, and negotiations are underway with Austria, Belgium and Poland.

This publication comprises the presentations delivered at the Follow-up Experts' Training on social security coordination organized by the ILO on 6-8 October 2010 in Chisinau within the framework of the Romanian-funded technical cooperation project "Republic of Moldova: Building capacity for coordination of social security for migrant workers".

The scope of this publication covers practical aspects of administrative arrangements, a Romanian case study of the implementation of social security agreements, and new EU Regulations on social security coordination with a focus on sickness, unemployment and family benefits. It supplements the earlier publication "Coordination of social security: training modules", published in August 2010. We trust that the present publication, together with the earlier one, will be useful references for those who work in the area of social security coordination.

We would like to express our appreciation for the following resource persons for their valuable contribution to the training:

Eugenia Ciobota, Consultant, International Relationship Division, Ministry of Labour, Social Protection and Family, Romania (Implementation of Social Security Agreements: Romanian Experience);

Milos Nikac, Assistant Director, Institute for Social Insurance, Republic of Serbia (Model Administrative Arrangement for Application of Agreement on Social Insurance); and

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Budapest, January 2011

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Model Administrative Arrangement for Application of the Agreement on Social Insurance

Structure of the model administrative arrangement

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- Part II: Provisions concerning the applicable legislation (Art. 3)
- Part III: Application of special provisions
 - Chapter 1: Sickness and Maternity (Art. 4-12)
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- Part IV: Enforcement (Art. 19-21)
- Part V: Final provision (Art. 22)

Title and Preamble

ADMINISTRATIVE ARRANGEMENT
FOR APPLICATION
OF THE AGREEMENT
BETWEEN THE REPUBLIC OF MOLDOVA AND THE _____
ON SOCIAL INSURANCE

Pursuant to Article ___ of the Agreement between the Republic of Moldova and _____ on social insurance, signed at _____ on _____, the competent authorities of the contracting states, namely:

- for the Republic of Moldova : _____ and
- for the _____ : _____

have agreed as follows:

General provisions

Article 1

Definitions

For the purpose of this Arrangement:

1. The expression “Agreement” means the Agreement between the Republic of Moldova and _____ on Social Insurance;
2. Other expressions used in this Arrangement have the meaning given to them in Article 1 of the Agreement.

General provisions

Article 2

Liaison bodies

- (1) The Liaison bodies referred to in paragraph _ of Article _ of the Agreement are:
 - For the Republic of Moldova:

 - For the _____ :

- (2) For the application of the Agreement and this Arrangement, the liaison bodies defined in paragraph 1 of this Article may communicate directly with one another as well as with the claimants, beneficiaries and their representatives.
- (3) Liaison bodies shall jointly determine appropriate procedures and forms for the application of the Agreement and this Arrangement.
- (4) For the application of the Agreement and this Arrangement, the liaison bodies shall provide each other legal and administrative assistance.

Provisions concerning the applicable legislation

Article 3

Certificate of applicable legislation

- (1) In cases referred to in Article _ of the Agreement, the _____ on the Moldovan side and the _____ on the _____ side, will at the request of the employer or the insured person issue a certificate of fixed duration verifying that the insured person continues to be subject to the legislation they apply. The certificate shall also list the family members who accompany the insured person.
 - (2) When an insured person mentioned in paragraph 1 of this Article takes on employment in the territory of the other contracting state by a different employer located in that territory, that person is required to inform the institution that issued the certificate without delay. That institution will thereupon revoke the certificate, as from the commencing date of the new employment, and inform the institution of the other contracting state.
-

Provisions concerning the applicable legislation

Article 3

Certificate of applicable legislation (continued)

- (3) When the legislation of one contracting state is applicable by reason of an agreement of the competent authorities in accordance with Article _ of the Agreement, the institution of that contracting state mentioned in paragraph 1 of this Article shall issue a certificate indicating that, in respect of the work or employment in question, the employed person is subject to that legislation.
- (4) The institution of the contracting state that has issued a certificate under paragraph 1 or 3 of this Article shall send a copy to the institution of the other contracting state.

Application of special provisions “sickness and maternity”

Article 4 Institutions

For the application of this chapter:

1. The “institution of the place of temporary stay” is:
 - 1.1. in relation to Republic of Moldova, _____;
 - 1.2. in relation to _____, _____.

 2. The “institution of the place of residence” is:
 - 2.1. in relation to Republic of Moldova, _____;
 - 2.2. in relation to _____, _____.
-

Application of special provisions “sickness and maternity”

Article 5 Benefits in cash in case of sickness and maternity

- (1) In order to receive sickness or maternity benefits in cash:
 1. if the Moldovan legislation is applicable, the person concerned who stays in the territory of Moldova, shall submit a claim to _____;
 2. if the _____ legislation is applicable, the person concerned who stays in the territory of the _____, shall to submit an application to _____.

- (2) The claim submitted to the institution as referred to in paragraph 1, shall be accompanied by a certificate of temporary incapacity for work issued by a medical institution. This certificate shall state the day of commencement of the incapacity, the diagnosis, and the expected duration of the incapacity.

Application of special provisions “sickness and maternity”

Article 6

Aggregation of periods of insurance

- (1) For the application of Article _ of the Agreement a person shall submit to the competent institution of one of the contracting states a certificate indicating the periods of insurance completed under the legislation of the other contracting state.
 - (2) At the request of the person concerned, this certificate shall be issued:
 1. in relation to Republic of Moldova, by the _____;
 2. in relation to _____, the _____.
 - (3) If the person concerned does not submit the certificate, the competent institution referred to in paragraph 1 of this Article shall request such a certificate from the insurance institution of the other contracting state.
-

Application of special provisions “sickness and maternity”

Article 7

Benefits in kind

- (1) In order to receive benefits in kind according to the Article _ of the Agreement, persons concerned must register themselves and their family members with the institution of their place of residence or temporary stay, by submitting a certificate testifying that both the insured person and family members are entitled to such benefits. This certificate shall indicate, in particular, the period during which benefits in kind can be provided.
- (2) In the event of hospitalisation of the insured person, the institution of the place of residence or temporary stay shall, within three days of being informed of hospitalisation, notify the competent institution of the date of entry into hospital and the probable duration of hospitalisation. At the date of insured person's discharge from the hospital, the institution of the place of residence or temporary stay shall notify, within the same prescribed period, the competent institution of the date of discharge.

Application of special provisions “sickness and maternity”

Article 8

Orthopedic appliances, prostheses and other benefits in kind requiring higher costs

- (1) The institution of the place of residence or temporary stay of insured person shall request from the competent institution the prior consent specified in Article _ paragraph _ of the Agreement. The latter institution shall reply to the request within the time limit of fifteen days from the day on which such a request was received.
- (2) Where the benefits in kind referred to in Article _ paragraph _ of the Agreement, in a case of absolute urgency, have to be granted without the consent of the competent institution, the institution of the place of residence or temporary stay shall immediately inform the competent institution thereof.

Application of special provisions “sickness and maternity”

Article 8

Orthopedic appliances, prostheses and other benefits in kind requiring higher costs (continued)

- (3) The cases of absolute urgency referred to in Article _ paragraph _ of the Agreement, are those where the provision of the benefit cannot be delayed without seriously endangering the life or health of the person concerned.
- (4) The liaison bodies shall agree upon a list of orthopedic appliances, prostheses and other benefits in kind requiring higher costs (exceeding EURO 500 - expressed in the national currency of the contracting state) to which the provisions of Article _ paragraph _ of the Agreement shall apply.

Application of special provisions “sickness and maternity”

Article 9

Benefits in kind for pensioners and their family members

In order to receive benefits in kind, the pensioner and/or his/her family members referred to in Article _ of the Agreement, shall register with the institution of the place of residence submitting the certificate of entitlement to the benefits in kind. If the pensioner and/or his/her family members do not submit the certificate, the institution of the place of residence shall request such a certificate from the competent institution. The competent institution that shall send such a certificate, in duplicate, to the institution of the place of residence of person concerned in the territory of other contracting state. The certificate will be valid until the date of its cancellation by the competent institution which has issued the certificate.

Application of special provisions “sickness and maternity”

Article 10

Compensation of costs

- (1) The competent institution shall compensate the institution of the place of temporary stay for the benefits in kind that it has provided to all persons referred to in Article _ of the Agreement. The compensation shall equal the actual cost of such benefits.
- (2) The competent institution will compensate to the persons referred to Article _ of the Agreement who have not met procedures prescribed in Article 7 of this Arrangement the expenses regarding benefits in kind in accordance with the applicable legislation. The institution of the place of temporary stay shall, at the request of the competent institution, supply the necessary information about the prices i.e. costs of granted benefits in kind.
- (3) The liaison bodies may agree, according to the Article _ of the Agreement, upon another method of compensation of costs for all the benefits in kind or part of them than the method provided for in paragraph 1 of this Article.

Application of special provisions “sickness and maternity”

Article 11

Other provisions concerning compensation of costs

- (1) The compensation referred to in Article _ of the Agreement shall be paid through the liaison bodies of contacting states or directly to the competent institutions.
- (2) If the liaison bodies agree on compensation as a lump-sum payment according to the Article _ of the Agreement, they may also agree on a certain percentage for administrative costs, as well as on the payment of advances.

Application of special provisions “sickness and maternity”

Article 12

Payment of cash benefits

The competent institution shall pay the benefits referred to in Article _ of the Agreement directly to the beneficiary.

Application of special provisions “invalidity, old-age and death”

Article 13 Competent institutions

For the application of this chapter the “competent institution” is:

1. In the Republic of Moldova:
 - 1.1. as regards _____ benefits: _____;
 - 1.2. as regards _____ benefits: _____;
2. In _____:
 - 2.1. as regards _____ benefits: _____;
 - 2.2. as regards _____ benefits: _____;

Application of special provisions “invalidity, old-age and death”

Article 14 Competent institutions

- (1) The competent institutions shall inform each other, without any delay, of any application for a benefit to which Part _ Chapter _ of the Agreement is applicable. This information shall be supplied on a agreed form and will contain all information necessary to the competent institution of the other contracting state, in particular the data on periods of insurance, type of insurance (employment), previous workplace and current employment or professional work and employer data. This form takes the place of presenting original documents.
- (2) The competent institutions shall furthermore inform each other of circumstances which are of importance when deciding on a benefit and which are relevant to the continuation of the right to the benefit, enclosing relevant medical documents.
- (3) The competent institutions shall decide upon the application and notify the applicant and the institution of the other contracting state of their decisions.

Application of special provisions “invalidity, old-age and death”

Article 15

Certification of periods of insurance

In order to determine the entitlement to a benefit, or the calculation of its amount, according to the provisions of Part _ Chapter _ of the Agreement, the competent institution of one contracting state will, at the request of the competent institution of the other contracting state, certify the periods of insurance completed by a person under the legislation that institution applies and will provide all other information as may be required.

Application of special provisions “invalidity, old-age and death”

Article 16

Notification

The competent institutions shall notify one another on the following and any other matters related to benefits:

- Termination of the right to benefit or suspension of disbursement of benefit;
- Change in insurance periods;
- The commencement of insurance;
- The new marriage status of the beneficiary widow/widower;
- Moving to a third country;
- Address changes;
- Present education of children and
- Death of a beneficiary.

Application of special provisions “invalidity, old-age and death”

Article 17 Payment of benefits

- (1) All benefits according to the provision of Part _ Chapter _ of the Agreement shall be paid out directly to the beneficiaries.
- (2) At the request of the competent institution a beneficiary will, once a year (every six months), provide a life certificate.

Application of special provisions “unemployment”

Article 18 Exchange of information

Where a person, in application of Part _ Chapter _ of the Agreement, applies for an unemployment cash benefit, the competent institution of one contracting state where claim has been submitted will obtain information regarding the periods of insurance and periods of receiving such cash benefits from the institution of the other contracting state.

Enforcement

Article 19

Mutual assistance

- (1) The competent institutions of the contracting states may directly contact each other, as well as an applicant, a beneficiary, a member of his/her family, or an authorised representative of the person concerned.
- (2) Diplomatic missions or consular representatives and the competent institutions of one contracting state may contact the institutions of the other contracting state directly.
- (3) For the purposes of implementing the Agreement and this Arrangement, the institutions shall lend their good services and act as though implementing their own legislation. The administrative assistance provided by the institutions shall be free of charge.

Enforcement

Article 20

Medical examinations

- (1) At the request of the competent institution of a contracting state, the medical examination of an applicant, a beneficiary, or a member of his family residing or staying in the territory of the other contracting state shall be carried out by the competent institution of the latter contracting state.
- (2) In order to determine the extent of an applicant's ability to work, or that of a beneficiary or a member of his/her family, the competent institution of a contracting state shall use the medical reports and the administrative data provided by the competent institution of the other contracting state. However, the competent institution of the former contracting state reserves the right to have an applicant, a beneficiary or a member of his/her family undergo a medical examination by a doctor of its own choice or in the territory where this competent institution is situated.

Enforcement

Article 20

Medical examinations (continued)

- (3) The applicant, the beneficiary or the family member shall comply with any request to undergo a medical examination. If the person concerned, for medical reasons, is unfit to travel to the territory of the other contracting state, he/she shall inform the competent institution of that contracting state immediately. He/she shall, in that case, submit a medical certificate issued by a doctor designated for this purpose by the competent institution in whose territory he/she resides or stays. This certificate shall prove the medical reasons for his/her unfitness to travel as well as expected duration.
 - (4) The costs of the examination and, as the case may be, the expenses for travel and accommodation shall be paid for by the competent institution at whose request the examination is carried out.
-

Enforcement

Article 21

Data exchange

The liaison bodies (competent institutions) shall, at the end of March of the current year, exchange statistical data on the number of the beneficiaries residing in the territory of the other contracting state, type of benefits paid and the amounts of these, for the previous year.

Final provision

Article 22

Entry into force

This Arrangement shall enter into force at the same date of entry into force of the Agreement.

Done and signed in two originals in _____ on _____, in Moldovan language and _____ language, both texts being equally authoritative.

Implementation of Social Security Agreements: Romanian Experience

Module 1: Forms for the Application of Social Security Agreements

Module 2: Case study - Implementation of Social Security Agreements between Romania and Luxembourg

Coordination of Social Security Systems

- Bilateral agreements (between two states)
 - International conventions/ multilateral agreements (several states)
 - Supranational legislation (European regulations)
-

Principles of Social Security Coordination

- Equality of treatment
- Application of a single legislation
- Aggregation of insurance periods
- Export of benefits
- Administrative cooperation

Equality of treatment

- Ensures that migrant workers receive the social security rights and obligations in the same conditions as its own citizens:
 - Included in all bilateral agreements
 - Also provided by the Article 39 of the European Community Treaty
 - Article 3 of the Regulation 1408/71
 - Article 4 of the Regulation 883/2004
-

Application of a single legislation

- At a certain moment while pursuing his/her professional career, a migrant worker is subject to the social security legislation of a single member state.
 - General Rule**
 - Legislation of the country in which the activity is undertaken, even if the person's residence or if the company employing the person has its principal place of business in the territory of another member state.
 - There are certain exceptions from the establishment of the general rule of the legislation applicable in the case of posting and the case in which the migrant worker is pursuing his/her activity (employed or self-employed) in the territory of two or more member states. For these situations clearly established provisions will determine the legislation applicable.

Aggregation of insurance periods

- For the entitlement of the rights
- For granting the benefits
- Insurance periods accomplished just before coming into force of the respective agreement/convention/regulation are taken into account

Export of benefits

- The benefits are paid in the beneficiary's country of residence, i.e. they are exportable
 - Particularly important for pensions

Administrative cooperation

- Bilateral agreements provide concluding administrative arrangements which set out concrete methods/forms and implementing procedures of the agreements
 - Regulation 574/72 for implementing the Regulation 1408/71
 - 41 E-forms and European Health Insurance Card
 - Regulation 987/2009 for implementing the Regulation 883/2004
-

European Forms (E-Forms/R574)

European Forms (E-Forms/R574) are classified according to the type of benefits:

- Sickness and maternity benefits (series 100)
- Old-age/survivors'/invalidity benefits (series 200)
- Unemployment benefits (series 300)
- Family benefits (series 400)
- Forms that are common for several benefits

Common forms

E 001 – Communication form used for completing other forms for:

- Request, communication of information
- Request for forms
- Reprocessing of an application when the existing forms are not adaptable to the situation concerned

E 101 – Form concerning the legislation applicable (posting)

E 102 – Form concerning the extension of term of posting

E 103 – Exercising the right of option (diplomatic missions, embassy staff)

- Used when posting to another state, situation in which the worker is subject to the legislation of the posting state.
- Issued by the institution or organ assigned for this purpose by the competent authority.

Forms for sickness and maternity benefits

E 104 – Form concerning the aggregation of periods of insurance, employment or residence

- Distinguishes the periods of insurance accomplished in the territory of a member state.
- Used by the institution of a new state of employment for qualifying sickness, maternity, death benefits, when a worker starts an activity in a state and does not fulfill qualifying period of the benefits in that state.

E 106 – Form for the entitlement to sickness and maternity benefits in kind for persons residing in a country other than the competent country

- Allows the worker and the family members who reside with the worker in the territory of a country other than the competent country to receive sickness and maternity benefits provided on account of the competent institution by the institution of the place of residence, in accordance with the provisions of the legislation applicable.
- Used by the family members of the unemployed worker if they do not reside with the unemployed.

E 107 – Form for application of entitlement to benefits

- Used by the institution of the place of stay or residence to which received an application for a form for the entitlement to benefits in kind in case of sickness, maternity or accidents at work to request the forms necessary for benefit entitlement (E 106, E 109, E 112, E 120, E 121, E 123).

E 108 – Notification of suspension or withdrawal of the right to sickness and maternity benefits in kind

- Used for suspension or withdrawal of the right to sickness and maternity benefits in kind, which are provided to a person who resides in a country other than the competent one (E 106, E 109, E 120, E 121, E 123).

E 109 – Form for the registration of members of the employed person's family and the updating of lists

- This form is used to allow the employed person's family members who do not reside with him/her in the country of residence, to receive benefits in kind offered on account of the competent institution by the institution of the place of residence in accordance with the provisions of the legislation applicable.

E 111 – Form for the entitlement to benefits in kind during a temporary stay in a country other than the competent country

- This form has been replaced by the European Health Insurance Card.

E 112 – Form concerning the retention of the right to sickness or maternity benefits currently being provided

- Used for temporary or final transfer of the residence to other country while retaining the right to benefits by the competent country.
- Used for an authorized medical treatment in another country.

Authorization provisions:

- The treatment should be part of benefits provided in the country of residence.
- The treatment cannot be done in the country of residence during the necessary period of time given the applicant's health status and possible evolution of sickness.

E 115 – Claim for cash benefits for incapacity for work

- Used in the case of an employed or unemployed worker who is incapable for work in a country other than the competent country.

E 116 – Medical report relating to incapacity for work (sickness, maternity, accident at work, occupational disease)

- This form is a simplified medical report which should be completed by the doctor who undertakes the medical check in the institution of the place of stay or residence of the employed or unemployed worker.

E 117 – Granting of cash benefits in the case of maternity and incapacity for work

- By this form the competent institution indicates if the person concerned has the right to daily allowances (following the acceptance of E 116 and E 117).
- If the right is granted, the period and the provider of benefits are specified (competent institution, employer, the institution of the place of stay or residence).

E 118 – Notification of non-recognition or of termination of incapacity for work

- This form is used to allow the institution of the place of stay or residence and the competent institution to notify the employed or unemployed worker regarding the non-recognition or termination of incapacity for work.

E 120 – Form for the entitlement to benefits in kind for pension claimants and their family members

- This form is used for workers who cease the right to benefits according to the legislation of the last competent country as a result of the preceding performed activity, while an entitlement to benefits in kind for pensioners is in the process of examination. Benefits in kind may be granted to these workers as well as to their family members in their country of residence.

E 121 – Form for the entitlement to benefits in kind for the pensioners and their family members who reside in a country other than the competent country

- This form is used to allow both the pensioner and the family members, whether they live together or not, to receive benefits in kind, offered on account of the competent institution by the institution of the place of residence, in accordance with the provisions of the legislation applicable.

E 123 – Form for the entitlement to benefits in kind under insurance against accidents at work and occupational diseases

- This form allows the worker who is a victim of an accident at work to receive, in the country of stay or residence, of benefits in kind under insurance against accidents at work, offered on account of the competent institution by the institution of the place of staying or residence, in accordance with the provisions of the legislation applicable.

E 125 – Individual record of actual expenditure

- This form is completed by the institution of the place of stay or residence which provides benefits on sickness, maternity or insurance against accidents at work, or medical services on account of a competent institution of another country which reimburses these costs based on the invoice.

E 126 – Establishment of rates for refund of benefits in kind

- This form is used by the competent institution to which the insured person is subjected. This form presents the invoices of expenses for medical care received during a temporary stay in the territory of another country. By this form the competent institution requests the institution of the place of residence the amount of expenses to be reimbursed if the person concerned received services during his/her stay.

E 127 – Individual record of annual lump-sum payments

- This form is used when expenses are reimbursed based on a lump-sum. Benefits provided on the basis of E 109 and E 121 forms are subject to lump-sum reimbursements.

Difference between benefits in kind and cash benefits:

- Benefits in kind are provided on account of the competent institution by the institution of the place of residence in accordance with the provisions of the legislation applicable. Cash benefits are provided by the competent institution in accordance with the legislation applicable. Namely, cash benefits are exportable.
- Cash benefits are designated to compensate losses of income of a worker as a result of his/her sickness.

Forms for pensions

E 202/ E 203/ E 204 – Investigation of a claim for an old-age/survivors'/invalidity pension

- This is equivalent to a claim of an old-age/survivors'/invalidity pension for all the institutions concerned and it substitutes the application to be made taking into account the national legislation of each concerned country.

E 205 – Form concerning the period of insurance (Form concerning insurance history in Romania)

- By this form each of the concerned institutions confirms the periods of insurance, as well as the equivalent periods in these institutions performed by the person concerned in accordance with the legislation applicable.

E 207 – Information concerning the insured person's insurance history

- This form is used to facilitate the fulfillment of formalities by the concerned institution
- Information concerning the insurance history is gathered from the insured person and sent to the concerned institutions, if necessary. This information confirms or complements the information already known by the institutions, regarding the insured person's insurance history and allow to establish the entire insurance period.

E 210 – Notification of decision concerning a claim for pension

- This form is used to send personal decision of all the concerned institutions, accompanied by a copy of the official decision.

E 211 – Summary of decisions

- Used by the institution which examines the request after receiving all decisions sent by all the concerned institutions to notify the beneficiary on the decisions made, as well as the concerned institutions.

E 213 – Detailed medical report

- This form is used to establish the degree of invalidity by all institutions to which legislation the pension applicant was subjected.
- An institution of one country requests medical examination of a person whose residence is in the territory of another country.

E 215 – Administrative report on the status of a pensioner

- Used for regular administrative controls of a pension beneficiary who lives in the territory of another country.

Creation of pension files

- Institution which examines the request to create a pension file:
 - Institution in the country of residence of the person who made the request, if it is submitted to the legislation of the respective country
 - Otherwise, institution of the country of the last employment.
 - Functions of the institution:
 - To complete the liaison forms
 - To ensure the exchange of forms between institutions
 - To notify the insurer on the decisions taken

Forms completed by the examining institution

- E 202/E 203/E204
- E 205
- E 207
- E 211
- E 213
- E 001 (if necessary)

Forms completed by the institution concerned

- E 205
- E 210
- E 001 (if necessary)

Calculation of pension

- Case (1) : the aggregation of insurance periods is not necessary
 - Two pensions are calculated (national, pro-rated), then the more favourable one is chosen
- Case (2) : the aggregation of insurance periods is necessary
 - Only the pro-rated pension is calculated

Calculation of pension to be paid from Romania using pro-rata method

$$\frac{\text{Period of insurance in Romania}}{\text{Period of insurance in all countries concerned}} \times \text{TA}$$

TA= theoretical amount (assuming that all periods of insurance had been in Romania)

Forms for unemployment benefits

E 301 – Form concerning the periods to be taken into account for the granting of unemployment benefits

- This form certifies the periods of insurance or employment performed by an employed person in a country, so that he/she could be eligible for unemployment benefits in the territory of another country.

E 302 – Form relating to the family members of an unemployed person to be taken into account for the calculation of benefits

- Certifies that the family members are not taken into account for the calculation of unemployment benefits according to the legislation of the residence member state.
- Used in a country whose legislation takes into account the number of family members in the calculation of the benefit amount, even if they do not have their residence in the territory of that country.

E 303 – Form concerning the retention of the right to unemployment benefits

- This form allows the unemployed worker who receives unemployment benefits in one country to retain the right to these benefits when moving to another country searching for work (within the limit of the rights received in the native country and for a maximum period of 3 months).

Forms for family benefits

E 401 – Form concerning composition of a family for the purpose of the granting of family benefits

- This form certifies the family members of the employed or self-employed, unemployed worker, pensioner who have the residence in the territory of a country other than the competent country. This form should be presented in support of a request of family benefits.

E 402 – Form of continuation of studies for the purpose of the granting of family benefits

- The first part of this form is completed by the competent institution to grant family benefits, and the second part is completed by the educational institution where the child of the applicant is registered.

E 403 – Form of apprenticeship and/or vocational training for the purpose of the granting of family benefits

- The first part of this form is completed by the competent institution to grant family benefits, and the second part is completed by the person, company or institution responsible for apprenticeship where the child of the applicant is registered.

E 404 – Medical form for the purpose of the granting of family benefits

- The second part of this form is completed by the health insurance institution of the country of residence of the family members, in order to allow the competent institution of family allowance to examine if the family member fulfils provisions of its legislation related to the medical status for receiving the family benefits.

E 405 – Form concerning the aggregation of periods of insurance, employment or self-employment or concerning successive employment in several states, between the dates on which payment is due, according to the legislation of these states

- This form is used:
 - To solve the problem of multiple family benefits in the case of successive occupations in the territory of several countries.
 - To take into account periods of insurance in the territory of a country in order to grant the right to family benefits in the territory of the new country of employment.

E 411 – Request for information on the entitlement to family benefits in the member states of residence of the family members

- This form is used to solve the problems related to the aggregation of family benefits and to allow the competent institution to examine if the entitlement to family benefits is suspended due to a professional activity conducted in the country of residence of the family members.

New forms

- Regulations 883/2004 and 987/2009
- Portable documents

Social security field	Document	Number	Former E-Form
Legislation applicable	Certificate concerning the social security legislation which applies to the holder	A1	E101 E103
Sickness benefits	Registering for healthcare cover	S1	E106 E109 E120 E121
	Entitlement to scheduled treatment	S2	E112
	Medical treatment for former crossborder worker in former country of work	S3	-
	Entitlement to healthcare cover under insurance against accidents at work and occupational diseases	DA1	E123
Pensions	Summary of pension decisions taken by institutions in the member states where the person has built up pension rights	P1	E205 E207 E211
Unemployment benefits	Periods to be taken into account for granting unemployment benefits	U1	E301
	Retention of unemployment benefits entitlement	U2	E303
	Circumstances likely to affect the entitlement to unemployment benefits	U3	-

Implementation of Social Security Agreements: Romanian Experience

Module 1: Forms for the Application of Social Security Agreements

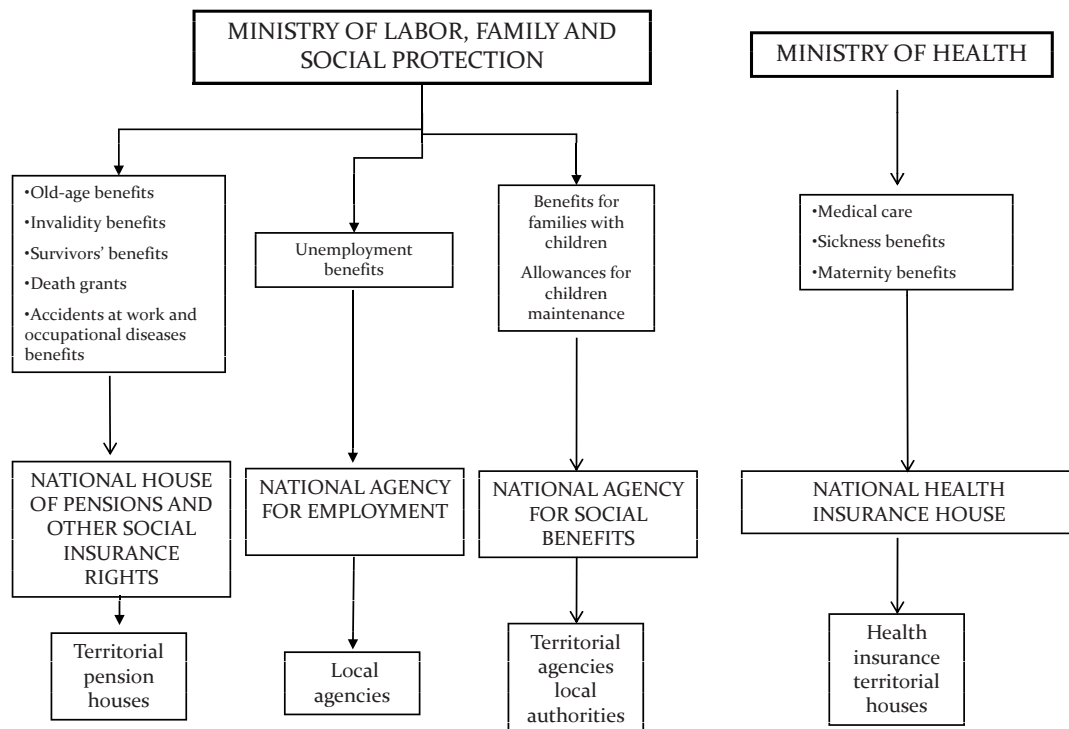
Module 2: Case study - Implementation of Social Security Agreements between Romania and Luxembourg

Romania: Bilateral Agreements on Social Security

- Currently, Romania implements 22 bilateral agreements in the field of social security, 9 of them were signed in the last years with the Netherlands, Czech Republic, Luxemburg, Germany, Austria, Hungary, Spain, Portugal, Bulgaria, Turkey, Macedonia, Korea
 - Signed: Canada and Moldova
 - Agreement to be signed: Chile
 - In negotiation: Croatia, Ukraine, Albania, Israel, Algeria and Serbia
-

Implementation of Bilateral Agreements and European Regulations in Romania

- Institutions involved in the implementation of social security coordination:
 - Ministry of Labour, Family and Social Protection
 - Ministry of Health
 - National Agency for Employment (1998)
 - National Health Insurance House (1998)
 - National House of Pensions and Other Social Insurance Rights (2000)
 - National Agency for Social Benefits (2008)



Implementation of Bilateral Agreements and European Regulations in Romania

- Competent authorities:
 - Ministry of Labor, Family and Social Protection
 - Ministry of Health

Implementation of Bilateral Agreements and European Regulations in Romania

- Liaison bodies:
 - National House of Pensions and Other Social Insurance Benefits (pensions, accidents at work and occupational diseases)
 - National Agency for Employment (unemployment benefits)
 - National Health Insurance House (sickness and maternity benefits)
 - National Agency for Social Benefits (family benefits)
-

Implementation of Bilateral Agreements and European Regulations in Romania

- Competent institutions:
 - **NHPSIR:** for legislation applicable
 - **Territorial Pension Houses:** pensions, accidents at work and occupational diseases, death grants
 - **Health Insurance Houses :** sickness and maternity benefits in kind, sickness and maternity allowances, allowances for temporary incapacity following an ordinary illness and accidents besides those at work, care-giver's allowances for caring for a sick child, allowances for illness prevention and recovery of the working capacity
 - **Territorial Employment Agencies:** unemployment benefits
 - **Territorial Agencies for Social Benefits:** child benefit, parental allowance or monthly allowance, monthly benefits for the maintenance of disabled children

Implementation of the Agreement Romania/Luxembourg

Agreement

- Agreement Provisions:
- Part I – General Provisions
- Articles 1- 8
 - Definitions (1)
 - Documents-based area of application (2)
 - Person-based area of application (3)
 - Equality of treatment (4)
 - Export of benefits (5)
 - Aggregation of insurance periods (6)
 - Admission to optional continued insurance (7)
 - Avoiding aggregation of benefits (8)

Arrangement

- Arrangement Provisions:
- Part I - General Provisions
- Articles 1-5
 - Definitions (1)
 - Liaison bodies (2)
 - Competent institutions (3)
 - Request for admission to optional continued insurance (4)
 - Form of aggregation of insurance benefits (5)
- **RO/L 104 –201** Forms of insurance periods (Art: A 6,7,22; AA 4,5)

Implementation of the Agreement Romania/Luxembourg

Documents-based area of application for Romania:

- (i) Allowances for temporary incapacity following an ordinary illness or accidents besides those at work, for occupational diseases and accidents at work;
- (ii) Benefits in kind for occupational diseases and accidents at work;
- (iii) Illness prevention and recover of the working capacity benefits;
- (iv) Maternity benefit;
- (v) Paternal allowance for maintenance of child and care-giver's allowance for caring for a sick child;
- (vi) Old-age pension;
- (vii) Early retirement pension;
- (viii) Invalidity pension;
- (ix) Survivors' benefit;
- (x) Death grants;
- (xi) Unemployment benefit;
- (xii) Family benefit;
- (xiii) Sickness and maternity benefits in kind.

Documents-based area of application for Luxembourg:

- (i) Sickness and maternity insurances;
- (ii) Insurance against occupational diseases and accidents at work;
- (iii) Old-age, invalidity and survivors' insurance benefits;
- (iv) Unemployment benefit;
- (v) Family benefit.

Implementation of the Agreement Romania/Luxembourg

- **RO/L 104-201**– Forms of insurance periods (Art: A 6,7,22; AA 4,5)
 - Competent institution (in the field of health or pensions) fills in side A and sends two copies to the institution of the other contracting party. This one fills in side B and returns the form or gives it to the beneficiary in case it was issued at his/her request.
-

Implementation of the Agreement Romania/Luxembourg

- Part II – Applicable Legislation
- Articles 9-14
 - General Rules (9)
 - Posted workers (10)
 - Staff of the International Transport Companies (11)
 - Navy crew (12)
 - Diplomatic missions and consular posts (13)
 - Exceptions (14)
- Part II – Applicable Legislation
- Articles 6-8
 - Form regarding applicable legislation (6)
 - Extension (7)
 - Derogation (8)
- **RO/L 101** – Form concerning the posting (Art: A 10; AA 6)
- **RO/L 102** – Form concerning the extension of posting (Art: A 10; AA 7)

Implementation of the Agreement Romania/Luxembourg

- **RO/L 101 –**
Form concerning the posting (Art: A 10; AA 6)
- **RO/L 102 –**
Form concerning the extension of posting (Art: A 10; AA 7)
- Competent institution – at the beneficiary or employer request NHPSIR fills in the form and return it to the person requested.
- The employer fills in side A, in four copies, and sends them to the institution in Luxembourg where the worker is posted. The Luxembourg institution fills in side B and sends three copies: one copy each to the employee, the employer, and the institution in Romania.

Implementation of the Agreement Romania/Luxembourg

- Part III
- Special provisions regarding different branches of benefits
- Section 1: Sickness and maternity benefits
- Articles 15-21
 - Special rule referring to the aggregation (15)
 - Entitlement to benefits in kind when the place of stay is in the territory of the contracting party (16)
 - Entitlement to benefits when the residence is in the territory of the contracting party (employed person and members of his family) (17)
 - Entitlement to cash benefits when the place of stay or residence is in the territory of the contracting party (18)
 - Entitlement to benefits in kind for pensioners and members of their family (19)
 - Institutions from the place of temporary stay or residence (20)
 - Reimbursement (21)
- Part III
- Special provisions regarding different branches of benefits
- Section 1: Sickness and maternity benefits
- Articles 9-17
 - Entitlement to benefits when the place of temporary stay is in the territory of the contracting party (9)
 - Entitlement to benefits for persons who work in the territory of the contracting party and members of the family that accompany them (10)
 - Entitlement to benefits for members of the family of the insured person or pensioner, that have their residence in the territory of the contracting party (11)
 - Granting of major benefits in kind (12)
 - Hospitalization (13)
 - Entitlement to cash benefits (14)
 - Entitlement to benefits for pensioner and members of his family (15)
 - Institutions from the place of stay or residence (16)
 - Reimbursements between institutions (17)

Implementation of the Agreement Romania/Luxembourg

- **RO/L 111** – Form for the entitlement to benefits in kind in case of emergency during a temporary stay in the territory of the other contracting party (Art: A 16.1; AA 9)
- **RO/L 128** – Form for the entitlement to benefits in kind necessary during a temporary stay in the territory of the other contracting party (Art: A 16.2; AA 9)
- The competent HI institution in Romania completes the form and sends it to the concerned person or institution of the place of residence (Luxembourg), if it was issued at its request.

Implementation of the Agreement Romania/Luxembourg

- **RO/L 106** – Form for the entitlement to benefits in kind for persons who work in the territory of the other contracting party and their family members (Art: A17.1; AA 10)
- The competent institution fills in side A and sends two copies to the institution of the place of residence, if it was issued at its request. This institution fills in side B and then sends back one copy to the competent institution.

Implementation of the Agreement Romania/Luxembourg

- **RO/L 109** – Form for the entitlement to benefits in kind for family members (Art: A 17.3, 19.3; AA 11)
 - The competent institution fills in side A and sends two copies to the insured person or to the institution of the place of residence, if it was issued at its request. This institution fills in the B side and then sends back one copy to the competent institution.
-

Implementation of the Agreement Romania/Luxembourg

- **RO/L 121** – Form for the entitlement to benefits in kind for pensioners (Art: A 19.2; AA 15)
- The competent HI institution and the institution that provides the pension fill in side A and send two copies to the pensioner or to the institution of the place of residence, if it was issued at its request. This institution fills in side B and then sends back one copy to the competent HI institution.

Implementation of the Agreement Romania/Luxembourg

- **RO/L 113** – Hospitalisation, notification of entering and leaving the hospital (Art: A 16.1.3, 17.1, 32.1; AA 13, 25.1)
- **RO/L 114** – Granting of major benefits in kind (Art: A 16.5, 17.2; AA 12)
- Institution of the place of stay or residence fills in side A , leaving side B blank, and sends it to the competent institution.
- Institution of the place of stay or residence fills in side A and sends two copies to the competent institution, which fills in side B and sends back one copy to the institution of the place of stay or residence.

Implementation of the Agreement Romania/Luxembourg

- **RO/L 115** – Claim for cash benefits for incapacity for work (Art: A 18, 32.2; AA 14,25.2)
- **RO/L 117** – Granting of cash benefits in the case of incapacity for work (Art: A 18, 32.2; AA 14, 25.2)
- **RO/L 118** – Notification of non-recognition or of end of incapacity for work (Art: A 18, 32.2; AA 14, 25.2)
- Institution of the place of stay or residence sends the form to the competent institution;
- When receiving RO/L 115 the competent institution fills in RO/L 117 form and sends it to the institution of the place of stay or residence;
- Institution of the place of stay or residence issues two copies (one copy sent directly to the concerned person, one copy to the institution).

Implementation of the Agreement Romania/Luxembourg

- **RO/L 125** – Individual record of actual expenditure (Art: A 21, 32.5, 41.6; AA 17, 25.3, 28.4)
- An individual form for each person is filled in by the institution of the place of stay or residence (Romania), which then is sent to the competent institution (Luxembourg) for cost reimbursement.

Implementation of the Agreement Romania/Luxembourg

- Section 2 – invalidity/old-age/survivors' pensions
 - Articles 22-27
 - Special aggregation rules (22)
 - Prolongation of reference period (23)
 - Aggregation of insurance periods performed in the territory of a third party (24)
 - Entitlement of benefits (calculation using "pro rata temporis") (25)
 - Insurance period less than one year (26)
 - Peculiarities of Luxembourg's legislation (27)
 - Section 2 – invalidity/old-age/survivors' pensions
 - Articles 18-23
 - Application of pension's request (18)
 - Investigation of pension's request (19)
 - Notification of decisions (20)
 - Payment of pensions (21)
 - Recalculation, suspension or end of pensions granting (22)
 - Statistics (23)
- RO/L 202/203/204**
RO/L 205, RO/L 211
RO/L 213, RO/L 215

Implementation of the Agreement Romania/Luxembourg

- **RO/L 202**
 - **RO/L 203**
 - **RO/L 204**
 - Investigation of a claim for old-age/survivors'/invalidity pension
 - **RO/L 205**
 - Form concerning insurance history
 - Form issued by the competent institution of the place of residence of the applicant. If the applicant was subject to the legislation of the contracting Party in the territory where he/she resides, form RO/L 205 should be attached to the concerned application. Also, all documents concerning insurance history of the applicant in the territory of the other contracting Party should be attached. If the concerned person resides in the territory of a third Party, investigation institution would be the one of the contracting Party to which the claim was addressed.
-

Implementation of the Agreement Romania/Luxembourg

- **RO/L 210 – 211**
 - Notification of decision (Art. 20 of AA)
- Investigating institution in Romania or the institution in Luxembourg fills in the concerned form and sends one copy each to the applicant and to other competent institution, enclosing a copy of its own decision.

Implementation of the Agreement Romania/Luxembourg

- **RO/L 215**
 - Administrative report on the status of a pensioner (Art.28 of AA)
- Institution which issues the report (local pension house) sends it to the Luxembourg institution which requested it.

Implementation of the Agreement Romania/Luxembourg

- Section 3 – Death Grants
- Articles 28-29
 - Non-application of the territory principle (28)
 - Priority rule (29)
- Section 3 – Death Grants
- Article 24
 - Provision of the death grant
- **RO/L 124** – Claim for death grant is addressed either to the competent institution or to the institution of the place of residence presenting justificative documents requested by the competent institution

Implementation of the Agreement Romania/Luxembourg

- Section 4 – Accidents at Work and Occupational Diseases Benefits
 - Articles 30-33
 - Occupational disease in case of performing an activity on the territories of both contracting parties (30)
 - Taking into consideration of previous accidents at work or occupational diseases (31)
 - Place of staying or residence in the territory of other party (32)
 - Temporary place of staying or residence in the territory of other party (33)
 - Section 4 – Accidents at Work and Occupational Diseases Benefits
 - Article 25
 - Entitlement of benefits in kind and cash, and compensation between institutions
 - **RO/L 123** – Entitlement of benefits in kind for accidents at work and occupational diseases
-

Implementation of the Agreement Romania/Luxembourg

- Section 5 – Unemployment Benefits
- Articles 34-38
 - Special rules concerning aggregation (34)
 - Minimum period of employment (35)
 - Taking into consideration of previous benefits periods (36)
 - Taking into consideration of members of the family (37)
 - Place of residence (38)
- Section 5 – Unemployment Benefits
- Article 26
 - Form of the aggregation of periods of insurance

Implementation of the Agreement Romania/Luxembourg

- **RO/L 301 – 302** – Form relating to the insurance periods and the family members who are taken into account for the granting of unemployment benefits (Art: A 6, 34, 36, 37; AA 26)
- Forwarding institution (Local Employment Agency) fills in side A and sends two copies to the addressee institution. This one fills in side B and sends one copy to the forwarding institution.

Implementation of the Agreement Romania/Luxembourg

- Section 6 – Family Benefits
- Articles 39-40
 - Special rule concerning aggregation(39)
 - Entitlement to benefits (40)
- Section 6 – Family Benefits
- Article 27
 - Form of the aggregation of periods of residence

Implementation of the Agreement Romania/Luxembourg

- **RO/L 405** – Form concerning the periods of insurance or residence
- Forwarding institution fills in side A and sends two copies of the certificate to the addressee institution. This one fills in side B and sends one copy to the forwarding institution.

Implementation of the Agreement Romania/Luxembourg

- | | |
|---|---|
| <ul style="list-style-type: none"> • Part IV – Various Provisions • Articles 41-49 <ul style="list-style-type: none"> – Administrative and cooperation measures (41) – Use of official languages (42) – Tax and certification exemption (43) – Applying a request (44) – Third party responsibility (45) – Recovering of overpayments (46) – Performance procedure (47) – Payment currency (48) – Disputes solving (49) • Part V – Transitional and Final Provisions | <ul style="list-style-type: none"> • Part IV – Various Provisions • Articles 28-33 <ul style="list-style-type: none"> – Administrative control and medical examination (28) – Control procedure in case of granting of social assistance benefits (29) – Exchange of information (30) – Banking references (31) – Restarting the payment of a benefit (32) – Entering into force and duration (33) • RO/L 213 – Medical report (Art. 28 of AA) |
|---|---|

Implementation of the Agreement Romania/Luxembourg

- Other forms used :
- **RO/L 001** – Request for communication of information, forms, return
- **RO/L 107** – Application for a form for the entitlement to benefits in kind
- **RO/L 108** – Notification of suspension or withdrawal of the right to benefits in kind

Implementation of other Agreements

- Other agreements of Romania which are implemented using agreed forms based on the model of E-Forms:
- **Czech Republic (signed on 24.09.2002)**
 - Simplified forms (RO/CZ 107, RO/CZ 111, RO/CZ 113, RO/CZ 114, RO/CZ 125, RO/CZ 126, RO/CZ 202, RO/CZ 203, RO/CZ 2004, RO/CZ 205, RO/CZ 207, RO/CZ 213, RO/CZ 301)
- **Hungary (signed on 20.10.2005)**
 - Forms agreed for health insurance (RO/H 001, RO/H 104, RO/H 106, RO/H 107, RO/H 108, RO/H 109, RO/H 111, RO/H 112, RO/H 114, RO/H 115, RO/H 118, RO/H 121, RO/H 125)

Implementation of Agreements and Regulations

- Administrative measures:
 - Developing of administrative ability of the concerned institutions
 - Elaboration of internal application norms
 - IT applications (EHIC card, calculation of pensions MERCUR)
 - Training of employees involved in application of international documents with provisions in the field of social security
 - Informing the insured persons
-

Exercises

Exercise 1

Mr. Smith, a citizen of Luxembourg, works for a company in Luxembourg. The company opens a subsidiary in Romania. To open the subsidiary, Luxembourg company sends Mr. Smith to Romania for 12 months.

Q: Which formalities should be fulfilled so that Mr. Smith can be further subject to the Luxembourg legislation?

A: The employer requests the competent institution in Luxembourg to issue form RO/L 101 which confirms that Mr. Smith is still subject to the Luxembourg legislation; the employee presents it to the Romanian institution (NHPSIR), the Health Insurance House is also informed; he keeps one copy so that in case of a control he can prove that he is still insured in Luxembourg.

Exercise 2

Settlement of the subsidiary is delayed and the 12 months are not enough. Mr. Smith's stay in Romania will be extended for another 6 months, after the first 12 months.

*Q: What are the possibilities granted to the Luxembourg employer?
Which formalities should be fulfilled so that Mr. Smith can be further subject to the Luxembourg legislation?*

A: Before the end of the original posting period, the employer should request an extension of posting by presenting RO/L 102 form to the Romanian institution which, if it agrees, fills in side B of the form.

Exercise 3

Mrs. Enache, a Romanian citizen, is on her leave and travels to Luxembourg to visit a friend. There she slips on the street and needs medical care because of her leg sprain. According to the Luxembourg system she has to pay the bill for medical care.

Q: What should Mrs. Enache do to get the reimbursement?

A: Mrs. Enache has to present RO/L 111 form together with the bill from the Health Insurance Institution in Luxembourg (Caisse de maladie des ouvriers) in order to receive the reimbursement of medical expenses.

Exercise 4

Mrs. Dumas, a pensioner from Luxembourg, needs thermal bath treatment. As there is no appropriate thermal bath in her country she wants to come to Romania to Baile Felix where she has a friend.

*Q: Which formalities should be fulfilled?
Under which circumstances the treatment can be refused?*

A: Mrs. Dumas should get RO/L 112 form from the Luxembourg Health Insurance Institution by which she is insured; if the treatment is not listed as medical care which is granted by this institution the treatment may be refused.

Exercise 5

Mr. Ionescu, a Romanian citizen, has his residence in Luxembourg where he worked for 5 years. He marries a Romanian and returns to work to Romania. After 2 months of work in Romania, the doctor prescribes him to take a medical leave.

*Q: Can this person be entitled to cash benefits under the Romanian system?
Which formalities should be fulfilled by the Romanian institution and which form should be requested?*

A: The condition to be entitled to sickness allowance in Romania is to pay the contributions at least one month during the last 12 months, this is fulfilled without the need of RO/L 104 form for aggregation of insurance periods.

Exercise 6

Mr. Georgescu works and resides in Luxembourg. His wife, not employed, lives with their children in Romania.

Q: Who is responsible for entitlement of the benefits in kind (and on whose account) and which formalities should be fulfilled?

A: He should fill in RO/L 109 form issued by the competent institution in Luxembourg which also covers the expenses.

Exercise 7

A Romanian diplomat works in the Romanian Embassy in Luxembourg and lives there with his family.

*Q: To which social insurance legislation are they subjected?
To which health benefits are they entitled and what formalities should be fulfilled?*

A: They are subject to the Romanian legislation. They should fill in RO/L 106 form by which he and his family register at the Luxembourg health insurance institution and receive the same medical care as Luxembourg citizens.

Exercise 8

The above Romanian diplomat gets sick and needs to take a medical leave. He received a medical certificate from his doctor.

Q: Which formalities should be fulfilled to be entitled to cash benefits?

A: Within 3 days he should go to the Luxembourg institution which sends RO/L 115 form together with medical certificate to the competent institution in Romania. This one analyses the request and sends the notification using RO/L 117 form; in case of rejection the form RO/L 118 is also sent explaining the reason of rejection.

Exercise 9

Mrs. and Mr. Ionescu, Romanian pensioners, wish to move to their daughter who lives in Luxembourg.

Q: Which formalities should be fulfilled in Romania in order to be entitled to medical care benefits in Luxembourg?

A: Before leaving Romania they should request RO/L 121 form from the health insurance house to which they are subject and present it to the Luxembourg health insurance institution at the place of residence; this one will register them and return one copy to the Romanian health insurance house.

Exercise 10

Mr. Georgescu is a pensioner and lives in Romania. He receives a pension from Romania for 15 years of work and a pension from Luxembourg for his 20 years of work.

*Q: Which institution is responsible for his medical care benefits?
What if he only receives the pension from Luxembourg?*

A: In the first case, Romanian health insurance house is responsible for the medical care expenses; in the second case, the Luxembourg institution is responsible.

Exercise 11

Mr. Dumas, after working for 5 years in Luxembourg, lost his job but found another one in Romania. However, after 3 months the company in Romania was closed down. Mr. Dumas goes to the local employment agency to register himself as an unemployed person.

Q: Can he be entitled to the unemployment benefit? What formalities should be fulfilled?

A: Since he worked at least 3 months in Romania he may apply for unemployment benefits, but a period of insurance of at least 12 months during the last 24 months is requested in order to receive the unemployment benefit. Employment Agency in Romania fills in side A of forms RO/L 301-302 and sends them to the Luxembourg institution which fills in side B and returns one copy.

Coordination of Social Security Systems in the European Union

Module 1: Overview of the EC Regulations 883/2004 and 978/2009

Module 2: Coordination of sickness benefits

Module 3: Coordination of family benefits for children abroad

Module 4: Coordination of unemployment benefits

Module 1: Overview of the EC-Regulations 883/2004 and 987/2009 (material scope, equality of treatment and assimilation of facts)

1. The scope *ratione materiae* of the Regulation (EC) No. 883/2004

Article 3 of Regulation (EC) No. 883/2004 determines its material scope of application. It contains an exhaustive list of social security benefits covered by the Regulation, refers to special non-contributory cash benefits treated in accordance with Article 70 and excludes social assistance benefits and compensation schemes from its scope. All EU-Member States covered by the Regulation must make sure their social security benefits are coordinated according to the rules laid down in the Regulation. This means that, as a first step, they have to classify their social benefits in one of the categories defined in Article 3.

Social Security benefits

Social security benefits within the meaning of the Regulation must fulfil two conditions:

1. They must be regulated by **legislation** within the meaning of Article 1 (l).

This term covers statutes, regulations and other provisions and all implementing measures with the exclusion of industrial agreements¹, whether or not they have been the subject of a decision by the authorities rendering them compulsory or extending their scope (unless the Member State has made an explicit declaration to the contrary).

Article 9 requires the Member State to specify the legislation and schemes covered by Regulation 883/2004 in a declaration. The ECJ has decided with respect to the previous Regulation 1408/71 that the fact that a national law or regulation has not been specified in the declarations referred to in this provision is not in itself proof that that law or regulation does not fall within the field of application of the Regulation; on the other hand, the fact that a Member State has specified a law in its declaration must be accepted as proof that the benefit granted on the basis of that law are social security benefits within the meaning of the Regulation.² The term legislation does not cover social security conventions concluded between a single Member State and a non-Member State.³

The scope of the Regulation is not limited to the so-called first pillar social security schemes, but it covers basic statutory schemes and supplementary schemes.⁴ It can therefore be concluded that *supplementary mandatory pension insurance* schemes, as they have now been established in many countries, are also covered by the Regulation. The fact that these schemes are frequently administered by private insurance companies is irrelevant in this respect.

Legislation which confers on the beneficiaries a legally defined position which involves no individual and discretionary assessment of need or personal circumstances comes in principle within the field of social security within the meaning of the Regulation.⁵ The mere fact that a scheme is tax-financed does not necessarily exclude it from its scope (see Article 3 (2) of the Regulation). Also schemes which are entirely financed by employers (e.g. sickness benefits granted by employers⁶) may fall within the scope of the Regulation.

¹ ECJ, case C-253/90 of 6.2.1992, *Co v Belgium*; case 313/82 of 15.3.1984, *Tiel Utrecht*

² ECJ, case 35/77 of 29.11.1977, *Beerens*; case C-237/78 of 12.7.1979, *Palermo, born Troia*

³ ECJ case C-23/92 of 2.8.1993, *Grana-Novoa*; see however also in this respect ECJ case C-55/00 of 15.01.2002, *Gottardo*

⁴ ECJ, case 147/87 of 17.12.1987, *Zaoui*

⁵ ECJ, case 79/76 of 31.3.1977, *Fossi*

⁶ ECJ, case 45/90 of 03.06.1992, *Paletta*

2. They must be payable because of one of the **contingencies** specified in Article 3 (1) of Regulation (EC) No. 883/2004. That list of contingencies is exhaustive and a branch of social security not mentioned in the list does not fall within its scope. Therefore, a Member State covered by the Regulation must determine whether a benefit, which it identified as either as a social security benefit in kind or a cash benefit, must be treated either as

- (1) sickness benefit
- (2) maternity or equivalent paternity benefit
- (3) invalidity benefit
- (4) old-age benefit
- (5) survivors' benefit
- (6) benefit in respect of accident at work or occupational disease
- (7) death grant
- (8) unemployment benefit
- (9) pre-retirement benefit or
- (10) family benefit.

This categorization of national benefits is not always easy. It rests entirely on the factors relating to each benefit, in particular its *purpose* and the *conditions for its grant*, and not on whether the national legislation describes the benefit as a specific social security benefit or not.

A social security benefit guaranteeing minimum means of subsistence in a general manner cannot be classified under one of the branches of social security listed in Art. 3 (1) of the Regulation and therefore does not constitute a social security benefit within the specific meaning of the Regulation.⁷

Social and medical assistance

Social and medical assistance benefits are excluded from the scope of Regulation (EC) No. 883/2004. The underlying philosophy of the Regulation thus is that social security and social assistance are based on opposing concepts. They are mutually exclusive.⁸

Social security benefits are benefits which

- are granted to claimants on the basis of a legally defined position
- without a discretionary individual assessment of the personal needs.

Social assistance benefits typically aim to alleviate poverty, i.e. its grant depends on the financial need of the persons concerned irrespective of the grounds of such need. In assessing this criterion of financial need, the application of means-testing is, of course, an important factor. It is, however, not an absolute criterion, as the legislation of some Member States implicitly presumes, in view of the scope of beneficiaries, that they do not have sufficient income.⁹

⁷ ECJ, case 249/83 of 27.3.1985, Hoeckx; case C-66/92 of 2.8.1993, Acciardi, case 122/84 of 27.03.1985, Scrivner

⁸ However, benefits excluded from the scope of Regulation 883/2004 may still be classified as a social advantage within the meaning of Art. 7 (2) of Regulation 1612/68. The term "social advantage" within the meaning of Art. 7 (2) of Regulation 1612/68 is very broad, it includes all advantages which, whether or not linked to a contract of employment, are generally granted to national workers primarily because of their objective status as workers or by virtue of the mere fact of residence on the national territory and whose extension to workers who are nationals of other Member State therefore seems likely to facilitate mobility of such workers within the community.

⁹ See ECJ case C-154/05 of 6.6.2006, Kersbergen-Lap and Dams-Schipper, ECR I-16249

Compensation schemes

The Regulation does not apply to compensation schemes, either, by which a state assumes the liability for damages to persons caused by war, crime, agents of the State or for political or religious reasons.

Special non-contributory cash benefits

There are also hybrid benefits which possess features both of classic social security benefits and of social assistance.

This special category of benefits is regulated in Article 70 of Regulation 883/2004; they are called “**special non-contributory cash benefits**” and have to be listed in Annex X to the Regulation. The consequence is that their payment may be suspended in case of residence abroad.

In order to qualify as a special non-contributory cash benefit, a benefit must fulfil three conditions:

- a) It must be “special”, i.e. either providing a minimum subsistence income having regard to the economic and social situation in a Member State or providing solely specific protection for the disabled, closely linked to the said person’s social environment in the Member State concerned.
- b) It must be financed exclusively from compulsory taxation intended to cover general public expenditure and the conditions for providing and for calculating the benefits may not be dependent on any contributions in respect of the beneficiary.
- c) It must be listed in Annex X.¹⁰

Such mixed-type benefits are normally means-tested flat-rate benefits paid in one of the contingencies listed in Article 3 (1). At the same time, they must either pursue the aim to prevent poverty or the aim of social integration in order to be “special”. Disablement benefits are normally not special within this meaning, unless they are designed to meet specific needs in term of social integration of recipients into society where this is rendered more difficult by their disability. Benefits which simply aim to compensate for the additional costs caused by disablement and to improve the person’s state of health and quality of life, as a person reliant on care, have been classified as long-term care benefits and therefore sickness benefits by the ECJ.¹¹

2. Equality of treatment and assimilation of facts and events

Prohibition of discrimination on grounds of nationality is one of the fundamental pillars of the EC-Treaty, and is also one of the fundamental pillars of social security coordination under the ILO-Conventions. The principle was laid down in Article 3 of Regulation (EEC) No. 1408/71 and is now enshrined in Article 4 of Regulation (EC) No. 883/2004. It provides that persons to whom Regulation (EC) No. 883/2004 applies, irrespective of their place of residence, are subject to the same obligations and enjoy the same benefits under the legislation of any other Member State.

This principle of equality of treatment applies to both direct and indirect discrimination on grounds of nationality.

Direct discrimination occurs where there is a distinction based explicitly on nationality. An example of direct discrimination would be a legal provision that allowed only Moldovan nationals to be paid a certain benefit or to draw a certain benefit abroad.

Indirect discrimination occurs where a legal provision does not draw a distinction based on nationality, but non-nationals in practice are exclusively or mainly adversely affected. The European Court of Justice (ECJ) has even found indirect discrimination where nationals of a Member State can meet the requirements of a law more easily than nationals of the other Member states. This effectively means that conditions imposed by

¹⁰ See Article 4 (2a) of Regulation 1408/71, Art. 70 of Regulation 883/04

¹¹ See ECJ case C-299/05 of 18.10.2007, Commission v European Parliament and Council of the European Union, ECR I- 8695

national legislation must be regarded as indirectly discriminatory where, although applicable irrespective of nationality, they can more easily be satisfied by national workers than migrant workers, or where there is a risk that they may operate to the particular detriment of the latter.¹²

Once a claimant has shown that a rule predominantly or exclusively affects non-nationals, the burden of proof switches to the responsible State to show that the difference in treatment can be justified by objective considerations which are independent of the nationality of the person concerned. In order to do this, the State must show that the rule is proportionate. That involves showing that the rule:

- pursues a legitimate aim,
- is appropriate (in the sense of being capable of achieving the legitimate aim) and
- is necessary for the achievement of that aim.

Example 1:

A *Luxembourg* law only granted maternity benefits to persons resident in Luxembourg for one year. The ECJ held that this was indirectly discriminatory; in practice the residence requirement was more easily met by nationals of Luxembourg than by nationals from other Member States.¹³

Example 2:

A *German* law provided that a person in receipt of an accident pension and an old-age pension could have their old-age pension reduced if the sum of the two pensions exceeded 95% of the worker's former annual earnings upon which the pension was calculated. However, if the accident pension was not paid by German authorities but instead by authorities of another Member State, then the old-age pension was reduced regardless of whether the sum of pensions exceeded 95% of the worker's former annual earnings. The ECJ held that this was indirectly discriminatory on grounds of nationality since it placed migrant workers at a disadvantage. Germany argued that the law was objectively justified since it was very difficult to find out what the former earnings were in another Member State. The ECJ rejected this argument. The Court appears to have doubted that the avoidance of administrative difficulties, of itself, was sufficiently legitimate to justify a discriminatory law.¹⁴

Example 3:

A *French* law provided benefits to women over 65 who had large families. However, it was a requirement for eligibility for the benefit that at least five of the children be French nationals, i.e. born on French territory. The conditions for eligibility were not directly discriminatory since there was no requirement that the women claiming benefit be French. However, the ECJ held that the conditions for eligibility were indirectly discriminatory since non-nationals were less likely than French nationals to have at least five French national children. France argued that the law was objectively justified since it was designed to boost the birth rate in France and not elsewhere. The ECJ rejected this argument. One of the factors that the Court took into account was that the benefit was designed for women over 65. It appears that the Court took into account the fact that women of child-bearing age were unlikely to have more children because they would receive greater benefits in old-age. The measure therefore was not appropriate, in the sense of being capable of achieving the legitimate aim of increasing the birth rate.¹⁵

¹² See ECJ case C-332/05 of 18.01.2007, Celozzi, ECR I-563, paragraphs 24 - 27

¹³ ECJ case C-111/91 of 10.03.1993, Commission v. Luxembourg, ECR I-817

¹⁴ ECJ case 10/90 of 7.03.1991, Masgio, ECR 1119

¹⁵ ECJ case 237/78 of 12.07.1979, Toia, ECR 2645

Example 4:

A *German* law provided that pensions arising from contributions which were paid before and during the Second World War outside of today's territory of the Federal Republic of Germany are only paid within the German territory, but not to beneficiaries residing abroad. In order to guarantee that this exception could be maintained under the EC-Regulations, a specific clause was inserted in Annex VI of Regulation 1408/71 providing that this exception could also be practiced within its scope of application.

When the case was brought before the ECJ in 2006, however, the Court decided otherwise:

At first, it rejected the argument, that the pension benefits in question were to be treated as ‘benefits for victims of war or its consequences’ and therefore excluded from the material scope of application of the Regulation. The Court pointed out that the benefit in question was granted to the recipients without any individual and discretionary assessment of personal needs and that it relates to one of the risks expressly listed in the Regulation, namely old-age, invalidity or death, so that it has to be treated as any other old-age, invalidity or survivors’ benefit.

The Court acknowledged that the waiver of the residence clause in the Regulation was only guaranteed “save as otherwise provided in the Regulation” and that an exception to the general rule of exportability of cash benefits was inserted for this benefit in the annex IV of the Regulation. However, it referred to the principle of freedom of movement guaranteed by the EC-Treaty. It concluded that the non-exportability of pensions paid for contributions made outside of its territory would make it manifestly more difficult or even prevent the exercise of the right to free movement by those concerned and that it therefore constitutes an obstacle to that freedom.

The Court consequently considered whether that refusal can be objectively justified. However, it could not find that

- the grant of the benefits was closely linked to the social environment of the beneficiary and that
- that an export of these benefits would seriously undermine the financial balance of the social security scheme.

Consequently, the Court denied Germany the right to restrict the payment of this benefit to persons residing in Germany, because this would run directly counter to the fundamental objective of the European Union which is to encourage the movement of persons within the Union.¹⁶

Example 5:

In a *Dutch* case concerning a minimum disablement benefit for young handicapped persons (*Wajong*), the Court ruled that the benefit must be regarded as a special non-contributory benefit within the meaning of Annex X of Regulation 883, although the benefit is not means-tested. However, it is not dependent on periods of work or contributions, either (i.e., exclusively tax-finance) and it is intended to relieve need by guaranteeing a minimum subsistence income to disabled young people. Since its amount is calculated on the basis of the minimum wage in the Netherlands, it takes into account the standard of living in that country and is therefore closely linked to its socio-economic environment. The EU-Commission had also pointed out in this respect, that the majority of disabled young people would not have sufficient means of subsistence if they did not receive that benefit.¹⁷

¹⁶ Joined cases C-396/05, C-419/05, C-450/05 of 18.12.2007, Habelt, Möser and Wachter, ECR I-

¹⁷ ECJ case C-145/05 of 6.7.2006, Kersbergen-Lap and Dams-Schipper, ECR I-6249

However, in a later case concerning the same benefit, the Court also decided that the implementation of the residence principle must not go beyond what is required to achieve the legitimate objective pursued, in particular where the person in question has maintained all of his economic and social links to the member State of origin.¹⁸ In such a situation, the non-export of that benefit could be regarded as “unfair”.

Example 6:

The Court had also regarded it as legitimate for the national legislature to ensure that there is a real link between the applicant for a (tax-financed) parental allowance and the geographic employment market concerned. It therefore accepted the exclusion from the right to a parental allowance according to *German* law for a person who did not reside in Germany and carried on an occupation of only a minor extent in that country.¹⁹

The principle of equal treatment of benefits, income, facts or events

The principle of equal treatment outlined above has been strengthened by a specific provision (Article 6) stipulating cross border recognition of facts and events. In fact, in a number of judgements, the European Court of Justice has already decided in favour of a cross-border assimilation of facts or events as a requirement of the principle of equal treatment:²⁰

According to this principle facts or events occurring in one Member State must be taken into account by the competent Member State as though they had taken place in its own territory.

Example 7:

A migrant worker who becomes unemployed and qualifies for an increase of unemployment benefit, if he has a wife and children, would also be entitled to such an increase if his family members reside in another Member State. Equally, any earnings from employment in another Member State may also constitute a ground for the loss or suspension of the right to unemployment benefit in the competent Member State.

However, the assimilation of facts or events that occurred in a Member State cannot render another Member State competent or its legislation applicable.²¹

Example 8:

A person returns to live in Moldova having become unemployed in another Member State. The principle of assimilation of facts does not have the effect of rendering Moldova the competent State for the provision of unemployment benefits nor does it require Moldova to apply the principle of aggregation.

¹⁸ ECJ case C-287/05 of 11.09.2007, Hendrix, ECR I-6909

¹⁹ ECJ case C-212/05 of 18.7.2007, Hartmann, ECR I-6303)

²⁰ See ECJ case 20/85 of 7.6.1988, Roviello, ECR 2805 - determination of invalidity pension; case C-349/87 of 4.10.1991, Parasci, ECR I-4501 - extension of time frame; joined cases 45/92 and 46/92 of 9.12.1993, Lepore and Scamuffa, ECR I-6497 - recognition of periods of incapacity for work abroad as precondition for old-age pension; case C-131/96 of 25.6.1997, Mora Romero, ECR 3659 - recognition of military service as reason to extend payment of an orphan's pension; case C-28/00 of 7.2.2002, Kauer, ECR I-1343 - raising of children abroad; case C-290/00 of 18.4.2002, Duchon, ECR I-3567 - taking into account of accident at work suffered abroad as condition for a pension and case C-373/02 of 28.4.2004, Öztürk, ECR I-3605 - unemployment abroad as condition for early retirement benefit

²¹ Recital 11 of Regulation 883/2004 (in the Preamble to the Regulation)

Equally, the assimilation of facts or events that occurred in another Member State cannot interfere with the principle of aggregation of periods of insurance completed on another Member State.²² This means that periods of insurance are not being created by the principle of assimilation of facts and events and periods of insurance which are completed under the legislation of another Member State are solely to be taken into account by applying the principle of aggregation of periods.

Example 9:

The legislation of a country A provides that military service is taken into account for the calculation of a pension. This means that military service completed under the legislation of another country B will only be taken into account by way of aggregation of periods of insurance (provided the military service creates an insurance period in country B), but never as insurance period completed in country A.

²² Recital 10 of Regulation 883/2004 is also entirely in line with the ECJ judgement of 11.11.2004 in the case C-372/02, Adanez Vega, ECR I-10761. During the proceedings, Mr. Adanez Vega had referred to the fact that under German legislation periods of military service completed in Germany are to be treated as periods of insurance. He had performed his military service in Spain. According to Mr. Adanez Vega the prohibition of any discrimination based on nationality between EU nationals required that his military service in Spain had to be assimilated to military service in Germany. The Court, however, rejected this thesis. The period of military service could only be taken into account, if the conditions for applying the aggregation provisions were fulfilled. The Court said that Article 3 dealing with equality of treatment under Regulation 1408/71 applies only “subject to the special provisions in the Regulation”. As there were special provisions designed to govern entitlement to unemployment benefits of an unemployed persons who has completed periods of insurance or employment under the legislation of another Member State, these special provisions displace the general principle of equality enshrined in the Regulation.

Regulation (EC) No 883/2004

The EC-Regulations coordinate the European social security schemes in a way that is

- more comprehensive,
- more intensive, and
- more stringent

than the classic bilateral or multilateral social security agreements.

Regulation (EC) No 883/2004

- They are more **comprehensive**, because they cover all branches of social security (including even pre-retirement benefits) and all kind of schemes (including supplementary schemes and benefits provided by employers), if they are based on legislation.

Regulation (EC) No 883/2004

- They are more **intensive** because all parties involved meet at least five times in the Administrative Commission to discuss issues of common interest and, where possible, to eliminate arising difficulties. They are also more **intensive** because of the electronic data exchange "EESSI" which is now being established at the insistence of the EU Commission.

Regulation (EC) No 883/2004

- They are more **stringent** in particular because of the jurisprudence of the European Court of Justice which, on numerous occasions, has removed obstacles to an ever closer coordination of the schemes in the interest of migrant workers and EU citizens.

Regulation (EC) No 883/2004

The material scope of application of Regulation (EC) No 883/2004

Social security benefits

They must be

- granted to recipients, without any individual and discretionary assessment of personal needs, on the basis of a legally defined position
i.e. on the basis of statutes, regulations and other provision except for individual or industrial agreements

Social security benefits

- relate to one of the risks expressly listed in Article 3 (1)
i.e. sickness, maternity, invalidity, old-age, survivorship, accident at work or occupational disease, death grants, unemployment, pre retirement, family benefits
- Declaration under Art. 9
= semi-binding

Compensation schemes

- The Regulation (EC) No. 883/2004 does not apply to compensation schemes.
- Benefits in relation to which a State assumes liability for damages to persons and provides for compensation, such as those for
 - victims of war and its consequences,
 - victims of crime,
 - victims of damages occasioned by state agents.

Prohibition of discrimination on grounds of nationality

Article 4 Equality of treatment

Unless otherwise provided for by this Regulation, persons to whom this Regulation applies shall enjoy the same benefit and be subject to the same obligations under the legislation of any Member State as the nationals thereof.

Social and medical assistance

- Social and medical assistance benefits are excluded from the scope of Regulation (EC) No. 883/2004
- Social assistance benefits typically aim to alleviate poverty. They are normally, but not necessarily means-tested, i.e. their grant depends on the personal circumstances and the financial needs of the person concerned.

Special non-contributory cash benefits

These are hybrid, mixed-type benefits which possess features both of social security and social assistance

- They must be “special”, i.e. providing a minimum subsistence income or
- providing solely specific protection for the disabled, closely linked to the person’s social environment in the State concerned.
- They must be exclusively tax-financed.
- They must be listed in Annex X.

Direct and indirect discrimination

- **Direct discrimination** occurs where there is a distinction based explicitly on nationality.
- **Indirect or covert** discrimination occurs where a legal provision does not draw a distinction based on nationality, but non-nationals in practice are exclusively or mainly adversely affected.

Examples of discrimination

- Pension benefits are only exported for nationals at the full rate, but not for non-nationals
- Residence criteria:
Benefits are only granted to persons who reside or resided for a certain period in a country. This residence condition mainly affects foreigners, because it is more easily met by nationals of a country.
Access to benefits or insurance is only provided to persons with a permanent residence permit.

Objective justifications

- A benefit is closely linked to the economic and social context of the person involved or to the environment of a State (e.g. means-tested).
- The claimant for a tax-financed benefit has no real link to the geographical employment market of a country.
- The export of a benefit would seriously undermine the financial balance of a social security system.

Assimilation of facts and events

- where, under the legislation of the **competent MS**, the receipt of social security **benefits** and other **income** has certain legal effects, the relevant provisions of that legislation shall also apply to the receipt of equivalent benefits acquired under the legislation of another MS or to income acquired in another MS.
- where, under the legislation of the **competent MS**, legal effects are attributed to the occurrence of certain **facts** or **events**, that MS shall take account of like facts or events occurring in any MS as though they had taken place on its own territory.

Burden of proof

Once a claimant has shown that a rule predominantly or exclusively affects non-nationals, the burden of proof switches to the responsible State to show that the rules are proportionate and objectively justified by reasons other than nationality. That involves showing that the rule

- pursues a legitimate aim
- is appropriate and
- is necessary for the achievement of the aim

Assimilation of facts and events

Article 5

Equal treatment of benefits, income, facts or events

Unless otherwise provided for by this Regulation and in the light of the special implementing provisions laid down, the following shall apply:

Assimilation of facts and events

- Recital 10: This principle shall not interfere with the principle of aggregating periods of insurance.
- Recital 11: The assimilation of facts and events can in no way render another MS competent or its legislation applicable.
- Recital 12: The principle of assimilation of facts and events should not lead to objectively unjustified results or to the overlapping of benefits of the same kind for the same period.

Coordination of Social Security Systems in the European Union

Module 1: Overview of the EC Regulations 883/2004 and 978/2009

Module 2: Coordination of sickness benefits

Module 3: Coordination of family benefits for children abroad

Module 4: Coordination of unemployment benefits

Module 2: Coordination of sickness benefits

For anyone travelling abroad, be it for the purpose of vacation or work, it is of considerable importance to be appropriately covered in case of accident or disease. National health schemes normally do not cover any medical expenses incurred abroad. Therefore, it is advisable to take out private travel insurance in order to cover this risk.

However, where States have agreed to co-ordinate their national health schemes, the need for such a private insurance no longer exists. On the other side, however, such co-ordination is rather complex because a number of different situations have to be taken into account.

A basic problem: Widely diverging national provisions regarding medical care

One of the basic principles of all co-ordinating instruments in the field of social security is to ensure the provision of benefits even if the beneficiary lives in the other contracting state, be it on a temporary or a permanent basis. This principle of “export of benefits” can be implemented in a rather straightforward manner in the case of cash benefits which can simply be transferred to the beneficiaries account. Things are more complicated when benefits in kind are involved.

Medical care - comprising out-patient treatment by a doctor, in-patient treatment in a hospital as well as the provision of drugs and of other medical or surgical appliances - are “benefits in kind”, which cannot be simply transferred abroad. It would make little sense to send a doctor abroad every times an insured person falls ill while travelling in another country. Therefore, the insured person in need of medical care will have to address a health care provider at his place of stay or residence abroad.

Things are further complicated by the fact that the organisation of social security medical care differs largely in the different European countries. Broadly speaking, two different methods can be distinguished: the direct and the indirect systems.

In an indirect system, there are three actors involved: the health care provider (doctor, hospital, and pharmacy), the patient and the social insurance fund. The health care providers are usually linked to the insurance fund by a variety of contracts which determine the extent of medical treatment covered by the scheme and the fee the fund must pay for each medical service provided. Sometimes, services of greater importance (e.g. spa treatment, rehabilitation measures) are subject to prior agreement of the fund.

Under this “fee-for-service” method, prices are agreed for a long list of medical items and prescriptions which, if they are provided to an insured person, are paid by the insurance fund. Frequently, the prices are paid directly by the fund to the health care provider, but in some cases or in some countries, the patient may also be required to pay the medical bill first and then to be reimbursed, in whole or in part, by the social insurance fund. Sometimes, and to a more and more increasing extent, patients are required to cover a part of the expenses himself; - be it a certain percentage, a fixed sum or a difference between the price agreed by the social insurance fund and the actual cost billed by the health care provider. A few countries also use the so-called “capitation method” for paying general practitioners which means that a fixed amount of money is paid for a fixed period during which doctors undertake responsibility for the medical care of all people registered with them.

Under the direct system, the social security institution itself owns, operates and controls the necessary medical facilities. The responsibility of the institution thus extends to the quality and efficiency of the services as well as their financial cost. Such direct systems are usually found where countries did not rely on the insurance method but on national health systems operated by government agencies covering the whole population.

For all these reasons, a country which agrees that its institutions also cover medical treatment for its beneficiaries abroad must take all these differences into account.

Different ways to provide medical care abroad

Medical care abroad can be provided on the basis of a bilateral or multilateral agreement or unilaterally by national law. The latter is rather exceptional and mostly limited to emergency cases.

The most convenient way to ensure the provision of medical care abroad is to reimburse the costs involved either directly to the health care provider abroad or indirectly to the beneficiary. However this is done, the legislator (or the contracting party) must be aware of the fact that the cost for the same kind of medical service may be much higher abroad than in your own country. There are two reasons for this:

One reason may be that the wage level or the quality of service is different. It is no secret that the general wage level for the medical personnel in most Western European States is much higher than in the Central or Eastern European countries. Another reason may be that a health care provider has normally no inherent interest to contain the amount of his services unless he is obliged to do so by national rules.

In theory these problems could be overcome by direct service agreements between the national scheme and health care providers abroad. However, such contractual arrangements are extremely rare and experience shows that both, the providers and the institutions are normally not very much interested in such kind of agreements¹ due to the limited number of persons which might be concerned. Moreover, it is arithmetically not realistic to consider that health care institutions should conclude such agreements with all health care providers abroad, even if limited to Europe.

The easiest way is certainly to let the beneficiary pay the bill abroad and then to reimburse him after his return. This is normally the way used by private insurance companies which offer health care coverage in case of travel abroad.

However, this approach has also its drawbacks. First of all, it implies that the beneficiary pays first whereas normally he does not have to pay the whole cost in advance in his home country (with the possible exception of an individual share). Moreover, the price of health care abroad may exceed the price for the same kind of service within the home country (i.e. the so-called “competent” State) which means that either the insurance institution or the beneficiary himself will have to cover the difference. It should be kept in mind that a doctor or a hospital providing medical care to a patient from another country will treat him on the basis of a private contract which means that they can charge him a higher fee than to those patients who are covered by the general contract between the provider and the health care scheme within the country where the provider is situated.

For all these reasons, full coverage of medical treatment abroad is frequently limited to cases of emergency. Moreover, the reimbursement of costlier kind of services has frequently been made conditional on prior agreement by the institution which is competent for the patient concerned.

The ILO and the Council of Europe’s instruments in this area

The European Convention on Social Security of 14.12.1972 and the ILO Maintenance of Social Security Rights Recommendation 167 of 20.6.1983 propose a basic setting for a comprehensive co-ordination of social security schemes including the provision of medical care. In this respect, they basically follow the approach pursued at the time of their adoption by the Regulation (EEC) No. 1408/71 of the European Communities:

¹ Possibly with the notable exception of some border regions or in case of specialist care in which a country cannot provide on its own.

First of all, they differ between persons who stay only temporarily abroad (e.g. tourists) and those who are ordinarily resident abroad. Those who reside abroad on a regular basis are entitled under Article 20 of the Convention² to all benefits in kind, provided at the expense of the competent institution by the institution of the place of residence in accordance with the provisions of the legislation which the latter institution applies, as if these persons were affiliated to it (= unlimited health care).

Persons who only stay abroad temporarily such as tourists, students or seconded workers are treated differently under Article 21 of the Convention.³ They are only entitled to medical care which their condition necessitates immediately. This basically means that they can only get emergency treatment for example in case of an accident or in case of a sudden disease (= limited health care).

If a person wants medical treatment abroad which is not immediately necessary he must get prior authorisation from the institution which is competent for him. Such authorisation, however, shall not be refused when the requisite treatment cannot be given in the territory of the competent State.

The Convention also determines the competent institution for pensioners (Article 24).⁴ If a person receives two or more pensions including one under the legislation of his country of residence, he shall be covered by the sickness scheme of his country of residence. If a person receives one or more pensions from different countries, he shall nevertheless be entitled to medical care in accordance with the legislation of his country of residence, but at the expense of the institution of the State under whose legislation the pensioner completed the longest period of insurance or residence, or, if this was equal, to whose legislation he was last subject.

One of the main drawbacks of the European Convention on Social Security is the fact that many of its provisions are not directly applicable but depend on further bilateral or multilateral agreements between the Contracting Parties which may also provide for special arrangements for instance as regards the refund of costs. This drawback is avoided by the European Regulations on the Coordination of Social Security Systems, as they are directly applicable and easily amended, in case of need, by the European legislator.

Regulation (EC) No 883/2004

Like the European Convention on Social Security, the Regulation (EC) No 883/204 makes a distinction between those who are temporarily abroad and those who reside in another country on a permanent basis.

Residence in a Member State other than the competent Member State

Persons who reside in a non-competent Member State are entitled to all benefits in kind (healthcare, medical treatment, medicines and hospitalisation as well as certain benefits for persons reliant on long-term care) on behalf of and at the expense of the competent institution. These benefits are provided by the institution of the place of residence in accordance with the provisions of its own legislation. This basically means that these persons are treated in their country of residence the same way as if they were insured there, whereas on the contribution side, they still have to pay contributions to the competent sickness insurance scheme (unless, of course, there is a non-contributory national health scheme in the competent State), which, at the end, has also to bear the expense.

This also means that the health care providers in the country of residence are not obliged to award medical treatment according to the rules of the competent state, but according to their own rules which are familiar to them. The reason for this rule is easy to understand: The doctors and the institutions concerned cannot possibly know the details of the legislation of the other Member States; therefore they always apply the legislation of their own country even if the person concerned is insured in another country.

² See also Article 19 of ILO Recommendation 167.

³ See also Article 20 of ILO Recommendation 167.

⁴ The ILO Recommendation 167 does not deal with this issue.

This may or may not be to the advantage of the beneficiary in comparison to the legislation of the State, where he is actually insured. It may entail, for instance, that a person living in a country with a poor health care scheme might have to pay contributions to a scheme which applies higher standards, more extensive services or less cost sharing. It may also be the other way round, namely that a person covered by tax-funded national health care scheme has to pay no contributions for the insurance-based scheme in his country of residence, although he enjoys the same rights.

This provision mainly applies to frontier workers and members of their family, but it may also apply to pensioners which receive a pension from a foreign country and, for this reason, are also covered by the sickness insurance of this country, or to family members of a migrant worker who remain in their country of origin, whereas the migrant worker is covered by the new “competent” social security scheme of his country of employment.

Example 1 (frontier workers):

How does this work in practice? Let's take the example of a German worker, Mr. Schmidt, who is employed in Aachen/Germany, but has moved with his family across the German-Belgian border because houses are cheaper there. As he continues to be employed in Germany, he is still subject to the German social security legislation (*lex loci laboris* principle). In order to have access to medical care at his place of residence in Belgium, he requests the document S1 from the German sickness fund where he is insured for himself and for the members of his family.

The document S1 enables them to register with a sickness fund in Belgium⁵ and to receive all benefits in kind provided for under the Belgian legislation, when they want to visit a Belgian doctor.⁶ In addition, they continue to be entitled to all kind of benefits provided for under the German legislation when they visit a German doctor. As a matter of fact, frontier workers and the members of their family are privileged in this respect as they enjoy the right to unlimited access to health care in both countries, the country of employment of the breadwinner and their country of residence.

In some countries, however, access to health care in the competent State, i.e. in the country of employment is still limited for the members of the family of the frontier worker (as this was the rule under the former Regulation (EEC) No 1408/71). These countries are listed in Annex III of Regulation (EC) No 883/2004, they are Denmark, Ireland, Finland, Sweden and United Kingdom, whereas Estonia, Spain, Italy, Lithuania, Hungary and the Netherlands have agreed to use this option only for a transitory period of four years after the entry into force of the new Regulation.⁷

Example 2 (retired frontier workers):

After his retirement, Mr. Schmidt has a problem: He is no longer working and consequently has lost the privilege of being a frontier worker. He had started a costly dental treatment with his German dentists and would like to finish it. In order to be able to continue the treatment which he had started before retirement, he requests the document S3 from his German sickness insurance which entitles him to continue a treatment for an illness which had started already before retirement.⁸

Having finished the dental treatment, he is not at all keen to change his dentist, but he wants to keep the German dentist in whom he trusts. Can he do so on the basis of the document S3?

⁵ In accordance with Article 24 of Regulation (EC) No 987/2009.

⁶ Family members, however, are only covered if they fulfill the conditions laid down in the legislation of the State of residence.

⁷ i.e. till 1 May 2014.

⁸ See Article 28 (1) of Regulation (EC) No. 883/2004.

The answer is: The document S3 entitles him and the members of his family only to certain benefits in the former State of work. In any case, he is entitled to continue a treatment for an illness which has already begun there before retirement. Afterwards or for other treatments, he only enjoys unlimited access to health care in both countries, i.e. in the former State of work and the State of residence, if both countries have agreed to provide it on a reciprocal basis by inserting themselves in the Annex V of Regulation (EC) No 883/2004. This is the case for Belgium, Germany, Spain, France, Luxembourg, Austria and Portugal. As Mr. Schmidt has the good luck that both his country of residence (Belgium) and his former country of work (Germany) are listed in Annex V, he may keep his dentist also for further treatments.⁹ This right to continued unlimited access to healthcare in the former country of employment is subject to the condition, that, in the five years preceding the beginning of the pension, the pensioner has been employed or self-employed there for at least two years as a frontier worker.

Example 3 (pensioners living abroad):

After a while, Mr and Mrs Schmidt are fed up with the cold and rainy weather at the German/Belgian border. Therefore, they decide to move to Mallorca in Spain where they buy a house. In order to get full access to the Spanish health care benefits, they request again the document S1 from their competent German sickness insurance fund and register with the local Spanish sickness institution in Mallorca. Of course, Mr. Schmidt feels a bit embarrassed by the fact that he continues to have to pay contributions to his German sickness insurance fund, whereas under the Spanish legislation, pensioner obtain health care free of charge.

Example 4 (healthcare for pensioners in country of origin):

When Mr. Schmidt becomes older, he suffers a heart attack and needs a by-pass operation. He knows a good surgeon in Germany and wants to have the by-pass operation done by him. However, the European Health Insurance Card does not entitle him to such scheduled treatment outside of the country of residence (Spain). Of course he may request the authorisation from his Spanish sickness fund to get the treatment in Germany (document S2), but he is unlikely to get it, because the needed by-pass operation could also be made in Spain.

Mr. Schmidt thinks that this is unfair. He argues that in spite of his registration in the Spanish healthcare scheme, he is still a member of the German sickness fund and still liable to pay contributions to this fund. And in fact, he is right. Germany is one of the countries listed in Annex IV of Regulation (EC) No. 883/004, which offer unlimited access to health for pensioners who are insured in one of their sickness funds, even when they reside abroad and are registered with the healthcare scheme in their country of residence.¹⁰

Rules on reimbursement

The cost of the medical care provided by the Belgian or Spanish sickness insurance is reimbursed by the German sickness insurance in line with the rules laid down in the implementing Regulation (EC) No 987/2009. The general principle is that the actual amount of all costs incurred in the “host” country has to be reimbursed by the insurer as soon as the corresponding documentation has been submitted.

Different rules, however, may apply

- for family members who do not reside in the same Member State as the insured person (e.g. in case of guest workers or seasonal workers) and
- for pensioners and members of their family,

⁹ This, however, is subject to the condition, that Mr. Schmidt has been pursuing an activity as an employed or self-employed person for at least two years in the five years preceding his retirement, see Article 28 (2) of Regulation No. 883/2004.

¹⁰ See Article 27 (2) of Regulation (EC) No. 883/2004; other countries listed in Annex IV are Belgium, Bulgaria, Czech Republic, Greece, Spain, France, Cyprus, Luxembourg, Hungary, Netherlands, Austria, Poland, Slovenia, Sweden.

if the State of residence is listed in Annex 3 of Regulation (EC) No. 987/2009. This Annex offers for States the legal and administrative structure of which are such that the use of reimbursement on the basis of actual expenditure is not appropriate the possibility to opt for lump-sum reimbursement.¹¹ Countries which have used this option are mainly those with a national health care scheme (direct system) which do not apply the “fee-for-service” method and where medical care is provided by government agencies for all residents.¹² These fixed amounts have to be agreed each year by an Audit Board in Brussels. They are determined by multiplying the average annual cost per family member/pensioner in the country concerned, broken down by three different age groups¹³ by the average annual family member /pensioner to be taken into account, and by reducing the resultant amount by 20% or 15%. The amount of the reduction depends on whether the debtor State is listed in Annex IV and thus provides for unlimited access to health care for pensioners or not. In other words: Member States listed in Annex IV of Regulation (EC) No 883/2004 get a bonus of 5 percentage points.

Competent Member State for pensioners

The provisions regarding the competent institution for pensioners are similar to those contained in the European Convention on Social Security set out above.¹⁴ This means that a pensioner basically remains affiliated to sickness insurance of the country which is also responsible for the payment of the pension. If he resides or stays in a different country, the general rules apply, i.e. he is entitled to medical care in accordance with the legislation of his country of residence or stay, but at the expense of the institution to which he is affiliated.

If a pensioner receives two or more pensions including one under the legislation of his country of residence, he shall be covered by the sickness scheme of his country of residence. If a person receives pensions from different countries, but none from his country of residence, he shall nevertheless be entitled to medical care in accordance with the legislation of his country of residence, but at the expense of the institution of the country under whose legislation the pensioner completed the longest period of insurance or residence, or, if this was equal, to whose legislation he was last subject.

If a pensioner is in employment, i.e. if he exercises an additional economic activity, his rights to benefit in kind based on employment or self-employment take priority.¹⁵

Stay outside the competent Member State

Persons who only stay temporarily in another country (e.g. tourists, students, seconded workers) are only entitled to those benefits which become medically necessary during their stay, taking into account the nature of the benefits and the expected length of stay. The purpose of this limitation is to prevent “medical tourism”, i.e. the situation that insured persons go to another country for the sole reason to get more expensive treatment or to avoid the cost-sharing rules applicable in his country of residence. Pre-existing diseases for which they had already received benefits before travelling abroad are not excluded. Entitlement to medical care, however, is limited to what becomes necessary on medical grounds “with a view to preventing an insured person from being forced to return, before the end of the planned duration of stay.”¹⁶ This means that no benefits shall be provided which can also be put off until the intended return to the “competent” home country.

¹¹ See Article 35 (2) of Regulation (EC) No 883/2004; Article 63 to 65 of Regulation No 987/2009.

¹² Countries listed in Annex 3 are Ireland, Spain, Italy, Malta, the Netherlands, Portugal, Finland, Sweden, United Kingdom.

¹³ These are: Persons aged under 20, from 20 to 64, and 65 and over.

¹⁴ Articles 23 – 26 of Regulation (EC) No 883/2004.

¹⁵ See Article 31 of Regulation (EC) No 883/2004.

¹⁶ Article 25 (2) of Regulation (EC) No 987/2009.

Example 5 (tourists):

Before entirely moving to Spain, the Schmidt family had always spent their summer holidays in this country. In order to be able to obtain medical care also during their holidays in Spain, they requested the European Health Insurance Card (EHIC) from their German sickness insurance. However, this Card only entitles them to medical care which becomes medically necessary during their intended stay in Spain.

Example 6 (no document):

When Mr. Schmidt spent his vacations in Spain last summer, he forgot to take his EHIC with him. Precisely this time, he suffered an accident and had to go to a hospital for urgent treatment. What can he do?

In such a case, the Implementing Regulation No 987/2009 provides for two possible solutions: The first possibility is that the institution of the place of stay (i.e. the Spanish institution in our case) directly addresses the competent institution in order to obtain a “Provisional Replacement Form”. The second possibility frequently practised in cases of minor importance is that the patient first pays the bill himself and is later refunded by his insurance. This shall normally be done in accordance with the refund rates administered by the institution of the place of stay. However, reimbursement may also be done by the competent institution in accordance with its own refund rates provided the beneficiary agrees. If the Member State of stay does not provide for reimbursement rates, the competent institution may reimburse in accordance with its own refund rates even without the agreement of the insured person.

Persons travelling to another country for (scheduled) treatment

If an insured person travels to another country in order to obtain treatment there, the costs are covered by the competent sickness insurance institution only if the person has received permission beforehand. It is basically up to the sickness insurance institution to decide whether or not it will give such authorisation by issuing the document S2. Normally, such approvals are not given. Only in cases where the treatment in question is among the benefits provided for by the legislation of the competent State, but not available within the time normally necessary with regard to the current state of health of the insured person concerned, the required permission may not be refused. If a document S2 is given to the insured person, it entitles him to all benefits available in the host country.

These rather restrictive rules on the provision of health care abroad have been considerably enlarged by the European Court of Justice in his famous Kohll and Decker rulings.¹⁷

The Decker case concerns the (partial) reimbursement of eyeglasses which were prescribed for Mr. Decker in Luxembourg, but purchased by him in a border town in Belgium. In the Kohll case, the plaintiff had requested from his Luxembourg sickness insurance permission for orthodontic treatment for his minor daughter in Germany. In both cases, the request was refused by the Luxembourg sickness fund on the grounds that the purchase of eyeglasses in Belgium or the proposed orthodontic treatment in Germany was not urgent during the stay abroad and that both services were also available in Luxembourg.

So the question was raised (and brought before the European Court of Justice) whether the requirement of prior authorisation infringes on one of the cornerstones of the European Community, namely the principle of free movement of goods and services (Articles 36, 42, 56 and 57 TFEU - ex-Articles 30, 36, 59 and 60 of the EC-Treaty) This principle does not only comprise the freedom to move to another member state in order to provide there goods and services, it also comprises the right to move to another Member state in order to have unrestricted access to goods and services. Of course, the requirement of prior authorisation and its refusal

¹⁷ ECJ, case C-120/95 of 28.04.1998, Decker, ECR 1998, I-1831; case C-158/96 of 28.04.1998, Kohll, ECR 1998, I-1931.

does not hinder the insured persons to obtain medical services abroad, but it may indirectly prevent them from doing so, if they know that their cost will not be reimbursed by their sickness insurance.

However, the right to free movement of goods and services is not unlimited and a requirement of prior authorisation may be accepted where this is justified on the grounds of public interest and on the “rule of reason”. In both cases, the Court recognised in principle that the need to guarantee the financial equilibrium of the social security system, the need to ensure a balanced medical service accessible to everyone and finally the protection of health may constitute grounds for justification. In the actual cases, however, such grounds were refuted.

In a number of later rulings¹⁸, the Court confirmed this jurisdiction subject to two limitations: Firstly, it did not require the sickness funds to reimburse medical goods or services purchased abroad according to the foreign tariffs, but only in accordance with its own tariffs, i.e. at only the price it would have had to pay anyway, if the same good or service had been purchased at home.

Secondly, it made a distinction between medical services provided by practitioners in their surgeries or at the patient’s home (out-patient treatment) and medical services provided in a hospital (in-patient treatment). Where in the case of out-patient treatment the health care providers are in a certain way subject to the rules of supply and demand and as such in competition with each other, medical services provided in a hospital take place within an infrastructure with certain very distinct characteristics which were also recognised by the Court: “The number of hospitals, their geographical distribution, the mode of their organisation and the equipment with which they are provided, and even the nature of the medical services which they are able to offer, are all matters for which planning must be possible”.¹⁹ The Court acknowledged that, “if insured persons were at liberty, regardless of the circumstances, to use the services of hospitals with which their sickness insurance fund had no contractual arrangements, all the planning which goes into the contractual system in an effort to guarantee a rationalised, stable, balanced and accessible supply of hospital services would be jeopardised at a stroke”.²⁰ The Court therefore concluded that there can be reasons which justify restrictions on the free movement in case of hospital treatment and that such treatment in a hospital with which the insurance fund had no contractual arrangement can therefore be made subject to prior authorisation provided that the conditions attached to the grant of such authorisation are objective and justified in view of the need to maintain an adequate, balanced and permanent supply of hospital care on national territory and to ensure the financial stability of the sickness insurance system, and that they satisfy the requirement of proportionality.

However, once it is clear that treatment covered by the national insurance system cannot be provided by a contracted establishment without undue delay, it is not acceptable that national hospitals not having any contractual arrangements with the insured person’s sickness fund be given priority over hospitals in other Member States.²¹

¹⁸ ECJ, case C-368/98 of 12.07.2001, Vanbraekel, ECR 2001,I-5363; case C-385/99 of 13.05.2003, Müller-Fauré and van Riet, ECR 2003,I-4509; case C-56/01 of 23.10.2003, Inizian, ECR 2003, I-12403; case C-372/04 of 16.05.2006, Watts, ECR 2006,I-4325.

¹⁹ ECJ, case C-157/99 of 12.07.2001, Smits and Peerbooms, ECR 2001, I-5473, points 76 – 80

In this ruling the Court recognised that the contracting system (between insurance funds and the hospitals) meets a variety of legitimate concerns: “For one thing, it seeks to achieve the aim of ensuring that there is sufficient and permanent access to a balanced range of high-quality hospital treatment in the State concerned. For another thing, it assists in meeting a desire to control costs and to prevent, as far as possible, any wastage of financial, technical and human resources. Such wastage is all the more damaging because it is generally recognised that the hospital care sector generates considerable costs and must satisfy increasing needs, while the financial resources which may be available for health care are not unlimited, whatever the mode of funding applied. From both those perspectives, a requirement that the assumption of costs, under a national social security system, of hospital treatment provided in another Member State must be subject to prior authorisation appears to be a measure which is both necessary and reasonable.”

²⁰ Smits and Peerbooms, point 81.

²¹ Smits and Peerbooms, 103 –107.

As a result of this jurisdiction, there are two different ways in the European Community to achieve cross-border medical care in non-urgent cases:

On the one hand, there is the classic S2-procedure laid down in the Regulation (EC) No 883/2004 which enables a patient to receive medical treatment abroad “as though he were insured with the foreign social security system”. This means that he is subject to the same rules on cost-sharing and the same regulations which apply in the country providing the services, and the costs are settled between both the social security systems according to the tariffs of the State where the service is delivered.

On the other hand, the Court created an alternative procedure, based directly upon the EC-Treaty, where patients go abroad to obtain medical care on a private basis without any prior authorisation of their sickness insurance fund. In such a case they are not integrated into the social protection system of the Member State where they receive the medical service. When returning to their country of residence, they can nevertheless claim the reimbursement of the costs incurred from their sickness insurance fund, but only subject to the conditions and according to the tariffs applicable in this State. In addition, this possibility exists only with respect to out-patient care.

The new draft directive on the application of patients’ rights in cross-border healthcare

In response to this jurisdiction, the EU is now about to adopt a new directive on cross-border healthcare. This directive establishes the principle that insured persons who receive cross-border healthcare within the European Union shall be reimbursed by the Member State of affiliation up to the level of costs that should have been assumed by this State had this healthcare been provided in its territory, however, without exceeding the costs of healthcare received (Article 7). As a consequence, all Member States (including those with a national health care system) become obliged to have a mechanism for the calculation of costs of cross-border healthcare that are to be reimbursed. This mechanism shall be based on objective, non-discriminating criteria known in advance.

The draft directive, however, excludes some benefits from its scope, namely:

- services in the field of long-term care the purpose of which is to support people in need of assistance in carrying out routine, everyday tasks,
- allocation of and access to organs for the purpose of organ transplants, and
- public vaccination programmes.

Moreover, it accepts that the reimbursement of costs of cross-border healthcare may be made subject to prior authorisation in the case of healthcare

- which is subject to planning in so far as it involves overnight hospital accommodation of the patient in question or requires the use of highly specialised and cost-intensive medical infrastructure or medical equipment, or
- which involves treatment presenting a particular risk for the patient or the population or which could raise serious and specific concerns relating to the quality or safety of the care.

When a patient applies for prior authorisation, the institution of the Member State of affiliation shall check whether the conditions of Regulation (EC) No 883/2004 are met. Where those conditions are met, the prior authorisation shall be granted pursuant to the Regulation (by issuing document S2) unless the patient requests otherwise.

Moreover, the draft directive specifies that the prior authorisation may be refused for a number of reasons. This is in particular the case, when the healthcare can be provided on its territory within a time-limit which is medically justifiable, taking into account the current state of health and the probable course of illness of the person concerned.

Medical care abroad in case of work-related accidents or occupational diseases

The provisions in Regulation (EC) No 883/2004 in respect of accidents at work or occupational diseases can be compared, in many ways, with the relevant provisions on sickness benefits.

In case of residence abroad, healthcare benefits are provided by the institution responsible for employment injury at the place of residence according to the legislation of that country and reimbursed by the competent institution of the country in which the person covered is insured. Cash benefits are always determined and paid according to the legislation of the country where the injured person is insured.

In case of temporary stay abroad – e.g. in case of a street accident during an international transport - the insured person is entitled to all medical care necessary during the stay abroad. He may also request to be transported back to his home country, unless such a transport would be prejudicial to his state of health or to the medical treatment being given. The scope of benefits provided according to the legislation of the place of stay is normally more extended than in case of ordinary sickness.²²

Accidents at work always need to be recognized as such by the competent institution. This is normally done through document DA1 which is issued at the request of the institution of the place of residence or stay or, as the case may be, at the request of the injured person himself.

When a person has contracted an occupational disease, benefits are always provided by solely one institution, even if the person concerned had pursued an activity in several Member States which, by their nature, is likely to cause that disease, namely by the institution and according to the legislation of the last of those States whose conditions are satisfied.

²² In general, the patient does not have to bear any share of the costs of medical treatment received in case of employment injury.

Provision of medical care abroad

Export of **cash benefits** is easy, as money can be transferred to a foreign account.

Benefits in kind (medical care and medical appliances) can only be reimbursed.

The main question is:
**Under which conditions
 and at which price ?**

Different health care schemes in Europe

- **National health systems** (*direct system*)
 Usually financed out of taxation

Only two actors are involved as all medical facilities are operated by a government agency.

Different health care schemes in Europe

- **Social insurance** (*indirect system*)
 Usually financed by contributions
Three actors are involved:
 1. Health care providers (doctor, hospital, pharmacy)
 2. Patients (insured persons and members of their family)
 3. The health care fund which finances health care using the following methods:
 - Fee-for-service: paid either by the fund or by the patient who is then reimbursed by the insurance fund
 - Capitation: fixed amount for all services provided by a doctor

European Convention on Social Security (14.12.1972)

- Ordinary residence abroad
 - all benefits
 - in accordance with legislation of country of residence
 - at the expense of the competent institution

European Convention on Social Security (14.12.1972)

- Temporary stay abroad
 - only benefits which are immediately required (emergency treatment) or
 - subject to prior authorisation

Regulation (EC) No 883/2004

- Ordinary residence abroad
 - all benefits
 - in accordance with legislation of country of residence
 - at the expense of the competent institution

Regulation (EC) No 883/2004

- **Frontier workers** enjoy unlimited access to health care in country of residence and country of employment.
- **Family members of frontier workers** enjoy unlimited access to health care in country of residence and country of employment, unless the latter one is listed in Annex III.
= Estonia, Spain, Italy, Lithuania, Hungary, Netherlands for four years;
= Denmark, Ireland, Finland, Sweden, United Kingdom for an unlimited period, but subject to scrutiny after five years

Regulation (EC) No 883/2004

Portable Document



Entitlement to benefits in kind for persons resident in another Member State

Regulation (EC) No 883/2004

- Retired frontier workers continue to receive health care in (former) country of employment, if
 - continuation of treatment or
 - State of residence and State of former employment are listed in Annex V
= Belgium, Germany, Spain, France, Luxembourg, Austria, Portugal
- The same applies to their family members, unless the former country of employment is listed in Annex III.

Regulation (EC) No 883/2004

Portable Document



Medical treatment for former frontier workers in former country of employment

Regulation (EC) No 883/2004

- **Pensioners** enjoy unlimited access to health care not only in country of residence, but also in competent State, if the latter is listed in Annex IV
= Belgium, Bulgaria, Czech Republic, Germany, Greece, Spain, France, Cyprus, Luxembourg, Hungary, Austria, Netherlands, Austria, Poland, Slovenia, Sweden

Regulation (EC) No 883/2004

Reimbursement of cost

- on the basis of the actual amount (as a general rule), unless
- the legal and administrative structures of the State of residence are such that the use of reimbursement of actual expenditure is not appropriate and the State is listed in Annex 3 of Regulation (EC) No 987/2009
= Spain, Ireland, Italy, Netherlands, Malta, Portugal, Finland, Sweden, United Kingdom)
↳ reimbursement on the basis of fixed amounts

Regulation (EC) No 883/2004

- Lump-sum reimbursements for benefits provided by a State listed in Annex 3* are subject to a reduction of 15% or 20% (depending on entry in Annex IV providing for unlimited access to health care for pensioners in competent State)
*= Ireland, Spain, Italy, Malta, the Netherlands, Portugal, Finland, Sweden, United Kingdom

Sickness insurance for pensioners

- Competent institution
 - If pension is paid by country of residence
 - ↳ sickness insurance of country of residence
 - If pension is not paid by country of residence
 - ↳ sickness insurance of country which pays pension

Sickness insurance for pensioners

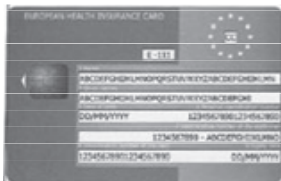
- Competent institution
 - If more than one pension are paid, but none by country of residence
 - ↳ sickness insurance of country, where pensioner completed longest period of insurance or residence

Regulation (EC) No 883/2004

- Temporary stay abroad
 - All benefits which become *medically necessary* during the stay, taking into account the *nature* of the benefits and the *expected length of stay*
 or
 - subject to *prior authorisation*

Regulation (EC) No 883/2004

The European Health Insurance Card



➡ if EHIC is not available

Regulation (EC) No 883/2004

Conditions for prior authorisation

- Article 20 (2)
Authorisation (document S2) *must be accorded* where the treatment in question is among the benefits *provided for by the legislation* of the Member State where the person involved resides, and where he *cannot be given* such treatment within a time-limit which is medically justifiable, taking account of his current state of health and the probable course of the illness.

Regulation (EC) No 883/2004

Portable Document



Regulation (EC) No 883/2004

Conditions for prior authorisation

- ECJ rulings of 28 April 1998 in the cases Kohll/Decker

No prior authorisation is required for medical treatment *outside of hospitals* which had been purchased by the patient on the basis of a private contract; such treatment shall be *reimbursed* according to the *tariffs* normally applied by the competent institution.

Regulation (EC) No 883/2004

The Kohll/Decker solution

- Member States have the power to organise their social security systems.
- Nevertheless, social security provisions are not exempt from the application of the basic principles of free movement of goods and services.
- A prior authorisation requirement discourages insured persons from seeking care from service providers or suppliers of medical goods established in another Member State and therefore constitutes an impediment to the exercise of the aforementioned rights.

Directive on cross-border healthcare

- Reimbursement of cross-border healthcare
- by Member State of affiliation
- up to the level of costs of the same healthcare in its territory,
- but not more than the actual cost of the treatment received.
 - ↳ MS with national health care scheme are obliged to create mechanism for the purpose of reimbursement of cross-border healthcare

Directive on cross-border healthcare

- Benefits excluded from its scope are
 - long-term care
 - organ transplants
 - public vaccination programs
- Benefits admittedly subject to prior authorisation are
 - overnight hospital accommodation
 - highly specialised and cost-intensive treatment
 - treatment presenting a particular risk for the patient

Directive on cross-border healthcare

- Prior authorisation may be refused, in particular,
 - when the Member State of affiliation can provide the healthcare on its territory within a time-limit which is medically justifiable, taking into account the current state of health and the probable course of illness of the patient,
 - if there are concerns regarding the quality of care and the patient safety.

Accidents at work and occupational diseases

- Benefits in kind are provided by institution of residence or stay according to the legislation which it applies.
- Cash benefits are paid by the competent institution according to the legislation which it applies.

Accidents at work and occupational diseases

- If the occupational disease can be related to exposure to the same risk in several Member States, only the last of those States is competent for the award of benefits.
- Work accidents abroad are recognized by the competent institution by means of document DA1.



Entitlement to healthcare cover under insurance against accidents at work and occupational diseases

Coordination of Social Security Systems in the European Union

Module 1: Overview of the EC Regulations 883/2004 and 978/2009

Module 2: Coordination of sickness benefits

Module 3: Coordination of family benefits for children abroad

Module 4: Coordination of unemployment benefits

Module 3: Coordination of family benefits for children abroad

Special Features of family benefits

Family allowances, as a component of a social security programme, rest upon a foundation distinct from that of other cash benefits. Other cash benefits stand ready to provide a guaranteed income against the day when regular wages are interrupted or are relinquished in a contingency such as old age, invalidity or accident. Family allowances, by contrast, recognize that the rates of regular wages in payment do not, as a rule, take into account the size of the family to be supported by the wage. And, although children's allowances and family benefit schemes are now well established in the industrialised world, they were introduced to social security later than the other branches, in response to gradual social pressures, rather than to specific occurrences such as illness, injury or maternity. The social pressures included the realisation, from the early days of industrial change that large families and poverty often went hand in hand. With raising income and decreasing fertility rates, this concern was later replaced by fears expressed in some quarters that the expense of raising children might result in a decrease of the population.

Payment of family benefits for children resident abroad

Whereas contribution-financed social insurance schemes or other kind of employment-related schemes normally pay benefits to the members of the scheme irrespective of their residence, tax-financed universal schemes tend to make entitlement subject to a residence test. In order to avoid the duplication of payments or gaps, if parts of a family live in different countries, the co-ordination rules not only provide for the payment of family benefits abroad in specific circumstances, but at the same time also for specific rules in order to prevent unjustified double payments by both the country of residence and the country of employment of the breadwinner. This is achieved by a set of priority rules.

Countries who wish to co-ordinate their family benefit schemes have basically three options:¹

1. They can provide that family benefits be paid by the institution of the country of employment and according to the legislation of this country. This solution seems to be particularly convenient for countries with employment-related schemes.
2. They could also provide that family benefits be paid by the country of residence of the children. This solution seems to be particularly convenient for countries with residence-based universal schemes.
3. They could also provide that the benefit be payable by the institution of the country of residence of the children and according to the legislation which it applies, but at the expense of the institution of the country of employment.

The first solution would mean that the amount of the benefit is determined by the legislation of the country of employment, whereas the second and third solution would mean that the amount is determined by the legislation of the country of residence of the child.

The Council of Europe's instruments in this area

The European Interim Agreement on Social Security other than Schemes for Old Age, Invalidity or Survivors of 11.12.1953 confines itself to establish the principle of equal treatment between all nationals of the contracting Parties. In the case of non-contributory (family) benefits, this principle has been made subject to a period of

¹ All these three options can also be found, for instance, in the ILO Recommendation No 167 concerning the establishment of an international system for the maintenance of rights in social security, 1983.

residence of at least 6 months prior to the claiming of the benefit. The same period of residence immediately preceding the claim is also required for the extension of the provisions of bilateral and multilateral agreements with respect to non-contributory (family benefit) schemes.

On the other hand, there are no provisions requiring the payment of family benefits for children residing abroad unless, of course, by virtue of the equality-of-treatment principle, if such payment is provided under national law or by virtue of a social security agreement which applies to the nationals of the signatory states.

The European Convention on Social Security of 14.12.1972 contains a more comprehensive set of rules, although these fall short from being exhaustive.

The Convention contains a number of rules which are immediately applicable for all nationals of a contracting party and which relate to

- the principle of equal treatment for nationals of all contracting parties (Article 8)
- the adding together of periods of insurance or residence (wherever this is required) (Article 57), and
- the general obligation to conclude additional bilateral or multilateral agreements in order to apply the non immediately effective provisions (Article 58).

The latter are in particular those which refer to the export of benefits. In this respect, the Convention offers a choice:

1. The contracting parties could either agree to a full export of family benefits: This means that persons subject to the legislation of one contracting party (e.g. by virtue of their employment there) who have children resident or being brought up in the territory of another contracting party shall be entitled in respect of such children to the family allowances provided for by the legislation of the first party, as if these children were permanently resident or were being brought up in the territory of that party (Art. 59 (2)).
2. They could also agree to a limited export of family benefits: This means that the competent institution limits the amount of family allowances paid for children abroad to the amount of family allowances provided for by the legislation of the country of residence of the children.
3. They could also agree to a reimbursement of family benefits: This means that the family benefit is paid by the institution of the country of residence of the children, but reimbursed by the competent institution of the country of employment of the breadwinner.
4. They could finally also agree to waive all reimbursement: This means that the family benefit is always paid by the institution of the country of residence of the children at its own expense.

In this respect, Articles 22 and 23 of ILO-Recommendation 167 also offer alternative solutions which basically comprise the same choices as set out in the European Convention.

Finally, the Convention² makes a very sophisticated distinction between family allowances and family benefits: “Family allowances” comprise periodical cash benefits granted according to the number and age of children, whereas the more comprehensive term “family benefits” comprises any benefits in kind or in cash granted to offset family maintenance costs. In this respect, the European Court of Justice has, for instance, decided, that “parental allowances”, “advance maintenance payments” or “school expenses allowances” are not covered by the term “family allowances” because they are not solely granted according to the number and age of children, but also subject to further conditions³. This distinction plays a role when it comes to the export of benefits as the Convention only requires the export of family allowances, but accepts that all the other family benefits are provided according to the legislation of the country of residence.

² The same distinction is made in Article 1 subparagraph (q) of ILO Recommendation No 167.

³ ECJ, case 313/86 of 27.09.1988, Lenoir, ECR 1988, 5391; case C-43/99 of 31.05.2001, Leclere and Deaconescu, ECR 2001, I-4265; case C-85/99 of 15.03.2001, Offermanns, ECR 2001, I-2261; case C-333/00 of 7.11.2002, Maaheimo, ECR 2002, I-

Regulation (EC) No 883/2004

Like the European Convention on Social Security, the former Regulation (EEC) No 1408/71 made a distinction between “family allowances” and “family benefits”: Whereas the rules applicable to employed and unemployed persons comprised all “family benefits” (Chapter 7 of Title III), the rules applicable to pensioners only covered “family allowances” (Chapter 8 of Title III). But this distinction has now been abolished under Regulation No 883/2004, which treats all family benefits in the same way. On the other hand, advances of maintenance payments, birth grants and adoption allowances, which are inserted in the Annex I are explicitly excluded from its scope because of their particular demographic character.

Export of family benefits

Unlike the original Regulation No 3 which provided for a limited export of family benefits only, the Regulation No 1408/71 provided for a full export. An exception rule applicable to France which provided for a limited export of French family benefits (i.e. limited to the amount payable by virtue of the legislation of the country of residence of the children), has been invalidated by the European Court of Justice in his famous “Pinna”-ruling because of covert discrimination⁴.

Article 67 of Regulation (EC) No 883/2004 continues to provide for a full export of family benefits within the European Union by stipulating that

“A person shall be entitled to family benefits in accordance with the legislation of the competent Member State, including for his/her family members residing in another Member State. However, a pensioner shall be entitled to family benefits in accordance with the legislation of the Member State competent for his/her pension.”

Priority rules

What happens if a family is entitled to family benefits according to the legislation of two different countries? Such a situation arises, for instance, in the case where a worker migrates to work in another State and leaves the family behind in his state of origin. The family would then be entitled to the family benefit of the country of employment of the worker and, at the same time, to the family benefits provided for by the legislation of their country of residence.

In order to avoid such an overlapping of family benefits, Article 68 of Regulation No 883/2004 establishes priority rules which can be resumed as follows:

1. The country of employment is responsible for the payment of family benefits in the first place (irrespective of the type of system, i.e. in employment – related and residence-based schemes alike),
2. then comes the country from which a pension is drawn and
3. finally the country of residence.

If benefits are payable by more than one Member State on the same basis, the following subsidiary criteria apply:

1. Where both parents are employed or self-employed in different states, the State of residence of the children is responsible for the payment of family benefits in the first place.

⁴ In this ruling (ECJ, case 41/84 of 15.01.1986, Pinna I, ECR 1986, 1), the court held that “the objective of securing free movement for workers within the Community, as provided for by the EC Treaty, will be imperilled and made more difficult to realize, if unnecessary differences in the social security rules are introduced by Community law. Therefore, the rules on co-ordination of social security schemes must refrain from adding to the disparities which already stem from the absence of harmonization of national legislation.”

2. Where both parents work in different countries, but not in the country of residence, the institution of the State providing for the highest level of benefits shall pay the full amount of such benefit and be reimbursed half this sum by the institution of the other State up to the limit of the amount provided for under its legislation.
3. If pensions are drawn from two different States, the State of residence of the children is responsible for the payment of family benefits in the first place.
4. If none of these pensions is payable according to the legislation of the country of residence, the State with the longest insurance record is responsible in the first place.

Member States whose legislation, according to these rules, is not applicable by priority right, may be required, however, to pay a differential supplement covering the difference between its own benefit and the benefit payable by the country whose legislation applies in the first place.

These rules thus prevent a duplication of family benefits, but at the same time they secure that the total of family benefits payable for the family of migrant workers always attains the highest amount provided for by the legislation of the different countries in question. The only exception to this rule applies in the event that both parents do not exercise any economic activity and are not pensioners either, but reside in different countries. In such a situation, the benefit provided by the country of residence of the child shall be the only one payable for this child.⁵

There are also detailed coordinating rules in the Implementing Regulation No 987/2009 in order to determine which Member State shall pay family benefits by priority and which State shall only pay a differential supplement, if its own benefits are higher: Article 60 stipulates that a claim for family benefits shall be addressed to the competent institution. This application, however, is also valid for all the other institutions concerned, as if it were submitted there. This means that if the competent institution concludes that its legislation is applicable by priority right, it shall provide the family benefit according to the legislation it applies. If it appears that there may be an entitlement to a differential supplement by virtue of the legislation of another Member State, the institution shall forward the application, without delay, to the competent Institution of the other Member State and inform the person concerned. Moreover, it shall inform the institution of the other Member State as soon as possible about its decision on the application and the amount of family benefits paid.

If the application is submitted to the competent institution of a Member State whose legislation is applicable, but not by priority right, the institution shall forward the application without delay to the competent institution of the Member State whose legislation is applicable by priority, inform the person concerned and provide, if necessary, the differential supplement. The competent institution of the Member State whose legislation is applicable by priority shall deal with this application as though it were submitted directly to itself. The date on which such an application was submitted to the first institution shall be considered as the date of its claim to the institution with priority.⁶

If there is a difference of views between the institutions concerned about which legislation shall be applicable by priority right, benefits shall be paid on a provisional basis

- in the first place by the institution of the Member State where the applicant pursues his/her employment or economic activity,
- in the second place by the institution of the place of residence, if the applicant pursues his activity in more than one Member State or when s/he pursues no economic activity.⁷

⁵ Article 68 (2) third sentence of Reg. 883/2004

⁶ Article 68 (3) of Regulation No 883/2004

⁷ Article 6 of Regulation No 883/2004

Examples: Ranking of rights to family benefits

Family resident in State A

Father	Mother and children	Ranking of rights
Employed in B	Not employed, residence in A	1. State B 2. State A (differential supplement)
Employed in B	Employed in A, residence in A	1. State A 2. State B (differential supplement)
Employed in B (with highest family benefit)	Employed in C, residence in A	1. State B 2. State C (reimbursement by half) 3. State A (differential amount)
Pension from B	Not employed, residence in A	1. State B 2. State A (differential supplement)
Pensions from A and B	Not employed, residence in A	1. State A 2. State B (differential supplement)
Pensions from B and C (longest period of insurance in C)	Not employed, residence in A	1. State C 2. State B (differential supplement) 3. State A (differential supplement)
Pension from B	Pension from A, residence in A	1. State A 2. State B (differential supplement)
Not employed, residence in B	Not employed, residence in A	1. State A (no differential supplement from State B)

Different family benefit schemes

- **Employment-related, income based schemes**
 - mainly financed by employer contributions
- **Universal, residence-based schemes**
 - mainly financed out of taxation
 - sometimes means-tested, i.e. dependent on family income

Award of family benefits for children abroad (basic options)

- At the rate provided by the legislation of the country of **employment or residence**
- Financed by the institution of the country of **employment or residence**

European Convention on Social Security (14.12.1972)

- **Directly applicable**
 - Equal treatment (*Article 6*)
 - Aggregation of periods of insurance (*Article 57*)
 - Obligation to conclude additional agreements (*Article 58*)

European Convention on Social Security (14.12.1972)

- **Negotiable**
 - Full export of family allowances (*i.e. according to legislation of country of employment*)
 - Limited export of family allowances (*limited to amount payable for children in country of residence*)
 - Financed by competent institution (*reimbursement*)
 - Financed by institution of country of residence (*waiving of reimbursement*)

Terminology

“Family allowances”

Periodical cash benefit granted according to the number and age of children, only.

“Family benefits”

Any benefit in kind or in cash granted to offset family maintenance costs; this term includes “parental allowances”, “advance to maintenance of payments”, “school expenses allowances” etc.

Regulation (EC) No 883/2004

- **Full export** of family benefits (economically active persons) / allowances (pensioners)
- Total of benefits due to migrant workers shall **always** equal the **highest amount**

Regulation (EC) No 883/2004

- **Priority rules** prevent undue duplication of benefits
 - Rights available because of an **economic activity** (including unemployment)
 - Rights available on the grounds of receipt of a **pension**
 - Rights obtained by **residence**

Regulation (EC) No 883/2004

- In case of **conflict**, the following **subsidiary criteria** apply
 - a) Employment in different countries
 - 1. Residence
 - 2. Highest amount, reimbursed by half
 - b) Pensions from different countries
 - 1. Residence
 - 2. Longest insurance record
 - c) Residence in different countries
 - No rules apply

Regulation (EC) No 883/2004

- A “**differential supplement**” is payable by the institution whose legislation does not apply by priority, but provides for a higher benefit.

Regulation (EC) No 883/2004

- Abolition of differentiation between family allowances and family benefits
- Advance to maintenance payments are excluded (*because of their special nature as recoverable advance payments*)
- No differential supplement, if benefits are awarded on the basis of residence only (*i.e. in case of inactive persons*)

Coordination of Social Security Systems in the European Union

Module 1: Overview of the EC Regulations 883/2004 and 978/2009

Module 2: Coordination of sickness benefits

Module 3: Coordination of family benefits for children abroad

Module 4: Coordination of unemployment benefits

Module 4: Coordination of unemployment benefits

Background

In a period of high unemployment linked with high emigration rates, the provisions regarding unemployment insurance are of particular relevance for migrant workers, in particular if they want to return to their country of origin. On the other hand, the provisions on unemployment benefits in the EC-regulations or in bilateral social security agreements are, as a general rule, comparatively restrictive and less generous. This is due to the fact that unemployment insurance is closely linked to the national employment policy and therefore requires an active collaboration and monitoring of the unemployed person.

Aggregation of periods of insurance

This means that the possibility of aggregation of periods of insured employment completed in another State is of particular importance for a returning a migrant worker. Both Article 51 of the European Convention on Social Security and Article 61 (2) of Regulation (EC) No 883/2004 provide for an aggregation of periods completed in the other state, but only under the condition that the unemployed person was last subject to the legislation of the country where he submits his claim.¹ This means that a migrant worker who returns to his country of origin will not be entitled to any benefits unless he finds there an employment long enough to be insured again.

The reason for this restrictive condition is that the Member States do not want to accept the responsibility for persons who do not belong to their workforce. The freedom of movement within the European Union applies to the employed or self-employed, but not to unemployed persons.

Former bilateral social security agreements were sometimes more generous and provided at least for the returning nationals of a contracting state to claim unemployment benefits without this restrictive condition. Because of the general prohibition of discrimination based on nationality laid down in the EC-Treaty, however, such clauses can no longer be maintained.

However, under the aforementioned instruments, there is an exception to this rule: Frontier workers and other cross-border workers who worked abroad without transferring their residence (e.g. seasonal workers) are exempted from this condition. “Frontier workers” are defined as persons who are employed in the territory of a member state and reside in the territory of another member state, where they return, as a rule, daily or at least once a week. Other cross-border workers in the same situation who are employed in one member state and reside in another member state to which they return less often than frontier works, i.e. less frequently than once a week, are described as “workers other than frontier workers”.

In particular seasonal workers belong to this group of persons, as they stay in the country of employment for a limited period (e.g. for the harvest of fruits, vine or vegetables) without transferring their residence there.

For these two groups of persons a distinction is made: If they are partially or intermittently unemployed, i.e. whenever their employment contract is maintained during a period of unemployment or reduced working time, they shall continue to receive their benefits from the country of employment. However, if they are wholly unemployed they shall receive their benefits from the institution of their country of residence (even without previous employment in this country and even without having paid any contribution to this institution), unless – in the case of workers other than frontier workers – they prefer to stay in their previous country of employment and look for work there.²

¹ However, Article 4 of ILO-Recommendation 167, which establishes the principle of aggregation of periods of insurance in the event of unemployment, does not provide for such a condition.

² See Article 65 of Reg. 883/2004, Article 53 of the European Convention on Social Security, Article 21 (2) of ILO Rec. 167.

These specific rules for frontier workers and the so-called workers other than frontier workers were drawn up because it was assumed that they maintain particular close ties with their country of residence and would be most likely to find a job there. Consequently the periods of insurance completed in the former state of employment must be taken into account, in their case, even without previous employment in the “competent” country of residence.

However, the new Regulation (EC) 883/2004 provides for some flexibility. According to Article 65, frontier workers are also entitled, as a supplementary step, to register with the employment office of their previous country of employment. In addition, the institution of the competent country of residence (as compensation for the loss of contributions during the previous employment) is entitled to a reimbursement for the benefits paid for a period of at least three or five months.³

Periods of unemployment insurance completed in the former country of employment are certified by the portable document U1.⁴

Export of benefits

The principle of freedom of movement is one of the four pillars of the European Union. This includes the right to look for a job beyond the boundaries of one’s home country. An unemployed person, however, faces the problem that he must be available to the employment service of his country and cannot take leave without the permission of this service.

It may also be that an unemployed person want to move to another State e.g. for family reasons or because the spouse has found a job in another country. What can be done to prevent the loss of all entitlement to unemployment benefit?

Article 52 of the European Convention on social security as well as Article 21 (1) of ILO Recommendation 167 suggest in such a situation the following solution: The institution of the new state of residence shall continue to pay the unemployment benefit in accordance with its own legislation if the person concerned registers with its employment office within 30 days after his transfer of residence. This solution, however, has not been retained by Regulation (EC) No 883/2004 and it is not applied in bilateral social security agreements, either.

Article 64 of Regulation No 883/2004 only provides for a limited possibility to retain the right to unemployment benefits under certain conditions in such a situation. These are

An unemployed person who goes to another Member State in order to seek work there must

- have been registered with the employment service of the competent Member State for a period of at least four weeks⁵;
- register with the unemployment service of the country where he is looking for work within seven days after departing; and
- comply with the control procedures organized by the unemployment service of that country.

Jobseekers who intend to look for work in another country shall request a document U2 ⁶ before departure which certifies their right to continue to draw unemployment benefit. They should take care to return before expiry of the maximum period, because if they return later, without the explicit permission of the employment

³ See Article 65 (6) and (7) of Reg. 883/2004.

⁴ This corresponds to form E 301 under Reg. 1408/71.

⁵ The underlying idea of this precondition is that an unemployed person should at first exhaust all possibilities of finding a new job in his former country of employment before extending the search for employment to other countries. This period can be shortened, however, by the institution concerned.

⁶ This corresponds to form E 303 under Reg. 1408/71.

service of the state which is paying the benefits, they risk losing all remaining entitlement to benefits, unless the legislation of the competent state provides otherwise.

If the competent unemployment service is informed that these conditions are fulfilled it will continue to pay the unemployment benefit. In the new country of stay, the jobseeker will be treated by the employment service exactly the same way as any other jobseeker in this country. If the institution of this country becomes aware of any circumstance which might affect entitlement to benefits, it will immediately inform the competent institution and the jobseeker by handing out the document U3. This document informs the unemployed person of the situation and suggests to contact his competent institution without delay if he does not agree, in order to make sure that his benefit continues to be paid to him.

Circumstances likely to affect entitlement to benefits are, in particular,

- the take-up of employment or self-employment,
- the receipt of other kind of earnings,
- the refusal of a job offer or interview request from the employment services of the country where he seeks a job,
- the refusal to participate in occupational rehabilitation,
- the occurrence of incapacity for work,
- the non-compliance with requested control measure and
- the fact that the person is no longer available to the employment service.

Such a right to maintain entitlement to unemployment benefits during a (limited) period is a particularity of the European law, where the right to free movement of works is guaranteed by the EC-Treaty, as this implies also the right to look for work in another Member State. Such a right is normally not a feature of national legislation and it is not a usual feature of bilateral social security agreements, either.

Applicable legislation and calculation of benefits

According to the *lex-loci-laboris* principle, the State where a person is or was employed is also the one which is responsible for granting the social security benefits. An unemployed person who looks for a job abroad for a limited period continues to receive unemployment benefit, sickness coverage and family benefits according to the legislation of the country of last employment. However, frontier workers and other cross-border workers who register in their country of residence are covered by the legislation of this country.

The amount of unemployment benefit in most European countries depends on the previous salary or professional income of the beneficiary. As a general rule, the unemployment institution is only obliged to base its calculations on the previous income which the person received in the same state, i.e. where he was most recently employed. In the case of frontier workers and other cross-border workers, however, it will have to base its calculations on the income received in the former state of employment. As a consequence, the institution of the former state of employment is obliged, at request, to provide the necessary information in this respect.

If the amount of the unemployment benefit depends on the family situation of the person concerned, family members residing in another member state are equally taken into account as if they were residing in the state which pays the benefit.

Different unemployment schemes

- Employment-related, income based schemes
 - mainly financed by employers' and employees' contributions
- Universal, residence-based schemes
 - mainly financed out of taxation
 - sometimes means-tested, i.e. dependent on family income

European Convention on Social Security (14.12.1972)

- Negotiable
 - Entitlement to benefits in case of **change of residence** provided by new country of residence according to its legislation at the expense of the institution of former country of employment (subject to the condition, that the person registers with the employment service within 30 days of transfer of residence) (*Article 52*)
 - Special rules for **frontier** and other **cross-border workers** (*Article 53*)

European Convention on Social Security (14.12.1972)

- Directly applicable
 - Equal treatment (*Article 6*)
 - Aggregation of periods of insurance (*Article 51*)
 - Rules preventing the overlapping of benefits (*Article 13*)
 - Calculation of benefits (*Article 55*)
 - Obligation to conclude additional agreements (*Article 58*)

Regulation (EC) No 883/2004

- Aggregation of periods of insurance or employment
 - only where the most recent period of insurance had been completed
 - except for frontier and other cross-border workers
 - **portable document** to be issued by institution of country of last employment



Certification of periods to be taken into account for the granting of benefits

Regulation (EC) No 883/2004

- Frontier worker
(= person employed in a country which is not their country of residence, who return there at least once a week)
 - partial or intermittent unemployment - **legislation of country of employment**
 - whole unemployment - **legislation of country of residence**

Regulation (EC) No 883/2004

- Workers other than frontier workers
(= workers employed outside of their country of residence, who do not return regularly (e.g. seasonal workers, posted workers)
 - partial or intermittent unemployment - **legislation of country of employment**
 - whole unemployment - **legislation of country of their choice**

Regulation (EC) No 883/2004

- Reimbursement of unemployment benefits by formerly competent institution
 - at least for **three months**
 - for **five months**, when, during the preceding 24 months, at least 12 months of employment have been completed in former country of employment
 - but **not more** than the amount payable in former country of employment

Regulation (EC) No 883/2004

- Export of unemployment benefits
 - Registration of - at least - **four weeks** with the employment service of country of last employment
 - Registration with the employment service of new country of stay at least **seven days** after departure
 - Compliance with **control procedure** organised by the employment service of that country
 - **Return** before the end of the authorised period (between three and six months)

Regulation (EC) No 883/2004

Portable documents



Retention of unemployment benefits entitlement



Circumstances likely to affect the entitlement to benefits

