

Social security coordination

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Introduction

EU law and social security

- ▶ No harmonisation of national social security schemes
- ▶ MS have the exclusive competence to determine:
 - ▶ the conditions that create the right or the obligation to become affiliated,
 - ▶ the conditions for the acquisition, retention, loss or suspension of the right to social security benefits, and
 - ▶ the method of calculation of their amount.

Introduction

EU law and social security

- ▶ However: MS must comply with EU law
 - ▶ Free movement of persons
- ▶ Reg. 883/2004
 - ▶ Coordination
 - ▶ “migrant workers must not lose their right to social security benefits or have the amount of those benefits reduced because they have exercised the right to freedom of movement conferred on them by the Treaty”

Structure

- ▶ Determination of the applicable legislation
 - ▶ Titles II and III Reg. 883/2004
 - ▶ Posting
- ▶ Application of national law
 - ▶ Titles I and III Reg. 883/2004
 - ▶ Deterritorialisation
- ▶ Family benefits

Case study

- ▶ Nationality: SVN
- ▶ Place of work: BE
- ▶ Place of residence: FR
- ▶ Place of establishment of employer: LUX

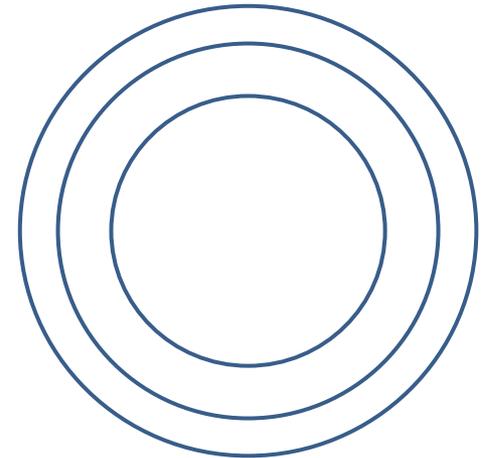
Social security in two questions

- ▶ **Benefits: who receives what from whom?**
 - ▶ Right of individual
 - ▶ Duty of social security institution
- ▶ **Contributions: who receives what from whom?**
 - ▶ Right of social security institution
 - ▶ Duty of individual

Applicable legislation

Choice of the applicable legislation

- ▶ A State other than BE, FR, LUX, SVN?
- ▶ Bounded nature of solidarity
- ▶ Inclusion and exclusion
- ▶ Enter and exit



Applicable legislation

Choice of the applicable legislation

- ▶ “solidarity envisages the inherently uncommercial act of involuntary subsidization of one social group by another.”
 - ▶ (A.G. Fennelly in C-70/95 *Sodemare*, §29)

Applicable legislation

Unicity of applicable legislation

- ▶ How many Member States may levy contributions?
 - ▶ A sedentary person pays contributions (and receives benefits) in one MS only
 - ▶ Migrant person
 - ▶ Free movement of persons and double burdens
 - ▶ Objective justification?
 - ▶ Contributions in one single Member State:
 - ▶ “Persons to whom this Regulation applies shall be subject to the legislation of a single Member State only”
 - (art. 11(1) Reg. 883/2004)

Applicable legislation

Unicity of applicable legislation

- ▶ One MS – which?

SVN

BE

LUX

FR



Applicable legislation

Contributions

- ▶ The Member State of (habitual) residence?
 - ▶ Pro
 - ▶ Integration of the worker
 - ▶ Contra
 - ▶ Free movement of workers: equality on the work floor and differential social security contributions
 - ▶ Fair competition
 - ▶ (Integration of the employer)

Applicable legislation

Contributions

- ▶ The home Member State?
 - ▶ Pro
 - ▶ Integration of the worker, at least initially
 - ▶ Contra
 - ▶ Free movement of workers: direct discrimination
 - ▶ Fair competition
 - ▶ (Integration of the employer)

Applicable legislation

Contributions

- ▶ The Member State of establishment of the employer?
 - ▶ Pro
 - ▶ (Integration of the employer)
 - ▶ Contra
 - ▶ Free movement of workers
 - ▶ Fair competition
 - ▶ Forum shopping
 - ▶ Integration of the worker

Applicable legislation

Contributions

- ▶ The Member State of work
 - ▶ Pro
 - ▶ Free movement of workers
 - ▶ Integration of the worker
 - ▶ Fair competition
 - ▶ (Integration of the employer)
 - ▶ Parallelism with most, but not all, national laws (founding MS)
 - ▶ Contra

Applicable legislation

Contributions

- ▶ The Member State of work
 - ▶ “a person pursuing an activity as an employed or self-employed person in a Member State shall be subject to the legislation of that Member State”
 - ▶ (art. 11(3)(a) Reg. 883/2004)
 - ▶ LUX employer pays contributions at the BE rate for his workers active in BE, regardless of their nationality or their place of residence

Applicable legislation

Contributions

- ▶ The Member State of work
 - ▶ Simultaneous employment
 - ▶ ~/~ same employer; same activity; simultaneously or in alternation
 - ▶ Substantial part of activity in MS of residence -> MS of residence
 - ▶ Otherwise: a ladder
 - ▶ (art. 13 Reg. 883/2004; art. 14 Reg. 987/2009)

Applicable legislation

Contributions

▶ The Member State of work

▶ Posting of employed person

- ▶ Conditions: (art. 12(1) Reg. 883/2004)
 - ❑ Activity as an employed person in a Member State
 - ❑ On behalf of an employer which normally carries out its activities there
 - ❑ Work on that employer's behalf in another Member State
 - ❑ The anticipated duration of such work does not exceed 24 months
 - ❑ He/she is not sent to replace another posted person
- ▶ Rationale: freedom to provide services

Applicable legislation

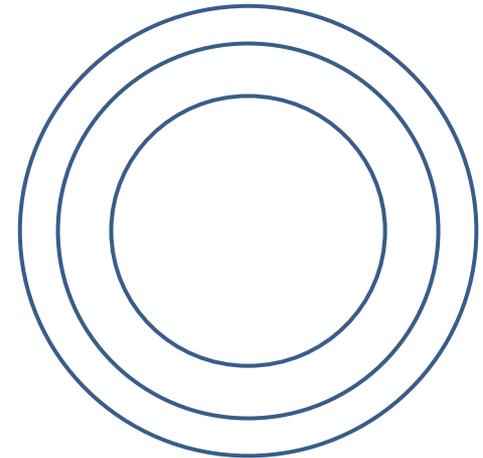
Contributions

- ▶ The Member State of work
 - ▶ Posting of self-employed person
 - ▶ Conditions: (art. 12(2) Reg. 883/2004)
 - Service provider normally pursues an activity as a self-employed person in a Member State
 - Similar activity in another Member State
 - The anticipated duration of such activity does not exceed 24 months
 - ▶ Rationale: freedom to provide services

Applicable legislation

Choice of the applicable legislation

- ▶ Bounded nature of solidarity
- ▶ Inclusion and exclusion
- ▶ Enter and exit



Applicable legislation

Unicity of applicable legislation

- ▶ How many Member States should grant benefits?
 - ▶ A sedentary person draws benefits in one MS only
 - ▶ Migrant person
 - ▶ Contributions in one single Member State
 - ▶ Principle: benefits in one single Member State
 - “Persons to whom this Regulation applies shall be subject to the legislation of a single Member State only” (art. 11(1) Reg. 883/2004)
 - ▶ Exceptions

Applicable legislation

Benefits

- ▶ The Member State of work – economically active persons
 - ▶ Pro
 - ▶ Free movement of workers
 - ▶ Integration of the worker
 - ▶ Parallelism with many national laws (founding MS)
 - ▶ Contra

Applicable legislation

Benefits

- ▶ The Member State of residence – economically non-active persons
 - ▶ Art. 11(3)(e) Reg. 883/2004
 - ▶ Pro
 - ▶ Integration
 - ▶ Free movement of EU citizens
 - ▶ Parallelism with many national laws
 - ▶ Contra

Applicable legislation

Benefits

- ▶ “EAP” and “N-EAP”?
 - ▶ Persons receiving short-term cash benefits because or as a consequence of their activity as an employed or self-employed person = EAP
 - ▶ Art. 11(2) Reg. 883/2004

Applicable legislation

Benefits

- ▶ The Member State of work – exceptions
 - ▶ Health care for person residing outside the competent MS
 - ▶ Provider: institution of the place of residence
 - ▶ Full reimbursement by the competent MS
 - ▶ Special non-contributory cash benefits
 - ▶ Minimum subsistence income
 - ▶ Specific protection for the disabled

Posting

Rationale

- ▶ The free movement of services
 - ▶ Posting of employed workers
 - ▶ Posting of self-employed worker
- ▶ Temporary nature and exceptional nature
 - ▶ Not on-going carousel of posted workers for the same position

Posting

Art. 12(1) Reg. 883/2004

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

Posting of employed workers

Employer

Posting MS

Posted worker

User in host MS



Posting of employed workers

Maximal duration

- ▶ “the anticipated duration of such work does not exceed 24 months”

Posting of employed workers



Posted worker

User in host MS



Posting of employed workers

Employer – posting MS

- ▶ “an employer which normally carries out its activities” in the posting MS
 - ▶ Art. 12(1) Reg. 883/2004
- ▶ Substantial activities
 - ▶ > Internal management
 - ▶ Open-ended list of indicators
 - ▶ the place where the posting undertaking has its registered office and its administration;
 - ▶ the place of recruitment of the posted worker;

Posting of employed workers

Employer – posting MS

- ▶ the number of administrative staff of the posting undertaking present in the posting State and in the State of employment – the presence of only administrative staff in the posting State rules out *per se* the applicability to the undertaking of the provisions governing posting;
- ▶ ☐ the place where the majority of contracts with clients are concluded
- ▶ ☐ the law applicable to the contracts signed by the posting undertaking with its clients and with its workers;
- ▶ ☐ the number of contracts executed in the posting State and the State of employment;

Posting of employed workers

Employer – posting MS

- ▶ ☐ the turnover achieved by the posting undertaking in the posting State and in the State of employment during an appropriate typical period (e.g. turnover of approximately 25% of total turnover in the posting State could be a sufficient indicator, but cases where turnover is under 25% would warrant greater scrutiny);
- ▶ ☐ the length of time an undertaking is established in the posting Member State.



Posting of employed workers

Employer – posting MS

- ▶ Company A (MS A) sends 7 members of its permanent staff and 3 temporary workers (temporary work agency; they were working for company A) to MS B
 - ▶ Posting?
 - ▶ Who is the employer of the temporary workers?

Posting of employed workers



Posting MS

User in host MS



Posting of employed workers

Posted worker – posting employer

- ▶ A direct relationship:
 - ▶ Work in posting MS “on behalf of”;
 - ▶ “posted by that employer”
 - ▶ Work in host MS “on that employer’s behalf”
- ▶ Open-ended list of indicators
 - ▶ responsibility for recruitment;
 - ▶ it must be evident that the contract was and still is applicable throughout the posting period to the parties involved in drawing it up and stems from the negotiations that led to recruitment;
 - ▶ the power to terminate the contract of employment (dismissal) must remain exclusively with the ‘posting’ undertaking;

Posting of employed workers

Posted worker – posting employer

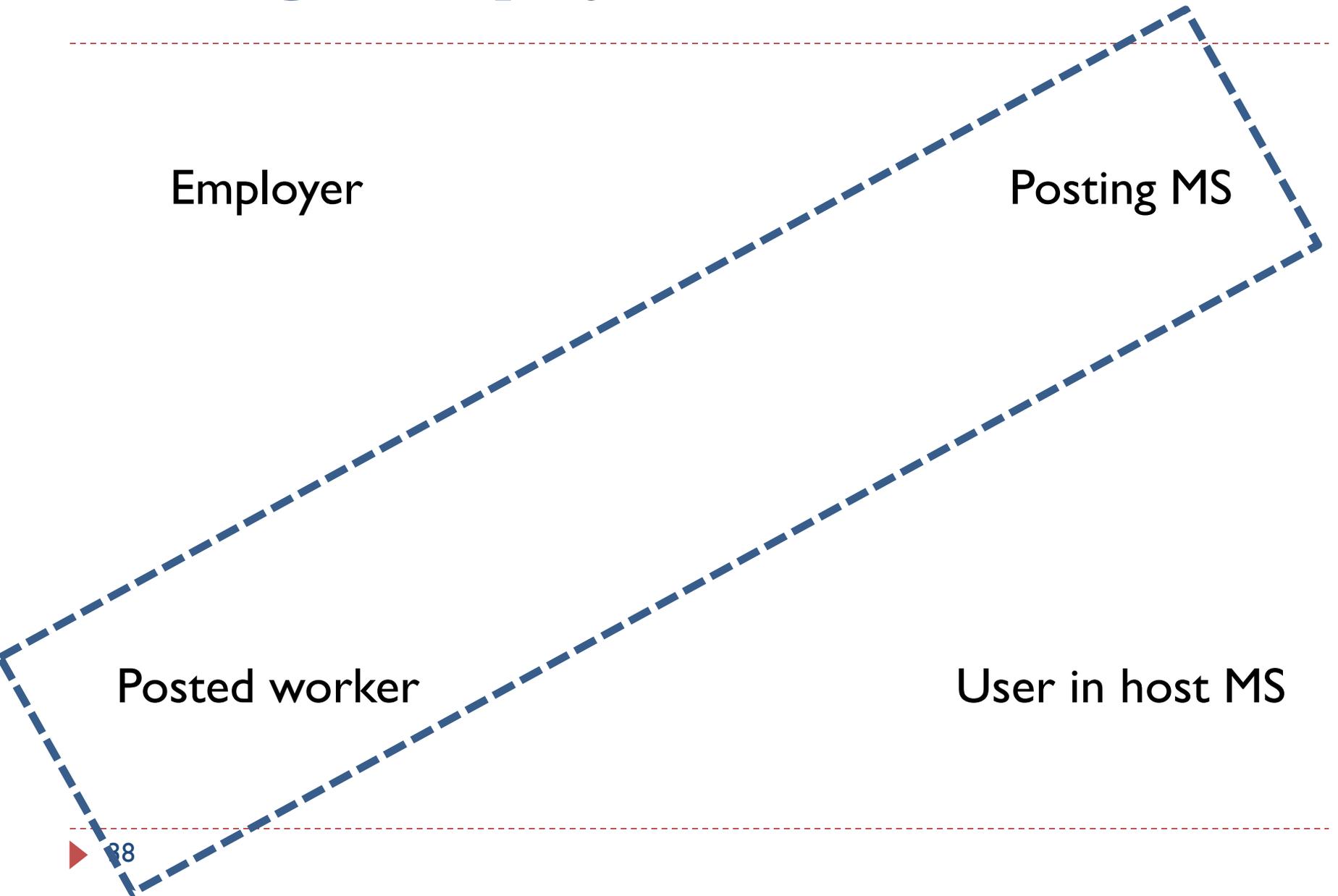
- ▶ The ‘posting’ undertaking must retain the power to determine the “nature” of the work performed by the posted worker, not in terms of defining the details of the type of work to be performed and the way it is to be performed, but in the more general terms of determining the end product of that work or the basic service to be provided;
- ▶ The obligation with regard to the remuneration of the worker rests with the undertaking which concluded the employment contract. This is without prejudice to any possible agreements between the employer in the posting State and the undertaking in the State of employment on the manner by which the actual payments are made to the employee;
- ▶ The power to impose disciplinary action on the employee remains with the posting undertaking.

Posting of employed workers

Posted worker – posting employer

- ▶ **Company A sends PW to Company B**
 - ▶ Contract A-PW remains in force; A pays the wages to PW; B refunds the remuneration to A
 - ▶ Contract A-PW remains in force; A pays the wages to PW; PW concludes an additional employment contract with B and receives wages from B
 - ▶ Contract A-PW is suspended; PW concludes an additional employment contract with B and receives wages from B

Posting of employed workers



Posting of employed workers

Posted worker – posting MS

- ▶ “A person who pursues an activity as an employed person in a Member State [...] shall continue to be subject to the legislation of the [posting MS]”
- ▶ Incl. “a person who is recruited with a view to being posted to another Member State, provided that, immediately before the start of his employment, the person concerned is already subject to the legislation of the Member State in which his employer is established.”

Posting of employed workers

Posted worker – posting MS

- ▶ **Administrative Commission**
 - ▶ One month suffices
 - ▶ Less than one month: a case-by-case assessment
 - ▶ Employment with any employer in posting MS
 - ▶ Affiliation on the basis of residence

Posting of employed workers

Posted worker – posting MS

- ▶ On 1 June, Company A (MS A) sends to Company B three workers who began work for A on 1 June:
 - ▶ X: before, she was subject to soc. sec. legislation of MS A on basis of residence (*qua* student)
 - ▶ Y: before, he was working in MS C and living in MS A
 - ▶ Z: he worked in MS A from 1 May; before that, he had worked for years in MS B

Posting of employed workers

Employer

Posting MS

Posted worker

User in host MS



Posting of employed workers

Posted worker – users

- ▶ No employment relationship
- ▶ Several users in the same host MS: posting
- ▶ Several Member States consecutively: each posting is a new posting
- ▶ Normal simultaneous employment in different MS
 - ▶ Art. 13 Reg. 883/2004

Posting of employed workers

Replacement

- ▶ “he/she is not sent to replace another posted person.”
 - ▶ Art. 12(1) Reg. 883/2004
- ▶ From perspective of posting State
- ▶ From perspective of host State
 - ▶ Position cannot be filled by a posted worker from another company
- ▶ Unless:
 - ▶ Posting period is not finished

Posting of employed workers

Replacement

- ▶ Same position?
- ▶ Waiting period?



Posting

Waiting period

- ▶ Once a worker has ended a period of posting, no fresh period of posting for the same worker, the same undertakings and the same Member State can be authorized until at least two months have elapsed from the date of expiry of the previous posting period.
 - ▶ Derogation from this principle is, however, permissible in specific circumstances.
 - ▶ (EC;Admin. Comm.)
- ▶ if the posted worker could not complete the work due to unforeseen circumstances, prior to end of 24m

Posting

Waiting period

- ▶ E.g. posted for 12m, ill for 3m -> extension by 3m
- ▶ E.g. posted for 24m, unexpected delay -> no extension, unless art. 16 agreement

Posting of employed workers

Exclusions

- ▶ User places posted worker at the disposal of another company in the host MS / in another MS
- ▶ Posted worker is recruited in MS A by a Company established in MS B in order to work in MS A
- ▶ Replacement
- ▶ Labour contract with user

Posting of employed workers

Opt-out

- ▶ “Two or more Member States, the competent authorities of these Member States or the bodies designated by these authorities may by common agreement provide for exceptions to Articles 11 to 15 *in the interest of* certain persons or categories of persons.”
 - ▶ (Art. 16(1) Reg. 883/2004)

Posting of employed workers

Decision-making

- ▶ Competent MS issues a certificate, which is binding for the host MS
- ▶ Binding force of AI certificate
 - ▶ Administration and *courts* of the host MS
 - ▶ Legal certainty; unicity of applicable legislation
 - ▶ Host MS has doubts on correctness
 - ▶ Competent MS reconsiders and, if necessary, withdraws
 - ▶ Persistent disagreement -> Administrative Commission; infringement proceedings; proceedings before national courts

Posting of self-employed persons

Art. 12(2) Reg. 883/2004

- ▶ “A person who normally pursues an activity as a self-employed person in a Member State who goes to pursue a similar activity in another Member State shall continue to be subject to the legislation of the first Member State, provided that the anticipated duration of such activity does not exceed 24 months.”

Posting of self-employed persons

Service provider – posting MS

- ▶ “who normally pursues an activity as a self-employed person”
 - ▶ “a person who habitually carries out substantial activities in the territory of the Member State in which he is established. In particular, that person must have already pursued his activity for some time before the date when he wishes to take advantage of the provisions of that Article and, during any period of temporary activity in another Member State, must continue to fulfil, in the Member State where he is established, the requirements for the pursuit of his activity in order to be able to pursue it on his return.”
 - ▶ Art. 14(3) Reg. 987/2009

Posting of self-employed persons

Service provider – posting MS

- ▶ “who normally pursues an activity as a self-employed person”
 - ▶ Open-ended list of criteria: does the service provider
 - ▶ keep an office in the posting State;
 - ▶ pay taxes in the posting State;
 - ▶ maintain a VAT number in the posting State;
 - ▶ Remain registered with chambers of commerce or professional bodies in the posting State;
 - ▶ have a professional card in the posting State.
 - ▶ Two months suffice; shorter periods require a case-by-case evaluation

Posting of self-employed persons

Activities in posting MS and host MS

► Similarity:

Competent MS	Host MS
Self-employed carpenter	Self-employed butcher
Construction company, installation of piping and wiring systems	Installation of wiring system and repairing the foundation
Transport services	Installation of wiring system and repairing the foundation
Solicitor in criminal law	Counsel on corporate governance

Posting of self-employed persons

Activities in posting MS and host MS

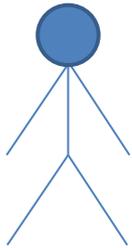
- ▶ **Similarity:**
 - ▶ ~ the actual nature of the activity, rather than of the designation of employed or self-employed activity that may be given to this activity by the other Member State.
 - ▶ The work in the host MS must be determined before departure
 - ▶ Proof via e.g. contracts
 - ▶ Same sector usually suffices

Structure

- ▶ Determination of the applicable legislation
 - ▶ Titles II and III Reg. 883/2004
 - ▶ Posting
- ▶ **Application of national law**
 - ▶ **Titles I and III Reg. 883/2004**
 - ▶ **Deterritorialisation**
- ▶ Family benefits

Bounded solidarity

Links with the competent Member State



Ongoing work

Durational work

Payment of many

contributions

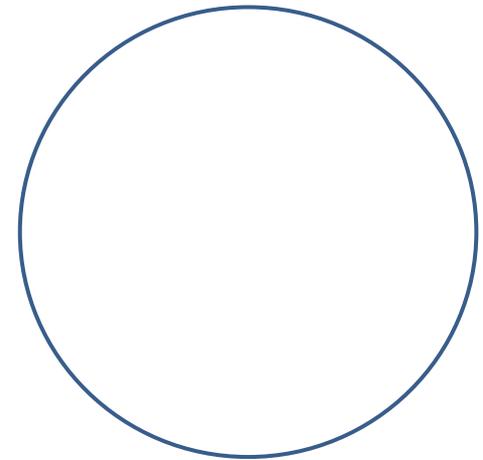
Residence

Links of family members

Nationality

Place of establishment of employer

Etc.



Deterritorialisation

Residence and export

- ▶ E.g. sickness benefits in cash
 - ▶ Income-replacement in the event of unfitness for work
- ▶ “Unless otherwise provided for by this Regulation, cash benefits payable under the legislation of one or more Member States or under this Regulation shall not be subject to any reduction, amendment, suspension, withdrawal or confiscation on account of the fact that the beneficiary or the members of his/her family reside in a Member State other than that in which the institution responsible for providing benefits is situated.”
 - ▶ (Art. 7 Reg. 883/2004)
- ▶ Rationale: free movement

Deterritorialisation

Periods and aggregation

- ▶ Change of place of work -> change of applicable legislation
- ▶ Competent MS: if *national* periods of insurance, (self-)employment or residence, then right to benefits
- ▶ Periods completed under law of another Member State
- ▶ Competent MS must treat foreign periods as national periods
 - ▶ (Art. 6 Reg. 883/2004)

Deterritorialisation

Periods and aggregation

- ▶ Old place of work: BE (age 24-39)
- ▶ New place of work: SVN

BE

Slovenia

- ▶ Rationale: free movement

Denationalisation

The principle of non-discrimination

- ▶ “persons to whom this Regulation applies shall enjoy the same benefits and be subject to the same obligations under the legislation of any Member State as the nationals thereof.”
 - ▶ Art. 4 Reg. 883/2004

Bounded solidarity and deterritorialisation

Links with the competent Member State



Ongoing work

Durational work

Payment of many

contributions

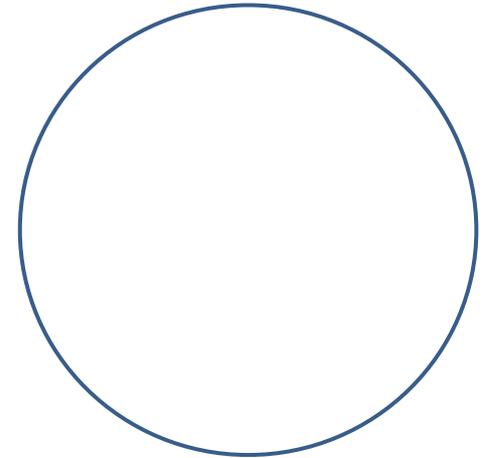
Residence

Links of family members

Nationality

Place of establishment of employer

Etc.



Deterritorialisation

The equal treatment of facts

- ▶ Rule of competent MS: if A then right to benefit
 - ▶ In casu: B (in another MS) instead of A
- ▶ If B is equivalent to A, and
- ▶ If there is no objective justification for a different treatment of A and B,
- ▶ Then right to benefit
- ▶ (the equal treatment of A and B would benefit the insured person)

Deterritorialisation

Condition	Consequence	Case
New job is <i>subject to German social security</i>	Public intervention in the payment of private-sector recruitment agency	C-208/05 <i>ITC</i>
Periods of receipt of <i>Austrian</i> unemployment benefits	Early retirement pension for unemployed persons	C-373/02 <i>Öztürk</i>
Degree of incapacity for work = <i>German</i> occupational activity – remaining capacity for work	Invalidity benefit	20/85 <i>Roviello</i>
Periods of studies <i>in Belgium</i>	Tideover allowance for young persons seeking their first job	C-258/04 <i>Ioannidis</i> , C-367/11 <i>Prete</i>
Periods of work <i>in Sweden</i>	Parental benefit at higher level	C-257/10 <i>Bergström</i>

Deterritorialisation

The equal treatment of facts unpicked

- ▶ Territorial elements are suspect
- ▶ Equivalent facts
- ▶ Consequences
 - ▶ No de minimis
 - ▶ If beneficial for migrant -> compulsory for MS
 - ▶ If detrimental for migrant -> facultative for MS
 - ▶ 1/78 *Kenny*
- ▶ Three defences
 - ▶ Equivalence
 - ▶ Specific provisions of the Reg.
 - ▶ Objective justification + proportionality

Deterritorialisation

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:
- ▶ (a) where, under the legislation of the competent Member State, 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 Member State or to income acquired in another Member State;
- ▶ (b) where, under the legislation of the competent Member State, legal effects are attributed to the occurrence of certain facts or events, that Member State shall take account of like facts or events occurring in any Member State as though they had taken place in its own territory.
 - ▶ (Art. 5 Reg. 883/2004)

Deterritorialisation

Objective and proportional justification

- ▶ Relevant to:
 - ▶ The principle of equal treatment
 - ▶ Art. 4 Reg. 883/2004
 - ▶ TFEU
 - ▶ The principle of equal treatment of facts
 - ▶ Art. 5 Reg. 883/2004
 - ▶ The prohibition on non-discriminatory restrictions
 - ▶ TFEU

Deterritorialisation

Objective and proportional justification

- ▶ Objective justifications
 - ▶ Express derogations
 - ▶ Purely economic objectives
 - ▶ C-158/96 *Kohll*
 - ▶ Financial balance of social security system
 - ▶ Insufficient proof
 - C-208/05 *ITC*; C-396/05, C-419/05 and C-450/05 *Habelt*; C-228/07 *Petersen*
 - ▶ Unsuitable means
 - C-11/06 and C-12/06 *Morgan*

Deterritorialisation

Objective and proportional justification

- ▶ Objective justifications
 - ▶ Real link between the insured person and
 - ▶ The labour market
 - ▶ Society
 - ▶ The social security system

Deterritorialisation

Objective and proportional justification

- ▶ Objective justifications

- ▶ Control

- ▶ Administrative considerations

- C-18/95 *Terhoeve*; C-55/00 *Gottardo*

- ▶ C-406/04 *De Cuyper*: national residence condition is justified on the grounds of the need for control – sanctioned by provision of the Regulation

- ▶ Contrast with C-228/07 *Petersen* and C-499/06 *Nerkowska*

Deterritorialisation

Objective and proportional justification

- ▶ Suitability
- ▶ Proportionality
- ▶ The intensity of review
 - ▶ Time
 - ▶ Identity of defendant (MS or EU)
 - ▶ Objective justification
 - ▶ Disputed benefit

Structure

- ▶ Determination of the applicable legislation
 - ▶ Titles II and III Reg. 883/2004
 - ▶ Posting
- ▶ Application of national law
 - ▶ Titles I and III Reg. 883/2004
 - ▶ Deterritorialisation
- ▶ **Family benefits**

Family benefits

Context

- ▶ **Typical social security benefits**
 - ▶ Unexpected (or ineluctable) social security risk
- ▶ **Family benefits**
 - ▶ Enabling reproductive choice for the sake of
 - ▶ Child
 - ▶ Parents
 - ▶ Society at large

Family benefits

Scope

- ▶ “all benefits in kind or in cash intended to meet family expenses, excluding advances of maintenance payments and special childbirth and adoption allowances mentioned in Annex I”
 - ▶ A public contribution to a family’s budget to alleviate the financial burdens involved in the maintenance [...] of children
 - ▶ Child-raising benefits
 - ▶ Multi-purpose

Family benefits

Scope

- ▶ **Family allowances**
 - ▶ Periodic cash benefits compensating the expenses of raising children, the eligibility and amount of which depend mainly on their number and age
- ▶ **Child-raising allowances**
 - ▶ Income-replacement benefits permitting a parent to devote themselves to the upbringing of a young child by remunerating the service of raising a child
- ▶ **Child-care allowances**
 - ▶ Compensation of the costs for day-care services for EAP parents

Family benefits

Scope

- ▶ **Not:**
 - ▶ Public advances on maintenance payments
 - ▶ Special childbirth and adoption allowances

Family benefits

Applicable legislation

- ▶ **Actors**
 - ▶ First parent
 - ▶ Second parent
 - ▶ Child himself
 - ▶ Other caretakers

Family benefits

Applicable legislation

- ▶ **National law:**
 - ▶ Who: child
 - ▶ When: continuous
 - ▶ What: residence
 - ▶ The present place of habitual residence of the ultimate beneficiary, i.e. child
 - ▶ Integration of the parent

- ▶ Unicity of applicable legislation?

Family benefits

Applicable legislation

- ▶ Lex loci domicilii
 - ▶ Funding: taxation
 - ▶ Function of family benefits
 - ▶ Compensation of the economic cost of raising children
 - Living costs; purchasing power
 - Loss of revenue (lex loci laboris)
 - ▶ Demographic objective
 - Social investment
 - Future place of work and residence of the children

Family benefits

Applicable legislation

- ▶ **Lex loci domicilii**
 - ▶ **Function of family benefits**
 - ▶ Early childhood development
 - ▶ The promotion of employment
 - Lex loci laboris
 - ▶ Poverty reduction
 - ▶ Wage complement for workers with families?
 - ▶ **Integration of all family members**
 - ▶ **Present and future integration**

Family benefits

Applicable legislation – EU law

- ▶ Art. 67-69 Reg. 883/2004
- ▶ The closest connection of the family unit as a whole
 - ▶ Place of habitual residence of the child
 - ▶ FR; LUX; DE
 - ▶ Integration of parents in MS other than MS of residence

Family benefits

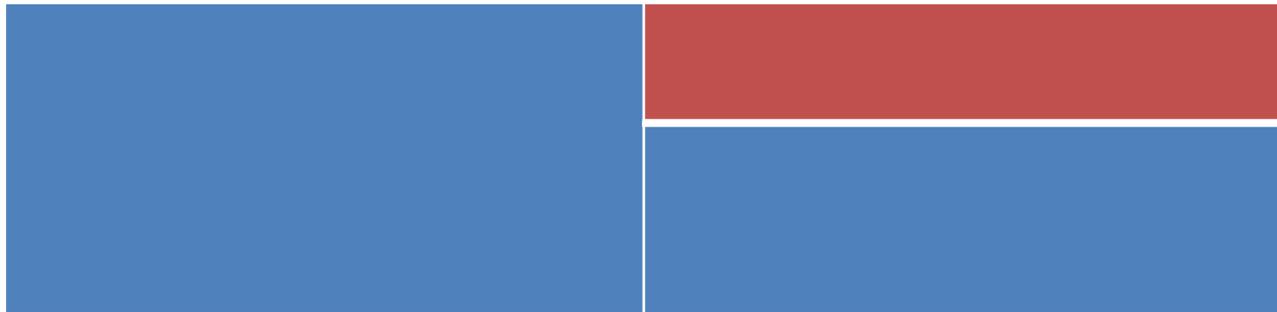
Applicable legislation – EU law

- ▶ Reg. 1408/71
 - ▶ Unicity of applicable legislation
 - ▶ Grouping the legislations applicable to the parents
 - ▶ E.g. MS of work of one parent + MS of residence of the family members, in which a parent works = the latter MS
- ▶ ECJ
 - ▶ Art. 48 TFEU -> a supplement
 - ▶ Closest connections of the family unit

Family benefits

Applicable legislation – EU law

- ▶ Supplement



Family benefits

Applicable legislation – EU law

- ▶ Reg. 883/2004
 - ▶ Determination of the applicable legislation to each family member under Title II
 - ▶ Family member = person recognised as such by the legislation providing benefits
 - ▶ Pensioners: *lex pensionada*
 - ▶ Children
 - ▶ Direct recipient
 - ▶ Indirect recipient

Family benefits

Applicable legislation – EU law

- ▶ **Reg. 883/2004**
 - ▶ **Plurality of applicable legislation**
 - ▶ Family benefits (i) are payable, (ii) perform the same social function (family benefits of the same kind), (iii) concern the same period and (iv) ultimately benefit the same child
 - ▶ Overcompensation of costs / lost income

Family benefits

Applicable legislation – EU law

- ▶ **Reg. 883/2004**
 - ▶ **Base on which a benefit rests**
 - ▶ ~/~ national connection factor
 - ▶ ~ the EU connecting factor

Family benefits

Applicable legislation – EU law

- ▶ **Reg. 883/2004**
 - ▶ **Benefits payable on different bases**
 - ▶ first the State making the rights available on the basis of an activity as an employed or self-employed person;
 - ▶ then the State awarding rights on the basis of the receipt of a pension;
 - ▶ finally, the State awarding rights on the basis of residence.

Family benefits

Applicable legislation – EU law

- ▶ **Reg. 883/2004**
 - ▶ **Benefits payable on the same basis**
 - ▶ Basis is (self-)employed activity:
 - MS of residence of children, provided that there is such activity
 - MS of activity providing the highest amount of the benefits
 - ▶ Basis is receipt of pensions
 - MS of residence of children, provided it disburses a pension
 - MS of the longest period of insurance or residence
 - ▶ Basis is place of residence
 - MS of residence of children

Family benefits

Applicable legislation – EU law

- ▶ **Reg. 883/2004**
 - ▶ Supplement

