



European Labour Authority

EU labour mobility regulatory framework (Social security coordination)

1

Trainers

Agenda

1

Opening

2

Welcome and introduction of the trainer, 10:00 - 10:15

3

Train the Trainer Model, 10:15 – 10:30

4

SSC regulatory framework relevant for CJIs - basics, 10:30 – 11.15

5

Coffee break, 11:15 – 11:30

6

Highly Mobile Workers (the transport sector and others), 11:30 – 12:45

7

Lunch time, 12:45 – 13:45

8

SSC regulatory framework relevant for CJIs - specific cases, 13:45 – 14.45

9

Discussion and closing remarks of the day, 14:45 – 15.00

2

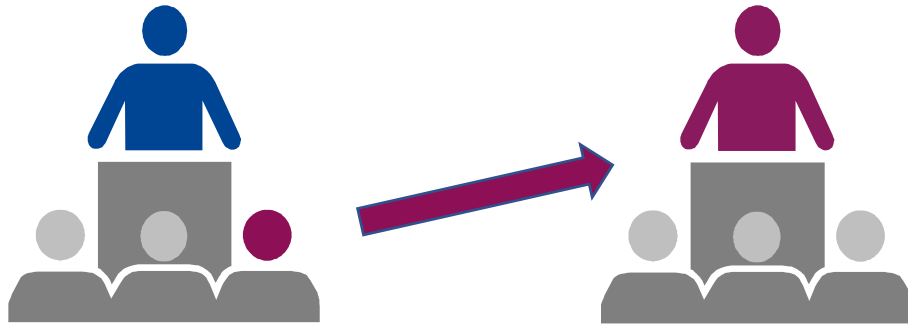
Training model

Train the Trainer Model

- ✓ The Train the trainer model is **widely used training strategy**
- ✓ Subject-matter expert is trained to **become a training instructor**
- ✓ The method offers distinct **advantages** over other training models because trainees typically **learn faster and retain the information better** than in other teaching models
- ✓ **Spillover effect** of training - it's enable the education of a larger number of participants



Train the trainer model



The **trainer**, a subject-matter expert, **trains other participants** from Member States and simultaneously **teaches** them **how to train others** in the secure exchange of information.


All participants will be encouraged to **conduct similar trainings** for other stakeholders (**Inspectors and Social partners**) in their respective Member States.

HOW?

- The participant will **receive material** that will use during the presentation in Member State.
- The participant will use **own remarks** from today's training.

WHAT materials?

1. **Presentation with notes** for the trainer.



Persons covered by the coordination

- EU nationals**
insured in one of the EU Member States, including students, self-employed, civil servants (+ their family members)
- Persons without a citizenship and refugees**
with permanent residence within EU, who were insured in one of the EU member states (+ their family members)
- Non-EU citizens**
who legally reside in an EU Member State and travel for work purposes between EU Member States (+ their family members)
- Persons who are currently unemployed**
do not work yet, or are no longer employment active
- Citizens of EEA (Iceland, Liechtenstein, Norway) and Switzerland**
(+ their family members)

The Regulation No. 883/2004 specifically defines the persons which are covered by its provision. First of all, it applies to persons who are either nationals of an EU/EEA Member State and Switzerland. It also applies to stateless persons and refugees if they reside in an EU/EEA Member State or Switzerland and if they are or have been subject to the social security legislation of one or more EU/EEA Member States.

Further, it applies to persons who are currently unemployed.

The Regulation No. 883/2004 however applies not only to the EU Member State but also to citizens of EEA (European Economic Area), namely Iceland, Liechtenstein and Norway, and it also applies to Switzerland. Further in the presentation, for simplification purposes, we will continue to refer to these countries as "EU Member States".

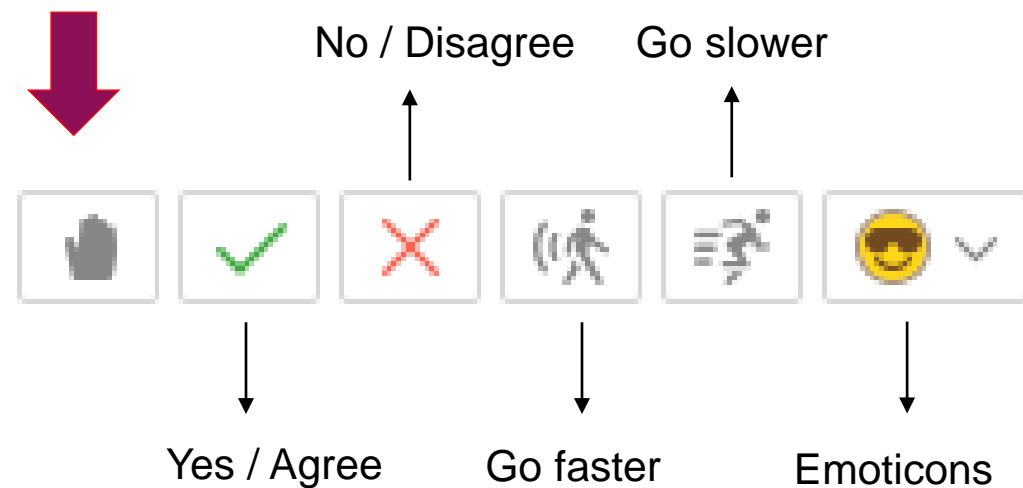
Under a separate regulation – Regulation No. 1231/2010, the social security coordination rules have been extended to apply also to non-EU nationals, who legally reside in an EU and travel for work purposes between EU Member States (i.e. their situation is not confined in all respects within a single Member State). However, the extension does not apply in the relations with Denmark, Liechtenstein, Iceland, Norway and Switzerland.

The family members and the survivors of the persons in the previous categories are also covered, irrespective of their nationality.

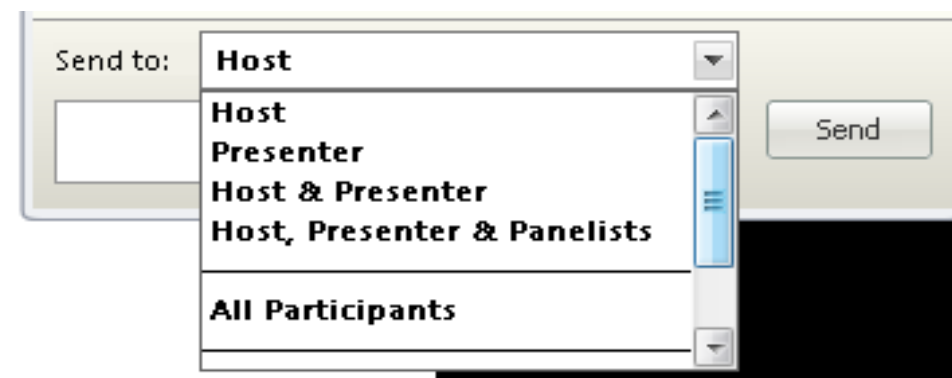
Administration rules

In case of a **question**:

1. **Raise your hand** (virtually or physical)



2. Ask for the floor in the **chat** or **ask directly in the chat**



1. Select „All Participants“
2. Type your message
3. Click „Send“

Please **wait** for the trainer to **give you the floor** to avoid confusion.

3

SSC regulatory
framework relevant for
CJIs

3.1 International Coordination

Goals of coordination



Free movement of workers

Avoiding the situation in which the employee would, due to his migration,

- be not covered by any social security system

Or

- would fall under the social security systems of several countries

Four basic principles of coordination



Single applicable legislation



Equal treatment of facts and events and non-discrimination



Aggregation of insurance periods



Export of benefits to another EU Member State

Persons covered by the coordination

EU nationals

insured in one of the EU Member States, including students, self-employed, civil servants
(+ their family members)

Persons without a citizenship and refugees

with permanent residence within EU, who were insured in one of the EU member states
(+ their family members)

Non-EU citizens

who legally reside in an EU Member State and travel for work purposes between EU Member States
(+ their family members)

Persons who are currently unemployed

do not work yet, or are no longer employment active

Citizens of EEA (Iceland, Liechtenstein, Norway) and Switzerland

(+ their family members)

Scope of coordination

The EU rules on social security coordination apply in the EU member states, Iceland, Liechtenstein, Norway and Switzerland to national legislation on:



1

Sickness benefits, maternity benefits and equivalent paternity benefits

2

Old age pensions, pre-retirement benefits and financial benefits during invalidity

3

Survivors benefits and death grants

4

Unemployment benefits

5

Family benefits

6

Work accident benefits and occupational diseases benefits

“Old” social security framework

1

Regulation No. 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families, moving within the Community

2

Regulation No. 574/72, laying down the procedure for implementing Regulation No. 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to their family members

3

Regulation No. 859/2003, extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality.

4

Rulings of the European Court of Justice (“ECJ”)

“New“ Social Security framework valid from 1 May 2010

- 1 **Regulation (EC) No. 883/2004** on the coordination of social security systems
- 2 **Regulation (EC) No. 987/2009**, laying down the procedure for implementing Regulation (EC) No. 883/2004 on the coordination of social security systems.
- 3 **Regulation (EC) No. 988/2009**, amending Regulation (EC) No 883/2004 on the coordination of social security systems, and determining the content of its Annexes.
- 4 **Regulation (EC) No. 465/2012**, amending Regulation (EC) No. 883/2004 on the coordination of social security systems and Regulation (EC) No. 987/2009 laying down the procedure for implementing Regulation (EC) No. 883/2004 - applicable from 28 June 2012.
- 5 **Regulation (EC) No. 1231/2010** on extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality.
- 6 **Decisions of Administrative Commission** (Administrative Commission is responsible for addressing the administrative questions and interprets the regulations).
- 7 **Rulings of the European Court of Justice (“ECJ”)**

Official documents

**“Old” Regulation
(so-called E-forms)**

**“New” Regulation
(so-called PD-A1 forms or simply A1 forms)**

- **Electronic exchange of information** on social security via the electronic system EESSI (Electronic Exchange of Social Security Information) among the social security institutions



so-called

Structured Electronic Documents (SED)

- **EESSI** was launched in July 2017 and countries were required to implement it by 2 **July 2019**, when “full electronic exchange of SS data in a simple, speedy and secure way should be a reality across Europe”.

Portable documents

These forms will be issued even after the transitional period is over, as individuals need to have official documents at hand in order to claim their rights

There are altogether 9 paper forms + European Health Insurance Card (EHIC) = total of 10 forms

- **A1** (replacing the form E101 - determination of applicable legislation)
- **DA1** (replacing the form E123 – for accidents at work and occupational diseases)
- **P1** (for pension benefits)
- **S1 + S2 + S3** (for healthcare benefits + EHIC)
- **U1 + U2 + U3** (for unemployment benefits),

3.2 Determining the applicable legislation (under Regulation 883/2004)

Applicable legislation - basic rules

Employed and self-employed persons

- Covers employed and self-employed persons as well as persons receiving certain short-term cash benefits based on their employment or self-employment (Article 11, par. 2))

“Persons receiving cash benefits because or as a consequence of their activity as an employed or self-employed person shall be considered to be pursuing the said activity.”

- Basic rule (Article 11, par. 3a)) – “*Lex loci laboris*” – the place where a person performs work

**“If a person carries out his work at the territory of one Member State only,
he/she falls under the social security system of the country,
ON THE TERRITORY OF WHICH THE WORK IS PERFORMED.”**

- This rule is applicable regardless of the Member State of person’s residence or Member State of his employer’s seat
- No A1 form is issued for these cases

Applicable legislation - basic rules

Professionally non-active persons

- Defined restrictively (Article 11, par. 3e)), meaning “any other than those” listed in subparagraphs (a) to (d) of Article 11, par. 3
 - (a) Employed and self-employed (these are subject to legislation of MS where they carry out their work)
 - (b) Civil servants (these are subject to legislation of MS administration employing them)
 - (c) Persons receiving unemployment benefits (these are subject to legislation of Member State of residence)
 - (d) Persons called up or recalled from armed forces or for civilian service (these are subject to legislation of Member State to which they serve)
- Basic rule (Article 11, par. 3e)) – “*Lex loci domicilii*” – the place where a person resides

“Any other person to whom subparagraphs (a) to (d) do not apply shall be subject to the legislation of the Member State of RESIDENCE,...”

Exceptions to the basic rule

There are 3 exceptions to the Basic rule

1. Posting

Article 12 of the Regulation

relating to temporary
posting of employees and
self-employed
to carry out work in another
Member State

2. Multiple state workers

Article 13 of the Regulation

relating to employees and
self-employed who
normally pursue their
activities in two or more
Member States

3. Exception

Article 16 of the Regulation

this is an exception
to paragraphs/rules set out
by Articles 11-15

Exception to the basic rule:

1. Posting

Posting of employees

Article 12, par. 1 of the Regulation No. 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 ...”**

Posting of employees

Article 12, par. 1 of the Regulation No. 883/2004

The employee can remain insured in his home country during his posting, if the following conditions are met:



1

The anticipated duration of posting does not exceed 24 months

2

During the posting, a direct relationship between the employer and his employee must keep on existing

3

The employee is not posted to replace another posted person

4

The employer carries out substantial activities in its home country (i.e. activities which are not confined to internal management only)

Posting of employees

Ad 1. Posting period of less than 24 months

This criteria is met even if the person was employed for the purpose of being assigned to another Member State, if...

...immediately before its assignment the employee was subject to social security scheme of his home country for **at least 1 month** (ref. Reg. 987/2009, Article 14, par 1)

ECJ case C-451/17 Walltopia

Posting of employees

Ad 2. Posted employee is not posted to replace other previously posted employee

The employer should not assign its employees repeatedly based on the same business contract for the same position and for the same purpose

ECJ case C-527/16 Alpenrind

Posting of employees

Ad 3. Direct relationship maintained between home country employer and its employee*

Direct relationship ('organic link') is met if the following characteristics are met:

- ✓ Responsibility for recruitment must be with home company
- ✓ The employment contract is to be applicable throughout the assignment period
- ✓ The power to terminate the employment contract with employee (dismissal) remains exclusively with the home company
- ✓ The home company retains the power to determine the “nature” of the employee’s work (not in terms of defining the details of the type of work and the way it is to be performed, but in 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 employee rests with the home company (although the salary can be paid by the host company based on agreement between home and host companies)
- ✓ The power to impose disciplinary action on the employee remains with the home company

Posting of employees

Ad 4. 'Substantial activity' carried out by home country employer in home country

The following criteria are being considered:

- ✓ The place where the home employer has its registered office
- ✓ The number of administrative staff of the home employer present in the home country and the host country
- ✓ The place of recruitment of the assignee
- ✓ The country in which the majority of contracts with clients are concluded
- ✓ The law applicable to the contracts signed by home company with its clients and with its employees,
- ✓ The number of contracts executed in the home country
- ✓ The turnover achieved by the home company in the home and host country (e.g. turnover of approx. 25% of total turnover in the host country could be a sufficient indicator, but cases where turnover is under 25% would cause greater scrutiny)
- ✓ The length of time the home company is established in the home country

Posting of employees

*Conditions of posting**

Must remain the same throughout the assignment period.

If this is not the case, any changes need to be reported to the local social security authorities.

*Interruption of posting**

The assignment can be interrupted for short periods (i.e. for a maximum of 2 months) for the purpose of holiday, sickness, training in home country etc.

*Subsequent posting**

In case of a new assignment, a new period of 24 months applies.

However, the period between such two consecutive assignments must be at least 2 months.

*As per the Decision No. A2 of the Administrative Commission of Social Security Systems dated 12 June 2009

Posting of employees

This is not a posting...*

There is a number of situations in which the EU rules a priori rule-out the application of the assignment provisions, in particular when:

- ✗ The HOST company places an employee at the disposal of another company in the Member State in which it (host company) is situated
- ✗ The HOST company places him at the disposal of a company situated in another Member State
- ✗ The employee is recruited in a Member State in order to be sent by a company situated in a second Member State to a company in a third Member State without satisfying the requirement of prior attachment to the social security system of the assigning Member State
- ✗ The employee is recruited in one Member State by a company situated in a second Member State in order to work in the first Member State
- ✗ The employee is being posted to replace another posted person
- ✗ The employee has concluded a labour contract with the company to which he is being assigned

*As per the Decision No. A2 of the Administrative Commission of Social Security Systems dated 12 June 2009

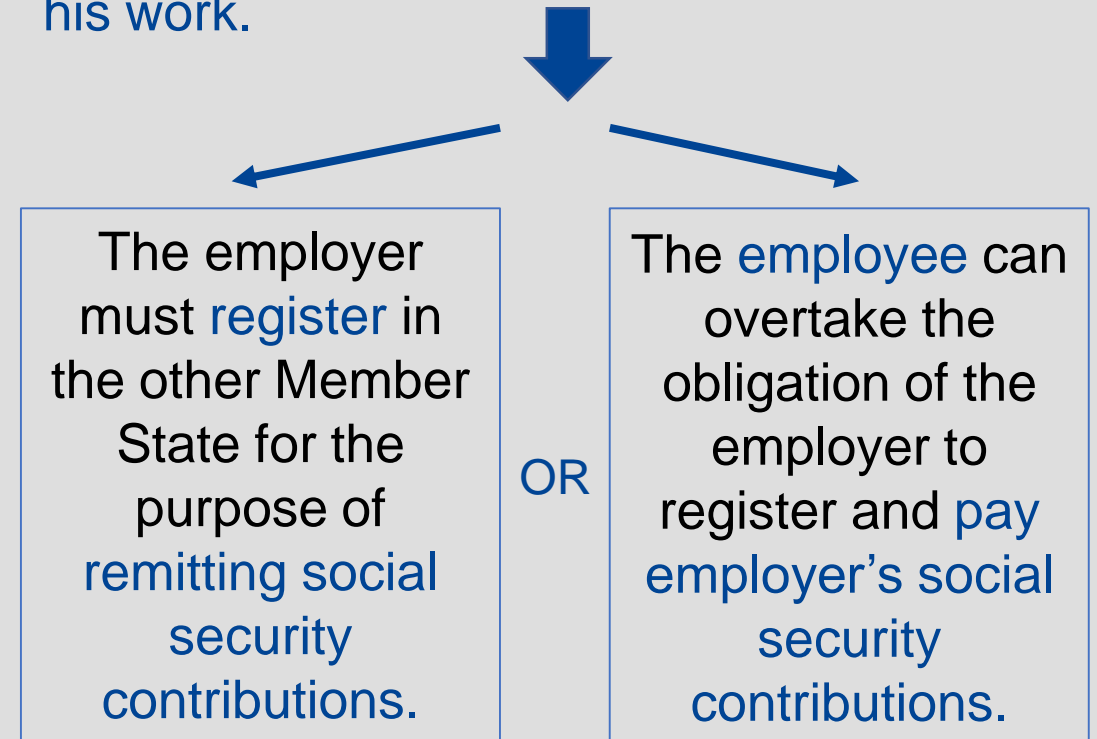
Posting of employees

If the posting conditions are not met, then...

...the employee falls under the social security scheme of the Member State, in which he carries out his work (i.e. basic rule applies).

What is the consequence?

The employee and the employer must pay social security contributions in the Member State, in which the employee carries out his work.



Posting of self-employed persons

Article 12, par. 2 of the Regulation No. 883/2004

**“A person who normally pursues an activity as a self-employed 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 the anticipated duration of the work does not exceed 24 months.”**

Posting of self-employed persons

Meaning of 'normally pursues an activity as a self-employed'

Article 14, par. 3 of the Regulation No. 987/2009

- ✓ A person who habitually carries out substantial activities in the territory of the Member State in 'which he is established'
- ✓ Criteria to be used to determine the country in which he has been 'normally' self-employed are as follows:
 - having use of office space,
 - paying taxes,
 - having a professional card,
 - having VAT number or
 - being registered with chambers of commerce or professional bodies

Self-employed person can be posted if the following conditions are met:

- (a) that person have already pursued his activities for some time (at least 2 months*) before the date when he wishes to be posted,

AND

- (b) during any period of temporary activity in another Member State he 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

*As per the Decision No. A2 of the Administrative Commission of Social Security Systems dated 12 June 2009

Posting of self-employed persons

Meaning of 'similar activity'

Nature of activity must be:

similar to that carried out in the original Member State

determined in advance (i.e. before departure from the posting Member State)

Within the same sector

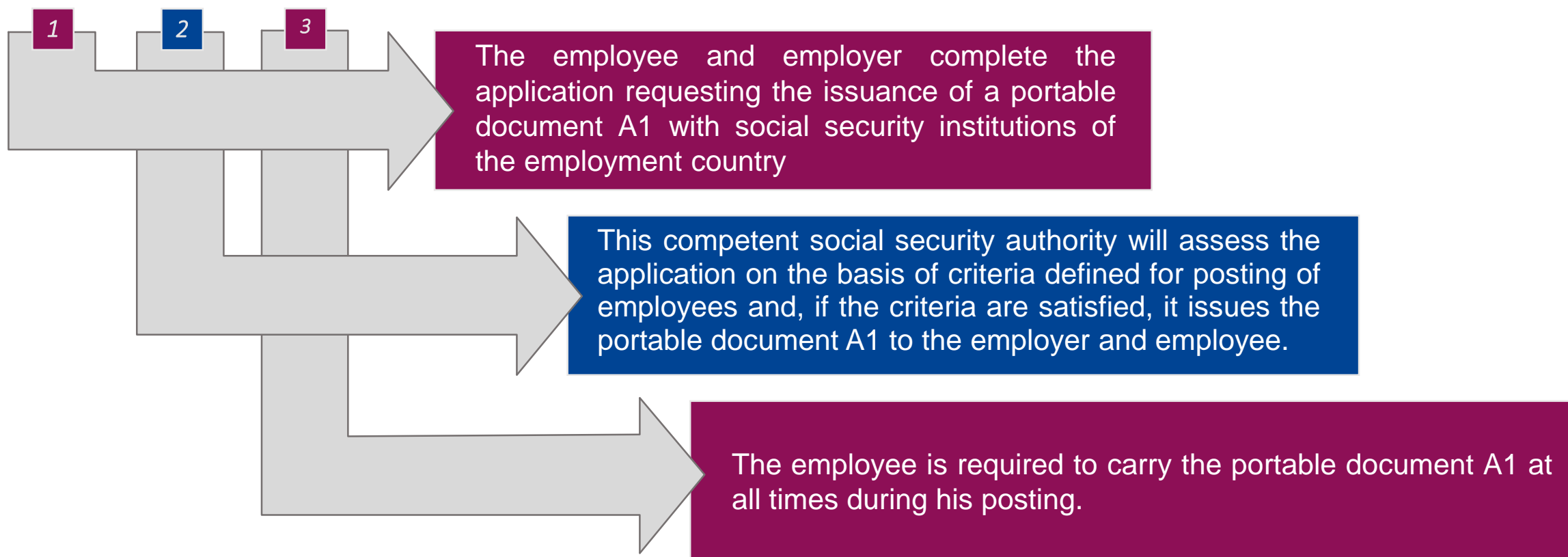
(but even within sectors work can be very diverse, so it may not always be possible to apply the posting rule for the “new” activity)

Proof by documents

(the nature of work must be documented by, for example, a contract or order etc. from the client)

Posting of employees and self-employed

Procedure for determination of applicable legislation:



Exception to the basic rule:

2. Multiple state workers

(Definitions)

Definition of 'Multiple state worker'

As per Regulation No. 883/2004 (Article 13)

Multiple state worker = “a person who normally pursues an activity as an employed person [or self-employed person] in two or more Member States”.

As per Regulation 987/2009 (Article 14, par 5 & 6) the interpretation has been expanded:

Multiple state worker = “a person who normally pursues an activity as an employed person [or self-employed person] in two or more Member shall refer to the following person:

Employed person

(a) While maintaining an activity in one Member State, **simultaneously exercises a separate activity** in one or more other Member States, irrespective of the duration or nature of such activity

OR

(b) Continuously pursues **alternating activities** (with the exception of marginal activities), in two or more Member States, irrespective of the frequency or regularity of the alternation

Self-employed person

Simultaneously or in alternation pursues one or more separate self-employed activities, irrespective of the nature of those activities, in two or more Member States

Definition of 'Substantial part of activities'

Defined in Regulation No. 987/2009
(Article 14, par. 8)

To determine whether the substantial part of activities is pursued in a Member State, the following indicative criteria shall be taken into account:

Employed person

Working time and/or remuneration

Self-employed person

Turnover, working time, number of services rendered and/or income

A share of less than 25% in respect of these criteria shall be an indicator that a substantial part of the activities is not being pursued in the relevant Member State.



When determining the substantial part of activities, the institution concerned shall take into account the situation projected for the following 12 months.

(Article 14, par. 10)

Definition of 'Residence'

Definition in Regulation No. 883/2004

Residence = place where a person habitually resides.

Definition expanded in Regulation No. 987/2009 (Article 11)

Residence = centre of interests of the employee, taking into account in particular:

(a) The **duration** and **continuity** of presence on the territory of the Member States concerned

(b) The **personal circumstances** of the employee

- The **nature and the specific characteristics of any activity pursued**, in particular the place where such activity is habitually pursued, the stability of the activity, and the duration of any work contract
- Family status and family ties of the person
- The exercise of any non-remunerated activity
- In the case of students, the source of their income
- Housing situation of the person, in particular how permanent it is
- Residency of the person for tax purposes (i.e. where the taxes are being paid based on taxation rules).

Definition of 'Centre of interest' for self-employed person

No definition in Regulation No. 883/2004

Definition in **Regulation No. 987/2009**
(Article 11, par.9)

Centre of interest = a place determined on taking into account of all the aspects of that person's occupational activities, notably:

- The place where the person's fixed and permanent place of business is located
- The habitual nature or the duration of the activities pursued
- The number of services rendered and the intention of the person concerned as revealed by all the circumstances

Exception to the basic rule:

2. Multiple state workers

(Rules)

Multiple state workers rules

Article 13, par. 1a)

of Regulation No. 883/2004 (as amended by Regulation 465/2012)

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

(a) to the legislation of the Member State of **residence** if he/she pursues a substantial part of his/her activity in that Member State.

Example

- German national **residing** in Germany
- He **works** for 1 employer or more employers **in**:

France – 49% of work time

Germany – 39% of work time

Latvia – 12% of work time



Question

Subject to which Member State's social security system the German national should fall within for social security purposes?

Multiple state workers rules

Article 13, par. 1a)

of Regulation No. 883/2004 (as amended by Regulation 465/2012)

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

(a) to the legislation of the Member State of **residence** if he/she pursues a substantial part of his/her activity in that Member State.

Example

- German national **residing** in Germany
- He **works** for 1 employer or more employers **in**:

France – 49% of work time

Germany – 39% of work time

Latvia – 12% of work time

Subject to German legislation

Why? Because he works more than 25% of time in Germany, where he resides

Multiple state workers

Article 13, par. 1b), letter (i)
of Regulation No. 883/2004 (as amended by
Regulation 465/2012)

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

(b) if he/she **does NOT** pursue a substantial part
of **his/her activity** in the Member State of
residence

(i) to the legislation of the Member State in
which the **registered office or place of
business of the undertaking or employer**
is situated if he/she is employed by one
undertaking or employer.

Example

- Romanian national **residing** in Romania
- 1 employer based in Romania but he **works** in:

Romania (15% of work time)

Bulgaria (85% of work time)



Question

**Subject to which Member State's social
security system the Romanian national
should fall within
for social security purposes?**

Multiple state workers

Article 13, par. 1b), letter (i)
of Regulation No. 883/2004 (as amended by
Regulation 465/2012)

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

(b) if he/she **does NOT** pursue a substantial part
of his/her activity in the Member State of
residence

(i) to the legislation of the Member State in
which the **registered office or place of
business of the undertaking or employer**
is situated if he/she is employed by one
undertaking or employer.

Example

- a Romanian national **residing** in Romania
- 1 employer based in Romania but he **works** in:

Romania (15% of work time)

Bulgaria (85% of work time)

Subject to Romanian legislation

Why? Because he works less than 25%
of work time in Romania, and thus he
should be subject to social security
system of employer's Member State,
which is Romania

Multiple state workers rules

Article 13, par 1b), letter (ii)
of Regulation No. 883/2004 (as amended by
Regulation 465/2012)

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

(b) if he/she **does NOT** pursue a substantial part
of **his/her activity** in the Member State of
residence

(ii) to the legislation of the Member State in
which the **registered office or place of
business of the undertakings** or
employers is situated if he/she is employed
by two or more undertakings or employers
which have their registered office or place
of business in only one Member State.

Example

- French national **residing** in France
- Employer X and employer Y, both **based in
Germany**
- He works in:

France (20% of work time)

Germany (80% of work time)

Question

**Subject to which Member State's social
security system the French national
should fall within
for social security purposes?**

Multiple state workers rules

Article 13, par 1b), letter (ii)
of Regulation No. 883/2004 (as amended by
Regulation 465/2012)

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

(b) if he/she **does NOT pursue a substantial part
of his/her activity** in the Member State of
residence

(ii) to the legislation of the Member State in
which the **registered office or place of
business of the undertakings** or
employers is situated if he/she is employed
by two or more undertakings or employers
which have their registered office or place
of business in only one Member State.

Example

- French national **residing** in France
- Employer X and employer Y, both **based in
Germany**
- He works in:

France (20% of work time)

Germany (80% of work time)

Subject to German legislation

Why? Because he works less than 25%
of work time in France, he should be
subject to social security system of the
employers' Member State, since these
are located in one Member State =>
which is Germany

Multiple state workers

Article 13, par 1b), letter (iii)
of Regulation No. 883/2004 (as amended by
Regulation 465/2012)

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

(b) if he/she **does NOT** pursue a substantial part
of **his/her activity** in the Member State of
residence

(iii) to the legislation of the Member State in
which the **registered office or place of
business of the undertaking** or employer
is situated ***other than the Member State of
residence*** if he/she is employed by two or
more undertakings or employers, which
have their registered office or place of
business in two Member States, one of
which is the Member State of residence.

Example

- Polish national **residing** in Poland
- Employed by 1 Polish & 1 Czech employer
- He works in:

Poland (20% of work time)

Czech Republic (80% of work time)



Question

**Subject to which Member State's social
security system the Polish national
should fall within
for social security purposes?**

Multiple state workers

Article 13, par 1b), letter (iii)
of Regulation No. 883/2004 (as amended by
Regulation 465/2012)

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

(b) if he/she **does NOT pursue a substantial part
of his/her activity** in the Member State of
residence

(iii) to the legislation of the Member State in
which the **registered office or place of
business of the undertaking** or employer
is situated ***other than the Member State of
residence*** if he/she is employed by two or
more undertakings or employers, which
have their registered office or place of
business in two Member States, one of
which is the Member State of residence.

Example

- Polish national **residing** in Poland
- Employed by 1 Polish & 1 Czech employer
- He works in:

Poland (20% of work time)

Czech Republic (80% of work time)

Subject to Czech legislation

Why? Because he works less than 25%
of work time in Poland, he should be
subject to social security system of the
other employers' Member State, he
works less than 25% on Poland and
there are 2 employers from different
MS

Multiple state workers

Article 13, par. 1), letter (iv)
of Regulation No. 883/2004 (as amended by
Regulation 465/2012)

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

(b) if he/she **does NOT pursue a substantial
part of his/her activity** in the Member State of
residence

(iv) to the legislation of the Member State
of **residence** if he/she is employed by two
or more undertakings or employers, at
least two of which have their registered
office or *place of business in different
Member States other than the Member
State of residence.*

Example

- Austrian national **residing** in Austria
- Employed by Hungarian and Czech employer
- He works in:

Hungary (20% of work time)

Czech Republic (80% of work time)



Question

**Subject to which Member State's social
security system the Austrian national
should fall within
for social security purposes?**

Multiple state workers

Article 13, par. 1), letter (iv)
of Regulation No. 883/2004 (as amended by
Regulation 465/2012)

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

(b) if he/she **does NOT pursue a substantial
part of his/her activity** in the Member State of
residence

(iv) to the legislation of the Member State
of **residence** if he/she is employed by two
or more undertakings or employers, at
least two of which have their registered
office or *place of business in different
Member States other than the Member
State of residence.*

Example

- Austrian national **residing** in Austria
- Employed by Hungarian and a Czech employer
- He works in:

Hungary (20% of work time)

Czech Republic (80% of work time)

Subject to Austrian legislation

Why? Because he works less than 25%
of work time in Austria, he should be
subject to social security system of the
country of his residency, since the
employers are based outside of his
country of residency

Multiple state workers

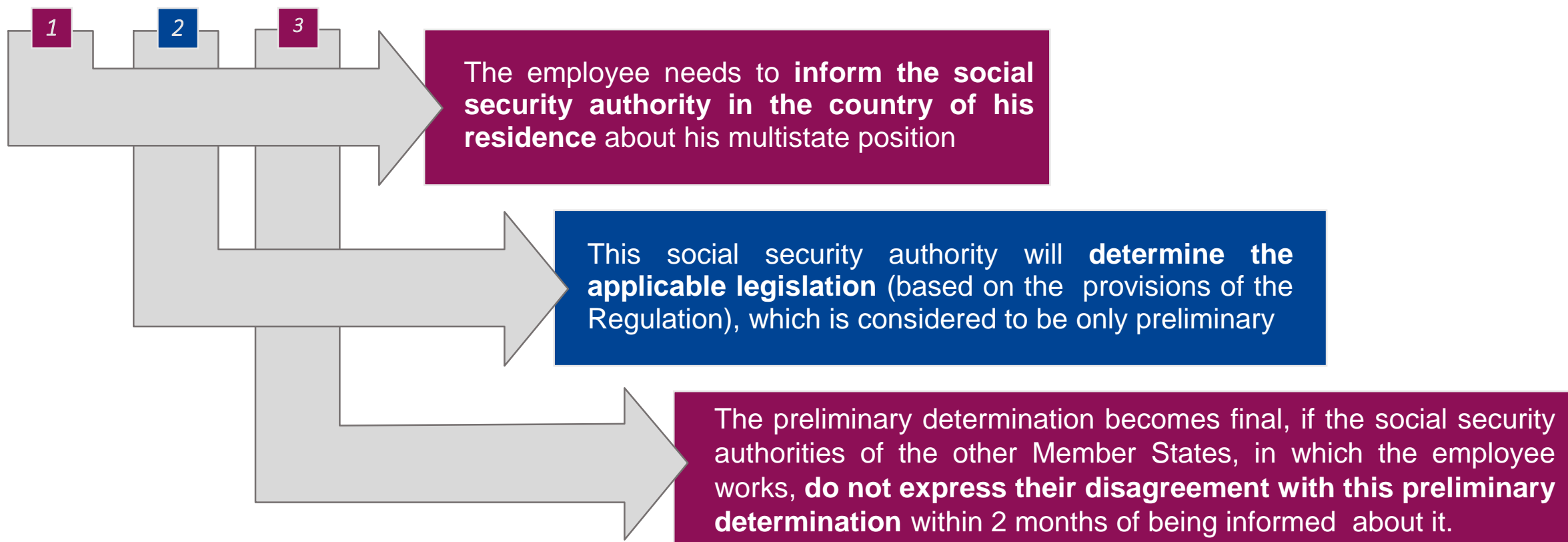
Special situation (Article 13, par. 3)

Self-employed person in one Member State
&
Employee in the other Member State

The person falls under the social security scheme of country where he acts as an employee.

Multiple state workers

Procedure for determination of applicable legislation:



Exception to the basic rule:

3. Exception

Exception

Article 16 of the Regulation



Applies to all Articles for determination of applicable legislation (i.e. Article 11 – Article 15)



The maximum period for which the exception can be applied is not defined in Regulation or in the decision of Administrative Commission (but in practice it is usually granted for a period of 5 years)



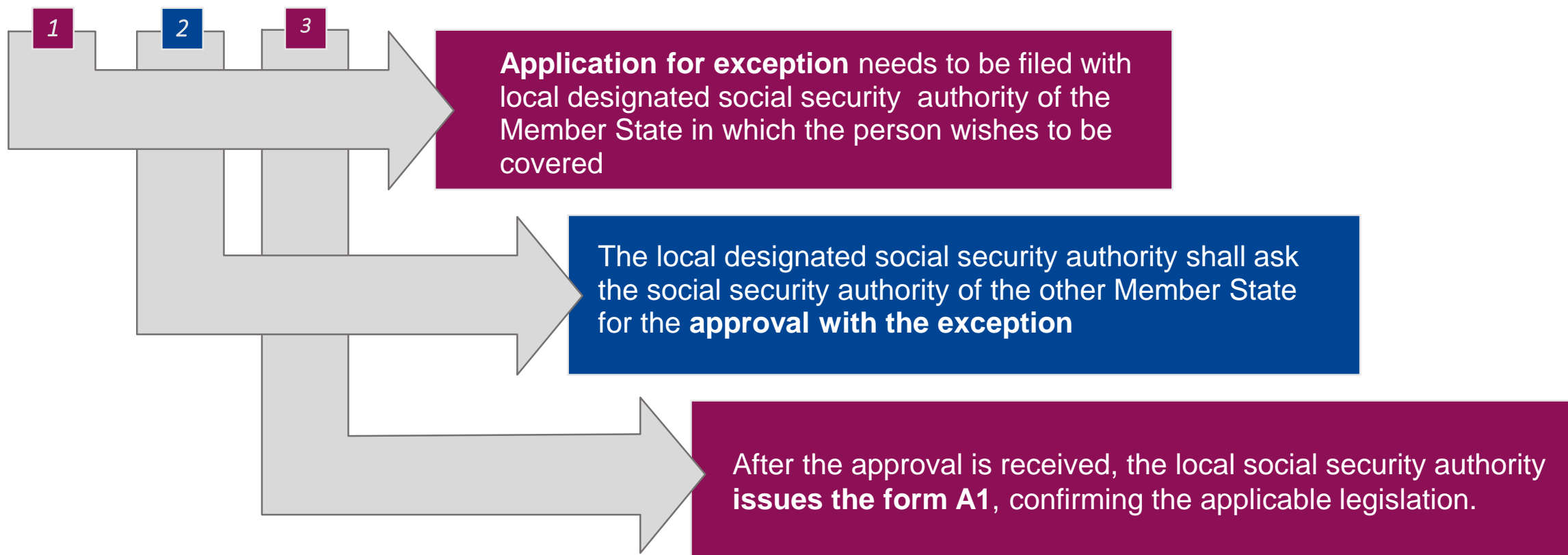
No legal title to grant/obtain the exception



The application needs to be filed in the country the legislation of which the person requests to applied

Exception

Procedure to be followed:



3.3 Health Insurance

Health insurance

No special Regulation covering specifically health insurance

The health insurance applicable legislation follows the social security rules for applicable legislation

The treatment applies also to family members

European Health Insurance Card (EHIC)

- ✓ provides for medically necessary, state-provided healthcare during a temporary stay (e.g. business trip) in any EU Member State, Iceland, Lichtenstein, Norway and Switzerland.
- ✓ Treatment under the same conditions and at the same cost (free in some countries) as available to people insured in that country
- ✓ Issued by a local health insurance authority

Health insurance

Living in one country and working in another country

- ✓ **S1 form** (former E106 form) = certificate of entitlement to healthcare if the employee does not live in the Member State in which he is insured
- ✓ Useful for cross-border workers (including posted workers), pensioners and civil servants and their dependents
- ✓ **Family members** - when the employee and his family members reside in a different country to the one in which the employee is insured, he and his family members are entitled to all the benefits in kind (e.g. healthcare, medical treatment, hospitalisation) provided for under the legislation of the country of the employee's residence as if he was insured there
- ✓ The institution in the country of residence is reimbursed by the institution with which the employee is insured

15 minutes
coffee break



4

Highly Mobile
Workers (the
transport sector
and others)

1 hour
lunch break



5

SSC regulatory
framework
relevant for CJIs -
specific cases

5.1

ECJ Case 1

Balandin

C-477/17

Balandin

Third country nationals – “right to stay”

Subject: Extension of coordination of social security systems to citizens of third countries (“TCNs”) residing legally in the territory of a Member State.

Case description



Mr. Balandin



Mr. Lukachenko

They were TCNs employed by



a company based in the Netherlands

October to May each year



Company had been organizing ice-skating shows in different EU Member States



All employees had been meeting in the NL before the show to prepare the show



Ice-skating shows in NL as well as other Member States

All TCNs had **work permits issued in the NL**. They also **resided** legally in the **other Member States** on the basis of a ‘**Schengen visa**’.

Balandin

Third country nationals – “right to stay”

For many years, the NL social security authorities had been issuing A1 certificates to such TCNs; however, from 2015/2016 season onwards the **NL authorities refused to issue A1s to such TCNs** (even retrospectively).

Article 1 of the Regulation No 1231/2010



‘Regulation [No 883/2004] and Regulation [No 987/2009] shall **apply to nationals of third countries who are not already covered by those Regulations solely on the ground of their nationality**, as well as to members of their families and to their survivors, provided that they are legally resident in the territory of a Member State and are in a situation which is not confined in all respects within a single Member State.’



Mr. Balandin



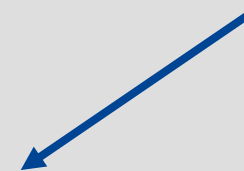
Mr. Lukachenko

Were **not residents** of the NL or another Member State **on a permanent basis but** were staying and **working only temporarily** in the NL for HOI



It was not clear whether

OR



Only those TCNs who are **actually residents** (i.e. who habitually reside) in the NL **may be covered by the Regulation No 1231/2010**

Whether the TCNs in a situation such as that of **Mr. Balandin and Mr. Lukachenko** **may also do so.**

Balandin

Third country nationals – “right to stay”

Question

Must Article 1 of Regulation No 1231/2010 be interpreted as meaning that TCNs, who live outside the European Union, but who work in various Member States on a temporary basis for an employer who is established in the Netherlands, may rely on the provisions of the EU Regulation No 883/2004 and Regulation No 987/2009?

Unclear definitions

The definition of ‘legal residence’ is uncertain, given the divergence between the language versions of the directive



NL version – the term ‘verblijven’, which appears to refer to a stay which is **not necessarily long term**

GE & ENG versions – the term ‘rechtmässige Wohnsitz’ and ‘legally resident’, which could be understood as referring to a **stay entailing a degree of permanence**

The provision in question must be interpreted by reference to the general scheme and purpose of the rules of which it forms part.

Balandin

Third country nationals – “right to stay”

Ruling

The concept of ‘legal residence’ reflects the EU legislature’s decision to submit the extension of the personal scope of Regulations Nos 883/2004 and 987/2009 to TCNs subject to the prior condition that they remain lawfully on the territory of the relevant Member State.



Both are not relevant

AND

The duration of the presence of those TCNs on the territory of a MS

The fact that they retain their centre of interest in a third country

The answer to the question

TCNs, who temporarily reside and work in different Member States in the service of an employer established in a Member State

May rely on the coordination rules laid down by:

- Regulation No 883/2004
- Regulation No 987/2009

In order to determine the social security legislation to which they are subject, provided that they are legally staying and working in the territory of the Member States

5.2

ECJ Case 2

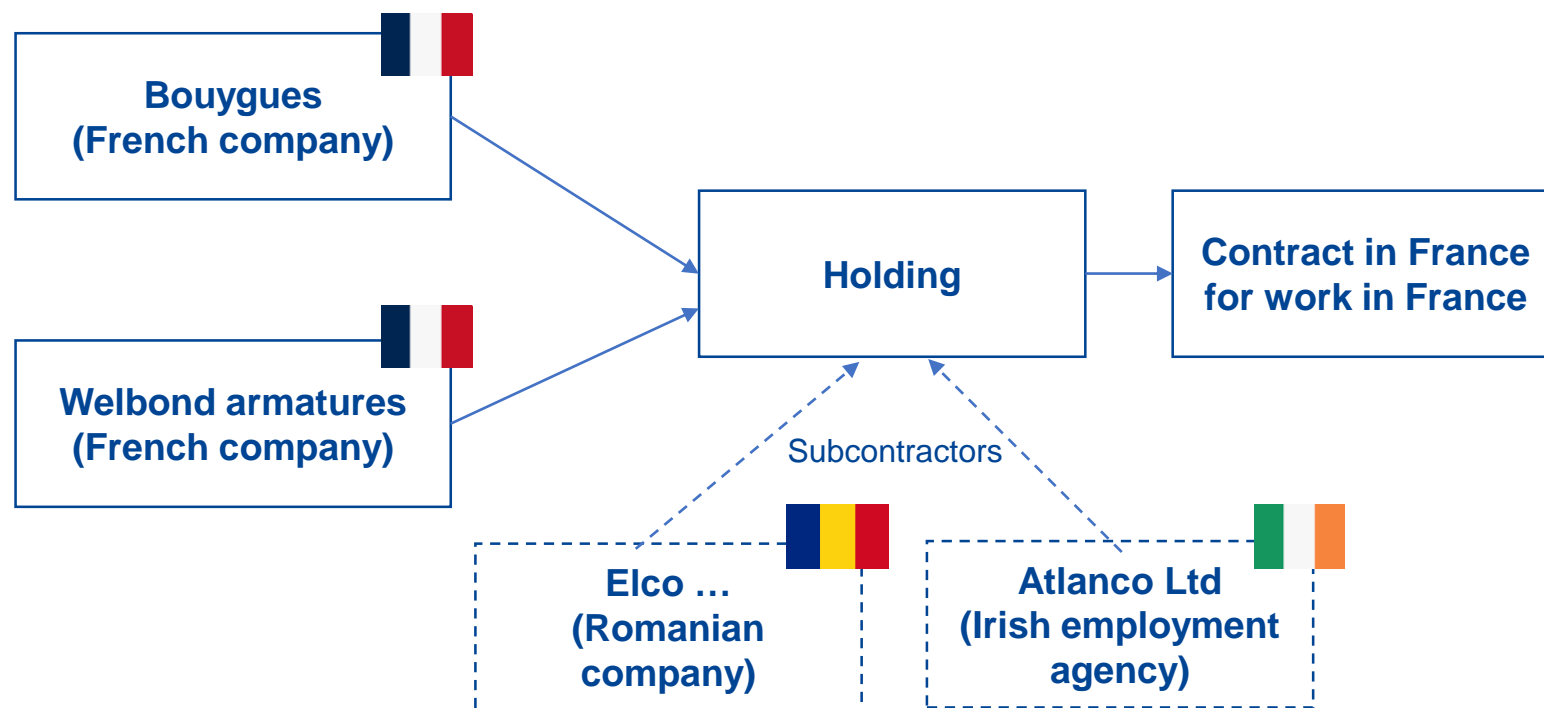
The Bouygues
travaux publics case

C-17/19

The Bouygues travaux publics case

Subject of the case: Validity of E101 / A1 for the purpose labour law legislation (rather than only for the purpose of social security legislation)

2008 - 2012



- No activities in Romania
- All contracts in France
- Employees hired for the purpose of being assigned to work in France

- Cyprus subsidiary which had an office in Poland
- No actual activities carried out in Cyprus or Poland
- Employees hired for the purpose of being assigned to work in France

The Bouygues travaux publics case

Employees have lodged several **complaints about the working conditions**



The companies were prosecuted for several offences, including the failure to declare the names of employees prior to their engagement in line with French labour law requirement.

Question to the ECJ

The referring court asked whether the **effects and validity attached to E101 and A1 certificates** regarding the fact that posted workers remain subject to the law of the Romania or Poland **should be accepted and applied** also with respect to the labour law obligation to declare workers prior to their work start in France in line with the French legislation.

This question arose especially in view of the fact that **courts can only refuse to accept the E101s/A1s** if these certificates **were fraudulently obtained** and the issuing institution failed to take into account within a reasonable time (i.e. cancel them).

The Bouygues travaux publics case

ECJ Ruling

As long as those certificates are not withdrawn or declared invalid



The competent institution of France must take into account the fact that the **person is already subject to the social security legislation of the Romania or Poland**, and the French institution cannot therefore subject the worker in question to its own social security system.

French court may **disregard E101/A1 certificates** only where **2 cumulative conditions are met**:

1. Romanian or Polish institution that issued those certificates has failed to make a decision within a reasonable time and cancel or withdraw those certificates, and

AND

2. The evidence permits that court to find, with due regard to the safeguards inherent in the right to a fair trial, that the E101/A1 certificates were fraudulently obtained or relied on



Although E 101 and A 1 Certificates have binding effects, those **effects are limited solely to the obligations imposed by national legislation in the area of social security** which is the subject of the coordination carried out by Regulations No 1408/71 and No 883/2004

The Bouygues travaux publics case

ECJ Ruling (cont'd):

Those certificates therefore have no binding effect with regard to obligations imposed by national law in matters other than social security, such as:

Obligations relating to the employment relationship between employers and workers, in particular their employment and working conditions.

The Court answered:

E 101 and A1 certificates have binding effects only with regard to the obligations imposed by national legislation in the area of social security.

The Bouygues travaux publics case

Outcome for the further proceedings

It was not at ECJ but at **the national court to determine whether the declaration of the name of the workers prior to their work** required by French labour law **related to** a matter of **social security** or a matter of labour law,

so the Court provided some guidance:

1. If the purpose of the declaration is to ensure that the workers are affiliated to one or other social security scheme, the E101 and A1 certificates preclude such an obligation to report the names of workers in line with French labour law.

2. However, if the purpose of the declaration is to ensure compliance with conditions of employment and working conditions imposed by labour law without an influence on the affiliation of the workers to one or the other the social security scheme, the E 101 and A 1 certificates have no effect on that obligation.

Questions to French team

QUESTIONS FOR DISCUSSION:

Are you aware of this case?

Has the French court already issued the final ruling based on the ECJ response? If so, what was the final ruling?

Any other implications arising from this case (e.g. change of local labour law or internal guidelines with respect to registering the posted workers under French labour law?)

Any other comments?

Please share you views on this topic.

6

Discussion and
closing remarks of
the day