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ACTA JURIDICA ET POLITICA

Tomus LXX.

Fasc. 5.

JÓZSEF HAJDÚ

Coordination of unemployment benefits  
in the European Union



SZEGED  
2007



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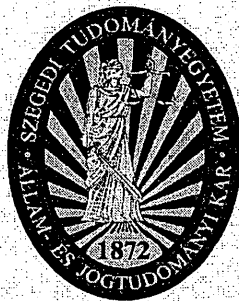
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**Coordination of unemployment benefits  
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Edit

Comissio Scientiae Studiorum Facultatis Scientiarum Politicarum et Juridicarum  
Universitatis Szegediensis

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Redigit  
KÁROLY TÓTH

Nota  
Acta Jur. et Pol. Szeged

Kiadja

a Szegedi Tudományegyetem Állam- és Jogtudományi Karának  
tudományos bizottsága

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TÓTH KÁROLY

Kiadványunk rövidítése  
Acta Jur. et Pol. Szeged

ISSN 0324–6523 Acta Univ.  
ISSN 0563–0606 Acta Jur.

## *1. Brief introduction to coordination of social security<sup>1</sup>*

The legal basis of the European social security coordination is as follows: Articles 42, 63 and 308 of the EC Treaty and Regulation 1408/71/EC and Regulation 574/72/EC.

The basic principle enshrined in the Treaty of Rome is the removal of obstacles to freedom of movement for persons between the Member States. To achieve this, it is necessary to adopt social security measures which prevent EU citizens working and residing in a Member State other than their own from losing some or all of their social security rights.

In 1958, the Council issued two regulations on social security for migrant workers which were subsequently superseded by Regulation 1408/71, supplemented by implementing Regulation 574/72. Nationals from Iceland, Liechtenstein, Norway are also covered by way of the European Economic Area (EEA) Agreement and Switzerland by the EU-Swiss Agreement.

### *1.1. The four main principles of Regulation 1408/71*

#### *1.1.1. Equal treatment*

Workers and self-employed persons from other Member States must have the same rights as the host State's own nationals. For the principle of equal treatment to apply, three conditions must be met: 1) equivalence of facts, 2) aggregation of periods and 3) retention of rights. In other words, a Member State may not confine social security benefits to its own nationals. The right to equal treatment applies unconditionally to any worker or self-employed person from another Member State having resided in the host State for a certain period of time.

#### *1.1.2. Aggregation*

This principle applies where, for example, national legislation requires a worker to have been insured or employed for a certain period of time before he/she is entitled to certain benefits, e.g. sickness, invalidity, old age, death or unemployment benefits. The aggregation principle means that the competent Member State must take account of periods of insurance and employment completed under another Member State's legislation in deciding whether a worker satisfies the requirements

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<sup>1</sup> The author is a professor at the Faculty of Law of Szeged University, Szeged and Károli Gáspár Protestant University, Budapest, Hungary.

regarding the duration of the period of insurance or employment. As regards the right to membership of unemployment or sickness funds, for example, application of the aggregation principle means that the person can be transferred directly from a fund in one Member State to a fund in another Member State.

### *1.1.3. Prevention of overlapping of benefits*

This principle is intended to prevent anyone obtaining undue advantages from the right to freedom of movement. Contributing to social security systems in two or more Member States during the same period of insurance does not confer the right to several benefits of the same kind.

### *1.1.4. Exportability*

This principle means that social security benefits can be paid throughout the Union and prohibits Member States from reserving the payment of benefits to people resident in the country, but it does not apply to all social security benefits. Special rules apply to the unemployed, for example. Different rights apply to exporting cash benefits (e.g. sickness benefit or pensions) and benefits in kind (e.g. medical assistance). Cash benefits are usually paid in accordance with the rules of the country in which the person entitled to them lives or is staying. Generally speaking, benefits in kind are governed by the rules of the country in which the fund member is staying. If the competent State is not the State of residence, the competent State must reimburse the State of residence or stay for its expenditure on benefits in kind.

## *1.2. Personal scope of Regulation*

Originally, Regulation 1408/71 only covered workers but, with effect from 1 July 1982, its scope was extended to cover the self-employed too (see Regulation 1390/81). The Regulation also covers members of workers' and *self-employed persons'* families and their dependants, as well as stateless persons and refugees.<sup>2</sup>

The most important legal basis for the currently effective 1408/71/EEC and for regulation 883/2004 is Article 42 of the Treaty of Rome. However, the extension of the social security coordination to the self-employed cannot be included in Article 42 which only refers to employees, so a separate legal basis, namely Article 308 had to be applied. Social security coordination to the self-employed was extended to the self-employed by regulation 1390/81/EEC guided by the objective to extend the right of free movement of workers and services to the self-employed, so it is necessary to apply the regulations of employees to them to the largest extent possible. Reflecting to the chapter concerned with unemployment benefits, it can

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<sup>2</sup> See Article 2 Paragraph 1 of the Regulation.

be said that the objective to extend all the regulations of the employees to the self-employed was not fulfilled with regulation 1390/81/EEC. The regulation only extended the regulation for Article 69 (export of benefits) to the self-employed.

Some countries already extended the regulations for unemployment benefits for self-employed persons: Czech Republic, Denmark, Luxembourg, Finland, Hungary, Poland, Sweden, Slovakia, Slovenia, Norway. Regulation 67. and 69. is applied by Finland and Luxembourg. Most countries apply Article 69 (export only), according to the regulation.

The legal basis of regulation 883/2004/EEC, replacing 1408/71/EEC is Article 42 and 308 of the Treaty of Rome. Its coming to effect is expected in 2008. It will be new in the sense that, compared to 1408/71/EEC that the same rules will apply for both employees and the self-employed. For the application of the new regulation, the smooth cooperation between the insurance and employment organizations of the member states is essential. No matter in which country the activities took place, if it is considered as self-employed period, it has to be taken into account. According to Article 61 of the new regulation, periods of insurance in the particular states has to be taken into account as if it had been fulfilled in the given member state. Article 64 states that it refers to those who are unemployed, either if the person is an employee or self-employed. The implementing regulation just published only refers to article 69. To sum it up: regulation 883/2004/EEC brings the self-employed on the same legal basis with employees. However, there are some remained problems:

- Missing unified regulations for the definition of the self-employed
- Parallel self-employed activities, the aggregation of different benefits
- Usage of E forms.<sup>3</sup>

By Council Regulation 1606/98 of 29 June 1998 the Council extended the scope of Regulation 1408/71 in order to set *civil servants* on an equal footing with the rest of the population as regards the general statutory pension rights provided in the Member States.

Regulation 307/1999 of 8 February 1999 extended the scope of the Regulation to include all *insured persons, particularly students and persons not in gainful employment*.

Council Regulation 895/2003 of 14 May 2003 extended the scope of the Regulation to cover nationals of third countries provided they are legally resident on Union territory.

### 1.3. Material scope of Regulation

Article 4 of Paragraph 1 of Regulation 1408/71 lists the social security benefits covered by the Regulation and the provisions which seek to prevent migrant

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<sup>3</sup> [www.afsz.hu/resource.aspx?ResourceID=en\\_migrations\\_nemzetkozi\\_konferencia\\_200602\\_eng](http://www.afsz.hu/resource.aspx?ResourceID=en_migrations_nemzetkozi_konferencia_200602_eng)

workers and self-employed persons from suffering losses because they work or have worked in one or more Member States:

- sickness and maternity/paternity benefits
- invalidity benefits intended for the maintenance or improvement of earning capacity;
- old-age benefits;
- survivors' benefits;
- benefits in respect of accidents at work and occupational diseases;
- unemployment benefits;
- family benefits.<sup>4</sup>

This article deals only with the issues of the coordination of unemployment benefits.

## *2. Coordination of unemployment benefits*

### *2.1. The types of unemployed migrant worker*

The unemployment benefits are covered by the EU coordination regulations. The unemployment benefits cover the risk associated with the involuntary loss of revenue whilst still being able to work.

However, the coordination rules on unemployment benefits are peculiar in twofold: *a)* totalisation principles are not fully implemented; *b)* only a marginal implementation of the basic principles. For example, the principle of exportability is only partially applicable. Furthermore, there is a strong relationship with employment policy and with the administration of the unemployed, such as registration with employment offices, active participation in employment promotion measures, etc.

There are three different situations of an unemployed migrant worker.

- a)* A migrant worker becomes unemployed afterwards
- b)* Looking for a job abroad: export of benefits
- c)* Workers residing outside the competent State
  - ca)* Frontier workers: typical and atypical unemployment
  - cb)* Workers other than frontier workers.

*2.1.1. A migrant worker becomes unemployed afterwards.* As regards unemployment benefits, the competent institution of a Member State must take into account the periods of insurance, employment or self-employment completed under the legislation of any other Member State as though they were completed under the legislation it applies. Usually in such case the qualifying period for unemployment

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<sup>4</sup> [http://www.europarl.europa.eu/facts/4\\_8\\_4\\_en.htm](http://www.europarl.europa.eu/facts/4_8_4_en.htm)



benefit is 1–2 years. The aggregation principle is used in a limited way, because it is applied *a)* only for employed persons, *b)* last employment in the State where the claim is lodged, *c)* taking into account the conditions of employment in the last State (more than 4 (four) weeks).

*2.1.2. Looking for a job abroad: export of benefits.* As regards unemployment benefits paid in another Member State while seeking work, an unemployed person may move to another Member State in order to seek work while retaining entitlement to benefits for three months. If the unemployed person does not return on or before the expiry of this period he/she loses all entitlement to benefits. The basic requirement is to be available for work in the competent State and need for control and monitoring.

In principle there is no possibility of the export of unemployment benefits; however, it is contrary to the freedom of movement which is one of the fundamental principles of the Treaty.<sup>5</sup> Therefore, there is an exception which makes a limited export possible when all of the following conditions are met:

- a)* Registration of – at least – four weeks with the employment service of the State of last employment.
- b)* Registration with the employment service of the State of stay at least within seven days after departure.
- c)* Compliance with the control procedure of the State of stay.
- d)* Return within three months to the competent State, and
- e)* This exception can be used only once per unemployment period.

In that case when an unemployed migrant worker searches for work in other MS, the mechanism is as follows: The migrant worker must have the E-303 form.

As for cross-border technical information: the unemployment benefits are provided by the institution of the State where the person went to look for a job. The serving institution is afterwards reimbursed by the competent institution.

*2.1.3. Workers residing outside the competent State.* As regards the entitlement to unemployment benefits for workers who, during their last employment, resided in a Member State other than the competent State, the new Regulation allows unemployed frontier workers to make themselves available also to the employment services of the State in which they pursued their last activity. This rule makes it easier for workers to find work.

- a) Frontier workers<sup>6</sup>: typical and atypical.*

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<sup>5</sup> The ECJ in the *De Cuyper v Office national de l'emploi* (Case C-406/04) ECJ case stated: „The rights of freedom of movement and residence flowing from citizenship of the European Union did not prevent a Member State from making receipt of unemployment benefit conditional on residence in that State.”

<sup>6</sup> Frontier worker: persons employed in the territory of a State other than their State of residence, who return home at least once a week.

*aa) Typical frontier workers.*

- In case of partial or intermittent unemployment of typical frontier workers, the applicable legislation is the legislation of the State of employment.
- In case of full unemployment of typical frontier workers, the applicable legislation is the legislation of the State of residence.

*ab) Atypical frontier workers. The persons who maintain in the State of last employment personal and business links of such a nature as to give them a better chance of finding new employment there (Miethe-case)*

- In case of partial or intermittent unemployment of atypical frontier workers, the applicable legislation is the legislation of the State of employment.
- In case of full unemployment of atypical frontier workers, the applicable legislation is the legislation of the State of last employment.

*b) Workers other than frontier workers. Persons residing outside of the competent State, who are not frontier workers (eg. seasonal workers).*

- In case of partial or intermittent unemployment of workers other than frontier workers, the applicable legislation is the legislation of the State of employment.
- In case of full unemployment of workers other than frontier workers, the applicable legislation is the legislation of the State of last employment.

## *2.2. The definition of partially unemployed person*

The first question is the definition of wholly or partially unemployed person.<sup>7</sup> The Court of Justice of the European Communities has ruled that in order to determine whether a frontier worker is to be regarded as partially unemployed or wholly unemployed within the meaning of Article 71(1)(a) of the said Regulation, uniform Community criteria must be applied. Such assessment may not be made on the basis of criteria drawn from national law.

The Court of Justice of the European Communities has ruled that where a frontier worker no longer has any link with the competent Member State and is wholly unemployed, unemployment benefits are to be provided by the institution of the place of residence at its own expense.<sup>8</sup> An assessment of whether or not an employment link exists or is maintained is based entirely on the national legislation of the State of employment.

*a)* With respect to the application of Article 71(1)(a) of the Regulation, determination of the nature of unemployment (that is to say partial or whole) shall depend on whether or not any contractual employment link exists or is maintained

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<sup>7</sup> See more in Table 1 in Appendix: Definition of part time unemployment in EU Member States

<sup>8</sup> Judgement of 15 March 2001 in case C-444/98, 'R. J. de Laat/Bestuur van het Landelijk instituut sociale verzekeringen'

between the parties, and not on the duration of any temporary suspension of the worker's activity.

b) If a frontier worker remains employed by an undertaking in a Member State other than that in whose territory he/she resides, but his/her activity is suspended although he/she can return to his/her post at any time, the said worker shall be regarded as partially unemployed, and the corresponding benefits shall be provided by the competent institution of the Member State of employment in accordance with Article 71(1)(a)(i) of Regulation (EEC) No 1408/71.

c) If a frontier worker, in the absence of any contractual employment link, no longer has any link with the Member State of employment (for example because the employment contract link has been terminated or has expired), he/she shall be regarded as wholly unemployed in accordance with Article 71(1)(a)(ii) of Regulation (EEC) No 1408/71, and benefits shall be provided by the institution of the place of residence at its own expense.<sup>9</sup>

### *3. Unemployment benefits in the new 883/2004/EC regulation*

The 1408/71/EEC Regulation will be replaced by the 883/2004/EC Regulation. According to the new Regulation, the competent institution of a Member State must take into account the periods of insurance, employment or self-employment completed under the legislation of any other Member State as though they were completed under the legislation it applies.

The new Regulation mainly introduces two questions linked to unemployment benefits:

- the exportation of unemployment benefits to another Member State when a person goes there in order to seek work;
- the rights to unemployment benefits for workers who, during their last job, resided in a Member State other than the competent State.

As regards unemployment benefits paid in another Member State while seeking work, an unemployed person may move to another Member State in order to seek work while retaining entitlement to benefits for three months. The competent services or institutions may extend this period up to a maximum of six months. If the unemployed person does not return on or before the expiry of this period he/she loses all entitlement to benefits.

As regards the entitlement to unemployment benefits for workers who, during their last employment, resided in a Member State other than the competent State, the new Regulation allows unemployed frontier workers to make themselves

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<sup>9</sup> Administrative Commission of the European Communities on Social Security for Migrant Workers Decision No 205 of 17 October 2005 on the scope of the notion of 'partial unemployment' with regard to frontier workers EN L 130/38 Official Journal of the European Union 18.5.2006

available also to the employment services of the State in which they pursued their last activity. This rule makes it easier for workers to find work.<sup>10</sup>

#### 4. Practical problems of coordination of unemployment benefits

##### 4.1. Discrimination between nationals and others

As it was underlined above, according to the coordination regulations every type of discrimination which is based on nationality is prohibited. The first relevant example is *Austria*. Although entitlement to unemployment benefits under the Austrian unemployment law is not subject to the nationality of the unemployed person, benefits are only granted (among other provisions, after a minimum period of insurance), to unemployed persons who are 'available' to the employment service authorities. This availability requires inter alia that the unemployed person must have a residence permit (in particular for occupational matters). That permit can be withdrawn when a foreigner is unemployed for a certain period, meaning that entitlement to unemployment benefits is confined to a maximum period (e.g. of twelve months for those who have been employed legally in Austria for more than one but less than five years). Since the primary benefit, i.e. *Arbeitslosengeld*, is granted usually for a maximum period of 30 weeks, the limit imposed by the law applicable to foreigners primarily restricts entitlement to *Notstandshilfe* (emergency unemployment assistance). The restrictions pursuant to the *Fremden-gesetz* mentioned above, do not apply to EC nationals who exercise their right to free movement. Nevertheless, EC nationals who are unable to provide proof of sufficient earnings and health insurance covering all risks, may lose their residence permit after more than six months of unemployment. In practice, the employment service authorities seem to ignore these provisions and consider all EC nationals as 'available' and therefore entitled to *Arbeitslosengeld* as well as *Notstandshilfe* under the same conditions as nationals.<sup>11</sup>

In the case of the *Hungarian* unemployment benefits problems may arise from the period of transition as the employment of the nationals of certain Member States is subject to a permit, thus these people have a limited access to the labour market and the principle of equal treatment can be realized only with limitations.<sup>12</sup>

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<sup>10</sup> <http://europa.eu/scadplus/leg/en/cha/c10521.htm>

<sup>11</sup> Training and Reporting on European Social Security, Austria National Report 2006 by WALTER J. PFEIL, 2006

<sup>12</sup> Training and Reporting on European Social Security, Hungarian National Report 2006 by JÓZSEF HAJDÚ, 2006

#### 4.2. Export of benefits

Unemployment benefits are in principle not exportable. However, in order to promote the free movement, Article 69 of Regulation 1408/71 foresees that, under certain conditions, unemployment benefits may be exported during three months.

The *Austrian* practice shows that Article 69 has obviously not been applied to the new benefits implemented under the *AlVG* for older unemployed persons who can no longer claim the early retirement pensions for unemployed which have been abolished in 2004. The *Übergangsgeld nach Altersteilzeit* and the *Übergangsgeld* ('transitional payment') are granted to unemployed people until they have reached regular pension age. These persons no longer have to prove they are 'available' as required for (regular) unemployment benefits, but only under the provision of particular 'directives' issued by the labour market authorities. Since these new benefits have to be considered as pension benefits in terms of Regulation 1408/71, they will have to be exported according to Article 10 and cannot be subject to any national labour market-'directives'. Article 69 is applied, however, to the *Pensionsvorschuss* (advance payment) which is granted to unemployed persons who have already applied for a pension insurance benefit.<sup>13</sup>

In the *Netherlands*, in 2006, a new provision was inserted in the Unemployment Benefits Act. Persons entitled to unemployment benefit are allowed to participate in training, education or another reintegration project while remaining in receipt of benefit while staying in another Member State. A condition is that activities last for a maximum period of six months and give realistic prospects for getting a job of at least six months, as appearing from a letter of intent of an employer.<sup>14</sup>

In *Luxembourg* the National Court decided that the competent services or institutions have a large power to extend the time limits of the 3-months rule (article 69 § 2), but that they have to take into account the *principle of proportionality*. Application of this principle requires that the competent services or institutions consider, in each case, the period exceeding the time limit, the reason of the late return and the seriousness of the legal consequences of the late return. It also seems impossible to deprive a citizen, who has lost his or her job and who takes the initiative to seek employment in another Member State, using his or her freedom of movement, of a social security benefit granted by the legislation of one Member State. In *exceptional cases* does not mean *in case of absolute necessity*.<sup>15</sup>

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<sup>13</sup> Training and Reporting on European Social Security, Austria National Report 2006 by WALTER J. PFEIL, 2006

<sup>14</sup> Training and Reporting on European Social Security, Netherlands National Report 2006 by FRANS PENNING, 2006

<sup>15</sup> Training and Reporting on European Social Security, Luxembourg National Report 2006 by NICHOLE KERSCHEN, 2006

In *Sweden* it was asked if a Member State can force someone to work in another Member State. The case concerned a man living in Sweden near Norway, who received a job vacancy from a Norwegian job agency, but he refused it because this would force him to spend a 12h working day because of the distance between his home in Sweden and his work in Norway. The Swedish Inspection was of the opinion that, as he lived in the border area, it was natural and normal that he should look for work in Norway. He argued that this could not be combined with his wife's job and the care for the children. The Administrative Court decided that it was only temporary work and 12h was not unreasonable, so he could not refuse the job.<sup>16</sup>

In *Portugal*, officials of social security report complaints of workers and workers-unions in Switzerland concerning temporary workers in that country (not seasonal workers in the sense of the Regulations). In general those workers are occupied in Switzerland for 9 months and must return to Portugal at the end of the labour contract. Most of them cannot get forms E303 as for that Swiss authorities follow strictly the rule of Article 69 and only issue the forms after the period of four weeks during which the worker must be available to Swiss Employment Services. Therefore, without a regular lodging in Switzerland (that in most cases is provided by employers for the duration of the contract) those workers prefer to apply for E301 and claim unemployment benefits in Portugal under Article 71-1-b)ii).

Portuguese institutions, in cases of workers who have successive contracts in Switzerland during several years, wonder whether the situation of being a Portuguese resident is fulfilled. In fact, in such situations their centre of interest seems to be focussed in the country where they work regularly and almost continuously.<sup>17</sup>

A similar situation occurs in France where Portuguese seasonal workers have great difficulties to get the E301 form, because only one institution is competent to issue that form [Groupement des Assedic de la Région Parisienne]. Those workers who live very far (for instance in south-west, near Spain), have great difficulty to go to Paris expressly for that purpose. In the last years Portuguese institutions have been accepting E301 issued by Agricultural Social Security institutions (Mutualité Agricole) or Inspections of Work Authorities (which are not competent institutions).<sup>18</sup>

A particular question is whether frontier workers can also invoke Article 69, and if the answer is in the affirmative, how the rules concerned should be applied. It follows from the *Huijbrechts* judgment, that, as a result of the application of

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<sup>16</sup> Training and Reporting on European Social Security, Swedish National Report 2006 by ANN NUMHAUSER-HENNING, 2006

<sup>17</sup> Training and Reporting on European Social Security, Portugal National Report 2006 by ARTUR SOARES, 2006

<sup>18</sup> Training and Reporting on European Social Security, French National Report 2006 by JEAN PHILIPPE LHERNOULD, 2006

Article 71(1)(a)(ii), frontier workers are insured on the basis of notional insurance in the State of residence. They receive their unemployment benefit in the State of residence; the right to benefit in the State of employment is suspended. If they move their residence to the State of employment, the benefit is paid by that State. In this case Article 69 is not applicable; the frontier worker cannot seek work in the State to which he or she moves while remaining in receipt of the benefit of his or her former State of residence, but the benefit is paid immediately by the State of residence/previous State of employment. Can the frontier worker invoke Article 69 in order to look for work in a third State? This question was raised before the Dutch Central Appeals Court in the case of a German frontier worker residing in the Netherlands, but seeking work in France. The Central Appeals Court inferred from the *Huijbrechts* judgment that he/she could not invoke Article 69. It is however highly questionable if this interpretation is correct.<sup>19</sup>

A particular question related to the fact is as to why nationals of the new Member States may not invoke article 69? This is particularly true as the Accession Treaty does not suspend the application of the EU Regulations. This problem results from the relationship between the transitional periods and free movement of workers on the one hand, and the application of Article 69 on the other hand. Can those people only rely on Article 69 if they get a permission for work in the “old” Member State? What is then the aim of this article? Does seeking employment also not include taking the job? It seems that the question whether someone who is looking for a job and wants to register with the employment services and therefore can export unemployment benefits, is a national matter and will depend on each Member State. For example, in the *Polish* report the situation of Polish jobseekers going to Germany was sketched. The person would receive a form E 303 and would, once arriving in Germany and depending on the *Land*, go to the competent labour office. He or she then has to wait for a decision as to whether or not he or she will be registered. It is noted that the person concerned has been informed by the Polish competent institution, prior to leaving, that there might be problems in obtaining registration. Pending the decision, he or she might stay in Germany or return to Poland. However, if he or she does not return to Poland within 30 days following his or her departure, he or she might lose his or her entitlement to Polish benefits. It would seem that it sometimes takes longer than 30 days to obtain a decision from the German labour office. Refusal of registration makes a person eligible for benefits in Poland, provided he or she has worked for a period of twelve months.<sup>20</sup>

The *Slovenian* report raises the question whether the Slovenian authorities are entitled to refuse to register an unemployed person – a Dutchman, for the sake of example – for the purposes of Article 69 of the Regulation when an unemployed

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<sup>19</sup> Training and Reporting on European Social Security, French National Report 2006 by JEAN PHILIPPE LHERNOULD, 2006

<sup>20</sup> Training and Reporting on European Social Security, Poland National Report 2006 by GERTRUDA USCINSKA, 2006

Slovene in the Netherlands would meet with the same fate. This issue was dealt with in depth in the Administrative Commission.<sup>21</sup>

In *Hungary* also many problems are encountered. Not all MSs are prepared to receive E303s due to the transitional arrangements, e.g. in Italy. There Italy refuses to register Hungarians because of the transitional arrangements and the concerned person could not receive his allowance and needed to come back home.<sup>22</sup> Unfamiliarity with the conditions leads also to the loss of the entitlement to benefits in Malta. They leave the country where they were last employed without having registered with its employment services, they register too late with the employment services of the State where they are looking for work, or they return after the expiry of the three-month period. In Malta they also faced these and other problems, not to mention difficulties experienced by the unemployed persons due to language barriers. Things do not always run as smoothly as they would want them to, and the following are some common occurrences which were met when Maltese unemployed persons went to seek employment in other Member States: postponed departure; not unemployed for 4 weeks; circumstances change; late registration; not accepted as unemployed; failure to follow registration procedures; worker returns to Malta; second departures, etc. It is also worthwhile mentioning that the Department also met some difficulties when unemployed persons came to seek employment in Malta, thus transferring their unemployment benefit under Article 69. These may be summarised as: customer arriving without the forms E303; circumstances change; late registration; customer worked in Malta before claiming; overpayment of unemployment benefits due to different payment systems (Malta pays unemployment benefits on a 6-day week basis whilst some Member States pay and quote rates on a 5/7-day week basis); and quite often, despite notifying the customers upon arrival to the offices, they leave before the unemployment benefit expires without completing the necessary formalities.<sup>23</sup>

#### 4.3. *Assimilation of facts*

In *Austria*, in practice, the assimilation of other facts (e.g. military service in another Member State) seems to be granted. However, there are still problems, as the following cases may indicate. Recently it was ruled that periods of self-employment pursued in another Member State do not prolong the reference period for completing the qualifying periods as provided for unemployment benefits. A national court stated clearly that under national law only periods of self-employment pursued in Austria give rise to prolongation of the reference period;

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<sup>21</sup> Training and Reporting on European Social Security, Slovenian National Report 2006 by ANJUTA BUBNOV-SKOBERNE, 2006.

<sup>22</sup> Training and Reporting on European Social Security, Hungarian National Report 2006 by JÓZSEF HAJDÚ, 2006.

<sup>23</sup> Training and Reporting on European Social Security, Maltese National Report 2006 by JOSEPH B. CAMILLERI, 2006.



this could not be considered as discriminatory or as a violation of the principle of assimilation of facts, since even Article 9a of Regulation 1408/71 refers only to periods during which certain benefits have been drawn and periods devoted to the upbringing of children but not to periods of self-employment pursued in another Member State.<sup>24</sup>

In unemployment insurance in *Slovenia* an employed person is entitled to unemployment benefit only if the unemployment is involuntary. The law describes in detail the cases when the unemployment is considered to be voluntary or due to the fault of the unemployed person. In practice it can prove to be difficult to ascertain whether the unemployment in another MS is involuntary.<sup>25</sup>

A particular case could be found in *Finland*. A person residing in one Member State and employed in another Member State as a posted worker was registered as an unemployed person in the State of residence. Later the unemployment insurance authorities noticed that as the person was not a frontier worker, he or she should be registered as an unemployed person in the competent State. The competent State did not insure him. The result is that the person has no entitlement to unemployment benefits from the State of residence and no entitlements from the competent State. The question is whether registration as an unemployed person by authorities in the State of residence should be taken into account in the competent country for the entitlement to unemployment benefits.<sup>26</sup>

In *Estonia* it is reported that there is still no *respective practice*. However, there are some cases where the assimilation of facts could become relevant. According to the Unemployment Insurance Act, there are certain exceptions, when the unemployment insurance benefit is not granted, even if the person has become unemployed and has fulfilled the qualification period. The benefit is not granted if the last employment contract of the person was terminated due to violation of the contractual obligations, lack of trust or corruptive act, or by a mutual agreement with the employer.

However, currently these conditions are not checked in practice, if the last employment contract (before registering as unemployed according to the Estonian legislation) was not made under the Estonian Employment Contract Act.<sup>27</sup>

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<sup>24</sup> Training and Reporting on European Social Security, Austria National Report 2006 by WALTER J. PFEIL, 2006

<sup>25</sup> Training and Reporting on European Social Security, Slovenian National Report 2006 by ANJUTA BÜBNOV-SKOBERNE, 2006

<sup>26</sup> Training and Reporting on European Social Security, Finnish National Report 2006 by MAIJA SAKSLIN, 2006

<sup>27</sup> Training and Reporting on European Social Security, Estonian National Report 2006 by LAURI LEPPIK, 2006

#### 4.4. Unemployment benefits for frontier workers

In the Regulation, special rules are set out for the unemployment benefits of frontier workers. A fully unemployed frontier worker receives unemployment benefits in accordance with and at the charge of the country of residence.

Basically the same applies to *Austria*, but it has to be mentioned that there are also some exceptions stipulated in the agreements with Germany and Liechtenstein: With respect to Germany it means that a frontier worker (even in the sense of Article 1(b) of Regulation 1408/71) who has been employed for at least five years within the last six years, among them one year as a frontier worker, may claim unemployment benefit in the State of residence (cf. Article 71(1) (a) No. ii of Regulation 1408/71) or in the State of (previous) employment. In all other cases the rules of the Regulations apply.<sup>28</sup>

The *France* report gives an interesting example of the application of Article 71 of the Regulation. Mr X, is a French citizen who worked in Germany for almost 20 years between 1975 and 1994 and settled in France in 1994. At the *ASSEDIC* (Unemployment Benefit Office), he claimed the unemployment benefit to which he thought he was entitled on the basis of periods of work he had completed in Germany. The *ASSEDIC* refused to grant the benefit because France was not the place of his most recent previous employment. The *Cour de cassation* confirmed the administrative decision and the ruling of the Court of Appeal: Insofar as Mr X. could not produce proof of residence in France during the time he was working in Germany, he could not benefit from the option provided by Article 71 and therefore was not entitled to French unemployment benefits.<sup>29</sup>

The main problem that *Latvia* faced during the first year of the application of Regulation 1408/71 was that large number of Latvians who after returning from the work abroad claimed unemployment benefits in Latvia according to Article 71 Point 1 (b) (ii) of the Regulation. It seems that many people working abroad do not know about their rights to be covered by social insurance and to claim social insurance benefits in the country where they were working (see comment draft).<sup>30</sup>

A Luxembourg Court decided that ‘when a frontier worker, who is unemployed, after he or she had registered as a jobseeker in the State of residence, transfers his or her residence to the State of the last employment, the exception of Article 71 § 1 (a) (ii) stops and the State of last employment has to assume its obligations which result from Regulation 1408/71’. As a result, the competent institution could not refuse the payment of unemployment benefits arguing only that he did not reside in Luxembourg at the moment of redundancy.

<sup>28</sup> Training and Reporting on European Social Security, Austria National Report 2006 by WALTER J. PFEIL, 2006

<sup>29</sup> Training and Reporting on European Social Security, French National Report 2006 by JEAN PHILIPPE LHERNOULD, 2006

<sup>30</sup> Training and Reporting on European Social Security, Latvian National Report 2006 by DAIGA ERMSON, 2006

A particular issue is the so-called atypical frontier workers as defined in the *Miethe* case, allowing 'not really frontier' workers to receive their benefits in the State of last employment. It seems that this rule is already used in many circumstances when the frontier worker does not possess the nationality of the State of residence. This is e.g. the case in the Netherlands where many German and Belgian frontier workers live.<sup>31</sup>

According to the *Dutch* report the Court may have underestimated the number of situations in which the *Miethe* rule can be said to apply, which can lead to arbitrary results. The Dutch benefit administration decides that the *Miethe* rule applies in cases where the person concerned does not have the nationality of the country of residence and if this means that they are refused Dutch benefit, they have to apply for a German or Belgian benefit, respectively. The Dutch Court of Appeal for social security cases has accepted this approach.

The question is asked to what extent the *Miethe* rule is an exception to the general rule of the Regulation? If it applies, workers can choose to apply for benefit in either the State of employment or residence. The rule is not intended to be advantageous for the benefit administration, but for the workers concerned.<sup>32</sup>

In *Denmark* however, more cases (on an estimate 10 per year) have recently been decided with reference to case C-1/85 *Miethe*, 12 June 1986, thus making it possible for the frontier worker to receive benefits from the country of last employment although residing in a different Member State and although wholly unemployed. Article 71 (1) (B) of 1408/71 has thus increasingly been taken into account. The national decisions relate to the Sound (Øresund) region and can in part be explained by the increased frontier activity between Denmark and Sweden after the construction of the Øresund bridge.<sup>33</sup>

In *Spain* third nationals frontier workers are excluded from unemployment benefits because although they work legally in Spain, they do not reside in Spain. According to Spanish legislation unemployment benefits are not exportable. Therefore they cannot be paid abroad to third nationals, who fall outside the EU Regulations.<sup>34</sup>

In 2006 the Agency issued a leaflet on unemployment benefits in order to increase the awareness of people working abroad about their rights to social benefits.

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<sup>31</sup> Training and Reporting on European Social Security, Luxembourg National Report 2006 by NICHOLE KERSCHEN, 2006

<sup>32</sup> Training and Reporting on European Social Security, European Report 2006 by YVES JORENS and JÓZSEF HAJDÚ, 2006

<sup>33</sup> Training and Reporting on European Social Security, European Report 2006 by YVES JORENS and JÓZSEF HAJDÚ, 2006

<sup>34</sup> Training and Reporting on European Social Security, Spanish National Report 2006 by CRISTINA SÁNCHEZ-RODAS NAVARRO, 2006

#### 4.5. Concepts of partial unemployment

According to the ILO Convention No. 168 Article 10 *full unemployment* defined as the loss of earnings due to inability to obtain suitable employment in the case of a person capable of working, available for work and actually seeking work.<sup>35</sup>

According to the ILO definition the *partial unemployment* means involuntary temporarily reduced hours of work with reduced pay due to adverse business conditions.<sup>36</sup>

In some EU Member States, Estonia, Slovakia, Slovenia and Hungary, the concept of partial unemployment is not known.<sup>37</sup>

Within the EU practice, recently the Dutch Court of Roermond requested a preliminary ruling on this issue. It asked whether the interpretation given by the Centrale Raad van Beroep was correct. The Court of Justice answered this question in the *De Laat* judgment. Unfortunately, the benefit administrations of the Netherlands and Belgium appear to interpret this judgment differently. Whereas Belgium seems to apply the judgment only in cases identical to the *De Laat* case (a worker continuing to work for his employer in a part-time job), the Dutch benefit administration considers that partial unemployment is also involved when a person does not have any work at all in his or her country of employment, but has a concrete prospect of finding work in that State.<sup>38</sup>

In *Slovenia* a problem is encountered in relation to Germany. Slovenia does not, unlike Germany, have the concept of partial unemployment, meaning that a person whose employment contract subsists is not regarded as being unemployed. This implies that when a German partially unemployed person comes to Slovenia, he or she is not entitled to unemployment benefits. He or she would only be so if his or her employment contract had ended.<sup>39</sup>

#### 4.6. Influence of national job promotion rules

*Austria* has different provisions for labour market activation and employment promotion measures. Some are particular allowances (*Beihilfen*) which can be granted to workers and employees as well as employers, e.g. to compensate partly for loss of income during periods of part-time work or to boost employment in regions or industries with specific problems. However, since there is no legal

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<sup>35</sup> Convention (No. 168) concerning Employment Promotion and Protection against Unemployment

<sup>36</sup> <http://www.ilo.org/public/libdoc/ILO-Thesaurus/english/tr2399.htm>

<sup>37</sup> Training and Reporting on European Social Security, European Report 2006 by YVES JORENS and JÓZSEF HAJDÚ, 2006

<sup>38</sup> Training and Reporting on European Social Security, European Report 2006 by YVES JORENS and JÓZSEF HAJDÚ, 2006

<sup>39</sup> Training and Reporting on European Social Security, Slovenian National Report 2006 by ANJUTA BUBNOV-SKOBERNE, 2006

entitlement to the allowances, no particular problems with regards to Community law have been encountered so far.

Another problem arises for frontier workers. Although they can only receive unemployment benefits in the State of residence, they can subscribe themselves to the job agencies in both States. In Austria there is a need for coordination where an Austrian frontier worker is taking part in some labour promotion measures offered by a German job agency and is as a result not able to accept a job in Austria. No sanctions may be given when a job in another State is not accepted. Certainly in the European labour market it seems logical that someone may be offered and accept a job just across the border, instead he/she has to accept a job several hundreds of kilometres away, but in his/her State of residence.<sup>40</sup>

#### *4.7. Totalisation of periods*

The application of the aggregation rule in the field of unemployment benefits is dependent on having at least fulfilled a last period of insurance in the country where benefits are claimed. As in many legislations, no minimum waiting period is provided, the accomplishment of even one day of employment, liable to insurance under the legislation of that scheme, right after the person moves to that country, leads to the application of that rule. The Greek report draws attention to the fact that that phenomenon could have a serious financial impact on the scheme as obviously, all unemployment contributions have been paid by the persons concerned to the corresponding insurance schemes of the Member States of origin or last employment, whilst for one day of contribution under the new scheme, the person has a right to benefits for a long period, without any mechanism of distribution or sharing of costs between institutions involved being provided under the Regulation. This situation is all but exceptional, Greece being a southern country attracting a lot of tourists, especially during the summer months (April to October). It is reported that a significant percentage of people travelling to Greece gets a summer job, e.g. in a club, only for several days, and are subsequently registered in the Greek records and claim unemployment benefits. Some concerns are also found in Austria where the danger of abuse is emphasized as this minimum period can easily be reached.<sup>41</sup>

Implementation problems on how to take account of periods of insurance and benefits in other countries could also be found in the Slovak Republic. E.g. a Slovak person works in Hungary for 4 years, becomes unemployed and receives unemployment benefits in Hungary. Then he or she goes to Slovakia and works there for 1 year and becomes unemployed. Doubts were raised on whether the 4 years insurance in Hungary have to be taken into account, for instance when the

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<sup>40</sup> Training and Reporting on European Social Security, Austria National Report 2006 by WALTER J. PFEIL, 2006

<sup>41</sup> Training and Reporting on European Social Security, Greek National Report 2006 by KONSTANTINOS KREMALIS, 2006

Slovakian legislation requires 4 years of insurance to get unemployment benefits? It was recommended that the Hungarian insurance period should be considered as 'consumed', as the person received Hungarian unemployment benefits. This means the Slovak Republic only has to take into account the year of work in Slovakia, which will not suffice to get unemployment benefits. In other words, the Hungarian periods should be regarded as Slovak periods: if they were 'used', they don't have to be taken into account, if they were not used, they should be added up to the Slovak insurance period.<sup>42</sup>

In *Austria*, the VwGH ruled that periods of self-employment pursued in another Member State do not prolong the reference period for completing the qualifying periods as provided for unemployment benefits under the *AIVG*.<sup>43</sup>

The Labour Court of Appeal of Liège pointed out that, in order to be eligible for benefits in Belgium, a migrant worker has to accomplish at least one day's work on Belgian territory. It is up to the worker to prove that he actually worked; the circumstance that his alleged employment was officially declared to the social security and tax authorities is not sufficient in itself. In a later judgment of September 6, 2005, the same Court raised doubts about the employment requirement and its conformity with European law and lodged a reference for a preliminary ruling with the Court of Justice. The question pending in case C-346/05 is whether Article 39(2) of the Treaty and Article 3(1) of Regulation No 1408/71 permit Article 67(3) of Regulation No 1408/71 (1) to be interpreted as imposing an obligation on a worker who is a national of a Member State to complete a period of employment giving the right to unemployment benefits in the State of residence even where the internal law of that State does not impose such an obligation in the case of a foreign worker whether he is from a Member State or not.<sup>44</sup>

#### 4.8. Unemployment benefits for self-employed persons

In some Member States, an unemployment scheme for self-employed applies or will be applied. In Hungary there exists unemployment insurance protection for the self-employed, called Entrepreneurial Benefit. In Austria there are also definite plans to establish a type of voluntary unemployment insurance scheme for young self-employed persons to stimulate entrepreneurship. This could cause some problems because of the specific interpretation of 'social insurance' under constitutional law which requires that a particular *Versichertengemeinschaft* (community covered by a social insurance system) must be homogeneous. Thus,

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<sup>42</sup> Training and Reporting on European Social Security, Slovakia National Report 2006 by IVETA RADICOVA, 2006

<sup>43</sup> Training and Reporting on European Social Security, Austria National Report 2006 by WALTER J. PFEIL, 2006

<sup>44</sup> Training and Reporting on European Social Security, Belgian National Report 2006 by HERMAN VAN HOOGENBEMT, 2006

unemployed persons who have not completed a minimum period of insurance as employees will probably not be covered by unemployment insurance, at least not under the same conditions as employed persons.<sup>45</sup>

### *Other issues*

In *Estonia* the E303 forms, which the Unemployment Insurance Fund has issued so far, have been given to persons who have mainly announced that they will go to look for a job in Finland, Sweden and the UK. However, it appears that some of those persons have not actually registered themselves (or have not been eligible for registration) as unemployed/jobseekers in the country of destination as there have been no requests for reimbursement of benefits from competent institutions of other Member States so far.

Another outstanding issue in *Estonia* is how to tackle potential fraud, if the recipient of an unemployment insurance benefit actually works in another Member State. For the time being, the Unemployment Insurance Fund is unable to control this.<sup>46</sup>

*Belgium* has concluded an agreement with Luxembourg, France and Germany, pursuant to Article 17 of the Regulation, in order to keep part-time employees under the social security system of the Member State where they live. There is, somewhat surprisingly, no similar agreement with the Netherlands. Employees who live in Belgium, and work part-time in the Netherlands, have to apply for unemployment benefits in the Netherlands. It seems, however, that the Belgian competent authorities grant the benefit which is due on top of the part-time salary, if certain conditions are met.

The Belgian report also gives an example where differences in pensionable age may lead to problems, related to overlapping of benefits. Workers who are entitled to a Belgian unemployment benefit may encounter problems if they are entitled to a French retirement pension, which may well happen before they reach the age of 65 which is the normal pensionable age in Belgium. Under French law, overlapping of these benefits is authorized within certain limits. The Belgian unemployment authorities refuse to allow the cumulation of the Belgian unemployment benefit with a French retirement pension, be it under the general French scheme or under the ARCCO-scheme.<sup>47</sup>

Another problem related to the supplementary schemes for unemployment benefits can be found in the *Netherlands*. If an employer promises to supplement

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<sup>45</sup> Training and Reporting on European Social Security, European Report 2006 by YVES JORENS and JÓZSEF HAJDÚ, 2006

<sup>46</sup> Training and Reporting on European Social Security, Estonian National Report by LAURI LEPPIK, 2006

<sup>47</sup> Training and Reporting on European Social Security, Belgian National Report 2006 by HERMAN VAN HOOGENBEMT, 2006

the unemployment benefit of his former worker, the idea is that the benefit is supplemented up to a certain percentage of the former wage. In such cases the Dutch level is taken into account, even if the person concerned, being a frontier worker residing in Belgium, receives the lower Belgian benefit. Such an approach seems to infringe on Article 7(2) of Regulation 1612/68. An example of such a problem is a decision by the Kantonrechter Eindhoven (cantonal court) of 21 March 2002, which decided that the refusal to pay benefits was not contrary to Article 7(2) of Regulation 1612/68.<sup>48</sup>

In *Portugal*, problems are mentioned concerning the rules of the calculation of unemployment benefits. Portugal takes into consideration the average daily wages registered in a “reference period” (twelve months before the second month prior to unemployment). In case of persons that become unemployed in Portugal after a short period of work several problems can occur when the person only fulfils the conditions through the aggregation of periods of insurance.

1<sup>st</sup>: The person entitled to benefit was unemployed in another Member State during two or three years before coming to Portugal with the E303. Here, after receiving two weeks of unemployment benefits, the person accepts a job that was proposed by the Employment Services and works two months. He becomes unemployed at the end of “experimental period” (period during which the employer can put an end to the contract on the basis of unfitness for the job). This person cannot aggregate the periods accomplished in the previous State of occupation because Portuguese law doesn’t allow aggregation of periods of unemployment benefits with periods of insurance due to working remuneration. The job-seeker is penalised because he was obliged to accept a job and afterwards he loses the job and entitlement to benefits in both Member States;

2<sup>nd</sup>: When a recently employed person becomes unemployed in Portugal and doesn’t complete the qualifying period for benefits and aggregation of periods is necessary, it may happen that no remunerations are registered in Portugal in the reference period established for the calculation of benefits (Art. 68 of Reg. 1408/71 establishes that only the remunerations registered in the competent institution must be considered). This is a serious problem for the unemployed person because aggregation of periods can be useless as benefits cannot be calculated. Portugal, with a view to protecting workers in such a situation, provided specific legislation on the subject (Decree-Law 46/93 of 20 February) in two perspectives;

- when there are no Portuguese remunerations in the period of reference; or
- when in the period of reference, the unemployed person had some months with remunerations in one Member State other than Portugal and lately in Portugal, and in both situations the legal solution provided by the Decree-Law is to “use” the average of Portuguese wages to apply to the periods of work in the other Member

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<sup>48</sup> Training and Reporting on European Social Security, European Report 2006 by YVES JORENS and JÓZSEF HAJDÚ, 2006



State. Otherwise, the unemployed person would not qualify for benefits in the first case or would have a lower benefit in the second.<sup>49</sup>

### *Summary*

Each EU country regulates unemployment benefits with its own national regulation of social insurance. For economic, historical and practical reasons, these differ from country to country. Therefore the differences between national systems could cause problems when two or more countries are involved. This article dealt mainly with these problems and difficulties. However, the EU social security legislation coordinates these national schemes to ensure that the application of different national regulations does not adversely affect persons who move within the European Union and the European Economic Area (EEA). This coordination means that Member States may freely determine detailed rules such as the conditions that must be met in order to qualify for the rights, the way in which the benefits are calculated etc., but they must at the same time respect the common rules and principles of EU legislation.

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<sup>49</sup> Training and Reporting on European Social Security, Portugal National Report 2006 by ARTUR SOARES, 2006

## APPENDIX

## Definition of part time unemployment in EU member states

Country	Definition of part time unemployment
Belgium	Days or half days during which the execution of the work contract is suspended.
Denmark	Weekly working time is reduced by at least 7.4 hours in relation to full-time employment.
Germany	<p>Partial unemployment (Teilarbeitslosigkeit): Loss of a job under compulsory insurance coverage, carried out in addition to another job under compulsory insurance coverage and search for a new job under similar coverage.</p> <ul style="list-style-type: none"> <li>– Short-time work (Kurzarbeit):</li> <li>– Temporary shortage of work due to economic reasons.</li> <li>– Unemployment due to weather conditions (Witterungsbedingter Arbeitsausfall):</li> <li>– In the building sector, temporary unemployment due to weather conditions (1 November to 31 March).</li> </ul>
Greece	Partial unemployment: resulting from the seasonal fluctuations of certain branches of the economic activity (building sector, hotel industry, artistic professions).
Spain	<p>Unemployment is regarded as partial when the worker's ordinary working day is temporarily reduced by at least one third, provided there is a proportional reduction in wages.</p> <p>For these purposes, a temporary reduction of ordinary working time means a deduction authorised during the duration of redundancy plans which do not include final reductions in working time and do not cover the full duration of the labour contract.</p>
France	Reduction or suspension of hours usually worked below legal limit, because of economic, accidental, economical or technical reasons.
Ireland	<p>Systematic short time working: Where the working week is reduced on a systematic basis from a full week to 3 days a week or less, the employee is entitled to claim Unemployment Benefit for the days not working.</p> <p>Part Time Working: Where the number of days worked from week to week is 3 or less.</p>
Iceland	When an unemployed person accepts part-time work which is less than he had before he may be entitled to benefits. In case of a part-time employed person (i.e. 75% work) becoming unemployed and thereafter becomes partially employed (i.e. 50%) the Allocation Committee may decide to pay the difference, i.e. 75%–50% = 25% unemployment benefit for a maximum period of 2 years. This amount can be affected by the wages.
Italy	Additions to salary where the enterprise reduces or ceases activities because of reasons of its own or temporarily (ordinary complement).

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Liechtenstein	Short-time work: reduction of working time or periodic interruptions of work. Weather-related short-time work. Only for certain professional groups in the construction industry and only from 1 December through 15 March (with the exception of 24 December through 6 January).
Luxembourg	Short-time working or two or more days of unemployment in a normal working week.
Norway	Normal working hours of the person concerned must have suffered a reduction of at least 40%.
Austria	Short-time working support for the employer in the event of short-time working (Kurzarbeitsunterstützung). Bad weather compensation in the building sector (Schlechtwetterentschädigung). Further training allowance (Weiterbildungsgeld). Part-time allowance for elder workers (Altersteilzeitgeld). As regards the respective terms of partial unemployment see "Conditions".
Portugal	Part-time work: When the unemployed, benefiting from unemployment insurance, is hired part-time. Temporary work reduction: Reduction of working hours due to business-cycle related economic and technological reasons or because of nature disaster which hit the enterprise.
Finland	When an unemployed person accepts part-time work or not longer than one month lasting full-time work and the total time does not exceed 75% of the working hours of a full-time worker. Where a person has lost his principal employment and has a secondary employment or entrepreneurship. When an unemployed person has started such entrepreneurship which does not prevent accepting other work.
Sweden	A person is considered as partially unemployed if he works less than what he wants compared to his former normal working hours per week before he became unemployed.
UK	Any day of unemployment on which a person would normally work.

Source: [http://ec.europa.eu/employment\\_social/missoc/2002/missoc\\_242\\_en.htm](http://ec.europa.eu/employment_social/missoc/2002/missoc_242_en.htm)

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[http://www.coe.int/t/dg3/socialpolicies/socialsecurity/coordination\\_en.asp](http://www.coe.int/t/dg3/socialpolicies/socialsecurity/coordination_en.asp)

HAJDÚ JÓZSEF

## A MUNKANÉLKÜLI ELLÁTÁSOK KOORDINÁCIÓJA AZ EURÓPAI UNIÓBAN

(Összefoglalás)

Napjainkban a munkanélküliség különös figyelmet kap az Európai Unióban, hiszen az egységes munkaerőpiacon 1992 óta átlagosan 10 százalék körül mozog a munkanélküliségi ráta, és csak 1999-ben sikerült 9 százalékra csökkenteni az átlagot. A munkanélküliség ellen folytatott küzdelem elsősorban a tagállamok feladata. A munkanélküliek pénzbeli és egyéb támogatásai – képzés, önálló vállalkozóvá válás elősegítése stb. – a tagállamok pénzügyi keretei szerint alakulnak. Az EU alapvetően csak javaslatok megfogalmazására, a legjobb tagállami megoldások közvetítésére jogosult.

A szociális biztonsági koordináció ezen a területen is kivételt képez, és olyan európai közösségi jogi szabályozást honosít meg, amely érinti a tagállami (passzív) munkanélküli ellátórendszereket.

A munkanélküli ellátásokra is vonatkozik a koordináció négy alapelve, az egyenlő elbánás, az egy tagállam joghatósága, az összeszámítás és az exportálhatóság elve, továbbá a kiegészítő elvek közül az arányosítást és az átfedések tilalmát kimondó alapelv. Ez azt jelenti, hogy egy munkanélküli mindig csak egy tagállamtól kaphat munkanélküli ellátást. A koordináció azokra az Európai Unió és jogszerűen az Európai Unió területén tartózkodó harmadik állam polgárait tartalmaz rendelkezéseket, akik migráns munkavállalók, tehát valamilyen nemzetközi (határon átnyúló) elem jelenik meg a foglalkoztatásuk, majd a munkanélkülivé válásuk kapcsán. A gyakorlatban ez azt jelenti, hogy a munkanélkülivé vált személy nem annak a tagállamnak az állampolgára, amelyben munkanélkülivé vált, vagy ha az is, előtte más tagállamokban is dolgozott. Ez a rendszer garantálja, hogy ne érje hátrány azért, mert nem csupán egyetlen tagállamban végzett munkát.

Ebben a munkában a munkanélküli ellátások Európai Unió koordinációjával kapcsolatos legfontosabb gyakorlati problémákra mutattunk rá.





A SZEGEDI TUDOMÁNYEGYETEM ÁLLAM- ÉS JOGTUDOMÁNYI  
KARÁNAK E SOROZATBAN ÚJABBAN MEGJELENT KIADVÁNYAI

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