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# Coordination of Unemployment Benefits

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## INTRODUCTION

After the Council's decision to review the effect of adding a new Article 65a to Regulation (EC) No 883/2004 (hereafter called Regulation 883/2004), the Commission issued a declaration, stating that the envisaged review (two years) of Article 65a would be the occasion to open a broader discussion on the current provisions in the unemployment field and to assess the need for a review of its principles. The declaration also announced that, to this end, the Commission would start preparatory work and initiate a discussion with the Administrative Commission for the Coordination of Social Security Systems. This approach was endorsed by a majority of the Member States in the Council.

Within this context, the trESS Think Tank was requested to assist the European Commission and the Administrative Commission in the analysis of the current challenges and in the identification of possible solutions for a more efficient coordination of unemployment benefits by carrying out an analytical study. In response to this request, a group of independent experts of the trESS network, presided over by Carlos Garcia de Cortázar Nebreda, produced the present report.

This report builds on the work carried out by the Administrative Commission, which during the last years analysed several issues of the Unemployment Chapter of Regulation 883/2004. It is divided into two parts. The first part starts with a description of the main features of the EU legal framework of the coordination of unemployment benefits, thereby focusing on the principle of aggregation of periods of insurance or (self-) employment, the export of unemployment benefits, the coordination of unemployment benefits in the case of cross-border workers and the new Article 65a of Regulation 883/2004. In this part also the main challenges that arise from the application of the existing EU legal framework in these areas will be described.

On the basis of the challenges identified in Part I, Part II of the report presents possible ways to simplify the coordination rules for unemployment benefits. This part includes an analysis of the possible impact of the proposed solutions.

Furthermore, the Annex to the report contains:

- excerpts from the most important case law of the CJEU;
- cross-border obstacles in the unemployment area identified by a Nordic expert group; and
- definitions, mappings and descriptions of the national schemes of unemployment benefits.

## PART I

### MAIN FEATURES AND CHALLENGES

#### A. Characteristics of the existing coordination rules in the unemployment field

In order to be able to map the challenges that arise from the application of the existing legal framework for the coordination of unemployment benefits we have to start with a description of the main features of the unemployment chapter of Regulation 883/2004 (Chapter 6). It is characteristic of the unemployment chapter that it deviates from the general coordination principles laid down in Article 5, Article 6 and Article 7 of the Regulation. Article 5 requires, among other things, that if the legislation of a Member State attributes legal effects to the occurrence of certain facts or events in any other Member State, these facts or events have to be treated in the same way. Article 6 gives a general provision for the aggregation of periods of insurance, (self-)employment or residence. Accordingly, a Member State which makes the right to benefits conditional upon the completion of periods of insurance, employment, self-employment or residence, shall take these periods into account when completed in another Member State. Article 7 of the Regulation provides for a general waiver of residence rules. Regulation 883/2004 prescribes that these Articles are applicable 'unless provided otherwise by the Regulation'. The chapter on unemployment benefits made use of the possibility 'to provide otherwise'. Hence, the general coordination principles laid down in Article 5, Article 6 and Article 7 of the Regulation do not apply to unemployment benefits.

A second, correlated characteristic of the unemployment chapter is that it provides specific coordination rules for the aggregation of periods of insurance or (self-)employment, for the export of unemployment benefits and for cross-border workers. The reason for creating specific rules in these areas is closely related to the special nature of unemployment benefits. Unemployment benefits are cash benefits which are granted under the condition that an unemployed person is not only unemployed, but also makes him or herself available for the labour market. In other words, the obligation to pay the benefit on the part of the insurance carrier corresponds with the counter-obligation to be available for the labour market on the part of the unemployed person. In connection with this, the benefit also includes assistance in finding new employment which is to be provided by the employment services to workers who have made themselves available to them.

The present coordination scheme with regard to unemployment benefits mirrors this nexus between payment and assistance/availability in several ways. For example, the separation of payment and availability is tolerated only as an exception embedded in the framework of Article 64 of the Regulation. In this way, the chapter on the coordination of unemployment benefits respects the preferences of Member States' national laws, which without exception, as far as we can see, reflect the connection of payment and availability. The CJEU confirms this point of view by underlining that Article 64 is not simply a measure to coordinate national laws on social security. 'It establishes an independent body of rules in favour of workers claiming the benefit thereof which constitute an exception to the national legal rules and which must be interpreted uniformly in all the Member States irrespective of the rules laid down in national laws regarding the continuance and loss of entitlement to benefits.'<sup>1</sup>

In the same vein, the Community legislator created specific coordination rules for unemployed persons who, during their last employment, resided in a Member State other than the competent State. These rules deviate from the basic rule laid down in Article 11 (3) (a) of the Regulation, which stipulates that the competent State is the Member State in which a person pursues an activity as an employed or self-

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<sup>1</sup> The CJEU underlined this in case 41/79, *Testa* [1980] ECR 1979. See for further details paragraph A, 2, a.

employed person. The State of residence is only subsidiarily competent.<sup>2</sup> There are at least three reasons why the principle of the competence of the Member State of (self-)employment was established. Firstly, when a person is employed in a certain Member State, this means that he or she is integrated in the labour market of this State. When the risk of unemployment, against which he or she is insured in this Member State, materialises, it is reasonable to try to reinsert him or her into the labour market of this State. The second reason is that contributions to the unemployment insurance have been paid to the scheme in this Member State (the same is true for taxes when the scheme is tax financed). As a consequence, this Member State is responsible for tackling the problems that result from unemployment. And last but not least, the *lex loci laboris* rule in Article 11 (3) (a) is the expression of the equality of treatment principle (Article 45 TFEU), which guarantees that migrant workers are treated in the same way as domestic workers. Therefore, migrant workers should be subject to the same social security legislation as national workers. The CJEU has frequently emphasised this link between Article 45 and Article 48 TFEU.<sup>3</sup> Article 65 of the Regulation derogates from this general principle by establishing a divergent unemployment status for frontier workers or persons other than frontier workers residing in a Member State other than the competent State. For them it is the State of residence which has to be primarily addressed. The Community legislator chose to make an exception to the *lex loci laboris* principle for this particular group with the aim to ensure that they receive unemployment benefits under the most favourable conditions for finding new employment.<sup>4</sup>

The aims behind the specific coordination rules laid down in the unemployment chapter of the Regulation are certainly worth pursuing. However, the flipside of these rules is that their application and administrative management have significant disadvantages. Examples of these disadvantages are:

- an unfair distribution of costs between the State of employment and the State of residence;
- a burdensome reimbursement management;
- difficult identification of the habitual residence of the unemployed, when other than a frontier worker;
- legal uncertainty;
- a heavy workload for cooperating employment services.

It goes without saying that the current state of law is a challenge for a new orientation. However, previous attempts to modernise the unemployment chapter of the Regulation shows that we are dealing here with a very sensitive area of regulation. For example, the 1998 Commission proposal to make the rule of the competence of the State of last (self-)employment generally applicable, was not adopted, mainly because the delegations were suspicious about the separation between assistance/availability and the payment of the benefit which this proposal would entail. The delegations especially feared inactivity of the State of residence since the financial burden for paying the benefits was not for this State but for the State of last employment. The discussions on this issue eventually resulted in a compromise which has been embedded in the unemployment chapter of Regulation 883/2004. Yet, practice shows that the derogations from the general coordination principles laid down in this chapter, still give rise to many problems.

In order to gain a deeper insight in this matter, the derogations will be further elaborated in the next sections, thereby focussing on the principle of aggregation of periods of insurance or (self-)employment (A. 1.1), on the export of unemployment benefits (A. 1.2) and on the rules for cross-border workers (A. 1.3).

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<sup>2</sup> For a precise doctrinal elaboration see case C-372/02, *Adanez-Vega* [2004] ECR I-10761. The principle of the competence of the Member State of (self-)employment is underlined by the aggregation requirement contained in Article 61 (2), which also derogates from the general rules. See for further details paragraph A.1.

<sup>3</sup> See for example cases 75/63, *Unger* [1964] ECR 177 and C-10/90, *Masgio* [1991] ECR I-1119.

<sup>4</sup> See cases 39/76, *Mouthaan* [1976] ECR 1901; 227/81, *Aubin* [1982] ECR 1991; 1/85, *Miethe* [1986] ECR 1837; and C-444/98, *de Laet* [2001] ECR I-2229.

The challenges arising from the derogations from the general coordination principles in these areas will be identified in part B.

## **1. Aggregation rules in the case of unemployment**

### **a. General rule**

In the absence of harmonisation at EU level, it is for each Member State to determine the conditions for insurance under a social security scheme and the entitlement to benefits under that scheme. However, Member States must comply with EU law when exercising these powers. In consequence, they have to respect Article 48 TFEU, which aims to ensure that the exercise of the freedom of movement does not result in depriving a worker of social security protection to which he would have been entitled if he had spent his working life in only one Member State.

The aggregation rules of Regulation 883/2004 implement the fundamental aim of Article 48 TFEU by providing for a general provision which aims to secure that, for the purpose of acquiring and determining the length of social security benefits, all relevant periods of insurance, (self-)employment or residence completed under the laws of several countries are taken into account. This general rule is written down in Article 6 of Regulation 883/2004 and generally speaking applies to all chapters of the Regulation.

### **b. Derogations**

Special aggregation rules have been introduced into the unemployment chapter of Regulation 883/2004. These rules are incorporated in Article 61 of the Regulation and derogate from Article 6 in two ways. Article 61 (1) of the Regulation firstly draws a distinction between, on the one hand, cases where the national legislation of the competent State makes the entitlement and the length of unemployment benefits subject to the completion of periods of insurance and, on the other hand, cases where the legislation makes that entitlement conditional on the completion of periods of employment or self-employment.<sup>5</sup> It is also relevant that Article 61 (2) of the Regulation limits the application of the aggregation rules to unemployed workers who have completed their most recent periods of insurance, employment or self-employment in the State where the benefit is claimed. A more detailed description of these derogations will follow below.

### **c. Article 61 (1) of Regulation 883/2004**

It follows from Article 61 (1) of Regulation 883/2004 that, in cases where the national legislation of the competent State makes the entitlement to benefits conditional upon periods of insurance, all periods of insurance, without any further examination of their nature, must be taken into account to assess entitlement to unemployment benefits in the competent State. This is irrespective of whether the periods were based on employment or self-employment, or whether these were other periods, such as periods of

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<sup>5</sup> According to Article 1 (t) of Regulation 883/2004, periods of insurance are periods of contribution, employment or self-employment defined or recognised as periods of insurance by the legislation under which they were completed or considered as completed, and all periods treated as such, where they are regarded by this legislation as equivalent to periods of insurance. Consequently, the term 'periods of insurance' must be understood as referring not only to periods in which contributions to an unemployment insurance scheme were paid; the term also refers to periods of employment or self-employment considered by the legislation under which they are completed as equivalent to periods of insurance.

Article 1 (u) of Regulation 883/2004 defines periods of employment or self-employment as periods so defined or recognised by the legislation under which they are completed, and all periods treated as such, where they are regarded by that legislation as equivalent to periods of employment or self-employment.

sickness, maternity, education or military service, as long as these periods are considered equal to insured periods under the legislation of the competent State.

Periods of employment or self-employment completed in other Member States which, according to the legislation of the competent State, are not regarded as equivalent to periods of insurance, can in several cases be left aside. This follows from Article 61 (1), second paragraph, which stipulates that periods of employment or self-employment completed under the legislation of another Member State shall be taken into account only if such periods would qualify as periods of insurance should they be completed in accordance with the applicable legislation.

If the legislation of the competent State makes the entitlement to unemployment benefits conditional upon the completion of periods of employment or self-employment, all periods of insurance, employment or self-employment which fall within the scope of the definition given in Article 1 (u) of Regulation 883/2004 are to be taken into account. Article 61 (1), second paragraph does not apply here, since this paragraph specifically relates to cases where the legislation of the competent State makes benefit entitlement subject to the completion of periods of insurance.

Article 61 of the Regulation may imply that periods of employment or self-employment completed in another State than the competent State, which under the legislation under which they were completed do not qualify for acquiring a right to receive benefits, can be relevant to a claim for an unemployment benefit in a State that requires periods of insurance, on the condition that these periods of employment or self-employment would be considered as periods of insurance, had they been completed in the competent State.<sup>6</sup> Hence, periods of insurance for a scheme for the self-employed can count as periods of insurance for a scheme of the employed and vice versa.

**d. Article 61 (2) of Regulation 883/2004**

Yet, there is one important restriction. Article 61 (2) of Regulation 883/2004 prescribes that, for the application of the aggregation rules, it is required that the claimant has most recently completed periods of insurance, employment or self-employment in accordance with the legislation under which the benefits are claimed. In other words, an unemployed person is, in principle, only entitled to unemployment benefits in the State on the territory of which he became unemployed, in accordance with the national legislation of that State.

Regulation 883/2004 does not specify when a period of insurance, employment or self-employment is considered completed. Nevertheless, it is clear that the restriction to periods 'most recently completed' in the competent State is to be interpreted in conjunction with Article 48 TFEU, which guarantees the protection of migrant workers' social security rights. In this respect, it should be noted that a migrant worker becomes subject to the legislation of a Member State as soon as he starts to work there. Hence, the aggregation rules of Article 61 become fully applicable as from that moment. Another interpretation would deprive migrant workers who become unemployed of any entitlement to unemployment benefits in the competent State, despite them having completed periods of insurance or self-employment in another Member State. Migrant workers would thus lose social security protection, which would be contrary to the purpose of Article 48 TFEU.

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<sup>6</sup> On this matter, see also the *Warmerdam* case: C-388/87 [1989] ECR 724.

## e. Practical issues

The competent institution is responsible for contacting the institutions of the Member States the legislation of which an unemployed migrant worker has been subject to in order to determine all periods completed under their legislation.<sup>7</sup>

PD U1 certifies periods of insurance, employment or self-employment completed by a worker in a Member State other than the competent State. This document is issued on request of the worker, by the institution of the State where these periods were completed. For the purpose of exchanging information between national institutions, also SED U 001 may be relevant to persons who resided in the competent State during their last activity as an employed or self-employed person. SED 004 may be relevant to persons who resided in a Member State other than the competent Member State during their last activity.<sup>8</sup>

## 2. Export of unemployment benefits

### a. Derogations

Article 64 of Regulation 883/2004 provides specific rules for the export of unemployment benefits. These rules deviate from the general principle of waiving residence conditions, enshrined in Article 7 of Regulation 883/2004, by limiting the possibility to receive unemployment benefits in another Member State to a period of three months. However, the competent institution may extend this period to a maximum of six months on request of the person concerned.<sup>9</sup>

As the competent institution is to provide the unemployment benefit at its own expense during the export period, Article 64 also contains specific rules to ensure compliance with the duty to actively seek employment. For example, benefit recipients are to timely register themselves with the employment services in the State where they are trying to find new employment. They also have to observe the conditions attached to the control procedure in that State. Moreover, they have to return to the competent State before the export period expires on penalty of losing all entitlement to unemployment benefits in the competent State.

In case 41/79, *Testa*, the CJEU ruled that these export rules must be interpreted uniformly in all Member States. The rationale behind this is, according to the CJEU, that Article 64 of Regulation 883/2004 does not simply seek to coordinate national social security legislation; it contains a body of independent rules which provide an exception to the national legal rules in favour of the workers. After all, the export rules offer them the possibility to seek employment in another Member State, which is an opportunity they otherwise may not have had. The CJEU also considered that the consequences of not returning in time are consistent with EU law, even though this may result in the worker losing rights acquired by virtue of the national legislation. An important factor in this respect is, according to the CJEU, that the workers are informed about the consequence of not returning in good time by means of an explanatory sheet (E 303/5) which is

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<sup>7</sup> Article 54 (1) of Regulation 987/2009 in conjunction with Article 12 (1) of Regulation 987/2009.

<sup>8</sup> See also in Annex II obstacle B14 identified by the Nordic expert group.

<sup>9</sup> In the Proposal for Simplification of Regulation 1408/71, the Commission proposed to extend the export period to six months. The Council did not accept this proposal mainly for fear of abuse and lack of control and, also, trust in the employment services in the 'search country'. Would they be motivated to support workers to find a job if they are not financially responsible for the payment of the unemployment benefit?

handed to them by the competent institution and written in their own language. Therefore, the worker can make the decision to use the export rules freely and with full knowledge of the consequences.<sup>10</sup>

#### **b. Extension**

Article 64 stipulates that the consequences of not returning in time apply, unless the provisions of the competent State are more favourable. Article 64 also stipulates that, in exceptional cases, the time limit for returning to the competent State may be extended by the competent institution on request of the unemployed person. In theory, this request can be granted as long as the extension does not expand the total duration of the benefit to which the person concerned would have been entitled if he had stayed in the competent State. The competent institutions have a broad discretion as to the application of this rule.<sup>11</sup> However, in exercising their discretionary power, they must comply with EU law and, more in particular, with the principle of proportionality which is a general principle of EU law. A correct application of this principle implies that the competent institution, in each individual case, is to take all relevant circumstances into consideration, such as the reasons for not returning in time, the seriousness of the consequences that arise from this delay and the chances of finding new employment, either in the competent State or in the State where the person went to look for work.

#### **c. Frontier workers**

Wholly unemployed frontier workers who receive benefits from the State of residence pursuant to Article 65 of the Regulation can invoke the export rules only in order to find new employment in a State which is not the State of last employment. Article 64 cannot be applied in situations where the worker, after having received unemployment benefits in the State of residence, decides to transfer his domicile to the State of last employment. This follows from Article 65, which stipulates that the State of residence is to pay the unemployment benefit of wholly unemployed frontier workers 'as if' this State were the State of last employment. If the worker, after having received unemployment benefits in the State of residence, decides to settle in the State of last employment, Article 65 ceases to apply. In that case, the State of last employment, as the competent State, will have to (re)assume its obligations that arise from Regulation 883/2004 with regard to unemployment benefits.<sup>12</sup>

#### **d. Practical issues**

Unemployed persons who decide to look for work in a Member State other than the competent State have to ask for a PD U2 before leaving the competent State. For the purpose of exchanging information between institutions, SED U 009 may be relevant. This document is to be provided to jobseekers in addition to the PD U2.<sup>13 14</sup>

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<sup>10</sup> See the *Testa* case, C-41/79 en C-121/79 [1980] ECR 1980 and 1981 and the *Rydergard* case, C-215/00 [2002] ECR I-1829.

<sup>11</sup> See for example the *Coccioli* case: C-139/78 [1979] ECR 991.

<sup>12</sup> See *Commission v the Netherlands*, C-311/01 [2003] ECR I-3103.

<sup>13</sup> See for further details Article 55 of Regulation 987/2009.

<sup>14</sup> See Annex II, obstacle B13 for administrative challenges in relation to frontier workers.

### 3. Specific rules for cross-border workers

#### a. Derogations

By way of derogation from the general rule laid down in Article 11 (3) (a) of Regulation 883/2004, Article 65 designates the legislation of the State of residence as applicable for the granting of unemployment benefits to wholly unemployed persons who, during their last activity as an employed or self-employed person, were not residing in the State of last activity. If that is the case, the State of residence is to award and to pay the unemployment benefit as if this State were the State of last activity. This basic rule applies even if the worker in question would be entitled to claim unemployment benefits under the national legislation of the State of last activity.<sup>15</sup>

The justification for this derogation is mainly based on social and practical considerations which are closely connected to the fact that receiving unemployment benefits goes hand in hand with the obligation to actively seek employment. Assuming that the correlative obligation to register with and to remain available to the employment services can be more easily fulfilled in the State of residence, the Community legislator chose to make an exception to the *lex loci laboris* principle for this particular group, thereby aiming to ensure that they receive unemployment benefits under the most favourable conditions for finding new employment.<sup>16</sup>

Accordingly, wholly unemployed frontier workers who, during their last employment, resided in another Member State than the competent State are to make themselves available to the employment services in the State of residence. As a supplementary step, they can also make themselves available to the employment services of the State in which they pursued their last activity as an employed or self-employed person. In that case they can try their chances of finding new employment in two countries at the same time. Yet, if they start job search activities in the State of last activity, they have to remain available for the labour market in the State of residence as well. So, the basic rule that this group is to fulfil job seeking activities in the State of residence does not change once the unemployed worker decides to make himself available to the employment services of the State of last activity.<sup>17</sup>

#### b. Case C-131/95, *Huijbrechts*

Article 65 of Regulation 883/2004 suggests that the State of residence is responsible for the payment of the unemployment benefit for as long as the conditions attached to it are met. This responsibility is based on a legal fiction: the State of residence is to pay for the benefit 'as if' it were the State of last employment. As long as this fiction applies, the State of last employment's obligations with regard to providing unemployment benefits are suspended. However, these obligations will 'revive' once the legal fiction ceases to apply. This will be the case when a wholly unemployed worker who receives an unemployment benefit in the State of residence decides to transfer his place of residence to the State of last activity. By doing so, one of the conditions attached to Article 65 of the Regulation, notably the condition of residing in the State of residence, is no longer met. Therefore, the worker will no longer fall within the scope of Article 65 of the Regulation. In case C-131/95, *Huijbrechts*,<sup>18</sup> the CJEU ruled that, in such a situation, the State of last activity is to (re)assume its obligations under the Regulation with regard to unemployment benefits. In consequence, this State will become the competent State and will therefore be responsible for the payment of the benefit.

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<sup>15</sup> See for this ruling the *Miethé* case, C-1/85 [1986] ECR 1837.

<sup>16</sup> See the *Miethé* case, C-1/85 [1986] ECR 1837 and the *De Laat* case, C-444/98 [2001] ECR I-229.

<sup>17</sup> See Article 65 (2) of Regulation 883/2004 in conjunction with Article 56 (2) of Regulation 987/2009.

<sup>18</sup> *Huijbrechts*, C-131/95 [1997] ECR I-1409.

It should be noted that such a switch in the applicable legislation can also take place when non-frontier workers are involved who do not reside in the State of last employment. Characteristic of this group is that they do not return to the State of residence at least once a week. Consequently, they do not fall under the definition of a frontier worker as laid down in Article 1 (f) of Regulation 883/2004. Often these non-frontier workers will have a place of stay in the State of activity, while keeping their place of residence in another State. In case of unemployment, Article 65 will apply to this group as long as the ties with the State of origin are strong enough to assume that the person concerned still 'habitually resides' in this State.<sup>19</sup> If the ties loosen and there are reasons to assume that the place of stay has become the place of residence or if the person concerned decided to reside in the State of last activity, one of the conditions for the application of Article 65 will no longer be fulfilled. As a result, the liability for payment of the benefit will switch from the State where the person concerned had his place of residence to the State of last employment. For the person concerned this implies that he or she has to apply for unemployment benefits there and also has to make himself available to the employment services in the State of last activity (Article 65 (2) of Regulation 883/2004).

### c. The place of residence

Given the decisive role of the place of residence for the application of Article 65 of Regulation 883/2004, it is useful to know the criteria used to determine where a person 'habitually resides'. In case 76/76, *Di Paolo*, the CJEU stated that as a rule a person, although employed in another Member State, is to be considered as a person who continues to 'habitually reside' in the State of residence if he or she retains close ties with this country and has his or her habitual centre of interest there.<sup>20</sup> To determine whether a person meets these criteria several factors may play a role, such as the duration and the durability of his or her residence before he or she moved to another Member State, the length and the purpose of his or her absence, the nature of the activities performed in another Member State and his or her intentions with regard to returning to the place of residence, as it appears from all circumstances.

It is primarily up to the competent institution to assess the factual circumstances of each individual case in order to determine whether or not a person has transferred his place of residence to the State of last employment. In doing so, the competent institution should keep in mind that the provisions of Article 65 are to be interpreted strictly. As the CJEU put it in case 76/76, *Di Paolo*:

The transfer of liability for payment of the unemployment benefits from the Member State of last employment to the Member State of residence is justified for certain categories of workers who retain close ties with the country where they have settled and habitually reside, but it would no longer be justified if, by an excessively wide interpretation of the concept of residence, the point were to be reached at which all migrant workers who pursue an activity in one Member State [...] were given the benefit of the exception [of the non-frontier workers rule]’.

A very important step was taken for establishing the residence of the person concerned with the adoption of Article 11 of Regulation 987/2009. Nevertheless, some problems remain not fully solved.

If institutions fail to establish a common agreement on a person's place of residence, Article 6 (1) of Regulation 987/2009 applies. Accordingly, the person concerned is to be made provisionally subject to the legislation of one of the Member States in accordance with the order of priority stipulated in Article 6 (1). Benefits may be provisionally granted on the basis of Article 6 (2) of Regulation 987/2009.

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<sup>19</sup> See Article 1 (j) of Regulation 883/2004 in which the place of residence is defined as the place where a person habitually resides.

<sup>20</sup> *Di Paolo* case, C-76/76 [1977] ECR 315.

#### **d. Reimbursement rules**

Regulation 883/2004 provides for specific reimbursement rules which seek to compensate the State of residence for its liability to pay unemployment benefits to frontier workers and non-frontier workers who did not reside in the State of last activity as an employed or unemployed person. Pursuant to Article 65 (5) of Regulation 883/2004, the State of residence is to bear the cost of the benefits provided to this group, although no contributions were paid for them in the State of residence. In addition, by virtue of Article 11 (3) (c) of Regulation 883/2004, the State of residence also has the responsibility for all other benefits, such as sickness and family benefits. In order to compensate this, Article 65 (6) of Regulation 883/2004 stipulates that the competent institution of the State to whose legislation the person was last subject has to reimburse the State of residence the full amount of benefits paid for the first three months. This period is extended for five months if the person concerned, during the preceding 24 months, completed periods of employment or self-employment of at least 12 months in the State of last employment (Article 65 (7) of Regulation 883/2004).

#### **e. Partially unemployed persons who do not reside in the State of employment**

For persons who are partially or intermittently unemployed, the Community legislator adhered to the *lex loci laboris* principle. This means that the State in which they pursue (d) their activity as an (partially) employed or self-employed person is the competent State, even if the worker resides in a State other than the competent State. Hence, a partially or intermittently unemployed person will receive unemployment benefits in the State where he last worked (and still works), as if he were residing in that State. In return, partially unemployed persons have to make themselves available to the employer or to employment services in the competent State.

The justification for this difference in treatment between wholly and partially unemployed persons who do not reside in the State of last employment is closely connected to the assumption that a worker who, in another State than the State of residence, remains employed, albeit part-time, and who is available for work on a full-time basis, will have better prospects of finding additional employment on terms and conditions compatible with his part-time job in the State of last employment. After all, in view of the closer ties with this State, it is more likely that such employment can be found there.

The CJEU formulated this rule in case C-444/98, *De Laat*.<sup>21</sup> It was later on refined by the Administrative Commission. Decision U3 of this Commission provides a definition of the term 'partial unemployment', which is lacking in the Regulation. It also identifies criteria for distinguishing 'partial unemployment' from full ('whole') unemployment. A decisive element in this respect is whether or not any contractual employment link exists or is maintained between the parties. If this is the case, the person is considered as partially unemployed, which implies that the State of employment has to pay the benefit. If there is no contractual link, the person is considered as wholly unemployed, which means that the State of residence is responsible for paying the benefit.<sup>22</sup>

#### **f. Article 65a of Regulation 883/2004**

On the basis of Regulation 465/2012, a new Article 65a has been inserted in Regulation 883/2004.<sup>23</sup> This provision seeks to ensure that wholly unemployed self-employed frontier workers who have lastly completed periods of insurance as a self-employed person or periods of self-employment recognised for the purpose of granting unemployment benefits in a Member State and who reside in another Member

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<sup>21</sup> *De Laat*, C-444/98 [2001] ECR I-2229.

<sup>22</sup> See Annex II, obstacle B15 for challenges in implementing Decision U3.

<sup>23</sup> Regulation 465/2012, OJ [2012] L/149/4.

State where no unemployment benefits system covering self-employed persons exists can nevertheless claim unemployment benefits.

The adoption of Article 65a was complicated. The Commission's proposal considered the State of last activity as the competent State. However, this proposal was not accepted by the Council, who opted for the following wording: 'a wholly unemployed person, who, as a frontier worker, has most recently completed periods of insurance as a self-employed person in a Member State other than the Member State of residence, and whose Member State of residence has issued a notification that there is no possibility for any category of self-employed persons to be covered by an unemployment benefit scheme of that Member State, shall register with and make him/herself available to the employment services of the State in which he/she pursued his/her last activity as a self-employed person and, when he/she applies for benefits, shall continuously adhere to the conditions laid down in the legislation of the latter Member State. However, the unemployed person may, as a supplementary step, make him/herself available to the employment services of the Member State of residence. Benefits shall be provided to the wholly unemployed person by the Member State to whose legislation he/she was last subject in accordance with the legislation which that Member State applies. If the wholly unemployed person does not wish to become or remain available to the employment services of the Member State of last activity, after having been registered there, and wishes to seek work in the Member State of residence, the provisions concerning the export of unemployment benefits can become applicable for a period of three months. The competent institution may extend this period to the end of the period of entitlement to benefits'.

The following consequences should be highlighted here:

If the State of residence does not acknowledge unemployment benefits for any category of self-employed persons, the Member State in which the person concerned pursued his or her last activity becomes competent for the granting of unemployment benefits when the person concerned is registered with its employment services (derogation from the principle that the State of residence is the competent State as laid down in Article 65 of Regulation 883/2004).

The export of benefits may be extended to the end of the period of the entitlement to benefits if the person concerned does not wish to become or remain available to the employment services of the State of last activity and wishes to seek employment in the State of residence which does not acknowledge unemployment benefits for any category of self-employed persons (derogation from Article 64, which stipulates a maximum of six months).

The State of residence has to award unemployment benefits to self-employed frontier workers if any category of self-employed persons is covered by its unemployment benefit system, although the worker concerned belongs to a category which is not covered by this system (an indirect consequence of Article 65a).

Taking account of the Administrative Commission's evaluation after the second year of the implementation of Article 65a, the European Commission might submit a proposal for amendments (revision clause).<sup>24</sup>

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<sup>24</sup> See Recital 6 of the Preamble to Regulation 465/2012, which refers to the experimental character of Article 65a.

## B. Challenges

### 1. Problems arising from the application of the aggregation rules

It has to be admitted that after so many years of application of Article 61 (or a similar provision since the special aggregation clause for unemployment benefits already existed in Regulation 3<sup>25</sup>), the answers to the questionnaire prepared for the A.C. by the Polish Presidency (see note 470/11) produce a disappointing result. In fact, the divergences in Member States' interpretations of Article 61 are remarkable. What is more, some of the responses are contrary to the Commission's position. For this reason, it is urgent to come to a uniform application of the aggregation principle.

#### a. Periods of (self-) employment to be taken into account

A major problem in the field of the application of the aggregation rules is that the interpretations of these rules differ significantly among the Member States' institutions. Especially in cases where the national legislation makes benefit entitlement conditional on the completion of periods of insurance, different approaches are taken with regard to periods of employment or self-employment, which under the legislation under which they were completed are not regarded as periods conferring entitlement to unemployment benefits.

Some institutions take the view that the Member State which actually grants the unemployment benefit with the help of Article 61 of the Regulation should not be obliged to take into account periods which would not qualify for benefit entitlement under the legislation of the State in which these periods were completed in cases where the period in question would have been considered as a period of insurance under the national legislation of the competent State. If the competent institution was obliged to take these periods into account, this would result in uninsured periods of employment or self-employment being upgraded and treated as periods of insurance to be taken into account for establishing the entitlement to unemployment benefits. This sort of upgrading would exceed the margins of coordination and conflicts with the general principle of aggregation. In the institutions' opinion, it is solely for the legislation under which the periods are completed to lay down whether periods of gainful activity afford coverage against the risk of unemployment. If this is not the case, the application of Article 61 of the Regulation by another Member State cannot result in benefit entitlement in the aggregating State.

As such, institutions that hold this view question the CJEU's ruling in case 388/87, *Warmerdam-Steggerda*.<sup>26</sup> In their opinion, this judgement seems to misinterpret the intention of the legislator. Moreover, it is the only judgement which invokes a very extensive interpretation of Article 67 of Regulation 1408/71 (i.e. Article 61 of Regulation 883/2004). Other settled and more recent case law seems to support the traditional interpretation of the aggregation principle. For these reasons, case 388/87, *Warmerdam-Steggerda* should, in their view be seen as a specific ruling for this particular case, rather than a general ruling on the interpretation of the aggregation principle.

Another argument that has been put forward is that social security provisions should reflect on the financial stability of social security schemes. Therefore, the benefits provided should, as a rule, be based on contributions and levies paid. When uninsured periods can lead to benefit entitlement, this rule is not respected. Institutions that follow this approach also claim (in favour of their position) that not taking into account uninsured periods completed in another State than the competent State puts migrant workers on the same footing as national workers of the State where the uninsured periods are completed. Hence, in their view this interpretation preserves the principle of equal treatment.

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<sup>25</sup> Official Journal of 16 December 1958.

<sup>26</sup> *Warmerdam*, C-388/87, [1989], ECR 724.

In order to ensure a uniform interpretation of the aggregation rules laid down in Article 61 of Regulation 883/2004, this issue should be clarified and a common approach reached.

#### **b. Periods to be taken into account with regard to voluntary schemes**

Under the existing EU legal framework, the question whether a person has or has not voluntarily insured him or herself is not a parameter when it comes to assessing the periods of employment or self-employment. The only parameter is the national legislation of the Member State granting the unemployment benefit. Some institutions argue that it is questionable whether case 388/87, *Warmerdam-Steggerda*, also applies if a person voluntarily did not insure him or herself. In their opinion, aggregation of those periods goes beyond the principles of coordination and the aim of Article 48 TFEU. After all, the purpose of coordination is for migrant workers not to lose their rights. However, if there was no right in the State of previous activity due to the free will of the person concerned why should rights then be created in the competent State?

It is against this backdrop that some institutions do not want to aggregate periods in which the person concerned did not take the opportunity to insure him or herself on a voluntary basis. Arguments in favour of this approach are that aggregation would in these cases lead to unfair situations and may also encourage frontier workers not to take out insurance voluntarily, knowing that they will be entitled to unemployment benefits in the home State. Institutions that follow this approach state that the situation in which a person chooses not to be insured differs from the situation in case 388/87, *Warmerdam-Steggerda*, where there was no possibility to be insured in the UK. Hence, they are of the opinion that, if such a possibility does exist, the CJEU's ruling in case 388/87, *Warmerdam-Steggerda*, does not apply. These institutions also fear that, if frontier workers are involved, the State of residence may not receive any reimbursement from the State of last activity under Article 65 (6) and (7) of Regulation 883/2004, because no insured periods were completed there.

In summary, there are a number of controversial issues here: the application of case 388/87, *Warmerdam-Steggerda*, voluntary versus compulsory insurance, justifiable or unjustifiable advantages and the effect and value of 'periods of employment' when in the Member State in which they were completed periods of insurance are required for the entitlement of benefits. Nevertheless, the key point, at the last stage, is the consideration of these periods by the Member State in which they were completed. Maybe this is the main point to be discussed and not so much whether the competent Member State has to aggregate them. This will be the second stage, which has more to do with the assimilation principle. In order to ensure a uniform interpretation of the aggregation rules laid down in Article 61 of Regulation 883/2004, this issue should be clarified and a common approach should be reached as well.

#### **c. Practical problems**

As Member States take different approaches towards the application of Article 61 of Regulation 883/2004, confusion may arise as to the periods to be filled in on the PD U1 and the SEDs. Whereas some institutions fill in all periods, others only include periods that qualify for benefit entitlement based on the argument that, otherwise, periods that cannot lead to an unemployment benefit in the State where the periods were completed have to be taken into account by the competent State which is to pay for the benefit.

The institutions are also experiencing problems because sometimes wrong SEDs are used. It is also possible that SEDs contain incorrect information or do not contain information on the nature of the employment, or that the recipient cannot be identified. Moreover, some institutions refuse to deliver the PD U1. It is also quite common that institutions must wait for months for the PD U1 or the SEDs. In practice, these issues are considered major challenges.

## **2. Problems arising from the application of the export rules**

### **a. Extension of the export period**

A major challenge concerning the application of the export rules is that they are not applied uniformly across the EU. While in the majority of the Member States, the extension of the export period is possible up to a maximum of six months, there are considerable differences when it comes to the criteria which the Member States use to grant the extension. While some Member States developed their own criteria, others assess the possibility to grant an extension for each individual case on the basis of the reasons mentioned in the request. Furthermore, there are also Member States in which extension of the export period is exceptional and a number of Member States do not prolong the export period at all. Only one Member State, viz the Czech Republic, issues the PD U2 for six months directly from the beginning of the export period without requiring the jobseeker to make a further request.

The main reasons for not granting an extension of the export period vary as well. Sometimes, criteria to grant an extension are non-existent or an extension is refused because the national legislation does not provide for the possibility to extend the export period. Furthermore, before granting an extension, institutions may require proof that there are no job opportunities in the home country or that the person concerned has intensively looked for employment in the competent State. Certain institutions ask unemployed persons to prove that they are likely to find a job abroad during the extended period. Others tend to adopt a more lenient approach, for example by extending the export period for another three months if the person in question did not find a job during the first three months and fulfils all the obligations and duties as a jobseeker. Another possibility is that a request for extension is granted if the persons concerned can prove that illness, or another case of force majeure, prevent them from returning in good time or that they have a partner or a family in the Member State where they were trying to find new employment.

Other issues need to be clarified as well. For example, if the person concerned appeals against a negative decision on the extension of the export period, it is not clear whether he or she should return to the competent State before the appeal is investigated. Neither is it clear what should happen if the person concerned does not return and the appeal was decided upon in favour of the jobseeker.

### **b. Practical problems**

Practice shows that the application of Article 64 may give rise to a number of practical problems. For example, it is at times difficult to acquire the required information in time. Institutions tend to regard these delays as a major challenge. It is also problematic that many institutions insist on receiving a confirmation of the jobseeker's registration with the employment services in another Member State. Only after this confirmation, the benefit will be paid. Furthermore, experience shows that jobseekers may also encounter difficulties to register with the employment services in another Member State. There are also differences with regard to the monthly follow-up information. For example, some institutions are keen on receiving this information, whereas others rely on the duty of the person concerned to inform them about his or her job search activities.

A uniform approach is also lacking concerning the use of the PD U2 and SED U009. Some institutions do not issue these documents, whilst others do not recognise them. Another source of problems is that some institutions still use E 303 forms without any reference to the new Regulations. In these cases it may be difficult to know under what regime the benefits should be provided. Besides, the fact that E 303 forms cannot be used may pose problems if the institution wishes to receive monthly information on the jobseeker's situation. Furthermore, the practice of issuing SED U 009 in addition to PD U2 tends to create

confusion. On top of that, it does not seem to be feasible to require each country to provide a separate letter accompanying the U2 form.

All in all, there does not seem to be a common practice as to complying with the common rules for the export of unemployment benefits. In consequence, unemployed persons who use the opportunity to look for work in another Member State may not be properly informed on and therefore not aware of their obligations. They thus risk losing their entitlement to unemployment benefits because they are not familiar with conditions attached to the right to retain these benefits during their job search abroad. For example, an unemployed person leaves the competent State without having registered with its employment services and registers too late with the employment services in the country where he or she seeks employment or returns after the export period has expired. This person may in consequence not have access to his or her benefits, which is not in line with the aim of the export rules laid down in Article 64 of Regulation 883/2004.

Another possible source of difficulties are situations where an unemployed person accepts a part-time job in another Member State during the export period. According to the rules on determining the applicable legislation this may imply that the worker will become subject to the legislation of the Member State where he pursues his or her part-time job.<sup>27</sup> Even though recommendation U1 seeks to ensure that in such case the worker remains subject to the legislation of the State paying for the unemployment benefit, this may not suffice to prevent a switch in the applicable legislation. Problems may also arise when the employer refuses to pay contributions in the State which pays the benefit. At the end of the day, this sort of problems can constitute a barrier to the exercise of the right to move freely within the EU. Therefore, they need to be solved somehow.

### **3. *Problems arising from the application of the coordination rules for cross-border workers***

#### **a. Determining the applicable legislation**

The complexity of the legal framework which has been developed for the granting of unemployment benefits with regard to cross-border workers in turn complicates a correct application of these rules in various ways. For example, a problem may lie in the fact that the applicable legislation for the granting of unemployment benefits varies depending on whether the person concerned is wholly or partially unemployed. Regulation 883/2004 does not define these concepts. Decision U3 of the Administrative Commission nevertheless fills this lacuna by providing criteria on the basis of which institutions can determine when a person is to be regarded as a partially or as a wholly unemployed person. Yet, the interpretation of these criteria may still present problems.

The main cause of this is the contractual link required by Decision U3 between the parties, suggesting a contractual link between the employer of the lost job and the employee. In practice, the effect may be that an application for an unemployment benefit is not granted by the competent institution of the State of last employment because, according to this institution, there no longer is a contractual link between the person concerned and his last employer. Consequently, he or she is to be regarded as wholly unemployed and should therefore apply for an unemployment benefit in the State of residence. The competent institution in that State, however, may interpret the facts from a broader perspective and take the view that there still is a contractual link, so that the person concerned should apply for his unemployment benefit in the State of last employment. The unemployed person may thus fall between two stools. The purpose of promoting the freedom of movement by protecting migrant workers is not served properly this way.

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<sup>27</sup> Article 11 (2) in conjunction with Article 13 (1) (b) of Regulation 883/2004 and Article 14 of Regulation 987/2009.

Difficulties in determining the applicable legislation may also crop up when it is not clear where a cross-border worker resides. Clarity on this matter is essential since the place of residence is a crucial factor in the application of Article 65 of Regulation 883/2004. Despite the criteria developed by the CJEU and the checklist provided for in Article 11 of Regulation 987/2009, experience shows that, especially in more complex situations, it is not always easy to determine where a person 'habitually resides' and where his or her 'habitual centre of interest' is situated. As this has to be determined based on an assessment of the factual circumstances, it is quite possible that national institutions come to different conclusions. As such, this may give rise to disagreements between Member States which, in turn, may cause legal uncertainty for the person concerned. After all, without an agreement on the place of residence, the applicable rules for the provision of benefits cannot be determined.

**b. A switch in the applicable legislation**

Once a person is qualified as a wholly unemployed frontier worker or a non-frontier worker who continues to habitually reside in the State of residence, other complications may surface. For example, in such case Article 65 applies, which implies that the State of residence will be the competent State for the provision of social security benefits. For the person concerned this means that he or she is, all of a sudden, confronted with a switch of the applicable social security regime. As the State of residence has exclusive competence for the granting of benefits, the person concerned will not only receive his or her unemployment benefit from the State of residence, but also his or her sickness and maternity benefits, his or her family benefits. The State of residence is, in other words, responsible for the payment of the whole package.

As the benefits and pensions are to be awarded in compliance with the conditions and the level defined in the legislation of the State of residence, this rule may give rise to disputes, especially when applying the legislation of the State of last employment would have resulted in a more favourable outcome for the person concerned and/or his or her family members. It goes without saying that the general rule, which says that a wholly unemployed frontier worker receives his or her benefits solely from the State of residence, is also far from attractive to this State, as the contributions for the benefits are paid in the State of last employment. True, the reimbursement rules of Article 65 (6) and (7) are to bring some financial relief. However, these rules do not take away the possible disadvantages with which wholly unemployed cross-border workers may be confronted due to the application of Article 65 of Regulation 883/2004.

It is of course so that Article 65 of the Regulation only applies as long as the conditions attached to it are met. If this is no longer the case, there will be a switch in the applicable legislation. Such a switch may occur if a wholly unemployed person takes up a part-time job in another Member State or when a non-frontier worker no longer habitually resides in the State of residence. It follows from the CJEU's ruling in case C-131/95, *Huijbrechts*,<sup>28</sup> that a switch in the applicable legislation may also be at stake if a wholly unemployed cross-border worker, while receiving unemployment benefit from the State of residence, decides to transfer his place of residence to the State of last employment. According to the CJEU, the latter State then has to (re)assume its obligations under the Regulation with regard to the granting of unemployment benefits, always on condition that the person concerned changes his or her residence.

**c. Diverging opinions on the application of case C-131/95, *Huijbrechts***

After the entry into force of Regulation 883/2004, national institutions developed diverging opinions on the question whether or not case C-131/95, *Huijbrechts*, still applies under Regulation 883/2004. Some institutions answer this question in the affirmative, whereas other institutions have an opposite opinion. As a result, unemployed persons who exercise their right to move freely within the EU may be confronted with difficulties in having access to unemployment benefits. In turn, this may constitute a barrier to their right to

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<sup>28</sup> *Huijbrechts*, C-131/95 [1997] ECR I-1409.

move freely within the EU. Eventually, it may be up to the CJEU to decide to what extent such a barrier can be objectively justified and thus whether this is compatible with EU law.

#### **d. Diverging opinions on the application of case 1/85, *Miethe***

Another great variation exists in the institutions' approaches towards the application of case 1/85, *Miethe*.<sup>29</sup> Some institutions take the view that case 1/85, *Miethe* no longer applies under Regulation 883/2004, whereas other institutions are of the opinion that this case can still be applicable under Regulation 883/2004. The CJEU has been asked for a preliminary ruling in order to gain clarity on this matter (case C-443/11, *Jeltes*).<sup>30</sup> It will be interesting to learn how the CJEU deals with this case, especially since some Member States wish the aforementioned preliminary ruling to be expressly included into Regulation.

#### **e. Reimbursement**

The price paid for the adoption of Article 65 of Regulation 883/2004 with the preservation of the residence State as the competent State was the inclusion of paragraphs 6 and 7, which impose some financial obligations on the State of last employment or last activity. At the same time the State of residence maintains the competence for these cases. The application of these new provisions creates considerable difficulties and shortcomings, not only for the creditor State (State of Residence), but also for the institutions of the debtor State (State of last activity). Some examples of the problems that the institutions of the Member States are facing could be presented here:

- The State of last employment or last activity may be obliged to reimburse some amounts although the person concerned would not have been entitled to benefits under its legislation. The application of a foreign legislation is binding, which may in principle collide with the apparent neutrality of the coordination provisions.
- The State of residence ameliorates its situation with respect to the provisions of Article 71 of Regulation 1408/71, but in many cases the reimbursements do not fully cover (3 to 5 months) the cost of the unemployment or other benefits awarded.
- The amounts reimbursed may not be proportional to the periods completed in the Member State of last employment or last activity. No minimal period of insurance is required for the start of the obligation; an insurance period of only one day may suffice.
- The State of residence is obliged to be in a position of creditor and needs to require the correspondent reimbursement from the debtor.
- The maximum amount provided in paragraph 6 can be a theoretical amount, taking into account that the real amount payable by the State of last employment or last activity could amount to zero. Member States frequently disagree on this maximum amount.
- The administrative procedure is very complicated and burdensome. Delays of reimbursement are common and frequent. For the State of residence, there always is the uncertainty whether and when it will receive the reimbursement. This objection weighs most heavily against the reimbursement approach.

Decision U4 was a good step towards a joint interpretation of the reimbursements. However, some Member States have declared that they may not follow this Decision, which implies an additional problem. Practice shows that there is also uncertainty as to how to handle claims for reimbursement. In general, institutions seem to lack the experience to properly assess reimbursement claims. Especially the third sentence of Article 65 (6) of Regulation 883/2004 appears to be problematic. Moreover, it is not always

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<sup>29</sup> *Miethe*, C-1/85 [1986] ECR 1837.

<sup>30</sup> *Jeltes*, C-433/11, pending.

clear to which institution the reimbursement queries should be sent, despite the Master Directory. Problems may also arise when different currencies are used. It is not always clear what rate of conversion should be chosen.

**f. Possible problems with regard to the application of Article 65a of Regulation 883/2004**

The application of Article 65a may cause various problems. It is not possible at this stage to evaluate the effects or impact of the new Article 65a. In fact the answers of the questionnaire sent to the national experts do not provide much information about the practical problems of the implementation of the new provision. It is to be admitted that few cases are envisaged. Maybe the main problem will be to check the notifications of the Member States declaring that the condition of the non-existence of any category of self-employed worker to be covered for unemployment benefits is fulfilled. Consequently, a strict supervision by the Commission will be demanded, taking into account that the State of last activity in which the person concerned completed periods of insurance can be considered as competent depending on the 'notification' of the State of residence. A controversial interpretation of the meaning 'no possibility for any category of self-employed persons to be covered ...' is always possible. An example may clarify this problematic issue. The concept of unemployment benefits is very large and not limited to the pure social security cash benefits. Some Member States may report that they do not have any scheme and at the same time they can inform that the persons concerned may be entitled to labour market services, orientation, vocational training, social assistance benefits or cash allowances even if no separate scheme exists for the self-employed. The option of a simple notification does not seem valid taking into account the effects of this notification. A decision of the Administrative Commission may be needed to have any legal certainty.

From another point of view, the proposal of the Commission and the solution adopted by the Council and the Parliament has very positives aspects, which may not be what the legislator wants directly. For example:

- it breaks with the principle that the State of residence is always competent in cases of frontier workers;
- it makes export possible (albeit atypical export only to the State of residence in case of application of paragraph 3, but at least export) to the end of the period of the entitlement to benefit;
- it indirectly extends the scope of the *Miethé* case and gives the unemployed person the chance to choose the most convenient Member State (State of residence or State of last activity) for his or her interest.

With the new Article 65a some taboos are broken and new possibilities are opened. Moreover, the principles of the unemployment chapter of Regulation 883/2004 are weakened and an important precedent is established. It is therefore not surprising that the multiple statements of the Council include in particular those that demand the full compliance with the *lex loci laboris* principle. In fact, where the unemployment chapter of Regulation 883/2004 deviates slightly from the principle of '*lex residentiae*' (Article 71 of Regulation 1408/71), the new Article 65a introduces an exception to the exception. As such, this seems to facilitate an evolution towards considering the State of last activity as the competent State, taking into account especially that unanimity is no longer needed.

However, the application and future possible revision of Article 65a will not be simple. Some problems were mentioned already above. But, unfortunately we envisage more. For example:

Article 65a implies indirectly that the State of residence becomes competent, through the application of Article 65, although for the category of self-employed workers to which the person concerned belongs, no unemployment benefits are granted if such benefits are acknowledged for another category of self-employed workers in this Member State. Which national provisions will be applicable? An assimilation will

need to be made in case multiple schemes exist. Which principles will then be applicable for such assimilation? The most favourable scheme? The one applicable to the most similar category of workers? And which national institution will be competent if the institution which manages the scheme (for instance, a self-employed agricultural fund) does not award unemployed benefits? Which funds will it use if in the budget this budget item does not exist? Or in case, as in Spain, the self-employed may choose the coverage of unemployment benefits among different institutions (public or semi-public), will this option be maintained for somebody that was never affiliated to the institution concerned?

In short, it is true that Article 65a does not imply a harmonisation, but it has to be admitted that it is not totally neutral for the national legislations and administrations.

Article 65a opens the possibility of export of benefits until the end of the period of entitlement to benefits if the person concerned decides not to be available in the State of last activity. This is in contrast with Article 64, which provides a maximum of six months. When Article 65a is to be applied, (if the person concerned decides not to be available in the State of last activity), the barrier of six months is broken and some workers will require equal treatment although the situation may be quite different.

Summarising, the effort of Council and Parliament to achieve a compromise with the adoption of Article 65a has to be recognised. However, from the legal point of view, Pandora's box may have been opened and the solution is not to fill the cracks, but to construct a brand-new building. It has to be admitted that the original proposal of the Commission (the State of last activity remains competent) was more revolutionary, more coherent and more respectful towards the general principles of Regulation 883/2004. So, the attempt was good, but the final result is doubtful. Or maybe not, because it also gives a boost to a reflection on the whole unemployment chapter.

Practical issues may arise in connection with the new reimbursement rules laid down in Article 65 (6) and (7) of Regulation 883/2004. We refer for examples of the problems that can arise when applying these rules to paragraph B.3.e. Experience shows that practical problems may also crop up when an unemployed person who is receiving benefits in the State of residence accepts a job in another Member State. Even though recommendation U1 seeks to ensure that, in such a situation, the worker remains subject to the legislation of the State of residence, this may not suffice to prevent a switch in the applicable legislation. It is also not clear how to handle situations where the employer refuses to pay contributions in the State of residence.

#### **4. *Problems arising in relation to the calculation of benefits***

Article 62 (1) of the Regulation stipulates that the competent institution of a Member State the legislation of which provides that the calculation of benefits is to be based on the amount of the previous salary, shall take into account exclusively the salary received by the person concerned in respect of his or her last activity as an employed or self-employed person in the territory of that State. In practice, some Member States question this principle. They are of the opinion that, if a person has been employed in Member State A on the basis of a rather low salary and subsequently takes up a job in Member State B in which the salary level is relatively high, the unemployment benefit should be calculated on the basis of the average amount of the salaries which the person concerned received in both countries. In these cases, it may be helpful to alert the Member State who takes this view to the ruling of the CJEU in the Case 67/79 *Fellinger*.<sup>31</sup> In this case the CJEU underlined that Article 68 of Regulation 1408/71 (Article 62 of Regulation 883/2004) is part of the common provisions of the unemployment chapter and that this provision therefore has a general scope. For this reason, if the competent institution is subject to legislation which stipulates that the

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<sup>31</sup> *Fellinger*, C-67/79 [1980] ECR 535.

calculation of benefits is to be based on the amount of the previous salary, this institution, when calculating these benefits, has to take the salary into account which the worker actually received with respect to his or her last employment in the Member State where he or she was employed immediately prior to becoming unemployed. This provision reflects the requirements of freedom of movement of workers<sup>32</sup> and is in line with the principle of equal treatment laid down in Articles 45 to 48 TFEU.

Concerning frontier workers, it will be clear that the application of Article 62 (3) may cause problems when self-employed workers are involved who do not receive a salary but who are often subject to complicated systems for the calculation of their income. In regard to employed workers, some Member States complain about Article 62 (3) when the salaries in these States are lower than in the State of last activity. Consequent to the application of this provision, they have to pay higher benefits, which implies an economically heavy charge.

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<sup>32</sup> Point 8 of the *Fellingner* judgement.

## **PART II**

### **PROPOSALS**

#### **INTRODUCTION**

In Part I we discussed the present state of the coordination of unemployment benefits in Chapter 6 and the challenges resulting from it. With reference to this part, we will in Part II present proposals for two central elements of coordination of unemployment benefits: the determination of the competent State (Proposal I, under A.) and the framework of the export of benefits (Proposal II, under B.). Finally, under C, we will suggest some changes to the current provisions, stressing in particular the third main challenge detected: the aggregation of periods. However, we consider the proposal under A the most realistic and feasible.

The proposals presented under A, B, and C are independent. However, many of the proposals and sub-proposals are compatible and, if needed, can be mixed.

When developing our proposals, our intention was to strike a balance between the interests of the unemployed persons (optimal conditions for searching a new job) and the interests of the national employment services (smooth administrative procedures, avoidance of disputes). Likewise the interests of the Member States concerned had to be taken into consideration (fair distribution of the financial burden). The CJEU case law was an important source for the interpretation of the existing rules and the development of the reform proposals.

#### **A. Proposal I: The determination of the competent State**

We propose that the competence to provide unemployment benefits exclusively lies with the institutions of the State of last (self-)employment.

##### **1. Problem identification**

In Part I (see A., pages 6 et seq) we have outlined the basic rules determining the competent State (referring to Article 11 (3) (a) and Article 65) and their inner logic. On the basis of this outline we have identified many shortcomings and disadvantages of the existing rules. We have also underlined the particular nature of unemployment benefits, which differ from other cash benefits due to their assistance/availability nexus and, as a consequence, need specific coordination instruments. It was our intention to conceive our proposal by trying to overcome these disadvantages, but, nevertheless, by preserving the values inherent to the current law.

##### **2. Contents and effects of the Proposal**

Against this background, we should now study the possible effects if we determined the Member State of last (self-)employment as the exclusively competent State. Obviously, for most cases nothing would change. The problem area is – of course – the group of unemployed persons who presently fall under Article 65. Let us first look at the frontier worker in the sense of Article 1 (f), who according to the new regime is connected to the State of last (self-)employment.

That this connection is a sound solution is already envisaged in the existing legislation, although on an optional basis. Pursuant to Article 65 (2), second sentence a frontier worker may make him or herself available to the employment services of the Member State in which he or she pursued his or her last (self-) employment. This means that the legislator is in itself not opposed to this possibility. The next step is to give this idea a twist and to make availability obligatory.

The first and most important question is whether this obligation could be considered against the interests of the person affected. In our opinion, it cannot. The person worked in this Member State (of (self-) employment or activity) and this shows his or her willingness to be part of this Member State's labour market. Moreover, in principle, the geographical distance did not play a decisive role for him or her. Presumably this will consequently not be a hindrance to look for a job in this State. Nothing speaks against it that the search for a new job primarily starts in this State. In addition, after one month of availability, the person can turn his or her search for a new job to the country of residence or another Member State. This search can be extended up to six months. Furthermore, Article 64 (1) (a) and (b) provide for flexible solutions. The competent services may authorise an earlier departure (before four weeks have passed) or may extend the period. If the unemployed is not successful within this time frame the presumption which now underpins Article 65 (1), pursuant to which the State of residence is best suited to finding a new job, is rebutted.

Generally speaking, the model proposed here accommodates the interests of the State of last activity (payment of benefits due to contributions received), the interests of the State of residence (freedom from payment without contributions) and the interests of the insured person (having good opportunities to find a new job). All the disadvantages that result from the present state of law would be eliminated, including the problems with the identification of the atypical frontier worker (*Miethe* case).

Let us now consider the second group under Article 65 (unemployed persons other than frontier workers). Most arguments that refer to frontier workers may be valid for this group as well. Certain persons, other than frontier workers, are already under current law obliged to make themselves available to the employment services in the Member State the legislation of which they were last subject to. This is the case when they do not return to their Member State of residence (Article 65 (2), last sentence). As far as the remainder of this group is concerned, in view of the bond which was established with the State mentioned before due to their (self-)employment there, they may reasonably be expected to remain under the control of this Member State's insurance body. Since such persons who are not frontier workers usually have an abode in this country, they can perform their availability. After a four weeks' stay, these persons can make use of the arrangements which Article 64 provides for. This scheme is not that much different from what is presently provided for in Article 65 (5) (b).

An additional remark seems necessary. Compared to Article 71 of Regulation 1408/71, Article 65 of Regulation 883/2004 has paved the way, though not entirely, for what we could call a double track system of availability. The modifications in Article 65 vis-à-vis Article 71 of Regulation 1408/71 show that the European legislator tends to support availability in both Member States. The Regulation is in favour of a certain degree of flexibility which the person affected can make use of. The same is true for the model proposed here, but it realises this flexibility in a different way than the present model, which entrusts the frontier/non-frontier workers to the State of residence. The future model would build on the State of last (self-)employment as far as the delivery of the unemployment benefits is concerned. At the same time, it does not neglect the problem of assistance/availability. On the contrary, it opens up the possibility for flexibility in the search process, which the unemployed can make use of.

This way, this model entirely concords with the approach pursued in Article 61 (2) and Article 64. We recall what the CJEU stated about these provisions (and the previous ones respectively): 'As regards the entitlement to unemployment benefits of workers seeking employment in a Member State other than that

in which they last worked or paid contributions, the Council considered it necessary that such entitlement should be subject to conditions designed to encourage such persons to seek work in the Member State in which they were last employed, to make that State bear the burden of providing the unemployment benefits, and, finally, to ensure that those benefits are granted only to those actually seeking employment. In attaching such conditions to Article 67(3) and Article 69(1) of Regulation No 1408/71, the Council made proper use of its discretion.’

Furthermore, the reform proposal in principle preserves the aims which are inherent in the present version of Article 65 (best search conditions). With its mix of compulsory and optional elements regarding availability, it serves the purpose to offer a basis for a successful re-entry into one of the labour markets. At the same time, it resolves the ambiguity of the current Regulation as regards the definition of the competent State (especially the problem of habitual residence). In this context, reference has to be made to the consistent CJEU case law, which holds that Article 71 of Regulation 1408/71 (now Article 65) does not affect the principle that the competent State is the State where the person was last employed (see the *Cochet* case).<sup>33</sup> To justify this statement the CJEU builds upon the wording of Article 71 (1) (a) (ii) of Regulation 1408/71 (now Article 65 (5) (a)), pursuant to which the Member State in whose territory a frontier worker resides is responsible for paying those benefits as though it were the State where he was last employed. The CJEU qualifies this provision as a ‘legal fiction (which) suspends the obligations of the State where the unemployed person was last employed for so long as he continues to reside in another Member State, but does not have the effect of extinguishing them’.

The competence rule advocated here obviates this legal conundrum without destroying the substance and the aims of the present law (Article 65). The State of last (self-)employment never loses its competence, but it may share its assistance/availability requirements with the State of residence as described above.

Our proposal would replace specific competence rules like those in Article 65 and Article 65a without destroying the aims inherent in these provisions. As our analysis above has shown the reform proposal is not a break with, but smoothly fits into the existing architecture of Chapter 6 and its value system. This is also true for the recently introduced Article 65a, which deals with self-employed frontier workers. This provision expresses its confidence in the State of the last self-employment and builds on the double track system of availability/assistance. In addition, we strongly believe that with a shift to exclusive competence of the State of last (self-)employment the aims pursued by Chapter 6 are better served (for details see below, 3.).

### **3. *The added value of the proposal***

Our proposal would render Articles 65 and 65a redundant and all the problems linked to these provisions would disappear. We can identify favourable consequences both for the employment services involved and the unemployed persons affected. As far as the former are concerned they are no longer confronted with the difficult application of Article 65, in particular the interpretation of the terms frontier worker, person other than frontier worker and the atypical frontier worker and the wholly or partially unemployed persons as well. Disputes in this area between the employment services and the unemployed persons can be avoided. Although preliminary rulings before the CJEU are only the tip of the iceberg, the numerous judgements of the CJEU testify to the many controversies in the application of the norm in question. And, we should not forget the disputes between the employment services of different Member States which would no longer arise. In addition, the administrative workload was recently increased by the introduction of reimbursement mechanisms in Article 65, which in the future would become superfluous. The realisation of our proposal would lead to an enormous amount of reduction of the administrative workload and, as a

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<sup>33</sup> *Cochet*, C-145/84 [1985] ECR 801, paragraph 15.

consequence, to quicker decision-making. Its contribution to cost-effectiveness in handling the awarding of unemployment benefits is out of question.

With respect to the unemployed persons, they have clear guidance about what the competent institution is. Moreover, they do not lose the existing possibility to address to employment services of the competent State and of the State of residence as well. Perhaps they lose the possibility to cherry-picking, but this possibility is not worth protecting.

We do not see any significant disadvantage of our proposal, neither for the employment services nor for the unemployed persons. On the contrary, we believe to have shown that our proposal is based on sound risk allocation and a sound distribution of costs from which all parties involved would benefit. We of course understand that more control may be needed to avoid fraud and abuse, but this requirement (control) can be considered, as a matter of fact, as a horizontal issue.

### **ADVANTAGES OF THIS PROPOSAL**

For the person concerned	For the institutions	For the Regulations
<p>Enhancement of a more mobile European labour market;</p> <p>More legal certainty;</p> <p>Strengthening of the individuals rights;</p> <p>A better knowledge of the unemployment insurance system of affiliation;</p> <p>A better correspondence of the level of the benefits to the earning level of the person concerned;</p> <p>A link between benefits and contributions;</p> <p>No loss of rights based on collective agreements, redundancy schemes or other special arrangements;</p> <p>A simplification of the coordination in situations of partial or full incapacity for work when the unemployed person</p>	<p>A solution for the main problems of financial unbalance among Member States;</p> <p>More legal certainty;</p> <p>A lower administrative burden and a better cost-effectiveness;</p> <p>No need to define whether a person is wholly, partially or intermittently unemployed;</p> <p>No need to define whether a person is a frontier worker (or an atypical frontier worker);</p> <p>No need to define the Member State of residence;</p> <p>The laborious procedures for reimbursements could be taken out;</p> <p>No need to coordinate two (in many cases) very different types of unemployment systems;</p> <p>No 'fight' with the administration in the Member State of residence (today it is</p>	<p>A major simplification; some articles could be deleted (Article 65a for instance) or strongly reduced (Article 65); no different provisions for partial, intermittent or whole unemployment;</p> <p>Strengthening of the basic principles of the Regulations.</p>

<p>resides in another Member State than the competent one.</p>	<p>often so that the unemployment authorities in the Member State of residence do not recognise cross-border workers as persons who would have the right to unemployment benefits in a particular unemployment fund as they did not pay contributions or have not been a member of that fund);</p> <p>No 'fight' with the administration of the Member State of last employment or activity which in some cases pretends that workers other than frontier workers are obliged to return to their State of residence to receive unemployment benefits;</p> <p>Less disputes and disagreements between Member States, no delays, an acceleration of decisions;</p> <p>A minimisation of the possibility to opt for the most lucrative legislation applicable (in practice, Article 65 creates this possibility as it is quite difficult to determine in which country the person concerned resides).</p>	
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## B. Proposal II: A change of the rules on the export of unemployment benefits

We have shown (see Part I, B.2 above) that a major challenge concerning the application of the export rules is that they are not applied uniformly across the EU. The question is how to deal with the different approaches. On the one hand, one could argue that the decision to extend the export period lies within the discretion of the competent institution. On the other hand, it should be kept in mind that the interpretation of the export rules by the national institutions should be consistent with EU law. Accordingly, national institutions should take account of the principle of proportionality (not arbitrarily) when they exercise their discretionary powers. This implies that the competent institution has to take into consideration all relevant circumstances when making decisions on granting an extension of the export period. Providing clear guidance on a correct application of the principle of proportionality when applying the export rules could be helpful to attain more uniformity in the interpretation of this particular export rule. In any case, it would seem necessary to make clear that a strict interpretation of the export rules, resulting in a more or less 'automatic' denial to prolong the export period, conflicts with the principle of proportionality.

To remedy the existing inconsistencies and difficulties in the management of the export of unemployment benefits we propose a change of Article 64 and offer three alternatives which provide for a soft change

(first alternative, under 1.), a more intense change (second alternative, under 2.) or a more far-reaching change (third alternative, under 3.).

### **1. First alternative: Strengthening of the procedural position of the unemployed person**

If Member States wish to keep to the existing scheme under Article 64 (1) (c), i.e. to decide about the extension of the period up to six months on an individual basis, the procedural position of the unemployed person should be strengthened. Along the regulatory technique used in the health care chapter in Article 20 (2), a provision should be added to the existing Article 64 (1) (c), pursuant to which the extension up to six months shall be accorded if the person concerned is seen fit for a job search abroad of this length, taking into account among others his or her professional qualifications for the employment in the foreign country. As an alternative, or in addition, the specification of the criteria could be carried out in a Decision of the Administrative Commission thus providing for a wider set of criteria such as labour market conditions, family aspects, the length of the period of unemployment in the competent State, etc.

This alternative keeps the substance of Article 64 as it is. A minor amendment takes place in order to guarantee a transparent decision-making by the competent employment service. It does not enhance additional costs for the employment services.

### **2. Second alternative: Extension of the search period abroad up to six month without discretion**

To the alternative under 1, we prefer a proposal which better answers to the aforementioned challenges. The time limit of six months, presently provided for in Article 64 (1) (c) on a discretionary basis, should become the generally applicable time frame. This way, coordination law would follow the model which the CJEU laid down in case C-292/89, *Antonissen*.<sup>34</sup> Here, the CJEU saw a period of six months appropriate for job search for reasons of freedom of movement. To anticipate possible objections by Member States a provision against abuse of this right could be inserted into Article 64 (1) (c), giving the competent institution the power to shorten the period of six months up to three months if there is evidence that the unemployed person is not expected to seriously and successfully carry out his/her search for a job abroad.

This alternative is neutral in relation to costs compared to the existing scheme. Its advantage, however, lies in the fact that it significantly improves the freedom of choice of the unemployed persons. Nevertheless it does not neglect the interests of the employment services. On the contrary, if they can identify cogent elements which offer clear evidence of abuse of the right to a longer job search abroad, the competent institution is empowered to intervene and shorten the time limit.

### **3. Third alternative: Unrestricted export of unemployment benefits**

As a further simplification and strengthening of the basic principles of the Coordination Regulations we propose the full export of unemployment benefits. By this we mean that the rule of competence of the last country of (self-)employment would be applied without restrictions. The duration of the unemployment benefits would depend on the national provisions in the competent Member State. It should be possible for the unemployed person to look for work in other Member States as well. The conditions for actively seeking employment would have to be fulfilled in accordance with the legislation in the competent Member State. However, the actions for actively seeking employment could be performed in another Member State. Almost all Member States' national legislations require residence or stay in the competent

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<sup>34</sup> *Antonissen*, C-292/98 [1991] ECR I-745.

Member State in order to obtain unemployment benefits. The availability for the labour market in another Member State than the competent one should be considered parallel to the availability to the labour market in the competent Member State.

This proposal would take out the exception on the waiving of residence clauses for the unemployment chapter. The validity of residence clauses have already been questioned by the CJEU (see cases C-406/04, *De Cuyper*,<sup>35</sup> and C-228/07, *Petersen*<sup>36</sup>). This would also bring unemployment benefits in line with e.g. sickness benefits in cash when applying the Regulations. Although it is true that unemployment benefits have a particular nature as they always require both unemployment and availability, it can also be stated that similar requirements have been introduced in national legislations in recent years also in relation to other cash benefits, e.g. sickness and rehabilitation benefits in cash. Because of changes in national legislation in relation to e.g. sickness and rehabilitation benefits in cash, there have been more and more requirements of participating in e.g. activation measures which seem quite similar to the activation measures required to obtain unemployment benefits.<sup>37</sup>

Our proposal is that in order to be entitled to the unemployment benefit the person in question would have to be actively seeking employment either in the country of employment or in some other Member State. The competent Member States' legislation may require participation in frequent activation measures, training, check-ups and physical presence within the competent Member States, but the unemployed person could satisfy these criteria by performing these obligations in another Member State. The competent Member State would have to equally treat the facts and events occurred in another Member State according to Article 5 of Regulation 883/2004 as if they would have happened in the competent Member State of employment.

This proposal requires cooperation between the unemployment authorities of the competent Member State and the unemployment authorities of the State where the unemployed person is seeking employment. This would require formalities procedures to be included in the Regulation for the cooperation between the Member States as well as for the actions taken by the employment authorities in the other Member States. The cooperation between the unemployment authorities in the EU is, however, everyday practice even according to the current provisions concerning unemployment benefits (see also *Rydergård*).<sup>38</sup>

However, another special provision would be necessary: cooperation rules for the unemployment authorities of the competent Member State and the unemployment authorities of the possible Member State of residence or stay would be necessary as *conditio sine qua non*. This provision would also state the obligations of the Member State of stay or residence.

This proposal's advantages would be a relief of the administrative burden and an increase in the transparency of the system. At the same time, some of the arguments presented under letter A are also relevant for this proposal, taking into account that one of the reasons (but not the only one) for the

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<sup>35</sup> *De Cuyper*, C-406/04 [2006] ECR I-6947.

<sup>36</sup> *Petersen*, C-228/07 [2008] ECR I-6989.

<sup>37</sup> This issue has been dealt with in e.g. the final report of the Nordic group referred to in Annex II. The expert group was commissioned to examine the obstacles that people moving between the Nordic countries encounter with regard to the labour market, social security and social services. One of the problematic issues handled by the group were challenges that people face in cross-border situations when they need to take part in activation measures in the country of residence, but are in receipt of e.g. sickness or rehabilitation benefits in cash from the competent Member State.

<sup>38</sup> *Rydergård*, C-215/00 [2002] ECR I-1817, paragraph 23.

existence of special provisions for frontier workers were the restrictions on limitations of the export of benefits. Consequently, as an indirect result of this proposal, it could be possible, if wanted, to delete Article 64 and 65a in its present wording. However, it has to be stressed that this deletion is not the main aim of this proposal but an indirect possible consequence

It is a fact that complicated rules diminish the legal certainty from a migrant workers' perspective. One of the major advantages of this solution would be the legal certainty for the unemployed person. Moreover, there would not be any need to identify who is a frontier worker or who is a person who resided in another Member State during his or her work or who returned to this Member State of residence after becoming unemployed. The provisions would be straightforward and the emphasis would be on the cooperation between the unemployment authorities, the free movement of persons and the active participation in the labour market.

### **ADVANTAGES OF THIS PROPOSAL**

For the person concerned	For the institutions	For the Regulations
<p>Enhancement of a more mobile European labour market;</p> <p>Facilitation of the free movement of workers and the search of a new job;</p> <p>More legal certainty.</p>	<p>The general provisions of the waiving residence clause can be applicable and the whole experience of the export of benefits implemented;</p> <p>No different procedures for the export of benefits of unemployment benefits and for other benefits;</p> <p>As Article 65 and 65a could be deleted or strongly reduced, most of the advantages included in the table under A ( Proposal I) can be repeated here;</p> <p>Less disputes and disagreements among competent institutions and the beneficiary in case the possible extension up to six months or return to the competent State once the period of export (three to six months) is over.</p>	<p>A major simplification; some articles could be deleted (Article 65a for instance) or strongly reduced (Article 64 and 65); no different provisions for partial, intermittent or whole unemployment;</p> <p>Strengthening of the basic principles of the Regulations especially with the waiving of residence clause.</p>

However, this provision implies a very important drawback. A Member State, in order to avoid unemployment tourism and fraud and abuse, might like to introduce some restrictions to the aggregation clause, requiring that a minimum period is completed in this Member State without applying the aggregation provision. In this case the solution could be worse than the problem, or maybe not if this clause was applicable as a plus, only in case of full export without any restriction. On the contrary, the normal aggregation provision would be applicable for the limited export (up to six months). Of course this idea does not increase the simplicity and opens a geometrical variable, but it is worth considering it.

As another important drawback, we envisage that the link between payment and availability will be weakened and, as a consequence, for strengthening the effectiveness of this measure and avoiding the possible fraud and abuse, strict control will be needed and the cooperation between competent institutions has to be reinforced.

### C. Concrete proposals for the completion or modification of the current wording of Regulation 883/2004

The option of maintaining the current provision with the introduction of some amendments always has to be considered and evaluated. In fact, the inputs of a partial approach are not incompatible with other broader approaches taking into account that some of the results obtained in a partial proposal can always be integrated in a more general one.

A few points will be analysed in the following section.

#### 1. Definition

Contrary to pensions, family benefits or preretirement, Article 1 of Regulation 883/2004 does not contain any definition of unemployment benefits. It could be considered that there is no need for such definition. However, the CJEU has on several occasions been obliged to make an interpretation of the hidden will of the legislator to delimit the meaning of the concept 'unemployment benefits'. We can find the essential elements of the definition in the CJEU case law:

- benefits payable to persons who have ceased, suspended or reduced the economic activities and are available to the labour market (*Acciardi*<sup>39</sup>);
- benefits intended to prevent future unemployment; assistance for vocational training intended to enable persons in employment as well as to improve their qualifications to avoid the threat of unemployment and to enable unemployed persons to retrain and find new employment measures intended to combat or avoid unemployment (*Campana*<sup>40</sup>);
- assistance in finding new employment which the employment services provide for workers who have made themselves available to them (*Miethe*<sup>41</sup>);
- benefits intended to replace the remuneration lost by reason of unemployment and thereby provide for the maintenance of the unemployed person (*Meints*<sup>42</sup> and *Knoch*<sup>43</sup>);
- benefits which are granted if the risk of loss of employment materialises and which are no longer payable if that situation ceases to exist as a result of the claimant's engaging in paid employment (*De Cuyper*<sup>44</sup>).

It has to be admitted that it could be convenient to elaborate a definition, specially taking into account the existence of atypical benefits (see *Meints* and *Petersen*) in the different legislations. Moreover, sometimes unemployment benefits can be confused with preretirement benefits. As a very important drawback it can be mentioned that a very tight and strict definition could exclude some benefits which, at least now, are

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<sup>39</sup> *Acciardi*, C-66/92 [1993] ECR I-4567.

<sup>40</sup> *Campana*, C-375/85 [1987] ECR 2387.

<sup>41</sup> *Miethe*, C-1/85 [1986] ECR 1837.

<sup>42</sup> *Meints* C-57/96 [1997] ECR I-6689.

<sup>43</sup> *Knoch*, C-102/91 [1992] ECR I-4341.

<sup>44</sup> *De Cuyper*, C-406/04 [2006] ECR I-6947.

living in legal limbo which enables their consideration as unemployment benefits. In addition, the requisite of availability has to be interpreted with some flexibility taking into account the *Petersen* ruling.<sup>45</sup>

## 2. *Export of benefits during the whole period of entitlement to benefits (discretionarily). Extension of paragraph 3 of Article 65a to Article 64 (1) (c).*

During the last years, unemployment rates have increased dramatically. The differences between Member States in unemployment figures are enormous. In fact, the lowest unemployment rates were recorded in Austria (4.5%), the Netherlands (5.1%), Germany and Luxembourg (both 5.4%), and the highest rates in Spain (24.8%) and Greece (22.5% in April 2012). These figures show that the European labour market present huge dissimilarities and that movement of workers and jobseekers will increase in the next years. In addition, long-term unemployment rates (more than 12 months) amount to around 45% according to EUROSTAT. The trend of a new emigration follows the axis south/north.

Article 64 of Regulation 883/2004 provides for the export of unemployment benefits for a period of three months, which can, however, be extended to a maximum of six months. Article 65a (3) permits the extension up to the end of the period of entitlement to benefits.

As a possible solution to maintain the coherence of Regulation 883/2004, it could be considered to adapt Article 64 to the wording of Article 65a, allowing the discretionary extension of the export of benefits to the whole period of entitlement to benefits.

## 3. *Aggregation. Article 61*

The special aggregation provision in the unemployment chapter, the current Article 61, was from its very beginning part of the EU regulations coordinating Member States' social security systems. It was included already in Regulation 3. In fact, Article 33 (4) of Regulation 3 made a distinction between two categories: Member States with a contributory system which subjects the entitlement to benefits to the condition of having fulfilled certain periods of insurance or assimilated periods, and Member States with a non-contributory system which subjects entitlement to benefits to the condition of having fulfilled certain periods of employment (or assimilated periods) or of residence. Later on, under Regulation 1408/71, the distinction continued, however without the reference to the systems being contributory or non-contributory.

The interpretation of the current Article 61 has been the source of much controversy. Member States do not have a common position on this. The discussions in the Administrative Commission and the notes of the Polish Presidency show that Article 61 is a very complicated provision with, in some cases, difficult implementation. Nevertheless, it has to be reminded that some rules must be interpreted uniformly in all Member States. Taking this approach into account, in the point on challenges, for instance, some ideas were mentioned in particular on the 'upgrading of insurance periods' (Case 388/87, *Warderdam-Steggerda*) in relation to the financial stability of the social security system. Consequently, in order to ensure a uniform interpretation of Article 61 of Regulation 883/2004, this issue should be more clarified and a common approach reached. A serious brainstorming about this issue could bring possible, future, steps ahead.

One of the possibilities to simplify the implementation of Regulation 883/2004 could be to delete Article 61 and to directly apply Article 6. In fact, only a few Member States have unemployment benefits based on employment periods.

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<sup>45</sup> *Petersen*, C-228/07 [2008] ECR I-6989.

It could be positive to launch a discussion about whether Article 6 and Article 5 combined make Article 61 superfluous. The question could be raised whether there certain Member States have legislation under which entitlement to other benefits depends on the completion of employment periods rather than insurance periods and how these Member States are applying Article 6. Perhaps the first section of paragraph 1 of Article 61 could be deleted. Concerning the second section of paragraph 1 of Article 61, two questions should be posed. The first question is whether this provision is a wanted restriction or a wanted extension of Article 6. The second question is whether it is already implicitly included in Article 6.

When Regulation 883/2004 was discussed in the Council, no debate took place about Article 61. We have almost forgotten which concrete details were taken into account by the legislator when Regulation 3 was adopted. It could perhaps be interesting to refresh our memories about the reasons why this provision exists and if they are still valid. The second paragraph seems to be necessary, but it cannot be excluded that similar situations exist for other benefits which are governed by Article 6. Nevertheless, the case law about this article is very accurate and serious doubts may arise whether or not Article 6 would protect the unemployed persons in the same way as Article 61 with the interpretation of the CJEU. Any change in this sense has to take into account the situation of the person concern avoiding, if possible, a *reformatio in peius*.

As a summary, it has to be decided by the Commission and the Member States whether a discussion has to be launched with respect to Article 61 in the revision of the principles of the unemployment chapter. It is probably worth it.

## SUMMARY AND CONCLUSIONS

This first analysis already shows that there are several challenges (Part I) in the application of the current provisions of Regulation 883/2004 and different alternatives and proposals (Part II) to meet these challenges. The choice among the different proposals is principally a political one. It has to be pointed out that no proposal offers a win-win situation. On the contrary, all of them have drawbacks. From another point of view it has to be stressed that any change to overcome a challenge can open the door for a new challenge. Nevertheless, the coordination provisions are the result of a search for excellence. The motto of Regulations 1408/71 and 883/2004 has always been: 'better' rather than 'good'.

It is important to stress that for the most part, the unemployment chapter is applied without difficulties. However, when a close cross-border element appears (residence or stay in a Member State other than the competent State, periods of employment completed in another Member State) problems multiply and some weaknesses are identified.

The main problem with unemployment benefits is their specificity. They differ from other cash benefits in their conditions of entitlement. It has to be taken into account that granting an unemployment benefit requires unemployment plus availability. In other words, the obligation to pay the benefit on the part of the competent institution corresponds with the counter-obligation to be available on the part of the unemployed. In this context the CJEU (C-1/85, *Miethe*) has formulated the following: 'That benefit is not merely pecuniary, but includes the assistance in finding new employment which the employment services provide for workers who have made themselves available to them'.<sup>46</sup> This is the core problem and any proposed solution has to take this peculiarity into account.

The proposals presented are only a preliminary sketch. Of all proposals, we prefer the one described in Part II (Proposal A.I) as it is very realistic and offers a congruent approach to the general principles of Regulation 883/2004. However, we have also included other proposals, generally and concretely aiming at an amelioration of the current provisions. In this sense it has to be stressed that one of the purposes of this report is to activate a brainstorming and stimulate the debate. We are aware that nothing here is new or innovative. Our mission has been to revive recurrent thoughts which are sometimes in the unconscious.

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<sup>46</sup> *Miethe*, C-1/85 [1986] ECR 1837, paragraph 16.

# ANNEX I

## COORDINATION OF UNEMPLOYMENT BENEFITS

### – CASE LAW OF THE COURT OF JUSTICE OF THE EUROPEAN UNION –

#### CLASSIFICATION OF UNEMPLOYMENT BENEFITS

- C-39/76 (Mouthaan)
- C-57/96 (Meints)
- C-375/85 (Campana)
- C-406/04 (De Cuyper)
- C-228/07 (Petersen)

#### CONFLICT RULES / COMPETENT STATE

- C-131/95 (Huijbrechts)
- C-372/02 (Adanez-Vega)

#### AGGREGATION OF PERIODS

- C-126/77 (Frangiamore)
- C-388/87 (Warmerdam-Steggerda)
- C-88/95 and joined cases (Losada et al)
- C-372/02 (Adanez-Vega)
- C-272/90 (Noorden)
- C-62/91 (Gray)

#### EXPORT OF BENEFITS

- C-215/00 (Rydergård)
- C-139/78 (Coccioli)
- C-145/84 (Cochet)
- C-41/79 (Testa)
- C-27/75 (Bonaffini)
- C-406/04 (De Cuyper)
- C-228/07 (Petersen)

#### FRONTIER / NON-FRONTIER WORKER / RESIDENCE

- C-236/87 (Bergemann)
- C-1/85 (Miethe)
- C-76/76 (Di Paolo)
- C-102/91 (Knoch)
- C-227/81 (Aubin)
- C-102/91 (Knoch)
- C-444/98 (de Laat)
- C-443/11 (Jeltes) pending

## 1. Classification of unemployment benefits

Case 39/76 (Mouthaan) ECR 1976, I-1902, paragraphs 17-21

17 It is finally asked whether the term 'unemployment benefits' contained in Article 4(1)(g) of Regulation No 1408/71 may be interpreted as being applicable to benefits such as those provided by Title III A of the Netherlands Law on Unemployment.

18 Title III A of that Law provides for the subrogation of the competent professional of trade institution to the obligations, in relation to the worker, arising from the contract of employment, of the employer who has become insolvent.

19 The aim of these provisions is to enable a worker who is owed wages following the insolvency of his employer to recover the amounts due to him within the limits laid down by that Law.

20 Such a subrogation does not partake of the nature of the unemployment benefits referred to in Article 4(1)(g) of Regulation No 1408/71 which are essentially intended to guarantee to an unemployed worker the payment of sums which do not correspond to contributions made by that worker in the course of his employment.

21 The reply to be given to the third question is, therefore, that benefits such as those under Title III A of the Netherlands Law on Unemployment do not constitute 'unemployment benefits' within the meaning of Article 4(1)(g) of Regulation No 1408/71.

C-57/96 (Meints) ECR 1997, I-6708, paragraphs 27

27 In order to be classified as an 'unemployment benefit' within the meaning of Article 4(1)(g) of Regulation No 1408/71, a benefit must be intended to replace the remuneration lost by reason of unemployment and thereby provide for the maintenance of the unemployed person (see, to that effect, Case C-102/91 Knoch v Bundesanstalt für Arbeit [1992] ECR I-4341, paragraph 44).

Case 375/85 (Campana) ECR 1986, 2387, paragraphs 6-13

6 According to Article 4(1) of Regulation No 1408/71 the regulation 'shall apply to all legislation concerning the following branches of social security', the list of which includes, in subparagraph (g), 'unemployment benefits'. Article 4(1) does not state whether the expression 'unemployment benefits' relates exclusively to benefits which are accorded in respect of present unemployment or whether it also covers benefits intended to prevent future unemployment. It must also be pointed out that benefits intended to prevent unemployment do not fall within the schemes expressly excluded from the scope *ratione materiae* of Regulation No 1408/71 under Article 4(4).

7 Moreover, Article 67 of Regulation No 1408/71, referred to by the Bundessozialgericht, which lays down the manner in which unemployment benefits are to be calculated, does not exclude preventive measures but merely refers in a very general manner to 'the right to benefits'.

8 In order to interpret Article 4(1)(g) in conjunction with Article 67(1) of Regulation No 1408/71 of the Council it is therefore necessary to have regard to the fundamental aim of Article 51 of the EEC Treaty, which is to establish the most favourable conditions for achieving freedom of movement and employment for Community workers within the territory of each Member State.

9 In that connection it must be observed that in the light of the present economic situation the Member States have established assistance for vocational training intended both to enable persons in employment to improve their qualifications to avoid the threat of unemployment and to enable unemployed persons to retrain and find new employment. Both types of benefit are intended to combat unemployment.

10 Consequently, it would be contrary to the aim of Article 51 of the EEC Treaty to exclude from the scope of Article 4(1)(g) and Article 67(1) of Regulation No 1408/71, as a matter of principle, benefits intended to prevent future unemployment.

11 However, the government of the Federal Republic of Germany has rightly pointed out that benefits intended to encourage vocational training may also be directed at objectives other than the fight against unemployment, such as improving the personal circumstances of recipients or satisfying certain special needs of the economy.

12 Consequently, the expression 'unemployment benefits' as used in Article 4(1)(g) of Regulation No 1408/71 must be restricted to assistance for vocational training which concerns either persons who are already unemployed or persons who are still in employment but are actually threatened by unemployment.

13 It is for the national authorities, subject to supervision by the competent courts, to assess in each individual case whether a person in employment who applies for assistance for vocational training may be deemed to be actually threatened by unemployment.

C-406/04 (De Cuyper) ECR 2006, I-6947, paragraphs 24-31

24 As regards the requirement that the benefit in question must concern one of the risks expressly listed in Article 4(1) of Regulation No 1408/71, that is satisfied in so far as the allowance covers the risk linked to involuntary loss of employment although the worker retains his capacity for work.

25 The Court has already held that, in order to be categorised as social security benefits, benefits must be regarded, irrespective of the characteristics peculiar to different national legal systems, as being of the same kind when their purpose and object as well as the basis on which they are calculated and the conditions for granting them are identical. On the other hand, characteristics which are purely formal must not be considered relevant criteria for the classification of the benefits (see, to that effect, Case 171/82 Valentini [1983] ECR 2157, paragraph 13).

26 In the light of the foregoing, the allowance at issue in the main proceedings must be examined in order to establish whether it should be regarded as an unemployment benefit.

27 As regards its purpose, that allowance is aimed at enabling the workers concerned to provide for themselves following an involuntary loss of employment when they still have the capacity for work. In order to distinguish between different categories of social security benefits, 'the risk covered' by each benefit must also be taken into consideration. Thus an unemployment benefit covers the risk associated with the loss of revenue suffered by a worker following the loss of his employment although he is still able to work. A benefit granted if that risk materialises, namely loss of employment, and which is no longer payable if that situation ceases to exist as a result of the claimant's engaging in paid employment must be regarded as constituting an unemployment benefit.

28 As regards determination of the amount of the allowance paid to Mr De Cuyper, the basis of calculation used by the Belgian employment services is identical to that used in respect of all unemployed persons, the allowance being calculated according to the rules laid down in Article 114 et seq. of the Royal Decree of 25 November 1991. Those rules provide for a basic amount, fixed at 40% of average daily remuneration, which is increased by an adaptation supplement, fixed at 15% of that remuneration. That amount is deemed take into account the unemployed person's specific personal circumstances, as predetermined by law.

29 Lastly, as regards the conditions for granting the benefit, it must be borne in mind that, as ONEM stated at the hearing, Mr De Cuyper is subject to the same conditions as other workers seeking an unemployment allowance. In particular, in order to obtain the allowance, in addition to the fact that he must have ceased to be in work and in receipt of remuneration for reasons beyond his control, a worker must furnish proof of 624 days worked, or days treated as such, during the 36 months preceding his application for the allowance and his employment must have given rise to the payment of social security contributions to be taken into account for the purpose of calculation of the amount of that allowance.

30 Moreover, the allowance at issue in the main proceedings is an allowance which is subject to the Belgian statutory unemployment benefits scheme. The fact that an unemployed person in a situation such as that of Mr De Cuyper is exempt from the requirement to register as a job-seeker and consequently from the requirement of being available for work in no way affects the fundamental characteristics of the allowance as set out in paragraphs 27 and 28 of this judgment.

31 Furthermore, the obtaining of that exemption does not mean that the unemployed person is exempt from the requirement to remain available to the employment services inasmuch as, even if he does not have to register as a job-seeker or accept any suitable employment, he must still remain available to those services so that his employment and family situation can be monitored.

C-228/07 (Petersen) ECR 2008, I-6989, paragraphs 22-35

22 The question whether a benefit such as the one at issue in the main proceedings is to be regarded as an 'invalidity benefit' or an 'unemployment benefit' within the meaning of Article 4(1)(b) or (g) of Regulation No 1408/71 must be considered in the light of those principles.

23 With regard, first, to the purpose and object of the benefit at issue in the main proceedings, it is clear from the provisions of Paragraph 23 of the AIVG, and in particular, Paragraph 23(1) to (3), that, as the Advocate General points out, in substance, in points 58 and 59 of his Opinion, the purpose of the benefit in question is to provide an applicant for invalidity benefit who is unemployed or has no income, when the circumstances indicate that the pension should be granted, with the financial means to meet his needs until a definitive decision is adopted on his application and, consequently, during a period in which it is still uncertain whether the applicant can return to professional life.

24 As the German Government pointed out in its observations, the benefit at issue in the main proceedings thus seeks to permit the person applying for an invalidity pension to remain in the employment market during the period of uncertainty so as to avoid making a subsequent return more difficult if the application for an invalidity pension is rejected.

25 It is clear from the foregoing that, like all unemployment benefits, the benefit at issue in the main proceedings, which is also paid by the authorities competent in the matter of unemployment, is essentially to replace the remuneration lost by reason of unemployment and thereby provide for the maintenance of the unemployed person (Case C-102/91 Knoch v Bundesanstalt für Arbeit [1992] ECR I-4341, paragraphs 44

and 45; Acciardi, cited above, paragraphs 16 and 17; and Case C-57/96 Meints [1997] ECR I-6689, paragraph 27). If the invalidity pension is refused, the benefit at issue is, in regard to the duration thereof and to the amount granted, regarded as unemployment benefit pursuant to Paragraph 23(7) of the AIVG.

26 It is true that the benefit at issue in the main proceedings is also linked to an application for an invalidity pension and, if the pension is subsequently granted, the authorities competent in regard to invalidity pensions are required to refund the amounts paid by way of the above benefit to the authorities competent in regard to unemployment.

27 However, it must be stated, as the Austrian Government pointed out, that although, for the purposes of granting the benefit at issue in the main proceedings, entitlement to such an invalidity pension must, pursuant to Paragraph 23(2)(2) of the AIVG, be probable, the lack of paid employment must, on the other hand, be established, since unemployment is an essential condition for the grant of the benefit.

28 The consequence, in particular, is that if the recipient of the benefit at issue in the main proceedings obtains employment, he loses the right to the benefit. The Court has already decided that a benefit granted if the risk of loss of employment materialises and which is no longer payable if that situation ceases to exist as a result of the claimant's engaging in paid employment must be regarded as consulting an unemployment benefit (De Cuyper, cited above, paragraph 27).

29 In addition, with regard to the basis on which the benefit at issue in the main proceedings is calculated, it must be pointed out that the amount thereof is determined, pursuant to Paragraph 23(4) of the AIVG, in the same way as unemployment benefit. It is true that, under that provision, the amount of the benefit is limited to that of the invalidity pension applied for. However, as the German Government has indicated, that ceiling is intended solely to avoid the beneficiary having to refund amounts unduly paid if the invalidity pension is granted.

30 Finally, with regard to the conditions for the grant of the said benefit, it must be noted that, in addition to the fact that the provisions applicable to that benefit are laid down in the rules concerning unemployment benefit and that the benefit is paid by the authorities competent in regard to unemployment, the applicant for an invalidity pension must fulfil the conditions for entitlement for unemployment benefit in terms of length of affiliation; in addition, the period of entitlement to the benefit must not be exhausted.

31 It is common ground that, if the right to unemployment benefit is exhausted during the period in which the benefit at issue in the main proceedings is being paid, the right to the former benefit ceases at the same time, notwithstanding the fact that no definitive decision has been adopted concerning the application for an invalidity pension.

32 However, Mr Petersen and the Spanish Government point out that, by way of derogation from the requirements laid down in the national rules for entitlement to unemployment benefit, it is not required, for the purposes of obtaining the benefit at issue in the main proceedings, that the applicant show that he is capable of working, willing to work and available for work.

33 However, although it is true that those requirements could constitute an important characteristic of the conditions of eligibility for unemployment benefit (see, to that effect, Case 79/81 Baccini [1982] ECR 1063, paragraphs 15 and 16; Acciardi, cited above, paragraphs 16 and 17; Case C-25/95 Otte [1996] ECR I-3745, paragraph 36; and De Cuyper, cited above, paragraph 27), the fact of being dispensed from fulfilling those conditions in a particular case cannot, as such, affect the very nature of the benefit at issue in the main proceedings.

34 In the present case, such a dispensation is intended solely to adapt the conditions for the grant of that benefit to the situation of an applicant for an invalidity pension whose capacity and availability for work are, in fact, uncertain during the period in which a definitive decision is being adopted in regard to him (see, by analogy, *De Cuyper*, paragraphs 30 and 34).

35 Under those circumstances, it must be held that it is clear both from the purpose and object of the benefit at issue in the main proceedings and from the basis on which it is calculated that, notwithstanding the fact that it is linked to an application for an invalidity pension, such a benefit is directly related to the risk of unemployment referred to in Article 4(1)(g) of Regulation No 1408/71.

## **2. Conflict Rules / Competent State**

C-131/95 (*Huijbrechts*) ECR 1997, I-1418, paragraphs 17-26, 28

17 The provisions of Title II of the Regulation constitute a complete and uniform system of conflict rules the aim of which is to ensure that workers moving within the Community shall be subject to the social security scheme of only one Member State, in order to prevent the system of legislation of more than one Member State from being applicable and to avoid the complications which may result from that situation (Case C-71/93 *Van Poucke* [1994] ECR I-1101, paragraph 22).

18 To that end, Article 13(1) of the Regulation provides that '(...) the persons to whom this regulation applies shall be subject to the legislation of a single Member State only' and 'that legislation shall be determined in accordance with the provisions of this title'. By virtue of Article 13(2)(a) 'a person employed in the territory of one Member State shall be subject to the legislation of that Member State even if he resides in the territory of another Member State (...)'.

19 The Court has held that the sole purpose of Article 13(2)(a) is to determine the national legislation applicable and not to lay down the conditions creating the right or the obligation to become affiliated to a social security scheme (Case C-2/89 *Kits van Heijningen* [1990] ECR I-1755, paragraph 19).

20 The general rule set out in Article 13 is defined in greater detail, with regard to unemployment benefits, by Articles 67 and 68, which lay down the method of calculating those benefits, and Article 69 which, subject to certain conditions, preserves entitlement to benefit in the State where the person concerned was last employed when he goes to one or more Member States in order to seek employment there.

21 It follows from all those provisions that the competent State in relation to unemployment benefits is the State where the unemployed person was last employed (see Case 145/84 *Cochet* [1985] ECR 801, paragraph 14), with the result that, in accordance with Article 1(o) and (q) it is in principle that Member State which is responsible for paying those benefits.

22 However, the Regulation derogates from that principle in respect of frontier workers. Article 71(1)(a)(ii) provides: An unemployed person who was formerly employed and who, during his last employment, was residing in the territory of a Member State other than the competent State shall receive benefits in accordance with the following provisions: (a)(i) (...) (a)(ii) a frontier worker who is wholly unemployed shall receive benefits in accordance with the legislation of the Member State in whose territory he resides as though he had been subject to that legislation while last employed; these benefits shall be provided by the institution of the place of residence at its own expense.

23 It is clear from that provision that a frontier worker who is wholly unemployed is not entitled to unemployment benefit in the State where he was last employed, even if he paid contributions there, but is obliged to become affiliated to the social security scheme of the Member State in which he resides and to receive in that State, during the period in which he lives there, the unemployment benefits provided for by its legislation.

24 According to the wording of Article 71(1)(a)(ii), the Member State in whose territory a frontier worker resides is responsible for paying those benefits 'as though' it were the State where he was last employed. While that legal fiction suspends the obligations of the State where the unemployed person was last employed for so long as he continues to reside in another Member State, it does not have the effect of extinguishing them.

25 Thus, in *Cochet*, cited above, the Court held, on the one hand, that Article 71(1)(a)(ii) does not affect the principle that the competent State is the State where the person concerned was last employed (paragraph 15) and, on the other, that Article 69 relating to 'Unemployed persons going to a Member State other than the competent State' is not applicable to a wholly unemployed frontier worker who, on the termination of his last employment, settles in the territory of the competent Member State, that is to say the Member State where he was last employed.

26 It follows that in a situation such as that in point in the main proceedings, the fact that the person concerned resided in Belgium and, pursuant to Article 71(1)(a)(ii) of the Regulation, received unemployment benefit there under Belgian legislation does not relieve the State where she was last employed, the Kingdom of the Netherlands, of its competence in principle. The Kingdom of Belgium was required to pay the benefit 'as though' it were the State where she was last employed.

28 It follows from the foregoing considerations that, where an unemployed frontier worker, after receiving unemployment benefit in the State in which he is resident, settles in the Member State in which he was last employed, the derogation under Article 71(1)(a)(ii) ceases to apply, with the result that the State in which he was last employed must begin, or begin afresh, to assume its obligations under the Regulation in relation to unemployment benefit. Consequently, benefits paid by the State in which he was temporarily resident must be taken into account, for the application of the legislation of the State in which he was last employed, as though they had been paid by the latter State.

C-372/02 (*Adanez-Vega*) ECR 2004, I-10796, paragraphs 17-25

17 By its first question the referring court essentially asks whether under Articles 13 and 71 of Regulation No 1408/71 the legislation applicable to a person who is residing in a Member State and is unemployed there having performed his compulsory military service in another Member State is the legislation of the Member State of residence or that of the Member State in which he performed his military service.

18 It should first be pointed out that, according to settled case-law, the provisions of Regulation No 1408/71 determining the applicable legislation constitute a complete system of conflict rules the effect of which is to divest the national legislatures of the power to determine the ambit and the conditions for the application of their national legislation on the subject so far as the persons who are subject thereto and the territory within which the provisions of national law take effect are concerned (see to that effect *inter alia* Case 302/84 *Ten Holder* [1986] ECR 1821, paragraph 21, and Case 60/85 *Luijten* [1986] ECR 2365, paragraph 14).

19 In that connection Regulation No 1408/71 provides, in Title II thereof, rules for determining the 'legislation applicable'. In certain areas those general rules governing connecting factors are however subject to exceptions (see to that effect Case 58/87 Rebmann [1986] ECR 3467, paragraph 13). It is plain from the scheme of Regulation No 1408/71 that the application of those special rules governing connecting factors none the less presupposes the prior determination of the applicable legislation in accordance with the provisions of Title II of that regulation.

20 It is therefore necessary to determine first of all which is the applicable legislation under the general rules governing connecting factors in Title II of Regulation No 1408/71. Next it is necessary to decide whether the special rules governing connecting factors in that regulation provide for the application of any other legislation.

*General rules governing connecting factors (Article 13 of Regulation No 1408/71)*

21 It must be observed that under Article 13(2)(e) of Regulation No 1408/71 the person called up for service in the armed forces of a Member State is subject to the legislation of that State.

22 Thus, in the main proceedings Mr Adanez-Vega was subject to the legislation of Spain while performing his military service in Spain. However, that legislation ceased to apply when he finished his military service.

23 It is clear from Article 13(2)(f) of Regulation No 1408/71 that a person to whom the legislation of a Member State ceases to be applicable, without the legislation of another Member State becoming applicable to him in accordance with the provisions laid down in Article 13(2)(a) to (d) or Articles 14 to 17 of that Regulation, is to be subject to the legislation of the Member State in whose territory he resides.

24 According to the Court's case-law Article 13(2)(f) of Regulation No 1408/71 applies both to persons who have definitely ceased all occupational activity and to those who have merely temporarily ceased their occupational activity (Case C-275/96 Kuusijärvi [1998] ECR I-3419, paragraphs 39 and 40).

25 Accordingly, the legislation applicable to unemployed persons under the general jurisdictional rules in Title II of Regulation No 1408/71 is therefore in principle that of the Member State of residence.

### **3. Aggregation of periods**

Case 126/77 (Frangiamore) ECR 1978, 725, paragraph 10

10 It is thus apparent from the foregoing considerations that a period of employment completed under the legislation of a Member State other than that in which the competent institution is established, and defined or recognized as an insurance period under that legislation, is not subject to the condition laid down in Article 67(1) in fine of Regulation No 1408/71.

Case 388/87 (Warmerdam-Steggerda) ECR 1989, 1226, paragraph 17

17 It follows from the wording of that provision that if the legislation of the Member State within whose territory the competent institution is situated makes entitlement to unemployment benefits dependent on the completion of periods of insurance, the periods of insurance completed in any other Member State must be taken into account in the Member State in which the benefits were applied for, as

though they were periods of insurance completed under the legislation of the latter Member State . In the same case, periods of employment completed without affiliation to a scheme of unemployment insurance under the legislation of any other Member State must be taken into account in the Member State in which the benefit was applied for, as though they were periods of employment completed under the legislation of the latter State, provided that, according to the law of that State, those periods of employment would have been regarded as periods of insurance.

C-88/95 and joined cases (Losada et al.) ECR 1997, I-895, paragraphs 33-38

33 Article 51 of the Treaty lays down the principle of aggregation of all periods taken into account under the laws of the several countries and that of exportation of benefits, but it does not define the expression 'periods of insurance'.

34 Article 1(r) of Regulation No 1408/71 defines periods of insurance as 'periods of contribution or periods of employment or self-employment as defined or recognized as periods of insurance by the legislation under which they were completed or considered as completed, and all periods treated as such, where they are regarded by the said legislation as equivalent to periods of insurance'.

35 In *Warmerdam-Steggerda*, paragraphs 10, 17 and 19, it was held that Regulation No 1408/71 does not determine the conditions under which periods of employment or insurance are constituted. Those conditions are determined solely by the legislation of the Member State in which benefits are applied for.

36 Consequently, a Member State is entitled to make the award of unemployment allowance conditional on the persons concerned having last completed periods classed as 'periods of insurance' or 'periods of employment' under its own legislation.

37 It is therefore for the national court to determine whether the periods during which the competent Spanish institution paid contributions to the sickness insurance and family benefits schemes on behalf of the plaintiffs in the main proceedings constitute periods of insurance under its domestic legislation.

38 The answer to the national court's second question must therefore be that it is for the national court to determine whether the condition laid down by Article 67(3) of Regulation No 1408/71 to the effect that a person who has completed periods of insurance in another Member State cannot rely on those periods in order to obtain unemployment benefit in the State concerned unless he last completed periods of insurance in accordance with the provisions of the legislation of that State, is fulfilled where the person concerned has never been in employment in that State but contributions have been paid on his behalf to the sickness insurance and family benefits schemes by the competent unemployment institution.

C-372/02 (*Adanez-Vega*) ECR 2004, I-10798, paragraphs 51-52

51 It is clear from the case-law that the condition that 'the person concerned should have completed lastly ... periods of insurance ... in accordance with the provisions of the legislation under which the benefits are claimed' is designed to encourage such persons to seek work in the Member State where they last paid unemployment insurance contributions, and to make that State bear the burden of providing the unemployment benefits (see to that effect Case C-62/91 *Gray* [1992] ECR I-2737, paragraph 12).

52 Consequently, as stated by the Advocate General at paragraphs 79 and 80 of his Opinion, a period of insurance must be deemed to have been completed 'lastly' in a Member State if, regardless of the lapse

of time between completion of the last period of insurance and the application for benefit, no other period of insurance was completed in another Member State in the interim.

C-272/90 (Noorden) ECR 1991, I-2543, paragraph 12

12 It must therefore be stated in reply to the question submitted by the national court that the relevant Community legislation, in particular Articles 67(3), 69 and 70 of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, does not preclude a Member State from refusing to grant a worker unemployment benefit for more than the maximum period of three months laid down in Article 69 of that regulation when the worker has not completed lastly periods of insurance or employment in that Member State.

C-62/91 (Gray) ECR 1992, I-2039, paragraph 8 et seq.

8 The majority of its members consider that both the requirement laid down by Article 67(3) that an unemployed person wishing to have periods of insurance or employment aggregated must have completed his last period of insurance or employment in the Member State in which the unemployment benefits are applied for and the requirements laid down in Article 69(1) that an unemployed worker seeking employment in another Member State must, in order to maintain entitlement to unemployment benefits, have registered himself as a person seeking work and have remained available to the employment services of the Member State of last employment for four weeks, impede freedom of movement for workers. It is thought that those provisions may involve financial disadvantages for workers who cease working in one Member State and then go directly to seek work in another Member State.

9 The doubts of the majority of the members of the national tribunal therefore arise from the idea that, contrary to what Article 51 of the EEC Treaty would appear to require, Article 67(3) and Article 69(1) of Regulation No 1408/71 do not lay down in the field of social security, particularly with regard to unemployment, the measures necessary to establish freedom of movement for workers.

10 It is to be noted that by providing, first, that in the case of Community nationals moving to a Member State periods of insurance or employment completed under the legislation of any other Member State are to be taken into account in that State for the purposes of the acquisition, retention or recovery of entitlement to unemployment benefits and, secondly, that unemployed workers seeking work in another Member State are for a limited period to retain entitlement to unemployment benefits provided for by the legislation of the State in which they were last employed even though they are not available to the employment services of that State, Regulation No 1408/71 confers on those workers rights which they would not otherwise enjoy and which thus help to ensure freedom of movement for workers in accordance with Article 51 of the Treaty.

11 It is further to be noted that, as the Court ruled in its judgment in Joined Cases 41/79, 121/79 and 796/89 (*Testa v Bundesanstalt für Arbeit* [1980] ECR 1979, at paragraph 14), Article 51 of the Treaty does not prohibit the Community legislature from attaching conditions to the rights and advantages which it accords in order to ensure freedom of movement for workers or from determining the limits thereto.

12 As regards the entitlement to unemployment benefits of workers seeking employment in a Member State other than that in which they last worked or paid contributions, the Council considered it necessary that such entitlement should be subject to conditions designed to encourage such persons to seek work in the Member State in which they were last employed, to make that State bear the burden of

providing the unemployment benefits, and, finally, to ensure that those benefits are granted only to those actually seeking employment. In attaching such conditions to Article 67(3) and Article 69(1) of Regulation No 1408/71, the Council made proper use of its discretion.

13 It follows that consideration of the question raised by the national tribunal has disclosed no factor of such a kind as to affect the validity of Article 67(3) and Article 69(1) of Regulation No 1408/71.

#### **4. Export of benefits**

C-215/00 (Rydergård) ECR 2002, I-1829, paragraphs 29-32

29 Article 69(1)(a) of Regulation No 1408/71 provides only that the period during which the worker must have remained available to the employment services of the competent State after becoming unemployed must be at least four weeks.

30 This condition is designed *inter alia* to ensure that before a worker leaves, at the expense of one Member State, to seek work in another Member State the authorities of the first State are able, first, to satisfy themselves that the worker is in fact unemployed and, second, to offer him work.

31 For that purpose it is not necessary to require that the period of four weeks be unbroken. On the contrary, it is sufficient if after becoming unemployed the person seeking work remained available to the employment services of the competent State for a total period of at least four weeks. It is for the national authorities to determine, in each case and on the basis of their national law, the moment which is to be regarded as constituting the commencement of unemployment and to verify – taking account in particular of the reply given to the first question – whether that period has been completed.

32 The answer to the second question must therefore be that Article 69(1)(a) of Regulation No 1408/71 must be construed as meaning that in order to retain entitlement to unemployment benefits as provided for therein, a person seeking work must have remained available to the employment services of the competent State for a total of at least four weeks after the commencement of unemployment, regardless of whether that period was continuous or not.

Case 139/78 (Coccioli) ECR 1979, 991, paragraphs 5-6, 8-9

5 In this respect it must be observed that Article 69(2) of Regulation No 1408/71 does not provide that a request for extension must necessarily be made before the expiration of the period.

In fact, amongst the “exceptional cases” capable of justifying an extension of the period some may be of such a nature that they prevent not only the return of the unemployed person to the competent state within the period prescribed, but equally the lodging of a request for extension, before the expiration of that period.

6 The answer to be given to the first question must therefore be that an extension of the period referred to in Article 69(2) of Regulation No 1408/71 is permissible even when the request is made after the expiration of that period.

8 It is for the authorities concerned to check whether the use made by the worker of the right conferred upon him by Article 69 of Regulation No 1408/71 was in conformity with the objective for which it was instituted.

Consequently it is for the competent services and institutions of the Member States to assess in each specific case the factual circumstances constituting an “exceptional case” as relied on in support of a request for extension of the period referred to in Article 69(2) of Regulation No 1408/71.

9 The answer to be given to the second question should therefore be that that provision does not restrict the freedom of the competent services and institutions of the Member States to take into consideration, with a view to deciding upon any extension of the period laid down by the Regulation, all factors which they regard as relevant and which are inherent both in the individual situation of the workers concerned and in the exercise of effective control.

Case 145/84 (Cochet) ECR 1985, 803, paragraphs 10-17

10 The question referred to the Court by the Raad van beroep must therefore be understood as asking, in substance, whether the Member State in which the unemployed person is resident and where he is paid unemployment benefit in accordance with Article 71(1)(a)(ii) of Regulation No 1408/71 of the Council after his employment in another Member State has terminated, is to be regarded as ‘the competent state’ for the purposes of the provisions of that regulation and whether, consequently, Article 69 is applicable to that unemployed person when he subsequently settles in the Member State in which he was last employed.

11 As the Netherlands government rightly emphasizes the term ‘competent state’ must be defined in conformity with the general rules set out in Article 13 of Regulation No 1408/71, which is part of Title II thereof heads ‘Determination of the legislation applicable’.

12 Article 13(1) states that ‘persons to whom this regulation applies shall be subject to the legislation of a single Member State only’ and that ‘that legislation shall be determined in accordance with the provisions of this Title’. Article 13(2)(a) then provides that: ‘A person employed in the territory of one Member State shall be subject to the legislation of that state even if he resides in the territory of another Member State.’

13 It therefore follows from the general rule laid down by Article 13 of Title II of Regulation No 1408/71 that the competent state in relation to social security benefits is the state of employment.

14 That general rule is defined more precisely in the provisions of the Regulation concerned with unemployment benefits from which it is clear that ‘the competent state’ in that connection is the state where the unemployed person was last employed. That is the position in relation to the common provisions contained in Articles 67 and 68 which lay down the method of calculating unemployment benefits, in relation to Article 69 which, subject to certain conditions, preserves entitlement to unemployment benefits in the state where the person was last employed when he goes to one or more other Member States in order to seek employment there, and in relation to Article 71(1)(a)(i) and (b)(i) according to which a frontier worker who is partially or intermittently unemployed or an employed person, other than a frontier worker, who is partially, intermittently or wholly unemployed receives the benefits in question in the state where he was last employed even though he is resident in another Member State.

15 Although, in derogation from the rule derived from Article 1(o) and (q) of Regulation No 1408/71 that the competent state is to be responsible for paying unemployment benefits, Article 71(1)(a)(ii) and

(b)(ii) provides that, in relation to a frontier worker who is wholly unemployed or an employed person, other than a frontier worker, who is wholly unemployed and who makes himself available for work to the employment services in the territory of the Member State in which he resides, such benefits are to be paid by the authorities of the Member State in whose territory he is resident, it must be emphasized that those provisions of Article 71 do not affect the principle that the competent state is the state where that person was last employed. That follows from the wording itself of the heading to Section 3 of Chapter 6 of Regulation No 1408/71, which is repeated in Article 71(1) which deals with the case where an unemployed person is resident during his last employment in the territory of a Member State other than the state where he is employed, the section is, in fact, headed 'unemployed persons who, during their last employment, were residing in a Member State other than the competent state'.

16 It follows from the foregoing considerations that Article 69 relating to 'unemployed persons going to a Member State other than the competent state' is not applicable to an unemployed person who, after he has received unemployment benefit in the state in whose territory he is resident, settles in the territory of the Member State in which he was last employed and in which he applies for unemployment benefit.

17 Consequently the reply to the question referred to the Court by the Raad van beroep, Amsterdam, must be that Section 2 of Chapter 6 of Title III of Regulation No 1408/71, and in particular Article 69 thereof, is not applicable to a wholly unemployed frontier worker who, on the termination of his last employment, settles in the territory of the competent Member State, that is to say the Member State in which he was last employed.

Case 41/79 (Testa) ECR 1980, 1981, paragraphs 9-11, 13-16

9 Contrary to what the plaintiffs in the main actions allege, the loss of entitlement to benefits laid down by Article 69(2) is not restricted to the time between the expiry of the period and the moment when a worker makes himself available again to the employment services of the competent State. If that were the effect of Article 69(2), that provision would not require the worker to return within the three month period and would not refer to the loss of "all entitlement" in the event of his returning late.

10 Nor is it possible to accept the argument that the phrase "under the legislation of the competent State" occurring in Article 69(2) must be taken as referring to national law for the determination of the circumstances in which entitlement to benefit is lost. That phrase, which follows the words "he shall lose all entitlement to benefits", is merely intended to explain that a worker shall lose, in the event of his returning late, all entitlement to benefits as against the competent State, irrespective of any entitlement to benefits which he may have as against other Member States.

11 There are therefore grounds for replying to the questions referred to the Court that a worker who returns to the competent State after the three month period referred to in Article 69(1)(c) has expired may no longer claim entitlement, by virtue of the first sentence of Article 69(2), to benefits as against the competent State unless the said period is extended pursuant to the second sentence of Article 69(2).

13 As the Court has already observed in its judgment of 20 March 1979 in Case 139/78 Coccioni v Bundesanstalt für Arbeit [1979] ECR 991, in giving a worker the right to go to another Member State to seek employment there, Article 69 of Regulation No 1408/71 confers on a person availing himself of that provision an advantage as compared with a person who remains in the competent State inasmuch as, by the effect of Article 69, he is freed for a period of three months of the duty to keep himself available to the employment services of the competent State and to be subject to the control procedure organized therein, even though he must register with the employment services of the Member State to which he goes.

14 The right to retain unemployment benefits conferred by Article 69 therefore contributes to ensuring freedom of movement for workers in accordance with Article 51 of the Treaty. The fact that that advantage is limited in time and subject to the observance of certain conditions is not such as to bring Article 69(2) into conflict with Article 51. The latter provision does not prohibit the Community legislature from attaching conditions to the rights and advantages which it accords in order to ensure freedom of movement for workers or from determining the limits thereto.

15 As part of a special system of rules which gives rights to workers which they would not otherwise have, Article 69(2) cannot therefore be equated with the provisions held invalid by the Court in its judgments of 21 October 1975 in Case 24/75 *Petroni* [1975] ECR 1149 and of 13 October 1977 in Case 112/76 *Manzoni* [1977] ECR 1647, to the extent to which their effect was to cause workers to lose advantages in the field of social security guaranteed to them in any event by the legislation of a single Member State.

16 It follows that Article 69(2) of Regulation No 1408/71 is not incompatible with the rules on freedom of movement for workers in the Community.

Case 27/75 (*Bonaffini*) ECR 1975, 971, paragraphs 5, 8-9

5 Article 69 of Regulation No 1408/71 covers the case of an unemployed migrant worker who is in receipt of unemployment benefit in the competent state and goes to one or more of the other Member States in order to seek employment there.

8 Notwithstanding that in administering the benefits to which the worker is entitled under their legislation, there is nothing to prevent the authorities of that Member State from taking account of the fact that, by virtue of Article 69, the worker is also in receipt of unemployment benefit from the competent state, these authorities cannot claim that the worker has lost the benefit of Article 69 because of failure to fulfil the conditions which it prescribes and, on that account, refuse to apply to him their national legislation in the proper and normal way.

9 The answer must, therefore, be that Article 69 is intended only to ensure for the migrant worker the limited and conditional preservation of the unemployment benefits of the competent state, even if he goes to another Member State, and, consequently, that that other Member State cannot rely on mere failure to comply with the conditions prescribed by that Article in order to deny the worker entitlement to the benefits which he may claim under the national legislation of that state.

C-406/04 (*De Cuyper*) ECR 2006, I-6947, paragraphs 35-48

35 Under Article 18 EC, '[e]very citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect'.

36 According to that wording, the right to reside within the territory of the Member States which is conferred directly on every citizen of the Union by Article 18 EC is not unconditional. It is conferred subject to the limitations and conditions laid down by the Treaty and by the measures adopted to give it effect (Case C-456/02 *Trojani* [2004] ECR I-7573, paragraphs 31 and 32).

37 To that effect it is necessary first of all to examine Regulation No 1408/71. According to Article 10 thereof, unless the regulation provides otherwise, 'invalidity, old-age or survivors' cash benefits, pensions

for accidents at work or occupational diseases and death grants acquired under the legislation of one or more Member States shall not be subject to any reduction, modification, suspension, withdrawal or confiscation by reason of the fact that the recipient resides in the territory of a Member State other than that in which the institution responsible for payment is situated'. The list in that article does not include unemployment benefits. It follows that that provision does not preclude the legislation of a Member State from making entitlement to an unemployment allowance conditional on residence in the territory of that State.

38 In that regard, Regulation No 1408/71 provides for only two situations in which the competent Member State is required to allow recipients of an unemployment allowance to reside in the territory of another Member State while retaining their entitlement to it. Firstly, there is the situation provided for in Article 69 of the regulation, allowing unemployed persons who go to a Member State other than the competent State 'in order to seek employment there' to retain their entitlement to unemployment benefit. Secondly, there is the situation referred to in Article 71 of that regulation, relating to unemployed persons who, during their last employment, were residing in the territory of a Member State other than the competent State. It is clear from the order for reference that a situation such as that of Mr De Cuyper is not covered by either of those articles.

39 It is established that national legislation such as that in this case which places at a disadvantage certain of its nationals simply because they have exercised their freedom to move and to reside in another Member State is a restriction on the freedoms conferred by Article 18 EC on every citizen of the Union (see, to that effect, Case C-224/98 D'Hoop [2002] ECR I-6191, paragraph 31, and Case C-224/02 Pusa [2004] ECR I-5763, paragraph 19).

40 Such a restriction can be justified, with regard to Community law, only if it is based on objective considerations of public interest independent of the nationality of the persons concerned and proportionate to the legitimate objective of the national provisions.

41 In the present case, the enactment of a residence clause reflects the need to monitor the employment and family situation of unemployed persons. That clause allows ONEM inspectors to check whether the situation of a recipient of the unemployment allowance has undergone changes which may have an effect on the benefit granted. That justification is accordingly based on objective considerations of public interest independent of the nationality of the persons concerned.

42 A measure is proportionate when, while appropriate for securing the attainment of the objective pursued, it does not go beyond what is necessary in order to attain it.

43 The justification given by the Belgian authorities for the existence, in the present case, of a residence clause is the need for ONEM inspectors to monitor compliance with the legal requirements laid down for retention of entitlement to the unemployment allowance. Thus it must *inter alia* allow those inspectors to check whether the situation of a person who has declared that he is living alone and unemployed has undergone changes which may have an effect on the benefit granted.

44 So far as concerns, in the main proceedings, the possibility of less restrictive monitoring measures, such as those mentioned by Mr De Cuyper, it has not been established that they would have been capable of ensuring the attainment of the objective pursued.

45 Thus, the effectiveness of monitoring arrangements which, like those introduced in this case, are aimed at checking the family circumstances of the unemployed person concerned and the possible existence of sources of revenue which the claimant has not declared is dependent to a large on the fact that the monitoring is unexpected and carried out on the spot, since the competent services have to be

able to check whether the information provided by the unemployed person corresponds to the true situation. In that regard it must be pointed out that the monitoring to be carried out as far as concerns unemployed allowances is of a specific nature which justifies the introduction of arrangements that are more restrictive than those imposed for monitoring in respect of other benefits.

46 It follows that less restrictive measures, such as the production of documents or certificates, would mean that the monitoring would no longer be unexpected and would consequently be less effective.

47 Accordingly, it must be found that the obligation to reside in the Member State in which the institution responsible for payment is situated, which is justified in domestic law by the need to monitor compliance with the statutory conditions governing the compensation paid to unemployed persons, satisfies the requirement of proportionality.

48 In view of the foregoing considerations, the answer to the question referred must be that freedom of movement and residence, conferred on every citizen of the Union by Article 18 EC, does not preclude a residence clause, such as that applied in the case in the main proceedings, which is imposed on an unemployed person over 50 years of age who is exempt from the requirement of proving that he is available for work, as a condition for the retention of his entitlement to unemployment benefit.

C-228/07 (Petersen) ECR 2008, I-6989, paragraphs 37-64

37 In its second question, the national court is asking, essentially, whether Article 39 EC is to be interpreted as preventing a Member State from making the grant of a benefit such as the one at issue in the main proceedings, which must be regarded as an 'unemployment benefit' within the meaning of Article 4(1)(g) of Regulation No 1408/71, subject to the condition that the recipients must be resident on the national territory of that State, prohibiting the exportability of such a benefit to another Member State.

38 First of all, it must be noted that although Article 10(1) of Regulation No 1408/71 – which provides, '[s]ave as otherwise provided in this Regulation', for the waiver of residence clauses in regard to the benefits enumerated therein – expressly mentions invalidity benefits, which are therefore, in principle, exportable to another Member State (Case C-20/96 Snares [1997] ECR I-6057, paragraph 40), it does not mention unemployment benefits. That provision therefore does not preclude the legislation of a Member State from making entitlement to such a benefit conditional on residence in the territory of that State (see, to that effect, De Cuyper, cited above, paragraph 37).

39 In that regard, Regulation No 1408/71 provides, however, for two situations in which the competent Member State is required to allow recipients of an unemployment allowance to reside in the territory of another Member State while retaining their entitlement to benefit. Firstly, there is the situation provided for in Article 69 of the regulation, allowing unemployed persons who go to a Member State other than the competent State 'in order to seek employment there' to retain their entitlement to unemployment benefit. Secondly, there is the situation referred to in Article 71 of that regulation, relating to unemployed persons who, during their last employment, were residing in the territory of a Member State other than the competent State (De Cuyper, cited above, paragraph 38).

40 However, it clearly follows from the order for reference that a situation such as that of Mr Petersen is not covered by either of those articles and, consequently, that Regulation No 1408/71 does not contain any provisions governing cases such as the one which is the subject of the main proceedings.

41 It must be pointed out, however, that Regulation No 1408/71 does not set up a common scheme of social security, but allows different national social security schemes to exist and its sole objective is to

ensure the coordination of those schemes (Case 21/87 Borowitz [1988] ECR 3715, paragraph 23, and Case C-331/06 Chuck [2008] ECR I-0000, paragraph 27).

42 Whilst, in the absence of harmonisation at Community level, Member States retain the power to organise their social security schemes, they must none the less, when exercising that power, comply with Community law and, in particular, the provisions of the EC Treaty on freedom of movement for workers (see, to that effect, Case C-135/99 Elsen [2000] ECR I-10409, paragraph 33, and Case C-227/03 van Pommeren-Bourgon diën [2005] ECR I-6101, paragraph 39).

43 According to settled case-law, the aims of Articles 39 EC to 42 EC would not be attained if, as a consequence of the exercise of their right to freedom of movement, workers were to lose the social security advantages guaranteed them by the legislation of one Member State, especially where those advantages represent the counterpart of contributions which they have paid. Such a consequence might discourage Community workers from exercising their right to freedom of movement and would therefore constitute an obstacle to that freedom (see, to that effect, Case C-349/87 Paraschi [1991] ECR I-4501, paragraph 22; Case C-215/99 Jauch [2001] ECR I-1901, paragraph 20; and Hosse, cited above, paragraph 24).

44 It follows that, contrary to the view of the Austrian and German governments, it must be considered whether the rules applicable to a benefit such as the one at issue in the main proceedings are compatible with Article 39 EC.

45 It must be borne in mind in that regard that, according to settled case-law, the concept of 'worker' within the meaning of Article 39 EC of the Treaty has a specific Community meaning and must not be interpreted narrowly. Any person who pursues activities which are real and genuine, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary, must be regarded as a 'worker'. The essential feature of an employment relationship is, according to that case-law, that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration (see, in particular, Case 66/85 Lawrie-Blum [1986] ECR 2121, paragraphs 16 and 17; Case C-456/02 Trojani [2004] ECR I-0000, paragraph 15; and Case C-109/04 Kranemann [2005] ECR I-2421, paragraph 12).

46 In the present case, it is clear from the order for reference that, before the facts which gave rise to the dispute in the main proceedings, Mr Petersen worked as an employed person in a Member State and was consequently a 'worker' within the meaning of Article 39 EC. A national of a Member State who, like Mr Petersen, leaves his Member State of origin to work as an employed person in another Member State must be regarded as exercising the right of freedom of movement for workers provided for in Article 39 EC.

47 That conclusion is not called into question by the fact that, at the time of the later transfer of his residence to his State of origin after the competent authorities had granted him the benefit at issue in the main proceedings, Mr Petersen was unemployed and had applied for an invalidity pension.

48 According to settled case-law, migrant workers are guaranteed certain rights linked to the status of worker even when they are no longer in an employment relationship (see, to that effect, Case 39/86 Lair [1988] ECR 3161, paragraph 36; Case C-85/96 Martínez Sala [1998] ECR I-2691, paragraph 32; Case C-35/97 Commission v France [1998] ECR I-5325, paragraph 41; Case C-413/01 Ninni-Orasche [2003] ECR I-13187, paragraph 34; and Case C-138/02 Collins [2004] ECR I-2703, paragraph 27).

49 That is the case in regard to benefits the payment of which is dependent on the prior existence of an employment relationship which has come to an end and is intrinsically linked to the recipients' objective

status as workers (Meints, cited above, paragraph 41, and Case C-43/99 Leclere and Deaconescu [2001] ECR I-4265, paragraph 57).

50 In a situation like the one in the main proceedings, where the benefit at issue was intended to provide income for an unemployed applicant for an invalidity pension who had worked as an employed person in the Member State concerned, it must be stated that since, as the Advocate General points out in point 72 of his Opinion, such a benefit is linked to the risks of both unemployment and invalidity, it flows directly from an 'employment relationship' within the meaning of Article 39 EC.

51 It follows that a national of a Member State in a situation such as that of Mr Petersen must be regarded as continuing to be a 'worker' within the meaning of Article 39 EC for the purposes of obtaining the benefit at issue and, consequently, such a national comes within the scope of that article.

52 It must therefore be considered whether a residence requirement such as that imposed for the grant of the benefit at issue in the main proceedings constitutes an 'obstacle to the freedom of movement for workers' within the meaning of Article 39 EC.

53 According to settled case-law, the equal treatment rule which appears in Article 39(2) EC prohibits not only overt discrimination on grounds of nationality but also all covert forms of discrimination which, by the application of other criteria of differentiation, lead in fact to the same result (see, in particular, Meints, cited above, paragraph 44; Case C-212/05 Hartmann [2007] ECR I-6303, paragraph 29; and Case C-213/05 Geven [2007] ECR I-6347, paragraph 18).

54 Unless it is objectively justified and proportionate to the aim pursued, a provision of national law must be regarded as indirectly discriminatory if it is intrinsically liable to affect migrant workers more than national workers and if there is a consequent risk that it will place the former at a particular disadvantage (Meints, cited above, paragraph 44; Hartmann, cited above, paragraph 30; and Geven, cited above, paragraph 19).

55 That is true of a residence condition such as the one to which the grant of the benefit at issue in the main proceedings is subject, which can be more easily met by national workers than by those from other Member States, since the latter workers above all, particularly in the case of unemployment or invalidity, tend to leave the country in which they were formerly employed to return to their countries of origin (see, to that effect, Paraschi, cited above, paragraph 24, and Case C-290/00 Duchon [2002] ECR I-3567, paragraph 38).

56 The Austrian Government has not sought to explain the objective which is to be achieved by the residence requirement imposed by the national rules for the grant of the benefit at issue in the main proceedings and, consequently, has not put forward any factor whatsoever to justify that condition in relation to the overriding reasons in the general interest protected by Article 39 EC.

57 In order to provide the national court with a complete answer, it should be pointed out, however, that although it is possible that the risk of seriously undermining the financial balance of a social security system may, in particular, constitute an overriding reason in the general interest (see, in particular, Case C-158/96 Kohll [1998] ECR I-1931, paragraph 41, and Case C-208/05 ITC [2007] ECR I-181, paragraph 43), the existence of such a risk would be difficult to establish since, as the Advocate General points out in point 81 of his Opinion, by granting the benefit at issue in the main proceedings to applicants for an invalidity pension who, at the time that they submit their application, reside in the national territory, the competent authorities have in fact demonstrated their capacity to bear the economic burden of that benefit until such time as a definitive decision has been adopted in regard to it.

58 In addition, it must be pointed out that the residence requirement at issue in the main proceedings seems disproportionate since it is imposed in respect of a social security benefit which, like the benefit at issue in the main proceedings, is intended to be paid to applicants for an invalidity pension for a limited period which, according to the Austrian Government, does not exceed, on average, three to four months during which, while waiting for a definitive decision on the grant of such a pension, they are not required to be capable of working, willing to work and available for work (see, to that effect, Collins, cited above, paragraphs 68 and 69).

59 If, at the end of that waiting period, the invalidity pension is granted, the competent authorities in the Member State concerned, who must deduct from it the amounts paid by way of the benefit at issue in the main proceedings, will, in any event be required by Article 10(1) of Regulation No 1408/71 to pay the pension in question, even if the recipient transfers his residence to another Member State.

60 If, on the other hand, at the end of the said period, the invalidity pension is refused, in which case the benefit at issue must be changed, in regard both to its amount and to its duration, to the entitlement to unemployment benefit, the competent authorities of that Member State are no longer required to pay the latter benefit to the recipient unless he can show that that he fulfils the conditions laid down in Article 69 of Regulation No 1408/71 for the retention of the right to benefits as a worker seeking employment in another Member State, which implies that he must fulfil all the conditions laid down in the national law of the Member State of origin for entitlement to unemployment benefit.

61 In addition, the residence requirement at issue in the main proceedings also seems disproportionate since it is clear from the order for reference that, during the waiting period while a decision is being made on the application for an invalidity pension, applicants for the benefit at issue in the main proceedings, like the unemployed persons seeking work in another Member State to whom Article 69 of Regulation No 1408/71 applies, (Case 139/78 Coccioni [1979] ECR 991, paragraph 7), are not subject to any particular checks by the employment service of the Member State concerned, since they are dispensed from the obligations concerning capacity to work, willingness to work and availability for work.

62 In any event, even if such checks were provided for, it would still have to be ascertained whether it was not sufficient to request that the recipient go to the Member State concerned for the purpose of undergoing such checks, if necessary, on pain of suspension of payment of the benefit in the event of unwarranted refusal on the part of the recipient (see, to that effect, Case C-499/06 Nerkowska [2008] ECR I-0000, paragraph 45).

63 It follows from the foregoing that, with regard to the grant of a benefit such as the one at issue in the main proceedings and inasmuch as the file submitted to the Court does not contain any factor which might objectively justify a residence requirement, that requirement must be regarded as incompatible with Article 39 EC.

64 Consequently, the answer to the second question must be that, inasmuch as no factor has been put forward which shows that such a condition is objectively justified and proportionate, Article 39 EC must be interpreted as preventing a Member State from making the grant of a benefit such as the one at issue in the main proceedings, which must be regarded as an 'unemployment benefit' within the meaning of Article 4(1)(g) of Regulation No 1408/71, subject to the condition that the recipients be resident in the national territory of that State.

## 5. Frontier / Non-frontier worker

Case 236/87 (Bergemann) ECR 1988, 5125, paragraphs 9, 12-14, 18-22

9 By its first question, the national court seeks in substance to ascertain whether a worker who, in the course of his last employment, transfers his residence to another Member State and who, after that transfer, no longer returns to the State of employment in order to pursue an occupation there, can be regarded as a “frontier worker” within the meaning of Articles 1(b) and 71(1)(a)(ii) of Regulation No 1408/71.

12 It follows from that provision that only workers who, on the one hand, reside in a State other than the State of employment and who, on the other, return regularly and frequently, in other words “daily or at least once a week” to their State of residence may be regarded as having the status of frontier workers.

13 Accordingly, a worker who, after having transferred his residence to a Member State other than the State of employment, no longer returns to that State, is not covered by the term “frontier worker” within the meaning of Article 1(b), cited above. Accordingly, such a worker cannot rely on the terms of Article 71(1)(a)(ii) of that regulation.

14 The reply to the first question submitted by the national court should therefore be that a worker who, in the course of his last employment, transfers his residence to another Member State and who, after that transfer, no longer returns to the State of employment in order to pursue an occupation there, cannot be regarded as a “frontier worker” within the meaning of Articles 1(b) and 71(1)(a)(ii) of Regulation No 1408/71.

18 As regards the second point, it should be observed, that, according to the ninth recital in the preamble to Regulation No 1408/71, the provisions of Article 71 are intended to guarantee to migrant workers unemployment benefits under the most favourable conditions for seeking new employment.

19 To this end, Article 71(1)(b)(ii) provides that an employed person other than a frontier worker, who is wholly unemployed, who, in the course of his last employment, resided on the territory of a Member State other than the State of employment, and makes himself available to the employment services in the territory of the Member State in which he resides, or who returns to that territory, is to receive unemployment benefit in accordance with the legislation of that State as if he had last been employed there.

20 As the Court has held (see the judgment of 17 February 1977 in Case 76/76, cited above), this possibility of receiving unemployment benefits in the State of residence is justified for certain categories of workers who retain close ties, in particular of a personal and vocational nature, with the country where they have settled and habitually reside. It is reasonable that workers who have such links with the State in which they reside should be accorded the best conditions in that State for finding new employment.

21 In the light of these considerations, Article 71(1)(b)(ii) must be regarded as applicable to a case, such as the present one, of a worker who has transferred her residence to a State other than the State of employment for family reasons namely, the wish to live with her spouse and their child, in view of the fact that, in such circumstances there can be no doubt that she can enjoy in the State of residence, rather than the State of employment, more favourable conditions for obtaining new employment.

22 Accordingly, in reply to the second point raised by the national court it should be stated that Article 71(1)(b)(ii) of Regulation No 1408/71 is applicable to a worker who, in the course of his last employment,

transfers his residence to another Member State for family reasons and who, after that transfer, no longer returns to the State of employment in order to pursue an occupation there.

Case 1/85 (Miethe) ECR 1986, 1846, paragraphs 15-20

15 According to the Commission, Article 71 of Regulation No 1408/71 is intended to permit the migrant workers concerned to obtain unemployment benefits in the place in which, as a rule, the most generous benefits are offered. Normally, a 'genuine' frontier worker lives in the Member State in which he, his family and his friends reside and in which he carries on his social and political activities. It is therefore normal that Article 71(1)(a)(ii) should provide that where such a worker becomes wholly unemployed, the benefits he receives are to be provided by the institution of the Member State in which he resides. However that is not the case as regards certain workers who maintain much closer ties with the Member State in which they were last employed than with the Member State in which they reside and who are, in reality, 'false frontier workers'. Such workers should be permitted to have the benefit of Article 71(1)(b)(i) of Regulation No 1408/71, which entitles them to benefits in the Member State in which they were last employed.

16 It must be borne in mind that, as the Court has already held in its judgment of 15 December 1976 in Case 39/76 (*Bestuur der Bedrijfsvereniging voor de Metaalnijverheid v L. Mouthaan* [1976] ECR 1901) and in its judgment of 27 May 1982 in Case 227/81 (*Aubin v UNEDIC and ASSEDIC* [1982] ECR 1991), Article 71 of Regulation No 1408/71 is intended to ensure that migrant workers receive unemployment benefit in the conditions most favourable to the search for new employment. That benefit is not merely pecuniary but includes the assistance in finding new employment which the employment services provide for workers who have made themselves available to them.

17 That being so, it must be acknowledged that the rule in Article 71(1)(a)(ii), to the effect that a wholly unemployed frontier worker coming within the definition in Article 1(b) is entitled to benefits solely in the Member State in which he resides, was based on the assumption that such a worker would find in that State the conditions most favourable to the search for new employment.

18 However, the objective pursued by Article 71(1)(a)(ii) of Regulation No 1408/71 cannot be achieved where a wholly unemployed worker, although he satisfies the criteria laid down in Article 1(b) of that regulation, has in exceptional circumstances maintained in the Member State in which he was last employed personal and business links of such a nature as to give him a better chance of finding new employment there. Such a worker must therefore be regarded as a worker 'other than a frontier worker' within the meaning of Article 71 and consequently comes within the scope of Article 71(1)(b).

19 In such a case, it is for the national court alone to determine whether a worker who resides in a Member State other than that in which he was last employed none the less continues to enjoy a better chance of finding new employment in that State and must therefore come within the scope of Article 71(1)(b) of Regulation No 1408/71.

20 The answer to the second question must therefore be that a worker who is wholly unemployed and who, although he satisfies the criteria laid down in Article 1(b) of Regulation No 1408/71, has maintained in the Member State in which he was last employed personal and business links of such a nature as to give him a better chance of finding new employment there, must be regarded as a 'worker other than a frontier worker' and therefore comes within the scope of Article 71(1)(b). It is for the national court alone to determine whether a worker is in that position.

12 The transfer of liability for payment of unemployment benefits from the Member State of last employment to the Member State of residence is justified for certain categories of workers who retain close ties with the country where they have settled and habitually reside, but it would no longer be justified if, by an excessively wide interpretation of the concept of residence, the point were to be reached at which all migrant workers who pursue an activity in one Member State while their families continue habitually to reside in another Member State were given the benefit of the exception contained in Article 71 of Regulation No 1408/71.

13 It follows from these considerations that the provisions of Article 71(1)(b)(ii) must be interpreted strictly.

14 These considerations led the Administrative Commission (on social security for migrant workers) established under Article 80 of Regulation No 1408/71, in its Opinion No 94 of 24 January 1974 OJ C 126 1974, P.22), to hold that Article 71(1)(b)(ii) applies only to seasonal workers and, in addition, to the workers referred to in Article 14(1)(b), (c) and (d) of Regulation No 1408/71.

15 However, that decision, though clarifying the matter to a certain extent, cannot be considered to have enumerated exhaustively the categories of workers who may come within the provision, nor to have excluded certain other categories who have maintained similarly close ties with their country of habitual residence.

16 By virtue of the words 'in which he resides, or who returns to that territory', Article 71(1)(b)(ii) covers two categories of workers whose situation is substantially the same.

17 The concept of 'the Member State in which he resides' must be limited to the state where the worker, although occupied in another Member State, continues habitually to reside and where the habitual centre of his interests is also situated.

18 In this respect, the fact that the worker has left his family in the said state constitutes evidence that he has retained his residence there, but is not of itself sufficient to allow him the benefit of the exception laid down in Article 71(1)(b)(ii).

19 In fact, whenever a worker has a stable employment in a Member State there is a presumption that he resides there, even if he has left his family in another state.

20 Accordingly it is not only the family situation of the worker that should be taken into account, but also the reasons which have led him to move, and the nature of the work.

21 The addition of the words 'or who returns to that territory' implies merely that the concept of residence, such as defined above, does not necessarily exclude non-habitual residence in another Member State.

22 Thus for the purposes of applying Article 71(1)(b)(ii) of Regulation No 1408/71, account should be taken of the length and continuity of residence before the person concerned moved, the length and purpose of his absence, the nature of the occupation found in the other Member State and the intention of the person concerned as it appears from all the circumstances.

C-102/91 (Knoch) ECR 1992, I-4380, paragraphs 26-27

26 As regards the fact that she held a post for 21 months in another Member State, it should be borne in mind, as the Court has already indicated in its judgment in Case 76/76 Di Paolo, cited above, that there is no precise definition of the criterion of length of absence and that it is not an exclusive criterion.

27 Indeed, no provision of Regulation No 1408/71 lays down a time-limit beyond which Article 71(1)(b)(ii) must no longer be applied. A contrary interpretation would conflict with the aim pursued by that provision, which is to optimize a worker's chances of resuming employment.

Case 227/81 (Aubin) ECR 1982, 1991, paragraphs 19

19 Those provisions offer the worker a choice. He may apply to the unemployment benefit scheme in the state in which he was last employed, or claim benefit in the state where he resides. In the case of a wholly unemployed worker who elects to be governed by the legislation of the state where he resides that choice is made essentially – indeed, exclusively – by the worker's making himself available to the employment office of the state from which he is claiming the benefits. The worker may not, however, either aggregate the unemployment benefit from both states or, if he has made himself available only to the employment office in the territory of the Member State where he resides, claim unemployment benefits from the state in which he was last employed. With regard to that last point the court stated in its judgment of 9 July 1975 (Case 20/75 Gaetano d'Amico (1975) ECR 891), "the right to unemployment benefit presupposes that the unemployed person is available to the employment bureau at which he is registered, as appears from Chapter 6 of Regulation No 1408/71, in particular Article 69 and 71 thereof".

C-102/91 (Knoch) ECR 1992, I-4380, paragraphs 57-62

57 The national court asks first whether suspension takes place only when all the conditions laid down in Article 69 are satisfied or whether it is sufficient for the worker to have been in a position to satisfy those conditions, even if he did not do so.

58 As the Court stated in its judgment in Case 27/75 Bonaffini v INPS [1975] ECR 971, Article 69 is intended only to ensure for the migrant worker the limited and conditional preservation of the unemployment benefits of the competent State, even if he goes to another Member State, and consequently that other Member State cannot rely on mere failure to comply with the conditions prescribed by that article to deny the worker entitlement to the benefits which he may claim under the national legislation of that State.

59 It follows that receipt of benefits under the legislation of the Member State in whose territory the unemployed person resides or to which he returns may be suspended, pursuant to the third sentence of Article 71(1)(b)(ii) of Regulation No 1408/71, only in so far as the conditions laid down by Article 69 of the abovementioned regulation have actually been fulfilled and the person concerned accordingly receives benefits in the Member State to whose legislation he was last subject.

60 Finally, the national court seeks to ascertain whether suspension of that kind means only that the unemployed person does not during that time receive benefits from the Member State in whose territory he resides, but may thereafter claim in full the benefits paid by the competent institution of that State, or whether the length of the period of entitlement to unemployment benefits is also reduced by the number of days for which the suspension applied.

61 Reference need merely be made to the Court's remarks in paragraph 48 above concerning the application of Article 12 of Regulation No 1408/71 in cases covered by Article 71(1)(b)(ii) and Article 67 of that regulation.

62 Consequently, it must be stated in reply to the national court's question that in the event of suspension, pursuant to the third sentence of Article 71(1)(b)(ii) of Regulation No 1408/71, of receipt of benefits under the legislation of the State in whose territory the unemployed person resides, the competent institution of that Member State must deduct from the benefits which it pays the benefits which the unemployed person actually received in the Member State to whose legislation he was last subject. The period during which the unemployed person actually received unemployment benefits under the legislation of the latter State must be deducted from the period of entitlement to benefits under the legislation of the State of residence.

C-444/98 (de Laat) ECR 2001, I-2229, paragraphs 18, 31-37

18 The answer to the first question must therefore be 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 Regulation, uniform Community criteria must be applied. That assessment may not be made on the basis of criteria drawn from national law.

31 It should be noted at the outset that the provisions of Title II of the Regulation, which include Article 13, constitute, as the Court has consistently held, a complete and uniform system of conflict rules the aim of which is to ensure that workers moving within the Community are subject to the social security scheme of only one Member State, in order to prevent the national legislation of more than one Member State from being applicable and to avoid the attendant complications of such a situation (see, in particular, Case C-202/97 FTS [2000] ECR I-883, paragraph 20, and Case C-404/98 Plum [2000] ECR I-9379, paragraph 18).

32 Also, as the Court has already stated (see Case 39/76 Mouthaan [1976] ECR 1901, paragraph 13; Case 227/81 Aubin [1982] ECR 1991, paragraph 12; and Case 1/85 Miethe [1986] ECR 1837, paragraph 16), Article 71 of the Regulation is intended to ensure that migrant workers receive unemployment benefit on the conditions most favourable to the search for new employment.

33 That being so, it must be acknowledged that, by laying down the rule that a wholly unemployed frontier worker coming within the definition set out in Article 1(b) of the Regulation is entitled to benefits solely in the Member State in which he resides, Article 71(1)(a)(ii) was based on the assumption that such a worker would find in that State the conditions most favourable to the search for new employment (see Miethe, cited above, paragraph 17).

34 However, the protection of workers which is the aim pursued by Article 71 of the Regulation would be enfeebled if a worker who, in a Member State other than the State of residence, remains employed by the same undertaking, but part-time, while remaining available for work on a full-time basis, were obliged to apply to an institution in his place of residence for help in finding additional work. The fact that he has passed from full-time employment to part-time employment by virtue of a new contract is in this respect irrelevant.

35 More specifically, the institution of the place of residence would be considerably less well placed as compared with its counterpart in the competent Member State to assist the worker in finding additional employment on terms and conditions compatible with his part-time job since, in all likelihood, such employment would have to be in the territory of the competent Member State.

36 It is only when a worker no longer has any link with the competent Member State and is wholly unemployed that he must apply to the institution of his place of residence for assistance in finding employment.

37 The answers to the third, fourth, fifth and sixth questions must therefore be that if, in a Member State other than that in whose territory he resides, a worker remains in employment with the same undertaking, but part-time, while remaining available for work on a full-time basis, he is partially unemployed and the related benefits are to be provided by the competent institution of that State. On the other hand, if a frontier worker no longer has any link with that State and is wholly unemployed, those benefits are to be provided by the institution of the place of residence at its own expense. It is for the national court to determine on the basis of those criteria, in the case pending before it, the category to which the worker in question belongs.

C-443/11 (Jeltes) pending

Questions referred

Is the supplementary scope of the judgment in Case 1/85 *Miethe*, which was delivered while Regulation No 1408/71 was in force, still valid under Regulation No 883/2004, that is to say, a right of choice for an atypical frontier worker in respect to the Member State in which he makes himself available to the employment recruitment services, and from which he receives unemployment benefit, on the ground that in the Member State of his choice his prospects of reintegration into working life are greatest? Or does Article 65 of Regulation No 883/2004, considered as a whole, provide sufficient guarantees that a wholly unemployed worker will receive a benefit under conditions which are most favourable for him in his search for work, and has the *Miethe* judgment lost its added value?

Does European Union law, in this case Article 45 TFEU or Article 7(2) of Regulation No 1612/68, preclude the refusal by a Member State to award an unemployment benefit under its national legislation in the case of a migrant worker (frontier worker) who has become wholly unemployed, who was last employed in that Member State and who, given the existence of social and family ties, may be assumed to have the best prospects of reintegration into working life in that Member State, solely on the ground that he resides in another Member State?

Having regard to Article 87(8) of Regulation No 883/2004, Article 17 of the Charter of Fundamental Rights of the European Union and the principle of legal certainty, what would be the answer to the foregoing question if, before the date of the entry into force of Regulation No 883/2004, such a worker had been awarded an unemployment benefit under the legislation of the previous State of employment, where the maximum duration of the benefit and of the revival had not yet lapsed at the time of that entry into force (and where that benefit was terminated on the ground that the unemployed person had again found work)?

Would the answer to Question 2 be different if undertakings had been given to the unemployed frontier workers concerned that they would be able to apply for the revival of their entitlement to benefits if, after having found new work, they were once again to become unemployed, and the information supplied in that regard does not appear to have been correct or unambiguous as a result of lack of clarity in implementing practice?

## ANNEX II

### Cross-border obstacles in the unemployment area identified by a Nordic expert group

The summary of the obstacles in relation to unemployment benefits is an extract from the final report of an expert group that operated under the auspices of the Nordic committee of senior officials for health and social affairs (äk-s) and the Nordic committee of senior officials for labour (äk-a). The group was commissioned to examine the obstacles that people moving between the Nordic countries encounter with regard to the labour market, social security and social services. Its work was based on a list of obstacles that had come to the attention of the Nordic council of ministers' secretariat. The expert group delivered its final report 'freedom of movement within the social and labour market area in the Nordic countries – summary of obstacles and potential solutions' late March 2012. You can find the report in all Nordic languages and in English at <http://www.norden.org/en/publikationer/publikationer/2012-014>. The authors of this trESS report, taking into account the convenience of disseminating good practices, decided to include this summary as an example of the difficulties and obstacles existing in other areas and legislations, being convinced that it could be helpful for the experts of Regulation 883/2004.

Extract of obstacles relating to unemployment benefits:

#### **B12 (Obstacle No 4)**

Requests to be transferred to the unemployment insurance system in another country without delay to avoid the risk of receiving lower unemployment benefit

This concerns mainly the Swedish earnings related unemployment system where there is a requirement of minimum 12 month uninterrupted insurance. When a person start up work e.g. to Denmark where there is only a voluntary unemployment insurance there might be a gap in the insurance coverage in Sweden.

#### **B13 (Obstacle No 7)**

A frontier worker who falls ill and loses his or her job receives no benefits on regaining the partial capacity to work

In the opinion of the Expert Group this obstacle has arisen due to incorrect application of the rules. With regard to this, the institutions responsible should look again at their application and the information that they provide to the public. This problematic shows however the challenges in implementing these rules in practice.

The frontier worker should apply for unemployment benefit in the country of work where he/she has received sickness benefit based upon his/her employment relationship, if that is possible under the legislation of the country of work. The national regulations of the country of residence do not apply.

#### **B14 (Obstacle No 11)**

Entitlement to unemployment benefit after period of, e.g. Norwegian work assessment allowance

When an individual who has worked in another country seeks unemployment benefit in the country of residence, the institution responsible for assessing entitlement must seek certification to confirm completed periods of employment and social insurance cover in the country of work. The different countries have different regulations on which periods are to be certified and taken into account.

Countries have different rules for which periods should be compared and which therefore, depending on national practice, should be backed up with forms E301/PDU1/SED U002/SED U017. For example, Norway

does not include periods of work-assessment allowance on Form E301, since according to Norwegian national rules such periods do not provide entitlement to unemployment benefits in Norway. According to Danish national rules, periods of Danish social insurance cover can only be entered on E301/PDU11 if the person has been a member of a Danish unemployment insurance fund. Periods that, for this reason or on other grounds, cannot be stated on the relevant form or SED mean a break in the insurance cover period, which can affect entitlement to benefits. This can occur in several countries.

The Expert Group notes that, according to EU rules, it is the issuing institution that decides how periods are classified under national legislation. The Group takes the view that this obstacle can be removed by the institution that is assessing entitlement to unemployment benefit investigating all the circumstances and basing their decision on the current statutes.

The institutions should also take account of articles 5 and 6 of Regulation 883/2004, and the Administrative Commission's Decision No H6 of 16 December 2010 on aggregation of periods. If a period of illness can be disregarded in the country assessing entitlement to unemployment benefit, application of Article 5 means that such a period, if it occurred in another country, should be taken into account as if it had occurred in the country making the assessment.

### **B15 (Obstacle No 16)**

Unemployment insurance regulations for hourly-paid cross-border workers are complicated

It is difficult for an individual who is an hourly-paid employee in one Nordic country and lives in another Nordic country to obtain accurate information about how and where he or she is entitled to unemployment insurance cover. The information varies depending on which country and institution is answering the question.

This obstacle to freedom of movement relates to two situations:

An individual who lives in one country and works in another is made unemployed.

Depending on whether he/she is regarded as being fully unemployed or partially/periodically unemployed, he/she should seek benefit in the country of residence or the country of work. If two countries disagree, this can lead to difficulties claiming benefits from either.

An individual who is living in a country and is fully unemployed there takes a series of short-term, full-time jobs in another country. A currently unclear legal position in Sweden, together with systems that have not been adapted for this type of labour-market mobility, mean that the individual concerned may receive conflicting information about which rules apply and that unemployment insurance funds may have difficulty dealing with the case.

The Expert Group finds that the administrative difficulties in cases of this type, which involve transfers between different countries' systems, are hard to solve in practice. The obstacle may be solved through proposed amendments that the EU Commission will put before the Council of Ministers and European Parliament in 2012. The issue could also be affected by the review of the unemployment chapter in the regulation that is to be implemented.

Another possible solution would be to amend Swedish law.

The Expert Group also feels there should be a discussion within the Nordic Region on definitions of partial/periodical unemployment in contrast to full unemployment in respect of agency workers and short-time employees in general. A uniform Nordic view of such definitions would facilitate dealing with this type of case. The main challenge lie in the different labour law rules in the Nordic countries in relation to whether the employment relationship is in force between the hourly contracts or not when a person is

employed by an employment agency. Therefore the implementation of decision U3 (and C-444/98 De Laat) is not clear.

## ANNEX III

### DEFINING, MAPPING AND DESCRIBING THE NATIONAL SCHEMES OF UNEMPLOYMENT BENEFITS

#### A. Introduction

The European Union social security coordination law (Treaty on the Functioning of the EU, Article 48) and Regulations 883/2004, 987/2009 and 988/2009<sup>47</sup>) as interpreted by the Court of Justice of the European Union should facilitate the free movement of workers and citizens of the EU.

It is to be admitted that although shaping the social security system remains within the competence of each Member State, in many Member States unemployment benefits present similarities with some specialities and peculiarities in each national law.

The consideration of a benefit as an unemployment benefit is not usually very controversial. In fact, unemployment benefits can be considered as a classic branch that is suffering a great evolution with the developing of employment active measures and other supplementary measures. Nevertheless, in some cases the CJEU was required to decide, for instance in *C-57/96, H. Meints*, and *C-228/07, Jörn Petersen*, whether some benefits have to be considered as unemployment benefits. From time to time, what we call 'atypical benefits' appear. We have listed some of these here.

Contrary to pensions, family benefits or preretirement, Article 1 of Regulation 883/2004 does not contain any definition of unemployment benefits. However, the CJEU has on several occasions been obliged to delimit the meaning of the concept 'unemployment benefits', taking into account especially the aim of these benefits (please see Part II, C, 1).

Sincere gratitude should be expressed to the trESS national experts for providing valuable information about benefits in their respective Member State that would fit the idea of unemployment benefits.

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<sup>47</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, OJ L 200/1, 7.6.2004.

Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, OJ L 284/1, 30.10.2009.

Regulation (EC) No 988/2009 of the European Parliament and of the Council of 16 September 2009 amending Regulation (EC) No 883/2004 on the coordination of social security systems, and determining the content of its Annexes, OJ L 284/43, 30.10.2009.

## B. Tables

Source: MISSOC January 2012 + information from trESS National Experts

Country	Voluntary or compulsory insurance & basic principles	Employment and/or contributions period required	Waiting period	Maximum duration of unemployment benefits	Supplement by SNCB or social assistance
<b>Austria</b>	<p>Compulsory social insurance scheme financed by contributions for all employees and assimilated groups with earnings-related benefits.</p> <p>Covers all employees in paid employment, freelancers (<i>freie Dienstnehmer</i>), trainees and participants of vocational rehabilitation.</p> <p>No compulsory insurance if the income is below the marginal earnings threshold (<i>Geringfügigkeitsgrenze</i>) of €376.26 per month.</p> <p>It is possible to claim Unemployment assistance, (<i>Notstandshilfe</i>) once the right to Unemployment benefit has been exhausted and the unemployed person is in a state of need.</p> <p>No possibility for voluntary insurance, except for <i>self-employed</i> since 1 January 2009.</p> <p><i>Self-employed persons can choose to be insured against unemployment or not and thereby further improve their</i></p>	<p>For the first claim of unemployment cash benefit (<i>Arbeitslosengeld</i>): 52 weeks of insurance periods within the last 24 months. 26 weeks within the last 12 months for persons under the age of 25. In every further case 28 weeks of insurance periods within the last 12 months.</p> <p>Further training allowance (<i>Weiterbildungsgeld</i>): Entitlement if the qualifying period for unemployment benefit is fulfilled and if the employee does not receive his salary during 12 months maximum. Either s/he takes part in further training measures up to at least 20 hours weekly or the employer must hire an unemployed as a substitute. In case of leave for training or leave involving employment of a substitute employee, a daily allowance corresponding to the amount of unemployment benefit, but at least €14.53, is paid during two to 12 months.</p>	<p>No waiting period.</p> <p>Upon termination of employment relationship through the employee's fault or in the case the employee terminates the employment relationship without good reason the entitlement is suspended for 4 weeks.</p>	<p>Unemployment benefit (<i>Arbeitslosengeld</i>): Duration of payment depends on insurance duration and age:</p> <p>52 weeks within 20 years: weeks;</p> <p>156 weeks within 30 years: weeks;</p> <p>312 weeks within 39 years and 40 years of age: weeks;</p> <p>468 weeks within 52 years and 50 years of age: weeks.</p> <p>After completion of a vocational rehabilitation from the statutory social insurance the duration of payment amounts to 78 weeks. The duration will be extended by the period during which the beneficiary participates in a follow-up training or retraining measure or in a reintegration measure commissioned by the Labour Market Service and by 156 or 209 weeks if the beneficiary participates in a work foundation (special training measure).</p> <p>Unemployment assistance</p>	<p>Unemployment assistance, see left columns. No SNCB.</p> <p>In case that unemployment cash benefit or unemployment assistance do not reach a certain amount (for a single person € 773 for the year 2012) and the unemployed person has no other sufficient means for subsistence, s/he can claim means-tested-minimum-assistance (<i>Bedarfsorientierte Mindestsicherung</i>), which is based on the principle of subsidiarity and is provided by the Austrian states (<i>Bundesländer</i>). The claimant has to prove that s/he resides in the respective state and has no sufficient means. This entitlement is not subject to insurance or waiting periods.</p>

Country	Voluntary or compulsory insurance & basic principles	Employment and/or contributions period required	Waiting period	Maximum duration of unemployment benefits	Supplement by SNCB or social assistance
	<p><i>social protection. In case a self-employed person opts to be insured, s/he is bound to unemployment insurance for a minimum period of 8 years.</i></p> <p><i>Self-employed keep their entitlement to unemployment benefit, which they earned previously as non self-employed, for at least five years when certain conditions are fulfilled and even for the duration of their self-employed activity, even without being member to a voluntary unemployment insurance, i.e. for free.</i></p> <p><i>The following groups of self-employed persons are eligible for voluntary unemployment insurance: self-employed, who are covered for old-age in accordance with the Act on Social Insurance for Persons engaged in Commercial Activities (Gewerbliches Sozialversicherungsgesetz (GSVG)) or in accordance with the Act on Social Insurance for Self-Employed (Freiberufliches Sozialversicherungsgesetz (FSVG)), as well as self-employed lawyers and civil engineers. No possibility for membership to the voluntary unemployment insurance exists for persons having reached the age of 60 or the age for early retirement or if an old-age pension or an old-age benefit</i></p>			<p><i>(Notstandshilfe): Unlimited; granted for periods of 52 weeks.</i></p>	

Country	Voluntary or compulsory insurance & basic principles	Employment and/or contributions period required	Waiting period	Maximum duration of unemployment benefits	Supplement by SNCB or social assistance
	<i>has already been granted. The entitlement to benefits corresponds to that for compulsorily insured persons.</i>				
<b>Belgium</b>	<p>Compulsory Unemployment insurance (<i>assurance-chômage/werkloosheidsverzekering</i>) scheme, mainly financed by contributions, covering employees with earnings related or lump-sum benefits and with amounts depending on the family situation.</p> <p>Covers all employees and young persons who are unemployed following their training.</p> <p>No possibility of voluntary insurance</p> <p><i>No protection system exists for the self-employed.</i></p>	Entitlement to unemployment benefits is subject to completion of periods of insurance. In particular, the Belgian legislation states that entitlement to unemployment benefits is subject to having completed a defined number of days of salaried work, for which a sufficient remuneration is paid and for which social security contributions (incl. for the unemployment branch) have been deducted. The number of days of insured work varies according to age and the reference period, from 312 to 624 days.	No waiting period.	No limit (provided the beneficiary actively looks for work and notably follows a pathway to work).	No special unemployment assistance scheme/SNCB.
<b>Bulgaria</b>	<p>Compulsory social insurance scheme financed by contributions covering only employees and providing earnings-related benefits</p> <p>Covers:</p> <ul style="list-style-type: none"> <li>- employees working for more than five working days or 40 hours per calendar month and assimilated groups (e.g. civil servants, employees in elective offices, judges, soldiers and</li> </ul>	At least 9 months during the last 15 months before the unemployment (insurance against all risks).	No waiting period.	<p>Benefits are paid on a monthly basis for a period as follows:</p> <p>First is presented the insurance period and second the duration of payment:</p> <ul style="list-style-type: none"> <li>• 0 to 3 years, 4 months</li> <li>• 3 to 5 years, 6 months</li> <li>• 5 to 10 years, 8 months</li> <li>• 10 to 15 years, 9 months</li> </ul>	No special unemployment assistance scheme/SNCB.

Country	Voluntary or compulsory insurance & basic principles	Employment and/or contributions period required	Waiting period	Maximum duration of unemployment benefits	Supplement by SNCB or social assistance
	<p>military personnel, servants of the Bulgarian Orthodox Church and other registered religions having clerical rank),</p> <ul style="list-style-type: none"> <li>- paid and active members of co-operatives legally engaged by the co-operative,</li> <li>- management executives and those in control of commercial companies.</li> </ul> <p><i>No protection system exists for the self-employed.</i></p>			<ul style="list-style-type: none"> <li>• 15 to 20 years, 10 months</li> <li>• 20 to 25 years, 11 months</li> <li>• over 25 years, 12 months</li> </ul> <p>Those who have terminated the labour contract of their own accord or have been summarily dismissed receive unemployment benefit for a maximum period of 4 months.</p> <p>Unemployed persons, who return to work and regain entitlement to unemployment benefit within three years of their previous entitlement, receive the benefit for a maximum period of 4 months.</p>	
<b>Cyprus</b>	<p>Compulsory social insurance scheme financed by contributions providing earnings-related benefits for employees and voluntarily insured persons working abroad in the service of Cypriot employer.</p> <p>Covers:</p> <ul style="list-style-type: none"> <li>- Employees.</li> <li>- Voluntary contributors working abroad in the service of Cypriot employers.</li> </ul> <p><i>The self-employed are not cov-</i></p>	<p>Conditions relate to the extent of contributions paid:</p> <ul style="list-style-type: none"> <li>-the insured person has been insured for at least 26 weeks up to the date of unemployment;</li> <li>-paid basic insurance up to the date of unemployment equal to at least 26 times the weekly Basic Insurable Earnings (<i>Βασικές Ασφαλιστέες Αποδοχές</i>) of €170.88 per week (0.50 insurance point); and</li> <li>-paid and assimilated insurance in the relevant contribution year is at least equal to 20 times</li> </ul>	3 days (for voluntary abroad contributors the waiting period is 30 days).	156 days	No special unemployment assistance scheme/SNCB.

Country	Voluntary or compulsory insurance & basic principles	Employment and/or contributions period required	Waiting period	Maximum duration of unemployment benefits	Supplement by SNCB or social assistance
	<p>ered for Unemployment benefit</p>	<p>the weekly amount of Basic Insurable Earnings (0.39 insurance point).</p> <p><i>Definitions:</i>  <i>Basic insurance:</i> insurable earnings up to Basic Insurable Earnings (up to one insurance point).  <i>One insurance point:</i> equal to 52 times the weekly basic amount = €8,886.  <i>Relevant contribution year:</i> the last contributions year, prior to the benefit year, which includes the date of fulfilling the relevant insurance conditions.  <i>Benefit year:</i> the period which starts the first Monday of July of each year and ends the last Sunday prior to the first Monday of July of the following year. After the first exhaustion of payment, people over the age of 60 may gain the right for re-entitlement after 13 weeks of employment from the day of exhaustion instead of 26 weeks of employment.</p>			
<p><b>Czech Republic</b></p>	<p>Compulsory social insurance scheme financed by contributions covering the active population providing earnings-related benefits.</p> <p>Covers all employees, employers and self-employed persons.</p> <p>Voluntary insurance not possible.</p>	<p>12 months of basic pension insurance in the past 2 years on account of carrying out employment or another working activity.</p> <p>The condition of 12 months can also be completed by substitute periods of employment (e.g. personal care of a child).</p>		<p>Up to the age of 50 years: 5 months.</p> <p>From 50 to 55 years of age: 8 months.</p> <p>Over the age of 55 years: 11 months.</p> <p>In case of retraining: During the whole period of retraining</p>	<p>No special unemployment assistance scheme/SNCB.</p>

Country	Voluntary or compulsory insurance & basic principles	Employment and/or contributions period required	Waiting period	Maximum duration of unemployment benefits	Supplement by SNCB or social assistance
	<p><i>For the job seeker whose last activity before his inclusion in the job seekers list was independent gainful activity and who participated in the old-age pension insurance as a person performing independent gainful activity, the amount of his unemployment benefits shall be calculated from his last base for the assessment of the premium for old-age pension and the state employment policy contribution for the period under review calculated on the basis of 1 calendar month.</i></p>				
<b>Denmark</b>	<p>Voluntary unemployment insurance scheme financed by contributions covering the active population and providing earnings-related benefits. The following persons may be admitted as members to an unemployment fund:</p> <ul style="list-style-type: none"> <li>- Employees;</li> <li>- Persons having completed vocational training of at least 18 months and who register for the fund 2 weeks at the latest after having completed their education or training;</li> <li>- Conscripts (military service);</li> <li>- Self-employed persons and their assisting spouse;</li> <li>- Persons holding a public office (e.g. members of Parliament) or a municipal office.</li> </ul>	<p>Basic allowance: A minimum period of full-time employment of 52 weeks during the 3 preceding years is required. Only employment carried out while being insured is taken into account.</p> <p>Earnings-related fund: 1 year of insurance with fund</p>	<p>Employees: No waiting period if involuntary unemployed. 3 weeks waiting period if voluntary unemployed.</p> <p>Self employed: 3 weeks</p>	<p>2 years within a 3-year period.</p>	<p>No special unemployment assistance scheme/SNCB.</p> <p>It is possible to qualify for supplementary social assistance while receiving unemployment benefit.</p>

Country	Voluntary or compulsory insurance & basic principles	Employment and/or contributions period required	Waiting period	Maximum duration of unemployment benefits	Supplement by SNCB or social assistance
	<p><i>Unemployment insurance is voluntary also for the self-employed persons. Self-employed persons are entitled to benefits but the conditions for entitlement differ a bit from those for the employees.</i></p>				
<p><b>Estonia</b></p>	<p>Compulsory social insurance scheme financed by contributions covering all employees and providing an earnings-related Unemployment Insurance Benefit (<i>töötuskindlustushüvitis</i>).</p> <p>Social assistance scheme financed by taxes covering the active population providing a flat-rate Unemployment Allowance (<i>töötutoetus</i>)</p> <p>Voluntary insurance not possible.</p> <p><i>Self-employed persons are not covered by the unemployment insurance scheme, but they may be entitled to the State unemployment allowance scheme. In this scheme, self-employment is considered equal to employment in respect of the qualification period for entitlement to the allowance (the qualification period is 180 days of employment or equalised activity within the 12 months preceding</i></p>	<p>Unemployment Insurance Benefit (<i>töötuskindlustushüvitis</i>): Insurance period (payment of contributions) of 12 months over the 36 months preceding registration as unemployed.</p> <p>Unemployment Allowance (<i>töötutoetus</i>): 180 calendar days of work or equivalent activity over the 12 months before registration as unemployed.</p>	<p>Unemployment Insurance Benefit (<i>töötuskindlustushüvitis</i>): 7 calendar days. Longer waiting periods apply if the person was laid off and his / her length of employment in the company was 5 years or longer.</p> <p>Unemployment Allowance (<i>töötutoetus</i>): Generally 7 calendar days. However, 60 calendar days from the date of application for unemployment allowance for persons who, before registration as unemployed, were enrolled in daytime or full-time study at an educational institution.</p>	<p>Unemployment Insurance Benefit (<i>töötuskindlustushüvitis</i>):</p> <ul style="list-style-type: none"> <li>-180 calendar days for a person with an insurance period less than 56 months,</li> <li>-270 calendar days for a person with an insurance period from 56 to 110 months,</li> <li>-360 calendar days for a person with an insurance period of 111 or more months.</li> </ul> <p>Unemployment Allowance (<i>töötutoetus</i>):</p> <p>Generally up to 270 calendar days, up to 210 calendar days for unemployed persons whose last service relationship was terminated due to a breach of service duties, loss of confidence or an indecent act.</p> <p>Extension for unemployed persons close to (i.e. within 180 days from) retirement age: Continued payment of Unemployment Allowance (<i>töötutoetus</i>) up to the pensionable age.</p>	<p>Unemployment allowance (<i>töötutoetus</i>): <b>SNCB</b>. See left columns.</p>

Country	Voluntary or compulsory insurance & basic principles	Employment and/or contributions period required	Waiting period	Maximum duration of unemployment benefits	Supplement by SNCB or social assistance
	<i>unemployment).</i>				
<b>Finland</b>	<p>Social insurance scheme consisting of two parts:</p> <ul style="list-style-type: none"> <li>-basic unemployment allowance (<i>peruspäiväraha</i>): a flat-rate benefit financed by taxes and contributions of employees not members of the optional scheme;</li> <li>-optional earnings-related unemployment allowance (<i>ansiopäiväraha</i>): an earnings-related benefit for employees and self-employed, financed by contributions (employees and employers) and taxes.</li> </ul> <p>Personal scope:</p> <p>Insurance:</p> <ul style="list-style-type: none"> <li>-basic unemployment allowance (<i>peruspäiväraha</i>): Employees and self-employed persons aged 17 to 64.</li> <li>-earnings-related unemployment allowance (<i>ansioperusteinen työttömyyspäiväraha</i>): Employees and self-employed persons aged 17 to 64 who are members of an unemployment fund.</li> </ul> <p>Assistance (Labour market support, <i>työmarkkinatuki</i>):</p> <ul style="list-style-type: none"> <li>-unemployed persons who do not fulfill the conditions for unemployment insurance scheme or who have received daily allowance for the maxi-</li> </ul>	<p>Insurance:</p> <p>Basic unemployment allowance (<i>peruspäiväraha</i>):</p> <p>Employees: Initial condition at least 34 weeks of employment during the last 28 months and during each week at least 18 hours.</p> <p>Self-employed persons: at least 18 months of entrepreneurship during the last 48 months.</p> <p>Earnings-related unemployment allowance (<i>ansioperusteinen työttömyyspäiväraha</i>):</p> <p>As under "basic unemployment allowance" and to have fulfilled the employment requirement while being insured as a member of an unemployment fund.</p> <p>Assistance (Labour market support, <i>työmarkkinatuki</i>): No qualifying period.</p>	<p>Insurance:</p> <p>7 working days during 8 consecutive weeks.</p> <p>Assistance (Labour market support, <i>työmarkkinatuki</i>):</p> <p>5 working days during 8 consecutive weeks.</p> <p>Persons entering the labour market for the first time have a waiting period of 5 months. This is not applied to persons who have completed their vocational training.</p> <p>The unemployment benefit is not paid for 90 days if the person has resigned his job without a valid reason or the employment was terminated through his/her own fault.</p>	<p>Insurance:</p> <p>Maximum period of 500 calendar days. A jobseeker born prior to 1950 can then apply for unemployment pension (<i>Työttömyyseläke</i>).</p> <p>A jobseeker born in 1950-1954 may, notwithstanding the maximum period, be paid unemployment allowance until the end of the calendar month in which s/he reaches the age of 65, provided s/he has reached the age of 59 before the maximum period expires and has acquired, on expiry of the maximum period, at least five employment years - as defined by law - over the last 20 years.</p> <p>A jobseeker born in 1955 or later may, notwithstanding the maximum period, be paid unemployment allowance until the end of the calendar month in which s/he reaches the age of 65, provided s/he has reached the age of 60 before the maximum period expires and has acquired, on expiry of the maximum period, at least five employment years - as defined by law - over the last 20 years.</p> <p>Assistance (Labour market support, <i>työmarkkinatuki</i>): No limit.</p>	<p>Labour market support (<i>työmarkkinatuki</i>) is an assistance scheme (SNCB) for those jobseekers who have not worked previously or who have already been paid unemployment allowance for the maximum period. Labour market support is a flat-rate benefit financed by taxes.</p> <p>See left columns.</p>

Country	Voluntary or compulsory insurance & basic principles	Employment and/or contributions period required	Waiting period	Maximum duration of unemployment benefits	Supplement by SNCB or social assistance
	<p>mum period.</p> <p>-persons aged 17-24 are entitled during labour-market-measures.</p> <p>Otherwise not entitled are persons:</p> <p>-Aged 17, who have not completed a vocational training;</p> <p>-aged 18-24, who have refused labour-market-measures or who have not applied for training.</p> <p><i>The self-employed are insured by the basic unemployment insurance. The self-employed have the possibility to join voluntarily the earnings-related unemployment insurance scheme and qualify for the earnings-related unemployment allowance as members of special unemployment funds, with rules particularly adapted to the situation of the self-employed (e.g. in defining unemployment).</i></p>				
<b>France</b>	<p>Unemployment insurance (assurance chômage): Compulsory social insurance scheme financed by contributions for employees with earnings-related benefits. Covers all employees.</p> <p>Voluntary insurance in certain circumstances</p> <p><i>The self-employed:</i> <i>No unemployment insurance</i></p>	<p>Unemployment insurance (assurance chômage): At least 4 months (122 days) insurance during the last 28 months (36 months for those aged 50 and over) preceding the unemployment.</p> <p>Unemployment assistance (régime de solidarité): For the Allowance of specific solidarity (allocation de solidarité spécifique, ASS): 5 years of</p>	<p>Unemployment insurance (assurance chômage): The waiting period comprises paid holidays plus a general period of 7 days plus a waiting period equal to the amount of the redundancy payment divided by the amount of the salary of reference within a limit of 75 days.</p> <p>Unemployment assistance (régime de solidarité): No</p>	<p>Unemployment insurance (assurance chômage): The duration of payment of the benefit corresponds to the length of insurance taken into account for acquiring entitlement to benefits (between 4 months and 2 years or 3 years if the beneficiary is aged 50 and over).</p> <p>Unemployment assistance (régime de solidarité):</p>	<p>Unemployment assistance (Solidarity scheme, régime de solidarité): Tax financed scheme. Benefits paid under conditions of previous activity and means test.</p>

Country	Voluntary or compulsory insurance & basic principles	Employment and/or contributions period required	Waiting period	Maximum duration of unemployment benefits	Supplement by SNCB or social assistance																		
	<p>system exists for farmers. Crafts, Commerce and Manufacturing, liberal professions:</p> <ul style="list-style-type: none"> <li>-Workers practising a self-employed activity must be registered with social insurance organisations and pay their contributions themselves. Compulsory affiliation:</li> <li>-managers of firms on the trades register as well as assisting family members who take part in the small-scale enterprise;</li> <li>-persons practising an industrial and commercial activity involving signing up on the Commercial Register or liability to professional tax as a retailer;</li> <li>-persons practising a liberal profession.</li> </ul> <p>These schemes also cover partners who collaborate with these workers.</p>	<p>activity as an employed person during the 10 years preceding the end of the working contract.</p> <p>Transitional solidarity allowance (<i>allocation transitoire de solidarité, ATS</i>): aimed at alleviating the measures concerning the increase in retirement age for those involuntarily unemployed persons who satisfy the conditions for obtaining full old-age pension but who did not yet reach the retirement age. The ATS replaces the Retirement-equivalent benefit (<i>Allocation équivalent retraite, AER</i>) for the period between 1 July 2011 and 31 December 2014.</p>	waiting period.	<ul style="list-style-type: none"> <li>-Allowance of specific solidarity (<i>allocation de solidarité spécifique, ASP</i>): 6 months, renewable;</li> <li>-Temporary waiting period allowance (<i>allocation temporaire d'attente, ATA</i>): maximum 12 months.</li> </ul>																			
Germany	<p>Unemployment insurance (<i>Arbeitslosenversicherung</i>) is part of the overall job promotion scheme (<i>Arbeitsförderung</i>)(Social Code - Book III - SGB III). All employees (manual and white-collar workers and trainees including young disabled persons) are compulsorily insured. Voluntary continuation of compulsory insurance (<i>Versicherungspflicht auf Antrag</i>) is possible since 1</p>	<p>Unemployment insurance (<i>Arbeitslosenversicherung</i>): 12 months of pre-insurance (compulsory insurance coverage according to SGB III or in receipt of unemployment insurance benefits according to SGB III, e. g. unemployment benefit within the last 24 months, insurable employment or in receipt of unemployment insurance benefits according to the SGB III via to take-up of the employment).</p>	<p>In principle no waiting period.</p> <p>If the unemployed person has terminated his/her employment contract without good reason or has caused the termination of the contract through his/her own misconduct, a waiting period (<i>Sperrzeit</i>) of up to 12 weeks may become effective.</p>	<p>Unemployment insurance (<i>Arbeitslosenversicherung</i>): The duration of benefits (DB) depends on the duration of compulsory insurance coverage (DI) and on the age of the beneficiary:</p> <table border="1"> <thead> <tr> <th>DI (months)</th> <th>Age (years)</th> <th>DB (months)</th> </tr> </thead> <tbody> <tr> <td>12</td> <td>6</td> <td></td> </tr> <tr> <td>16</td> <td>8</td> <td></td> </tr> <tr> <td>20</td> <td>10</td> <td></td> </tr> <tr> <td>24</td> <td>12</td> <td></td> </tr> <tr> <td>30</td> <td>50</td> <td>15</td> </tr> </tbody> </table>	DI (months)	Age (years)	DB (months)	12	6		16	8		20	10		24	12		30	50	15	<p>Basic security benefits for jobseekers (<i>Grundsicherung für Arbeitsuchende</i>): After expiration of the unemployment insurance benefits according to the <i>SGB III</i> or in case the supplementary benefits are not sufficient to cover the needs, all beneficiaries capable of working as well as their family members are granted basic security benefits for jobseekers in case of need (<b>SNCB</b>). See also left column.</p>
DI (months)	Age (years)	DB (months)																					
12	6																						
16	8																						
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Country	Voluntary or compulsory insurance & basic principles	Employment and/or contributions period required	Waiting period	Maximum duration of unemployment benefits	Supplement by SNCB or social assistance
	<p>February 2006 for certain categories of persons (section 28a SGB III). These categories include carers who care for family members at least 14 hours per week, self-employed persons (with the exception of farmers) working at least 15 hours per week, and persons employed outside the EU or associated states.</p> <p>No compulsory insurance, however, if the income from work is marginal (<i>geringfügig</i>) (2012: € 400, to be modified from 1 January 2013 on: € 450 and compulsory insurance with the possibility of an opting-out for these "minijobbers").</p> <p>Basic security benefits for jobseekers (<i>Grundsicherung für Arbeitsuchende</i>) according to SGB II: tax-financed social security scheme of means-tested minimum resources for employable persons, who cannot find any employment in spite of intensive efforts or only an employment which does not meet their needs. Not employable dependants living together with the beneficiary of basic security benefits for jobseekers are entitled to social benefit (<i>Sozialgeld</i>)."</p> <p><i>There is no compulsory unemployment insurance for self-</i></p>	<p>Basic security benefits for jobseekers (<i>Grundsicherung für Arbeitsuchende</i>): No qualifying period required.</p>		<p>36 55 18 48 58 24</p> <p>Basic security benefits for jobseekers (<i>Grundsicherung für Arbeitsuchende</i>): Unemployment benefit II (<i>Arbeitslosengeld II</i>) and social benefit (<i>Sozialgeld</i>) are in principle unlimited if the conditions of eligibility are met; however, the benefit is only granted as a rule for a duration of six months, then it is necessary to prove the entitlement again.</p>	

Country	Voluntary or compulsory insurance & basic principles	Employment and/or contributions period required	Waiting period	Maximum duration of unemployment benefits	Supplement by SNCB or social assistance
	<i>employed farmers, craftsmen and retailers. If there is no sufficient income and no disposable assets, the self-employed farmers, craftsmen and retailers are in principle entitled to the standard allowance granted to jobseekers (Arbeitslosengeld II), a universal allowance granted to the gainfully employed to secure their subsistence.</i>				
<b>Greece</b>	<p>Compulsory social insurance scheme financed by contributions covering employees and providing earnings-related benefits.</p> <p>Covers employees who are insured against unemployment with the Labour Employment Office (OAED)</p> <p>Voluntary insurance not possible.</p> <p><i>The self-employed:</i></p> <p><i>Unemployment risk is not covered in the farmers' system.</i></p> <p><i>Craftsmen, retailers, professional motorists, hotel owners etc. are affiliated with the Social Security Organisation for the Self-Employed (OAEΕ, ΟΡΓΑΝΙΣΜΟΣ ΑΣΦΑΛΙΣΗΣ ΕΛΕΥΘΕΡΩΝ ΕΠΑΓΓΕΛΜΑΤΙΩΝ).</i></p> <p><i>Members of the liberal profes-</i></p>	<p>-At least 125 days of work during the 14 months preceding job loss or, at least, 200 days of work during the 2 years preceding job loss.</p> <p>-For first time claimants, an additional requirement of at least 80 days of work per year during the 2 previous years applies.</p>	6 days	<p>Generally proportional to periods of employment:</p> <p>Employment duration:</p> <p>125 days: 5 months</p> <p>150 days: 6 months</p> <p>180 days: 8 months</p> <p>220 days: 10 months</p> <p>250 days: 12 months</p> <p>If aged 49 or more:</p> <p>210 days: 12 months</p> <p>In all cases, 3 additional months at reduced rate, if 4,050 days of work, 12 additional months.</p> <p>For the newcomers on the labour market (youngsters between 20-29 years): 5 months of benefits.</p> <p>In all cases, 25 instalments of daily unemployment benefit for each month.</p>	No special unemployment assistance scheme/SNCB.

Country	Voluntary or compulsory insurance & basic principles	Employment and/or contributions period required	Waiting period	Maximum duration of unemployment benefits	Supplement by SNCB or social assistance
	<p>sions (medical personnel, doctors, pharmacists, engineers, lawyers, notaries etc.) are insured with the Insurance Fund for Independent Professionals (ETAA, ENIAIO TAMEIO ANEΞAPHTHA AΠΑΣΧΟΛΟΥΜΕΝΩΝ). The following fields are covered: health care, maternity (benefits in cash and in kind), long-term care, invalidity, old-age, survivors and employment injuries.</p>				
<b>Hungary</b>	<p>Compulsory social insurance scheme financed by contributions, covering the active population (employees and self-employed) and providing earnings-related benefits. Covers all employees, <i>self-employed</i> and assimilated groups.</p> <p>There is a new type of unemployment benefit for elderly workers, i.e. Job-seeker Aid Before Pension (<i>Nyugdíj előtti álláskeresési segély</i>). It is open to unemployed workers who are within five years of reaching retirement age and have been receiving job-seeker benefit (<i>Álláskeresési járadék</i>) for at least 45 days, and the period of payment of benefit comes to an end.</p>	At least 360 days of insurance during the previous 3 years.	No waiting period	1 day of Job-seeker Benefit ( <i>Álláskeresési járadék</i> ) is paid for every 10 days of prior insurance, up to a maximum of 90 days of benefit.	No special unemployment assistance scheme/SNCB.
<b>Ireland</b>	<i>Insurance:</i>	<i>Insurance:</i>	Insurance: 3 days.	<i>Insurance:</i>	<i>Assistance:</i>

Country	Voluntary or compulsory insurance & basic principles	Employment and/or contributions period required	Waiting period	Maximum duration of unemployment benefits	Supplement by SNCB or social assistance
	<p>Compulsory social insurance scheme financed by contributions covering employees and providing flat-rate benefits (Jobseeker's Benefit).</p> <p>With some exceptions, all employees and apprentices aged 16 years and over are covered. Major exceptions: <i>The self employed</i>; civil and public servants recruited before April 1995; persons earning less than € 38 per week.</p> <p><i>Assistance:</i> Persons aged 18 years and over, habitually resident in the State.</p> <p>Voluntary insurance not possible.</p> <p><i>There is no protection system for the self-employed, but they are eligible for the Jobseeker's Allowance (see last right hand column) Share-fishermen who pay optional contributions are covered for cash benefits for unemployment (payable for a limited duration of 13 weeks in any one year)</i></p>	<p>-104 weekly contributions paid; and -39 weekly contributions paid or credited during the relevant contribution year preceding the benefit year, of which a minimum of 13 must be paid contributions. The latter requirement may be satisfied by contributions paid in some other contribution years, or -26 weekly contributions paid in the relevant tax year (immediately precedes the benefit year) and 26 weekly contributions paid in the tax year immediately before the relevant tax year.</p> <p><i>Assistance:</i> No contribution conditions</p>	<p>Assistance: 3 days. (Except when claimant was in receipt of benefits under social insurance immediately prior to claim.)</p>	<p>312 days but limited to 234 days if applicant has paid less than 260 weekly contributions since first entering insurance. Where applicants reach age 65 they are allowed to remain on the benefit until age 66 (pension age), even if this exceeds the 234 days or 312 days limits, if 156 contributions have been paid and, they satisfy the second contribution condition. (see second column from left).</p> <p>If applicant is under age 18, payment is limited to 156 days.</p> <p><i>Assistance:</i> No limit up to the age of 66.</p>	<p>Tax financed scheme for all residents providing flat-rate benefits (Jobseeker's Allowance) (SNCB). See left columns.</p>
Italy	<p>Compulsory social insurance scheme for employees financed by contributions from employers, providing earnings-related benefits.</p>	<p><i>Ordinary unemployment benefit:</i> Two years of insurance and 52 weekly contributions during the last 2 years. <i>Special unemployment benefit:</i></p>	<p>Waiting period of 8 days</p>	<p><i>Ordinary unemployment benefit:</i> 240 days (360 days for the unemployed aged over 50 years).</p>	<p>No special unemployment assistance scheme/SNCB.</p> <p>Note: Reform passed with Law No. 92 of 2012 will gradually enter into force from 2013.</p>

Country	Voluntary or compulsory insurance & basic principles	Employment and/or contributions period required	Waiting period	Maximum duration of unemployment benefits	Supplement by SNCB or social assistance
	<p><i>Coverage:</i></p> <ul style="list-style-type: none"> <li>- ordinary unemployment benefit: all employees.</li> <li>- special unemployment benefit: workers in the construction industry.</li> <li>- mobility allowance: all employees (except in the construction industry) who qualified for the extraordinary earnings supplement.</li> </ul> <p>No possibility of voluntary insurance.</p> <p><i>No protection system exists for the self-employed.</i></p>	<p>10 monthly contributions or 43 weekly contributions during the last two years in the construction industry.</p> <p><i>Mobility Allowance:</i> At least 12 months of insurance, of which at least 6 months of effective work.</p>		<p><i>Special unemployment benefit:</i> 90 days with extension in the event of a recession.</p> <p><i>Mobility allowance:</i></p> <ul style="list-style-type: none"> <li>-12 months for the unemployed aged under 40 years;</li> <li>-24 months for the unemployed aged between 40 and 50 years;</li> <li>-36 months for the unemployed aged over 50 years.</li> </ul> <p>Possibility of extension until 48 months for regions in Southern Italy.</p>	
<b>Latvia</b>	<p>Compulsory social insurance scheme financed by contributions and taxes providing an earnings-related benefit.</p> <p><i>Coverage:</i> Persons on whose behalf contributions have been calculated: employees and persons on whose behalf contributions are paid from State social insurance budget.</p> <p>No voluntary insurance.</p> <p><i>Self-employed persons are not covered by the unemployment insurance scheme.</i></p>	<p>-Socially insured for at least 1 year, -paid at least 9 months of contributions in 12 months before registering as unemployed.</p>	<p>Involuntary unemployment: No waiting period.</p> <p>Voluntary unemployment and summary dismissal: Two months.</p>	<p>The duration of payment depends on the social insurance record of the person:</p> <ul style="list-style-type: none"> <li>-for persons with an insurance record between one and 9 years: 4 months;</li> <li>-for persons with an insurance record between 10 and 19 years: 6 months;</li> <li>-for persons with an insurance record of more than 20 years: 9 months.</li> </ul>	No special unemployment assistance scheme/SNCB.
<b>Lithuania</b>	<p>Compulsory social insurance scheme financed by contribu-</p>	<p>General: minimum period of insurance: 18 months within 3</p>	<p>Unemployment through no fault of the employee:</p>	<p>The duration of payment of Unemployment Insurance Bene-</p>	No special unemployment assistance scheme/SNCB.

Country	Voluntary or compulsory insurance & basic principles	Employment and/or contributions period required	Waiting period	Maximum duration of unemployment benefits	Supplement by SNCB or social assistance										
	<p>tions covering employees and providing earnings-related Unemployment Insurance Benefit (<i>Nedarbo draudimo išmoka</i>).</p> <p>Unemployment Insurance Benefit (<i>Nedarbo draudimo išmoka</i>) paid to:</p> <ul style="list-style-type: none"> <li>-All employed persons;</li> <li>-unemployed people who have taken a childcare leave from the 1st until the 3rd birthday of the child;</li> <li>-one of the parents (including adoptive parents) of a disabled person or a person appointed to be a guardian of the disabled person, providing permanent nursing at home;</li> <li>-spouses of civil servants and of servicemen in the professional military service as well as delegated persons, who have not attained the pensionable age and are not in receipt of income connected to employment relations, for a period of time they reside abroad together with the civil servant or the delegated person.</li> </ul> <p>No possibility for voluntary insurance.</p> <p><i>No coverage for self-employed.</i></p>	<p>years preceding unemployment. There are exceptions for certain groups of unemployed people who contributed but have not acquired the necessary social insurance record due to important reasons (they were dismissed on the initiative of the employer, when they are not at fault, etc); exceptions also for those who did not contribute and those jobseekers, who finished mandatory basic military service or alternative military service or were dismissed after having fulfilled more than half of the designated service time.</p>	<p>7 calendar days or the period during which severance pay or compensation of the amount of monthly average wage is paid as agreed between employer and employee.</p> <p>Unemployment in case of employee's fault: 3 months.</p>	<p>fit (<i>Nedarbo draudimo išmoka</i>) depends on the length of the insurance record:</p> <table border="0"> <tr> <td><u>Service years</u></td> <td><u>Duration</u></td> </tr> <tr> <td>less than 25 years</td> <td>6 months</td> </tr> <tr> <td>25 - 30 years</td> <td>7 months</td> </tr> <tr> <td>30 - 35 years</td> <td>8 months</td> </tr> <tr> <td>35 years and over</td> <td>9 months</td> </tr> </table> <p>The duration of payment of the Unemployment Insurance Benefit in municipalities with the highest registered unemployment rate (i.e. where the average of the registered unemployment rate of the last quarter is 1.5 times higher than the national average) can be extended by 2 months.</p> <p>In case of incapacity for work, the duration of payment is prolonged for as many calendar days as the jobseeker is incapacitated, within the limit of 30 days.</p> <p>The duration of payment of the Unemployment Insurance Benefit (<i>Nedarbo draudimo išmoka</i>) is prolonged for additional 2 months for elderly persons within 5 years till pension age.</p>	<u>Service years</u>	<u>Duration</u>	less than 25 years	6 months	25 - 30 years	7 months	30 - 35 years	8 months	35 years and over	9 months	
<u>Service years</u>	<u>Duration</u>														
less than 25 years	6 months														
25 - 30 years	7 months														
30 - 35 years	8 months														
35 years and over	9 months														
<b>Luxembourg</b>	<p>Compulsory unemployment allowance scheme financed by a special fund, the Fund for Em-</p>	<p>At least 26 weeks of employment (minimum of 16 hours per week) during the last 12 months</p>	<p>No waiting period, except for young unemployed (age limit: 21 - may be extended to 23, 25</p>	<p>Principle: The duration of the unemployment benefit is the same as the</p>	<p>No special unemployment assistance scheme/SNCB.</p>										

Country	Voluntary or compulsory insurance & basic principles	Employment and/or contributions period required	Waiting period	Maximum duration of unemployment benefits	Supplement by SNCB or social assistance
	<p>ployment, funded notably by the State, with benefits related to remuneration previously earned.</p> <p>Coverage:            -Employed persons.            -Young persons, who are unemployed after their studies.            -Self-employed persons who had to cease their activities and are in search of employed work.</p>	<p>No employment period required for young persons leaving school.</p> <p><i>The self-employed who had to cease their occupation owing to economic and financial difficulties, to medical reasons, to a third party or by a case of force majeure, may obtain unemployment benefits when they register as jobseekers. They must have completed at least two years of compulsory pension insurance as a self-employed person. However, for the purposes of calculating the two-year qualifying period, periods of insurance completed as an employed person can be aggregated, provided the person has carried out activities as a self-employed person for at least six months before the submission of the request for compensation.</i></p>	<p>or 28): allowance granted after a waiting period of 39 weeks, which can be reduced to 26 weeks under certain conditions</p>	<p>duration of the employment during the last 12 months with a maximum of 365 days.</p> <p>Possibilities of extension:            - for unemployed persons over 50 years of age, prolongation of 12, 9 or 6 months, if 30, 25 or 20 years of affiliation to pension insurance, respectively            - 182 extra calendar days for persons with particular difficulties to find a job.</p>	
Malta	<p>Compulsory social insurance scheme financed by contributions covering all employees and providing flat-rate Unemployment Benefit (<i>Beneficċju għal dizimpjieg</i>).</p> <p>Voluntary insurance is not possible.</p> <p><i>Self-employed persons are not</i></p>	<p>50 weeks of paid contributions of which at least 20 paid or credited should be in the last two previous years.</p>	<p>No waiting period in case of involuntary unemployment. If the person leaves employment voluntarily or because of misconduct no benefit is paid for a period of 6 months.</p>	<p>A maximum of 156 days' benefit, provided that the number of benefit days paid does not exceed the number of contributions paid under a Contract of Service.</p> <p>For example, a person claims Unemployment Benefit (<i>Beneficċju għal dizimpjieg</i>) after working for 70 weeks since</p>	<p>Unemployment assistance is paid at the same rates and same means-test conditions as Social Assistance</p> <p>Special Unemployment Benefit (<i>Beneficċju speċjali għal dizimpjieg</i>) is a hybrid of both the contributory benefit and the non-contributory assistance.</p>

Country	Voluntary or compulsory insurance & basic principles	Employment and/or contributions period required	Waiting period	Maximum duration of unemployment benefits	Supplement by SNCB or social assistance
	<i>entitled to an unemployment benefit.</i>			his/her entry in the Scheme. S/he will be entitled to a maximum of 70 days. All other number of days paid as sickness and unemployment prior to this claim will also be deducted. So if s/he has previously taken 8 days sick leave his/her entitlement would be of 62 days.	
<b>The Netherlands</b>	<p>Compulsory social insurance scheme financed by contributions covering employees and providing either a flat rate short-term benefit or an earnings-related benefit. All employees are covered.</p> <p>There is a possibility for voluntary insurance in exceptional circumstances.</p> <p><i>Self-employed persons are not insured against the risk of unemployment; here the corresponding law applies only to employees.</i></p>	<p>A person who has been employed for at least 26 weeks in the 36 weeks before the first day of unemployment (weeks' condition) qualifies for a three-month benefit.</p> <p>A person who has received wages for at least 52 days in four of the five calendar years preceding the year in which s/he became unemployed, (years' condition) qualifies for a benefit payable for a number of months that equals the number of months in employment (with a maximum of 38 months).</p>	No waiting period.	<p>A person who only meets the weeks' condition receives benefits for a maximum duration of 3 months.</p> <p>A person who satisfies the years' condition receives benefits for as many months as the number of months in employment, with a maximum of 38 months.</p>	<p>No special unemployment assistance scheme.</p> <p>If unemployment benefits are less than the social minimum, a supplementary benefit can be claimed under the Supplementary Benefit Act (<i>Toeslagenwet, TW</i>) (means tested) (SNCB).</p>
<b>Poland</b>	<p>Compulsory solidarity insurance scheme (entitlement linked to economic activity) financed by contributions of employers that provide a flat-rate benefit.</p> <p>Covers persons insured with the social security system on the basis of:</p> <ul style="list-style-type: none"> <li>-employment,</li> </ul>	At least 365 calendar days of paid employment during the 18 months preceding the day of registration.	7 calendar days.	<ul style="list-style-type: none"> <li>-6 months in areas with an unemployment rate less than 150% national average,</li> <li>-12 months in areas with an unemployment rate of at least 150% or more of the national average, or if the claimant has a qualifying period of 20 years and is over 50 years old, or if the claimant's spouse is unem-</li> </ul>	No special unemployment assistance scheme/SNCB.

Country	Voluntary or compulsory insurance & basic principles	Employment and/or contributions period required	Waiting period	Maximum duration of unemployment benefits	Supplement by SNCB or social assistance
	<p>-non-agricultural economic activities, and -other paid activities, provided the monthly earnings are equal to or greater than the national minimum wage. No possibility for voluntary insurance.</p> <p><i>The same rules as for employed persons applies also to self – employed.</i></p>			<p>ployed, not entitled to an allowance and they have at least one dependent child under the age of 15 years.</p>	
<b>Portugal</b>	<p>Unemployment insurance: Compulsory social insurance scheme for employees financed by contributions, with earnings-related benefits.</p> <p>Unemployment assistance: Mixed system financed by contributions and taxes with means tested benefits related to the indexing reference of social support IAS (<i>indexante dos apoios sociais</i>).</p> <p>Insurance and assistance covers all employees.</p> <p>No possibility of voluntary insurance</p> <p><i>Unemployment benefit is available only to those self-employed who are in a situation of economic dependance, i.e. who provide at least 80% of their activities on behalf of a con-</i></p>	<p>Unemployment insurance: At least 450 days of employed work and contribution payment, or assimilated situation, in the 24 months preceding commencement of unemployment.</p> <p>Unemployment assistance: At least 180 days of employed work in the 12 months preceding commencement of unemployment.</p> <p><i>Self-employed:</i> <i>The scheme provides for entitlement to activity cessation allowance (Subsídio por cessação de atividade) and to partial activity cessation allowance (Subsídio parcial por cessação de atividade) when the self-employed workers concerned have completed 720 days of non-salaried, economically dependent activity, for which contributions have effec-</i></p>	No waiting period	<p>Unemployment insurance: Duration of benefits proportional to age and length of contribution: <i>(1) aged less than 30 years:</i> - contribution period &lt; 24 months: 270 days of payment; - contribution period &gt; 24 months: 360 days of payment; 30 extra days every 5 years of registered income before unemployment. <i>(2) aged from 30 to 40 years:</i> - contribution period &lt; 48 months: 360 days of payment; - contribution period &gt; 24 months: 540 days of payment; 30 extra days every 5 years of registered income during the last 20 years preceding unemployment. <i>(3) aged from 40 to 45 years:</i> - contribution period &lt; 60 months: 540 days of payment; - contribution period &gt; 60 months: 720 days of payment;</p>	Unemployment assistance: See left columns.

Country	Voluntary or compulsory insurance & basic principles	Employment and/or contributions period required	Waiting period	Maximum duration of unemployment benefits	Supplement by SNCB or social assistance
	<i>tracting entity (contract for the provision of services).</i>	<i>tively been paid, in the course of the 48 months immediately preceding the date of involuntary cessation of the service contract.</i>		<p>30 extra days every 5 years of registered income during the last 20 years preceding unemployment.</p> <p><i>(4) aged 45 years or more:</i></p> <ul style="list-style-type: none"> <li>- contribution period &lt; 72 months: 720 days of payment;</li> <li>- contribution period &gt; 72 months: 900 days of payment;</li> </ul> <p>60 extra days every 5 years of registered income during the last 20 years preceding unemployment.</p> <p>Unemployment assistance: Duration of benefits according to age and length of contribution period, with the same periods as for unemployment insurance. If unemployment assistance is granted after the exhaustion of unemployment benefit, the duration of payment is halved.</p>	
<b>Slovakia</b>	<p>Social insurance scheme financed by compulsory contributions from employers, employees and voluntarily insured persons, covering employees and voluntarily insured persons and providing earnings-related benefits.</p> <p>Compulsory insurance for all employed persons (except pensioners).</p> <p>Voluntary insurance for persons</p>	At least 2 years of unemployment insurance contributions during the last 3 years (4 years in case of temporary employment).	No waiting period.	<p>Unemployment Benefit (<i>Dávka v nezamestnanosti</i>): 6 months (4 months in case of employees on fixed-term labour contracts).</p> <p>After a period of 3 months, the beneficiary has the choice either to continue receiving benefit (for another 3 months maximum) or to cancel the registration as jobseeker and obtain a bonus.</p>	<p>No special unemployment assistance scheme.</p> <p>Activation Allowance (<i>Aktivačný príspevok</i>) part of the means-tested non-contributory tax-financed scheme of Benefits in Material Need (<i>Dávka v hmotnej núdzi</i>): € 63.07 per month for those following a back-to-work programme (training or performance of minor community work at least 10 hours a week).</p>

Country	Voluntary or compulsory insurance & basic principles	Employment and/or contributions period required	Waiting period	Maximum duration of unemployment benefits	Supplement by SNCB or social assistance
	<p>up to the age of 16 years with permanent or temporary residence.</p> <p><i>Self-employed:</i> The benefits are granted according to the regulations of the general system, but only in case of non performance of the self-employed activity and previous voluntary insurance.</p>				<p>Measures of Active Labour Market Policy to support employment of disadvantaged jobseekers, to support employment of jobseekers in regions where the unemployment rate is higher than the Slovak average rate. Disadvantaged persons are: persons up to the age of 25 or over the age of 50, long-term unemployed, disabled persons, persons made redundant due to organisational reasons, persons caring for at least 3 children, single parents with at least 1 child, etc. Benefits include: benefit equal to the sum of subsistence minimum offered during the period of training activities, during education and preparation for labour market, during graduate praxis, during activation activities in the form of voluntary service and start-up allowance for the self-employment.</p>
<b>Slovenia</b>	<p>Compulsory social insurance scheme financed by taxes and contributions, covering employees, providing earnings-related Unemployment Benefit (<i>nadomestilo za primer brezposelnosti</i>).</p> <p>Compulsory insurance: Employees, self-employed, recipients of Unemployment</p>	At least 9 months of insurance during the previous 24 months.	No waiting period.	<p>Depends upon length of insurance and partly also on age:</p> <ul style="list-style-type: none"> <li>-insurance period between 9 months and 5 years: 3 months,</li> <li>-insurance period between 5 and 15 years: 6 months,</li> <li>-insurance period between 15 and 25 years: 9 months,</li> <li>-insurance period of 25 years or more: 12 months (19 months if over age 50; 25 months if over</li> </ul>	No special unemployment assistance scheme/SNCB.

Country	Voluntary or compulsory insurance & basic principles	Employment and/or contributions period required	Waiting period	Maximum duration of unemployment benefits	Supplement by SNCB or social assistance
	<p>Benefit (<i>nadomestilo za priver brezposelnosti</i>), recipients of Sickness Benefit (<i>nadomestilo plače za čas bolezni</i>), Paternity Benefit (<i>očeto vsko nadomestilo</i>) and Childcare Benefit (<i>nadomestilo za nego in varstvo otroka</i>) after termination of employment, family assistant (<i>družinski pomočnik</i>) entitled to partial payment for loss of income and some other categories of persons.</p> <p>Voluntary insurance:</p> <ul style="list-style-type: none"> <li>- citizens, employed by a foreign employer in a foreign country, who, upon return, cannot exercise their rights in case of unemployment on any other basis,</li> <li>- spouses or partners of citizens of the Republic of Slovenia employed abroad, if the spouse was employed in the Republic of Slovenia before departure abroad,</li> <li>- persons whose employment contract is suspended,</li> <li>- spouses or partners of diplomats and other civil servants posted abroad if they were registered as unemployed at least six months in a period of one year before departure.</li> </ul> <p><i>Self-employed persons are also covered by compulsory unemployment insurance. They are therefore entitled to unem-</i></p>			age 55).	

Country	Voluntary or compulsory insurance & basic principles	Employment and/or contributions period required	Waiting period	Maximum duration of unemployment benefits	Supplement by SNCB or social assistance
	<p>ployment benefits, payment of social security contributions and payment of contributions for pension and invalidity insurance one year prior to fulfilment of the minimum conditions for old-age pension.</p>				
Spain	<p>Compulsory social insurance scheme for employees financed by contributions of employers and employees and State contributions. The scheme comprises a contributory level (insurance level) with earnings-related benefits and a welfare level (assistance level) with flat-rate allowances.</p> <p>The protection provided by the welfare level also includes the Active Integration Income (<i>Renta Activa de Inserción, RAI</i>).</p> <p>Out-of-work benefit (<i>prestación por cese de actividad</i>) for the self-employed</p> <p>Employed workers included in a Social Security scheme which covers unemployment contingencies and other persons, treated as such, included in the scope of the protection.</p> <p>Voluntary insurance for the self-employed</p> <p><i>The self-employed are entitled</i></p>	<p><i>Insurance:</i> Minimum contribution period of 360 days during the 6 years immediately preceding the legal unemployment situation.</p> <p><i>Assistance:</i> (1) Allowance: Generally none, although certain unemployment allowances require a minimum contribution of 3 months (with family responsibilities) or 6 months (without family responsibilities) or 6 years in the course of the person's career (persons over 52 years of age).</p> <p>(2) Active Integration Income (<i>Renta Activa de Inserción, RAI</i>): No qualifying period required.</p> <p>(3) Professional requalification programme (<i>Programa de recualificación profesional</i>): No qualifying period required.</p>	<p><i>Insurance:</i> In general, no waiting period.</p> <p><i>Assistance:</i> (1) Allowance: One month at the disposal of the employment office as from the expiry date of the contributory benefit. In other cases, there is no waiting period.</p> <p>(2) Active Integration Income (<i>Renta Activa de Inserción, RAI</i>): In general, no waiting period.</p> <p>(3) Professional requalification programme (<i>Programa de recualificación profesional</i>): No waiting period.</p>	<p><i>Insurance:</i> Depending on contribution period over preceding 6 years. The duration of the payment varies from a minimum of 4 months to a maximum of 2 years.</p> <p><i>Assistance:</i> (1) Allowance: -Normally 6 months, possible extension in 6 months periods, up to a total of 18 months. -Extension of this period is possible in special cases. -In the case of workers over 52 who fulfil all the conditions to retire except for the age, the duration is extended until reaching retirement age. (2) Active Integration Income (<i>Renta Activa de Inserción, RAI</i>): A maximum of 11 months.</p> <p>(3) Professional requalification programme (<i>Programa de recualificación profesional</i>): A maximum of 6 months.</p>	<p>Unemployment assistance: see left columns. No SNCB.</p> <p>Some argue that the Active Integration Income is a SNCB. However, it is not included in Annex X. The benefit is not exportable under Spanish law.</p>

Country	Voluntary or compulsory insurance & basic principles	Employment and/or contributions period required	Waiting period	Maximum duration of unemployment benefits	Supplement by SNCB or social assistance
	<i>to the out-of-work benefit (Prestación por cese de actividad) if they opted for the coverage of occupational contingencies.</i>				
<b>Sweden</b>	<p>Unemployment insurance scheme consisting of two parts:</p> <ul style="list-style-type: none"> <li>- a voluntary insurance to compensate the loss of income (<i>inkomstbortfallsförsäkring</i>) providing an earnings-related benefit financed by employers' contributions and membership fees;</li> <li>- basic insurance (<i>grundförsäkring</i>) financed by employers' contributions covering those not voluntarily insured and providing a flat-rate benefit.</li> </ul> <p>Earnings-related benefit (<i>inkomstbortfallsförsäkring</i>) is paid to persons who have insured themselves i.e. have joined an unemployment insurance fund, and fulfil the membership and working conditions.</p> <p>Basic allowance (<i>grundförsäkring</i>) is paid to persons above the age of 20 who</p> <ul style="list-style-type: none"> <li>- fulfil the working condition,</li> <li>- are not a member of an unemployment fund, or</li> <li>- are a member of an unemployment fund but do not satisfy</li> </ul>	<ul style="list-style-type: none"> <li>- To have been employed or self-employed for at least 6 months and at least 80 hours of work per month during the last 12 months, or</li> <li>- To have been employed or self-employed for at least 480 hours during a consecutive period of 6 months with at least 50 hours of work every month during the last 12 months (working condition).</li> </ul> <p>In order to get earnings-related benefit the applicant must also be a member of an unemployment insurance fund for at least 12 months. Moreover, the applicant needs to prove work in the unemployment fund's scope of practice. In order to promote membership of unemployment insurance funds, and against the backdrop of the economic downturn, months between 1 January and 31 December 2009 are counted twice.</p> <p>If necessary at most 2 months in the working condition may be replaced by leave of absence with Parent's cash benefit (<i>föräldrapenning</i>) or military</p>	7 days	<p>300 days and 450 days for applicants who have a child under the age of 18. The benefit cannot be prolonged.</p> <p>Benefits provided for in the regulation on activity allowance (<i>förordningen (1996:1100) om aktivitetsstöd</i>) can be paid to persons not fulfilling the conditions for unemployment benefit or who have received unemployment benefit for the maximum time period.</p>	No special unemployment assistance scheme/SNCB.

Country	Voluntary or compulsory insurance & basic principles	Employment and/or contributions period required	Waiting period	Maximum duration of unemployment benefits	Supplement by SNCB or social assistance								
	<p>fy the membership condition required for entitlement to an income-related benefit.</p> <p><i>Unemployment insurance exists for the self-employed. Self-employed persons are covered by the basic insurance and have the option of joining the unemployment insurance fund responsible for their occupational branch and consequently acquire entitlement to the income-related benefit.</i></p>	<p>education as recruit within the Armed Forces.</p> <p>For those whose days with either sickness benefit or temporary sickness compensation have reached a maximum, it is now possible to enter an unemployment insurance fund and fulfil the membership condition in three months. In order to qualify for income related benefits, this group is also allowed to use a working condition in the previous membership period. This change is intended to apply from January 2010 to January 2013.</p> <p>For persons who have been long-term absent from work because of sickness, the reference period is extended from five to ten years, allowing them to fulfil the qualifying period with work performed further back in time. This extension is intended to apply from January 2010 to January 2013.</p>											
<b>Romania</b>	<p>Unemployment insurance scheme: Social insurance scheme, general, compulsory, contributory (employers and employees), providing both cash and in-kind benefits.</p> <p>The statutory coverage is based on the personal statute for the persons with domicile or residence in Romania.</p>	<p>Minimum contribution period: 12 months during the 24 months preceding the application date.</p> <p>No qualifying period for graduates.</p>	No waiting period.	<p>The duration of Unemployment Indemnity (<i>indemnizatie de somaj</i>) varies with the contribution period:</p> <table border="1"> <thead> <tr> <th>Contribution period (years)</th> <th>Duration (months)</th> </tr> </thead> <tbody> <tr> <td>1-5</td> <td>6</td> </tr> <tr> <td>5-10</td> <td>9</td> </tr> <tr> <td>10 and over</td> <td>12</td> </tr> </tbody> </table> <p>For graduates the duration of</p>	Contribution period (years)	Duration (months)	1-5	6	5-10	9	10 and over	12	No special unemployment assistance scheme/SNCB.
Contribution period (years)	Duration (months)												
1-5	6												
5-10	9												
10 and over	12												

Country	Voluntary or compulsory insurance & basic principles	Employment and/or contributions period required	Waiting period	Maximum duration of unemployment benefits	Supplement by SNCB or social assistance
	<p>Compulsory regime covers:</p> <ul style="list-style-type: none"> <li>-Employees,</li> <li>- persons assimilated to employees (elected or appointed to executive, legislative or judicial authorities; co-operative members),</li> <li>- civil servants.</li> </ul> <p>Voluntary regime covers:</p> <ul style="list-style-type: none"> <li>-<i>Self-employed</i>,</li> <li>-Romanian citizens working abroad.</li> </ul>			payment is 6 months.	
<b>United Kingdom</b>	<p>There are two types of unemployment benefit: Contribution-based Jobseeker's Allowance and Income-based Jobseeker's Allowance.</p> <p>Contribution-based Jobseeker's Allowance is a flat rate insurance benefit financed by employee and employer contributions. Entitlement is based on the payment of sufficient Class 1 National Insurance contributions (see below and next column). All employed persons must pay Class 1 contributions. Contribution-based Jobseeker's Allowance covers all employed persons, with the exception of married women who chose before April 1977 not to be insured.</p> <p>Income-based Jobseeker's Allowance is a means-tested</p>	<p>Contribution-based Jobseeker's Allowance:</p> <p>No qualifying period, but contributions must have been paid. To qualify</p> <ul style="list-style-type: none"> <li>- contributions must have been paid in one of the 2 tax years on which the claim is based amounting to at least 26 times the minimum weekly contribution for that year, and</li> <li>- contributions must have been paid or credited in both the appropriate tax years amounting to a total of at least 50 times the minimum weekly contribution for that year.</li> </ul> <p>Income-based Jobseeker's Allowance:</p> <p>No qualifying period, but claimant must be 'habitually resident' in the UK. Whether a claimant is considered to be 'habitually resident' is decided on a case-</p>	3 days (with some exceptions)	<p>Contribution-based Jobseeker's Allowance: Limited to 182 days in any job seeking period.</p> <p>Income-based Jobseeker's Allowance: Unlimited duration as long as entitlement conditions continue to be satisfied.</p>	<p>Income-based Jobseeker's Allowance (SNCB): See left columns.</p> <p>Note: Income-based Jobseeker's Allowance (and several other existing benefits) will be replaced from April 2013 by a new single benefit, called Universal Credit, for people who are looking for work and/or on a low income. The UK government considers that the new 'Universal Credit' is social assistance and falls outside the scope of Regulation 883/04. Contribution-based Jobseeker's Allowance will remain unchanged.</p>

Country	Voluntary or compulsory insurance & basic principles	Employment and/or contributions period required	Waiting period	Maximum duration of unemployment benefits	Supplement by SNCB or social assistance
	<p>benefit that covers unemployed people whose income and savings are below a set level.</p> <p>Entitlement conditions for both benefits include being available for and actively seeking work and entering into a 'jobseeker's agreement' detailing steps to be taken to find work.</p> <p>Voluntary insurance does not give entitlement to Contribution-based Jobseeker's Allowance.</p> <p><i>Self-employed people do not pay Class 1 National Insurance contributions but instead pay Class 2 and 4 insurance contributions. Class 2 and 4 National Insurance contributions do not give entitlement to Contribution-based Jobseeker's Allowance with the exception of 'share fishermen' who pay a higher rate of Class 2 contribution. Self-employed people who become unemployed may be able to claim Income-based Jobseeker's Allowance, which is means-tested (see above).</i></p>	by-case basis.			
<b>Switzerland</b>	Compulsory insurance scheme for employees, financed by contributions and taxes, covering the risks of total unemployment, partial unemployment and insolvency of the employer,	12 months of contributions, within a reference period of 2 years preceding unemployment. - Certain persons are exempted from the contribution period conditions.	General waiting period: 5 days. For persons with no maintenance obligations towards children under 25, the waiting period amounts to: -10 days for an insured salary	Maximum number: -200 daily allowances for persons under 25 with no maintenance obligations towards children; -260 daily allowances if contri-	No special unemployment assistance scheme/SNCB at federal level.

Country	Voluntary or compulsory insurance & basic principles	Employment and/or contributions period required	Waiting period	Maximum duration of unemployment benefits	Supplement by SNCB or social assistance
	<p>with earnings-related benefits.</p> <p>No possibility for voluntary insurance.</p> <p><i>The self-employed have no possibility of insurance.</i></p>	<p>- Longer reference period for persons who raised their child or started a self-employed activity without the help of the unemployment insurance.</p>	<p>between CHF 60,001 (€49,335) and CHF 90,000 (€74,001) per year;  -15 days for an insured salary between CHF 90,001 (€74 and CHF 125,000 (€102,779) per year;  -20 days for an insured salary above CHF 125,000 (€102,779) per year.</p> <p>The waiting period does not apply to insured persons whose insured salary is lower than CHF 36,000 (€29,600) per year neither to insured persons whose insured salary is between CHF 36,001 (€29,601) and CHF 60,000 (€49,334) per year and who have maintenance obligations towards children under 25.</p> <p>Special waiting periods (in addition to the general waiting period):  -120 days for persons exempted from the contribution period conditions because of training, illness, accident, maternity or detention;  -5 days for the other persons exempted from the contribution period conditions;  -1 day for persons coming to the end of a seasonal job or a profession in which changes of employer are frequent or working relationships last for a limited period.</p>	<p>tribution period of 12 months at least;  -400 daily allowances if contribution period of 18 months at least;  -520 daily allowances as from 55 years if contribution period of 22 months at least;  -520 daily allowances if the insured person receives an invalidity pension corresponding to an invalidity degree of at least 40% and if the insured person proves a contribution period of 22 months at least;  -90 daily allowances for persons exempted from the contribution period conditions.  120 supplementary daily allowances and extension of the allowance reference period until the end of the month preceding the month of the payment of the 1st pillar old-age pension.</p>	

Country	Voluntary or compulsory insurance & basic principles	Employment and/or contributions period required	Waiting period	Maximum duration of unemployment benefits	Supplement by SNCB or social assistance
<b>Iceland</b>	<p>Mandatory insurance scheme for the active population guaranteeing earnings-related and flat-rate unemployment benefit (<i>atvinnuleysisdagpeningar</i>) financed by the social security contribution (<i>tryggingagjald</i>).</p> <p>No possibility of voluntary insurance.</p> <p><i>Social protection exists for the self-employed as for the employees. Both groups are compulsorily insured.</i></p>	<p>12 months of consecutive work on the domestic labour market for entitlement to maximum benefits. 3 months of work during the last 12 months for entitlement to minimum benefits.</p> <p><i>In addition self-employed persons must have paid social security contribution (tryggingagjald) during the last year before becoming unemployed for entitlement to maximum benefits and for at least 3 months prior to becoming unemployed for entitlement to minimum benefits.</i></p>	<p>No waiting period, when unemployment is not caused by any fault of the employee. In case of resignation from work or when employment ceases due to fault of the employee the waiting period is 2 months for the first time. The benefit period will be reduced accordingly.</p>	<p>Maximum 3 years for each benefit period. When a person receiving unemployment benefits starts working again the benefit period will be prolonged accordingly. After having received benefits for 3 years, a new benefit period can only commence after 24 months, during which there must be 6 months of employment. Persons who received unemployment benefits for the first time in March 2008 or later may receive benefits for an additional period of 12 months. This temporary measure will cease on 31 December 2012.</p>	<p>No special unemployment assistance scheme/SNCB.</p>
<b>Liechtenstein</b>	<p>Compulsory insurance scheme for employees, financed by contributions, covering the risks of total unemployment, partial/temporary unemployment and insolvency of the employer, with earnings-related benefits.</p> <p>Covers all employees and apprentices.</p> <p>No possibility for voluntary insurance.</p> <p><i>Self-employed natural persons are not covered by compulsory insurance, nor do they have the possibility to take out voluntary</i></p>	<p>The person had to be insured for at least 12 months during the last two years before claiming unemployment benefits.</p>	<p>Entitlement starts after a waiting period of five days of verified unemployment. The unemployment needs to have lasted at least two days. The waiting period equals 10, 15 or 20 days depending on income. Persons who are exempted from the contribution period are not entitled to unemployment benefit during a specific waiting period set by the government, not lasting longer than 12 months, and this for their first receipt of benefits. This waiting period is additional to the normal waiting period.</p>	<p>Depending on age and on the contribution period. Entitlement within a period of 2 years:</p> <ul style="list-style-type: none"> <li>-260 daily cash benefits (<i>Taggelder</i>),</li> <li>-400 daily cash benefits in case of a contribution period of 18 months and 50 years of age,</li> <li>-500 daily cash benefits in case of a contribution period of 22 months and an invalidity pension for a degree of disability of at least 40%,</li> <li>-130 daily cash benefits for persons exempted from contribution payments,</li> <li>-200 daily cash benefits for persons under the age of 25</li> </ul>	<p>No special unemployment assistance scheme/SNCB.</p>

Country	Voluntary or compulsory insurance & basic principles	Employment and/or contributions period required	Waiting period	Maximum duration of unemployment benefits	Supplement by SNCB or social assistance
	<i>insurance.</i>		Applicants responsible for their own unemployment will not receive daily cash benefits for up to 60 days.	years and without child maintenance obligations.	
<b>Norway</b>	<p>Compulsory earnings-related part of the National Insurance Scheme (<i>folketrygden</i>), for employed persons designed to compensate for the loss of earnings from work and contribute to make the unemployed better qualified for the job market. Financed by taxes and contributions.</p> <p>Employed workers who are members of the National Insurance Scheme (<i>folketrygden</i>). Freelancers are considered as employed. Fishermen are covered even if they have status as self-employed (which they normally have).</p> <p>No possibility of voluntary insurance.</p> <p><i>Generally, there is no compulsory coverage for the self-employed. Nor is a voluntary coverage available.</i></p> <p><i>However, unemployment benefits based on previous work as an employee, can be drawn up to nine months into a start-up period as a self-employed.</i></p>	Have had an income from work of at least 1.5 the Basic Amount ( <i>Grunnbeløpet</i> ) i.e. NOK 123,183 in the previous calendar year, or an average per year of at least the Basic Amount of NOK 82,122 over the last 3 calendar years. Pregnancy benefits, parental benefits and benefits in the case of sickness which is related to pregnancy counts as income from work.	<p>Registered as unemployed for 3 days over the last 15 days, Saturdays and Sundays excluded.</p> <p>Waiting period prolonged to 8 weeks in case the worker has become unemployed by his own choice or fault. Longer prolongation in case of recurrence within a 12-month period.</p>	104 weeks. 52 weeks when income from work in the previous calendar year was below twice the Basic Amount ( <i>Grunnbeløpet</i> ) i.e. NOK 164,244. Weeks of prolonged waiting periods are considered as weeks of payment.	No special unemployment assistance scheme/SNCB.

Country	Voluntary or compulsory insurance & basic principles	Employment and/or contributions period required	Waiting period	Maximum duration of unemployment benefits	Supplement by SNCB or social assistance
	<i>Fishermen are compulsorily covered as part of their extended rights.</i>				

## C. Atypical benefits

The evolution of the unemployment branch has generated some unemployment benefits (see C-57/96, *Meints*; C-406/04, *De Cuyper*; and C-228/07, *Petersen*) that present specific elements and characteristics. They deviate from the so-called 'classical benefits', although the differences are sometimes minor. Most of them fall into the material scope of Regulation 883/2004. In fact, the so-called 'atypical benefits' demonstrate that this branch moves on and maintains its dynamicity and its capacity for adaptation to new realities and situations. As a matter of fact the use of the expression 'atypical' is almost a literary licence. We will list some of these benefits (we have chosen only some examples) taking into account that an exhaustive list is, just now, an impossible task. We have to point out that some of these benefits could fall into the scope of preretirement benefits. To elaborate this section, we have taken the answers of the national experts to the questionnaire.

### Austria

The *Petersen* case itself was an Austrian one dealing with an 'advanced pension payment' as stipulated in § 23 AIVG. This *Pensionsvorschuss* is a cash benefit that can be drawn by persons who, on the one hand, meet the conditions for the entitlement to *Arbeitslosengeld* except the requirement of willingness and fitness to work, and, on the other hand, have applied for an invalidity pension. *Pensionsvorschuss* is temporarily limited for the period until the pension benefit is granted or denied and has to be calculated according to the average amount the claimed pension has to be expected. Another interesting 'atypical unemployment benefit' might be the *Weiterbildungsgeld* ('further education benefit'), which is stipulated in § 26 AIVG as a means to 'promote employment'. This cash benefit can be drawn by persons meeting the periods of insurance as required for *Arbeitslosengeld* who have agreed with their employer on a temporary suspension of their labour contract for a minimum period of three up to a maximum of 12 months. During this suspension the claimant has to pursue some sort of further education basically comprising at least 20 hours per week. This education can be pursued also abroad as the entitlement to *Weiterbildungsgeld* is not subject to the claimant's stay or residence in Austria (cf. § 26 (7)).

### Belgium

The following could be mentioned: the professional integration benefit (*allocations d'insertion/ inschakelingsuitkeringen*) for unemployed graduates which is conditioned to the fact that the unemployed graduate follows a professional integration programme of 310 days, during which he or she should undertake concrete steps to find a job. The professional integration benefit is awarded for a period of up to 36 months, which can be extended under certain conditions. Reference may also be made to the 'Social insurance in case of bankruptcy', allowing the self-employed retailer (in case of bankruptcy) or the self-employed non-retailer (in case of receipt of a debt settlement plan) to receive financial aid for a period of 12 months.

### The Czech Republic

Under atypical unemployment benefits could be included some specific benefits for integration of disabled people into the labour market. According to the information received, these benefits, however, do not fall into the scope of coordination.

### France

'*Contrat de sécurisation professionnelle*' (CSP) can be signed by a person threatened to lose his or her job on the grounds of a collective/economic dismissal. This contract provides that, in exchange for maintaining 80% of the salary for a period of one year, the beneficiary agrees to both a conventional termination of the contract (instead of a dismissal) and to various actions aiming to facilitate his or her return to the job market (activation measures): trainings, skills evaluations, etc. This 'allowance' is co-funded by the unemployment scheme, the State and the former employer. It is managed by 'Pôle Emploi' (institution

which grants 'standard' unemployment benefits). According to an administrative circular, the allowance provided in the framework of the CSP can be granted in another Member State for a period of 3 months at the most (Circular Unédic No 2010-23 of 17/12/2010). It means that the allowance is considered to be an unemployment benefit by French institutions. At the end of the one-year period, persons who are still unemployed are entitled to standard unemployment benefits (the period of one year is taken into account for the calculation of the length of entitlement).

### **Italy**

Could be included as a new 'atypical' scheme: the recently introduced (*Legge* No 2/2009) for the so-called para-subordinate workers. A lump sum up to a maximum of 4,000 euros is provided for in case of termination of the self-employment contract in question when the para-subordinate worker has a minimum period of insurance and contribution under the special scheme (three monthly contributions in the year before the beginning of the unemployment and one month contributions in the year of termination of the contract lasting for more than two months). This scheme has been only slightly modified by the recent labour market reform of 27 June 2012 (the lump sum has been raised up to a maximum of 6,000 euros while the insurance and contributory conditions have been rebalanced in the view of the introduction of a means test requirement).

### **Lithuania**

One special 'pre-retirement unemployment benefit' was exceptionally introduced for the former workers of the closed (due to EU requirements) Ignalina atomic plant. Recipients of this benefit (five years before retirement age) are not obliged to the regular requirements of willingness and readiness to work, but for simplified ones.

### **Luxembourg**

The '*indemnité d'attente*' provided by the Act of 25 July 2002 on work incapacity and reintegration measures seems to be of a nature similar to the benefit at stake in the CJEU case *Petersen* (C-228/07). The aim of this legislation is to protect workers who are not considered as invalids under the regulation on invalidity, but who are nevertheless unable to resume their previous duties. Therefore, a special procedure has been created. If an applicant for an invalidity pension has been considered by the 'medical inspectorate of the social security administration' as not being an invalid and if he or she is also unfit to resume previous duties, a special joint committee will decide on redeployment, either internally or externally. If internal redeployment, which means redeployment inside the company, is not possible, it will prescribe external redeployment through the labour market. He or she will be registered as a jobseeker with reduced work capacity and will be entitled to unemployment benefits. If it is not possible to redeploy him or her through the labour market during the period for which full unemployment benefit is payable, he or she will be entitled to a special allowance, namely the '*indemnité d'attente*', corresponding to the amount of the invalidity pension. But, the worker must remain available for employment and the entitlement of the special allowance will end when the recipient will find an appropriate job. Like in the *Petersen* case, the purpose and the object of the benefit at issue is 'to replace the remuneration lost by reason of unemployment and thereby provide for the maintenance of the unemployed person' (paragraph 25). It is also true that the benefit at issue 'is also linked to an application for an invalidity pension' (paragraph 26), but the Luxembourg benefit is granted to persons whose application has been rejected. In the *Petersen* case, the benefit is calculated in the same way as unemployment benefits (paragraph 29), whereas the Luxembourg benefit is calculated like an invalidity pension. It is also paid by the invalidity pension fund. However, it follows an unemployment benefit paid by the public employment service, which it replaces. In the *Petersen* case, there is a derogation from the requirements laid down in the national rules for entitlement to unemployment benefits (paragraph 32), whereas the beneficiary of the Luxembourg benefit has to fulfil the conditions required from a registered jobseeker. He is registered as a jobseeker at the special service for workers with reduced capacity in the ADEM and must be available for work.

**Slovenia**

The entitlement to payment of the pension and invalidity insurance contribution by the unemployment insurance carrier (the Employment Service of Slovenia, *Zavod RS za zaposlovanje – ZRSZ*, [.ess.gov.si](http://.ess.gov.si)) for the period of one year after exhausting the right to the unemployment cash benefit, if the unemployed person could meet the retirement conditions in this period, might be the closest to an 'atypical unemployment benefit' in Slovenia. The 'unemployment right' of Members of the Parliament could also be mentioned. They are insured as workers and if they cannot continue with their previous employment after ending the mandate in the Parliament, and are not yet entitled to an old-age pension, they have the right to salary compensation. It is provided under the conditions and at the level determined in the Members of the Parliament Act (Articles 28 and 38) and not according to the general rules of the ZUTD.

**Spain**

Ex-prisoners who have been imprisoned for more than six months are entitled to unemployment allowances. No previous contributions are required (Art 215.1 d TRLGSS).