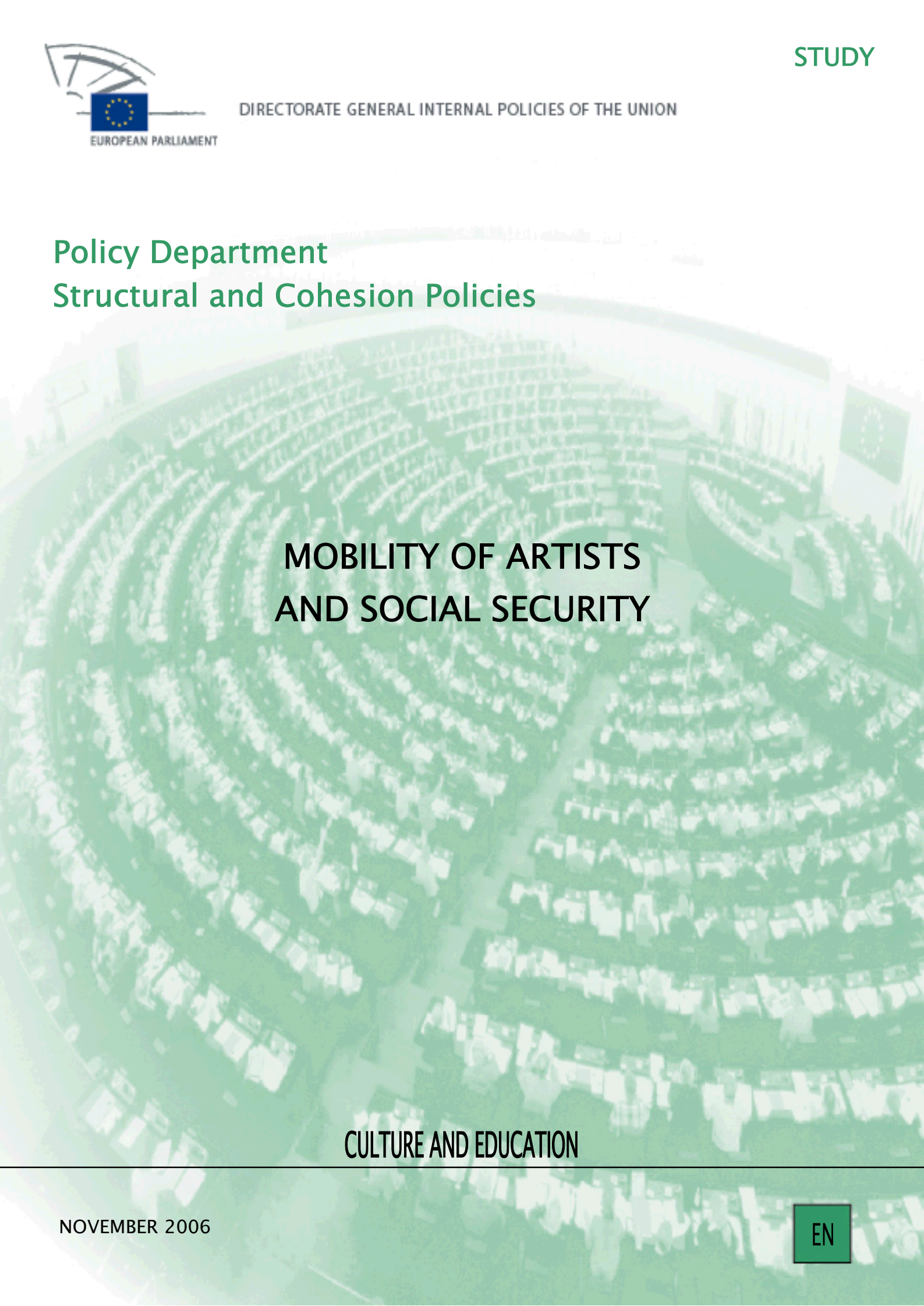
EUROPEAN PARLIAMENT

DIRECTORATE GENERAL INTERNAL POLICIES OF THE UNION

STUDY

Policy Department
Structural and Cohesion Policies



MOBILITY OF ARTISTS AND SOCIAL SECURITY

CULTURE AND EDUCATION

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EUROPEAN PARLIAMENT

Directorate-General Internal Policies of the Union

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Content:

The study examines the obstacles to the mobility of artists in the domains of unemployment insurance and retirement pensions. It analyses the problems encountered by artists who work in a Member State other than their own. It goes on to review the relevant Community legislation and examine possible solutions. In conclusion, the author makes recommendations designed to facilitate the mobility of artists in Europe.

IP/B/CULT/IC/2006_197

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EXECUTIVE SUMMARY

The study follows on from an initial study commissioned by the European Parliament on *The Status of Artists in Europe*, the French original of which was published in August 2006 and which focused on innovative measures of social and fiscal legislation adopted by certain Member States of the European Union to improve the socio-economic status of writers and visual and performing artists. The present study deals in greater detail with the subject of unemployment and pensions insurance for artists in the context of Community law.

Unemployment insurance and retirement pensions, like all other areas of social security, are matters for which the Member States are solely responsible. Under the subsidiarity principle enshrined in the current Treaties, the European Union does not intervene unless the Member States cannot achieve the desired objective. Such intervention takes the form of regulations coordinating the national systems of social security on the basis of five principles: equality of treatment for all European citizens, single applicable legislation, preservation of acquired rights, preservation of accruing rights (aggregation of periods of work or residence and payment of benefits on a *pro rata* basis) and genuine cooperation between governments and institutions. In no circumstances can the Union act as a substitute for the Member States.

Unfortunately, these coordination principles cannot solve all the problems arising in connection with the movement of artists. Because of their high degree of mobility, artists who are primarily salaried suffer from the absence of harmonisation: they cannot exercise freedom of movement without putting their social security at risk, particularly their unemployment insurance, and very often their pension rights are reduced and split among all the Member States in which they work. The diverse forms of legal status under which they operate in the various countries interrupt qualifying periods and prevent them from acquiring or maintaining an entitlement to unemployment benefit; their brief or lengthier periods of work outside their own country and the complex and ponderous nature of administrative procedures deter them from paying welfare contributions, cause them to forfeit rights, result in the payment of their retirement pension being split among several national institutions, each following its own awarding rules, and confront them with insurmountable difficulties when they have to reconstruct their fragmented careers in order to furnish evidence of employment. The Community regulations are powerless to resolve all these problems.

Happily, the position of *artists who normally work on a freelance basis* has become a lot clearer since the Banks case in 2000: the mechanism of temporary 'self-posting'[1], recognised as legitimate by the European Court of Justice, enables them to remain subject to the legislation of the Member State in which they *normally* perform their freelance work, even when they are engaged to work on a freelance or salaried basis in other countries.

In the case of salaried artists, the study concludes that the only solution in the present situation is to opt for the administration of artists' social-security records under the law of a single country and to treat work performed elsewhere as a *temporary posting*. This is the only arrangement whereby the law of the country of origin in which the artist normally works as a salaried employee can be applied continuously. Besides the need for the authorities to issue E 101 forms rapidly, this arrangement would require artists to be on the staff of an undertaking '*posting*' them to the country where they were to work for a limited time. The study suggests that, in addition to the familiar types of undertaking in the cultural field, the posting could be effected by

[1] For a maximum of 24 months, but this period may be extended with the consent of the competent institutions.

undertakings dedicated to the *provision of artistic services*. These businesses could be created by professionals in the realm of the arts in each Member State. There are already examples in Belgium[2] and France[3].

As far as unemployment is concerned, in order to alleviate the effect of administrative delays within the competent authorities, these undertakings could use a *special version of form E 301*, sending a copy to the unemployment authorities, which would then complete the official form.

With regard to retirement pensions, the study concludes that it would be useful to undertake a far more ambitious project, namely the creation of a Community body for the administration of professional artists' pensions. This body would manage the pensions of artists registered as having engaged in artistic activity for the greater part of their career. All pension rights for these artists would be transferred to this body by the Member States, as is done in the case of officials of the Community and the European institutions. That body could also grant a minimal pension, which could be funded, for example, from European administrative fines. The European Parliament could ask the Commission to examine this proposal.

As a means of persuading the competent authorities to establish or support such initiatives, the study recommends the compilation of a full and precise dossier on the present situation. On the one hand, this would involve asking the Administrative Commission on Social Security for Migrant Workers to draw up, in collaboration with Eurostat, a statistical and factual study on the professional status of artists in Europe (career patterns, occupations, status in labour law and in the social-security system, length of time spent abroad, posting situations, etc.), on the procedures, channels and timescales for the issuing of European forms – form E 101 for postings and form E 301 for unemployment benefit – the time taken to compile artists' pension records and the amount of their pensions, the amounts of pension entitlement that are lost and the reasons for these losses. On the other hand, it would mean inviting employers' organisations, associations from the realm of the arts and artists' unions to submit details of a number of actual cases to the Solvit network. A summary of existing solutions and deficiencies would then be referred to the Commission and the Administrative Commission for examination.

The Administrative Commission on Social Security for Migrant Workers could then take a decision to adopt specific measures designed to simplify, speed up and prioritise[4] procedures for issuing forms E 101 and E 301, for preparing artists' pension files, to propose the abolition of the option available to Member States under Community regulations of not paying out pensions in respect of insurance periods below one year and to make a recommendation asking Member States to take account of all forms of evidence of employment when reconstructing artists' careers.

[2] The SMArt artists' welfare offices.
[3] Umbrella companies.
[4] On the grounds that the complexity of artists' situations entitles them to a degree of priority.

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Part I - Introduction

This study complements an initial study commissioned by the European Parliament on *The Status of Artists in Europe*. The study, originally published in French in August 2006, focused on innovative measures adopted by certain Member States of the European Union to improve the socio-economic status of writers as well as visual and performing artists in the realms of contractual relations, professional representation, social security and taxation, each in its national and European aspects, in the context of mobility between countries.

It seemed useful to deal in greater depth with the most acute problems experienced by artists in the realm of social security, especially with regard to unemployment insurance and retirement pensions, in order to be able to propose specific solutions.

Unemployment insurance inevitably plays a key role in the everyday lives of artists throughout their careers. Artistic activity is, of course, characterised by its intermittent nature and gives rise to a multitude of short-term contracts and periods of unpaid work (perfecting skills, learning new techniques, studying roles or carrying out research). In these conditions, artists' access to *unemployment insurance and benefits*, along with the maintenance of their insurance cover, emerge as paramount issues for numerous exponents of the arts.

More than any other workers, artists engage in their activity throughout Europe and in other parts of the world and are confronted daily with administrative and legal problems connected with the exercise of freedom of movement in Europe, problems that hamper their professional mobility.

Given the available time and resources, the present study does not examine the various national legislative provisions but seeks to examine the problem in the light of Community law. By the same token, the methodological approach is based on existing literature and reports[5] as well as on interviews with members of social-security bodies and people who specialise in the administrative management of individual cases.

After reviewing the principles of community law relating to social security, we shall begin our enquiries with an examination of deficiencies identified in the field of unemployment insurance and then in the field of retirement pensions.

[5] ERICarts, *Causes, Consequences and Conflicts of Mobility in the Arts and Culture in Europe*. Interim Report for LABforCulture/European Cultural Foundation, prepared by Ilkka Heiskanen, Bonn and Helsinki, 2006; Richard Polacek, *Study relating to the various regimes of employment and social protection of workers in the European media, arts and entertainment sector in five applicant countries: Czech Republic, Hungary, Poland, Slovakia and Slovenia*, FIM-FIA-EURO-UNI-EAEA, 2003; Olivier Audéoud, *Study on the mobility and free movement of people and products in the cultural sector*, Study No DG EAC/08/00, April 2002, 33 pp; European Arts and Entertainment Alliance (EAEA), *Study Relating to the Various Regimes of Employment and Social Protection of Cultural Workers in the European Union*, Brussels, 2002; Suzanne Capiau, *La création d'un environnement juridique et économique approprié pour les activités artistiques*, Council of Europe, Strasbourg, 2000.

Part II – Findings of the study

Title I - Review of principles

The European Union does not have the power to harmonise the systems of national law in the sphere of social security. Its realm of action is confined to the coordination of national legislative provisions, to building bridges between the various national systems with the aim of eliminating obstacles to free movement of labour within the European Community.[6] This means that the Union cannot adopt instruments designed to harmonise particular principles or rules of welfare law.

The systems of social security in the Union differ in their underlying philosophy, in their funding methods – compulsory welfare contributions, voluntary contributions, levies based on salary levels or other factors, collection through the tax system, etc. – and in the way in which they are administered – centrally by public bodies or entrusted to a multitude of public, private or mixed bodies.

Coordination by the Community is based on five fundamental guiding principles:

1. *equal treatment*: residents of a country must be treated as nationals[7];

2. *single applicable legislation*: in any given international situation, a single system of law – the *lex loci laboris*[8] applies, except in special cases[9]; this serves to prevent the payment of double contributions;

3. *preservation of acquired rights*: rights to a social-security benefit cannot be forfeited just because a worker is resident in a Member State other than the one under whose law the rights were acquired[10];

4. *preservation of accruing rights*: all periods of work or of subjection to a social-security scheme under the various national legislative provisions must be aggregated for the establishment or maintenance of a right to benefits and for the assessment of the benefits (aggregation); the benefits are then paid by each Member State on the basis of the proportion of the total qualifying period spent in its territory (*pro rata* assessment);

5. *genuine cooperation*: the competent authorities must refrain from applying national provisions that would, in certain circumstances, result in the loss of social benefits for no other reason than the exercise of the freedom of movement guaranteed by the EC Treaty[11].

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6 Freedom of movement is guaranteed by Article 42 of the Treaty Establishing the European Community (see Annex I).

7 Article 3 of Regulation (EEC) No 1408/71 regarding social security, Article 39(2) of the EC Treaty with regard to freedom of movement and the first paragraph of Article 43, the first paragraph of Article 49 and the third paragraph of Article 50 of the EC Treaty, which cover freedom of establishment and freedom to provide services).

8 Law of the place of work.

9 Articles 13 to 17(a) of Regulation (EEC) No 1408/71 and Articles 11 to 13 of Regulation (EC) No 883/2004.

10 Article 42(b) of the EC Treaty.

11 Article 10 of the EC Treaty.

Coordination is an extremely technical and complex matter. It is governed by Regulation (EEC) No 1408/71[12] and its implementing regulation, Regulation (EEC) No 574/72[13]. These instruments will shortly be replaced by Regulation (EC) No 883/2004[14] and its implementing regulation as soon as the latter enters into force. The new regulations simplify and update the previous instruments and incorporate the case law established by the Court of Justice of the European Communities.

These regulations apply to the entire territory of the EEA[15].

In implementation of these regulations, an Administrative Commission on Social Security for Migrant Workers (CASSTM)[16] was established within the Commission of the European Communities. It is composed of a representative of the government of each Member State, assisted where appropriate by technical advisers, and has the task of dealing with every administrative issue or interpretation problem arising from Regulation 1408/71[17]. The main avenues open to the Administrative Commission are recommendations addressed to the Member States and decisions on matters concerning the administration or interpretation of the Community regulations. The powers of the Administrative Commission have been widened by the new Regulation 883/2004[18], which extends its right to make proposals and modernises procedures for exchanging information.

There is also an Advisory Committee on Social Security for Migrant Workers (CCSSTM)[19], which currently has 150 members, representing governments, trade unions and employers' organisations. It is empowered to address opinions and proposals to the Administrative Commission.

In order to coordinate the national systems of social security, the Administrative Commission created a series of Community forms – the familiar E forms. They were designed to be formatted in exactly the same way in each national language, thereby enabling the administrative authorities in other Member States, to which they are addressed, to understand easily the information they certify, such as the identity of the insured, the applicable legislation, periods of employment or insurance and amount of remuneration.

[12] Council Regulation of 14 June 1971 on the application of social security systems to employed persons and their families moving within the Community.
[13] Council Regulation of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71.
[14] Regulation of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems.
[15] The European Economic Area, comprising the Member States of the EU plus Iceland, Liechtenstein and Norway.
[16] Articles 80 and 81 of Regulation (EEC) No 1408/71; see Annex II.
[17] See Annex II.
[18] See Annex III.
[19] Articles 82 and 83 of Regulation (EEC) No 1408/71; see Annex II.

Title II - Unemployment insurance

2.1. Background

Unemployment insurance concerns artists who pursue their activity as *employees*, in other words who are engaged on the basis of an employment contract or who benefit from legal assimilation to employees by virtue of an imputed employment contract, as in France, or through the extension of the social-security scheme for employees, as in Belgium. It also concerns artists who are *not employees,* since some countries, such as Denmark, have unemployment-insurance schemes for workers who are not employees[20]. The unemployment schemes for non-employees have now been included in the substantive scope of the system of Community coordination by virtue of the new Regulation 883/2004.

The following were the main obstacles identified in the realm of unemployment insurance: non-harmonisation of the *status* of artistic activity on a European scale, payment of employees' welfare contributions in a country other than the country of employment and administrative delays in the transmission of Community forms, notably form E 101.

2.2. Obstacles connected with the social status of artistic activity

Artists, who are normally employees in their country of origin, are regarded as self-employed when they pursue the same activity in another country.

In principle, the social-security legislation that applies to the performance of work is the *lex loci laboris*, the law of the place of work. An artist who moves to several countries in succession will therefore be subject to the social-security system of each country in which he or she is engaged as an employee. An artist may be regarded as an employee in one Member State but as self-employed in another Member State *in respect of one and the same activity.* Opera singers engaged in Belgium, for example, are hired on the basis of an employment contract, whereas in Britain they practise their profession as self-employed persons[21].

When artists are hired in Member States other than their own, this difference in status disrupts the social-security record of artists who are normally employees and creates serious difficulties in the realm of unemployment insurance which significantly curtail artists' freedom of movement. Such periods of work *are not reckonable* as part of the qualifying period for unemployment benefit in the country where the artists normally work. In order to qualify for unemployment benefit, a person must normally have worked for a certain number of days within a stipulated period prior to applying for benefit. This situation therefore delays the date on which artists become eligible for unemployment benefit or disqualifies them from receiving it. Time spent working abroad may even result in the *suspension or loss of their right* to unemployment benefit, because it constitutes a period of self-employment that prohibits them from maintaining their insurance cover.

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[20] In Denmark, self-employed people can join an unemployment-insurance scheme, and extension of the German scheme to people with semi-employee status. In Belgium, all artists are covered by the employees' scheme unless they are recognised as self-employed. In France, a contract of employment is imputed between performing artists and the person who engages them.

[21] Barry Banks and Others v. Théâtre royal de la Monnaie, European Court of Justice Case No C-178/97, judgment of 30 March 2000.

2.3. Proposed solution

a. Posting

One practical solution that can be implemented immediately is the use of the mechanism of *posting*[22], in which an artist normally employed in the territory of a Member State by one or more undertakings is posted by one of those undertaking to the territory of another Member State to perform work there for that undertaking but continues to be subject to the legislation of the first Member State, provided that the anticipated duration of the work does not exceed twelve months and that the artist is not sent to replace another artist who has completed his or her term of posting.

Since the Banks case[23], which finally shed light on the Community principles relating to non-employees, it has been possible to apply the posting rules to self-employed artists who 'post themselves' when they go to perform work abroad as employees or self-employed persons.

The aim of this proposal is to ensure that the same posting principle becomes applicable to artists who normally have the status of employees in their country of origin.

As Community law now stands, this solution seems to be the only way in which employed artists – the occasional employees and globetrotters *par excellence* – can pursue their activity with the same status and remain subject to the same legal system, namely that of their country of origin which classifies them as employees.

This solution offers other advantages too: it prevents the fragmentation of welfare contributions among several Member States, avoids any risk of non-payment of contributions in the other Member States and ensures that the right to cash benefits, and particularly the retirement pension, is not split up among several countries. Moreover, people who are posted abroad have been able to enjoy health care in the country where they are temporarily employed since the introduction of the European health-insurance card in 2004[24].

The posting arrangement can operate for a period of 12 months, which may be extended to 24 months[25], or even longer in some cases[26].

The concept and conditions of posting were the subject of a practical guide to the posting of workers drawn up in stages by the Directorate-General for Social Affairs of the European Commission[27].

> *'Under Community rules, workers moving within the European Union must be subject to a single social security legislation, save for very specific exceptions (Article 13 (1) of the Regulation).*
>
> *Under the Regulation (Article 13(2)(a),(b) and (c)) the social security scheme applicable to those who for reasons of work move from one Member State to another is, generally speaking, that established by the legislation of the Member State of new employment.*

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22 Article 14 (1)(a) of Regulation (EEC) No 1408/71.
23 European Court of Justice Case No C-178/97, judgment of 30 March 2000.
24 Decisions 189, 190 and 191 of the Administrative Commission; see Official Journal of 27 October 2003.
25 Article 14(1)(a) of Regulation (EEC) No 1408/71 and Article 12(1) of Regulation (EC) No 883/2004; the latter provides for an initial period of 24 months.
26 This can be done on the basis of Article 17 of Regulation 1408/71, particularly for journalists.
27 On the basis of point 10 of Administrative Commission Decision No 181 of 13 December 2000.

In order to give as much encouragement as possible to the freedom of movement of workers and avoid unnecessary and costly administrative complications for workers, companies and administrations, the Community provisions in force allow for certain exceptions to the general principle referred to above.

(...)

These situations – which give exemption from the payment of insurance contributions in the State of employment – better known as the ***posting*** *of employees, are governed by Articles 14(1) and 14(b)(1) respectively of the Regulation.*

(...)

*In line with the above mentioned provisions of the Regulation, a person employed in the territory of a Member State by an undertaking "****to which he is normally attached****" is deemed to be posted when he is sent by that undertaking to the territory of another Member State to perform work there "****for that undertaking****" and "****provided that the anticipated duration of posting does not exceed 12 months****" and that he is not sent to replace another person who has completed his term of posting.*

Accordingly, in addition to the temporary nature of the posting and the fact that it is not designed to replace another worker, the vital defining features of a normal posting — which constitute the most frequent source of problems of interpretation and application — are the continuing nature throughout the period of posting of the subordinate relationship of the worker to the posting undertaking and the condition that the work is carried out on behalf of that undertaking.

More specifically and in accordance with the now settled case law of the Court of Justice, taken on board in Decision No 181, these defining features must be deemed to exist when there is and there continues to be throughout the whole period of posting a ***direct relationship*** *between the posting undertaking and the posted worker.'* [28]

The *direct relationship* that must exist between the posting undertaking and the posted worker comprises a raft of elements, such as a chain of command, an employment contract, the right to determine the nature of the work performed by the worker and the right of dismissal. This direct relationship undoubtedly merits particularly close examination in the case of artists, whose periods of activity are increasingly sporadic[29]. Similarly, the Administrative Commission should devote special attention to European tours in which performances are given in several countries in succession[30].

b. Implementation

This proposal makes three suppositions:

1. There must be a *genuine desire* to find an appropriate solution for this particular category of people. Artists will not be able to benefit from special interpretations or rules unless the institutions responsible for applying them are convinced that artists do represent a category of people whom they must treat in a differentiated manner in order to uphold the principles of equality and non-discrimination. The Administrative Commission will hesitate to adapt or interpret Community rules in the absence of any objective justification.

   In this context let us emphasise that *Article 17 of Regulation 1408/71 (Article 16 of Regulation 883/2004)* also allows two or more Member States or the competent authorities of those States may, by common agreement, provide for exceptions to the provisions of the Regulation that determine the applicable legislation. The

[28] Extracts from the *Practical Guide for the posting of workers in the Member States of the European Union and the European Economic Area and in Switzerland.* See Annex IV.
http://ec.europa.eu/employment_social/social_security_schemes/docs/posting_en.pdf

[29] As was clearly illustrated by the recent crisis among occasional employees in the performing arts in France.

[30] A creative interpretation has been found for such tours in Belgium. See *Artiesten in loondienst die internationaal optreden*, bruno.depauw@onssrszlss.fgov.be

implementation of Article 17, which involves decisions taken by common consent between Member States, is too slow to offer a general and effective solution.

A *technical and factual study* of the specific problems encountered in the field of social security by artists moving about within the EU therefore seems to be an essential first step and could serve to *persuade* the competent authorities – which are always anxious to avoid opening the door to numerous insufficiently warranted claims from various occupational groups – to *adapt or interpret the conditions of posting* to match the socio-economic and material circumstances of mobile artists.

2. There must be *an enterprise in the country of origin* (also known as the sending State) *that is able to post the artist* to the country in which he or she is to work on a temporary basis. This may, for example, be an audiovisual production company, a theatre, ballet or opera company, an umbrella company or an artists' welfare office[31], acting as a producer, subcontractor or co-producer or in some other function.

   It is also conceivable that, on the initiative of people working in the arts, supported by the public authorities, one or more non-profit cultural undertakings might be created in each Member State by which artists could apply to be hired as employees. These undertakings would act as '*producers*' of the artistic work or performance in the territory of origin. These undertakings could also offer the same services for works or performances executed in the country of origin.

3. *Form E 101*, for postings, *must be issued quickly, perhaps even immediately online, by the competent authorities*. According to the information we have received, this is not always the case. While E 101s can, in some highly computerised Member States, be issued within a few hours[32], we have been informed that people in other countries need to wait several months.

4. There must be a *network of accessible people with competence in this complex field* who are able to provide professional artists with *full and reliable information*.

c. Action by the European Parliament

In concrete terms, the European Parliament could ask the Commission to put an examination of the following points on the agenda for the next meeting of the *Administrative Commission on Social Security for Migrant Workers (CASSTM)*[33].

- a statistical study to be conducted by Eurostat:

  1. on the flows of employed and self-employed artists and technicians in Europe, broken down by occupation, status in labour and welfare law, duration of work abroad and context, i.e. cinematographic or theatrical production or co-production or European tours;

[31] This is the designation used in Belgium under the Act of 24 December 2002 on supplementary pensions for self-employed persons.
[32] Three hours in Belgium – see www.securitesociale.be
[33] The Administrative Commission meets once every two months.

2. the timescale, material resources and conditions for the issuing of forms E 101 in each country;

- examination, in collaboration with professionals from the realm of the arts, of the problems associated with the posting of employed artists and the criteria that might govern the assessment of the *direct relationship* between the posting enterprise and the artist, particularly in the light of the special socio-economic conditions of sporadic employment and high mobility linked with audiovisual co-productions and with European and international tours, and of emerging forms of engagement, such as artists' welfare offices and, in the case of temporary work, umbrella companies;

- updating of the Practical Guide for the Posting of Workers with regard to artists;

- formulation of a CASSTM decision on substantive improvements in the issuing of forms E 101 by means of automatic computerisation or a highly simplified procedure for companies in the realm of the arts;

- adequate and accessible information for professional artists.

The European Parliament could also invite *trade unions, employers' organisations and professional associations* to submit details of *specific cases* relating to the social security and mobility of artists to the Solvit[34] network. These cases, and any solutions that might be identified, could be the subject of a review for presentation to the Administrative Commission, which could then examine the cases and implement appropriate solutions.

2.4. Obstacles to administrative processes

a. Payment of contributions outside the country of employment

In principle, the social-security legislation applicable to the performance of work is the *lex loci laboris*, the law of the place of work. An artist moving between several Member States in succession will therefore be subject to the social-security system of each country in which he or she is engaged as an employee. In the event of an activity carried out simultaneously in the territory of several States, however, Regulation 1408/71 contains rules indicating which country's statute book applies to the payment of welfare contributions and to the receipt of benefits.

- If an artist works as an employee for one or more employers with their registered office in a country or countries *in which the artist does not reside* –

  for example, a Spanish artist living in Paris and working for the Rome opera company who gives a concert in Amsterdam –

  only the system of social security of the country in which he is residing, i.e. the French system, is applicable to all his activities; the welfare contributions in respect of his engagements in Rome and Amsterdam are payable by his employers in France[35].

[34] Solvit is a network for the online resolution of problems, in which the Member States of the EU cooperate in order to adopt pragmatic solutions to problems arising from the misapplication of single-market legislation by the public authorities. There is a Solvit centre in each Member State of the EU. See Annex V and http://ec.europa.eu/solvit/site/index_en.htm.

[35] Article 14(1)(b)(ii) of Regulation 1408/71.

- *If an artist also works in his or her country of residence –*

  for example, a German artist residing and working in Brussels as the artistic director of a theatre for one season also works as a libretto editor at the Madrid Opera House for two months and gives a performance as an actor in Prague –

  only the social-security scheme of his country of residence, namely the Belgian scheme, is applicable to all his activities; the welfare contributions in respect of his engagements in Madrid and Prague must be paid in Belgium[36].

- *If an artist is hired on a part-time basis outside his or her country of residence but continues to draw part of his or her unemployment benefit in the country of residence –*

  for example, an artist receiving unemployment benefit in Belgium and residing in Brussels is hired for part-time work in a theatre in the Netherlands for a period of six months –

  only the social-security scheme of his country of residence, namely the Belgian scheme, is applicable to his engagement; his welfare contributions are payable in Belgium by his Dutch employer[37].

In these specific cases, the difficulty identified with regard to unemployment insurance – and indeed the same difficulty applies to the other welfare benefits – is as follows: where the Regulation subjects artists to legislation other than the *lex loci laboris*, it is often observed that welfare contributions are not actually paid in the designated country or are not paid at all. As a result, the period of activity is not reckonable towards the aggregated employment of the insured.

In practice, the mechanism for the payment of welfare contributions outside the country of employment does not work at all, for the simple reason that the payment of welfare contributions in another country constitutes an administrative burden that can prove too onerous. In France, for instance, there is no centralised body for the payment of all welfare contributions.[38] This situation encourages clandestine work. Welfare contributions are paid in countries other than the one prescribed by the Community rules or are not paid at all. Artists are liable to end up with no documentary evidence of the deduction of welfare contributions which could be credited to their social-security records; accordingly, the authorities of the competent Member State cannot take such periods of work into account when assessing an artist's entitlement to benefits.

In cases where artists are in receipt of unemployment benefits, they will not be engaged or will be dismissed as soon as their employer becomes aware of the requirement to pay welfare contributions in another country.

b. Transmission of form E 301 relating to unemployment

Under the Community regulations, insured persons can aggregate all periods of work performed in each Member State in order to qualify for unemployment benefit in the last country in which

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[36] *ibid.,* Article 14(1)(b)(i).

[37] In implementation of Recommendation No 18 issued by the Administrative Commission.

[38] Except in the case of occasional performances, where GUSO serves as a one-stop shop for organisers of live performances other than those whose main activity or sole purpose is the commercialisation of performance venues, etc. See Annex VI and http://www.guso.com.fr.

they worked or were insured[39], provided they furnish evidence of these periods of work by means of form E 301[40]. This form is drawn up by the authority responsible for the unemployment scheme in the country of employment. If the interested party does not present a form E 301, the institution responsible for the benefits service requests it from the unemployment authority[41].

The identified difficulty lies in the fact that long delays ensue before these forms are transmitted, either because of the inherently ponderous nature of some administrative departments or because artists have already moved on, perhaps to the next stop on a tour or following the expiry of their contracts, before being able to apply to the unemployment authorities. According to the information we have received, it is virtually impossible to obtain an E 301 in Italy.

In general terms, traditional administrative procedures are still followed: paper documents transferred up and down the chain of command from office to office, and so on. There are still enormous arrears in terms of the computerisation of data and wide variations between Member States. *'We are still in the Middle Ages'* was one comment. It was felt in some Member States that there was no real political will to introduce automated electronic procedures for data processing and for cross-border information transfers.

The situation ought to improve in the medium term, since the new Regulation 883/2004 widens the powers of the Administrative Commission to modernise the processing of exchanges of data between institutions and even provides for the establishment of a *Technical Commission for Data Processing*[42].

2.5. Proposed solutions

a. Posting

Posting, the proposal described above, is capable of resolving the difficulties connected with the payment of welfare contributions outside the country of employment, since it is the posting enterprise that pays the welfare contributions in the country in which it is established, which is generally the country where the artist normally works.

As for the difficulties arising from administrative delays and inadequate procedures in connection with the issuing of forms E 301 in the event of posting, artists would have no need to produce a European form since they would remain subject to the legislation of their country of origin.

The reader is therefore referred to our previous explanation.

b. A special version of form E 301

It is also conceivable that professionals in the field of the arts could devise a form certifying the same information that appears on the E 301, a sort of *special artists' version of form E 301*, with

[39] To be more precise, the State responsible for granting the actor the welfare benefit for which he or she has applied.
[40] See the specimen form E 301 in Annex X.
[41] Article 80(2) of Regulation (EEC) No 574/72.
[42] Articles 71(d) and 73 of Regulation (EC) No 883/2004.

which artists would be issued by their employers at the end of their engagements, a copy being sent to the unemployment authority. The latter would then draw up the official E 301.

According to some experts working within competent institutions, this would be an acceptable solution[43]. These institutions take account of other evidence of employment besides the actual E 301[44]. What counts is the ability to prove that a period of work has been legal, i.e. '*in conformity with the legislation of the other State'*.

Forms E 301 already exist in all official languages. Their format makes them easy to understand. It would suffice to use the same format under the name of *E 301 (Artists)*, for example.

c. Speeding up administrative procedures for artists

With regard to administrative delays and/or inappropriate mechanisms for issuing forms E 301, the Administrative Commission could also adopt a decision addressed to the Member States and their unemployment authorities, inviting them to *prioritise the processing of artists' E 301s*. This request is warranted by the special nature of artists' itinerant work patterns, involving short stays in various Member States.

d. Action by the European Parliament

Besides the action suggested above with regard to postings, the European Parliament could:

- ask the European Commission to put the following items on the agenda for the forthcoming meetings of the CASSTM:
    - the compilation of a statistical study by Eurostat on the timescale, material resources and conditions for the issuing of forms E 101 in each country, and
    - the adoption of a decision addressed to the Member States and their unemployment authorities, inviting them to prioritise the processing and issuing of artists' E 301s.
- ask the professional associations (the European League of Employers' Associations in the Performing Arts (Pearle), artists' unions, the IETM International Network for Contemporary Performing Arts, Equity, etc.) to devise a *special artists' version of form E 301* and to promote the issuing of the form to artists as soon as they complete each engagement, along with the transmission of a copy to the competent unemployment authority.

[43] Particularly in the view of the National Employment Office (ONEm) in Brussels.
[44] ONEm, *Textes réglementaires commentés* – version 23, Article 37, p. 42.

Title III - Retirement pensions

3.1. Background

As we mentioned above, the role of the Community regulations is confined to the coordination of pension schemes; they can only build bridges between the various national schemes but do not in any way harmonise the provisions of national pensions legislation. Only the Member States can lay down the rules governing eligibility (based on work or residence), the level of contributions, pensionable age, when a pension application may be submitted and the conditions in which pensions can be paid (accumulation of a qualifying period of occupational activity, for example).

The mechanism for awarding retirement pensions may be summarised as follows:

A *pension account* is opened in each Member State in which a person has been subject to pensions legislation by virtue of periods of insurance or residence. The *date* on which workers can begin to draw their pensions is a matter for each Member State. At the stipulated time, interested parties can apply for a pension to the pensions authority *in their country of residence only*. This authority then contacts all the pensions authorities of the Member States in which the applicant worked in order to examine his or her *pension record*. If the applicable legislation makes the acquisition, retention or recovery of the right to benefits conditional upon the completion of qualifying periods of insurance or residence, the authority must take into consideration, as far as necessary, *all periods of insurance or residence* completed under the legislation of any other Member States, treating them as though they had been completed under the legislation which it administers[45]. It then calculates a *notional pension* based on the aggregation of these periods. The *payment* of this pension is divided among the Member States concerned *in proportion* to the length of the total insurance or residence period under each country's legislation. The purpose of aggregation is to calculate the pension entitlement *as though the person's entire career had been spent within one and the same national territory.*

3.2. The main obstacles

While the coordination introduced by the Community regulations represents a substantial step forward for citizens of the EU, it leaves untouched some situations that are extremely awkward for artists because their careers are built on far greater mobility within Europe and the world than those of most other members of social-insurance schemes. These situations, which have no common denominator with the circumstances of other workers, all act as obstacles to the free movement of artists that is guaranteed by Articles 39 and 42 of the EC Treaty.

[45] Article 45(1) of Regulation (EEC) No 1408/71.

The main identifiable obstacles encountered by artists are as follows[46]:

career-related obstacles:

- the difficulty of reconstructing periods of subjection to social-security rules throughout a career in the absence of actual payment of contributions or sufficient evidence of affiliation, such as the deduction of contributions or periods of residence;
- the increased risk of employers based in other countries failing to pay welfare contributions;
- differences between the ages at which a retirement pension can be awarded in each Member State;
- the significant loss of pension rights resulting from qualifying periods imposed by the legislation of certain countries, which requires individuals to have paid contributions or to have resided in the national territory for a prescribed number of years before they qualify for a pension; we have been informed that this period can vary – from no qualifying period in Belgium to five years in Germany and even fifteen years in Italy; it should be noted, however, that the Community regulations do, in principle, redress the balance by laying down that all these periods must be aggregated in accordance with the precept outlined above, namely that each Member State should treat the aggregated years of employment of its pension applicants as though their entire career had been spent in its own territory;
- deferment of the recognition of a person's rights on retirement in cases where entitlement is based on the period of residence in the national territory rather than the total period of employment;

obstacles relating to **aggregation**:

- where periods of work amounting to less than one year are non-reckonable, a competent authority is released from its obligation to pay its share of the assessed pension; it should, however, be noted that the regulations redress the balance to some extent by prescribing that these periods must be taken into account in the calculation of the pension by the other awarding States (Article 48 of Regulation 1408/71 and Article 57 of Regulation 883/2004).[47]

obstacles relating to **examination of applicants' insurance records**:

- administrative delays pose a problem: we were informed that the Administrative Commission had conducted an enquiry, which had shown that the period of examination could amount to as much as 14 years(!)[48];

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[46] Olivier Audéoud, *Study on the mobility and free movement of people and products in the cultural sector*, Study No DG EAC/08/00, April 2002, 33 pp.; European Arts and Entertainment Alliance (EAEA), *Study Relating to the Various Regimes of Employment and Social Protection of Cultural Workers in the European Union*, Brussels 2002; Richard Polacek, *Study relating to the various regimes of employment and social protection of workers in the European media, arts and entertainment sector in five applicant countries: Czech Republic, Hungary, Poland, Slovakia and Slovenia*, FIM-FIA-EURO-UNI-EAEA, 2003.

[47] In Belgium, if the pension would be lower than a certain annual amount – currently €99.16 – it is not paid.

[48] In European Commission, *Coordination of social security in an enlarged Europe – today and tomorrow*. Budapest Conference, 2004, p. 127.

obstacles relating to **the *amount of the pension***:

- the generally low levels of the pensions that artists receive for reasons linked to:
  - the difficulty of producing evidence to reconstruct their career history,
  - frequent non-payment of their contributions by their employers, or
  - non-payment of contributions because of their low income levels;

obstacles relating to the ***payment of pensions***:

- the absence of all-inclusive payments by a single body;
- payments split up among national bodies as a result of different sets of legislative provisions and national bureaucratic practices involving unwarranted delays and lengthy response times;
- bank charges on money transfers;
- differences between national statute books with regard to retirement age and the psychological difficulties involved in any change in the retirement age;
- variable conditions of payment (whether or not concurrence is permitted with income from artistic activity or royalties).

3.3. Proposed solutions

The identified obstacles result from the fragmentation of an individual's social-security coverage among various Member States. In the absence of harmonisation, the Community regulations cannot provide an adequate remedy. The only solution that might eliminate all these defects is centralisation of artists' social-security coverage.

Two means to this end are conceivable: either centralisation in each Member State or centralisation within a supranational Community body.

a. Posting

The mechanism of posting would involve the collation and centralisation of artists' social-security record in their Member State of origin, where they would normally work. This solution has already been recommended above in connection with unemployment insurance. Our previous remarks also apply to retirement pensions.

It is worth recalling that the merit of this solution is that it can be applied immediately without any amendments to the Community regulations. All it needs is the mobilisation of bodies within the arts and a favourable interpretation of the rules by the Member States and the Administrative Commission (CASSTM) to promote the posting of artists.

b. Creation of a Community body

Creating a Community body responsible for *managing* the pensions of employed and self-employed artists is a far more ambitious idea and is no doubt still Utopian at this stage, but would the idea of a 25-member European Union not have been regarded 50 years ago as an utterly hare-brained scheme?

There is already a precedent in the system of transferring pension rights to the European Communities for *officials* of the Community institutions and bodies[49]. This demonstrates the appropriateness of the solution. There is, in other words, a stock of know-how that could be useful in the establishment of the proposed system.

All pension rights established in the Member States for anyone who had been a *professional artist* for most of his or her working life would be transferred to this body, which would have sole responsibility for examining the records, paying the retirement pension and determining the conditions in which it could be paid concurrently with income from artistic activity and associated revenue, i.e. royalties arising from copyright and related rights, grants, etc.

This body could also guarantee a *minimum pension*. Its funding could come, for example, from Community revenue resulting from administrative fines imposed on businesses and Member States for infringements of Community law.

Artists would be registered by this body on the basis of recognition of a title corresponding to the rank of a Community official.

This solution would assist numerous artists, especially those from the new Member States.

The project would be a powerful signal of recognition of the important role played by culture in the process of European integration.

c. Technical improvements to the Regulations

Another suggestion, of course, would be to improve the present Regulations. For example:

- The option available to Member States of not paying out pensions in respect of insurance periods below one year (see above) could be abolished.

- Action could be taken to speed up the harmonisation of European welfare registration (allocation of a European social-security number) and the electronic cross-border transfer of data. There are still considerable arrears in the computerisation of national administrations; this, it seems, is due to a lack of political will. The problem is widespread. The deficiencies that affect artists could motivate the authorities to act if a statistical and factual study highlighted the particular severity of the problems faced by artists. The new Regulation 883/2004 and its implementing regulation, both of which could enter into force in 2009, ought to improve the situation for all citizens of Europe in the medium term by simplifying procedures and ensuring that national authorities transfer data electronically and cooperate directly in order to reduce the procedural burden on insured persons.[50]

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[49] The transfer of rights is regulated in Belgium by the Act of 10 February 2003 governing the transfer of pension rights between Belgian pension schemes and those of international public bodies (*Moniteur Belge*, 27 March 2003).

[50] The following is an extract from the explanatory statement by the European Commission on its proposal for the new implementing regulation:

‘**• Summary of the proposed action**

The aim of the proposal for a regulation to implement Regulation (EC) No 883/2004 on the coordination of national social security systems is to complete the process of modernising and simplifying the current legislation, Regulation (EEC) No 1408/71 and its implementing regulation, Regulation (EEC) No 574/72. This instrument is crucial to freedom of movement of persons in the Union.

- A recommendation could be addressed to Member States that they not only take account of contributions paid but also focus particular attention on *all evidence of paid work and deduction of contributions* in countries where the legislation takes account of insurance periods, since employees should not have to bear the consequences of their employers' failure to pay pension contributions.

d. Provision of information for artists

These improvements, however, will not remove the obstacles enumerated above. On the other hand, better practical knowledge of the European rules and clear information on retirement pensions, especially on the administrative process of examining pension records, is certainly likely to focus the attention of interested parties on the need to collect sufficient evidence of payment of their contributions and of their employment history or residence record.

e. Action by the European Parliament

Specifically, the European Parliament could ask the Commission to ensure that, besides the items suggested above in connection with posting, an examination of the following points is placed on the agenda for forthcoming meetings of the *Administrative Commission on Social Security for Migrant Workers (CASSTM)*[51]:

- a statistical study to be conducted by Eurostat:

    1. of the level of pensions of employed and self-employed artists in relation to their activity (occupation and duration of career), and

    2. of the time taken to process artists' pension applications in each country;

- rapid acceleration of the computerisation of data relating to social security in each Member State, primarily through the introduction of a European system of welfare registration, and electronic exchanges of data among all the competent authorities;
- examination of the possibility of abolishing the option available to Member States of not paying out pensions in respect of insurance periods below one year.

The objective of the proposal is to define for all parties involved (insured persons, the social security institutions and the competent authorities of the Member States) the procedures for implementing in practice the rules set out in Regulation (EC) No 883/2004.
The proposal completes the modernisation work done by Regulation (EC) No 883/2004 and seeks to improve current procedures by simplifying them and clarifying the existing provisions in many areas. In this respect, through the procedures to be carried out, the proposal is intended to clarify the rights and obligations of the various stakeholders.
This proposal is also intended to draw all the appropriate conclusions from the closer cooperation between the various stakeholders referred to in Regulation (EC) No 883/2004.
The fact that Regulation (EC) No 883/2004 now concerns all European citizens, since it also covers the non-working population, means modernising the methods and procedures for cooperation between Member States' social security institutions.
Specifically, it is a question of facilitating the procedures for insured persons and reducing the time needed for institutions in the various branches of social security (sickness, accidents at work, occupational diseases, invalidity, old age, unemployment, family benefits) to respond and to process cross-border cases.
This objective requires particular emphasis to be placed on the use of modern methods for the exchange of information. Electronic exchange of data between institutions is essential in facilitating the transfer of the information needed for coordinating and in particular ascertaining and calculating the rights of insured persons

[51] According to the information at our disposal, the Administrative Commission meets once every two months.

The European Parliament could ask the Commission:

- to compile and provide practical information, appropriate and accessible for professional artists, on the contribution of the Community Regulations in the realm of retirement pensions;

- to examine plans for the creation of a Community body for the management of the pensions of professional artists recognised as having carried out an artistic activity for most of their careers and to examine the proposal that the said body grant these artists a minimum pension, funded from administrative fines.

The European Parliament could invite the Member States to make material improvements to the processing of artists' pension records in view of their complexity and to take account, when reconstructing the careers of employed artists, not only of the amount of contributions paid but also of all evidence of artistic work performed as an employee and of the deduction of welfare contributions.

The European Parliament could also invite *trade unions, employers' organisations and professional associations* to submit details of *specific cases* relating to the social security and mobility of artists, especially those concerning retirement pensions, to the Solvit[52] network. These cases, and any solutions that might be identified, could be the subject of a review for presentation to the Administrative Commission, which could then examine the cases and implement appropriate solutions.

[52] Solvit is a network for the online resolution of problems, in which the Member States of the EU cooperate in order to adopt pragmatic solutions to problems arising from the misapplication of single-market legislation by the public authorities. There is a Solvit centre in each Member State of the EU. See Annex V and http://ec.europa.eu/solvit/site/index_en.htm

Conclusions and recommendations

Unemployment insurance and retirement pensions, like all other areas of social security, are matters for which the Member States are solely responsible. Under the subsidiarity principle enshrined in the current Treaties, the European Union does not intervene unless the Member States cannot achieve the desired objective. Such intervention takes the form of regulations coordinating the national systems of social security on the basis of five principles: equality of treatment for all European citizens, single applicable legislation, preservation of acquired rights, preservation of accruing rights (aggregation of periods of work or residence and payment of benefits on a *pro rata* basis) and genuine cooperation between governments and institutions. In no circumstances can the Union act as a substitute for the Member States.

Unfortunately, these coordination principles cannot solve all the problems arising in connection with the movement of artists. Because of their high degree of mobility, artists who are primarily salaried suffer from the absence of harmonisation: they cannot exercise freedom of movement without putting their social security at risk, particularly their unemployment insurance, and very often their pension rights are reduced and split among all the Member States in which they work. The diverse forms of legal status under which they operate in the various countries interrupt qualifying periods and prevent them from acquiring or maintaining an entitlement to unemployment benefit; their brief or lengthier periods of work outside their own country and the complex and ponderous nature of administrative procedures deter them from paying welfare contributions, cause them to forfeit rights, result in the payment of their retirement pension being split among several national institutions, each following its own awarding rules, and confront them with insurmountable difficulties when they have to reconstruct their fragmented careers in order to furnish evidence of employment. The Community regulations are powerless to resolve all these problems.

Happily, the position of *artists who normally work on a freelance basis* has become a lot clearer since the Banks case in 2000: the mechanism of *temporary 'self-posting'*[53], recognised as legitimate by the European Court of Justice, enables them to remain subject to the legislation of the Member State in which they *normally* perform their freelance work, even when they are engaged to work on a freelance or salaried basis in other countries.

In the case of salaried artists, the study concludes that the only solution in the present situation is to opt for the administration of artists' social-security records under the law of a single country and to treat work performed elsewhere as a *temporary posting*. This is the only arrangement whereby the law of the country of origin in which the artist normally works as a salaried employee can be applied continuously. Besides the need for the authorities to issue E 101 forms rapidly, this arrangement would require artists to be on the staff of an undertaking '*posting*' them to the country where they were to work for a limited time. The study suggests that, in addition to the familiar types of undertaking in the cultural field, the posting could be effected by undertakings dedicated to the *provision of artistic services*. These businesses could be created by professionals in the realm of the arts in each Member State. There are already examples in Belgium[54] and France[55].

[53] For a maximum of 24 months, but this period may be extended with the consent of the competent institutions.
[54] The SMArt artists' welfare offices.
[55] Umbrella companies.

As far as unemployment is concerned, in order to alleviate the effect of administrative delays within the competent authorities, these undertakings could use, and issue to artists at the end of their engagement, a *special version of form E 301*, sending a copy to the unemployment authorities, which would then complete the official form.

With regard to retirement pensions, the study concludes that it would be useful to undertake a far more ambitious project, namely the creation of a Community body for the administration of professional artists' pensions. This body would manage the pensions of artists registered as having engaged in artistic activity for the greater part of their career. All pension rights for these artists would be transferred to this body by the Member States, as is done in the case of officials of the Community and the European institutions. That body could also grant a minimal pension, which could be funded, for example, from European administrative fines. The European Parliament could ask the Commission to examine this proposal.

As a means of persuading the competent authorities to establish or support such initiatives, the study recommends the compilation of a full and precise dossier on the present situation. On the one hand, this would involve asking the Administrative Commission on Social Security for Migrant Workers to draw up, in collaboration with Eurostat, a statistical and factual study on the professional status of artists in Europe (career patterns, occupations, status in labour law and in the social-security system, length of time spent abroad, posting situations, etc.), on the procedures, channels and timescales for the issuing of European forms – form E 101 for postings and form E 301 for unemployment benefit – the time taken to compile artists' pension records and the amount of their pensions, the amounts of pension entitlement that are lost and the reasons for these losses. On the other hand, it would mean inviting employers' organisations, associations from the realm of the arts and artists' unions to submit details of a number of actual cases to the Solvit network. A summary of existing solutions and deficiencies would then be referred to the Commission and the Administrative Commission for examination.

The Administrative Commission on Social Security for Migrant Workers could then take a decision to adopt specific measures designed to simplify, speed up and prioritise[56] procedures for issuing forms E 101 and E 301, for preparing artists' pension files, to propose the abolition of the option available to Member States under Community regulations of not paying out pensions in respect of insurance periods below one year and to make a recommendation asking Member States to take account of all forms of evidence of employment when reconstructing artists' careers.

[56] On the grounds that the complexity of artists' situations entitles them to a degree of priority.

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Annex I Treaty establishing the European Community

(Extracts from the consolidated version)

(*Official Journal C 325 of 24 December 2002)*

(…)

PART ONE

PRINCIPLES

Article 10

Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community's tasks.

They shall abstain from any measure which could jeopardise the attainment of the objectives of this Treaty.

(…)

TITLE III

FREE MOVEMENT OF PERSONS, SERVICES AND CAPITAL

CHAPTER 1

WORKERS

Article 39

1. Freedom of movement for workers shall be secured within the Community.

2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.

3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:

(a) to accept offers of employment actually made;

(b) to move freely within the territory of Member States for this purpose;

(c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;

(d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in implementing regulations to be drawn up by the Commission.

4. The provisions of this Article shall not apply to employment in the public service.

Article 40

The Council shall, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, issue directives or make regulations setting out the measures required to bring about freedom of movement for workers, as defined in Article 39, in particular:

(a) by ensuring close cooperation between national employment services;

(b) by abolishing those administrative procedures and practices and those qualifying periods in respect of eligibility for available employment, whether resulting from national legislation or from agreements previously concluded between Member States, the maintenance of which would form an obstacle to liberalisation of the movement of workers;

(c) by abolishing all such qualifying periods and other restrictions provided for either under national legislation or under agreements previously concluded between Member States as imposed on workers of other Member States conditions regarding the free choice of employment other than those imposed on workers of the State concerned;

(d) by setting up appropriate machinery to bring offers of employment into touch with applications for employment and to facilitate the achievement of a balance between supply and demand in the employment market in such a way as to avoid serious threats to the standard of living and level of employment in the various regions and industries.

Article 41

Member States shall, within the framework of a joint programme, encourage the exchange of young workers.

Article 42

The Council shall, acting in accordance with the procedure referred to in Article 251, adopt such measures in the field of social security as are necessary to provide freedom of movement for workers; to this end, it shall make arrangements to secure for migrant workers and their dependants:

(a) aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of the several countries;

(b) payment of benefits to persons resident in the territories of Member States. The Council shall act unanimously throughout the procedure referred to in Article 251.

CHAPTER 2

RIGHT OF ESTABLISHMENT

Article 43

Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.

Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 48, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the Chapter relating to capital.

Article 44

1. In order to attain freedom of establishment as regards a particular activity, the Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, shall act by Means of directives.

2. The Council and the Commission shall carry out the duties devolving upon them under the preceding provisions, in particular:

(a) by according, as a general rule, priority treatment to activities where freedom of establishment makes a particularly valuable contribution to the development of production and trade;

(b) by ensuring close cooperation between the competent authorities in the Member States in order to ascertain the particular situation within the Community of the various activities concerned;

(c) by abolishing those administrative procedures and practices, whether resulting from national legislation or from agreements previously concluded between Member States, the maintenance of which would form an obstacle to freedom of establishment;

(d) by ensuring that workers of one Member State employed in the territory of another Member State may remain in that territory for the purpose of taking up activities therein as self-employed persons, where they satisfy the conditions which they would be required to satisfy if they were entering that State at the time when they intended to take up such activities;

(e) by enabling a national of one Member State to acquire and use land and buildings situated in the territory of another Member State, in so far as this does not conflict with the principles laid down in Article 33(2);

(f) by effecting the progressive abolition of restrictions on freedom of establishment in every branch of activity under consideration, both as regards the conditions for setting up agencies, branches or subsidiaries in the territory of a Member State and as regards the subsidiaries in the territory of a Member State and as regards the conditions governing the entry of personnel belonging to the main establishment into managerial or supervisory posts in such agencies, branches or subsidiaries;

(g) by coordinating to the necessary extent the safeguards which, for the protection of the interests of members and other, are required by Member States of companies or firms within the meaning of the second paragraph of Article 48 with a view to making such safeguards equivalent throughout the Community;

(h) by satisfying themselves that the conditions of establishment are not distorted by aids granted by Member States.

Article 45

The provisions of this Chapter shall not apply, so far as any given Member State is concerned, to activities which in that State are connected, even occasionally, with the exercise of official authority.

The Council may, acting by a qualified majority on a proposal from the Commission, rule that the provisions of this Chapter shall not apply to certain activities.

Article 46

1. The provisions of this Chapter and measures taken in pursuance thereof shall not prejudice the applicability of provisions laid down by law, regulation or administrative action providing for special treatment for foreign nationals on grounds of public policy, public security or public health.

2. The Council shall, acting in accordance with the procedure referred to in Article 251, issue directives for the coordination of the abovementioned provisions.

Article 47

1. In order to make it easier for persons to take up and pursue activities as self-employed persons, the Council shall, acting in accordance with the procedure referred to in Article 251, issue directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications.

2. For the same purpose, the Council shall, acting in accordance with the procedure referred to in Article 251, issue directives for the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as self-employed persons. The Council, acting unanimously throughout the procedure referred to in Article 251, shall decide on directives the implementation of which involves in at least one Member State amendment of the existing principles laid down by law governing the professions with respect to training and conditions of access for natural persons. In other cases the Council shall act by qualified majority.

3. In the case of the medical and allied and pharmaceutical professions, the progressive abolition of restrictions shall be dependent upon coordination of the conditions for their exercise in the various Member States.

Article 48

Companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Community shall, for the purposes of this Chapter, be treated in the same way as natural persons who are nationals of Member States.

'Companies or firms' means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making.

CHAPTER 3

SERVICES

Article 49

Within the framework of the provisions set out below, restrictions on freedom to provide services within the Community shall be prohibited in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended.

The Council may, acting by a qualified majority on a proposal from the Commission, extend the provisions of the Chapter to nationals of a third country who provide services and who are established within the Community.

Article 50

Services shall be considered to be 'services' within the meaning of this Treaty where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons.

'Services' shall in particular include:

(a) activities of an industrial character;

(b) activities of a commercial character;

(c) activities of craftsmen;

(d) activities of the professions.

Without prejudice to the provisions of the Chapter relating to the right of establishment, the person providing a service may, in order to do so, temporarily pursue his activity in the State where the service is provided, under the same conditions as are imposed by that State on its own nationals.

Article 51

1. Freedom to provide services in the field of transport shall be governed by the provisions of the title relating to transport.

2. The liberalisation of banking and insurance services connected with movements of capital shall be effected in step with the liberalisation of movement of capital.

Article 52

1. In order to achieve the liberalisation of a specific service, the Council shall, on a proposal from the Commission and after consulting the Economic and Social Committee and the European Parliament, issue directives acting by a qualified majority.

2. As regards the directives referred to in paragraph 1, priority shall as a general rule be given to those services which directly affect production costs or the liberalisation of which helps to promote trade in goods.

Article 53

The Member States declare their readiness to undertake the liberalisation of services beyond the extent required by the directives issued pursuant to Article 52(1), if their general economic situation and the situation of the economic sector concerned so permit. To this end, the Commission shall make recommendations to the Member States concerned.

Article 54

As long as restrictions on freedom to provide services have not been abolished, each Member State shall apply such restrictions without distinction on grounds of nationality or residence to all persons providing services within the meaning of the first paragraph of Article 49.

Article 55

The provisions of Articles 45 to 48 shall apply to the matters covered by this Chapter.

(…)

Article 251

1. Where reference is made in this Treaty to this Article for the adoption of an act, the following procedure shall apply.

2. The Commission shall submit a proposal to the European Parliament and the Council.

The Council, acting by a qualified majority after obtaining the opinion of the European Parliament:

— if it approves all the amendments contained in the European Parliament's opinion, may adopt the proposed act thus amended,

— if the European Parliament does not propose any amendments, may adopt the proposed act,

— shall otherwise adopt a common position and communicate it to the European Parliament.

The Council shall inform the European Parliament fully of the reasons which led it to adopt its common position. The Commission shall inform the European Parliament fully of its position.

If, within three months of such communication, the European Parliament:

(a) approves the common position or has not taken a decision, the act in question shall be deemed to have been adopted in accordance with that common position;

(b) rejects, by an absolute majority of its component members, the common position, the proposed act shall be deemed not to have been adopted;

(c) proposes amendments to the common position by an absolute majority of its component members, the amended text shall be forwarded to the Council and to the Commission, which shall deliver an opinion on those amendments.

3. If, within three months of the matter being referred to it, the Council, acting by a qualified majority, approves all the amendments of the European Parliament, the act in question shall be deemed to have been adopted in the form of the common position thus amended; however, the Council shall act unanimously on the amendments on which the Commission has delivered a negative opinion. If the Council does not approve all the amendments, the President of the Council, in agreement with the President of the European Parliament, shall within six weeks convene a meeting of the Conciliation Committee.

4. The Conciliation Committee, which shall be composed of the Members of the Council or their representatives and an equal number of representatives of the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the Members of the Council or their representatives and by a majority of the representatives of the European Parliament. The Commission shall take part in the Conciliation Committee's proceedings and shall take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council. In fulfilling this task, the Conciliation Committee shall address the common position on the basis of the amendments proposed by the European Parliament.

5. If, within six weeks of its being convened, the Conciliation Committee approves a joint text, the European Parliament, acting by an absolute majority of the votes cast, and the Council, acting by a qualified majority, shall each have a period of six weeks from that approval in which to adopt the act in question in accordance with the joint text. If either of the two institutions fails to approve the proposed act within that period, it shall be deemed not to have been adopted.

6. Where the Conciliation Committee does not approve a joint text, the proposed act shall be deemed not to have been adopted.

7. The periods of three months and six weeks referred to in this Article shall be extended by a maximum of one month and two weeks respectively at the initiative of the European Parliament or the Council.

Annex II The Administrative Commission (CASSTM) 1408/71

(Extract from Regulation (EEC) No 1408/71)

Article 80

Composition and working methods

1. There shall be attached to the Commission of the European Communities, an Administrative Commission on Social Security for Migrant Workers (hereinafter called 'Administrative Commission') made up of a government representative of each of the Member States, assisted, where necessary, by expert advisers. A representative of the Commission of the European Communities shall attend the meetings of the Administrative Commission in an advisory capacity.

2. The Administrative Commission shall be assisted in technical matters by the International Labour Office under the terms of the agreements concluded to that end between the European Economic Community and the International Labour Organisation.

3. The rules of the Administrative Commission shall be drawn up by mutual agreement among its members.

Decisions on questions of interpretation referred to in Article 81(a) shall be unanimous. They shall be given the necessary publicity.

4. Secretarial services shall be provided for the Administrative Commission by the Commission of the European Communities.

Article 81[57]

Tasks of the Administrative Commission

The Administrative Commission shall have the following duties:

(a) to deal with all administrative questions and questions of interpretation arising from this Regulation and subsequent regulations, or from any agreement or arrangement concluded thereunder, without prejudice to the right of the authorities, institutions and persons concerned to have recourse to the procedures and tribunals provided for by the legislations of Member States, by this Regulation or by the Treaty;

(b) to carry out all translations of documents relating to the implementation of this Regulation at the request of the competent authorities, institutions and courts of the Member States, and in particular translations of claims submitted by persons who may be entitled to benefit under this Regulation;

(c) to foster and develop cooperation between Member States in social security matters, particularly in respect of health and social measures of common interest;

(d) to foster and develop cooperation between Member States with a view to expediting, taking into account developments in administrative management techniques, the award of benefits, in particular those due under this Regulation for invalidity, old age and death (pensions);

(e) to assemble the factors to be taken into consideration for drawing up accounts relating to the costs to be borne by the institution of the Member States under this Regulation and to adopt the annual accounts between the said institutions;

[57] Cf. http://www.cleiss.fr/docs/textes/1408-71/am17.html.

(f) to undertake any other function coming within its competence under the provisions of this and of subsequent Regulations or any agreement or arrangement made thereunder;

(g) to submit proposals to the Commission of the European Economic Communities for working out subsequent Regulations and for the revision of this and subsequent Regulations.

Annex III The Administrative Commission (CACSSS) 883/2004

(Extract from Regulation (EC) No 883/2004)

TITLE IV

ADMINISTRATIVE COMMISSION AND ADVISORY COMMISSION

Article 71

Composition and working methods of the Administrative Commission

1. The Administrative Commission for the Coordination of Social Security Systems (hereinafter called 'the Administrative Commission') attached to the Commission of the European Communities shall be made up of a government representative from each of the Member States, assisted, where necessary, by expert advisers. A representative of the Commission of the European Communities shall attend the meetings of the Administrative Commission in an advisory capacity.

2. The rules of the Administrative Commission shall be drawn up by mutual agreement among its members.

Decisions on questions of interpretation referred to in Article 72(a) shall be adopted under the voting rules established by the Treaty and shall be given the necessary publicity.

3. Secretarial services for the Administrative Commission shall be provided by the Commission of the European Communities.

Article 72

Tasks of the Administrative Commission

The Administrative Commission shall:

(a) deal with all administrative questions and questions of interpretation arising from the provisions of this Regulation or those of the Implementing Regulation, or from any agreement concluded or arrangement made thereunder, without prejudice to the right of the authorities, institutions and persons concerned to have recourse to the procedures and tribunals provided for by the legislation of the Member States, by this Regulation or by the Treaty;

(b) facilitate the uniform application of Community law, especially by promoting exchange of experience and best administrative practices;

(c) foster and develop cooperation between Member States and their institutions in social security matters in order, inter alia, to take into account particular questions regarding certain categories of persons; facilitate realisation of actions of crossborder cooperation activities in the area of the coordination of social security systems;

(d) encourage as far as possible the use of new technologies in order to facilitate the free movement of persons, in particular by modernising procedures for exchanging information and adapting the information flow between institutions for the purposes of exchange by electronic means, taking account of the development of data processing in each Member State; the Administrative Commission shall adopt the common structural rules for data processing services, in particular on security and the use of standards, and shall lay down provisions for the operation of the common part of those services;

(e) undertake any other function falling within its competence under this Regulation and the Implementing Regulation or any agreement or arrangement concluded thereunder;

(f) make any relevant proposals to the Commission of the European Communities concerning the coordination of social security schemes, with a view to improving and modernising the Community 'acquis' by drafting subsequent Regulations or by means of other instruments provided for by the Treaty;

(g) establish the factors to be taken into account for drawing up accounts relating to the costs to be borne by the institutions of the Member States under this Regulation and to adopt the annual accounts between those institutions, based on the report of the Audit Board referred to in Article 74.

Article 73

Technical Commission for Data Processing

1. A Technical Commission for Data Processing (hereinafter called the 'Technical Commission') shall be attached to the Administrative Commission. The Technical Commission shall propose to the Administrative Commission common architecture rules for the operation of data-processing services, in particular on security and the use of standards; it shall deliver reports and a reasoned opinion before decisions are taken by the Administrative Commission pursuant to Article 72(d). The composition and working methods of the Technical Commission shall be determined by the Administrative Commission.

2. To this end, the Technical Commission shall:

(a) gather together the relevant technical documents and undertake the studies and other work required to accomplish its tasks;

(b) submit to the Administrative Commission the reports and reasoned opinions referred to in paragraph 1;

(c) carry out all other tasks and studies on matters referred to it by the Administrative Commission;

(d) ensure the management of Community pilot projects using data-processing services and, for the Community part, operational systems using data-processing services.

Article 74

Audit Board

1. An Audit Board shall be attached to the Administrative Commission. The composition and working methods of the Audit Board shall be determined by the Administrative Commission.

The Audit Board shall:

(a) verify the method of determining and calculating the annual average costs presented by Member States;

(b) collect the necessary data and carry out the calculations required for establishing the annual statement of claims of each Member State;

(c) give the Administrative Commission periodic accounts of the results of the implementation of this Regulation and of the Implementing Regulation, in particular as regards the financial aspect;

(d) provide the data and reports necessary for decisions to be taken by the Administrative Commission under Article 72(g);

(e) make any relevant suggestions it may have to the Administrative Commission, including those concerning this Regulation, in connection with subparagraphs (a), (b) and (c);

(f) carry out all work, studies or assignments on matters referred to it by the Administrative Commission.

Article 75

Advisory Committee for the Coordination of Social Security Systems

1. An Advisory Committee for the Coordination of Social Security Systems (hereinafter referred to as 'Advisory Committee') is hereby established, comprising, from each Member State:

(a) one government representative;

(b) one representative from the trade unions;

(c) one representative from the employers' organisations.

For each of the categories referred to above, an alternate member shall be appointed for each Member State.

The members and alternate members of the Advisory Committee shall be appointed by the Council. The Advisory Committee shall be chaired by a representative of the Commission of the European Communities. The Advisory Committee shall draw up its rules of procedure.

2. The Advisory Committee shall be empowered, at the request of the Commission of the European Communities, the Administrative Commission or on its own initiative:

(a) to examine general questions or questions of principle and problems arising from the implementation of the Community provisions on the coordination of social security systems, especially regarding certain categories of persons;

(b) to formulate opinions on such matters for the Administrative Commission and proposals for any revisions of the said provisions.

Annex IV Practical Guide for the Posting of Workers

PRACTICAL GUIDE FOR THE POSTING OF WORKERS IN THE MEMBER STATES[58] OF THE EUROPEAN UNION AND THE EUROPEAN ECONOMIC AREA AND IN SWITZERLAND

1. WHY DO WE NEED A GUIDE?

Point 10 of Decision No 181 of 13 December 2000[59], requires the Administrative Commission on Social Security for Migrant Workers to draw up in stages *'for the benefit of administrative authorities, undertakings and workers, a code of good practice concerning the posting of workers and the pursuit by self-employed workers of a secondary activity outside the State in which they are established'*. Given that the guide itself will be drawn up in stages, the current version cannot be considered exhaustive in terms of covering all possible future issues.

This Guide is intended to provide, at the various practical and administrative levels involved in implementing specific Community provisions, a valid working instrument which makes it possible to eliminate the doubts and confusions of interpretation and application which daily emerge in this complex sector.

The document sets out in plain language the principles and rules presented in Articles 14(1), 14(1)(a)(i) and 14(1)(b)(i) and (ii) of Regulation 1408/71[60] (hereinafter referred to as 'the Regulation'), in Decision 181 on the posting of workers and in the judgments of the Court of Justice (Van Der Vecht, Fitzwilliams, Banks, etc.) and takes due account of the invaluable suggestions submitted by the Member States on the basis of their respective national experiences.

2. WHICH SOCIAL SECURITY SCHEME IS APPLICABLE TO EMPLOYEES TEMPORARILY POSTED TO ANOTHER MEMBER STATE?

Under Community rules, workers moving within the European Union must be subject to a single social security legislation, save for very specific exceptions (Article 13(1) of the Regulation).

Under the Regulation (Article 13(2)(a), (b) and (c)) the social security scheme applicable to those who, for reasons of work, move from one Member State to another is, generally speaking, that established by the legislation of the Member State of new employment.

In order to give as much encouragement as possible to the freedom of movement of workers and avoid unnecessary and costly administrative complications for workers, companies and administrations, the Community provisions in force allow for certain exceptions to the general

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[58] In the following text, the term 'Member State' also refers to the Member States of the EEA and Switzerland.

[59] CASSTM Decision No 181 of 13 December 2000 concerning the interpretation of Articles 14(1), 14a(1) and 14b(1) and (2) of Council Regulation (EEC) No 1408/71 on the legislation applicable to posted workers and self-employed workers temporarily working outside the competent State.

[60] 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 (OJ English special edition: Series I Chapter 1971(II) p. 416 as updated by Regulation (EC) No 118/97, OJ L 28, 30.1.1997).

principle referred to above. The main exception is the option to maintain the social security scheme of the Member State in which the undertaking normally operates (the 'sending State') whenever the worker concerned is sent by that undertaking to another Member State ('State of employment') for a period of time which is limited from the outset (a maximum of 12 months, which may be extended by another 12 months), provided that certain conditions, enumerated below, continue to hold good.

A similar exception has been made for employees temporarily posted, by the undertaking employing them, on board vessels flying a flag other than that of the State to whose legislation the workers would normally be subject.

These situations – which give exemption from the payment of insurance contributions in the State of employment – better known as the **posting** of employees, are governed by Articles 14(1) and 14(1)(b)(i) respectively of the Regulation.

3. WHAT ABOUT SELF-EMPLOYED WORKERS TEMPORARILY WORKING IN A MEMBER STATE OTHER THAN THEIR OWN?

Here, too, workers who intend, for a limited period of time (a maximum of 12 months, which may be extended by another 12 months), to pursue their activity in a State other than that in which they normally pursue that activity, or on a vessel flying the flag of another Member State other than that in which they normally operate, have the option of maintaining the insurance scheme of their State of establishment.

Although this situation does possess the main characteristics of a 'posting', there is no posting employer involved, and so it cannot be formally defined as such but is still governed by Articles 14(1)(a)(i) and 14(b)(ii) of the Regulation.

4. HOW IS THE POSTING OF WORKERS DEFINED IN THE RELEVANT COMMUNITY LEGISLATION?

In line with the above-mentioned provisions of the Regulation, a person employed in the territory of a Member State by an undertaking '***to which he is normally attached***' is deemed to be posted when he/she is sent by that undertaking to the territory of another Member State to perform work there '***for that undertaking***', '***provided that the anticipated duration of posting does not exceed 12 months***' and that he/she is not sent to replace another person who has completed his term of posting.

Accordingly, in addition to the temporary nature of the posting and the fact that the worker is not posted for the purpose of replacing another worker, the vital defining features of a normal posting — which constitute the most frequent source of problems of interpretation and application — are that the subordinate relationship of the worker to the posting undertaking continues throughout the period of posting and that the work is carried out on behalf of, and in the interests of, that undertaking.

More specifically, and in accordance with what is now the settled case law of the Court of Justice, reflected in Decision No 181, these defining features must be deemed to exist when

there is, and there continues to be throughout the whole period of posting, a **direct relationship** between the posting undertaking and the posted worker.

5. WHEN IS IT POSSIBLE TO SPEAK OF A DIRECT RELATIONSHIP BETWEEN THE POSTING UNDERTAKING AND THE POSTED WORKER?

There are certain principles, stemming from a careful interpretation of the legal provisions and from Community case law and daily practice, that determine whether a **direct relationship** exists between a posting undertaking and a posted worker. These include the following:

- it must be evident from the inspection that the contract was and still is applicable to the parties involved in drawing it up and stems from the negotiations that led to recruitment;
- the power to terminate the contract of employment (dismissal) must remain exclusively with the posting undertaking;
- the posting undertaking must retain the power to determine the 'nature' of the work performed by the posted worker, not in terms of defining the details of the type of work to be performed and the way it is to be performed, but in the more general terms of determining the end product of that work or the basic service to be provided;
- the obligation with regard to the remuneration of the worker rests with the undertaking which concluded the contract; the existence of the direct relationship does not therefore depend on who actually pays the worker.

6. IS IT STILL POSSIBLE TO SPEAK OF POSTING IN THE CASE OF WORKERS RECRUITED IN ONE MEMBER STATE FOR POSTING IN ANOTHER?

This scenario applies, though not exclusively, to temporary employment companies whose characteristics make them conducive to numerous misapplications or abuses of posting (one example is that of 'letterbox companies').

Decision 181 — which follows Court of Justice guidelines on this issue — stipulates that, in order for such cases to remain within the context of posting, the posting undertaking must, amongst other things, '*habitually carry on significant activities in the territory*' of the posting State. Performance of management activities which are purely internal in that State cannot of itself justify the application of the provisions relating to posting.

The existence or otherwise of *significant activities* in the posting State can be checked by means of a series of objective factors.

Given the nature of the activities, the following list of indicators cannot be exhaustive, but it does comprise important factors:

- the place where the posting undertaking has its registered office and its administration;
- the number of administrative staff of the posting undertaking who work in the sending Member State and in the Member State of employment (the presence of only administrative staff in the sending State rules out *per se* the applicability to the undertaking of the provisions governing posting);
- the place of recruitment of the posted worker;
- the place where the majority of contracts with clients are concluded;

- the law applicable to the contracts signed by the posting undertaking with its clients and with its workers;
- the turnover achieved by the posting undertaking in the sending State and in the State of employment during a sufficiently clearly defined period (turnover of approximately 25% of total turnover in the sending State, for example, could be a sufficient indicator, but cases would warrant individual attention if the figure were under 25%).

As well as meeting these criteria, the undertakings in question must have pursued their activity in the sending State for a certain time in order to satisfy the requirement of habitual performance of '*significant activities*' in the territory of that State. This requirement is deemed to have been met if the activity has been pursued for at least four months; shorter periods would require a case-by-case evaluation that took account of all the other factors involved.

7. WHAT IF A WORKER IS POSTED TO WORK IN SEVERAL UNDERTAKINGS?

The fact that a posted person works at various times or during the same period in several undertakings in the same Member State of employment or consecutively in several undertakings in different States of employment does not rule out the application of the provisions governing posting.

The essential and decisive element in this case, too, is that the work must continue to be carried out *on behalf of*, and hence in the interests of, the posting undertaking.

Consequently, it is necessary always to check the existence and continuation throughout the posting period of this **direct relationship** between posted worker and posting undertaking, the essential characteristics of which are described above.

8. ARE THERE SITUATIONS IN WHICH IT IS ABSOLUTELY IMPOSSIBLE TO APPLY THE PROVISIONS ON POSTING?

There are at least four situations in which the rules in force exclude, *a priori*, the application of the provisions on posting.

The latter do not apply if:

- the undertaking to which the worker has been posted places him/her at the disposal of another undertaking in the Member State in which it is situated;
- the undertaking to which the worker is posted places him/her at the disposal of an undertaking situated in another Member State;
- the worker is recruited in a Member State in order to be sent by an undertaking situated in a second Member State to an undertaking in a third Member State;
- the worker is recruited in one Member State by an undertaking situated in a second Member State in order to work in the first Member State.

In such cases the reasons which prompted the categorical exclusion of the applicability of posting are clear: the complexity of the relationships arising from these situations, as well as offering no guarantee as to the existence of a **direct relationship** between the worker and the

posting undertaking, contrasts starkly with the objective of avoiding administrative complications and fragmentation of the existing insurance history, and this objective constitutes the *raison d'être* of the provisions governing posting.

9. ARE THERE ANY RESTRICTIONS ON THE APPLICATION OF THE PROVISIONS ON POSTING TO SELF-EMPLOYED WORKERS?

In the case of a self-employed worker intending to work on a temporary basis in an employed or self-employed capacity in a Member State other than the one in which he/she habitually performs his/her activity, different objective criteria from those that apply to gainful employment will, of course, be used to verify the existence of conditions in which the worker can remain affiliated to the social security scheme in that State.

The Community provisions lay down criteria designed to verify that the self-employed worker:

- has been pursuing significant activities (see point 6 above) for a certain length of time in the territory of the State where he/she is established before moving to another Member State;
- is able to substantiate, if necessary by producing the relevant contracts, that the activity to be performed for a limited period under a posting arrangement is genuine;
- continues, in the course of the period during which the worker performs such work in a State other than the State of origin, to fulfil in the sending State the conditions enabling him/her to resume his/her activity when he returns (e.g. maintenance of office space or the infrastructure required for the pursuit of his/her activity, continuation of social-security contributions, payment of taxes, VAT registration and registration with the relevant professional body and/or chamber of commerce).

It should not be forgotten that this list is intended to serve purely as a guide; given the extensive range of occupations concerned, the indicators to be taken into account may be very numerous and, in some instances, such as the cases of computer specialists and translators, may not even exist.

This sector must therefore be dealt with on a case-by-case basis, and an excessively formalised approach has to be avoided.

10. HOW IS THE CERTIFICATE FOR THE FIRST 12 MONTHS OF A POSTING OBTAINED?

An undertaking which posts a worker to another Member State (or the employed or self-employed worker) must contact the competent institution in the sending State (or the State in which the self-employed worker normally operates) in order to obtain the 'declaration of secondment' (form E 101, see Annex 1) attesting to the fact that the worker is subject to the legislation of that Member State and is therefore exempted from the application of the legislation of the State of employment (see point 11 below for the specific provisions on short-term posting).

Form E 101 is valid for a period not exceeding 12 months and should be applied for in sufficiently good time before the start of the posting period.

Nevertheless, in exceptional circumstances there are provisions which allow for the application to be made after the posting has commenced and even upon expiry of that period, provided it is made within a reasonable time span.

Once a worker has ended the initial period of posting, no fresh period of posting for the same worker, the same undertakings and the same Member State can be authorised until at least two months have elapsed from the date of expiry of the previous posting period. Derogation from this principle is, however, permissible in specific circumstances.

The posted worker and the posting undertaking must always be able to produce form E 101 for the purposes of checks by the insurance bodies of the States concerned.

Forms E 101 (and also E 102, which is referred to below in connection with the extension of a posting) must therefore always be retained even after the period of posting.

In order to be able to obtain sickness and maternity benefits for themselves and the members of their family, posted workers must obtain from the competent institution in the sending Member State, besides form E 101, evidence of entitlement to sickness benefits in kind, i.e. either form E106 (in the event that they have transferred their residence or place of abode to the State of employment) or the European health-insurance card or form E111 (if they have kept their residence in the sending State).

If the posting procedure cannot be used, the undertakings and/or workers concerned must contact the institutions which are territorially competent in the State of employment in order to obtain registration in the insurance scheme of that State for the category to which the workers belong.

11. A SIMPLIFIED PROCEDURE FOR POSTINGS OF UNDER THREE MONTHS

As we have seen, postings are generally restricted to a maximum of 12 months. In many cases, however, because of the type of activity involved, undertakings have to send their employees to other countries very frequently and for short or very short periods.

In such cases, it may be impossible or at least difficult to complete the normal procedure for issuing forms E 101 in good time, which means that the persons concerned would not have the requisite certificates.

Accordingly, when the foreseeable duration of the posting does not exceed three months, a simplified procedure defined in Administrative Commission Decision No 148[61] may be used.

On the basis of this procedure and upon request from the undertakings concerned, the competent institutions of the sending State can issue in advance a suitable number of E 101 forms with the last box already completed (specifying the office and containing the relevant address, stamp, date and signature), marked with the appropriate serial number and bearing the words '*Posting not exceeding three months in accordance with Decision No 148 of 25 June 1992 of the EEC Administrative Commission*'.

[61] CASSTM Decision No 148 of 25 June 1992 concerning the use of the certificate concerning the applicable legislation (Form E 101) where the period of posting does not exceed three months (OJ L 22, 30.1.1993).

When using the form, the posting undertaking must complete all the boxes on the form, forward a copy to the worker, and within 24 hours send another copy to the territorially competent institution, which, once the requisite checks have been carried out, keeps the document on file[62].

12. OBTAINING POSTING AUTHORISATION FOR A FURTHER PERIOD OF TWELVE MONTHS

Should a posting have to be extended for unforeseen reasons beyond the initially anticipated 12-month period, the employer (or the self-employed worker) must contact — obviously in sufficiently good time before the expiry date of the first 12-month posting — the competent authorities of the State of employment in order to obtain their agreement that the worker or workers may remain in the insurance scheme of that State.

Accordingly, four copies of form E 102 (see Annex 2) should be sent, with all the boxes in part A completed, for each worker concerned.

The list attached at Annex 3 will help to identify the bodies in each Member State empowered to authorise the extension of a posting.

Once the competent authority or designated organisation in the State of employment has carried out the requisite checks and given its agreement for the continuation of the insurance scheme of the posting State, it must complete part B of form E 102 and provide the employer with two copies, one of which the employer must pass on to the worker or workers concerned.

Form E 102 should also be carefully retained, in particular by the persons concerned, for production on request to the supervisory authorities.

13. WHAT TO DO IF, FOR VALID REASONS, THE POSTING WILL LAST MORE THAN 12 MONTHS

When it can be foreseen that a posting will last more than 12 months, the employer (or employed worker) or the self-employed worker must follow the procedure prescribed by in Article 17 of the Regulation.

In order to obtain posting authorisation in derogation from the usual rules, the employer (or employed worker) or the self-employed worker must contact the competent government department or designated organisation in the State to whose legislation certain workers or a certain category of employees (e.g. the staff of a bank, insurance company or airline company) wish to remain subject, in order to seek the conclusion of an agreement under Article 17 of the Regulation between that department or designated organisation and that of the Member State concerned.

The application should be accompanied by a specific report stating the grounds for its submission, in line with Recommendation 16[63]. The application should be submitted sufficiently

[62] Finland does not apply this procedure but uses a special electronic procedure.

[63] CASSTM Recommendation No 16 of 12 December 1984 concerning the conclusion of Agreements pursuant to Article 17 of Council Regulation (EEC) No 1408/71 (OJ C 273, 24.10.1985).

in advance, since possible difficulties or objections raised by the State of employment could delay the agreement. However, the application may be made retroactively in exceptional circumstances.

The authority or designated organisation of the posting State to which the application is submitted, on reaching agreement with the authority or designated organisation of the Member State of employment. issues form E 101 or notifies the agreement to both the applicant undertaking and the institution authorised to issue form E 101.

This latter institution, once it has received the communication from the government department, issues two copies of form E 101 in respect of each employee, one for the undertaking and one for the worker.

In the cases in question, the institution authorised to issue form E 101 must not only tick the box relating to Article 17 but also indicate in point 5.2 and/or 5.3 of the form the duration of the whole period in respect of which the agreement has been concluded as well as the references of the communication whereby the competent authority or the organisation designated by the State of employment allows the interested party to remain subject to the legislation of the sending State.

The original of this communication, held by the posting undertaking, must be forwarded to the undertaking to which the worker is posted in order to be able to substantiate at any time the legitimacy of his/her exemption from the social security legislation of the Member State in which the activity is being carried out and to justify the resulting non-payment of contributions normally payable under this legislation.

14. SUSPENSION AND INTERRUPTION OF THE POSTING PERIOD

Temporary suspensions of work during the posting period for whatever reason (holidays, illness, training at the posting undertaking, etc.) cannot justify an extension of the posting by an equivalent period.

The posting therefore ends on the expiry date of the scheduled period, irrespective of the number and duration of interruptions. Accordingly, unwarranted extension of the posting period by means of repeated temporary interruptions cannot be authorised.

If the posting has not actually been effected, if the extension option has not been used or if the posting has been interrupted before the predetermined expiry date, the worker and the employer must inform the institution of the posting State accordingly.

The same notification requirement applies if a worker, during his/her posting period, is assigned or transferred to another company in the State of origin, e.g. in the event of the undertaking being transferred, sold or merged.

15. NOTIFICATION REQUIREMENT AND MONITORING OF COMPLIANCE WITH THE RULES ON POSTING; ROLE OF THE ADMINISTRATIVE COMMISSION WHEN INSTITUTIONS HAVE OPPOSING VIEWS

In order to ensure that the posting mechanism is properly applied, the competent institutions in the Member State to whose legislation the workers remain subject must, by means of appropriate leaflets or other information media, inform both the employer and the posted workers of the conditions which apply to the posting, alerting them to the possibility that they may be subject to direct checks designed to verify that the conditions of posting continue to obtain.

Similar information must be supplied by the competent institutions in the Member State of residence of self-employed workers who carry out their work in another Member State on a temporary basis.

While providing undertakings and workers with every appropriate guarantee in order to ensure that free movement of labour and freedom to provide services are not impeded, the competent institutions of the sending State and the State of employment, individually or in cooperation, will take any initiatives that are necessary for the purpose of verifying the existence and continuation of the conditions inherent to a posting (direct relationship, significant activities in the sending State, maintenance in the State of residence of the facilities required for the pursuit of self-employed activity, etc.).

Following these checks, if any doubts remain as to the genuine nature of the posting and/or the validity of the form E 101 and of the grounds on which it was issued, and if the competent institutions fail to reach an agreement, they may each submit to the Administrative Commission, through the representatives of their respective governments, a note, which will be examined at the first meeting following the 20th day after its submission with a view to reconciling the opposing views on the legislation applicable to the case in question.

Annex V SOLVIT

(Extract from website)

What is SOLVIT?

SOLVIT is an on-line problem solving network in which EU Member States work together to solve without legal proceedings problems caused by the misapplication of Internal Market law by public authorities. There is a SOLVIT centre in every European Union Member State (as well as in Norway, Iceland and Liechtenstein). SOLVIT Centres can help with handling complaints from both **citizens** and **businesses.** They are part of the national administration and are committed to providing real solutions to problems within ten weeks. Using SOLVIT is free of charge.

SOLVIT has been working since July 2002. The European Commission coordinates the network, which is operated by the Member States, the European Commission provides the database facilities and, when needed, helps to speed up the resolution of problems. The Commission also passes formal complaints it receives on to SOLVIT if there is a good chance that the problem can be solved without legal action.

Why SOLVIT?

The Internal Market offers citizens and businesses many opportunities. You may want to move to another country in the European Union, to study, to work, to follow your partner or to enjoy life after retirement. Or you may want to set up a business or sell your products or services in another EU Member State

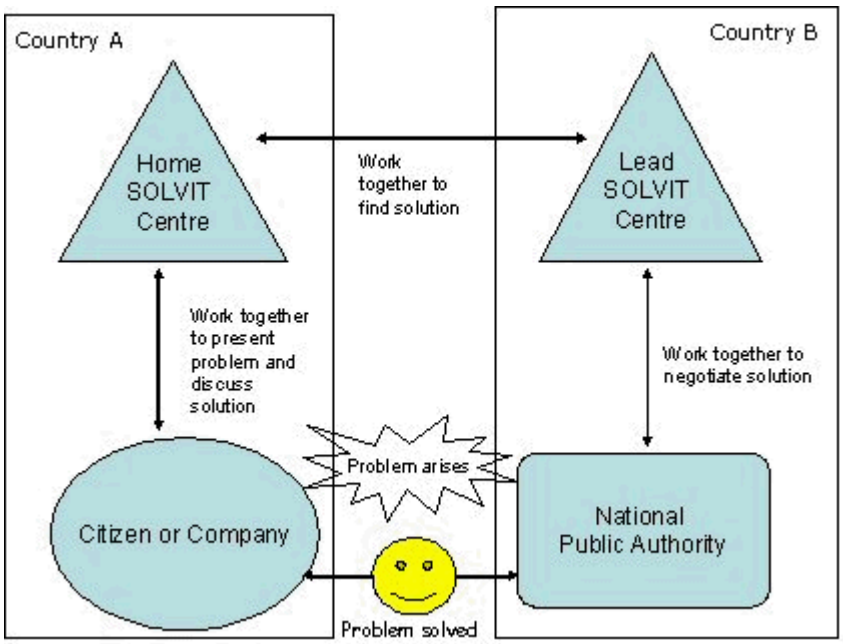
While the Internal Market generally works well, mistakes are sometimes made. For example, you might have problems with getting a residence permit, getting your professional qualifications recognised or registering a car. Your employment, social security or tax rights might be denied. You might have trouble getting the right to vote in European and local elections in the Member State to which you have moved. Your business could be faced with administrative obstacles, unjustified refusal of access to a national market or problems in getting reimbursement of VAT.

Sometimes these problems arise because of a lack of information about your rights in Europe and about how procedures work in other EU Member States. In such cases, the 'Your Europe' portal on the Europa website can help to clarify matters.

But if you are already well informed about your internal market rights and have tried in vain to exercise them in another EU country, SOLVIT is there to help you.

How does SOLVIT work?

When you submit a case to SOLVIT, your local SOLVIT Centre (known as the 'Home' SOLVIT Centre) will first check the details of your application to make sure that it does indeed concern the misapplication of Internal Market rules and that all the necessary information has been made available. It will then enter **your case into an on-line database**, and it will be forwarded automatically to the SOLVIT Centre in the other Member State where the problem has occurred (known as the 'Lead' SOLVIT Centre).



The Lead SOLVIT Centre should confirm within a week whether or not it will take on your case. This will largely depend on whether it considers that the case is well-founded and whether there is a good chance that it can be resolved pragmatically. If the solution to a problem requires the repeal of a national rule – rather than simply applying it correctly – this sometimes requires formal legal action, though SOLVIT can sometimes help persuade a Member State to waive the offending rule pending its abolition.

The **target deadline** for finding a solution to the problem is **10 weeks**.

The two SOLVIT Centres will work together to try to solve the problem and your Home SOLVIT Centre will keep you informed of progress.

SOLVIT is an alternative dispute resolution mechanism. It works much more quickly than making a formal complaint. You do not have to accept the proposed solution but you cannot challenge it formally through SOLVIT. Nevertheless, if a problem goes unresolved, or you consider that the proposed solution is unacceptable, you can still pursue legal action through a national court or lodge a formal complaint with the European Commission.

Where SOLVIT can help

SOLVIT deals with cross-border problems between a business or a citizen on the one hand and a national public authority on the other, where there is possible misapplication of EU law. The policy areas SOLVIT has mostly dealt with so far are:

- Recognition of professional qualifications and diplomas
- Access to education
- Residence permits
- Voting rights
- Social security
- Employment rights
- Driving licences
- Motor vehicle registration
- Border controls
- Market access for products

- Market access for services
- Establishment as self-employed
- Public procurement
- Taxation
- Free movement of capital or payments

This is not an exhaustive list. SOLVIT will consider any case that meets the criteria above.

However, since SOLVIT is an informal approach to problem solving it should not be used in situations where legal proceedings are already underway.

SOLVIT Quality and Performance standards

SOLVIT is committed to offering a first-class service. SOLVIT centres have, therefore, agreed to meet some quality and performance standards for problem solving.

On the basis of the standards, you can expect that:

- You can reach your local SOLVIT Centre by telephone, fax or e-mail during office hours and you will get a prompt reply to your queries.
- If your problem appears to be suitable for SOLVIT, the SOLVIT Centre will analyse it and will let you know as soon as possible whether it can be submitted to SOLVIT.
- When a case is submitted to the SOLVIT on-line database, you will receive a short record of it from the SOLVIT Centre.
- If the SOLVIT Centre of the country where the problem has occurred agrees to try and solve your problem, the deadline for a solution is ten weeks.
- If a solution is found, you will be advised on what you need to do to benefit from the proposed solution.
- If your case cannot be solved by the network, the local SOLVIT Centre will try to help you find another way to deal with your problem.

Annex VI GUSO (France)

Centralisation of the payment of welfare contributions

(Extract from the GUSO website)

What is the GUSO service?

- About AFDAS (training insurance fund for performing artists; in French)
- About Assédic/Unédic (providers of unemployment insurance; in French)
- About Audiens (provider of supplementary pensions for those who work in the arts and the media; in French)
- About the CMB (health service for performing artists; in French)
- About Congés Spectacles (organisation dedicated to the provision of paid leave for those who work in the performing arts; in French)
- About Urssaf (private bodies which recover revenue from the national-insurance fund for the provision of welfare services to their members; in French)
- Back to homepage (in French)

About GUSO

The simple answer for the employment of staff in the performing arts.
Say farewell to paperwork and the hassle of declarations!

GUSO is a service designed to simplify administrative chores.
Provided by welfare bodies in the realm of the performing arts, this simplified facility for the submission of declarations and the payment of contributions is a free service.

The national operator working on behalf of all parties is Unédic.

Its purpose is:

- to simplify procedures for non-professional organisers of live performances,
- to guarantee better social protection for performing artists and backstage staff, and
- to combat illegal work more effectively.

The GUSO service **has been compulsory since 1 January 2004**
(for employment contracts signed after 31 December 2003).
The facility is reserved for groups of artists (Cf. Article 10 of Executive Order No 45-2339 of 13 October 1945 on public entertainment events, as amended) and for **non-professional organisers of live performances**:
All natural persons (private individuals, traders, self-employed professionals, etc.) and all private corporate entities (associations, companies, works councils, hotels, restaurants, etc.) or public entities (local or regional authorities, public institutions, government services, etc.)

- whose main activity or aim is not the commercialisation of performance venues or leisure or amusement parks or the production or broadcasting of entertainment events,

and
- who employ, under fixed-term contracts, performing artists (Article L 761-2 of the Code of Labour Law) or technicians to contribute to live performances.

The number of organised performances is no longer limited as it used to be.
GUSO serves as a 'one-stop shop' where the aforementioned persons and entities can fulfil their legal obligations to the following welfare organisations in a single visit:

- **AFDAS** for vocational training,
- **Assédic** for unemployment insurance,
- **Audiens*** for supplementary retirement pensions and welfare provision,
- **Congés Spectacles** for paid leave,
- **CMB** (Centre Médical de la Bourse) for work-related health services, and
- **Urssaf** for social security.

With the aid of a single simplified online (or paper) form, an employer can complete the following formalities simultaneously:

- employment contracts,
- declaration and payment of all employment-related levies and contributions,
- annual declaration of social data,
- employment return for Assédic,
- employment certificate for Congés Spectacles, and
- pre-recruitment declaration (special printed form).

A monthly cumulative statement is sent to employees showing their various periods of employment, their pay and their corresponding welfare contributions (employer's and employee's contributions). This statement eliminates the need to issue pay slips.
The GUSO service keeps employers and employees within the law and protected.
** Covers IRPS, IRCPS and Audiens Prévoyance.*

Publication date: 2 February 2006 | Printer-friendly version

Annex VII Main people contacted

CORNELISSEN, Robertus (DG Employment and Social Affairs, European Commission) BE
Robertus.Cornelissen@cec.eu.int

De PAUW, Bruno (Social Security Office, Attaché, Service Conventions Internationales) BE
bruno.depauw@onssrszlss.fgov.be

HENRY, Dieudonné (Pensions Office - Bureau des conventions internationales) BE
Dieudonne.Henry@RVPONP.FGOV.BE

LEJEUNE, Murielle (Employment Office, direction réglementation chômage) BE
murielle.lejeune@onem.be

PIETQUIN Geneviève (Federal Public Service - Social Security) BE
Genevieve.Pietquin@minsoc.fed.be

SEBRECHTS, Chris (Employment Office, Directie werkloosheidsreglementering) BE
sebrechts christiaan. @rva.be

Annex VIII - Addresses of the relevant unemployment services

Austria

Arbeitsmarktservice WIEN, Landesgeschäftsstelle
Service für Arbeitskräfte
Landstrasser Hauptstrasse 55-57
A – 1030 WIEN
Tel.: 00 43 1 51 525
Fax: 00 43 1 87871 50789

Cyprus

The Social Insurance Services of the Ministry of Labour and Social Insurance
7, Byron Avenue
1465 NICOSIA
CYPRUS
Tel.: 0035722401638
Fax: 0035722672984
E-mail: **interrel@sid.mlsi.gov.cy**

Czech Republic

Employment Services Administration
Na Poricnim pravu 1
12801 PRAHA 2
Tel.: 00 420 221 922 831
E-mail: **eva.rihova@mpsv.cz**

Denmark

Arbejdsdirektoratet
Stormgade 10 – Postboks 1103
1009 KØBENHAVN K
Tel.: 00 45 38 10 60 11
Fax: 00 45 38 19 38 90
Internet: www.adir.dk
mail mailto:adir@adir.dk

Estonia

Estonian Unemployment Insurance Fund
(Eesti Töötukassa)
LÕKKE Street 4
TALINN 10122
ESTONIA
Tel: 00372 6 679 700
Fax: 00372 6 679 701
E-mail: **info@tootukassa.ee**
Personne de contact: PILLE LIIMAL, Adviser (Tel.: 00372 6 679 704, e-mail: **Pille.Liimal@tootukassa.ee**)

Finland

Mailing address
KELA
International Affairs Office
P.O.Box 72
00381 HELSINKI
Tel.: 00 358 20 434 2650
Fax: 00 358 20 434 2502

Visiting address
Valimotie 1B
00380 HELSINKI

E-mail: **inter.helsinki@kela.memonet.fi**

France

Groupement régional des assedics de la région parisienne (GARP)
Rue de Mantes 14 – BP 50
92703 COLOMBES CEDEX
Tel.: 00 33 146 52 20 32
Fax: 00 33 146 52 20 63

Germany

Bundesanstalt für Arbeit
Regensburger Strasse 104
90478 NÜRNBERG
Tel.: 00 49 911 17 90
Fax: 00 49 911 179 34 36
E-mail: **jab.ba@t.online.de**

Great Britain

Department of Social Security
Pensions and Overseas Benefits Directorate
Newcastle upon Tyne
ENGLAND NE98 1BA
Tel.: 00 44 191 218 71 40
Fax: 00 44 191 218 71 47

Greece

O.A.E.D.
Ethnikis Antistasis 8
16610 GLYFADA – ATHENES
Tel.: 00 30 1 998 90 00
Fax: 00 30 1 993 73 01

Hungary

FOGLALKOZTATÁSI HIVATAL
1089 BUDAPEST, Kálvária tér 7
Levélcím: 1476 BUDAPEST, Pf. 75
Tel.: (1)303-9300
Fax: (1)210-4255

Iceland

Atvinnuleysistryggingasjodur (Unemployment Insurance Fund)
Laugavegeur 114
I – 150 REYKJAVIK
Tel.: 00 354 1 560 44 00
Fax: 00 354 1 562 45 35

Ireland

Social Welfare Services Office
Department of Social, Community and Family Affairs
O'Connell Bridge House
D'Olier Street
DUBLIN 2
Tel.: 00 353 1 874 84 44
Fax: 00 353 1 704 32 56

Italy

Istituto Nazionale Previdenza Sociale
Servizio Rapporti e Convenzioni Internazionali
Via Ciro il Grande 21
00144 ROMA
Tel.: 00 39 6 59 05 45 30
6 59 05 47 95
Fax: 00 39 6 59 64 70 63
Internet: www.inps.it

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Istituto Nazionale Previdenza Sociale
Servizio Rapporti e Convenzioni Internazionali
Via della Frezza 17
00186 ROMA
Tel.: 00 39 6 59 05 44 84

Fax: 00 39 6 59 05 64 05

Latvia

State Social Insurance Agency
70a, Lacplesa Street
RIGA
LATVIA LV – 1011
Tel.: 00371 7011 800
Fax: 00371 7011 812

Liechtenstein

Amt für Volkswirtschaft
Gerberweg 2
FL – 9490 VADUZ
Tel.: 00 41 75 236 68 71
Fax: 00 41 75 236 68 89

Lithuania

Lithuanian Labour Exchange
(Unemployment)
Gelezinio Vilko 3 A
LT – 2600 VILNIUS
LITHUANIA
Tel: 00370 5 2360774
Fax: 00370 5 2360788
E-mail: **liongina@ldb.It**

Luxembourg

Administration de l'Emploi
Rue Bender 10 – B.P. 2208
L – 1022 LUXEMBOURG
Tel.: 00 352 478 53 00
Fax: 00 352 40 61 40

Malta

International Relations Unit
Department of Social Security
38, Ordnance Street
VALLETTA – CMR 02
MALTA
Tel.: 00356 2590 3267/43
Fax: 00356 2590 3234
E-mail: **iru.dss@gov.mt**

Netherlands

UWV Hengelo
Afdeling WW, Groep Verdragen
Postbus 124
NL – 7550 AC Hengelo
Demandes et information E 301/E 303:
Tel.: 0031 73 751 2190
Fax: 0031 74 750 3330
E-mail: **uwv.verdragen@uwv.nl**

Northern Ireland

Social Security Agency
Overseas Benefit Unit
Block 2, Castle Buildings,
Stormont, BELFAST
Tel.: 00 44 1232 52 26 03

Norway

Arbeids- og velferdsdirektoratet
(Directorate of Labour and Welfare)
Postboks 5 St. Olavs Plass
N – 0130 OSLO
NORWAY
Tel.: 00 47 21 07 00 00
Fax: 00 47 21 07 00 01]

Poland

Ministry of the Economy, Labour and Social Policy,
Department of Coordination of Social Security Schemes
Nowogrodzka 1/3/5, 00 – 513
WARSZAWA
POLAND
Tel./Fax: 00 48 22 826 59 01
E-mail: **Instytucja.Lacz@mps.gov.pl**

Portugal

Secretaria de Estado da Segurança Social
Departemento de Relaçoes Internacionais e Convençoes de Segurança Social
Rue da Junqueira 112
Apartado 3072
1302 LISBOA
Tel.: 00 351 1 362 16 33
Fax: 00 351 1 363 27 25

Slovakia

Social Insurance Agency
Unemployment Benefits
Ulica 29, augusta 8
813 63 BRATISLAVA 1
SLOVAKIA
Tel: 00421 2 5931 4418
Fax: 00421 2 5931 4412
Personne de contact: MS Martina Kollárová (e-mail: **martina.kollarova@socpoist.sk**)

Slovenia

ZAVOD REPUBLIKE SLOVENIJE ZA ZAPOSLOVANJE
Glinska ulica 12
1000 LJUBLJANA
SLOVENIA
Tel.: 01 200 2350
Fax: 01 425 9823
E-mail: **info@ess.gov.si**

Spain

Ministerio de Trabajo y Asuntos Sociales
Instituto Nacional de Empleo (INEM)
Condensa de Venadito 9
28027 S/N MADRID
Tel.: 00 349 1 585 98 88
Fax: 00 349 1 377 58 81/87

Sweden

The Swedish Unemployment Insurance Board

Courrier:
Box 210
S – 641 22 Katrineholm
SWEDEN

Visiteurs:
Hantverkaregatan 3
Katrineholm

Tel.: 00 46 150 48 70 00
Fax: 00 46 150 48 70 02
Website: **www.iaf.se**
E-mail: **iaf@iaf.se**

Switzerland **E 301**

SECO (Secrétariat d'État à l'économie – Staatssekretariat für Wirtschaft)
Effingerstrasse 31
CH – 3003 BERN
Tel.: 00 41 31 300 71 11
Fax: 00 41 31 300 71 99

SECO
Direction du Travail
Finkelhubel 12
CH – 3003 BERN]

Annex IX Specimen form E 301

THE ADMINISTRATIVE COMMISSION ON SOCIAL SECURITY FOR MIGRANT WORKERS

See 'instructions' on page 3

E 301 B (1)

CERTIFICATE CONCERNING THE PERIODS TO BE TAKEN INTO ACCOUNT FOR THE GRANTING OF UNEMPLOYMENT BENEFITS

Reg. 1408/71: Art. 67, Art. 68; Art. 71.1.a.ii, Art. 71.1.b.ii.
Reg. 574/72: Art. 80; Art 81; Art. 84.2

To be issued by the competent unemployment institution or the institution designated by the competent authority of the country where the unemployed person was previously insured. To be handed over to the person concerned or sent to the competent institution.

1 Employed person

1.1 Surname ([1a])

1.2 Forenames Previous names ([1a]) ([1b]) Date of birth

1.3 Place of birth ([2]) Nationality D.N.I. ([3])

1.4 Address of the worker in the State to which the certificate is being sent ([4]) ([14])

1.5 Identification No ([4]) ([5])

1.6 Trade Union/Unemployment fund ([6])

2 The insured person named above completed the following periods in the course of

2.1 ☐ the year ([7]) ☐ the two years ([7]) ☐ the three years ([7])
☐ more than three years ([7]) ☐ the four years ([7])
preceding the end of his last employment.

3 Periods of insurance relating to paid employment and periods treated as such ([8])

3.1 Periods of insurance

from	to

3.2 Periods treated as periods of insurance

from	to	Reason for treating as such ([9])

4 Periods of employment and periods treated as such ([8]) ([8a])

4.1 Periods of employment

from	to	Occupation ([10])

4.2 Periods treated as periods of employment

from	to	Reason for treating as such ([9])

5 Details of last employment (Article 68 1, second sentence)

Field of activity	Nature of work carried out ([11]) (e.g. 'bricklayer' not 'building worker')	Approximate wage per reference period ([15])

5.1 Reason for termination ☐ dismissal ([11a]) ☐ resignation
☐ expiry of contract ☐ termination of contract by mutual consent
☐ other

6 The person concerned

6.1 ☐ has received or has still to receive wages for the period following termination of work, up to

6.2 ☐ has received or has still to receive, on termination of work, compensation or other similar payment, amounting to

6.3 ☐ has received or has still to receive payment in lieu of annual leave, amounting to for days ([12])

6.4 ☐ has waived the following rights he enjoys under his contract of employment ([13])

Reason

6.5 ☐ is in receipt of other benefits

7 **Since the commencement of last employment in item 5 the person concerned received unemployment benefits**

from	to

8 ☐ **The person concerned is entitled to benefits under Art. 69 of Reg. 1408/71**
(E 303 certificate from to drawn up on)

9 ☐ **The person concerned is not entitled to receive benefits under Art. 69 of Reg. 1408/71**

9.1 ☐ because there is no entitlement under the legislation administered by the institution issuing this certificate

9.2 ☐ because he has not remained available to the employment services of the competent country for a period of four weeks from the day on which he became unemployed and because he was not authorised to leave that country before the end of that period

10 ☐ **The person concerned is not entitled to benefits under Art. 71.1.a.i or Art. 71.1.b.i of Reg. 1408/71 from the institution issuing this certificate**

10a ☐ The person concerned is not entitled to Swiss unemployment insurance benefits in accordance with point I.I of the Protocol to Annex II to the EU/Switzerland Agreement on free movement of persons

11 **Institution issuing the certificate**

11.1 Name NATIONAL EMPLOYMENT OFFICE
UNEMPLOYMENT AGENCY AT

11.2 Address ([14]):

BELGIUM

11.3 Stamp 11.4 Date 22/03/2007 11.5 Signature

②

E 301

INSTRUCTIONS

Please complete this form in block letters, writing on the dotted lines only. It consists of three pages, none of which may be left out even if it does not contain any relevant information.

NOTES

(1) Symbol of the country in which the institution completing the form is situated: BE = Belgium; CZ = Czech Republic; DK = Denmark; DE = Germany; EE = Estonia; GR = Greece; ES = Spain; FR = France; IE = Ireland; IT = Italy; CY = Cyprus; LV = Latvia; LT = Lithuania; LU = Luxembourg; HU = Hungary; MT = Malta; NL = The Netherlands; AT = Austria; PL = Poland; PT = Portugal; SI = Slovenia; SK = Slovakia; FI = Finland; SE = Sweden; UK = United Kingdom; IS = Iceland; LI = Liechtenstein; NO = Norway; CH = Switzerland.

(1a) In the case of Spanish nationals state both names.

In the case of Portuguese nationals state all names (forenames, surname, maiden name) in the order of civil status in which they appear on the identity card or passport.

(1b) Previous names include surname at birth.

(2) In the case of Portuguese districts, state also the parish and the local authority.

(3) In the case of Spanish nationals, state the number appearing on the national identity card (D.N.I.), if it exists, even if the identity card is out of date. Failing this, state 'None`. For Slovenian citizens, state the tax number. In the case of Maltese nationals state the Identity Card number. For the purposes of Maltese institutions, if not a Maltese national, state the Maltese social security number. In the case of Polish nationals, state the number of identity card or passport.

(4) If this is known.

(5) When the form is being sent to a Cypriot institution give the social insurance number, to a Czech, Danish, Estonian, Austrian, Finnish, Slovenian, Slovak or Swedish institution, give the personal identification number, to a Netherlands institution give the Sofi number, to a Polish institution give the PESEL and NIP numbers. When the form is being sent to a French institution, please give the Social Security Number (NIR). When the form is to be sent to a Belgian institution, please give the Social Security Identification Number (INSZ-NISS).

(6) To be completed, if possible, only when the certificate is requested by a worker before departure to Estonia, Denmark, Finland, Iceland or Sweden and where the worker has been previously insured in one of those countries.

(7) *One year* if the certificate is to be sent to a Luxembourg institution.

Two years if it is to be sent to an Italian, Icelandic, Liechtenstein or Swiss institution. Italy may also request information on the complete insurance periods abroad of the person concerned. For the purposes of Swiss institutions, four years in the case of child education or self-employment of short duration.

Three years if it is to be sent to a Belgian, Danish, French, Greek, Irish, Portuguese or United Kingdom institution.

More than three years if the certificate is to be sent to a Finnish (20 years), Spanish (6 years), German (7 years), Austrian (10, 15 or 25 years), Hungarian and Slovak (4 years), Swedish (8 years), Estonian, Czech, Cypriot,Latvian, Netherlands, Slovenian or Maltese institution (total

insurance history). If necessary, as regards workers aged 52 or over, the Spanish institution may require information on supplementary periods preceding the last six years.

The last ended calendar year or the three last ended calendar years if the form is to be sent to a Norwegian institution.

(8) If a breakdown of the details requested in items 3.1, 3.2, 4.1 and 4.2 is not available, state the total number of periods of insurance in item 3.1 or 4.1, as the case may be. Items 3.1 and 4.1 must be completed even if the periods overlap. It must be completed if sent to a Hungarian institution.

(8a) Periods of employment is to be understood as periods of employment only when these did not lead to unemployment insurance under the legislation of the State concerned.

(9) E.g. sickness, maternity, accident at work, military service, vocational training, recorded unemployment.

(10) State also the number of hours worked during these periods if known.

(11) Specify whether it is a seasonal activity. If the certificate is to be sent to a Belgian institution also state the weekly number of hours worked.

(11a) For the purposes of Estonian, Latvian and Swiss institutions indicate if the dismissal was caused by default of the person concerned.

(12) To be completed if the certificate is to be sent to a Belgian, Cypriot, Danish, German, Spanish, French, Italian, Netherlands, Austrian, Liechtenstein, Slovenian, Swiss or Norwegian institution.

(13) To be completed if the certificate is to be sent to a Belgian, Danish, Italian, Netherlands, Portuguese, Liechtenstein, Slovenian, Swiss or Norwegian institution.

(14) Street, number, post code, town, country.

(15) For the use of Belgian institutions, state the average gross monthly remuneration. For the use of Polish institutions, state actual remuneration. For the use of Czech and Hungarian institutions, state average net monthly remuneration. For the use of Slovak institutions, state average gross monthly remuneration for the time of duration of the employment.