

The background of the slide is a photograph of a person with long, wavy blonde hair, seen from the side, reading a large open book. A desk lamp with a blue shade and a white base is positioned to the right, casting a warm light. The scene is set in a dimly lit room, likely a library or study.

Social protection and the Commission proposal on coordination of social security systems

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Introduction



- ▶ Evelien de Jong
- ▶ Member of EY's network of global international social security specialists and EY Cross Border Commuter Expertise Center
- ▶ Purpose of this presentation: feedback from a practical point of view, based on daily usage of the legal texts

General remarks on the proposed text

MS last employment competent for payment of unemployment benefits

The proposed change will:

- ▶ be perceived to be “logical” for those involved, as this is the state to which they have also contributed;
- ▶ better match with the possible existence of social plans, made by the employer;
- ▶ also be a better match between the conditions for the entitlement to the benefit and the situation around the dismissal (e.g. agreeing with the dismissal).



General remarks on the proposed text

MS last employment competent for payment of unemployment benefits



However...

- ▶ Do the transitionary rules work out correctly?
- ▶ Aggregation of 12 month period: Consecutive months or accumulation of various months during certain period of time?
- ▶ Implementation: How does the competent MS make sure that the unemployed person fulfills all conditions to continue to be entitled to receive unemployment benefits?



General remarks on the proposed text

Introducing a new chapter for long term care benefits

- ▶ Current wording leads to changes in the coordination of long term care benefits. As a result, a significant amount of insured persons are likely to lose benefits.
- ▶ Introduction of documents for registration, proof of entitlement would imply more paperwork for mobile EU citizens.
- ▶ Institutions competent for long term care benefits in kind should be responsible for the implementation in the area of long term care in the future. Considering that 10 member states do not foresee such benefits and accordingly miss such institutions, one might wonder whether this would be an improvement in comparison with status quo.



Suggestions from day-to-day business

Promote free movement



- ▶ Biggest challenge for employers: the administrative formalities involved in **remittance of contributions in another country**.
- ▶ Registration and communication with foreign authorities, calculations of contributions based on the applicable legislation.
- ▶ Possibility to introduce an **EU instrument / single desk** to function as a gateway for employers and to facilitate procedures of registration, payment, calculation etc. (compare recital 19 implementing regulation, pages 14 and 33).



Suggestions from day-to-day business

Changing world: innovative ways of working are the future



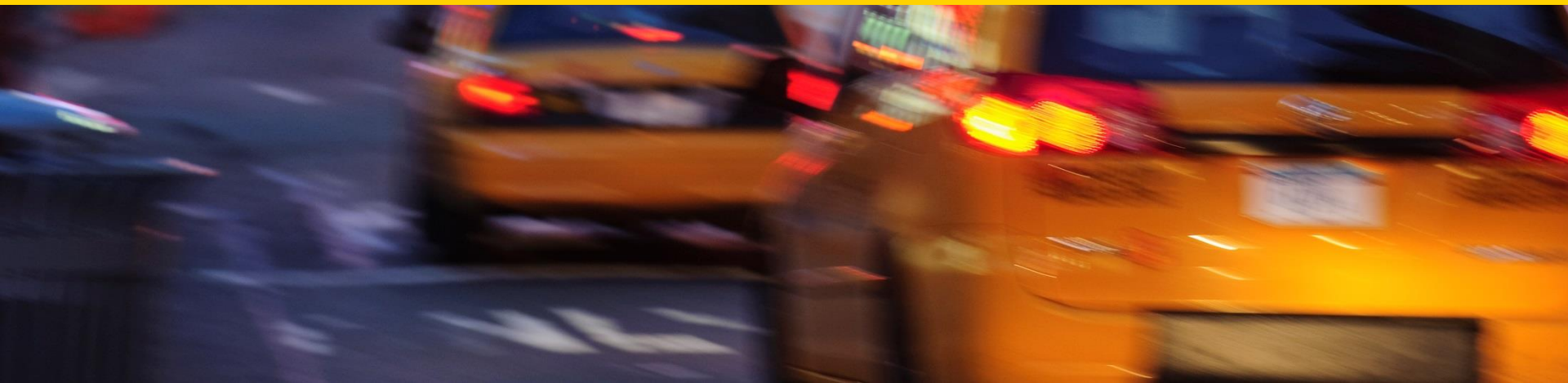
- ▶ Situations in which individuals are **working from home / teleworking** will occur more often in a working environment that adheres to the principles of modern office working. Are the coordination rules for working in multiple states meant for these situations?
- ▶ Application of the same principle (an individual is allowed to work from home), may entail (positive/negative) differences in social security entitlements and obligations for an employer's cross border worker population compared to their national workers.

Suggestions from day-to-day business

Changing world: innovative ways of working are the future



- ▶ How to differentiate between **posting and working in multiple states?**
- ▶ Could more importance be given to the intention of the parties to avoid the conclusion of article 16 agreements?



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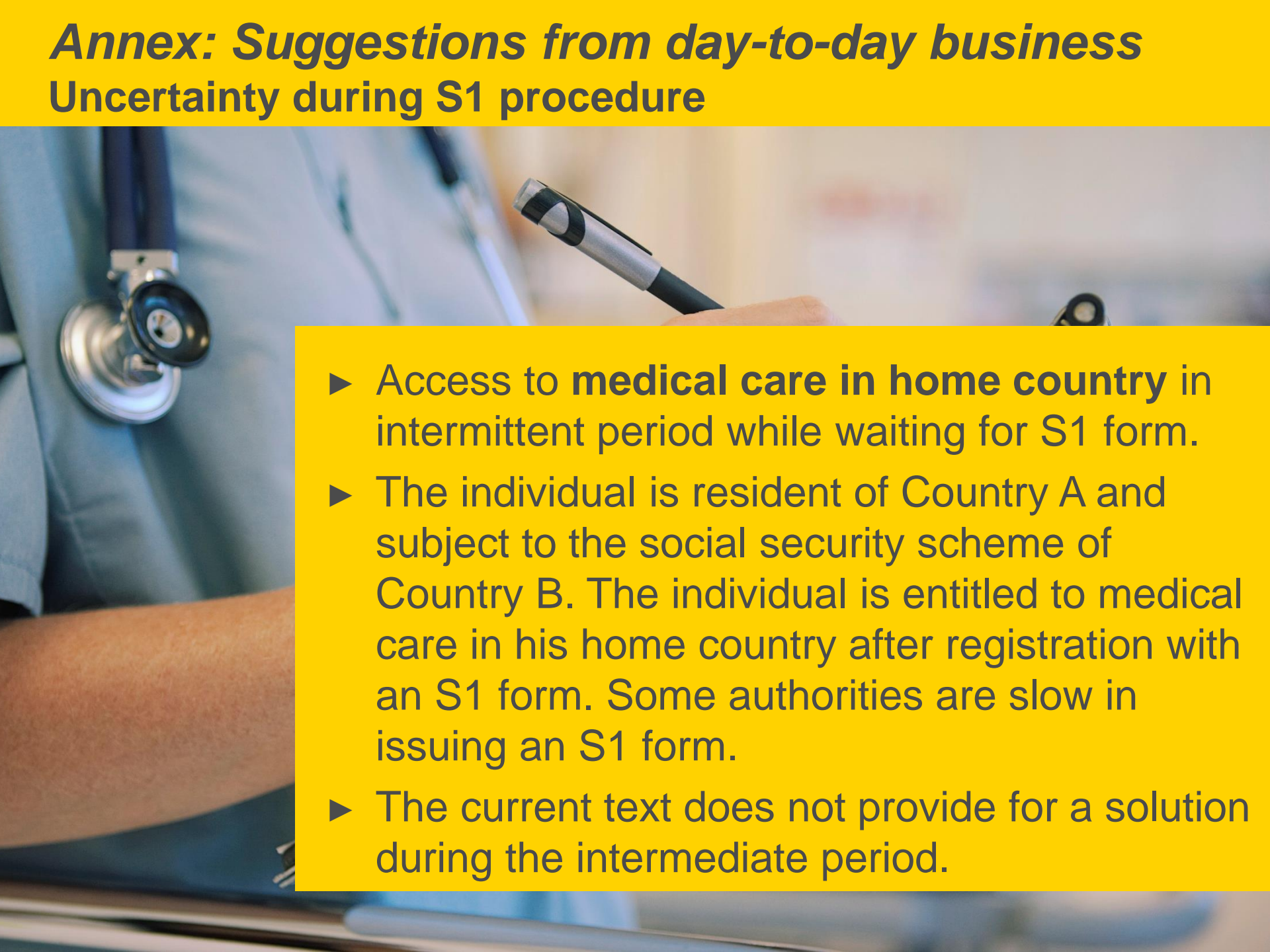
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Annex: Suggestions from day-to-day business

Uncertainty during S1 procedure

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- ▶ Access to **medical care in home country** in intermittent period while waiting for S1 form.
 - ▶ The individual is resident of Country A and subject to the social security scheme of Country B. The individual is entitled to medical care in his home country after registration with an S1 form. Some authorities are slow in issuing an S1 form.
 - ▶ The current text does not provide for a solution during the intermediate period.

Annex: Suggestions from day-to-day business

Uncertainty during Article 16 procedure

- ▶ **Remittance of social security contributions** in intermittent period while waiting for A1 form on the basis of article 16 to be issued.
- ▶ Penalties? Retro-active payments?

Annex: Detailed remarks on coordination rules



Working from home / multiple state working / **difference between posting rule and working in multiple states.**

- ▶ Does the posting rule (article 12) apply in the following situation: the individual is posted by his employer in Country A to work in Country B – the individual moves his residency to Country B – The individual is required to work in Country A on a regular basis (for reporting / instructions / etc). Based on article 13 the individual would become subject to the social security scheme of Country B.
- ▶ When are activities regarded as “marginal” activities that do not have to be taken into account? The legal text of article 12 does not necessarily rule out working in another state; the employee is solely required to be “posted”.
- ▶ Could more importance be given to the **intention of the parties** to avoid the conclusion of article 16 agreements?

Annex: detailed remarks on coordination rules

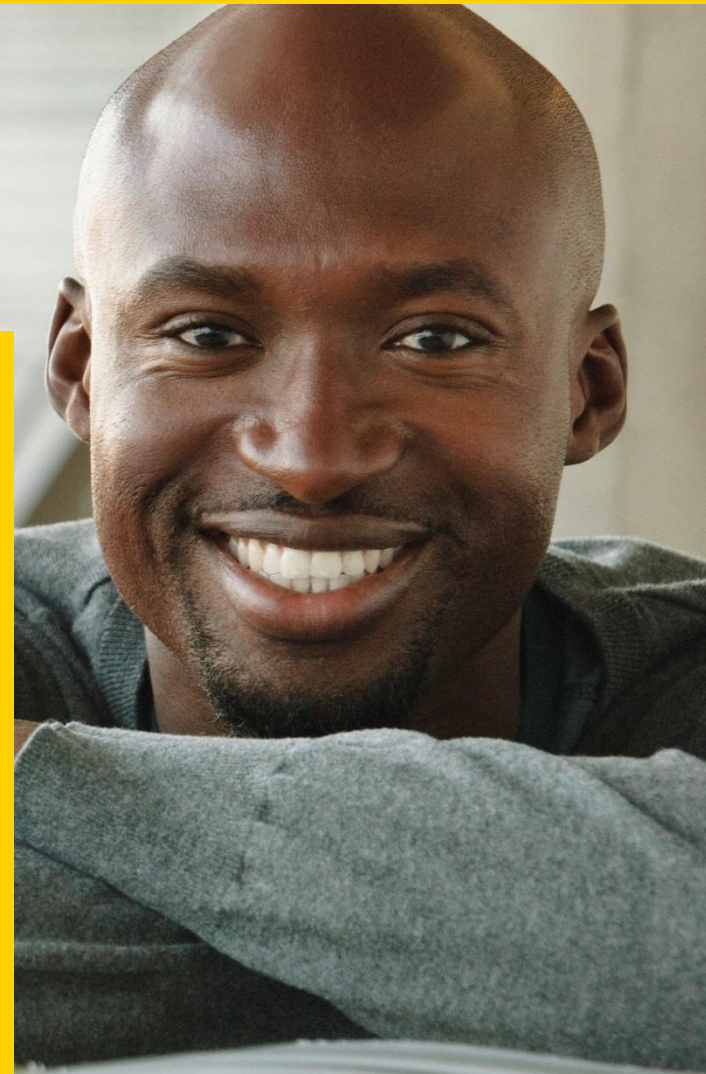


- ▶ Meaning of the **change in wording** of article 12. Is there an actual impact of the change of the wording?
- ▶ **Posting by self-employed persons:** a new paragraph is introduced according to which the individual should not be replacing another posted self-employed person or worker. Is the self-employed person able to make this assessment or is this the responsibility of the authorities when establishing the applicable legislation?

- ▶ Application of **posting rule for a cross border commuter**, living in Country A – employed by an employer in Country B – subject to legislation of Country A (i.e. because of substantial employment activities there) – posting to Country C. Impossible to continue home country social security based on current legal text (different from Regulation 1408/71).

Annex: detailed remarks on coordination rules

- ▶ **Inclusion of article 14 (11) of the Implementing Regulation** in title II of the Basic Regulation as this contains a coordination rule and not an additional “explanation” of article 13 of the basic Regulation. Same remark for the newly proposed article 14 (12).
- ▶ Introduction of a separate **coordination rule for civil servants** who are employed by multiple administrations. The current legal text does not foresee in a coordination rule for this situation. In practice the applicable legislation is determined by article 13 (1) of the basic regulation.



Annex: Detailed remarks on A1 forms



- Employers who employ employees in various Member States are often required to provide proof of (sufficient) social security coverage. Regulation 1408/71 provided the possibility for authorities to issue “**blank**” **E101 forms** in which the employer’s and employee’s data were already completed. The employer was allowed to insert the period for which the E101 was valid. Upon inserting the period, the employer had to inform the competent authority accordingly. This procedure allowed **more flexibility for employers** to have an E101 form available in case of e.g. a project which required the immediate employment of a person. A substantial time saving was reached as it was not necessary to wait for the authorities to issue an E101 first. The current legal text does not foresee this option.

Annex: detailed remarks on A1 forms



- What possibilities does the individual / employer have if the authorities do not abide by the time frames for A1 forms as indicated in the new proposal?

- Retro-active withdrawal of an A1 certificate is only possible in case of fraud. Are the newly proposed articles on **settlement of benefits and contributions** unduly recovered (articles 73 and further Implementing Regulation) only applicable in case of fraud and wrongfully established provisional application of a social security system?

Annex: Detailed remarks on unemployment



► Will the MS responsible for payment of the benefit be able to verify whether the conditions for entitlement to benefit are still fulfilled if the frontier worker is applying for jobs in the home country?

► Aggregation of 12 month period in article 65(2): consecutive months or accumulation of various months during certain period of time? Resident of Country A, employed in Country B from January to October in year 1 (10 months) – involuntary dismissal – Unemployment benefit from Country A – employment in Country B from February to May (3 months) in year 2 (3 months) – involuntary dismissal. Unemployment benefit from Country B (total period of employment = 13 months)?



Annex: Detailed remarks on unemployment

- ▶ Transitional rules for unemployed frontier workers (article 87b (4)); Impact for:
- ▶ a resident of country A,
- ▶ previously employed as frontier worker in Country B,
- ▶ receiving unemployment benefit from home country A under former Regulation)
- ▶ Employment in Country B for e.g. 13 months
- ▶ Followed by involuntary unemployment
- ▶ Transitional rules no longer applicable?



Annex: Detailed remarks on external dimension of the Regulation



- ▶ The appointment of the applicable social security scheme can be rather unsatisfying for a posted worker in the following situation:
- ▶ Posting by employer in Country A (non EU MS) to work in Country B (EU MS)
- ▶ Totalization Agreement between Country A and Country B
- ▶ CoC available to proof affiliation to Country A's social security scheme
- ▶ Individual moves residency to Country C (EU Member State) and will work substantially in Country C
- ▶ Country C's social security scheme is applicable based on EC Regulation

Possible to arrange that Country C steps aside and appoints the legislation of Country A as applicable (provided that a Totalisation Agreement exists between Country A and C)?