



FREE MOVEMENT OF WORKERS and
SOCIAL SECURITY COORDINATION



FAMILY BENEFITS

POSTING

ZAGREB, 27 OCTOBER 2017

FACULTY OF LAW, UNIVERSITY OF ZAGREB

Croatian Seminar

POSTING OF WORKERS AND FAMILY BENEFITS' COORDINATION



Croatian Seminar

Recent developments and proposed changes in the areas of posting and family benefits' coordination

Zagreb, 27 October 2017

Venue: Faculty of Law at the University of Zagreb,
Trg Republike Hrvatske 14 (ex Trg maršala Tita 14),
University hall, ground floor

Languages: English and Croatian (with simultaneous
interpretation)

This seminar is organised by FreSsco in collaboration with
its Croatian national expert, doc. dr. sc. Ivana Vukorepa.

FreSsco is an EC-funded network of independent experts
from 32 European countries coordinated by Ghent University
and ~~Etthela~~.



Agenda



Introductory session (uvodni dio)	
08.30-09.00	Registration (registracija)
09.00-09.15	Opening of the seminar (otvaranje, uvodni pozdravi) - Doc. dr. sc. Ivana Vukorepa, FreSsco national expert - Prof. dr. sc. Nina Tepes, Vice Dean, Faculty of Law, University of Zagreb
09.15-09.30	Presentation of FreSsco network (prezentacija FreSsco mreže) Doc. dr. sc. Ivana Vukorepa, FreSsco national expert
09.30-10.15	EC representatives: Recent developments at EU level concerning free movement of workers and social security coordination (Predstavnici Europske komisije: Najnovija dostignuća na razini EU vezano za slobodu kretanja radnika i koordinaciju sustava socijalne sigurnosti) - Federico Pancaldi, DG EMPL unit D/1 (free movement of workers, EURES) - Iva Rusan, DG EMPL unit D/2 (social security coordination)
10.15-10.30	Questions and discussion (pitivanja i diskusija)
10.30-11.00	Coffee break (pauza za kavu)

Morning session / Jutarnji dio	
Chair: Prof. dr. sc. Željko Potočnjak, University of Zagreb	
11.00-11.30	Family benefits - a challenge for the co-ordination system (Obiteljska davanja - izazov za sustav koordinacije) Dr. Emma Holm, Lund University
11.30-12.00	Coordination of family benefits - Croatian perspective (Koordinacija sustava obiteljskih davanja iz hrvatske perspektive) Dalibor Amanović, Croatian Pension Insurance Institute
12.00-12.30	Family benefits in relation to the UK (Obiteljska davanja u vezi UK) Prof. dr. Grega Strban, University of Ljubljana
12.30-13.00	Questions and discussion (pitivanja i diskusija)
13.00-14.00	Lunch (ručak)

Afternoon session / Poslijepodnevni dio	
Chair: Prof. dr. Grega Strban, University of Ljubljana	
14.00-14.30	Posting - the EU legal panorama in social security and labour law (Upućivanje radnika - EU pravni okvir za područje prava socijalne sigurnosti i radnog prava) Prof. dr. Maximilian Fuchs, Professor emeritus, Regensburg
14.30-15.00	Posting - Croatian legal perspective and challenges (Upućivanje radnika - RH pravni okvir i izazovi) Dr. sc. Andrea Grgić, national expert in posting (also DG EMPL unit B)
15.00-15.30	Questions and discussion (pitivanja i diskusija)
15.30-15.45	Closing remarks and end of the seminar (kraj seminara)

FreSsco Network

Doc. dr. sc. Ivana Vukorepa

Assistant Professor at Faculty of Law University of Zagreb
FreSsco national expert

FreSsco

- EU-wide network of independent experts in the fields of
- free movement of workers (FMW) &
- social security coordination (SSC)

- 32 countries covered (EU/EEA/CH)
- Funded by the European Commission
(DG EMPL units DI and D2)
- Implemented by Ghent University and Eftheia
- Since 16/12/2013
- Last year of operation: 16/12/2016 - 15/12/2017

 to provide high-quality legal expertise in the areas of FMW and SSC

 by means of *reports*

 by means of *ad hoc analytical support*

- to disseminate expertise and increase experts' and practitioners' knowledge
 - *by organising seminars*
 - *by sharing information*
 - *by building networks between stakeholders*

Network structure & organisation

-  Project management and coordination team
-  Team of national experts
-  Team of analytical experts
-  Advisory board

Main tasks & activities

-  Replies to ad hoc requests
-  Comparative and analytical reports
-  Seminars
-  Cooperation platform
-  Final conference

■ **Comparative report**

- National employment services. Conditions for registration and access to assistance by EU citizens from other Member States

■ **Analytical reports**

- The interrelation between social security coordination and labour law
- Cross-border cooperation in fraud and error investigations and prosecutions

Format & target audience

-  Ca. 10 one-day seminars a year
-  One country or multi-country
-  Representatives of competent authorities and institutions, social partners, NGOs, judges and lawyers and academics
-  Organised by national expert with content input (training/facilitation) by two FreSsco analytical experts (“visiting experts”) and EC representatives



Access

-  Restricted to EC representatives, FreSsco experts and seminar participants
-  Upon invitation by the FreSsco webmaster and following log-in procedure (ECAS account)
-  Haven't received invitation yet? Simple e-mail to fressco@ugent.be

Possibilities/benefits

-  Download all relevant information: latest seminar agenda, PPT presentations, background materials etc.
-  Online questions and discussions pertaining to topics treated at the seminar

2017 Seminar Calendar

Date	Country
27/4	Bulgaria
12/5	Finland
18/5	Romania
24/5	Switzerland
22/6	Poland
30/6	France
15/9	Italy
13/10	Latvia
27/10	Croatia
27/11	Spain

Cooperation & networking

- FreSsco website (EUROPA)

- <http://ec.europa.eu/social/main.jsp?catId=1098&langId=en>

- Cooperation platform

- FreSsco LinkedIn groups (FreSsco coordination / FreSsco free movement)
 - Bi-annual FreSsco Newsletter
 - FreSsco Forum

- Contact us at: fressco@ugent.be

The revision of the Posting of Workers Directive

FRESsCO Seminar
Zagreb, 27 October 2017

Federico PANCALDI
Free Movement of Workers, D.1 unit
DG EMPL



- The revision of the PWD (2016)
- *Lex Specialis* for Road Transport Sector
- Enforcement Directive
- European Labour Authority
- Free Movement of Workers



- 8 March 2016: COM proposal
- May-July 2016: subsidiarity control mechanism
- December 2016: opinions of the Committee of the Regions and of the EU Economic and Social Committee
- 16 October 2017: Report of the European Parliament
- 23 October 2017: Council's General Approach (EPSCO)
- November 2017 -> [...] trilogues and final approval



Key novelties:

- **Remuneration** instead of "minimum rates of pay": posted workers will be paid the entire amount set by law or universally applicable collective agreements;
 - No interference in social partners' bargaining
- **Long-term posting**: for postings lasting over 24 months, the entire labour law of the host country applies
 - No limit to the duration of posting



- Extension of the legal basis: article 153 TFEU
- Remuneration: like EC + accommodation and internal travel/board/lodging
- Remuneration formed also by generally applicable agreements
- Transparency: link btw information on website and proportionality of sanctions
- Duration: 24 months (with possible extensions)
- Subcontracting and temp work agencies
- Frauds: enhanced role of the Platform against Undeclared Work
- No special provision on road transport and no transition clause



- Remuneration: like EC + internal travel/board/lodging
- Transparency: link btw information on website and proportionality of sanctions
- Duration: 12 months (+ 6 upon request)
- Subcontracting rule: eliminated
- Temp work agencies
- Frauds: enhanced role of the Platform against Undeclared Work [recitals]
- Synchronisation with road transport lex specialis
- 4 year transition clause (3 for transposition + 1 for implementation)



- Provisions on posting of workers not adapted for **highly mobile road transport sector** : drivers are present in Member States for sometimes very short periods of time.
- National measures on the application of the **minimum wage**: FR, DE, AT, IT adopted national rules on a minimum wage.
- Different **administrative and control requirements** imposed on non-resident operators



- **International transport operations** : time threshold of 3 cumulated days per month in host Member State for the application of the minimum wage and annual paid leave rights of the host State.
- **Lighter administrative and control requirements**: Member States cannot require representative in host State, simpler and fewer notifications, no pay slips needed on board vehicle.
- **Easier controls** of driver's presence in host State : modification of the tachograph regulation.
- **Benefits**: uniform sector-specific rules on posting; reduced administrative costs by 58%; benefits for (EU-13) drivers due to higher remuneration.



- **Article 4.** criteria of genuine posting/genuine undertaking
- **Article 5.** Obligation to set up a single website including applicable conditions of work, including collective agreements
- **Article 9.** Control measures (pre-notification, keeping documents, liaison/contact points)
- **Article 12.** Subcontracting liability.
- **Chapter VI.** Administrative cooperation
- **Article 21.** Sanctions

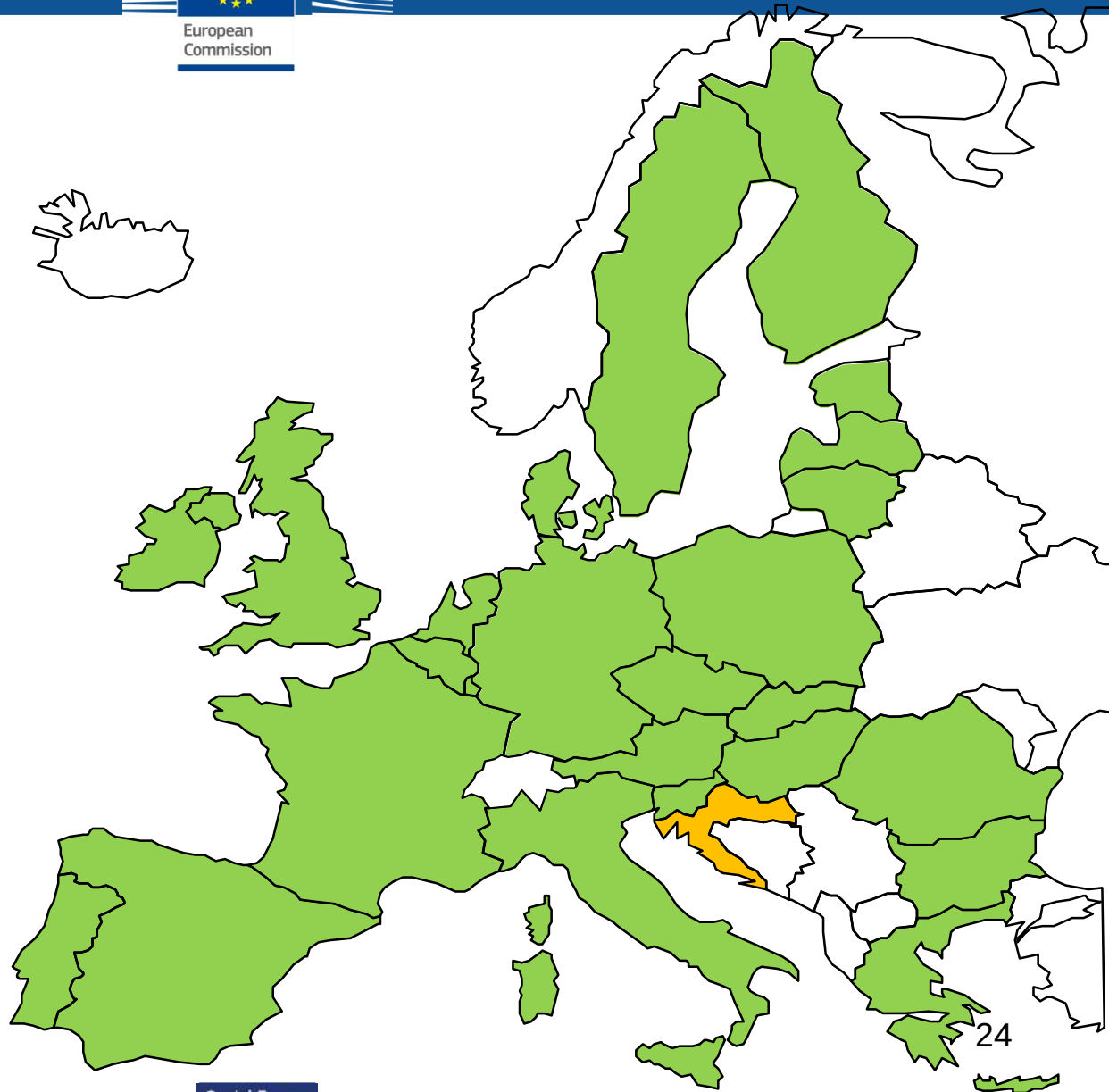
Enforcement Directive 2014/67



**Respect and
control of the
application of
the rules**

**Cooperation
between the
Member States**

**Administrative
justified
requirements**





We should make sure that all EU rules on labour mobility are enforced in a fair, simple and effective way by a new European inspection and enforcement body. It seems absurd to have a Banking Authority to police banking standards, but no common Labour Authority for ensuring fairness in our single market. We will create one.

Jean Claude Juncker



Objectives

- Strengthen administrative cooperation and mutual trust
- Improving coordination in fighting against frauds and abuses
- One-stop shop for support to mobility
- Better integration and synergies between existing EU agencies and structures



Directive 2014/54 on facilitating the exercise of rights in the context of free movement of workers

Transposition deadline expired in May 2016
Infringement procedures started against 8 MS

- **Ongoing assessment of national transposition measures**

Steps at EU level

- **Facilitating cooperation of the bodies that promote equal treatment and support Union workers**
- **Improving access to information**

The list is already available publicly at
<http://ec.europa.eu/social/main.jsp?catId=1277&langId=en>



EMPLOYMENT, SOCIAL AFFAIRS & INCLUSION

European Commission > Employment, Social Affairs & Inclusion

MOVING & WORKING IN EUROPE

- Working in another EU country
 - Free Movement - EU nationals
 - The right to look for a job
 - The right to reside
 - Equal treatment
 - Family members
 - Employment in the public sector
 - How to enforce your rights
- Bodies promoting equal treatment and supporting workers in the European Union and their family members**
 - Advisory Committee
 - EU legislation
 - Enlargement - transitional provisions
 - Non-EU nationals
 - Posted workers

Bodies promoting equal treatment and supporting workers in the European Union and their family members

The organisations designated under the Directive on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers, so-called **bodies**, are **empowered** to

- promote equal treatment,
- analyse the problems faced by Union workers and members of their family,
- study possible solutions,
- provide specific assistance.

Such independent **legal and/or other assistance** includes

- legal advice on the application of the relevant Union and national rules on free movement of workers,
- provision of information about complaint procedures,
- help to protect the rights of workers and members of their family,
- in some countries it may also include assistance in legal proceedings.

Click on a flag to find out the contact details of the bodies (the list so far does not include information on Luxembourg, Portugal, Romania and the United Kingdom):

 Austria	 Belgium	 Bulgaria	 Croatia	 Cyprus
 Czech Republic	 Denmark	 Estonia	 Finland	 France
 Germany	 Greece	 Hungary	 Ireland	 Italy

Thank you



Recent Developments at EU level in social security coordination

**Iva Rusan,
Legal Officer**

Unit D2 – Social Security Coordination

Directorate-General for Employment, Social Affairs and Inclusion

Overview

- *Revision of the social security coordination rules*
 - **Political and Policy Context for Revision**
 - **Impact Assessment & Consultation**
 - **Overview of main changes proposed**
 - **Recent Developments**
- *Further developments in the field of social security coordination*
 - **Work of the Administrative Commission**
 - **Progress of the ESSSI project**

Political and Policy Context for Revision of Social Security Coordination rules

- *The current EU's social security coordination rules have been in force since 1st May 2010.*
- *The labour market and society are constantly evolving, as are national social security systems and the case-law of the Court.*
- *Targeted adjustments are needed to ensure that the rules are fair, simpler to apply and easier to enforce.*

General Policy Objective of review

To continue the modernisation of the EU Social Security Coordination Rules by:

- **further facilitating the exercise of citizens' rights,**
- **ensuring legal clarity,**
- **ensuring a fair and equitable distribution of the financial burden and**
- **promoting administrative simplicity and enforceability of the rules.**

Simply: **clear, fair and enforceable rules**

Impact Assessment Process

- Key Elements of the proposal subject to Impact Assessment (SWD 461/2016)
- No Impact Assessment for elements which clarify/reinforce existing obligations but still consultation with stakeholders
- Executive Summary of proposal available in all languages (SWD 460/2016)
- Positive Opinion of the Regulatory Scrutiny Board 21 January 2016 (SEC 539)

Consultation Process

- Consultation of social security experts in Administrative Commission 2013-2015
- 10 June 2015: Meeting with social partners
- 17 June 2015: Meeting with NGOs
- Online public consultations 2013 & 2015

Overview of main changes

- Unemployment benefits
- Access of economically inactive citizens to social benefits
- Long-term care benefits
- Family benefits
- Social security of posted workers

Unemployment benefits - I

Export:

- Extend the period of export to minimum 6 months
- Stronger cooperation between Member States to support and monitor jobseekers

Unemployment benefits - II

Aggregation:

- Requirement to work at least three months in a new Member State before the duty to aggregate arises
- Where three month condition not met the former Member State of work becomes competent

Unemployment benefits - III

Frontier workers:

- Provided a person has worked at least 12 months in a Member State, that Member State is responsible for paying unemployment benefits
- Where 12 month period is not met, the Member State of residence would be responsible to pay.

Access of economically inactive citizens to social benefits

- Codification of CJEU case-law concerning economically inactive nationals
- Member States may refuse access to social security benefits if EU law criteria for legal residence is not met.
- Free Movement Directive criteria:
 - **having sufficient resources as not to impose a burden on host State's finances;**
 - **having comprehensive sickness insurance.**

Long-term care benefits

- Creation of a separate chapter, with a common definition of long-term care benefits, and criteria to identify them.
- Reflects existing practice that the Member State of insurance provides long-term care benefits in cash and reimburses the cost of benefits in kind provided by the Member State of residence.

Family benefits

- No indexation.
- Update of the rules for child-raising allowances:
 - **parent's individual right and**
 - **Member States will have the option to pay them in full to both working parents.**

Social security of posted workers

- Alignment of terminology concerning “posting”. This has no impact on scope.
- Clearer procedure for issuing and withdrawal of portable document A1 and stronger cooperation
- Extension of replacement ban to self-employed persons.
- Alignment of safeguards for posting in one Member State to work in two or more Member States.
- New implementing powers to Commission

Other amendments – I

Recovery procedure

- Aligns the procedures for recovery of unduly paid social security benefits with the equivalent procedures for the recovery of taxes
 - **uniform instrument to be used for enforcement measures**
 - **standard procedures for requesting mutual assistance and**
 - **Standard procedures for notification of instruments and decisions**
- Off-setting procedure is extended to cases of retroactive changes in legislation

Other amendments - II

- Measures to facilitate identification of fraud or error including as regards exchange of personal data
- Technical amendments in response to requests from the Administrative Commission
- New delegated powers to Commission to amend Annexes
- Updates to the Annexes in response to Member State requests

Joint Declaration of the Council, Parliament and the Commission of the EU's legislative priorities for 2017

- **Social Security Coordination Proposal:** One of four initiatives identified for priority treatment under the priority **Addressing the social dimension of the European Union**
- **Monitored:**
 1. At the political level through meetings of the Presidents of the 3 Institutions in March, July and November 2017;
 2. At the technical level, by the Interinstitutional Coordination Group, meeting at senior official level

Recent Developments

- EPSCO – 23 October – partial general approach on the chapters concerning equal treatment in access to social benefits of inactive EU citizens and applicable legislation (including posting).
- Work in progress in the EP
- Opinion of EESC on 5-6 July 2017
- Opinion on CoR on 12 July 2017

Current rules remain in place until entry into force of the new ones.

Further developments in the field of social security coordination

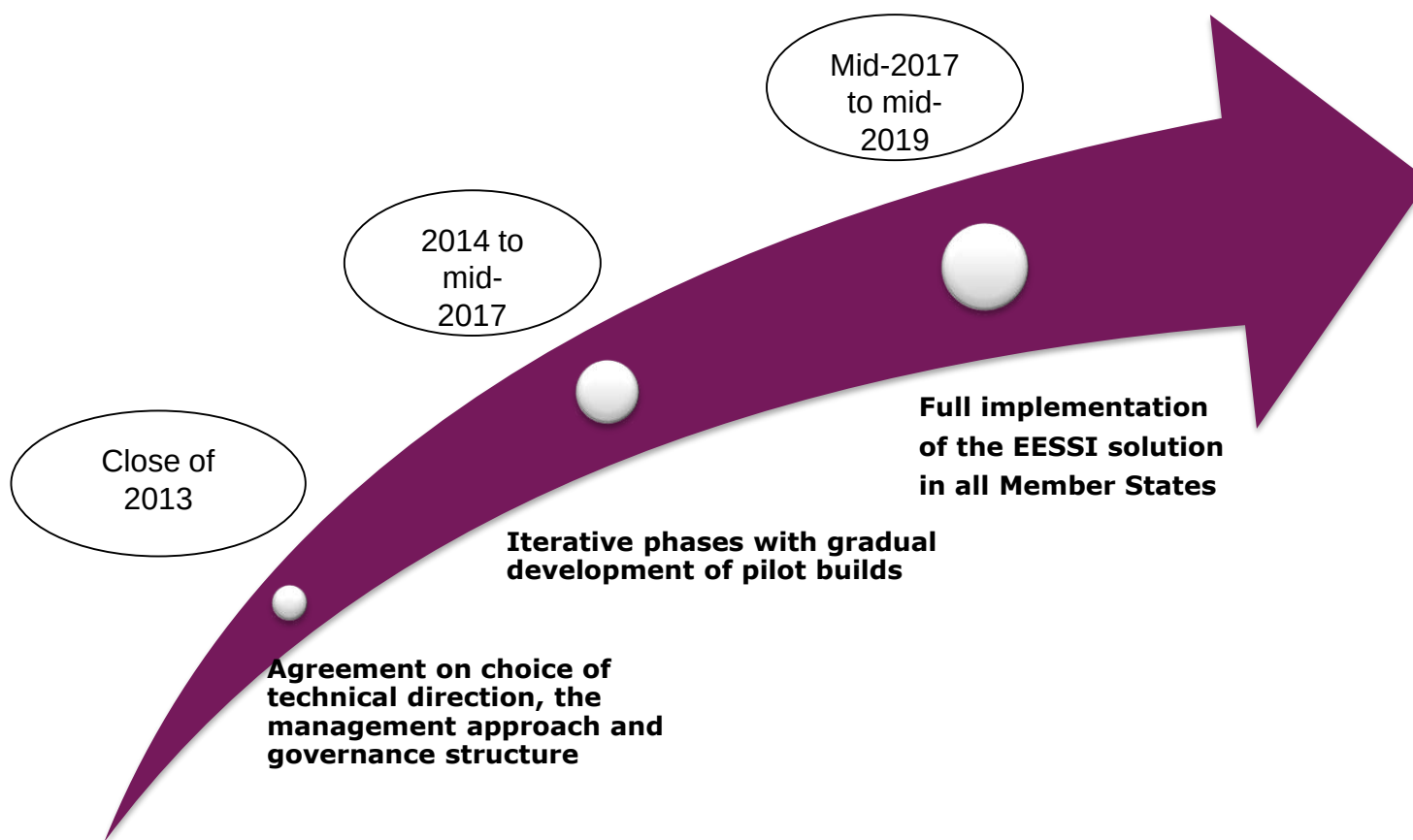
- *Work of the Administrative Commission:*
 - **New Decision No E6 - the determination of when an electronic message is considered legally delivered in the Electronic Exchange of Social Security Information (EESSI) system**
 - **New Decision No E5 - practical arrangements for the transitional period for the data exchange via electronic means**
 - **Recommendation A1 of the Administrative Commission**

- **Reflection Forum - on Assimilations of Facts**
- **Working Parties on Posting**
- **New Ad Hoc Group on Family Benefits**
- **Conciliation Board**

Electronic Exchange of Social Security Information – EESSI

- *EESSI is a key innovation of the modernised rules on social security coordination (Regulations (EC) No 883/2004 and No 987/2009) applicable since 1st of May 2010: Article 4 of Regulation (EC) No 987/2009 introduces the requirement for electronic exchange.*
- *EESSI is an IT system that will help social security bodies across the EU exchange information more rapidly and securely. All communication between national bodies on cross-border social security files will take place using structured electronic documents (SEDs), which will replace E-forms.*
- *EESSI covers all branches of social security listed in Article 3 of Regulation (EC) No 883/2004, and it will connect all EU Member States, as well as Iceland, Lichtenstein, Norway, and Switzerland.*

EESSI - high level steps towards delivery



Latest developments and next steps for national implementation of EESSI

- *The central EESSI system was delivered on 3 July 2017 to Member States.*
- *Member States have 2 years to implement and connect their national institutions.*
- *National implementation follows a common plan agreed by the AC, gradually introducing electronic procedures across the EU and across various sectors of social security.*

Thank you for your attention!

Visit us @

<http://ec.europa.eu/social/main.jsp?catId=849&langId=en>



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POSTING OF WORKERS AND FAMILY BENEFITS' COORDINATION



Family benefits – a challenge for the coordination system

Emma Holm

Doctor of EU Law, Lund university, Sweden

Structure

-  Family benefits—definition and characteristics
-  Exportability, aggregation and priority rules
-  Applicable legislation

Focus on atypical family benefits with the Swedish parental benefit as an example

Benefits relating to family

The national level:

Benefits granted immediately after the birth of a child, benefits covering general costs for having children, benefits aiming at compensating loss of income during child-rearing in the longer term

The EU level (R 883/2004):

Maternity/paternity benefits or family benefits

Family benefits in R 883/04- definition

- Article 1z: all benefits in kind or in cash intended to meet family expenses
- *“family benefits have a very broad scope, affording protection in situations which could be described as classic as well as in others which are specific in nature with the latter type of benefit having been the subject of the judgments of the Court of Justice in Joined Cases C-245/94 and C-312/94 Hoeber and Zachow and in Case C-275/96 Kuusijärvi, it is necessary to regulate all such benefits (preamble, p. 34) ”*

The family in focus, not the individual (compare maternity paternity benefits)

Exportability

- Article 67: Family members residing in another MS entitled to benefits (broad interpretation, for example C-245/94 and 312/94 *Hoever and Zachow*, C-255/99 *Humer* C-363/08 *Slanina*)
- How is this to be applied in relation to income-related benefits?

Proposed amendment to R 883/2004 – no derived rights for family members to benefits in cash intended to replace income during periods of child-raising

Aggregation

- Normally not relevant, but problems in relation to atypical family benefits:
- **C-257/10 Bergström:**

National law:

- demand for 240 days of insurance before the birth of the child
- level of benefit based on income from work on its own territory only

CJEU: a right to income-related parental benefit without completing periods of insurance or having income from work in the state in question

Anti-overlapping (priority rules)

- Article 68 - same family members have a right to benefits from more than one state for the same period

Primary responsibility for one state with possible supplement from the other state

- Problems in relation to atypical family benefits
- C-347/12 Wiering: only family benefits of the *same kind* are to be taken into account when calculating supplementary benefits

Proposed amendment to R 883/04 – by way of derogation from Article 68.2, in cases of overlapping entitlements, a MS may award a family benefit intended to replace income in full to a beneficiary regardless of the amount provided for by the first legislation

Applicable legislation

- Lex loci laboris, but priority rules in Article 68 in case of overlapping benefits
- CJEU case law (*C-352/06 Bosmann* and *C-611/10 and 612/10 Hudzinski/Wawrzyniak*)

Possibility/responsability for non-competent state to pay benefits

- To what extent may national rules on non-coverage be upheld?

In conclusion

-  Several problems in coordinating family benefits – diversity of benefits at the national level
-  Some solutions in the proposed amendments, but complex issues remain



HRVATSKI ZAVOD ZA MIROVINSKO OSIGURANJE

KOORDINACIJA SUSTAVA OBITELJSKIH DAVANJA IZ HRVATSKE PERSPEKTIVE

Dalibor Amanović
FreSsco seminar Zagreb, 27. listopada 2017.

- koordinacija sustava obiteljskih davanja prema uredbama Europske unije
 - definicija obiteljskih davanja
 - preklapanje davanja i pravila prednosti
 - postupak za ostvarivanje prava
- sustav doplatka za djecu u R Hrvatskoj
- statistički podaci

OBITELJSKA DAVANJA PRAVNI OKVIR

- Uredba (EZ) 883/2004 (Osnovna uredba)
 - Glava III, Poglavlje 8
 - Glava I, osnovna načela
 - Glava II, određivanje mjerodavnog zakonodavstva
- Uredba (EZ) 987/2009 (Provedbena uredba)
- Uredba 1231/2010
- Presude suda EU
- Odluke Administrativne komisije F1 i F2

DEFINICIJA OBITELJSKIH DAVANJA

- članak 1. (z) Uredbe 883/2004:
 - sva davanja u naravi ili novčana davanja namijenjena podmirivanju obiteljskih troškova,
 - mogu se isključiti predujmovi za uzdržavanje i posebna davanja za rođenje i usvajanje djeteta (ako su navedeni u Prilogu I)
- široka definicija kojom su obuhvaćena različita davanja (klasična obiteljska davanja, ali i druga posebna davanja, Preambula 34 Uredbe 883/2004)

OBITELJSKA DAVANJA U R HRVATSKOJ

- Izjava Republike Hrvatske u skladu sa člankom 9. Uredbe (EZ) br. 883/2004, obiteljsko davanje jedino doplatak za djecu
- Prilog I uz Uredbu 883/2004, isključeni privremeni predujmovi za uzdržavanje i jednokratne novčane potpore za novorođeno ili posvojeno dijete
- davanja za majčinstvo i istovjetna davanja za očinstvo uvršteni su u davanja iz zdravstvenog osiguranja

PRAVILA ZA ODREĐIVANJE MJERODAVNOG ZAKONODAVSTVA

- Glava II Uredbe 883/2004 (članak 67. posebno pravilo za umirovljenike)
- osnovno pravilo (članak 11.), na određenu osobu primjenjuje se zakonodavstvo samo jedne države članice
- kod obiteljskih davanja u obzir se uzima situacija čitave obitelji (članak 60. stavak 1. Uredbe 987/2009)
- članovi obitelji mogu biti obuhvaćeni zakonodavstvom različitih država članica
- prava se mogu ostvariti u više država članica (moguće i u „nenadležnoj” državi članici temeljem nacionalnog zakonodavstva, presude C-352/06 Bosmann, C-611/10 Hudzinski and Wawrzyniak)
- moguća preklapanja obiteljskih davanja – pravila prednosti (članak 68. Uredbe 883/2004)

PRAVILA PREDNOSTI

- ako u istom razdoblju i za iste članove obitelji postoji pravo u više država članica primjenjuju se pravila prednosti (članak 68. Uredbe 883/2004)
 - ako se prava ostvaruju po različitim osnovama
 1. prava koja postoje po osnovi zaposlenja/samozaposlenja (također za vrijeme privremene nesposobnosti, Odluka AC F1)
 2. prava koja postoje po osnovi korištenja mirovine
 3. prava stečena po osnovi boravišta

PRAVILA PREDNOSTI

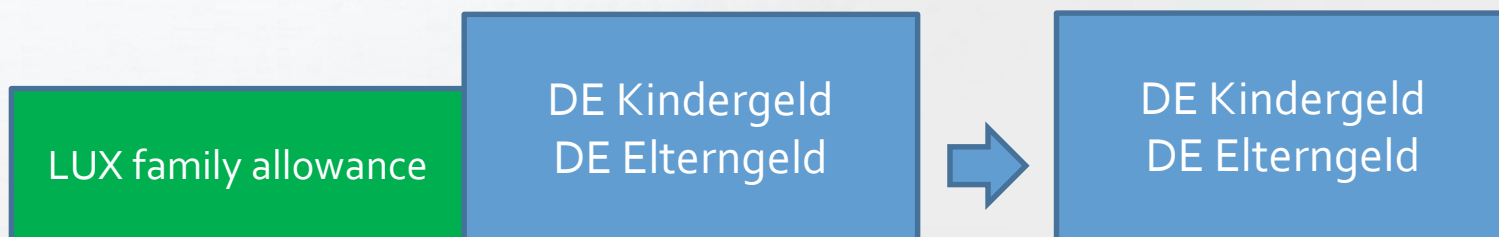
- ako se preklapaju prava koja se ostvaruju po istoj osnovi
 - prava temeljem ekonomske aktivnosti
 1. mjesto boravišta djece (ako postoji takva aktivnost u toj državi)
 2. najviši iznos davanja
 - prava temeljem korištenja mirovine
 1. mjesto boravišta djece (ako se mirovina isplaćuje u toj državi)
 2. najduže razdoblje osiguranja

PREKLAPANJE PRAVA

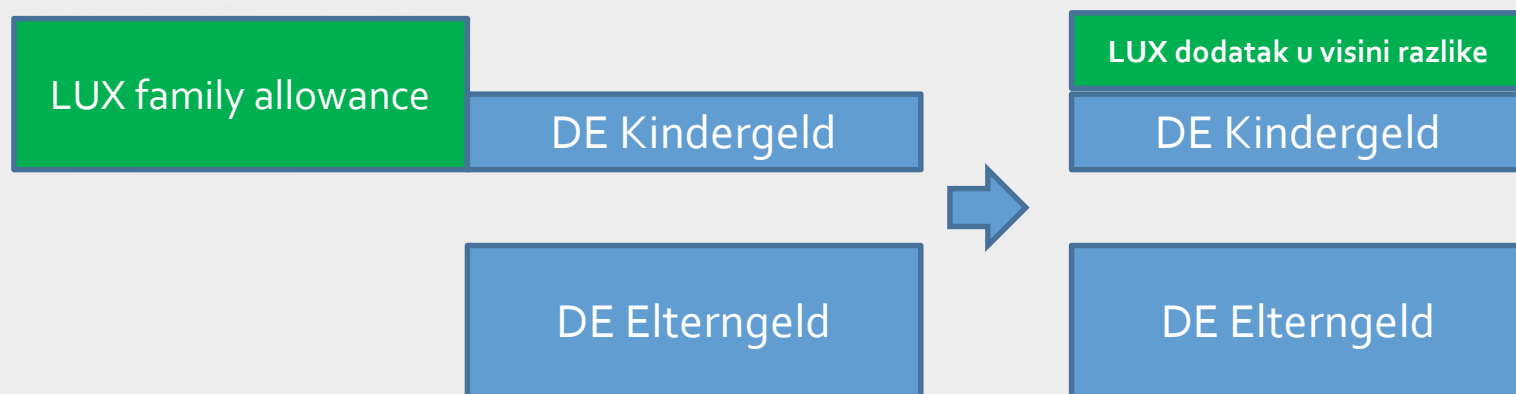
- uvjeti za primjenu članka 68. Uredbe 883/2004:
 - pravo ostvareno u više država
 - u istom razdoblju i za iste članove obitelji
 - davanja iste vrste
- obitelji će ostvariti pravo na najviši iznos obiteljskog davanja predviđen zakonodavstvom jedne od država članica
- primarno nadležna država, prema pravilima prednosti, isplaćuje punu svotu, a sekundarno nadležne države članice isplaćuju dodatak u visini razlike, ako je svota njihovog davanja veća

PREKLAPANJE PRAVA PRESUDA C-374/12 WIERING

1. Sva obiteljska davanja su istovrsna davanja (jedna košara)



2. Presuda Wiering nisu sva obiteljska davanja ista (dvije košare)



„u obzir se uzima situacija čitave obitelji kao da se na sve uključene osobe primjenjivalo zakonodavstvo dotične države članice i kao da su tamo imale boravište. Ako osoba koja ima pravo zatražiti davanja ne iskoristi svoje pravo, nadležna ustanova države članice čije se zakonodavstvo primjenjuje uzima u obzir zahtjev za obiteljska davanja koji je podnio drugi roditelj, osoba koja je izjednačena s roditeljem“... (članak 60. Uredbe 987/2009)



PRIMJER



zaposlenje



- SR Njemačka primarno nadležna i isplaćuje obiteljsko davanje u punoj svoti
- kako je obiteljsko davanje u RH manje nema ni razlikovnog dodatka



prebivalište



PRIMJER



Izaslani
radnik



prebivalište



- R Hrvatska primarno nadležna i isplaćuje obiteljsko davanje u punoj svoti
- ako postoji pravo na obiteljsko davanje u SR Njemačkoj isplaćuju razlikovni dodatak

UREDBA 1231/10 – DRŽAVLJANI TREĆIH DRŽAVA

- Uredba 1231/10, proširuje primjenu osnovne Uredbe 883/04 i provedbene Uredbe 987/09 na državljane trećih država i članove njihovih obitelji
- uvjeti:
 - ✓ zakonit boravak u državi članici
 - ✓ prekogranični element (situacija nije ograničena na samo jednu državu članicu)
- ne primjenjuje Danska
- UK primjenjuje staru uredbu 1408/71 (uredba 859/2003)
- ne države EGP i Švicarska
- ne primjenjuje se znači da se ne računaju za prekogranični element (potrebne najmanje dvije države članice)

- **Zakon o doplatku za djecu**
(„Narodne novine“, 94/01, 138/06 107/07, 37/08, 61/09, 61/11, 112/12, 82/15)
- **Zakon o pravima hrvatskih branitelja iz Domovinskog rata i članova njihovih obitelji** („Narodne novine“, 174/04, 92/05, 107/07, 65/09, 137/09, 146/10, 55/11)
- doplatak za djecu novčano je primanje koje koristi roditelj ili druga osoba određena Zakonom, radi potpore uzdržavanja i odgoja djece
- stječe se i ostvaruje ovisno o broju djece i visini ukupnog dohotka članova kućanstva korisnika te drugim uvjetima utvrđenim Zakonom

KORISNICI DOPLATKA ZA DJECU

- roditelj, posvojitelj, skrbnik, očuh, maćeha, baka, djed i osoba kojoj je, na temelju rješenja nadležnog tijela, dijete povjereno na čuvanje i odgoj
- punoljetno dijete bez oba roditelja koje je na redovitom školovanju
- pripada za svu djecu koju korisnik stvarno uzdržava
- član obitelji – članak 1. (i) Uredbe 883/2004 upućuje na zakonodavstvo nadležne države

UVJETI ZA STJECANJE PRAVA NA DOPLATAK ZA DJECU

1. podnositelj zahtjeva ima hrvatsko državljanstvo ili status stranca s odobrenim stalnim boravkom te prebivalište u R Hrvatskoj najmanje 3 godine prije podnošenja zahtjeva

kod primjene uredbi EU primjenjuju se opća načela (Glava I, Uredbe 883/2004), jednako postupanje, zbrajanje razdoblja

2. status azilanta, stranca pod supsidijarnom zaštitom ili status člana njihove obitelji prema propisima o azilu, bez uvjeta u pogledu državljanstva i duljine prebivališta, odnosno stalnog boravka na području R Hrvatske

UVJETI ZA STJECANJE PRAVA NA DOPLATAK ZA DJECU

3. ukupni dohodak, ostvaren u prethodnoj kalendarskoj godini, po članu kućanstva mjesečno ne prelazi 50% proračunske osnovice
4. podnositelj zahtjeva živi u kućanstvu s djetetom

članak 1. (i) Uredbe 883/2004, smatra se ispunjenim ako postoji uzdržavanje, također razvedeni roditelj (presuda C-363/08 Slanina, C-255/99 Humer)

DOBNA GRANICA DJETETA

- djeca do navršene 15. godine života (do kraja školske godine), djeca na školovanju u srednjoj školi do završetka tog školovanja, ali najduže do kraja školske godine u kojoj dijete navršava 19 godina života
- djeca koja nisu završila školovanje u predviđenom roku zbog bolesti produžuje se, najduže do 21. godine života
- djeca s težim ili teškim invaliditetom nastalim prije 18. godine života ili za vrijeme redovnog školovanja, sve dok taj invaliditet postoji (Zakon o izmjenama i dopunama Zakona o doplatku za djecu, „Narodne Novine“, broj: 82/15.)

DOHODOVNI CENZUS

PRORAČUNSKA OSNOVICA (PO) ZA GODINU	2017.	3 326,00 KN
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DOHODOVNI CENZUS	% PO	Svota prosječnog mjesečnog dohotka u kn
1. CENZUS	do 16,33%	do 543,14
2. CENZUS	od 16,33% do 33,66%	od 543,14 do 1119,53
3. CENZUS	od 33,66% do 50%	od 1119,53 do 1663,00
NEMA DOHODOVNOG CENZUSA: za dijete s težim ili teškim invaliditetom (čl. 22. ZDD), dijete smrtnog stradaloga, zatočenog ili nestalog hrvatskog branitelja (čl. 34. ZOPHBDR)		

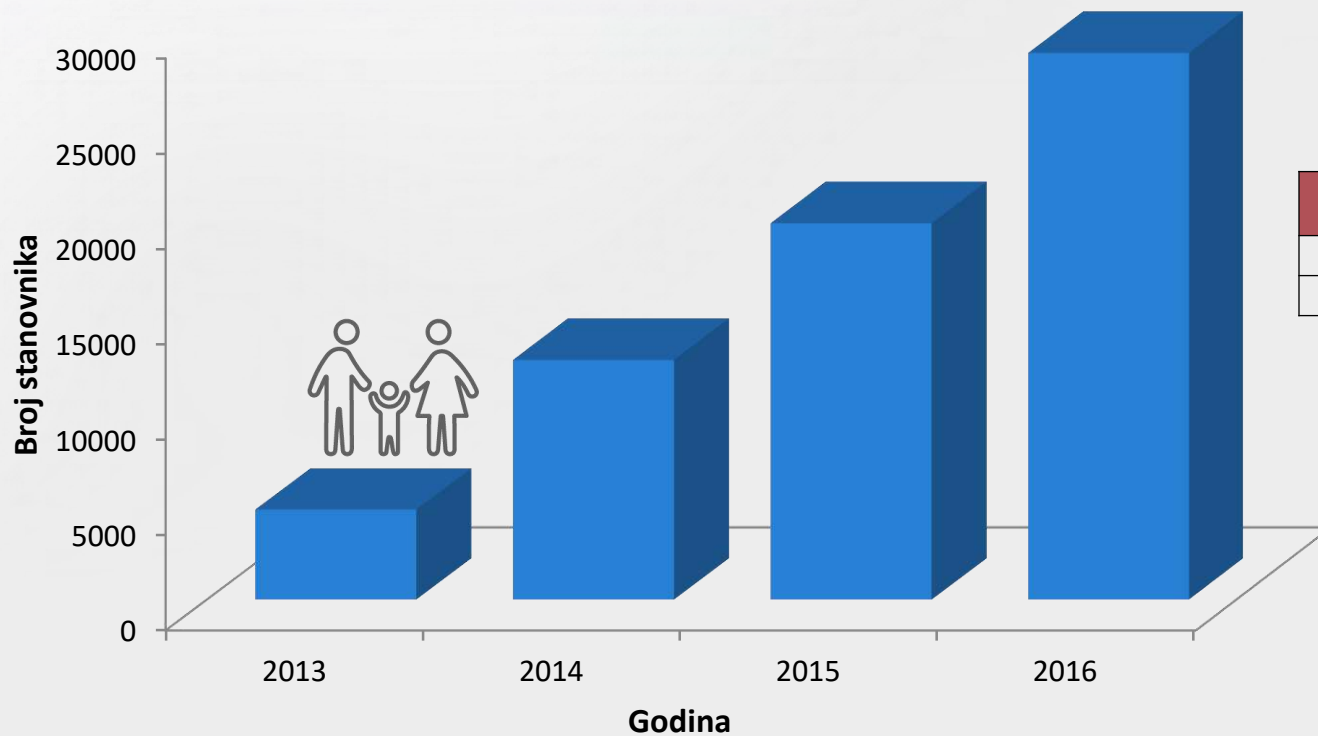
Za prvi cenzus (PC)	9% PO	299,34 kn
Za drugi cenzus (DC)	7,5% PO	249,45 kn
Za treći cenzus (TC)	6% PO	199,56 kn
Dijete bez oba roditelja ili - oba roditelja nepoznata ili nepoznatog prebivališta - potpuno nesposobni za samostalan život i rad ili - oduzeta poslovna sposobnost	PC + 25%	374,18 kn
	DC + 25%	311,81 kn
	TC + 25%	249,45 kn
Dijete s jednim roditeljem ili - jedan roditelj nepoznat ili nepoznatog prebivališta - potpuno nesposobni za samostalan život i rad ili - oduzeta poslovna sposobnost	PC + 15%	344,24 kn
	DC + 15%	286,87 kn
	TC + 15%	229,49 kn
Dijete s oštećenjem zdravlja	PC + 25%	374,18 kn
	DC + 25%	311,81 kn
	TC + 25%	249,45 kn
Dijete s težim ili teškim invaliditetom	25% PO	831,50 kn
Dijete smrtno stradalog, zatočenoga ili nestalog hrvatskog branitelja	9% PO + 25%	374,18 kn

PRONATALITETNI DODATAK: na ukupnu svotu doplatka određenu rješenjem, korisniku se dodaje 500,00 kn ako koristi doplatak za troje djece, odnosno 1 000,00 kn ako koristi doplatak za više od troje djece

MIGRACIJA STANOVNIŠTVA PREMA DRŽAVAMA EU (2013 – 2016)



DRŽAVNI ZAVOD ZA STATISTIKU
REPUBLIKE HRVATSKE
CROATIAN BUREAU OF STATISTICS



Odselili prema EU

2013.	2014.	2015.	2016.
4819	12745	19900	28882

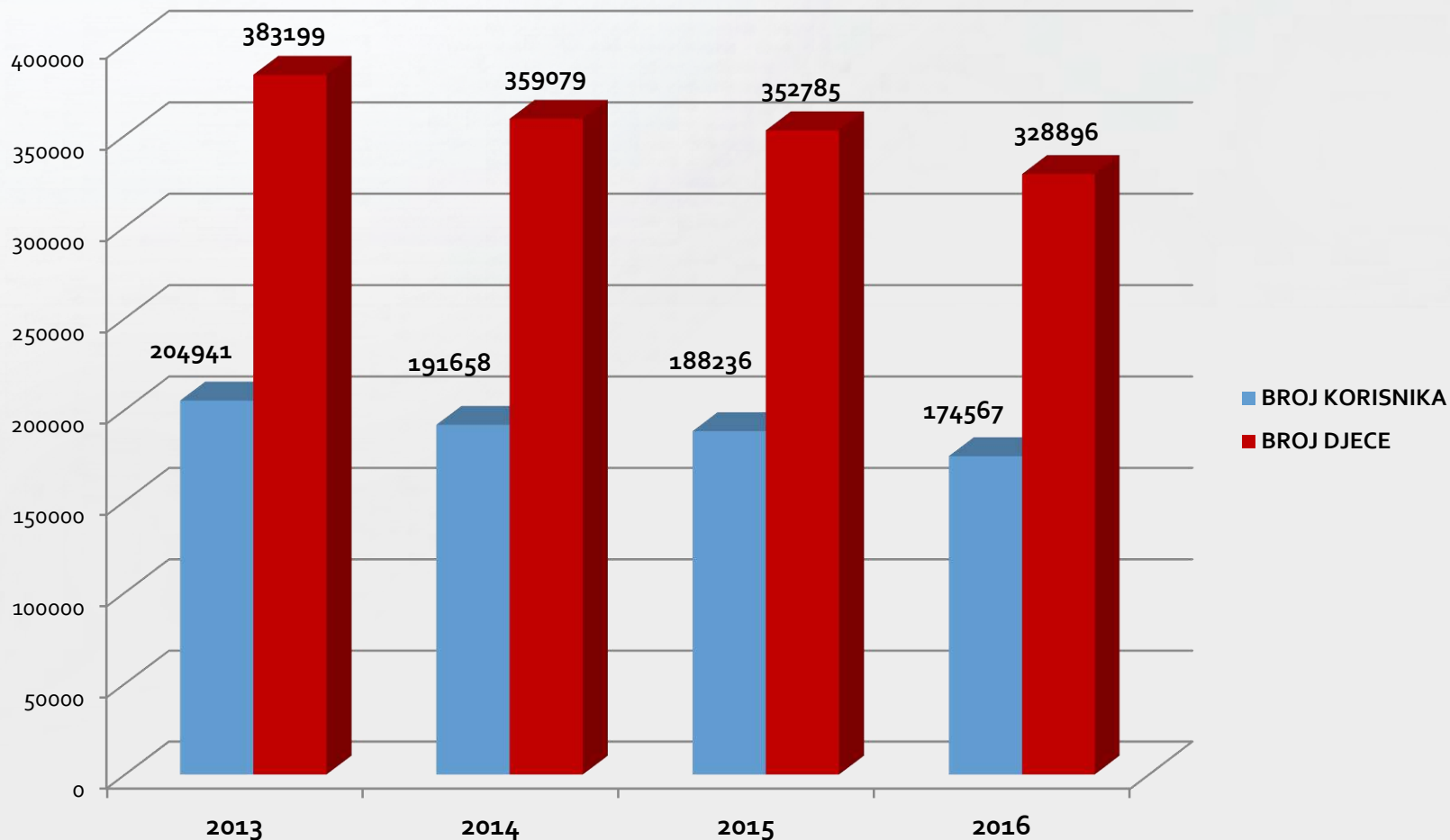
PREGLED BROJA KORISNIKA DOPLATKA ZA DJECU, BROJA DJECE I PROSJEČNE SVOTE ZA RUJAN 2017

Broj korisnika	151 416
Broj djece	285 987
Prosječna svota	374,00 HRK

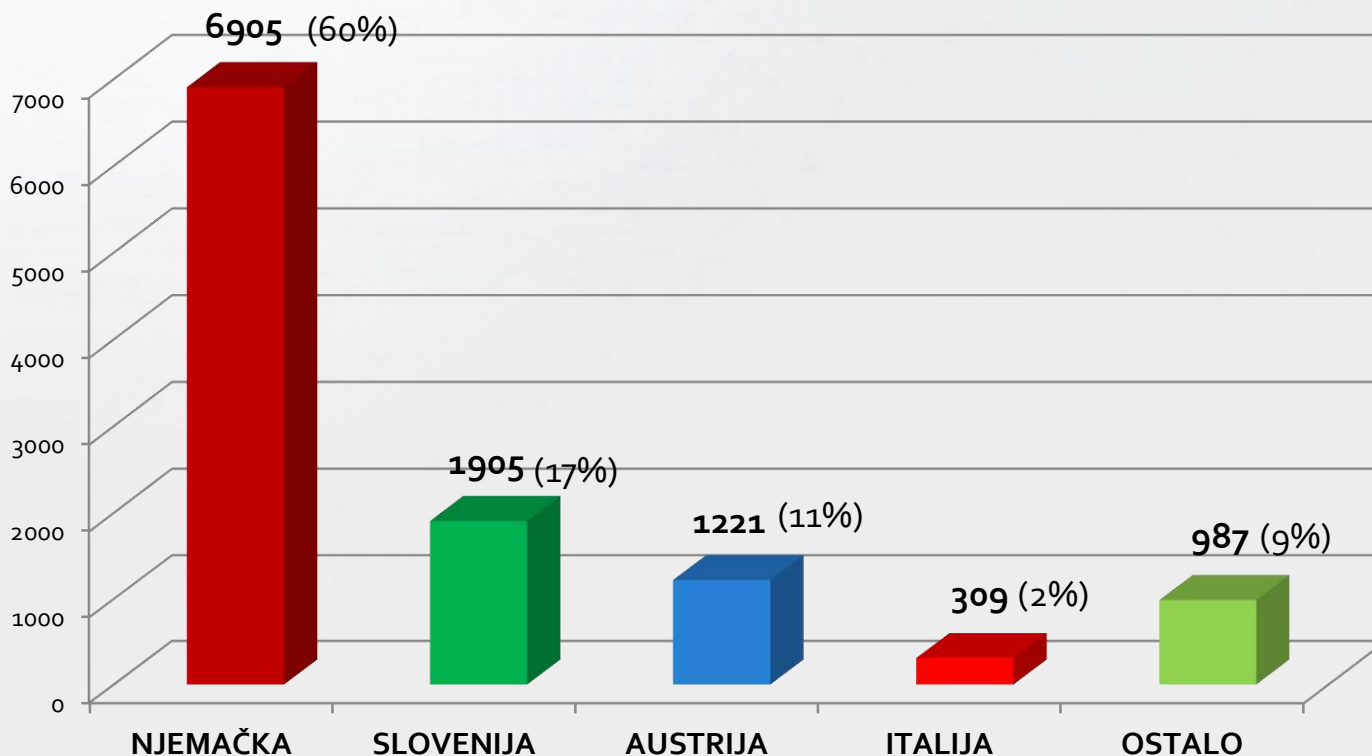
DOPLATAK ZA DJECU PRIMJENOM PROPISA EU ZA RUJAN 2017

Broj korisnika	669
Broj djece	1074
Prosječna svota	488,00 HRK

BROJ KORISNIKA DOPLATKA ZA DJECU I BROJ DJECE PO GODINAMA

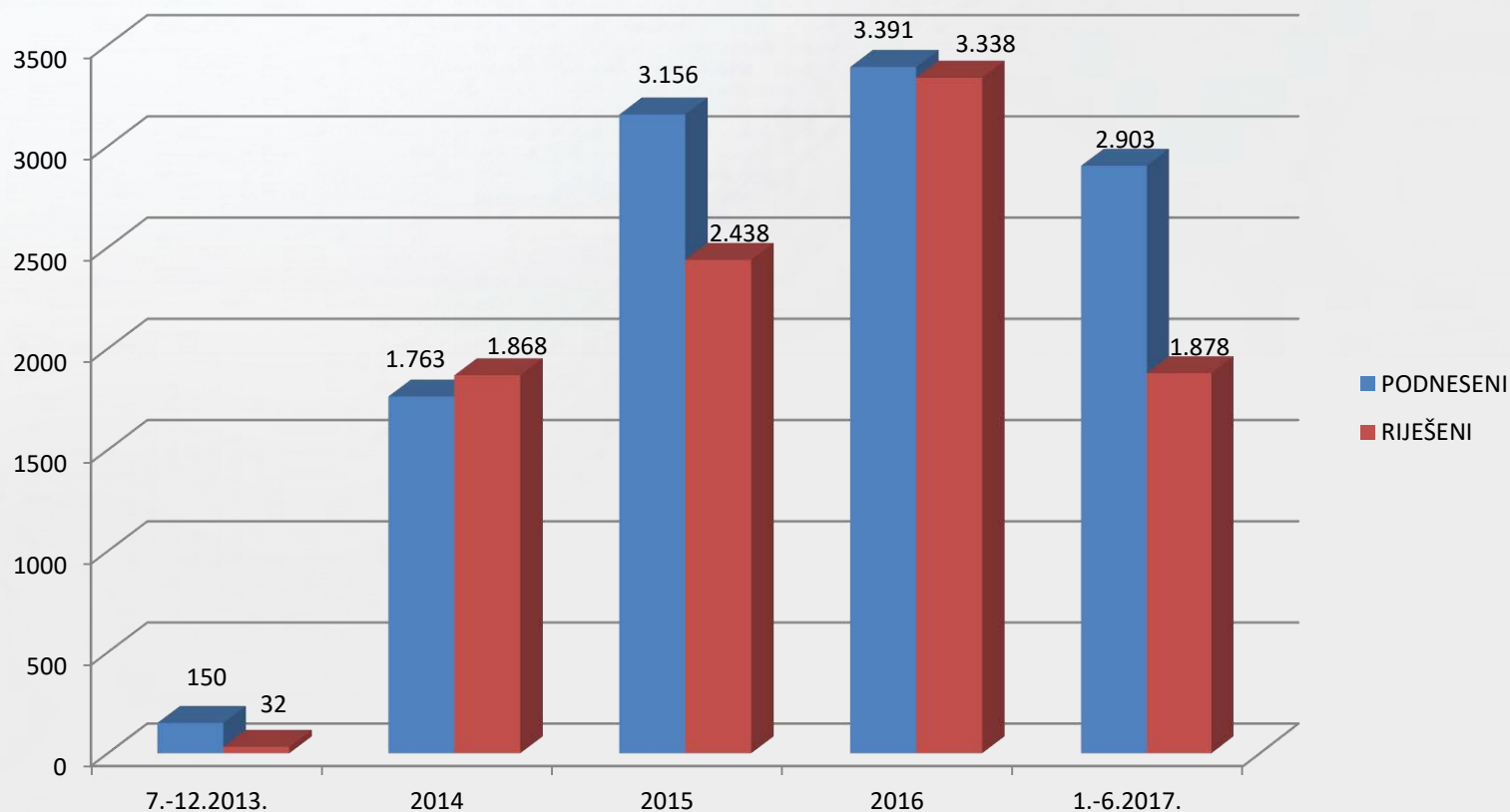


BROJ ZAHTJEVA ZA D.D. PRIMJENOM UREDBI EU PO DRŽAVAMA ZA RAZDOBLJE 1.7.2013-30.9.2017.



Ukupno je zaprimljeno 11 327 zahtjeva za D.D. primjenom uredbi EU u navedenom razdoblju.

PRIKAZ BROJA ZAHTJEVA ZA D.D. PRIMJENOM UREDBI EU PO GODINAMA



NAPOMENE:

- 2017. – podaci za prvih šest mjeseci, treba uzeti u obzir da se zahtjevi najviše podnose tijekom početka godine

HVALA NA PAŽNJI!

Family Benefits in relation to the UK

Prof. dr. Grega Strban

Faculty of Law, University of Ljubljana, FreSsco

"Recent developments and proposed changes in the areas of posting and family benefits' coordination"

Zagreb, 27 October 2017

Introductory Remarks

UK and European integration

- *United States of Europe*
 - (Churchill 1946, but without the UK?)
- *Principle of supremacy*
- *Migration flows and new patterns of mobility*
- *Social State v. Welfare State*

Introductory Remarks

Variety of family benefits

Three assumptions of social security

-  *Standard Beneficiary*

Competence of MS

Linked to maternity/paternity and family as social risks

Introductory Remarks



Points of discussion

-  *History of the UK in the EU*
-  *Variety of family benefits and difficulties related to their coordination (within the EU and in relation to the UK)*
-  *Attempts made by the EU for the UK to remain*
-  *Family benefits after Brexit*

History of the UK in the EU

 *Membership vetoed in 1963*

 *(consequence for IE, DK and NO)*

 *UK joined EU in its first enlargement (1973)*

 *Signatory of the SEA (1986)*

 *...but not of the 1989 Community Charter of the
Fundamental Social Rights of Workers*

History of the UK in the EU

Opted out of the Social Chapter (annex to 1992 Maastricht Treaty)

-  ... but agreed on it by the ToA (1997)

Extension of Social Security Regulations to TCN

-  Reg. 859/2003 (UK opted-in, IE-in, DK-out)

-  Reg. 1231/2010 (UK opted-out, IE-in, DK-out)

-  UK's changing social policy towards migration

History of the UK in the EU

 *UK not in EMU, Schengen...*

Country	# of opt-outs	Policy area					
		Schengen Area	EMU	CSDP	AFSJ	Charter of Fundamental Rights	Social Chapter
 Denmark	3	INT	O	O	O	NO	NO
 Ireland	2	O (opt-in)	NO	NO	O (opt-in)	NO	NO
 Poland	1	NO	NO	NO	NO	O	NO
 United Kingdom	4	O (opt-in)	O	NO	O (opt-in)	O	F
Legend							
 – opt-out in place  – former opt-out that was subsequently abolished  – participates on an intergovernmental basis, but not under EU law  – fully participating in policy area				"opt-in" – possibility to opt in on a case-by-case basis.			

A plethora of family benefits

Intended to meet family expenses

-  *Periodical payments or not*
-  *In cash or in kind*
-  *Social insurance or tax based or social assistance*
-  *Child benefits or child raising or child care allowances*
-  *Birth/adoption grants, supplements (for single parents)*
-  *Benefits for disabled children (link to invalidity or LTC)*
-  *Social services or tax relief*

Family benefits in social security coordination

Regulation (EC) 883/2004

-  *Simplification?*
-  *Family benefits and family allowances?*
-  *Decisions of the CJEU*
-  *Now comprehensive approach to ,Family benefits‘*
-  *Excluded*
 -  *Advances of maintenance allowances*
 -  *Childbirth and adoption allowances (Annex I to the Reg.)*

Family benefits granted to a family

Family

-  *Defined by national legislation*
-  *If not? Then spouse, minor and dependent children*
-  *Living in the same household or mainly dependent?*
-  *Married or divorced?*
-  *Who is claimant?*
-  *Entitling, entitled and receiving person*

Equal treatment and family benefits

-  *Nationality or residence conditions*
-  *Legal fiction - family members residing with entitled person*
-  *Where is residence?*
-  *CJEU decisions*

Determining applicable legislation

-  *Purpose of only one MS being competent*
-  *Deviating from the general principle*
 -  *CJEU cases (Bosmann, Hudziński and Wawrzyniak)*
-  *Two MS may be competent*
 -  *Anti-overlapping rules for benefits of the same kind*
 -  *Which family benefits are of the same kind? (CJEU Wiering)*

Export of (un)adjusted family benefits?

-  *Export – a misleading notion?*

-  *Export is being contested by some MS*

Attempts for the UK to remain

-  *,Brexit' agreement (Annex V) – indexation of FB*
 -  *Adjustment to the cost of living in the MS of children*
-  *Problems of ,Brexit' agreement :*
 -  *,Child benefits'?*
 -  *,Worker's residence'?*
 -  *Which rules and data?*

Attempts for the UK to remain

- *Reverse priority or SNCB?*
- *‘Fully compatible with the treaties’ (for UK only?)*
- *Two-way indexation? Optional? Only reduction?*
- *No distinction within MS – also none within EU?*
- *Never came into force, but has a life on its own?*
 - *5 MS, Austria after elections?, Opposition from HU, SI?*

Attempts for the UK to remain

CJEU decisions?

-  C - 308/14 EC v UK, 14 June 2016 (!)

-  Family benefits as (categorical) social assistance?
-  All social security benefits subject to the right to reside test?
-  Directive (2004/38) prevails over Regulation (883/2004)?

EC proposals for the amendment of R 883/2004?

Family benefits after Brexit

No special agreement?

- („no deal for Britain is better than a bad deal for Britain“)

UK citizens as third country nationals (CoE, ILO?)

Legal expectations?

- Periods of affiliation (contribution) before Brexit?
- Will Regulation (EC) 883/2004 remain applicable?

Vested (acquired) rights?

Family benefits after Brexit

Reliance on bilateral and multilateral social security coordination agreements?

-  *Will old (outdated) agreements be revived?*
 -  *Not all include Family Benefits...*
-  *Regulation (EC) 883/2004 never repealed them*
-  *Interpretation of the CJEU that the Regulation prevails*
-  *Will new have to be concluded? Adv. and drawbacks...*

Concluding thoughts

 *Changed social relations and CJEU case-law*

 *Rethinking the coordination of FB is necessary*

-  *Is it still possible to coordinate all kinds of family support?*
-  *Focus on the child (closest link)?*
-  *Coordination of ‚classic child benefits‘ (‚family allowances‘)?*
-  *Other family benefits still under EU law (as social and tax advantages)?*

Concluding thoughts

 *EU-UK relations have always been specific*

 *Attempts for the UK to remain – backfiring?*

 *There are many challenges for social security of migrants and their families*

 *So far we have always find a way to deal with them, and this time should be no different (with proper transition periods)*

 *Although the standard might not be the same...*



FREE MOVEMENT OF WORKERS and
SOCIAL SECURITY COORDINATION



FAMILY BENEFITS

POSTING

ZAGREB, 27 OCTOBER 2017

FACULTY OF LAW, UNIVERSITY OF ZAGREB

Croatian Seminar

POSTING OF WORKERS AND FAMILY BENEFITS' COORDINATION



Posting – the EU legal panorama in social security and labour law

Prof. Maximilian Fuchs, Germany

European Commission

Croatia Seminar, Zagreb, 27 October 2017

Posting

Legal sources

Art. 8 Reg. 593/2008

Art. 1/2 Dir. 96/71

Art. 12 Reg. 883/2004

The function of posting provisions

The guarantee of the freedom to provide services

Discrepancies between Art. 12 Reg. 883/2004 and Art. 1/2 Dir. 96/71

-  *time limit*
-  *qualities of posting undertakings*

Criticism of the current state of law

-  *violation of the equality principle*
-  *misuse and abuse of posting provisions*

The development of the law of posting

Case-law of the ECJ

Leading cases

-  *Fitzwilliam (C-202/97)*
-  *Plum (C-404/98)*

The codification of the case-law of the ECJ

Art. 14 Reg. 987/2009

Decision A2 of the AC

The shortcomings of procedural law

Weak points in Decision A2

The shortcomings of Dir. 96/71

-  *substantive law*
-  *procedural law*

The reaction to the shortcomings of Dir. 96/71

Dir. 2014/67

Changes in

-  *substantive law*
-  *procedural law*

Dir. 2014/67

Substantive law

Art. 4

Spill-over of criteria used in social security coordination

Dir. 2014/67

Procedural law

Art. 5–20

Concreteness of regulation

Important topics of procedural law

-  *monitoring proceedings*
-  *mutual assistance between Member States*
-  *adequate labour inspections*
-  *subcontracting liability*
-  *cross-border liabilities*

AI form

Role

Recital 12 of Dir. 2014/67

binding on the Host State

Art. 5 Reg. 987/2009

AI form

Many incorrect forms

Art. 12 para. 2 Reg. 883/2004

Reform proposal for Art. 5 Reg. 987/2009

Recommendation (incoming) by the AC

Proposal amending Dir. 96/71 COM(2016)128 final

-  *equal pay*
-  *posting exceeding 24 months: terms of the host Member state*

Upućivanje radnika

HR pravni okvir i izazovi

dr. sc. Andrea Grgić

Zagreb, 27. listopada 2017.

Seminar: Recent developments and proposed changes in
the area of posting and family benefits' coordination

-  Situacija u kojoj poslodavac s poslovnim nastanom u jednoj državi (podrijetla) upućuje radnika na rad u drugu državu (domaćina)
-  Mali opseg (0,4% zaposlenih u EU)
 -  2015. RH je cca. 19 država članica podrijetla (33 300 radnika) i 16 država članica domaćin (7 164 radnika)
 -  2016. iz RH je upućeno 36 038 radnika
-  Može uzrokovati socijalni damping u državi domaćinu
 -  Cijena rada po satu u 2016., u eurima:
 - EU 25,4; Euro zona 29,8; Danska 42,0; Bugarska 4,4
 - Njemačka 33,0 EUR; Austrija 32,7; Hrvatska 10,0

Struktura izlaganja

Međunarodnopravni okvir

Nacionalni pravni okvir

-  Upućivanje u RH kao državu članicu domaćina
-  Upućivanje iz RH kao države podrijetla

Izazovi za nacionalne dionike (radnike, poslodavce, sudove i druga tijela)

GATS

-  Model 4. i NN-MU 13/00

Čl. 56. i 57. UFEU-a (sloboda pružanja usluga)

Uredbe 883/2004, 987/2009 i 1231/2010

-  Koordinacija sustava socijalne sigurnosti

Uredbe Rim I i Bruxelles I

-  Mjerodavno pravo i sudska nadležnost za ugovor o radu

Direktive 96/71 (Osnovna) i 2014/67 (Provedbena)

-  Najniži zajamčeni uvjeti rada u DČ domaćinu

Direktiva 2014/66 (državljeni trećih zemalja)

Ugovori o proširenju (EU)

- **Zakon o strancima (NNI30/II – 69/17)**
 - Provodi Direktive 96/71, 2014/67 i 2014/66
 - Upućivanje u RH kao državu članicu domaćina
- **Zakon o radu (NN 93/14)**
 - Upućivanje iz RH kao države podrijetla
- **Zakon o provedbi uredbi EU-a o koordinaciji sustava socijalne sigurnosti (NN 54/13)**
 - Imenuje nadležna tijela, ustanove i tijela za vezu
- **Uredba o privremenoj primjeni pravila o radu državljana država članica EU i članova njihovih obitelji (NN 79/13)**

Upućivanje u RH kao državu članicu domaćina

Upućivanje radnika iz države članice EU-a

-  Članci 86.-89. ZS-a
-  Upućivanje državljana DČ
-  Upućivanje državljana TZ

Upućivanje iz treće zemlje

-  Upućivanje ključnog (rukovodećeg) osoblja, stručnjaka i pripravnika (čl. 79.a-f ZS-a)
-  Upućivanje “ostalih radnika”

Upućivanje radnika iz države članice EU-a (I.)

Državljeni EGP-a i Švicarske

-  Nije potrebna dozvola za boravak i rad ni potvrda o prijavi rada (čl. 153. ZS-a)
-  Za boravak u RH dulji od 3 mj. izdaje se potvrda o prijavi privremenog boravka (čl. 158. ZS-a)

Državljeni trećih zemalja

-  Boravak do 90 dana
-  Privremeni boravak (čl. 47. i čl. 86. ZS-a)
-  Posjedovanje dovoljno sredstava za uzdržavanje (čl. 54. ZS-a)

Upućivanje radnika iz države članice EU-a (II.)

Uvjeti rada (čl. 86. ZS-a)

-  Jamče se “tvrđi” uvjeti rada iz čl. 3. st. I. Direktive 96/71 na razini utvrđenoj pravnim propisima RH i KU na proširenoj primjeni u svim sektorima
-  Na snazi Zakon o minimalnoj plaći i dva KU na proširenoj primjeni (sektori ugostiteljstva i građevine)
-  Ne primjenjuje se na upućivanja kraća od 8 dana
-  Nije iskorištena mogućnost izjednačavanja upućenih i domaćih agencijskih radnika
-  Državljeni TZ trebaju biti zaposleni “zakonito”
-  Proširena odredba o sudskoj nadležnosti

Upućivanje radnika iz države članice EU-a (III.)

Nadzor nad upućivanjem

-  Ne smije biti ex ante postupak odobrenja
-  Usmjereno na utvrđivanje “istinskog upućivanja”
-  Obveza imenovanja osobe u RH koja će čuvati preslike ugovora o radu, dokaza o isplaćenim plaćama, evidenciju radnog vremena i dr., 5 godina nakon okončanja upućivanja (čl. 86. ZS-a)

Izjava o upućivanju (čl. 89. ZS-a)

-  Sadržaj će se se utvrditi pravilnikom

Procjena činjeničnih elemenata (čl. 88.a ZS-a)

-  Postupanje inspekcijskog tijela utvrdit će se pravilnikom

Upućivanje radnika iz države članice EU-a (IV.)

-  **Odgovornost za obveze podugovaratelja (čl. 88.b ZS-a)**
 -  “ugovaratelj” solidarno odgovara za isplatu najniže plaće i plaće za prekovremeni rad u graditeljstvu
-  **Sudska nadležnost (čl. 88. ZS-a)**
 -  Pravo pokretanja postupka pred RH sudom radi ostvarivanja prava iz ZS-a u skladu s propisima RH
 -  Čl. II. st. 6. Direktive 2014/67 (povrat poreza, doprinosi socijalnom osiguranju, troškovi za smještaj, doprinosi u fondove socijalnih partnera)
-  **Uzajamna pomoć i upravna suradnja (čl. 88. ZS-a)**

Upućivanje radnika u RH iz treće zemlje (I.)

- **Dozvola za boravak i rad unutar godišnje kvote (čl. 74. ZS-a)**
 - Agencijski radnici
 - Osobe premještene unutar društva iz Direktive 2014/66
 - Rukovoditelji, stručnjaci i pripravnici iz čl. 79.a ZS-a
- **Dozvola za boravak i rad izvan godišnje kvote (čl. 76. ZS-a)**
 - Ključno osoblje (SSP) te ugovorni pružatelji usluga (“ostale neophodne osobe”) (GATS)
 - Poslovni posjetitelji (GATS i SSP) - indirektno
 - Osobe premještene unutar društva iz Direktive 2014/66 (dugoročna mobilnost) iz čl. 79.c ZS-a
- **Preklapanje u kategoriji ključnog osoblja u pogledu uvjeta za ulazak i roka valjanosti dozvola za boravak i rad**
- **“Nestali” su rukovodeće osobe i stručnjaci iz GATS-a**

Upućivanje radnika u RH iz treće zemlje (II.)

Uvjeti rada za osobe iz Direktive 2014/66

Uvjeti rada za upućene radnike (čl. 79.a st. 9. ZS-a)

- No, uvjet za dozvolu za boravak i rad unutar godišnje kvote je primitak “plaće koja nije manja od one koju primaju zaposleni u RH koji rade na usporedivim radnim mjestima u skladu s primjenjivim zakonima i KU” (čl. 79.a st. 3. t. 5. ZS-a)

- Pravo na sindikalno udruživanje, kolektivno pregovaranje i štrajk, koordinaciju prava iz socijalnog osiguranja, priznavanje kvalifikacija i pristup robi i uslugama (čl. 79.d ZS-a)

Uvjeti rada za druge kategorije upućenih radnika

- Uredba Rim I

Upućivanje radnika iz RH kao države podrijetla (I.)

- Upućivanje u inozemno povezano društvo (čl. 18. ZR-a)
 - Privremeno, u trajanju od 2 godine
 - Nije propisan rok koji mora proteći između dva upućivanja
- Upućivanje preko agencije za privremeno zapošljavanje (čl. 44.-52. ZR-a)
 - Ne može trajati dulje od 3 godine
 - Ugovorena plaća ne smije biti nepovoljnija od plaće radnika neposredno zaposlenog kod korisnika

Upućivanje radnika iz RH kao države podrijetla (II.)

Obvezni sadržaj ugovora o upućivanju radnika u inozemstvo (čl. 18. ZR-a)

-  Izričito se ne navode prava iz čl. 3. st. 1. Direktive 96/71
-  Omogućava upućivanje na zakon, KU ili pravilnik o radu
-  Upućivanje duže od 30 dana

Agencijski radnici (čl. 46. ZR-a)

-  Također ne daje potpune informacije o pravima iz čl. 3. st. 1. Direktive 96/71
-  Ugovor o ustupanju radnika koji sklapaju agencija i korisnik treba sadržavati podatke o zakonodavstvu koje se primjenjuje na radni odnos ustupljenog radnika

Upućivanje radnika za vrijeme prijelaznog razdoblja

Ugovor o pristupanju RH Europskoj uniji

-  Prilog V. (slobodno kretanje osoba)
-  2+3+2 prijelazna razdoblja
-  Čl. 2. st. 12. – upućeni radnici
-  Čl. 2. st. 2., 3. i 5. – agencijski radnici (*Vicoplus*)

Uredba o privremenoj primjeni pravila o radu državljana država članica EU i članova njihovih obitelji (NN 79/13)

-  Uzajamne mjere
-  Malta, NL, UK, Slovenija i Austrija

-  Kompleksna i slojevita regulativa
-  Prijevodi sekundarnog zakonodavstva
-  Neprohodan i nekoordiniran ZS
-  Neažurirane stranice MRMS-a
-  Nepreveden ZS
-  Implementacija direktiva



FREE MOVEMENT OF WORKERS and
SOCIAL SECURITY COORDINATION



FAMILY BENEFITS

POSTING

ZAGREB, 27 OCTOBER 2017

FACULTY OF LAW, UNIVERSITY OF ZAGREB

Croatian Seminar

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