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on

# "Social Security, Supplementary Pensions and New Patterns of Work and Mobility: Researchers' profiles"

by

the expert group on "Social security, supplementary pensions and new patterns of work and mobility: researchers' profiles"

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# General conclusions and recommendations

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When looking at a researcher of today it is obvious that he/she is no longer staying at one university or other public or private research centre throughout his/her career, but is moving from one country to another, frequently and for shorter periods of time or is even working (be it sometimes under different statuses) in several countries at the same time. When the researcher of today retires his/her career path has been one of many different employers and can even be one of different statuses (employee, self-employed,…). The work patterns have changed tremendously over the years and researcher's mobility has increased dramatically. In fact the mobility of the researchers constitutes an essential element in the realization of a dynamic and successful European Research Area (ERA) which has been one of the top priorities of the European Commission in the last years.

However this increase in mobility has not been followed by adapted national nor European rules taking into account these changed work patterns and thus leaves the internationally mobile researcher often with a social security protection record which is not up to standard or in some cases even non existent. The international mobility of the researcher is too often hampered by obstacles linked to his/her social protection.

When analyzing the researcher's situation based on a literature study, a study of the relevant EU and national legislation as well as interviews with researchers and administrators it becomes clear that several factors contribute to the mobility obstacles. The general problems/obstacles which have to be addressed are the existence of a variety of employment statutes, the length and frequency of the mobility of the researcher, the complicated character of the EU coordination regulation, the problem of the uninsured researcher statuses, the differences in the provision of supplementary pensions and the lack of correct, up-to-date and 'client oriented' information. Furthermore the position of third national researchers and of the dependant family members of internationally mobile researchers (who will follow the social security status of the mobile researcher) should not be overlooked.

Identifying these obstacles is one thing, finding an appropriate and feasible solution is a different story. In fact, when looking for solutions one has to consider the limitations one is confronted with. First of all there is the fact that the Member States have the competence in regulating their own social security systems. As the situation stands today there does not seem to be the possibility (political will) to change this in the near future. Secondly there are also the EU coordination rules which were recently changed after a long process with many hick ups which makes it very difficult to assume that any major changes to this legislation could be envisaged. Finally one has to realize that the very concept of researchers is unclear and problematic. Many attempts have been made to define a 'researcher' but it is always a limited number of groups of researchers for whom a general solution can be found. Clear cut solutions for all researchers are not possible at this stage.

With the above mentioned in mind we give several options for solutions for the key issues which have to be tackled in order to improve the mobility of the researchers and thus make a positive step in the direction of the creation of an open and dynamic European Research Area. Our recommendations give options for possible solutions, some feasible on the short term, others might take somewhat longer, but in any case the implementation of the chosen solutions requires the full cooperation and political will of all parties involved (EU and Member States).

Before dealing with our conclusions and options for solutions concerning the three basic problems namely the variety of researchers statuses, length and frequency of the researcher's mobility and the problem of the uninsured researchers, followed by a closer look into the position of the family members, the supplementary pensions and the third country nationals, we briefly give an overview of the statistics gathered in the framework of our study.

## 1. Statistics

On the basis of an extensive literature review, a real case survey amongst research institutes of all European countries (via EURAXESS) as well as face to face and telephone interviews of research funders, thought leaders and/or experts in the field of interest we were able to identify the everyday practical problems that researchers moving within Europe are confronted with.

The analysis of the cases (for full details see annex 1: actual cases and annex 2: analysis of the cases of the fact finding part of the report) has shown that as to their social security position the internationally mobile researchers involved in our research have perceived the lack of information (47,06%) as well as the negative financial effects (38,24 %) (effects identified are amongst others: loss of benefits or a lack thereof, having to carry the burden of maternity leave period) as most important problems when they moved to another state. Administrative barriers were also touched upon by 14,71 % (barriers identified are amongst others the lack of communication between administrations, the complexity of procedures and the lack of flexibility concerning the safeguarding of family benefits).

When the researchers were questioned about their experiences as to their pension rights, more than 70% of the researchers involved have indicated that there was a problem due to the lack of information on the portability of their pension rights or on their rights as such; many did simply not know on how to manage their proper pension rights. Just over 40% of our group of researchers identified the negative financial effects as one of the disadvantages to their move; these effects range from a lack of pension schemes, the payment of contributions into several pension schemes, to problem of the waiting periods and vesting periods and the fiscal implications. Almost 40% complained about

an absent or inadequate administrative support by the services. 15% have indicated that there was a lack of portability of their acquired rights. And finally just under 12 % of the researchers had problems with some administrative barriers such as rigid administrative rules, lack of harmonization and contradictory legislation or simply the lack of social security planning.

Many of these issues identified by the researchers will come back in our options of solutions and recommendations.

## 2. Basic problems

We have identified three basic problems which hamper the mobility of researchers: the variety of researcher statuses held by the researchers, the problem of the "short period" and "frequent' character of the mobility and the problem of a group of researchers, often young researchers who end up without social insurance.

### 2.1. The variety of researchers' statuses

The social security statuses held by researchers throughout Europe are determined on the national level by the Member States and can vary from employed person, self-employed person, civil servant to student. Questions are raised especially as to the position of the doctoral students, the young (early stage) researchers and post-doctoral researchers with fellowships or scholarships, as they sometimes even end up without social insurance because of their often specific status.

Moreover, on the EU level it is clear that the existing social security coordination rules which are meant to remove the obstacles in the framework of the free movement of workers have a limited objective. The EU competence is indeed one 'to coordinate' and not 'to harmonise' in social security matters. Therefore the coordination rules respect the national differences, hence the different social security statuses of the 'employed persons' in the different countries.

It therefore can be argued that the mere fact that there is such a variety of nationally determined social security statuses held by researchers at various points of their careers

and in various Member States is not accurately reflected in the existing EU coordination rules. It is however our strong believe that whatever the national status of the researcher, all researchers are professionally active persons and should be treated as such. They should thus be making use of the free movement of workers or of services whereby there is a need for social security coordination. They should not be treated as non-active persons as is often the case now especially in the early stages of their careers.

One of the preferred solutions in order to deal with this 'variety of social security statuses' in a European social security coordination setting would be to treat all researchers as employees, since workers or employed persons enjoy traditionally the most comprehensive protection. They could be given an employment contract and social security contributions could be levied on their income (including on a grant, fellowship, scholarship or stipend).

Member States could and should take an active role in the promotion of researcher's mobility and need to take the appropriate measures. They in the end determine the social security position and should be urged by the EU to provide all researchers (including doctoral candidates and young (early stage) researchers and other researchers in a professional status other then employee, self-employed or civil servant) social security coverage at least equal to the one of employed persons or workers.

Thus a definition of the researchers is required. A consensus is needed on who can be qualified as a researcher and thus be qualified to be protected as well as an employed person or worker.

After looking at the different possibilities of defining a 'researcher' we reached a consensus to use a more employer oriented approach, whereby the diversity of researchers is approached from the employer rather then from the researcher and his/her activities. A distinction can then e.g. be made between: researchers working for public or private accredited universities and colleges of higher education; researchers working for public or private accredited research institutions; researchers working in multinational enterprises' research and development divisions and researchers working for small and medium enterprises or enterprises operating in a predominantly national environment. Finally a consensus was reached to look especially at the first and second

category of researchers within the framework of our analyses. Solutions proposed could then be an inspiration when looking at the other groups of researchers and in the end at all highly mobile workers.

A definition is also needed for EU social security coordination purposes in order to delimit researchers as professionally active persons and non-professionally active persons also covered by the coordination rules (e.g. students). This could be solved by legislative action or by non-legislative action namely proper interpretation by the Administrative Commission for the Coordination of Social Security Systems.

A more fundamental change of the EU coordination rules is required when special designation rules for highly mobile workers (including internationally mobile researchers) would be preferred. This option is not feasible in the short term as the new set of EU social security coordination rules and application rules just came into force and were already fiercely debated. Any major changes to these rules are at the moment politically not a realistic goal.

When looking towards the future one should not deny the opportunities that lie in a possible legislative framework on the European Researchers Area as an extra pressure tool of the EU. Of course a consensus from the Member States is needed and the question remains whether the 'political will' will indeed exist to take the necessary steps.

2.2. The problem of the length and frequency of the researchers' mobility

It is clear that the applicable legislation is not adapted to the "frequent" and "short term" mobility character of the researcher's career path.

Insured researchers moving from one country to another do this frequently for shorter periods of time, therefore when applying Regulation 883/04 one will have frequent changes in the applicable legislation and thus a frequently changing social security position which is also for the administration not always evident. It is often in the interest of the mobile researcher, as it is for any highly mobile person, that the applicable social security law does not change too often.

1. In order to bring more stability in the frequently changing social security status of the researcher moving from one Member State to another Member State, a first option for solution (which is quite feasible) lies in the possibilities of article 16 of the Regulation 883/04.

Article 16 of Regulation 883/04 foresees the possibility that "two or more Member States, the competent authorities of those Member States or the bodies designated by these authorities may by common agreement provide for exceptions to article 11 to 15 in the interest of certain persons or categories of persons". These agreements can be applied to any person and for many situations. Although now used often to "extend" posting periods, the wording of article 16 is much broader.

Till now, Article 16-agreements were formulated/inspired by making use of the Recommendation 16/84[1] of the Administrative Commission. One solution would be that the competent authorities of the Member States formulate new Art. 16-agreements using as an inspiration the "old" Recommendation 16/84 – but with special focus on researchers. Another solution would be to create a *new* and specially formulated Recommendation of the Administrative Commission.

The Art. 16- agreements have to be formulated more from a researchers' point of view. The wording of the Recommendation 16/84 was more related to a posting situation, whereby a person is posted "in the interest of, in the name of, or on behalf of an organization". This element, important to the situation of 'posting', will often not be present when researchers are moving to another Member State. It is thus of importance when drawing up an article 16-agreement that one separates this agreement from the concept of posting.

Another possibility would be to create a totally new Recommendation. The Administrative Commission could indeed, with a new Recommendation, produce an instrument which is better adapted to the more specific needs of researchers and other groups of highly mobile workers. Judging from the past activities in this respect within

[1] The ,Recommendation 16/84 of the Administrative Commission has become ineffective, since the Reg. 883/04 became applicable (i.e. from the 1st of May 2010). However, it is expected that the Administrative Commission will release a new Recommendation on the application of Art. 16 Reg. 883/04.

the Administrative Commission, this might not be a smooth operation as the Member States did not seem to be too keen to the idea of having article 16-agreements applied to special categories of workers.. Nevertheless with some political will on the part of the Member States, this option for a solution could be feasible as well without having to change again the EU social security coordination rules.

Article 16-agreements have to be made 'in the interest of' and 'with the agreement of' the researcher. The Administrative Commission will have to make clear what is meant by 'in the interest of' and 'with the agreement of', in order to delimit the possibility of a variety of interpretations afterwards and thus the creation of yet again differences in treatments. The aim of these agreements should indeed be to make sure that the researcher will have stability in his insurance position when moving frequently to various member states.

2. A second option of a solution besides the article 16-agreements, which entails a 'more invasive' and at this point in time less realistic way of working is the introduction of a new, specific conflict-of-law-rule especially for researchers.

When such a rule is desirable, a possible "model" could be the rules on the contract of staff of the EU (see article 15 of the Regulation 883/04). This article foresees in the option given to EU contract staff to choose under which social security scheme (except in respect to provisions relating to family allowances provided under the scheme applicable to such staff) they would like to fall, be it the one of the Member State in which they are employed, the legislation of the Member State to which they were last subject or the legislation of the Member State whose nationals they are. This right of option, which may be exercised once only, takes effect from the date of entry into employment.

If we would use article 15 of the Regulation 883/04 as a model for researchers this could mean concretely that they would have the choice to be socially insured in a) the country of employment, b) the country where they were insured over the last years, or c) the country of their nationality. However, applying this rule to the internationally mobile researcher will open the way for another set of interpretation problems (e.g. is a

scholarship or fellowship an employment?) which will have to be sorted out in order to have an appropriate solution.

3. Another but less feasible solution might lie in giving the mobile researcher the possibility "to choose" or "to opt" for a certain social security scheme. Here the remark should be made that giving the possibility to the researcher "to choose" is less recommended as it might mean the end of the solidarity principle. Yet when one gives a very limited number of possible 'options' to the researchers some guarantee to safeguard a common element might provide enough stability to the system. The question remains however what if there is no common element.

The options for solutions with respect to the article 16-agreements and the introduction of a specific conflict-of-law-rule based on article 15 deals with the situation where the researcher moves from one Member State to another Member State in order to perform research activities. The situation where a mobile researcher is employed simultaneously in different Member States will give rise to a whole set of other interpretation issues as to the application of article 13 of Regulation 883/04 and article 14 of the Implementation Regulation 987/2009.

For example, when a researcher who is employed in one Member State is simultaneously involved – as a self-employed – in a research project managed by a university in another Member State, article 13 (3) of Regulation 883/04 is clear, the competent state is the country of employment. More complicated is the situation where a researcher is at the same time taking part in *several* projects both as employed person and as self-employed person in different member states. Here article 13 of the Regulation 883/04 is to be interpreted as the wording of the article does not mention explicitly the situation of multiple employee and self-employed activities in different countries.

Another interpretation issue is the distinction between 'posting' and 'simultaneous activities' which was not clear in the past. Article 14 of the Implementation Regulations 987/09 makes the distinction somewhat clearer by mentioning some criteria helpful for making the distinction.

There are also the interpretation issues concerning the 'place of residence' of researchers. When performing simultaneously activities as an employee or as a self-employed person the competent state will be the country of residence when the person involved undertakes "substantial activities" in this country (article 13 of Regulation 987/09). Here there are still a lot of open questions as to interpretation of the notion of 'substantial activities' as well as the notion of 'residence'.

Most of these interpretation issues in case of simultaneous activities can be addressed within the EU social security coordination law, but a general application rule applicable for all researchers is hardly thinkable. Reasons therefore being: the variety of researchers and their different employment and mobility patterns. One can thus only find solutions by making overall assessments of the concrete situation of concrete researchers.

In general the new Coordination Regulation 883/2004 and the Implementation Regulation 987/2009 still need to get interpretations which are crucial for their implementation, especially in the research surrounding. The Administrative Commission could play an important role here (the concrete recommendations being referred to on page 7).

### 2.3. Uninsured mobile researchers

Solving the applicability issues of the EU social security coordination rules does not solve the problem of those researchers (often early stage researchers, researchers with scholarship or study grants not subject to social insurance) who have another professional employment status other than that of employee, self-employed person or civil servant and who are uninsured when taking on a research job in another country. They are not covered by Regulation 883/04 and thus no solutions will be found there.

We do recommend a minimum social protection for this group of researchers. This protection should include health coverage, family allowances and some minimum protection in case of work incapacity. Also access to pension insurance should be arranged as soon as possible. It is also important to stress that this minimum protection

should also be considered for the dependant family members of the internationally mobile researcher, as they will follow his legal status.

The competence of giving this minimum protection lies at the moment with the individual Member States; they have indeed a great responsibility to make sure that all mobile researchers have a minimum of social protection. A possibility here could be to look at the best practices in different Member States and try to find a common way of working.

The EU should however stimulate the Member States by including these minimum protection standards in their directives. There is the legislative framework that is being debated for the completion of the European Research Area as well as the pension directives which will be revised in the near future and where the Commission could indeed take more positive steps toward the setting of minimum standards.

**3. Family members**

When considering the researcher's mobility and possible obstacles with regard to his/her social security status, one should not overlook the family status of that researcher.

When the family members of an insured researcher are themselves insured and independent there is no problem as such (article 32 of Regulation 883/04 applies), but dependent family members follow the changes in the legal status of the researcher as he/she moves to another Member State even if they themselves remain in the same state.

Dependant family members of an insured researcher will have to register and deregister again and again and wait for the different forms which evidence their right to claim benefits. These forms are necessary in order to have full rights (e.g. health care) as when one does not have these forms one has mainly a right (on the basis of his/her EHIC) to emergency benefits only.
Issuing these forms takes time even if the competent state is known. At the same time one does not want to leave the family members without any coverage.

In this case one could consider the splitting of the legal status of the researcher and that of the dependant family members, whereby the dependant family members would be able to opt to be insured in their original country of residence as long as the active researcher is travelling around. It should however be noted that this would only be feasible in those countries where the link between the beneficiary and the person entitled to the derived rights.

The current European coordination rules do not give this possibility; in the health care chapter article 32 of Regulation 883/04 has to be modified in order to incorporate the situation of the dependant family members of the mobile researcher.

A solution silently agreed upon by many Member States could be formalized when a new-born child needs medical attention in another Member State while the birth certificate is not yet issued by the competent state: in that case the health costs will not have to be covered by the parents, but will be covered on the basis of the mother's EHIC card.

**4. Supplementary pensions**

Also in the field of supplementary pensions one can distinguish different obstacles regarding researchers' mobility, which are not always caused by EU-legislation or national law, but are caused by the regulation of the various pension schemes themselves.

These obstacles are the status of the researcher (sometimes they have a status which does not give them any pension rights (student)); the waiting periods and the vesting periods of occupational pensions which do not correlate to the short period of time that a researcher is covered by the systems; the indexation of pensions (dormant pensions are often not indexed), opting out, financial aspects (in these times of crisis one might prefer to stay in his/her original fund, but because of the increased premiums it is not certain that this is allowed or even wanted by the new employer); fiscal obstacles (tax deductibility of contributions paid in another country, the taxability of capital or

benefits transferred from one scheme to another); the information available (in general many young persons are not thinking about their pension rights and this is also true for researchers) and finally there is the problem of the loss of the overview which becomes apparent at retirement (due to the mobility of the researcher, he/she might have built up smaller units of pension rights and needs to have the necessary overview and information in order to claim these rights).

When talking about possible solutions the 'ideal' solution could lie in the establishment of an Institution for Occupational Retirement Provisions or IORP for researchers. Indeed the European Commission itself launched a feasibility study on the creation of such an EU pension fund for researchers which has already been finalized with positive conclusions and can be found under http://ec.europa.eu/research/era/areas/researchers/researchers_en.htm
This pan-European fund would be an institution set up by European based organizations with the aim of providing employment-related pension benefits in compliance with applicable legislative requirements. Concretely this would mean that a researcher when moving within Europe would be offered the opportunity to enter the pan-European scheme and transfer his accumulated pension rights to this new scheme. He/she will be an active member of this scheme until the end of his/her career as a public researcher.
When setting up this European scheme one has to start from the idea that a mobile researcher should not simply get the right to accrue pension rights, but that he/she can do so on a level which is at least as good as when he/she would not have become internationally mobile. The exercise will be difficult. Many difficult decisions (governance, country of establishment, supervisory structure, public or private character) will have to be taken and will not solve every problem, but it is nevertheless an interesting goal in the long run.

In the short run however we should focus on other options for solutions.

As to the problem of the 'waiting periods' and 'vesting periods' our proposal would be that Member States work on the mutual recognition of these periods. At the same time pension rights should also be portable. This can be done via national law or/and an EU directive. A possibility would be to state that supplementary pension in the framework

of researchers mobility should be treated as if they were first pillar pensions and thus the rules as stipulated in the EU coordination regulation would apply.

A right to choose a "virtual pension-home" could also give the stability that a frequently moving researcher needs. He/she would be given the option to stay with one pension provider during his entire career irrespective of his/her mobility.
In this way the researcher him-/herself is responsible for the payment of the premiums and will have to negotiate with his future employer to pay (part) of the premium to the pension provider.
EU-rules could ensure that all pension providers offer this option to researchers and that they are exempted from mandatory participation in pension schemes in the case they decided to stay with the primary pension scheme. The final report on the pan-European Pension Fund for Researchers also confirms this.
However this solution will not be feasible in all countries, especially when the employer has to pay very high premiums into the pension fund chosen by the researcher. It also does also not solve the problem for the young (early stage) researchers since they do not have a pension fund where they could stay in the first place.

The problem of lack of information should be dealt with so that employees across Europe are better informed about their rights and obligations. Our recommendations in this respect follow.

The implementation of the aforementioned options of solutions to achieve progress could be realized via a recommendation by the European Commission either to the Member States or directly to the providers of supplementary pensions; however a recommendation only expresses a concern of the European Commission and does not have necessarily an actual effect (it has a non-enforceable character).

More is to be said for the expression of a requirement for the Member States to set minimum standards and to provide a general structure for mutual recognition, portability and the virtual pension-home. There might nevertheless be reluctance by some Member States to accept one of these options and it might therefore be already a step in the right direction to require Member States by directive to make at least one of the options possible.

Moreover, one should be aware that the longer term solutions of an IORP will need clarity on the issues on which we hereby already suggested short term solutions.
The upcoming revision of the pension directives should be used to incorporate these minimum standards, so that Member States are indeed urged to abolish some barriers in their national laws.

Next to the provisions made in national law also the supplementary pension funds will have to make the necessary changes in their regulations in order to implement the above mentioned options or at least some of them.

**5. Information**

Throughout our research, information or rather the lack thereof is often been identified as a key issue for the internationally mobile researcher. Also out of the interviews conducted with several internationally mobile researchers 70,59% complain about the lack of information concerning their pension rights and 47,06% were not happy about the information as to their social security situation.

Also the employer and social security administrations could be helped with a better information and transfer of information in order to make sure that they can inform the researcher correctly (provide customized information suited to the researcher's case) and finalize the administration in relation to the employment of a mobile researcher more efficiently.

The statistics mentioned do speak for themselves. There exists clearly a need for correct and pertinent information adapted to the needs of the individual who requires the information.

The group of researchers is indeed not a homogeneous group, you have many different statuses and researchers can move to another country in various stages of their career. It should be clear that the information required by a full time professor is different from the information relevant for researchers looking for a job; part-time researchers or post-doctoral students.

The kind of information required is also different according to the duration of the stay. When somebody will leave for shorter periods of time, his/her main concern will probably be his/her health insurance. When one plans a longer stay other social security risks become more relevant as well.

One should not only focus on the position which the researcher will have after he/she moves but he/she will also be concerned with the indirect restrictions that might affect him/her when he/she decides to move. For example a researcher will not be inclined to move to another country if he/she is not certain about his/her position/rights when coming back to his/her home country.

In general one can conclude that there is indeed a great need for 'client oriented' information. New technologies can play an important rule in the search for this kind of information.
In this line one should read the Council Conclusions of 2 March 2010 on European researchers' mobility and careers inviting the Member States and the Commission to "Enhance the existing information services, in particular by making it possible for interested individual mobile researchers to easily obtain accurate information on their social security rights and obligations when moving, notably through an approach provided via EURAXESS." EURAXESS portals are a necessary tool in relaying correct user-friendly information to researchers.

There is no need in creating a new specific website, because many do exist and many of them are being supported by the European Union. Information on social security provided by the websites which are supported by the European Union should be available in all the official languages. If translation in all languages is not possible, the information should be at least available in the national language(s) and in English. The information on social security should also be more specific than what is available at the moment and more up-to-date as well. This does mean an extra effort is required from the administrations. An example of a good website we would like to mention is the Citizens' Signpost Service.

How elaborate the information on a website might be, it is still necessary for the individual researcher to have a correct idea on what his/her particular social security situation is and will be when he/she moves to another Member State. It is therefore our suggestion that the existing EURAXESS portal would rather be complemented by consultancy points. These consultancy points would be managed by authorized civil servants or employees of administrations and of universities/research institutions who deal with the individual researcher moving from one state to another. They will have access to all the relevant social security information of that person. In that way these consultancy points could be a direct source of information for the researcher and many administrative problems related to the mobility could be dealt with faster and more efficiently.

In the same manner if all Member States provide mobile workers with the e-means to access or to apply for their social security records wherever they are, it would help a lot to speed up the administrative procedure of recognition of their social security rights. It would also avoid the problem of getting information from a state when mobile workers/researchers are residing or performing their activities in another state.

The technology already been developed in the EU (European Health Insurance Card) could be transported to the whole field of social security. EU citizens and third country nationals could be given a kind of smart card containing all the information that could be required by other EU Member States administrations in order to recognize or calculate their social benefits. In such a case, the need for social security administrations to exchange data (and the delays that this might provoke) would probably decrease. This smart card could furthermore be a helpful instrument in the fight against social security fraud.

## 6. Third Country Nationals

It is clear that researchers' mobility should not only mean mobility for EU nationals. Europe must be more attractive for researchers and establish a balanced "brain circulation" within the EU as well as with third countries. Creating the European Research Area should indeed also include mobility of third country national researchers

coming to one EU Member State and moving within the EU, but also researchers of the EU Member States travelling to third countries.

When a third national researcher is coming to a Member State he/she will have a good social security protection for themselves and for the members of their family legally admitted to stay in the same Member State as long as he/she has the status of worker in that Member State. On the other hand the protection is less sure for the researchers not having this status. One also has to note that all the relevant directives (e.g. Directive 2005/71/EC (researchers), Directive 2004/114/EC (students), Directive 2009/50/EC highly qualified workers)) stipulate that they apply without prejudice to the more favourable provisions (in particular as regards social security) of bilateral and multilateral agreements concluded between the EU or the EU and its Member States on the one hand and third countries on the other hand and of the bilateral or multilateral agreements concluded between one or more Member States and one or more third countries.

Mobile researchers from third-countries moving from one Member State to another are in principle protected by the coordination regulations if they are workers. They will under the new coordination regulation be protected, when they don't have the employee status as far as they are socially insured in a Member State. However at the moment the enforcement of the new regulation is deferred for the third-country nationals until the entrance into force of a currently analysed regulation on the extension. The new extension will not concern Denmark, nor will it concern the United Kingdom (upholding in force for this state of the old regulations via the Regulation n° 859/2003). The work in progress on the new forms of mobility could lead to adaptations and modifications of the rules and administrative practices concerning the applicable legislation, in particular to very mobile researchers not meeting the characteristics of a posted worker. The extension of the provision of the new EU coordination Regulation 883/04 and the Implementation Regulation 987/2009 to third country national researchers could be envisaged via the future directive on a European Research Area. One could also wait until the personal scope of Regulation 883/04 and its Implementation Regulation has indeed been extended, an extension which is expected to take place in 2011.

What currently exists as regards to the situation of mobility outside the European Union as far as the coordination of social security legislation with third countries (bilateral conventions and association agreements) is concerned, forms a not very dense and a badly adapted network to facilitate the research workers' mobility by ensuring the continuity of their social protection. The use of bilateral conventions is limited by the emergence of a case law related to the exclusive external competence of the European Union, now explicitly recognised by the Lisbon Treaty. Another way, already opened by the association agreements, should be more largely followed: the way of agreements specific to the social security or broader economic agreements comprising a genuine, broad and modern part on coordination of social security, following the example of the Regulation n°883/2004 internal to the European Union.

**7. Our recommendations in short:**

Our research of the current situation, the problems indicated by the researchers and administrations, the difficulty in relation to the applicable legislation, the variety of researchers' statuses, the unclear situation of the dependant family members and third country nationals has urged us to make the follow recommendations:

- Due to the variety of researcher profiles and groups it is nearly impossible to foresee a solution for all researchers, therefore we recommend that priority is given to the researchers working at accredited universities or in recognized scientific research institutions;

- Researchers are active persons and should be treated as such; they should have a right to free movement especially in the view of a dynamic European Research Area. Social security issues should therefore not be an obstacle and it is our strong believe that the EU and its member states should make the necessary steps in the direction of such a free movement of researchers. These steps will include specific social security coordination measures (e.g. changes to the existing coordination rules, inclusion of third national researchers in the personal application field of the new coordination rules);

- The variety of researchers' statuses leaves especially young (early stage) international mobile researcher without sufficient social protection. We recommend that all researchers are provided with a minimum social security protection;

- The recently implemented social security coordination rules need to get interpretations which are more oriented towards the needs of the internationally mobile researcher;

- Not only statutory social security issues are of importance, but also the supplementary pensions should be looked at. The negative social security consequences of a typical research career should be dealt with also with regard to supplementary pensions;

- The family members of the researcher should be taken in consideration. The dependant family members' social security status should be stabilized e.g. by giving them the option to remain socially insured in their original state of residence (only possible if the Member State foresees in a split between the beneficiary of the rights and the dependant rights).

- Third country national researchers active in a Member State should enjoy equal treatment compared to researchers who are EU citizens. Social security should also here facilitate and not obstruct the return of researchers who have left the EU;

- And last but certainly not least, accurate and 'client oriented' information is of great importance for the internationally mobile researcher in order to know his/her rights and obligations as to his/her social security position. We therefore urge the EU to improve the existing information support systems (EURAXESS and EURES) by setting up a complementary and much more specialized and accurate information system and hence preferably via consultative information points in administrations and universities or research institutions where consultants have access to all the information relevant for the researcher so that they can take the necessary measures to correctly inform him/her and

administrate his/her dossier. New technologies could support the system of information transfer between the authorities of the EU Member States so that the administration of the mobile researchers can be ensured in a swift and efficient way.

# ANNEX 1: FACT FINDING PACKAGE

Mr. Indi Seehra and Mr. Rudi Tranquillini

**PACKAGES FACT FINDING PART TWO**

*Other concrete life situations COLLECTED by empirical reports*

## 1. Foreword

**Data collection**

The first report of this Package collected cases largely from the universities of Cambridge and Padova. To verify the conclusions being drawn the work in "Part-Two" widens the fact finding effort to cases across Europe. In order to identify examples from more countries and address the various topics of the study a number of research activities have been conducted comprising of the following:

- A literature review, including the gathering of relevant and recent research reports;
- A survey to collect real cases among Research Institutions of all European countries (via EURAXESS);
- Face to face and telephone interviews of research funders, thought leaders and/or experts in the field of interest.

The selected information is focused on the everyday practical problems that researchers confront when moving from one country to another to take on new research work. It is anticipated that the combination of shorter case studies and more in-depth case studies provides the necessary data to other members working on other Packages-the data providing conclusions to be drawn fom numerical numbers on types of cases as well as appropriate detail on some others.

Consequently the analysis has been based on the following evidence:

**Update cases**

- Updated data base on Researcher case studies;
- New data base- ADMIN most frequent questions received on the subject of social security and supplementary pensions;
- In-depth cases- from University of Oxford.

**Relevant updated reports and papers**

- **ECAS report** on questions collected managing a *Citizens Signpost Service* as service supplier of the European Commission. This is a feedback report based on

the analysis of interesting enquiries concretely experienced by the users of the Citizens Signpost Service organised by ECAS for the EU, from July through December 2007.

- **LERU paper** -containing the analysis and some recommendations on Improving the social security of internationally mobile researchers (published on March 2010).

**Recent published articles**

- HRK articles published by German Rectors' Conference - Bologna Centre support for the Universities that contain some reflection coming from empirical observation of the university system concerning pension issues;
- Article by Cristina Jiménez which appeared in Science Business on 4 February 2010;

**Interviews with experts/thought leaders**

- The Director of Human Resources of the European Science Foundation;
- The provincial Director of the Italian National Social Security (INPS);
- The provincial Director of the Italian National Insurance for public employees (INPDAP);
- The Manager of Padua Migrants Association (who manage for the University of Padua the *"Host Foreign Guests Service").*

**Data limitation**

The original sample of cases in the first report has been considerably enhanced with new cases. Although the sample size is still arguably small we are confident that some fundamental trends were gathered as they are backed up by the separate exercise of collecting the views of administrators in universities and research funders..

**Final data distribution**

- The cases collected cover 19 different Countries (13 EU and 6 extra EU).
- The host Countries resulted has been 11 (8 EU and 3 extra UE)

- The cases find are manly concentrated on two categories of researchers (Postdoc and Research Associate) (88%);

## 2. Summary

**Appendix 1** Is a more detailed summary of all cases collected and attempts to break down in narrative some of the conclusions that can be drawn. It includes also some in depth cases collected from University of Oxford.

**Appendix 2** Analysis of all cases in a concise format.

**Appendix** 3 ECAS report

**Appendix 4** LERU paper

**Appendix 5** HRK articles published by German Rectors' Conference

**Appendix 6** Article by Cristina Jiménez

**Appendix 7** Interviews with:

HR Director of European Science Foundation

Director of the Italian National Social Security (INPS)

Manager of Province of Padua Migrant Association

Director of the Italian National Insurance for public employees (INPDAP)

## 3. Appendixes

## Appendix 1 –Cases

### Summary



### *A. Researcher's cases*

#### 1. Case 1

I believe my pension payments made throughout my time abroad to have been 'lost' – I was subsequently asked to make 'voluntary contributions' to cover my missing years of eligibility to the state pension in the UK. Upon returning to the UK from Japan, I attempted to transfer my accrued pension into the USS scheme but they were unable to accomplish the transfer and they eventually gave up and simply ceased communication. [Case 1]
Further, the USS is unwilling/unable to provide adequate information on which schemes' benefits can be transferred into or out of a USS pension. I see no reason why this information should not be available in a public form, and have said so to them. It is inconvenient not to know until a transfer attempt is made whether, say, a two-year stint at a particular institution abroad will then be transferable back into the USS on my return. This unquestionably discourages mobility. // There is no clarity on whether it makes economic sense to join a particular pension scheme or to exercise the option not to participate, and this is something that it should be possible to make clear to every single individual. Not a single one of my colleagues feels adequately informed on this issue, and all are operating in ignorance. This is particularly galling given that the 'excellent pension scheme' was put forward as one of the employment benefits used to justify a lower salary! . [Case 1]
Upon returning to the UK from Japan, I attempted to transfer my accrued pension into the USS scheme but they were unable to accomplish the transfer and they eventually gave up and simply ceased communication // There is also no degree of compatibility across country borders, even within the EU, on compulsory (state) pension schemes, as my own situation indicates. [Case 1]
Unaware of any transferable/accumulative social security benefits. [Case 1]

#### 2. Case 2

Before I moved to UK, I asked both the German and the MRC pension scheme if they offer the possibility to transfer the pension contributions. The MRC is quite flexible in this respect and would transfer the money into another scheme if requested. The German pension scheme, however, cannot accept it since there is no agreement between these schemes (as far as I was told). Given the case I stay or go to another EU country

for another couple of years I will have paid more then 10 years of pension but only a few years in each system. [Case 2]
[…] the German pension is calculated on the years of contribution – with expected 45 years. However, every academic in Germany cannot reach the full years of contribution (even with a retiring age of 67) since this the time of studies (around 5 years) is not taken into account. In short, even after more than 40 years of work only a minimum pension could be expected – you might be entitled for different national pensions, but only for a certain time each. The next problem could arise with international payments … [Case 2]
If an additional private health insurance is required the age is important. Changing the systems means therefore increased costs for yourself and the family – and may cause trouble if you would like to switch in again. In our case, my wife came to UK after the birth of our daughter. Her position as civil servant is held for her during this time as unpaid leave for childcare to offer her the possibility return to it. As a civil servant she requires an additional private health insurance, which we decided after careful consideration not to cancel meaning extra costs of around 300 Euro/month. [Case 2]

### 3. Case 3

For two years working in the Netherlands (on a Marie Curie Fellowship) I paid into a compulsory Institute pension scheme. When I left (Oct 1999) I was told that the fund was not transferable out of the Netherlands, but that I would receive a pension related to this on retirement age. I wasn't sure how they were going to track me at that point in time, and have not enquired since on whether the regulations have changed. [Case 3]
For two years working in the Netherlands (on a Marie Curie Fellowship) I paid into a compulsory Institute pension scheme. When I left (Oct 1999) I was told that the fund was not transferable out of the Netherlands, but that I would receive a pension related to this on retirement age. I wasn't sure how they were going to track me at that point in time, and have not enquired since on whether the regulations have changed. [Case 3]

### 4. Case 4

As an employee of the University of Cambridge I was included in the University Superannuation Scheme, as all employees. For what I know it is a good pension scheme, however when I asked information on how to transfer my pension to Spain (I am in the UK only temporarily) I was told it was possible but was unable to obtain any specific information of conditions or how to do it. As I was unsure I would be able to make use of this pension I opted out of the pension scheme, losing the University contribution.
When I started working at the University I investigated whether I could move the University Superannuation Scheme to my country of origin (Portugal) in a few years. Neither here nor in Portugal I was assured that I would be able to do that to the total amounts that I would have in the scheme, so I actually opted out from what everyone tells me is a very good pension scheme. After 6 years working with the University and at 35 years of age I am still not saving for my pension.

### 5. Case 5

When I started working at the University I investigated whether I could move the University Superannuation Scheme to my country of origin (Portugal) in a few years. Neither here nor in Portugal I was assured that I would be able to do that to the total amounts that I would have in the scheme, so I actually opted out from what everyone tells me is a very good pension scheme. After 6 years working with the University and at 35 years of age I am still not saving for my pension. [Case 5]

### 6. Case 6

I was very unpleasantly surprised to observe, after the end of my first post-doctorate contract (a Marie Curie intra-European fellowship, which is advertised as a very good contract for including pension and social security benefits), that the University of Cambridge mentioned to the European Commission that my Marie Curie fellowship would be a non-pensionable contract. I do not know if it could have been negotiated before signing the contract, if I would have paid attention to this initially.

### 7. Case 7

Perhaps it is just lack of proper information, but there are several things, which are not clear to me, e.g.
1. Will the time spent in the USA somehow be calculated, when it comes to looking at my experience, counting years spent at work, for the purpose of the retirement?
2. How this will contribute financially to my pension?
3. How are the regulations between Poland and the UK working in this respect?
4. How is the time and money going to be calculated if I decide to move for example back to Poland, to any other European country (within EU) or to the US with the next several years?

### 8. Case 8

None yet. However, foreseeable issue regarding transfer of the pension (USS scheme) from the UK related to my current position at the University of Cambridge when back to France. [Case 8]
Due to lack of efficient communication between French and British social security offices, we had to wait for 12 months (from January 2009 to January 2010) to actually receive child benefits in the UK. Notably, our French social/family benefits had been stopped since September 2008. [Case 8]

### 9. Case 9

Not sure as I have not had problems yet, only questions. I would have questions about pensions and retirement. I am not sure where to get the information. For example, the

number of years I will have to work is different in France and the UK and may change again in the future. How pensions are calculated in the UK? How the differences will impact on the benefits at the end? Will I be able to cumulate the years worked in both countries? Another example: in France benefits are calculated based on the last 25 years salary. What if I stay in the UK and I have not worked 25 years in France? Etc… These are the type of questions I have, and that other people may ask themselves as well. [Case 9]

I don't have any experience related to pensions as I opted out when I was given the possibility to sign up for a private pension scheme. [Case 9]

When I moved from Spain to the UK in 2002 I never experienced any difficulties relating to social security benefits. Upon my arrival, I was immediately given a NI number and was advised by my supervisor at that time to get inscribed to a GP practice within the area I was living, which I did without encountering any problems. I am currently planning to move back to Spain in the coming weeks. To know what documents related to social security benefits I need to bring forward when back to Spain, I contacted HM Revenue & Customs and was advised to fill in two forms, the E301 and the P85. The first one relates to social security benefits, the second one relates to tax claims/returns while overseas, this form is particularly important for example if the end of a job contract does not coincide with the end of the fiscal year as one could be entitled to tax return. For both the P85 and the E301, I needed the P45 form and my last pay slip. The only difficulties experienced so far have been a delay in getting these, my last pay slip and the P45. The university only issues these at the end of each month. My contract finished on the 16th of January and so I had to wait for them before I could apply for the documentation I needed. I have now sent all these to HM revenue and customs; I have been told it can take up to two weeks for them to get back. [Case 9]

### 10. Case 10

**Career stage:** I am a Senior Research Associate and fellow of the British Heart Foundation. I may either stay in the UK or go back to France, depending on career choice.

**Which countries have you moved to and from?**

I am coming from France, have been in the UK for a little more than 4 years

**Difficulties relating to pensions:**

Not sure as I have not had problems yet, only questions.

I would have questions about pensions and retirement. I am not sure where to get the information.

For example, the number of years I will have to work is different in France and the UK and may change again in the future. How pensions are calculated in the UK? How the differences will impact on the benefits at the end? Will I be able to cumulate the years worked in both countries? Another example: in France benefits are calculated based on the last 25 years salary. What if I stay in the UK and I have not worked 25 years in France? Etc... These are the type of questions I have, and that other people may ask themselves as well.

### 11. Case 11

Yes, I do think this is a major problem for young academics. Given the terrible state of the academic job market, it is impossible to know where I will be after this postdoc is done, and I have therefore not enrolled myself in the pension program Cambridge offered. By the time I will hopefully get a permanent position, I will probably be close to 40, making me very disadvantaged in comparison with people who have worked since they were 22. So the problem is not that difficulties with social security transferability have a negative effect on mobility, but that one has to be mobile without regard of social security and pension planning. The academic world is becoming more global and uncertain at the same time, forcing researchers to move often, making it impossible to plan for pensions. [Case 11]

### 12. Case 12

When I received the pension details from the MRC, I provided the details of my social insurance, but I was notified that a pension from Austria cannot be transferred. For the last 1.5 years, however, I have been funded by the Erwin Schroedinger Fellowship of the Austrian Science Fund, which comes without any pension benefits at all. [Case 12]

### 13. Case 13

I was never assured that I can get the pension money if I go back to India. Hence, I had to opt out of pensions to increase my take home salary to support my family. This obviously increased my income tax! [Case 13]

I am Indian national, but moved to UK from Switzerland after postdoc position there[…] There are no social security benefits to those who are coming outside EU to UK. [Case 13]

### 14. Case 14

I am from Greece and want to move there in the next couple of years. I have worked in the UK for almost 5 years now and have a pension plan here but I doubt this will be transferable if I move to Greece. [Case 14]

I know I will be entitled to the benefits accrued in the 5 years I worked here, but the problem with many pension plans is that they become better the longer you stay with them (e.g. after 10 or more years for the USS). This disadvantages scientists who tend to move around every 2-5 years especially at the start of their careers. So, you can just mention this as a concern. [Case 14]

### 15. Case 15

This is certainly applicable to me. I worked in Brussels as an academic between '83 and '87 (and then again for the academic year '93-'94). I have been working here since '92, first as a college lecturer and since 2000 as a UTO. I have been trying to see what my pension situation looks like - whether I could bring my Belgian contributions over - but to no avail. I don't know who could help. At the moment, I am making additional

voluntary contributions so that I can make it to 40 years because I am unsure about what happens to my Belgian pension.

### 16. Case 16

I am an Eastern European. Despite being a part of the EU, I am not entitled to any unemployment benefits (and any other hardship-related benefits) if I have not worked in the UK continuously for at least 12 months. For Eastern European researchers on short-term research contracts it often means periods of unemployment without any social security. [Case 16]

### 17. Case 17

Heavy administrative tasks to follows and huge quantity of documents to collect for obtaining health insurance covering [Case 17]
I'm currently working in France on a 1 year contract and it's certainly not been easy! I wasn't able to opt out of the pension scheme but I have received no paperwork about it so have no idea whether it is transferable or not. [Case 17]
I wasn't able to opt out of the pension scheme [Case 17]
On top of the pension unknowns, they don't do PAYE here so I'm going to have to do a tax return, and my French is not good enough for that sort of thing. [Case 17]
I've signed up with the obligatory health insurance mutual, and the money's going out of my salary, but it's taken a lot of letters back and forth (and getting one of the PhD students to phone on my behalf) to try and get everything sorted. I'm still not sure it's finished (they wanted to see passport, birth & marriage certificates, so I took them into the office, but then they sent me another letter wanting to see the birth certificate again, so I sent it, but I've had no confirmation that worked). Fortunately I've not needed the doctor yet and am just crossing my fingers that I won't do before the end of my contract. I'm going to have to hire a financial advisor, I think, to untangle everything. [Case 17]

### 18. Case 18

Overall the comments were very positive he had not encountered many problems in the UK (NI number came through quickly and there was less bureaucracy than in Italy. No problems accessing health care, he had not tried to access other benefits (no childcare needs). // Italy and UK have a bilateral agreement and this helped in relation to tax however he had to find out about this through word of mouth from a friend.// A website with information on the types of agreements reciprocal arrangements that exist between countries, any specific rules relating to that country and things that a researcher should be aware of and should register for / do on arrival.// Website specifically developed for researchers to register their details and where they could search for funding and vacancies across Europe / Globe. // Reduce the difficulty in applying for funding (eligibility should be made more transparent) A site where a researcher can register their details and it actively contacts them with opportunities. (i.e. The site only contacts you with opportunities that you are eligible for). //The support service (departmental administration and careers service - specifically the research careers advisor was highly praised) He felt that the Cambridge Professors were far more supportive and responsive

to researchers careers than in Italy where they gave little time to talk to post docs and did not encourage people to move internationally. [Case 18]
The main problem experienced in moving to the UK from Argentina/Italy was that in order to find somewhere to live you need a bank account, and in order to open a bank account you need a rental agreement. I resolved this problem by 'shopping around' for a bank and managed to open an account with Lloyds prior to renting a property. I was concerned that if I was made redundant from the University and moved back to Argentina I would not receive housing benefit as this does not exist, and did not think that I would be entitled to unemployment benefit if I had not paid income tax in the country for a number of years. [Case 18]

### 19. Case 19

**Career Stage:** Clinical Fellow – University of Cambridge

**Which countries have you moved to and from?**

To the UK from Argentina/Italy

**Difficulties relating to benefits:**

The main problem experienced in moving to the UK from Argentina/Italy was that in order to find somewhere to live you need a bank account, and in order to open a bank account you need a rental agreement. I resolved this problem by 'shopping around' for a bank and managed to open an account with Lloyds prior to renting a property. I was concerned that if I was made redundant from the University and moved back to Argentina I would not receive housing benefit as this does not exist, and did not think that I would be entitled to unemployment benefit if I had not paid income tax in the country for a number of years.

### 20. Case 20

In Sweden the government pays 80% of actual salary in maternity pay for one year, the employer pays 10%, so that the employee receives 90% in total which can be split between both parents. Each parent must take a minimum of 1 month's leave. I felt a bit guilty about taking maternity leave as the employer pays the burden of cost (as the University has an occupational scheme). In Sweden the government pays child benefit which "more than covers the nursery fees", whereas in the UK a large chunk of my income goes on childcare. Even with a subsidised nursery place, childcare is approximately 8 times more expensive in the UK. It is also more difficult to find childcare, and we had to wait for over a year to obtain a nursery place.
If your child is unwell, the Swedish government will cover your salary for any day you are away from work which can be anything from 1 day to over a year, whereas in the UK you are likely to have to take unpaid leave.
In Sweden (University of Goteborg), PhD students receive grants with student rights during the first 2 years of their degree and receive proper salary (paying taxes) for the 3rd, 4th and sometimes 5th year of their PhDs. Therefore, PhD students are entitled to all the social benefits (maternity leave, etc.) from the third year of their degree. If a researcher has a child during the first or second year, their lab pays for the

maternity/paternity leave. Most of my lab colleagues in Sweden had children during their degree and both parents took leave.
If I went back to Sweden after having been made redundant in the UK I would not receive unemployment benefits as I would not have paid taxes for 2 years. In order to receive any benefit of this kind I would have to work in Sweden for 8 months. [Case 20]
Another problem experienced in moving to the UK is the short notice often given by funding bodies of whether salary costs will be included, or whether the grant will be successful. I moved to the UK from Sweden without knowing if the grant application had been successful. The application was in fact unsuccessful and I was reliant on my supervisor identifying funding whilst I reapplied. I moved with my husband and children which was problematic logistically, and it was difficult for my partner to find work in the UK. Once I was named on the grant the supervisor moved to another University in the UK taking the grant with them. This meant that I either had to move my family to another city or be made redundant from the University. As I had a family I did not have the flexibility to move easily. I was pregnant at the time these discussions were taking place and in the end decided not to move my family, but as my contract had ended I did not receive the occupational maternity benefits I would have done had my employment been extended. [Case 20]

### 21. Case 21

I moved to the UK from France 1 year ago. I joined the USS pension scheme, but have been told that USS cannot advise me whether I will be able to transfer the pension to another provider when I return to France as they do not know who the provider will be. Much rests on my next job and whether the new pension provider provided by the employer (together with USS) will agree to a transfer. I am concerned that if I pay into USS for 2 years and am not able to transfer my benefits, I will have to wait until I am of UK retirement age in order to receive the pension, and because it is based on limited years' service, the benefits after exchange rates and bank transfer costs, will be minimal. I am concerned that paying into USS at this stage may well be a waste of money. I cannot afford to pay into a private pension scheme in France whilst in the UK. I cannot move back to France until I have secured a job there as I will not be entitled to any social security benefits as I have not worked in the country for a couple of years.

### 22. Case 22

I believe that the biggest barrier is the lack of concrete information regarding pensions. I pay into the USS scheme provided by the University but it is unclear whether I will be able to take this money and transfer it to a pension in the U.S. when I finish working in the UK. USS has said that it might be possible to transfer the pension, but they cannot guarantee it. I am unable to legally contribute to my pension in the U.S as the U.S. won't accept foreign earned income into the U.S. retirement accounts. Thus, "working overseas is potentially very damaging because we might not be able to contribute to a pension fund while we are young". [Case 22]
I am also concerned by the 2008 changes to the UK tax regime for individuals whose permanent home is overseas which sets out arrangements for a £30,000 annual levy for individuals who are non UK domiciles. I am not quite sure how this might affects me, but if I wasn't planning on going back to the U.S. at the end of this year anyway, this tax could well have discouraged me from staying in the UK. [Case 22]

[From USA to UK] I wasn't able to obtain some family benefits because my visa said "no recourse to public funds". I think this refers to "child tax benefit and some others". [Case 22]

### 23. Case 23

[From Mexico to UK] I anticipate that in the near to medium term social security benefits are likely to be an important consideration in which country I decide to work in. Someone working on fixed term contracts (that may or may not be extended) and not being eligible for redundancy benefits, are in an increasingly uncomfortable situation. This means that, as I consider the next step in my career, issues related to social and work benefits are going to have greater weight than they have had in the past. I do not consider that these issues have hampered me while moving from one country to another in the past, because I have never really made use of those benefits, but they will certainly be a critical factor in deciding where I will be moving next. I am concerned that in coming to the UK I gave up the benefits (in salary and pension-related) associated with the length of service that I had accumulated in previous jobs. [Case 23]

### 24. Case 24

[From France to UK] It was unfortunate given the current exchange rates that I am paid in pounds sterling rather than Euros, and would prefer this to be optional. [Case 24]
I did not join the pension scheme as I did not expect to stay for more than 1 or 2 years. [Case 24]
Doubling of Fiscal effects, Difficulties in setting up a bank account, Presence of currency risk
One of the main barriers to the move was that in my first year I was double taxed in France retrospectively for the year 2002, and in the UK with immediate effect for the year 2003. I explained that setting up a bank account was difficult. [Case 24]

### 25. Case 25

I have only just started looking into transferring my USS account from the UK to my Australian super scheme, but I was dismayed to discover that -- if I read the USS brochures correctly -- the roughly £18000 paid by Cambridge and myself (14% / 6%) into the account would only translate to a few thousand pounds that could be transferred to Australia. I *hope* this reading is incorrect, as it suggests that I might not even get out the full value of my own additional payments into the account. In any case, if my reading is correct, some warning should be given to people that -- if they don't necessarily intend to settle in the UK -- they may not get the full value of the contributions they make to USS. [Case 25]
As a non-UK and non-EU citizen, my visa in the UK said "No recourse to public funds." When my contract ended, I went to the Job Centre on a colleague's suggestion to see if I could get Jobseeker's Allowance, but I was told I wasn't eligible, based on my visa. However, a few weeks later I came across a mention on the Home Office website of the fact that I wasn't entitled to income-based Jobseeker's Allowance, but I *was* entitled to contribution-based JA, into which I'd been paying with my NI contributions. The Job Centre staff were unfamiliar with this, but luckily I'd brought a printout of the

relevant document, and they took a photocopy of it. Contribution-based JA is not a huge benefit (~£60 / week), but it's better than no income and it's a benefit that we all pay into -- citizen or not. [Case 25]

### 26. Case 26

In terms of pensions, again I've had no problems yet, although, like probably most of your respondents, I have not reached the pension age when I presume most problems might actually arise. In relation to USS, I was told that there should be no problem transferring the pension abroad if/when I need to. In relation to the state pension, the information from Czech authorities is that I can apply for my UK state pension from another country in the EU in which I live at the time. [Case 26]

I am Czech researcher working in Scotland. Just to quickly say that I haven't had any problems of this kind.// When I returned to the UK from abroad in 2003, I think I wasn't eligible for an unemployment benefit due to residency rules (I did not check at the time). Although I had problems finding appropriate work, I did not consider applying for an unemployment benefit but rather registered as a self-employed interpreter (and I still do interpreting occasionally).// [I am Czech researcher working in Scotland.] Because of my personal situation, I had to apply for the housing benefit two years ago and I've encountered no problem based on my nationality. In that sense, the UK welfare state has worked remarkably well for me - although this is not necessarily related to mobility. [Case 26]

### 27. Case 27

I would have been a lot better off if I had stayed in Germany during my academic career so far. But I love living in different countries per se and I therefore decided that administrative barriers should not stop me. However, I find it a bit strange that researcher are on the one hand asked to broaden their professional horizons by moving to other countries and are on the other hand left alone when it comes to social security and pension questions. […] There is no unemployment insurance or a pension. I would love to voluntarily pay a contribution to these insurances, but it's not that easy. Thanks to a Danish colleague, I got to know unemployment insurance for academics which I joined recently. However, this only insures me against unemployment as long as I work in Scandinavia. For my pension I still haven't found a solution so far. [Case 27]

I hoped that I could voluntarily pay a contribution to the Swiss pension insurance that I had while working in Switzerland. However, even though I have a Swiss scholarship, that's not possible. Only if I had paid contributions to the respective insurance for more than 5 years already and only if I was now working outside of Europe, I could pay a voluntary fee. As far as my experience goes, authorities in Europe don't know how to deal with people whose income consists of stipends for a longer period of their lives. In the end you are left alone with your problems. [Case 27]

I am German and I studied Biology in Tübingen, Germany. After my Diploma (Masters), I moved to Zürich, Switzerland, where I did a PhD in Neurobiology. Now I'm a Postdoc in Sweden. I'm married to a Swiss who accompanied me to Sweden. He worked as a secondary school teacher in Switzerland, but is unemployed now since he couldn't find a job here. Instead he has been doing voluntary work, mainly programming webpages. Right now he works on a new version of the website for Tamam (http://www.tamam.se/), a Swedish non-profit organization. We have a little daughter

who is three and a half months old. My husband spends quite a lot of his time on helping me with the baby since I cannot be on maternity leave. I have had a scholarship during most of my PhD. Only during one year of my PhD, I was officially employed by the University of Zürich. This was the only time when I could deposit money for my retirement. During my first year in Sweden, I had a Swedish stipend which did not include social security benefits, an allowance for a partner or a child or the right for a maternity leave. When my daughter was born in November last year, I therefore asked in Sweden, Germany and Switzerland for child allowance, but none of the countries felt responsible. Fortunately, I got a Swiss scholarship from January onwards which includes child allowance. If my daughter had been born in January or later, I would have also had the right to take a 4 months maternity leave. Even though my new scholarship covers more social security benefits, a few important things are still missing. [Case 27]

### 28. Case 28

I have forwarded your request to the Euraxess Sweden national network as well as to the largest trade union gathering researchers, SULF, and people will send their answers to you directly. One comment I received was that it is really important that this is dealt with and solved. That it is made clear what the researchers have earned in different places. As it is now the researcher needs to contact the different authorities when it is time for retirement. [Case 28]

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### 29. Case 29

I'm from the US, currently doing my post-doc in Sweden at the KI.
In the US during graduate school, there is no money taken out for social security. This is bad for those studying because the money you receive when you retire is weighted. The money going into it when you are younger has a higher return then money that goes in later. In Sweden, I'm on a stipend for 2 years, which I think is standard. There is no money going into the social system either in the US or here in Sweden based on the laws. Also, my wife is over here so not only do we not have my money going into the US social security program but we are losing hers also. [Case 29]
On the flip side, I was looking at post-docs in Switzerland and in Switzerland there is money invested into the social security system and you can add more money to make sure that you are vested. The interesting thing is countries are pushing for knowledge transfer and collaboration which are not reflected in the pension schemes. I made the bet that doing a post-doc here would help me down the line to get a job and demand a higher salary and therefore make up for the money not invested over my PhD and time here.

## 30. Case 30

In Sweden it is quite common that a person has an employment with full social security and pension during at least during a part of their time as a doctoral candidate. However, after that some of these new doctors have to continue their work under a tax free stipend (in Sweden or abroad) that gives basically no social security at all. Some of them will get an employment and that group face no specific problem.// Typically it means that a person after some time on a stipend will no longer be able to get benefits during sickness and parental leave (in the latter case they might get a very low basic level). They will get no pension at all and the tax system in Sweden also means that they will be unable to get reduced tax for example due to costs for travels to the workplace and for the interest they pay for their loans etc. If such a person would leave Sweden the problems will be even more severe due to the fact that they will probably not be considered as a resident in Sweden. For the unemployment insurance the situation is a bit better due to different rules in the two systems in Sweden. [Case 30]

I am working for the Swedish association of University Teachers, SULF, in Sweden and I got your request for case studies from Eva Carnestedt at the Swedish research council VINNOVA. We have for a very long time been concerned about the problems for young researchers regarding social security and pension. In Sweden it is quite common that a person has an employment with full social security and pension during at least during a part of their time as a doctoral candidate. However, after that some of these new doctors have to continue their work under a tax free stipend (in Sweden or abroad) that gives basically no social security at all. Some of them will get an employment and that group face no specific problem.

If you like to I could give you specific cases, but the general problem is described above. Typically it means that a person after some time on a stipend will no longer be able to get benefits during sickness and parental leave (in the latter case they might get a very low basic level). They will get no pension at all and the tax system in Sweden also means that they will be unable to get reduced tax for example due to costs for travels to the workplace and for the interest they pay for their loans etc. If such a person would leave Sweden the problems will be even more severe due to the fact that they will probably not be considered as a resident in Sweden. For the unemployment insurance the situation is a bit better due to different rules in the two systems in Sweden.

If a person comes to Sweden without being employed they will face similar problems as those described above.

We believe that these problems lead to several unwanted effects such as the fact that women hesitate to continue a carrier within research more than men, that many that would become excellent researchers choose other jobs due to these problems etc. Our suggestion to solve all these problems is to no longer use stipends and instead give all young researchers an employment from the day they start as a doctoral candidate. We have specifically suggested that postdoc abroad financed from Sweden should be given as an employment at a Swedish university that then sends the person to the country were they are supposed to work. Since most universities in Sweden belong to the state that would mean that they would continue to be regarded as if they would work in Sweden and thereby they will get all benefits.

I attach our “postdoc-manual” that is an information to our members (that take a stipend, go abroad or comes to Sweden to do a postdoc (or similar)). In this manual most rules and problems are described. Please use it for your work in this group, but I would appreciate if it is not spread outside your group since it is for our members only. You are of course most welcome to contact me if you have any questions. [case 30]

### 31. Case 31

I am an Italian Researcher with a permanent position in Italy. I moved twice from Italy to Spain for a period of six months each one (hence for a total period of 12 months).
Initially (first 6 months period) the compulsory pension contribution paid in Spain was not recognized by Italian Institute INPS since they defined it as not transferable (because of the shortness of the period inferior to a year). Fortunately I spent a further period of other 6 months (starting in the same year) and this solved the situation.
I subscribed a private health insurance in Spain whose benefits were not recognized. Since I passed 6 months in Italy and six months in Spain, other six months in Italy and six months in Spain, I had to get 2 separate annual contracts, one in Italy and one in Spain doubling the costs.

### 32. Case 32

I am an Italian Researcher with a permanent position in Italy. I moved from Italy to USA for a period of 7 years more than 5 years ago. I am not sure that the pension payments made in US pension system is now transferable in Italy, but I am not claim for it yet.

### 33. Case 33

I am an Italian Post doc researcher. I was in Japan from 1998 to 2004 (6 years). As student researcher for one year, as Specialised Course Student for two years and as PhD student for three years. I was always considered as student (although I worked on many research projects in this period) thus no pension scheme was provided (both in Japan and in Italy).
As far as concern health insurance costs, the Japanese system reckon on a contribution for each expense (30% is charged on the individual and 70% is covered by Japanese authorities). In some cases (but I do not remember which, maybe for surgical interventions) the Japanese Student Association returned to the students 20% of the total expense supported by the student hence at the end the total covering was 90%. In addition, at that time, I paid 1.000 yens per month (more or less 10 Euros) for Health National Insurance. However, I was invested of the some rights of the rest of Japanese population.

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## Source of RESEARCHER'S data

**Cases from researchers at University of Cambridge, UK (N=24):**

- Careers Service
- Faculty of PPSIS (Politics, Psychology, Sociology and International Studies)

**Cases from researchers outside the University of Cambridge, UK (N=10):**

- European Commission Euraxess (EU)
- University and College Union (UCU)
- Vitae researchers website (UK)
- Marie Curie Fellowship Association (EU)
- EURODOC (EU)

- University of Padua (IT)
- Euraxess Sweden national network (S)
- The largest trade union gathering researchers, SULF (Sweden)
- Danish National Contact Point (NCP) Melanie Büscher. The Danish NCP is a part of NET4SOCIETY (http://www.net4society.eu/public/) that is an international network of National Contact Points for Socio-economic Sciences and Humanities (SSH) in the 7th European Framework Programme (FP7).
- Some of the Danish universities as well as my NCP network

## *B. Administrations cases*

The following collection is the result of the most Frequently Asked Questions' from researchers in the administration monitored (see appendix of sources)

### 1. Case 1

I am an American researcher planning a one-year research stay in Germany. I will finance my stay with the help of a fellowship. Will my American health insurance, which also covers medical expenses in Germany, suffice or will I need German insurance? **[Case 1 Euraxess Germany]**

### 2. Case 2

A Belgian academic has been on an extended research stay in Germany, funded by a fellowship. During her stay she was covered by private health insurance. Her employment contract in her own country, along with her social security entitlements, were suspended for this period of time. On her return she would like to resume employment and rejoin the social security system in her own country. What does she have to do? **[Case 2 Euraxess Germany]**

### 3. Case 3

I'm going to Lisbon to do a research project. I'm being awarded a fellowship so I'm not liable for taxation and social security payments. What are my options in relation to health insurance cover? Will my German health insurance scheme take me on again afterwards? **[Case 3 Euraxess Gemany]**
I'm going to Lisbon to do a research project. I'm being awarded a fellowship so I'm not liable for taxation and social security payments. What are my options in relation to health insurance cover? Will my German health insurance scheme take me on again afterwards? **[Case 3 Euraxess Germany]**

### 4. Case 4

I am going to France for a year as a guest researcher. For years, I have been insured with a German company health insurance scheme. During the stay in France I shall be insured with the DAAD's private group insurance. Do I have to return to the company health insurance scheme when I come back? Is the scheme obliged to take me on again if my subsequent salary is over the limit for mandatory health insurance? **[Case 4 Euraxess Germany]**

### 5. Case 5

I was a researcher in Germany, working on the basis of a fellowship. Subsequently, I worked in France and now I am employed in Poland. I'm currently in the process of collating the pension rights I have accrued and need to know how much pension I am entitled to in Germany. Does the time spent as a fellow count? **[Case 5 Euraxess Germany]**

## 6. Case 6

I am Canadian and have paid 3 years' contributions to the German pension scheme. Now I am returning to Canada. Can I pay in contributions for an additional 2 years in order to reach the 5-year mark and avoid losing everything? **[Case 6 Euraxess Germany]**

## 7. Case 7

I am British, have worked as a researcher in Germany for 12 years, have paid 144 monthly instalments into the German pension scheme and now wish to retire to Great Britain. Am I eligible for a German pension and how much will I receive? **[Case 7 Euraxess Germany]**

## 8. Case 8

My working visit to Germany as a researcher lasted less than 5 years. Can I apply for reimbursement of German social security contributions, and it is worth it? **[Case 8 Euraxess Germany]**

## 9. Case 9

Initially, I worked at a German university. I am currently employed by an American university and this year I will start working in Great Britain. I paid or will pay pension contributions in each of these countries. How will the contributions paid abroad be recognised in the German pension scheme when I return to Germany in a few years time? **[Case 9 Euraxess Germany]**

## 10. Case 10

I am German and for 1 month I held a seminar at a university in Austria and had to pay social security contributions. However, I live in Germany and will also receive my pension in Germany. Can I get the contribution to the Austrian pension scheme refunded? **[Case 10 Euraxess Germany]**

## 11. Case 11

I am Greek and have accepted a Marie Curie Fellowship for a research visit to Germany. I have now been asked whether I want the Marie Curie funding in the form of a "fellowship" or an employment contract. I have been informed that taxes and social security contributions would amount to more than 50% if I choose the contract option. In Greece we are not used to sums of this kind. Is this really possible? **[Case 11 Euraxess Germany]**

## 12. Case 12

Are academics from non-EU countries who are employed for a restricted period and pay social security contributions eligible for unemployment benefit when their contract comes to an end but their research work, for example, has not been completed? According to the new Immigration Act, foreign university graduates are entitled to remain in Germany for a year to search for employment. **[Case 12 Euraxess Germany]**

## 13. Case 13

In May, a German university intends to employ a researcher of Russian nationality, who is currently resident in Italy, for a period of 3-4 years. However, as she will be sent, or rather, delegated to a research centre in Switzerland for the duration of her contract she will not actually need to come to the German university. She will be resident in Switzerland. This raises some legal issues for us in respect of social security, tax and residence. In which state is she registered for tax and social security purposes? In which country does she acquire pension rights? How and where should she contribute towards her healthcare insurance? Does she actually need a German residence title? **[Case 13 Euraxess Germany]**

## 14. Case 14

We are a Polish research institute and want to employ a German researcher, currently living in Germany, who will bring an E 101 form with him. The E 101 form means we are exempt from paying Polish social security contributions for the German researcher. Do we have to pay social security contributions for him in Germany? **[Case 14 Euraxess Germany]**

## 15. Case 15

I am American but have been living in Germany for 6 years with a settlement permit working as a researcher at a university. In a few months I am going to take up a position at a British research institute but for personal reasons intend to continue living in Germany and also to spend most of my time working there. Where will I pay social security contributions? **[Case 15 Euraxess Germany]**

## 16. Case 16

”Why are you taking this money from me and how can I get it back” This pertains to: income tax; national insurance; superannuation **[Case 16]**

## 17. Case 17

Having to keep a UK bank account open to receive pension payments. **[Case 17]**
Transferring out to other Countries. Tax rules and other issue arise so as not to penalise the members benefits. **[Case 17]**

## 18. Case 18

How do I draw my benefits from the UK when I retire overseas? **[Case 18]**
If I join your pension scheme, can I subsequently transfer those benefits overseas? **[Case 18]**
Is it worthwhile joining the pension scheme when my contract is for a limited period? **[Case 18]**

## 19. Case 19

Most researchers are young aged, they don´t care about issues pertaining to pensions.**[Case 19]**
Labour – law documents in Czech language **[Case 19]**
Problems with assigning of personal identification number **[Case 19]**
No summary of a system of social security **[Case 19]**
See above: Labour – law documents in Czech language **[Case 19]**

## 20. Case 20

Query over what the impact on their pension when moving out of the EU – and the timescales of doing this. **[Case 20]**
If paying UK National Insurance then what benefits would they get at state pension age? **[Case 20]**
Time taken to get confirmation of tax and NI status. **[Case 20]**

## 21. Case 21

In France, there are really no problems with health cover for all the scientists (researchers?) who are salaried in France. Like all salaried (people) he benefits from the social French cover, via French national health and pensions organization , including the spouse and the children from the moment when they have a scientific visa. The problem is more delicate for the foreign scientists, not European and not salaried in France. These have to find protection in a social welfare system ..... and join voluntarily a French social security and subscribe to an private health insurance. (Contract offered to the scientists via the FnAK
On the other hand I had the occasion to have a problem with a young girl, polish doctorant in the middle of research against cancer (IARC) Lyons. She did her research thanks to a grant. At the end of her grant, she wanted to stay in France but could not be insured by French social security because
- she had never paid the contribution in France
- she was European and in that case her country of origin was to be able to insure her.
Problem was that she had never paid the contribution in Poland and that therefore her country refused to cover it. She had to have recourse to a private insurance. Her situation was therefore less favourable than a foreign scientist outside the EU which to me does not seem normal.

## 22. Case 22

### University of Rijeka, Croatia

1. Issues pertaining to pensions

At the Faculty of Tourism and Hospitality Management Opatija, we have encountered the procedure of organizing our employees' outgoing researcher mobilities on several occasions. The employee was always given written consent or written approval which defined:

- the employee's host institution abroad,
- length of stay abroad,
- salary during employee's absence
- the employee's duties upon return.

2. Issues pertaining to other elements of social security (excluding pension-related issues)

The time spent at the institution abroad was included in the employee's length of service and the Faculty fulfilled its commitments with respect to paying the employee's health insurance and pension scheme contributions.

## 23. Case 23

**Osijek University**

**1. Issues pertaining to pensions**
Visiting lecturers from the EU who work at our institution are mostly language instructors who are not really researchers, but teach different language practice courses. Their contracts are made either through DAAD (for visiting lecturers from Germany) or OaD (for Austrians) or based on bilateral agreements, as is the case for our Hungarian lecturers. The contracts do not include any pension coverage on our part. We also have Fulbright visiting professors or senior specialists from the U.S., whose status is regulated entirely through the Fulbright framework.
**2. Issues pertaining to other elements of social security (excluding pension-related issues)**
For German, Austrian and Hungarian visiting lecturers we pay just the basic state health insurance.

## 24. Case 24

(Research department) Most of the questions I receive during the recruitment/payroll interview concern pensions, as the usual question is - 'Is it worth me joining when I am only here for x months/years and I don't know where I'll be after that time period?'

## 25. Case 25

(Research department) I'm not sure that we can reply without asking all non UK postdocs the question. This relates to their personal experiences, rather than departmental problems. A portable pension scheme throughout the EU and the rest of the world would solve a lot of problems, I'm sure. But on the other points I don't have any response off the top of my head.

## 26. Case 26

(Research department) No researcher has ever expressed concern about pensions etc to me, although I can see it could be an issue. I think the researchers themselves would need to be questioned.

## 27. Case 27

(Research department) Issues: pensions being non-transferable across EU countries. No other social security issues.

## 28. Case 28

(Head of research services office) This issue has been on the table at numerous research policy forums in Europe, for many years. The problems are very well known. What has been lacking to date has been (a) the political means and (b) the political will to try to harmonise the various regimes. Plus of course there is the huge issue of the cost of raising the bar for all. Or how one could reduce conditions ('down' to the common level). A good recent article - see http://bulletin.sciencebusiness.net/ebulletins/showissue.php3?page=/548/art/16738/

## 29. Case 29

(Head of pensions office) We don't track [those who opt-out of USS], though I know a lot of researchers do opt out, particularly if they expect to be here for a short time. Those on EC research contracts pose a particular problem because the EC insists on paying the employer contribution irrespective of whether the individual is in the pension scheme or not. Most researchers will be eligible to join USS which is a defined benefit scheme. In theory the cash equivalent of the benefits they accrue can be transferred to a new employer's pension scheme, but this requires the new scheme to be registered by the UK's HMRC - and many overseas schemes are reluctant to do this, so the transfer route is often not available. This means that an international researcher could end up with small benefits left behind in USS, hence the reason for opting out and wanting to do something different with the contribution. It would be appropriate, particularly for mobile researchers, to have a centralised international pension scheme into which they can be admitted wherever they are working.

### Source of ADMIN data

- Euraxess Germany – from website ' Questions and answers on pension scheme' Available: http://www.euraxess.de/portal/pension_scheme_faqs_in.html
- Russell Group universities (excluding • Imperial College London • King's College London
- University College London • University of Liverpool • London School of Economics • University of Newcastle, as name of 'head of research' or 'pro-vice-chancellor of researcher' not available)
- Euraxess Croatia: all Local contact points who are also university administrators
- University of Dundee – UK [AWAITING CONFIRMATION]
- University of Durham – UK
- Euraxess France = Universite de Lyon – France [AWAITING CONFIRMATION]
- Euraxess Belgium (Didier Flagothier: didier.flagothier@belspo.be) [AWAITING CONFIRMATION]
- Euraxess Lithunia [AWAITING CONFIRMATION]
- Euraxess Poland [AWAITING CONFIRMATION]
- Euraxess Ireland [AWAITING CONFIRMATION]
- Euraxess Hungary [AWAITING CONFIRMATION]
- Euraxess Luxembourg [AWAITING CONFIRMATION]
- Euraxess Estonia [AWAITING CONFIRMATION]
- Euraxess Czech Republic (Bodnarova Viktoria [bodnarova@ssc.cas.cz)
- Euraxess Itality = Università di Bologna; Università di Catania; Università di Milano; Università di Pisa; Università di Verona; Università della Calabria [AWAITING CONFIRMATION]
- University of Edinburgh – declined to participate in the time available & due to administrative difficulties
- Euraxess Spain
- Permanent Conference of General Directors and Executives of Italian universities who has not yet react but we espect to obtain some other data from Italian Universities.

## C. In-depth cases

**Case study 1** *(German academic who relocated to UK to take up a readership, with partner who has also taken up a UL post).* Pension issues. **University of Oxford**

Currently, University professors in Germany are hired as 'civil-servants'. In Germany this means that salaries are relatively low, but the position comes with several other benefits: no pension contributions, no unemployment insurance (since one cannot get unemployed), not necessary to have an insurance in case one cannot work anymore for health reasons. There are also significant contributions to a private health insurance scheme. If one works for 40 years in the system, the pension is currently 72% of the last salary. However, leaving the system is almost suicidal, since in principle the civil servant system is just something one doesn't leave. Since one doesn't pay pension contributions there isn't anything anywhere in a pot. The employer pays some contributions backwards into a system for other employees, but it is very little, as it is just some very basic payment and it is based on a relatively low salary. Changing to the UK system one has the double disadvantage that the salary is relatively low, and usually people do not acknowledge the other benefits coming with it. With regard to the pension system, the answer is 'sorry, there is nothing we can do about it'. I am paying now 15 % of my salary to - perhaps - receive a pension that is significantly lower than what I'd have received in Germany. As far as I know it is very difficult - mainly for these reasons - to hire researchers from Germany that already hold a permanent position. My motivation to move was to solve a two body-problem and I probably wouldn't have considered such a move otherwise.

**Case study 2** *(French academic who relocated to UK)* **University of Oxford**

Before coming to Oxford, I had a permanent position in France as a Maître de Conférences (Lecturer). All major universities in France are public, and every Lecturer and Professor is therefore a civil servant. To obtain a full pension, one needs to be a civil servant for 37 ½ years, otherwise a very serious decrease in the amount of pension available happens (in my case, my contributions for 12 years would more or less amount to nothing). I asked the administration of University of Oxford what could be done so that my pension contributions from France and the UK are merged, but I was answered that nothing could be done. This in practice means that my pension contributions from France are lost, and it is as if I had started contributing to my pension only when I came here, two years ago. This is the generic situation for all French academics moving to the UK

**Case Study 3** (Financial effects due to MS's legislation on social security) **University of Oxford**

Anecdotally departments report that researchers arrive in the UK with questions about social security issues (such as registering for medical provision) but these questions are easily answered, and problems resolved, and no particular issues are reported.

I have been working as visiting professor at the U. of Vienna in spring 2008 and 2009 (4 months each). The Austrian authorities request compulsory national & health insurance contributions from all employees in public institutions (including short contracts, such as visiting professorships). The national insurance element should not be required, as I am over 65 and no longer liable to pay N.I. in Britain. The extra payment for health insurance requirement is out of line with EU agreements in any case; I am also privately insured. My personal statements to that effect were not deemed sufficient. The Austrian problem seems to be that their national insurance and health insurance are administered together and not separable, so that dispensation from one element alone cannot be obtained.

Dispensation from insurance contributions can be obtained by request from the British Pension authorities, which must declare that these insurances are covered in GB for the employee. However, the responsible Austrian Ministry of Social Affairs was unable even to provide me with the correct address of the relevant British authorities; it took months of correspondence and telephone discussions to obtain the waiver.

**Case Study 4** (complex personal experience) **University of Würzburg**

I am male, born on February 5, 1976, in Regensburg, Germany. I have studied psychology at the University of Würzburg and received my PhD in psychology at the University of Freiburg, Germany, in May 2007. Further information on my CV is available at http://wilmarigl.de .

In April 2007 I started **to work as a post-doc researcher** at the Karolinska Institutet, Stockholm, Sweden. I received a post-doc stipend of 19 000 SEK/month without social security or tax payments from the Karolinska Institutet from April 1, 2007, till March 31, 2008.

After that I was **unemployed** from April 2007 to July 2007 and did not receive any social benefits from Sweden or from Germany, although I had been working in Germany from May 2002 to February 2007 and paid taxes and social insurance in Germany. From August 2008 to December 2009 I worked as a post-doctoral researcher at the University of Uppsala, Sweden, and received a post-doc stipend from the University of Uppsala and third-party foundations of 20 000 SEK/month without social security or tax payments.

Since January 2010 I am employed as a researcher at the University of Uppsala and I receive 29 000 SEK/ month including social security and taxes (21 000 SEK after taxes). I only was employed, because I refused to accept to live on a stipend without social security for another year and considered to quit my job.

***Personal Disadvantages***

Because of these career decisions I suffered from the following disadvantages:

1) Loss of pension payments for 29 months, and maybe also for additional 11 months if I accept a job in another country since social benefits of less than 1 year are not transferred between countries.

2) Loss of unemployment benefits for 4 months

3) Loss of contributions of my employer to my social security for 29 months. I decided to pay my own private health insurance when I got unemployed starting from April 2008.

4) No right for paternal leave or child allowance during my time I received a stipend.

This an especially severe disadvantage for women (in this case my partner). Women are often considering to have children during their PhD or Post-doc. Post-docs (especially from abroad) usually receive stipends without social insurance and are in a much worse situation than PhD students in Sweden since PhD students are employed including social insurance.

5) Unclear health insurance status for 29 months.

It was not possible to become a member of the public statutory health insurance neither in Sweden nor in Germany. The Swedish system claimed that, as German citizens, we were supposed to be insured in Germany; whereas the German system informed us that, since we were not longer employed or residing in Germany, they had no longer the possibilities to provide insurance for us.

The social security regulations of Germany and Sweden do NOT deal with the status of a person living on a tax-free stipend without social insurance or tax payments. One does not get reliable, valid and consistent information on one's current social security status by the authorities in Germany or Sweden, just assumptions and expectations (mostly oral). This is not a sufficient basis for one's health care in case one suffers from a severe accident or chronic disease in the future. To find out what rights I was actually eligible for, I would have to go actually through the health system in a trial and error manner.

6) Loss of my social benefits in Germany in the future.

Two years after one was employed in Germany, one looses one's social benefits in Germany.
7) Discrimination at banks and other public authorities for 29 months.
Since stipends are often paid not on a monthly basis but every 3 months or once a year, to avoid the impression of employment, banks often conclude that one does not have a regular income which makes it harder to get credit or credit cards at a bank or other services at financial institutions.

***My proposals***

1) All persons producing research (e.g. peer-reviewed scientific articles) for public institutions have to be protected by the state by social security laws. All other forms of employer-employee relationships should be illegal. Doctoral and post-doctoral researchers do most of the research work in Sweden, but are only considered as "students". This is by no means justified since PhD students perform scientific work for the major part of their time and take part in educational programs for a minor part of their time. Post-doctoral researchers usually do not take part in any structured educational programs.
2) A flexible social insurance system has to be created, transferring social claims across states.
Currently minimal periods of employments of one year must exist before such claims are transferred from one country to another. This is not flexible enough since research stays and funding are used in a very dynamic way in research, leading to severe disadvantages for researchers at present and in the future (e.g. after retirement).

**Case Study 5** (Mobility of foreign researchers into the Czech Republic) **University of Prague**

What is necessary to be improved in the Czech Republic to enhance the researcher's mobility?
The Czech Republic does not have any uniform directive or guidelines laying down the obligations and rights of the host institution and foreign researchers. Also any Mobility Guide with the check list of the steps that the host institutions have to go through when recruiting foreign researcher is not available.
The Czech Republic also does not determine any status of the PhD students (early stage researchers) it is not clear if they are considered to be students or employees.
Nevertheless the student's stipend is too low (260 € per month) that is very difficult to live from this small amount .
Mobility of researchers from EU member states and from third countries into the Czech Republic is influenced with several factors. In this case study only the international fellowships/working stays longer than three months and based on the appointment of the researchers under an employment contract are considered. Only under these conditions the social and health security coverage under national legislation can be ensured.
Remuneration of the researcher by stipend does not enable to provide researchers with social and health coverage in the Czech Republic.
Prior to start researcher's fellowships/working stays in the host institution, the researcher stay has to be covered by any grant or other sort of financing and has to be carried out within any project or any sort of scientific research contract.

| **Performance obligations by recruiting a foreign researcher, divided according the researcher's location of origin** | EU member state | Third country |
|---|---|---|
| The HOST AGREEMENT, according to Section 30c of Act No. 341/2005 Coll., on Public Research Institutions, as amended, has to be concluded between the researcher and host institution<br>The host institution undertakes<br>• to employ the researcher<br>• to create for the researcher the working conditions enabling him/her successful performance of his/her tasks and to remunerate him/her in accordance with the employment contract<br>• to assist the Researcher in finding suitable accommodation to stay during his/her fellowships/working stays<br>The Researcher undertakes:<br>• to carry out the work in accordance with instructions of the head of the host institution research team,<br>• to terminate, immediately after termination of the participation in the project or scientific research contract his/her stay in the Czech Republic and to leave for the country of his/her permanent residence at his/her own expense.<br>• The Researcher has fulfilled requirements with respect to the reached education as stipulated in the Public Research Institutions Act and provided host institution with all required documents related thereto.<br>• The Researcher undertakes to arrange for the travel health insurance for the period of his/her stay in the Czech Republic. The insurance shall be valid from the date of his/her entering into the territory of the Czech Republic until the date of commencement of the employment relationship with host institution.<br>• The Researcher acknowledges the fact that Police of the Czech Republic is allowed to cancel his/her long-term residence permit granted for the purposes of scientific research, provided any of the conditions stipulated in Section 46d of Act No. 326/1999 Coll., on Residence of Foreigners in the territory of the Czech Republic, as amended, is fulfilled. | NO | YES |
| The written obligation of the host institution to cover all the stay expenses of the researcher on the territory of the Czech Republic after termination of his/her project or scientific research contract and termination of his/her long-term residence permit granted for the purposes of scientific research | NO | YES |
| On the basis of concluded Hosts agreement Researcher can request the Embassy of the Czech Republic in the country of his/her permanent residence to issue the visa for the purposes of scientific research | NO | YES |
| Entry in to the Czech Republic<br>Duty to report researcher's crossing the border and stay in the CR to alien police in the time period | YES<br>30 days | YES<br>3 days |
| **Appointment of the researcher by the host institution and obligations of the host institution** | | |
| to report the appointment of the foreign research to the Labor office latest at the day of his/her appointment | YES | YES |

| | | |
|---|---|---|
| to conclude employment contract between the researcher and host institution latest at the day of his/her appointment | YES | YES |
| to assist to the researcher to conclude public health insurance agreement between the researcher and any of the Czech health insurance company, latest at the day of his/her appointment<br>the insurance company issues the insured person pass,<br>the range of the insurance is the same as this for Czech employees | YES<br>Blue pass | YES<br>Green pass, valid only 1 year |
| to enroll the researcher at the Czech Social Security Administration for social security insurance, latest at the day of his/her appointment<br>the range of the insurance is the same as this for Czech employees | YES | YES |
| to pay income tax advance payment to the relevant Tax office | YES | YES |
| to pay contribution to the Trade union funds | YES | YES |

Once the foreign researcher concludes employment contract with the host institution the same rights and obligation as to the Czech researchers apply to him/her.

| Gross salary (GS) | | | | | | |
|---|---|---|---|---|---|---|
| Deductions paid by employee(researcher) 11% GS | | | | Deductions paid by host institution 34% | | |
| Social security insurance | | Health insurance | | Social security insurance | | Health insurance |
| 6,5 % GS | | 4,5% GS | | 25 % GS | | 9% GS |
| Soc. Sec. Ins. consist of | | | | Soc. Sec. Ins. consist of | | |
| sick ins. | 0%GS | | | sick ins. | 2,3%GS | |
| retirement ins. | 6,5% GS | | | retirement ins. | 21,5% GS | |
| unemployment ins. | 0%GS | | | unemployment ins. | 1,2%GS | |
| Income tax approx. 20% | | | | | | |

**Example:**

| | | |
|---|---|---|
| The researcher's monthly Gross salary | | 1000 € |
| Deductions paid by host institution | 34% GS | 340 € |
| Deductions paid by employee | 9% GS | 90 € |
| Income tax | 20% GS | 200 € |
| Researcher's Nett salary | | 710 € |
| Host institution personnel cost of the researcher | | 1340€ |

Researcher's Nett salary is about 53 % of the host institution personnel cost that is claimed to the project.

**What need to be improved in the Czech Republic to enhance the researcher's mobility:**

The Czech Republic does not have any uniform directive or guidelines laying down the obligations and rights of the host institution and foreign researchers. Also any Mobility Guide with the check list of the steps that the host institutions have to go through when recruiting foreign researcher is not available.
The Czech Republic also does not determine any status of the PhD students (early stage researchers) it is not clear if they are considered to be students or employees.
Nevertheless the student's stipend is too low (260 € per month) that is very difficult to live from this small amount .

The researcher's mobility issues fall within competency of many Czech authorities that is the reason of complicated administration.
The authorities are as follows:

1. Ministry of Education Youth and Sports
2. Academy of Sciences of the Czech Republic
3. Ministry of Interior
    a. Allien police
4. Ministry of Foreign Affairs
    a. Embassies
5. Ministry of Labor and Social Affairs
    a. The Czech Social Security Administration
6. Trade Unions
7. Ministry of Health
    a. Health insurance company
8. Ministry of Finances
    a. Tax offices

The host intuitions do not have any experience and any guidelines how to recruit foreign researchers. Intuitions do not employ any specialized staff that will be in charge of administrative and legal aspects relevant to the researcher's mobility.
The result is that the institutions do not recruit foreign researchers.
To improve this situation, a debate among relevant authorities has to start up to find the common solution to simplify researcher's mobility.
Next step is to teach the management and administrative staff of the research institutions how to proceed when recruiting foreign researchers. The Lifelong learning programmes (LLP) should be the good instrument for that.

**Appendix 2 – Case synoptic analysis**

| N=34 | Pensions (P) | Other social security benefits (S) |
|---|---|---|
| [1] Unaware or uninformed<br>• pension 'lost'<br>• pension unknown<br>• don't know what amount is or will be<br>• a gap in knowledge<br>• unaware | **14** | **2** |
| [2] Information is simply not available about transferability or whether to join a pension scheme<br>• asked for information but did not receive any<br>• tried to find out but is still unclear | **10** | **1** |
| [3] Failed transfer from one country to another<br>• no compatibility across borders<br>• social security status denies benefits<br>• benefits terminated | **5** | **9** |
| [4] Feeling coerced or powerless<br>• dissatisfaction with final amount<br>• inability to opt out<br>• extra costs incurred | **5** | **3** |
| [5] Interpretation problems | **1** | **0** |

| | | |
|---|---|---|
| • language barrier | | |
| [6] Inefficiency resulting in unacceptable delays | **1** | **4** |
| [7] Researcher takes on responsibility<br>• private pension scheme<br>• bureaucracy entailed deemed disproportionate to the short length of the post involved | **4** | **0** |
| **NB: Sum of row is not 30 (100%) because any individual may mention multiple issues regarding their pension situation.** | **Mentioned by 24 respondents** | **Mentioned by 17 respondents** |

**Notes**

Vitae Researchers blog; UCU (University & College Union); European Commission Euraxess; PPSIS Faculty, Cambridge University; Cambridge University Careers Service; University of Padua, Italy.

Supplementary pension scheme. Jurisdictions: England, Scotland, Wales. An occupational pension scheme (www.practicallaw.com/8-107-6900) established in accordance with a Member State's (www.practicallaw.com/1-107-6833) national legislation and practice and providing supplementary pension rights (www.practicallaw.com/3-242-5953). A supplementary pension scheme includes, for example, a group insurance contract or a pension promise backed by book reserves. Available: http://pensions.practicallaw.com/9-242-4960 (Accessed 10 February 2010).

**Mobility Country distribution**

| | Country of departure | Host Countries | Final Destination | Time (months) |
|---|---|---|---|---|
| **A** | 1 | | | |
| **AUS** | | | 1 | |
| **B** | | 1 | | 60 |
| **CH** | | 1 | | ? |
| **D** | 2 | 2 | | 12 |
| **ES** | 1 | 1 | 1 | |
| **Est-EU** | 1 | | | |
| **F** | 5 | 2 | 2 | 24 |
| **GR** | 1 | | 1 | |
| **IND** | 1 | | | |
| **IT** | 6 | 1 | 6 | ? |
| **J** | 1 | 1 | | 72 |
| **MEX** | 1 | | 1 | |
| **NL** | | 1 | | 24 |
| **P** | 2 | | 1 | |
| **RA** | 2 | | 1 | |
| **S** | 2 | 2 | 2 | 36 |
| **UK** | 4 | 18 | 12 | 505 |
| **USA** | 3 | 4 | 2 | 156 |
| **Unknown** | | | 2 | (8 cases) |
| | | | | |
| **Total** | **28** | **31** | **28** | **733** |

**Acronyms**

| | | | | |
|---|---|---|---|---|
| **A** | **AUSTRIA** | | **IND** | **INDIA** |
| **AUS** | **AUSTRALIA** | | **IT** | **ITALY** |
| **B** | **BELGIUM** | | **J** | **JAPAN** |
| **CH** | **SWISS** | | **MEX** | **MEXICO** |
| **D** | **GERMANY** | | **NL** | **HOLLAND** |
| **ES** | **SPAIN** | | **P** | **PORTUGAL** |
| **Est-EU** | **EAST-EU** | | **RA** | **ARGENTINA** |
| **F** | **FRANCE** | | **S** | **SWEDEN** |
| **GR** | **GREECE** | | **UK** | **UK** |
| | | | **USA** | **USA** |

**Length of mobility period**

| | Time spent abroad (in months) | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Carrier Stage** | **12** | **18** | **24** | **36** | **49** | **54** | **60** | **72** | **84** | **96** | **Unknown** | **Total** |
| **Fellowship** | | | 1 | | | | | | | | 1 | 2 |
| **Postdoc** | 1 | | 2 | 2 | | 1 | 3 | 2 | | 1 | 2 | 14 |
| **Research Associate** | 2 | 1 | 1 | | 1 | | | 1 | 3 | | 4 | 13 |
| **Unknown** | 1 | | | | | | | | | | 1 | 2 |
| **Total** | **4** | **1** | **4** | **2** | **1** | **1** | **3** | **3** | **3** | **1** | **8** | **31** |

**Mobility final destination**

| | Final destination | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Carrier Stage** | **AUS** | **ES** | **F** | **GR** | **IT** | **MEX** | **P** | **RA** | **S** | **UK** | **USA** | **Unknown** | **Total** |
| **Fellowship** | | | | | | | | 1 | | 1 | | | 2 |
| **Postdoc** | 1 | 1 | | 1 | 3 | | | | 2 | 6 | 1 | | 15 |
| **Research Associate** | | | 2 | | 3 | 1 | 1 | | | 5 | 1 | | 13 |
| **Unknown** | | | | | | | | | | | | 2 | 2 |
| **Total** | **1** | **1** | **2** | **1** | **6** | **1** | **1** | **1** | **2** | **12** | **1** | **2** | **32** |

**General overview on mobility issues perceived**

| Pension issues | Perception | Total | % |
|---|---|---|---|
| Lack of Information | 24 | 34 | **70,59%** |
| Financial negative effects | 14 | 34 | **41,18%** |
| Absence/inadequacy of administrative supporting services | 13 | 34 | **38,24%** |
| Lack of portability | 5 | 34 | **14,71%** |
| Administrative barriers | 4 | 34 | **11,76%** |
| Absence of an adequate and regular employment contract | 2 | 34 | **5,88%** |
| Cultural aspects | 1 | 34 | **2,94%** |

| Social Security issues | Perception | Total | % |
|---|---|---|---|
| Lack of Information | 16 | 34 | **47,06%** |
| Financial negative effects | 13 | 34 | **38,24%** |
| Administrative barriers | 5 | 34 | **14,71%** |
| Absence of an adequate and regular labour contract | 2 | 34 | **5,88%** |

**Pension**

**A. Lack of Information (24/34 = 70,59%)**

1. Lack of Information(1) [2];
2. Lack of Information (how the system work, how to manage its own rights) (3);
3. Lack of Information (transfer pension rights) (4);
4. Lack of Information (how manage its own pension rights) (5);
5. Lack of Information (how manage its own pension rights) (6);
6. Lack of Information (how manage its own pension rights) (7);
7. Uninformed(8)
8. Lack of Information (how manage its own pension rights) (9);
9. Lack of Information (where to get information, how the system work, how to manage its own rights) (10);
10. Lack of Information (13);
11. Lack of information (14);
12. Lack of information (15);
13. No comment (16)
14. Lack of information (17);
15. Lack of information (18);
16. No comment (19)
17. No comment (20)
18. Lack of information (portability) (22);
19. Lack of information and uncertainty of rights obtained (21);
20. Lack of information and support service (27)
21. Lack of information and supporting service (24)
22. Lack of information and supporting service (28);
23. Lack of information on proper rights (32)
24. Lack of information on proper rights (33)

**B. Financial negative effects (14/34 = 41,18%)**

1. Diseconomy generated by difference in pension schemes (lenght in taking over pension rights) (2);

[2] () means case reference

2. Potential difficulties in international payments(2).
3. Disadvantages versus permanent position (11).
4. Opting out of pensions to increase home salary (fiscal drag effects) (13)
5. Possible disadvantages connected with short time contribution at pension scheme(14);
6. Uncertainty about how optimise pension strategy plan(15)
7. Significant financial disadvantages connected with pension contribution spread among different providers(21);
8. Presence of fiscal penalties for temporary migrants(22).
9. Incompatibility between different Country pension schemes (no foreign payments are allowed in USA) (22);
10. Giving up benefits associated with the length of services(23)
11. Waste of value for the contribution made (25);
12. Waste of contribution made because of insufficient length of continuative contribution (6 months + 6 months) (26)
13. Risk of waste of contribution paid during doctoral period (27)
14. Lack of social security and pension scheme (29).
15. Lack of social security and pension scheme during doctoral e post doctoral school (30).
16. Financial cost for double health covering (32)

**C. Absence/inadequacy of administrative supporting services (13/34 = 38,34%)**

1. Inadequacy of supporting services (1);
2. Inadequacy of supporting services (to track people, to update single positions) (3);
3. Inadequacy of supporting services (4);
4. Inadequacy of supporting services (5);
5. Inadequacy of supporting services (6);
6. Inadequacy of supporting services (7);
7. Insufficient supporting services (9);
8. Insufficient supporting services (10);
9. Lack of supporting services (15);
10. Lack of supporting services (17);

11. Lack of well suited supporting service (researcher careers advisor, personalised website services) (18);
12. Lack of supporting services (22);
13. Inadequate supporting services (lack of consultancy) (25)

**D. Lack of portability (5/34 = 14,71%)**

1. Lack in portability of rights accrued (scant compatibility of schemes, administrative barriers) (1);
2. Lack in portability of rights accrued (fund transfer not allowed) (3)
3. Absence of a flexible statutory pension scheme(11);
4. Pension transfer not allowed (12);
5. Absence of a statutory pension scheme (29);

**E. Amministrative barriers (4/34 = 11,76%)**

1. Rigidity of administrations working rules(2);
2. Lack of harmonisation (7)
3. Lack of social security and pension planning(11);
4. Contradictory legislation among different countries (32)

**F. Absence of an adequate and regular employment contract (2/34 = 5,88%)**

1. Loss of unemployment benefits (31)
2. Loss of contributions of the employer (31)
3. Absence of paternal leave or child allowance (31)
4. Impossibility to claim for health insurance both in host country and in departure country (31)
5. Possible loss of future social benefits in the original country (31)
6. Discrimination at banks and other public authorities (31)
7. Absence of an adequate and regular employment contract (34)

**G. Cultural aspects (1/34 = 2,94%)**

1. Lack of encouragement to move internationally(18)

**Social Security issues**

**A. Lack of Information (47,06%)**

1. Uninformed (1)
2. No comment (3)
3. No comment (4)
4. No comment (5)
5. No comment (6)
6. No comment (7)
7. No comment (10)
8. No comment (11)
9. No comment (12)
10. No comment (14)
11. No comment (15)
12. No comment (18)
13. Lack of information about unemployment benefit (risk of loss) (19);
14. No comment (24)
15. Misinformed supporting services (25)
16. No comment (27)

**B. Financial negative effects (38,24%)**

1. Burden of costs during maternity leave period (in order to mantain basic rights) (2)
2. No social security benefits (13)
3. Lack of unemployment benefits (16)
4. Waste of social rights attained (housing benefits) (19)
5. Loss of unemployment rights; (20)
6. Substancial financial disadvantages in health/childcare assistance (nursery, sickness, paied maternity leave length)(20)
7. Waste of money due to social security benefit strictly linked with lenght of working continuosly on the MS's territory (2 years). (21)
8. Lack of some social benefits due to different social systems (22)

9. Not eligible for redundancy benefits (23)
10. Doubling costs because of social contribution are always due on annual basis (26)
11. Waste of unemployment rigths (28)
12. Lack of social security and pension scheme (29)
13. Lack of social security scheme during doctoral period and financial disadvantages linked to workplace travelling. (30)
14. Finacial cost linked to private health insurance during the stay (34)

**C. Administrative barriers (14,71%)**

1. Lack of administrative communication between EU Countries (child social benefits) (8)
2. Unsuitable administrative procedure between different institutions (University and Social Security System) (9)
3. Complexity and lenght of the administrative process in order to obtain health care covering; (17)
4. Incoherent settling conditions (rental contract to obtain a bank account, bank account to obtain a rental contract)(19)
5. Lenght in obtaining assistence (1 year for a nursery place) (20)
6. Lack of flexibility in safeguarding family social rights already achieved (transfer of grants/occupational maternity benefits) (20)

**D. Absence of an adequate and regular labour contract (5,88%)**

1. Loss of unemployment benefits (31)
2. Lack of recognition of contribution made in other countries (31)
3. Finacial cost linked to private health insurance during unemployed abroad (31)
4. Loss of right for paternal leave or child allowance (31)
5. Lack of health insurance covering without a good contract (31)
6. Lack of appropriate and clear information and support (31)
7. Absence of an adequate and regular employment contract (34)

**Appendix 3 (full text is added as separate PDF-file)**

# Difficulties Experienced by Citizens When Exercising their Mobility Rights in Single Market

## A Citizens Signpost Service feedback report

**based on the analysis of interesting enquiries from users from July through December 2007**

**Content:**



*This report was prepared by ECAS, that provides the Citizens Signpost Service as an external contractor for the Commission. The report is based on concrete life situations raised by the users of the Citizens Signpost Service. The views expressed in the report do not necessarily express the opinion of the Commission's services and do not bind the Commission.*

**Appendix 4: (Full text is added as separate PDF-file)**

LE RU
LEAGUE OF EUROPEAN RESEARCH UNIVERSITIES

# Improving the social security of internationally mobile researchers: Analysis and recommendations

## A briefing paper by the League of European Research Universities[1]

March 2010

*LERU, being strongly committed to the European Research Area and recognising that the mobility of researchers constitutes a crucial element in the realisation of the ERA, is concerned that the international mobility of researchers is often hindered by obstacles linked to their social protection. LERU therefore considers it a matter of high importance and urgency to call for improvements in the social security arrangements enjoyed by mobile researchers.*

*This paper first outlines the regulatory background of the social security of internationally mobile researchers. In the second section we briefly identify the problems internationally mobile researchers face both when they move within the European Union and when they are attracted from outside the Union to do research in the EU. In the third section we argue that solutions will have to be situated within the triangle of national sovereignty (in social security and in human resource management in research), of the existing EU framework (especially coordination law), and of the wide variety of researcher profiles. In the last section we put forward nine sets of recommendations which we hope will inspire the European decision makers to act in this area.*

1. The main authors of the paper are Danny Pieters and Paul Schoukens, both Professors of Social Security Law at the K.U.Leuven. LERU thanks the experts in its universities who have commented on the initial draft, in particular David Bogle (University College London), Gerard Cielen and Peter Marynen (K.U.Leuven), Vincenzo Ferrari (Università degli Studi di Milano), Christian Jäger (Albert-Ludwigs-Universität Freiburg), Ann Numhauser-Henning (Lunds universitet) and Frans Pennings (Universiteit Utrecht). The work has been supported by Katrien Maes (LERU chief policy officer) and Joost van Asten (LERU policy officer).

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**Appendix 5**



# DARE FOR MORE FREE MOVEMENT IN HIGHER EDUCATION

*Peter A. Zervakis*

A shift from penalising to facilitating mobility in research and academia represents a task of monumental importance for Europe. That will help the entire region toward more competition and innovation – a decisive advantage for science and research

The discussion on higher education reform in Europe is entering a second phase. Until now, the debates have centred around one main demand: more mobility in the European higher education and research areas, facilitating freer movement for students as well as academic instructors and researchers. In the course of this discussion, it has been revealed clearly that international academic exchange still encounters institutional hurdles in many areas – and this is precisely where the second phase is picking up. Now these national barriers need to be addressed so that the higher education and research areas can be developed further and more dynamically.

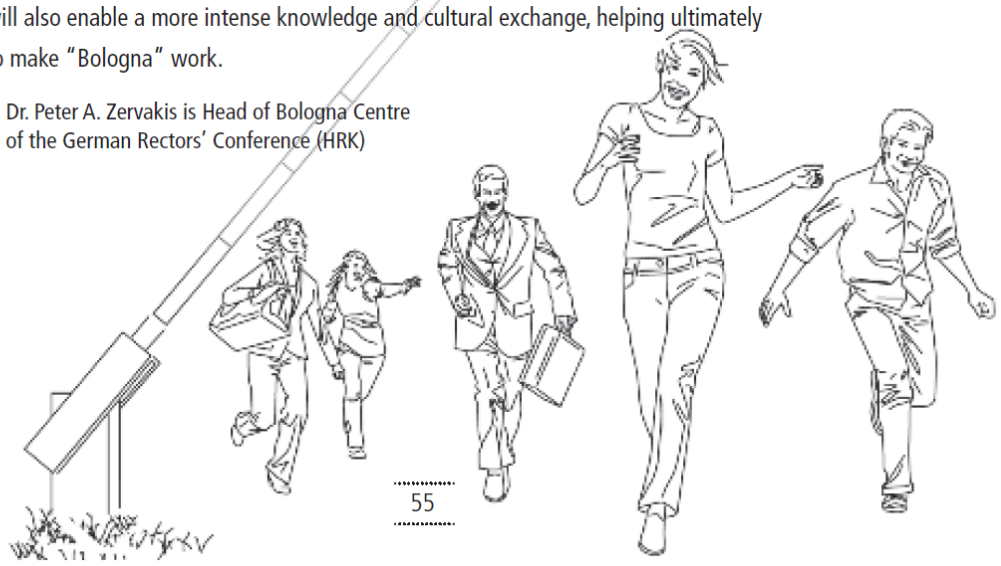
The significance is not only obvious, but goes well beyond the area of higher education: Europe would gain as a whole from improved employment conditions in the areas of research and academics, which bring forth creators of innovation and change. In overcoming long-established national restrictions, while preserving the constructive elements of national social security traditions, Europe could benefit from the added value of globalisation – through a stronger competitive dynamic of its higher education institutions. That is an important step on the way to gaining and retaining a highly qualified labour force. Moreover, only in an open, permeable higher education area can the much-needed exchange of experience and ideas

among scholars and scientists thrive – which ties in with the founding idea of the Bologna Process itself.

In the "social dimension" of the Bologna Process, promoting a better, more efficient implementation and raising awareness on multiple levels represents some of the most important measures ahead. Indeed, obstacles to mobility have become most salient, for example among the so-called "free movers" or academics and researchers who are mobile of their own accord, as opposed to being sent by an employer. And, particularly the Bologna countries outside the EU are strongly affected by an East-West divide. Such systematic incompatibilities can be resolved best for example by introducing transferable or portable rights to retirement and pension benefits across the European national social security systems. In doing so, doctoral students and young researchers without unlimited employment contracts also – or especially – should be considered.

Experience and "good-practice" have demonstrated that quick, reliable and transparent information on social security matters are becoming increasingly important for mobile academics and researchers. Here, European governments, pension providers and the higher education institutions themselves must therefore work closely together, which also presents an opportunity for forging new partnerships. These measures will cost a great deal of effort at all levels, but they are not ends in themselves. Facilitating more free movement in higher education will promote the competitiveness and innovative capacity of European academia and research, but it will also enable a more intense knowledge and cultural exchange, helping ultimately to make "Bologna" work.

■ Dr. Peter A. Zervakis is Head of Bologna Centre of the German Rectors' Conference (HRK)



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**Appendix 6:**

**Obstacles to researchers' mobility in the EU – 4 February 2010**

Cristina Jiménez

**Although the free mobility of researchers within the EU was one of the priorities of the European Research Area (ERA) at its creation in 2000, many obstacles to mobility remain. Some of them are ingrained in the lack of flexibility national systems show towards foreign workers. In Germany, Italy and Spain, what can only be described as opaque recruitment practices for senior positions are common. But researchers also complain about the everyday practical problems that they suffer when moving from one country to another for work.**

German-born Eberhard Falck has lived in six different European countries doing research and pursuing his academic career. On his latest move in June 2009, Falck took up position as a full professor at Université de Versailles Saint-Quentin-en-Yvelines in France.

Based on his long experience, Falck does not hesitate when saying, "The number one problem in mobility for researchers around Europe – and worldwide - is the lack of suitable pension and social security schemes." At present there is no pension transfer system in place. "This is a problem that hasn't been addressed by the European Commision yet," Falck said.

## No pension plans

In 2007, after long-running disagreements on its content, the Commission dropped a revised draft Directive on supplementary pension rights and transfer of retirement schemes across borders. But the need for the Directive remains as pressing as ever. The scientific community urgently needs a pan-EU pension scheme targeted at its very particular career profile – where travelling to other countries is almost compulsory to improve skills.

“Many scientists don't start contributing to pension plans until they settle into a permanent position, which often is not until they reach the age of 35 or 40. Others, who may have contributed to national pension plans while they were internationally mobile, have lost their benefits when they move from country to country,” explains Maria Leptin, director of the European Molecular Biology Organization (EMBO) in Heidelberg, Germany.

To overcome these problems, which may prevent talented scientists from changing lab, EMBO has just set up a pension scheme for postdoctoral researchers holding an EMBO Long-Term Fellowship. The programme started in 1 January and is already proving successful. Of the 146 new EMBO Fellows selected in Autumn 2009, almost half have already signed up for the pension plan. After this early success, Leptin is convinced that the availability of portable pension plans in Europe would encourage researcher mobility.

There are yet further bureaucratic roadblocks that need to be removed before mobility around Europe can be improved. For example, at the time of writing, and after six months living in Paris, Falck still does not have a social security number.

It took Keith Culver, a British/Canadian professor of innovation at UniverSud in Paris, nine months to get his social security number, because university administration staff did not really know how to help new foreign academics on very basic things. And as Culver notes, “It can be difficult to get national health insurance without social security number.”

Culver also points to the difficulties of relocating families. “When partners need to move, this adds to all the other problems,” he says. It wasn’t easy for Culver’s wife to find a job. “Everything works based on informal networks”, he says, “But if a country wants to attract highly qualified senior scientists from another countries, it needs to help their spouses search for a suitable job.” In contrast, Culver says, many US universities help the spouses of newly hired researchers to find jobs.

## Rigid systems

The UK, where almost 20 per cent of academics come from abroad, has a somewhat more flexible research environment than other EU countries. Furthermore, the government recognises the value of attracting scientists from overseas, and in December 2009 set out a strategy to encourage more people to come and carry out research in the country.

Burkhard Schafer of Edinburgh University's School of Law praises the flexibility of the system. Schafer first trained in philosophy in Germany, and then changed to law and computing in the UK. “In Germany it’s very difficult to change academic interests if you don’t have a formal training in the subject,” he says.

Another example of the flexibility of the British system is that Buckhard does not hold a PhD, but this has not been an obstacle for him in developing his academic career as a lecturer and a researcher. His advancement has been based on merit, such as having a good academic publications record. But says, Buckhard, in spite of his good career in the UK, it would be difficult for him to go back to Germany and get a similar post at a university there.

One of the reasons for this is that senior positions at German universities are often offered to PhD holders after completion of a ‘higher doctorate’, which is an exam on a particular subject. This cumbersome process disadvantages many foreign applicants. A similar system exists in France.

The Bologna Process was intended to put an end to such hurdles at universities, through the creation of the European Higher Education Zone. However some scientists are sceptics of the actual implementation of the process. “The Bologna process can deal with the homogenisation of academic degrees, but can it deal with cultural differences?” asks Buckhard.

Some of Europe’s leading research universities acknowledge there remain many barriers to researcher mobility. In an investigation of the problem published today the League of European Research Universities points to a maze of different career paths in different

countries in Europe, and says more should be done to improve the attractiveness of research careers.

Low salaries for researchers are also a problem. Elisa Lanciotti, an Italian physicist with a Physics degree from Bologna University in Italy, did her PhD in particle physics in Spain. After that, she spent three years in Geneva as a fellow at the European Organisation for Nuclear Research (CERN). Now, she works at the Autonomous University of Barcelona, but she cannot contemplate the possibility of going back home to work in Italy, mostly because of the low salary offered to researchers in Italy, compared to other European countries.

### Home-grown preferred

Indeed, Italian researchers abroad often complain that academic tenure is hard enough to secure for researchers who never left Italy and have sympathetic 'sponsors' at the department. So, those who do not stay in the country find that returning years later to a good position back in Italy is almost impossible. For the same reason, non-Italian researchers find it almost impossible to build an academic career in Italy.

The scenario is similar in France and Spain, where university academic posts are mostly taken up by national citizens, and anybody who moves away puts themselves at a disadvantage in terms of lost seniority, pension rights and social networks. It also means that French or Spanish academics who work abroad find it very difficult to move back again.

In addition, in Germany, France and Spain, lecturers are often civil servants – in other words, the jobs are only open to nationals, and permanent positions are only very rarely given to foreigners. "A lot of countries do not recognise foreign lecturers as being of equal status to those who are home-grown," Buckhard comments.

And so, ten years into the Bolgona Process and a decade since the ERA was conceived, the goal of a pan-European job market for researchers is still far from a reality. National governments and the EC need to dedicate still further effort, to create better opportunities for mobility, remove obstacles and harmonise career structures.

Source: ScienceBusiness an independent news service for emerging technologies
http://bulletin.sciencebusiness.net/ebulletins/showissue.php3?page=/548/art/16738/

## Appendix 7 – Interviews

### Summary



## 1^ Interview

**Catherine Lux**

**HR Director of European Science Foundation**

**Foreword**

The European Science Foundation (ESF) is an association of 79 member organisations devoted to scientific research in 30 European countries. Established in 1974 has coordinated a wide range of pan-European scientific initiatives.

ESF's core purpose is to promote high quality science at a European level.

The ESF is committed to facilitating cooperation and collaboration in European science on behalf of its principal stakeholders (Member Organisations and Europe's scientific community).

For this reason the recruiting policy of this organisation is particularly open to multicultural and multinational approach and also its internal procedures concerning social security and pension issues are design to face European and possibly worldwide competition.

The interview has been made in April 2010.

**Rudi**: "What is the foundation's experience in recruiting researchers?"

**Catherin**: "We must give Researchers a contract so we can make sure that they are fully covered and they are not losing out in terms of pension, social, medical and disability rights. These have many implications for mobility".

"It was always really tough because the rules of Europe are not helping a lot so of course we (employers) often have to add additional benefits in order to overcome the weaknesses of the European laws".

**Rudi**: "Okay – so let's start on the obstructions; What are your institutional experiences of the most crucial obstructions arising from pensions and so forth?"

**Catherin**: "When we are thinking about mobility, expatriation or repatriation, these are different cases. You are in the frame of what we call a 'secondment', or in direct employment where there is no link with your employer. A secondment means you have a link with your employer, you continue to be employed by your employer, and you are sent to another organisation for a certain period of time with the possibility of coming back to your home location after 3-5 years, whatever. So that's the first possibility".

"The second possibility is that you are no longer employed or you have to resign to pursue your career in Europe within another institution. You will resign - you will not have the status of a Civil Servant, say and your contract simply ends. You start your new job with your new employer in a different country, and you have no link with your previous employer. This needs to be differentiated from secondment as they are both legally and socially different".

"In France we have no other choice but to offer them an employment contract under French Law. That means that you are obliged to contribute to the French social security system. You are also obliged to contribute to the French pension system, which is the problem. In France

the social security system is very good. It is the pension that is the problem. You will only be paying for 3-5 years maximum and when you go back to your home country or another country, what that represents from a French pension is a very small payment".

"There are very clear rules in Europe on the consolidation of pension schemes of other countries within Europe. There is no guarantee that the accumulation of these small pension entitlements from your career across Europe will amount to what you would have received in your home country".

**Rudi:** "Are there really rules (legislation)?"

**Cathrin**: "No, these are rules. The rules are very complex and they give no guarantee to the people. Let's take an example. You spent 5 years in France and you are coming from Italy. You had a career of 10 years in Italy, you spent 5 years in France, and then you have a fantastic opportunity in the UK where you will be spending let's say 10 years, and then you go back to Italy for the rest of your career. So that's 25 years of your 40 year career in Italy".

"Italy, France and the UK are obliged to recognise the number of years that you spent in the other European countries. Anything up to 40 years will be recognised. In order for you to receive the full pension entitlement in all the countries you need to work for at least a certain number of years otherwise you will only be getting a small percentage of your pension".

"So what will happen is that Italy will pay 25 years, France 5 years and the UK 10years. But this is only the basic pension scheme according to the country. You do not know whether you be receiving an acceptable pension amount. You may lose, or you may gain from this construction because France, Italy and UK will apply their own rules and you will have the problem with the exchange rate of the pound. So you have no idea at the time when you retire whether the pound will be higher or lower than the Euro. In the UK the base pension is very small compared

to their private pension fund. In France we have a mandatory state pension scheme and it depends upon how many people contribute and how much they contribute to see if they can receive a pension. So you have many different types of schemes which is a real problem for you to work out how much you will get".

"I think some will stay at home and not go away!".

**Rudi**: "Do you think that the problems inside Europe are also the problems outside Europe?".

**Cathrin**: "In the UK there is the state pension scheme. In America there is minimum of coverage as companies are meant to provide you with your pension. There is a problem moving from a country outside Europe".

**Rudi**: "What about supplementary pension schemes?".

**Cathrin**: "Good question. The supplementary pension scheme is also something that the EU will need to deal with. If the construction of the culture is as if you are in the UK employees can contribute and the employers can contribute. You stop contributing at the time you are leaving. You have the option to take the money but this is generally subject to tax".

"You can leave the money in the fund which remains invested but there are not normally opportunities to continue to contribute because you are no longer part of the organization or residing in the country. This is money that you will be getting at some stage in your life, which will correspond to the number of years of contribution during your time in that country. So again you have a number of different sums coming from here and there".

**Rudi**: "But thinking about the possibility of the European Union to impact inside the member countries, because as you know the union is full of nations with priorities and they have the possibility to make autonomous legislations and therefore use different systems or apply different rules. So does the European Union have the possibility to create a scheme for

the portability of pensions or to cover social security necessities? In any member state there is the possibility to differentiate between the systems and the impact that the different member states want to afford. Italy is such a member state. True or not? So what suggestions do you have to improve the system - make it practical!".

**Cathrin**: "Ok- We all know that to create a central pension mobility scheme would be a fantastic thing. I think a way we could find a very practical solution would be to have the possibility to apply what I call the *'secondment option'* to all -whether or not you are linked to an employer in your home country".

"Secondment means you would have the possibility to continue to contribute to your home country social security and pension while you are covered in the 'host country'. This is working extremely well and this is the scheme I have put into place in this configuration of my headquarters which we were offering to many different people coming from **18 different countries** across Europe".

"This is possible for Social Security and it is also possible for the pension scheme and the supplementary pension scheme. That would be extremely good as by doing so the person would have the guarantee that they are preserving that same level of benefit that they had while they were working in home country. The only problem that we have with this situation is that, for the agreement to exist, the supplementary pension scheme agreed that they are limited in time to contributions for 5-6 years".

"Do you know of a form called E101? That's for construction actually. You are from Italy and working in France, your University says they will keep you as an employee on their payroll, and then you go to Strasbourg before you come to France. You continue to be paid by and you continue to make your social security and pension contributions in Italy. When you arrive in France with the E101 you qualify under the French system also".

**Rudi**: "I understand what you mean but what are the different types of contract you use for researchers? I mean for example the main researchers are Civil Servants, Professors and so on. Many researchers though (in Italy for example 30% of researchers) are recruited by an autonomous form of contract that is very similar to professionals, Okay? Furthermore we have the researcher/worker we have the researcher studying for their PhD so what do we do on such a situation?"

**Cathrin**: "What I wanted to say is that I want this secondment system to be applied to them even though they would not have a direct relationship with an employer. As a researcher they would have an opportunity to go abroad for research activities. The researchers ask their social security to be kept under the Italian system. The new employee would have to go through this system to ask for a E101 etc and he will be paid in his host country. You are not obliged to continue to pay the salary from the home country institution. This is what needs to be put in place. There is an opportunity for every researcher to say 'I want to be kept in my home country scheme in terms of social security and pension contribution because employees will probably trust their home country on that. I prefer to have a certain guarantee and know I will be covered for social security and pension.

**Rudi**: Will this be on a voluntary basis or not?

**Cathrin**: I don't know!, I don't know! Why not? Some people will be more adventurous and all would be more understanding and would say 'I prefer to get my pension from the American side because of, fgor me, it is better than the basic Italian social security system. So it could be optional, but there should be an organisation in every country having the authority to deal with international mobility.

**Rudi**: And in your experience of European organisations specifically, what problems are more daily management. What systems did you develop?

**Cathrin**: When I first came here I set up this kind of office recruiting 26 nationalities, people from all different countries. The offer for

employment is a detailed process. We explain everything in detail as we are trying to optimise where we can their personal situation and of course, our legal obligations. We explain the tax position to them as well as social security and pensions. Tax rules are very clear as well. There are tax agreements between different countries, but all the time you have to say 'are you a resident of France, or are you a resident of your home country. Sometimes it is obvious you live in France with your have a French employer – then it is obvious that you become a French tax resident but the implication on taxation especially on how much you have to pay compared to Italy is part of this discussion negotiation. I need to give them an idea of how much they will be getting net after tax because in France we don't withhold the taxation from pay. You pay your tax directly to the tax office. I need to give them an idea of how much they are earning in their home country, the tax terms and how to live comparatively in France. The gross pay s attractive but suddenly the net pay becomes less so. They are earning more or less than in their home countries and so they need to know the complexities of our offers. Sometimes one is entering into the private lives of this person because to give them an idea of the offer we are asking whether their wife works, we are obliged to be able to give them an attractive offer. We don't want here with a big surprise on their face and say 'you didn't explain to me x, y, z. We wouldn't want all of those problems

**Rudi**: Do you think that good information will be able to assure more mobility inside Europe? (not having the information stops people moving around Europe).

**Cathrin**: People might be frightened by complexity of taxation, social security, pensions etc. I am obliged to be technically extremely good and to give confidence to our new employees that we can be trusted and we will deal with all of that because this concerns their life, their pension etc. Of course this stops people moving around Europe.

**Rudi**: We found wide spread ignorance concerning technical aspects of social security and supplementary pensions. Do you think the lack of good

information is the real barrier and limitation to the mobility within Europe or not?

**Cathrin**: Yes, it is absolutely. A comment on the fact that it is complex, or on the fact that people are not informed?

The fact that people who are informed or not informed concerning such complexities of social security and pensions consider such a problem to be a critical point in order to take the decision to move to a place.

**Rudi**: If they are not informed, they may not know of the complexities the basis of what information. What effect would this have – positive or negative in your opinion?

**Catherin**: It would be almost negative to say that a system is over simplified because the complexity can stop someone moving. If we can't change systems we should find a way to have a very good communication and a better communication than today.

**Rudi**: Have you experienced a concrete case of people who have refused a position for social security reasons?

**Catherin**: Yes not completely for social security reasons, but partially. Recently, I offered a potential recruit from Holland a job as a Civil Servant. I suggested a package of working with us. He said he could not afford to lose his status, his pension – the risk was too high. So I'm finding this more and more. What I am also facing and for which I have a very good example is the fact that there are so many funders/employers across Europe who may not know of the secondment options.

In Italy we had a similar issue. We never got a clear statement from the authorities - I had no proof that he was continuing to contribute social security and pension to them. Little obligation if I couldn't get the form E101, as a person is not allowed not to pay the social security and pension in France. Finally after 1 year they said you have to reimburse the social security of Italy. Without Form E101 I nothing can be done.

No training in other places, it is difficult. We now have to retrieve the reimbursement from social security office in France. Can you imagine how difficult this is?

**Rudi**: How do you solve these problems in a simple way!

**Catherin**: A secondment system should be applied to everybody - taken up optionally, but offered to everybody. Each country should have a department in charge of mobility at the level of social security, pension etc. This department should be in charge of communication and aware of complications and we should make sure that people are trained in all organisations public and private Esp public. This would be very quick and before we have a fantastic European social security system. Let's have a secondment system even though he is not attached that everyone is attached to an employer.

**Rudi**: Thank you for answering the questions.

**Catherin**: Goodbye, goodbye.

**2^ Interview**

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**Marinella Cavallari**

**Director of the provincial headquarters of the National Institute for Social Security (INPS) in Padua.**

**Foreword**

INPS is the largest Italian Social Security Institution. Almost all private sector employees and some public sector, as most self-employed are insured with INPS.

The main business of this Institution is in liquidation and payment of:

a) social security pensions
b) pensions that have a welfare nature.

The first are based on direct relationships with insurance and are covered with normal direct contribution: retirement pension, retirement (lump sum), survivor pension, disability allowance, disability pension, pension granted accordant International Conventions for work performed abroad.

The pension with welfare nature, instead, are: integration of pensions to the minimum, social benefit, disability civilians.

INPS is not just for pensions but also provides payments for other benefits to support individual incomes such as: unemployment, sickness, maternity, labour redundancy (*"cassa integrazione"*), indemnities for those who have modest incomes and large families (family allowance and allowance to support mothers and families granted by the municipalities).

INPS also manages the database on the calculation of the equivalent economic situation (ISEE) used in Italy to allow some reductions of public services.

The Institute is also responsible for: medical assessment for incapacity and disability, medical appointments for spa treatments, release patterns of tax certificate.

The interview has been made in April 2010 in Padua.

**Rudi**: "What is in your opinion the first problem you foreseen in managing researchers' pension and in facilitating researcher mobility?"

**Marinella**: "The first thing I will face would be standardise and homogenize as many international conventions as possible. All international contribution are managed through specific bilateral conventions. Probably it will be necessary to better understand how to improve common rules primarily at European level and secondly all over the world. Another very big issue for international mobile researchers was immigration quota established yearly by the Government. Recently, Italy, has overcame this limitation for researcher and now, international mobility out of Schengen Agreement, is certainly easier for researchers".

**Rudi**: "Yes, we know. Anyhow we are looking for concrete barriers towards internal and external mobility in Europe, trying to identify possible practical remedies. So, what are your institutional experiences of the most crucial obstructions arising from pensions and/or other social security benefits?"

**Marinella**: "First of all, INPS is concerned more with the private filed that not with public researchers. We are directly involved with university only via self employed workers (Co.Co.Co.). Unfortunately, at the moment, we have not yet experienced any retirement concerning this type of workers because the use of this contact into the public sector started recently (no more than 15-20 years ago). I mean that is really hard identify an Italian or a foreign researcher engaged with this type of contract with enough contribution to retire (at least for us). As far as concern private researchers, there is no distinction between them and a normal worker. For us they are simply industry workers as any other employee. So if you want to face the specific problem of researchers, first of all you need to overtake an information deficiency labelling them inside the system. Secondly in many cases the social security systems around the world are so different that you really have not the possibility to compare each one to each other or to easily harmonise them without reconsider many other aspects. Consider for example the supplementary pension issue. At the moment, in Italy, it is available only on voluntary basis mainly inside the private sector. It has been launched a few years ago

(01 January 2007 exactly) with the possibility to use the retirement indemnities (*"TFR"*) but it is not still working at all. Not only for a scarce adherence of workers but also because financially speaking pension funds in Italy are loosing money since their introduction on the Italian scene. Furthermore, the possibility to create Single employer pension funds (for a single university for example) or to easily transfer the cumulate rights of an individual to a foreign private found outside Italy (as UK or Holland can do) is, at the moment, simply science fiction for Italy. It is clear that also the evolution of the financial market could be a barrier. In Italy, at the moment, is theoretically possible to create specific pension funds for specific category (but not for single institutions), but the demand simply does not exist"

**Rudi:** "I see. And flying at lower altitude, are there some recurrent problems or typical issues in your daily work on this subject?

**Marinella**: "While you was talking I was thinking exactly the same thing, i.e. that such a kind of problems are issues that could be more properly tackled from Central Administration and probably they need to be face up to a specific expert group. We fight with problems from the bottom. In mainly cases, we simply answer to individual needs and at international level we simply apply the appropriate international conventions. A practical problem, for example, is the request of releasing international certifications in different languages. We are not organised to do this, we have not a multilanguage form to use for this aim. Hence, we are monthly oblige to spend a relevant amount of money in translations, to translate forms to send abroad and to translate certification release from our foreign colleagues. We

**Rudi:** Have you a sufficient knowledge of your colleagues abroad and their homologues systems (in Europe or elsewhere)?

**Marinella** We often have problems of knowledge and comprehension with our homologues colleagues abroad. In some cases we have also difficulties to understand who is the correct speaker to refer. For example a German

Air Force pilot has retired and returned to Italy, asked for the aggregation of its contributions. We went mad before realizing who was the pension institution to talk to, because of Germany is organized differently. There is certainly a lack of knowledge of the other systems around Europe and even more outside EU. It could be useful to build up a big synoptic pictures to describe all available social security systems and they services.

From our side, when workers or employers go to abroad (only for private organisation of course, as we are not concern with Public Institutions) we compile and deliver apposite formularies they bring with, in order to have specific protection. All this, obviously, only in the limits established by the host country. For example the form used for health assistance is working quite well from an administrative point of view. Of course, the level of health assistance and the financial weight is not always the same for each worker who must support from himself the eventual difference found.

**Rudi:** "Are there other recurrent problems or typical issues in your daily work on this kind of subject? For example we fund that to give health insurance to a Japanese, a Chinese or an Arabian research worker involve to acquire the original income tax declaration. This produce many difficulties linked to linguistic barriers (Chinese, Japanese and Arabic), bureaucratic barriers (tax income is calculated in different manner) and financial distortions (the level of income in China is quite distant from the average income in Japan). So what to do to face such a kind of problem?

**Marinella** For this kind of problems, we can try to give a practical contribution, in order to make out possible concrete solutions. A more deep collaboration between institution could rapidly solve many small problems. For example, as far as concern the specific problem you mention before, a banal answer could be just to fix a lump sum for the first year of permanence for any single researcher coming from abroad. But this kind of decision must be taken by the Government. We cannot do anything as

this is a political decision. But on the side of counselling or support to the incoming or outgoing researcher we could agree on procedure or systems to share. For example starting with a deep study of how manage contribution abroad for researcher, I mean how to support a person who is going abroad giving him the appropriate information (e.g. which are the formula used aboard to calculate contribution, etc). Another possible domain of information to share is on international conventions extracting only the specific information useful for researchers. For example, we can imagine how to organise a shared local contact point for researchers.

**Rudi** Have you identify, in your practical experience, mechanisms able to simplify in somehow the situation?"

**Marinella** Not really. To reinforce cooperation cold certainly be a possible way. On the other hand we have not human resources that are able to make a phone call to Finland and speaking in English to fund a solution to a practical problem of work. At the moment we have someone who can analyse technically the problem and support incoming and outgoing researcher delivering practical solutions on individual basis, but only in Italian language. The luck of information is certainly the most common issues we face in our daily work. The ignorance affect both the rights and the knowledge of the system/procedures. We could support you in delivering information on specific cases. It is clearly unthinkable to organise a service inside our institute to support researcher. I believe that in many cases the problem is to know the appropriate convention which regulates all aspects concerning rights and possibilities.

**Rudi** Do you think that we have the possibility to foreseen potential solution, also at local level or have you got any suggestion to give in order to overtake specific issues linked with research mobility?"

**Marinella** The contribution of INPS is not so evident as we have not a clear vision of our impact on the research system. It is well know that in Italy research is manly public and the privileged actors of this system are universities (although some big organisations such as CNR, INFM and

ENEA are assured with us). Researchers engaged in the private sector are not different from any other private worker, for us because of they are recruited with a contract that is regulated under private sector law. Hence, at the moment, we have not any possibility to differentiate our level of services for such a specific category of workers, and in any case we are not in the position to easily identify them. A practical way to improve the system is probably founded on dissemination activities and sharing information about procedures, and rights for citizens among interested organisations.

**Rudi** **"**Have you got adequate resources to realize such a goal?"

**Marinella** Not really. To reinforce cooperation between INPS and big customer such us University of Padua could certainly be a good possible way. On the other hand we have not human resources that are able to perform a satisfactory level of service such us to make a natural phone call to Finland speaking in English. At the moment we have someone who can analyse technically the problem and could find solution at practical problems but not on individual basis, and only in Italian language. The lack of information is certainly the most common issues we face in our daily work. The ignorance affect both the rights and the knowledge of the system/procedures. We could support you in delivering information on specific cases but it is clearly unthinkable to organise a service inside our institute to support directly single researchers. However in many cases the problem is solved knowing the definite provisions foreseen in the specific convention which regulates all aspects concerning rights and possibilities link to the single case. And we are open to give our contribution to this process.

**Rudi**: Thank you very much for answering the questions. Goodbye.

**Marinella**: Goodbye.

**3^ Interview**

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**Maria Francesca Lago**

**Director of the provincial headquarters of the Italian National Insurance for public employees (INPDAP)**

**Foreword**

INPDAP manages the pension system for civil servants and is the second pillar, after INPS, of the Italian pension system. Its main business is the liquidation and payment of pensions and treatment of end of service (premium service allowances and severance pay) and severance indemnity (TFR).

INPDAP is not just social security. The Institute offers credit and social services for public administration employees and retirees (and their families). It proposes various forms of credit (i.e. small loans, loans and mortgages) for employees and - in agreement with lenders - for pensioners.

INPDAP pays scholarships to young people, grants study stays abroad and vacation in Italy, for postgraduate Masters and PhD. It provides summer accommodation and offers summer holidays for elderly.

These types of services performed are about one third of the total budget managed.

***Some figures***

Registered: 3,600,000

Pensions in payment: 2,650,000

Severance pay: 103,440

Premium service allowance: 80,400

TFR: 517,300

Loans: 88,000

Housing loans: 5,000

***Italian University system (Source: MIUR / Databases CINECA)***

• 95 universities

• Total staff of 111,964 persons in 59,406 academics (updated 2007)

• Students 1.810.100 (updated 2007)

The interview has been made in April 2010 in Padua.

**Rudi**: From your daily experience, do you believe that researchers are adequately informed on their part to deal with international mobility?

**Maria**: Not really. They often do not have the correct documents when they come to our offices. Taking into consideration those who went abroad, often had different types of contract, when they came back to Italy, and often they are starting from scratch.

For example, a researcher went to Russia without looking for appropriate prior information. When the period of mobility was ended, he had not applied for the correct documents to Russian institutions and when he was back, it was extremely difficult to get hold of the necessary declarations.

Another case involved the double payment of mandatory health insurance coverage. The researcher paid once in Spain and he paid again in Italy both for the entire year because of he spent six months from one part and other six to the other. The problem arises from the lack of adequate information between the two governments but also from the misinformation of the researcher who was not equipped with the appropriate forms. Getting correct and comprehensive information is an important point.

**Rudi**: In your experience, could the international mobility of researchers be managed more effectively, from the standpoint of social security and supplementary pension?

**Maria**: I do not know if it's management, but if we consider a researcher that is a public servant who goes abroad to work for the university, I mean seconded from the university, I do not see particular problems. The researcher maintains his/her employment relationship and maintains therefore the legal bond with INPDAP too (unless he/she is on leave).

As far as research grants are concerned, the researchers are not insured because they are not considered employees, but students. Other forms of engagement such as research fellowships or temporary collaboration contracts (co.co.co.) do not fall under our responsibility but under INPS jurisdiction. All the atypical forms of recruitment within public administration are not managed by us. As far as researcher civil servants are concerned, we do not foresee any complication.

On the other hand, it is impossible to cover all the problems of a system, and to address these issues would require a deepening reflection already at national level. These are problems in which I personally have a genuine interest but that the institution does not face in its daily work.

**Rudi**: Would you be able to indicate what problems are most frequently encountered in the researchers international mobility?

**Maria**: Unfortunately not. Essentially we are not able to monitor our policyholders at this level. When we see some concrete cases, we will be able to have better analysis. For example, we can reconstruct the individual's pay history. We will also be able to answer specific questions, giving information on assumptions of different scenarios like, what if ... but we are not able to see, for example, the reason for the interruption. We collect only the unpaid periods.

As for reflections on an insured Mr. X, you should first find out the type of contract. If the contract provides for international mobility (for ex. Mr. X went to Germany to take lessons) and then goes in the name and on behalf of the university, the relationship is not interrupted and therefore the contributory system continues to operate normally, as does is the employment contract that affects the mobility process. For example, an ordinary researcher has the right to apply for sabbatical or request unpaid leave in certain cases, but that right is

not recognized by grant or fellowship researchers. Furthermore, at the beginning of a career, mobility is greater and contracts vary easily. This continues for about 10-15 years. We know, for example, that most researchers start with a PhD where pension and social security are covered by INPS Social Security system, then usually they have two years of research grant that can be renewed up to six years and research grants are not covered by insurance and social security contributions. The same researcher can now win one or more research grants (usually annual) and finally wins a collaboration contract or can sometimes go up to another 6-year collaboration contracts and/or teaching assignments (occasional collaborations). Well, none of these contractual arrangements are handled by INPDAP, and none of them give the right to access to INPDAP services (e.g. contributions for kindergartens, summer camps, scholarships for foreign loans for first home purchase or other consumption expenditures) .

I remember a very significant case of mobility. This person had worked in Italy in the private sector paying contributions to INPS, then emigrated to UK where he worked for some years. Later moved to Switzerland and finished his career as a civil servant by contributing INPDAP.

**Rudi**: And how did you manage this complexity?

**Maria**: Since we are the last entity to which they paid contributions, the person asked us the "aggregation" of contributions. The aggregation is an institute of recent operations in Italy (2001), while internationally it has been activated for much longer. Each institution from which the person has paid contributions (ie UK, Switzerland and Italy) liquidates its stake, transferring everything to INPDAP who liquidates a single board to the beneficiary.

**Rudi**: This is accepted only between public administrations or also between public-private sector?

**Maria**: Even in the private sector. For example, scientists employed by private research centres in Italy are almost all classified as workers in the metalworking sector. If they worked before or after the public sector, such as the CNR, at the end of their career they may seek the aggregation. Nationally,

there is also the possibility of asking the reunion, but this process is not economically viable, especially for young people, as it treats all the contributions made by various speakers in the public sector wage levels are often much lower than the private sector . In fact, anyone who started work before 1995, has a totally different social security system that is contributory. Transferring the earlier contributions is costly and offers no particular advantages.

**Rudi**: What exactly is it and how much is paid to the researcher retired financially?

**Maria** Circumstances in which aggregation can be used by all employees, public or private, including the self and professionals (lawyers, engineers, doctors etc..) It is completely free aggregation in a worker who has contributed to several pension managements, who may combine all contributions (including in periods do not coincide) to obtain a single board. It is an alternative to the reunion of the contributions which is often quite expensive. The benefits that can be obtained by aggregation are old-age pension, the retirement pension (in Italy after 40 years of contributions), the disability pension and survivor's pension indirect.

The facility is managed by the technically provided, that enters into agreements with other interested bodies which will transfer the equivalent discounted cash at one of its share. A worker who does not already hold board may require aggregation at the age of 65, provided they have at least 20 years of contributions overall, or at any age where they have completed at least 40 years of contributions overall. Since 2007, retirement pension and seniority can be used for the accumulation of contributions in which the management is holding periods of at least 3 years.

The chronological age of 65 years is required for both men and women to achieve the retirement pension. As well as the pension, you must have ceased to be an employee. Workers can get aggregation even if they have the entitlement to a pension of operations in which they have paid contributions and then INPDAP may pay the pension but has not received any contributions.[3]

[3] http://www.inps.it/Doc/TuttoInps/Contributi/I_contributi_da_riscatto/La_totalizzazione/index.htm#N65577
http://www.inpdap.it/webinternet/PrevObbligatoria/Totalizzazioni.asp
http://www.inpdap.it/webinternet/PrevComplementare/index.asp

**Rudi**: What will the level of pension from INPDAP to cover the contributions made by another body such as the coordinated team?

**Maria:** The level of coverage depends on contributions from the various speakers. The co.co.co comes as contract management as it is possible to have multiple contracts simultaneously and allows pay negotiation without violating the union contract. Only towards the end of the 90s did these contracts begin to be used for recruiting clerical staff at low cost. Subsequently, the Biagi law, introduced a draft cooperation agreement (cocopro). Up to 2000 teachers were contracted to use more of this contractual formula.

**Rudi:** So far we have talked almost exclusively on the complexity of Italian basic mandatory contribution system. And as for the supplementary pension, which poses problems, does it really work? In your opinion, what improvements could be introduced?

**Maria:** The Italian social security system is still in its infancy. Many countries in Europe are more equipped to supplement the basic pension, which is much lower than expected in Italy. This was introduced by us in 2006 with the option of destination of the TFR in the private sector, but the management of this five-year period by the funds has been very disappointing and resulted in a net loss of almost 25% of the nominal value paid, then participation is still much imitated. A further complication arises from the fact that many funds do not deliver the pension if they have not achieved at least 5 years of contributions. Under 5 years, so the contributions are reimbursed (or veins return the accumulated capital will fund). For example, the Swiss system provides three security groups: the basic state guaranteed does not usually exceed 40% of final salary, another company is always mandatory and finally there is an option which can be corporate or individual. If you do not get to 5 years optional ones are repaid, while the mandatory deductions and are paid in proportion. This is essentially the same in the UK. Aggregation can only occur on the compulsory part.

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http://www.inpdap.it/webinternet/PrevComplementare/FormePensionistiche Complementari.asp

**Rudi:** Some companies in Europe have occupational pension funds which, at the request of the person, can transfer the value of accumulated contributions from another fund. Has the INPDAP experienced this type of procedure?

**Maria:** No. We here at Padua have never experienced this process. Indeed I think that is very difficult for us to achieve in Italy. The problem, in my view, arises from the financial parameters that each state sets their own and that some systems work funded and non-contribution as in the Italian system. We may receive funds from other public and pay in a lump sum on the basis of international conventions, but not take over the obligations assumed by other systems, we can only act as a "bank" of charges.

**Rudi:** Greater information and points of contact information could appreciably improve the situation?

**Maria:** I agree that often do not work to industry professionals know very little security and social security. The availability of more information could certainly improve operability of our front office. Also often the information generally available on the internet is incomplete or is not quite correct. The important thing is being done abroad and the right questions are being asked there. And there is 'necessary technology' to disperse to mobile researchers the opportunity to build their future pension. One aspect could be immediately useful to be able to access different social security legislation of various countries quickly and easily. The publication of all the rules in one virtual place, for example a website, could facilitate the collection and exchange of information across the EU. And… but please note that we are talking about different predictions. One is the individual retirement account and the other is the public one.

**Rudi:** Do institutions have specific agreements with other agencies to address issues of social security or welfare?

**Maria:** Not specifically, except for the implementation of plans for aggregation depending on the demand of individuals and in the case involving the signing of appropriate agreements with other agencies involved. The international conventions binding all social security institutions in Italy are grouped into

seven categories. But here we are talking about basic security. Another thing is the supplemental insurance, but in Italy, I repeat, this has not yet taken off and is still run very differently than in countries where this is established.

**Rudi:** In the final analysis, in practice, what advice can you give to improve the daily operations of this body, compared to the issue of international mobility of researchers?

**Maria:** I think one of the major problems is the representative forms of standardization in terms of form and language. If I remember rightly European Directives have established that the forms should be provided in at least one of the official languages (English, French or German). Unfortunately, we have to daily translate documents drafted at our expense into different languages, despite the directive. As for us, when requested, we paid for the necessary forms in English. Moreover, the administration issues an annual certification of contributions paid in that year although some administration, for example, by not issuing such a certificate (extract contributions) if the taxpayer did not stay for a period equal to or greater than a number of months that I believe should be greater than 6.

**Rudi:** What are the difficulties that your body has to relate to other social security institutions abroad?

**Maria:** In general we experienced major problems. The foreign institution's requests for information are usually provided with special forms that we provide with English language through appropriate models (for ex. The model E203). If the contribution is more than a year, they will provide themselves with a small pension. If it is less than one year, the time spent abroad is added to the aged in Italy, which means this counts toward calculating the pension. In any case, the level of contributions always derives from the rules of the system (country) where you gained the right, or where the employer resides. Payment, however, can also be by foreign request.

**Rudi** And proceed to a financial transfer in the case of pension rights of less than a year?

**Maria**: I do not know. We apply the conventions. Probably there will be cash transfers at Central but we do not know, we will prove it. Keep in mind that what we are talking about is the basic pension, the pension does not cover that. In all systems share the basic pension is unfunded, ie not subject to financial fluctuations, while the supplementary pensions are essentially based on market capitalization, even when they are mandatory and are therefore exposed to financial market performance.

**Rudi** Hence when the system is reluctant to breakdown the transfer rules, forms and procedures for international transfer, the system is quite homogeneous and follows the right person, but when the system is funded, such homogeneity is gone. Is this correct?

**Maria:** Yes I admit substantial problems arise from the treatment of mandatory supplementary pensions as optional. Here, standard rules are lacking and international mechanisms of aggregation or reunion are used when not applicable. That the agreements should include it also lists specific rules for the treatment of supplementary pensions. Moreover, the subject should be free to choose to apply for the aggregation at their convenience, regardless of the time-contributory. The rules, however, vary from country to country. If I am not mistaken, some countries such as Brazil, ask for residence in its territory on the pension. Other countries such as China have very low wage levels (around 10% currently) that would make it impossible to maintain the pension levels normally found in Italy. Other countries have different age limits for retirement, and so on. In these cases, I repeat, we limit ourselves to provide as recognized by the foreign country where the law has been completed. For example we provide the assistance gained in China and only one, though inadequate to live in Italy and we provide this assistance only when it is recognized by the country that pays according to the age limits set by that country.

**Rudi:** These rules apply to all countries?

**Maria:** No, they apply only to those with whom there is a convention. All countries that have significant numbers of Italian immigrants are covered by the Convention, including the EU even beyond North America and South America,

Australia and the most important African countries. Where there is no agreement (e.g. Thailand) the pension is paid directly from that country on its territory.

**Rudi** In this view, is there the possibility of using SITEMA social security as an element of attraction for international research?

**Maria** I honestly do not think so. Certainly not in Italy where the cost of social security is very high, much higher than in many other countries and at the same time the social security system is very unproductive. Even the Swiss social security system is not so heavy, even grouping include all three pillars (basic pension, supplementary pension schemes compulsory, voluntary supplemental insurance). In Italy the welfare and social contribution reaches almost 50% while the recognition of the right on the paid-up capital will be around 40%. Many other countries, recognize and will continue to recognize in the future a contribution of approximately 80% of last gross salary compared to a comparable contribution to the Italian. Our welfare system is not attractive internationally. The researcher will then experience very different patterns of contribution even within the European Union itself.

**Rudi:** Can we explain better, in concrete terms, what happens?

**Maria:** The current system means that compared to a gross salary (100), approximately 50% is paid for the welfare and social contributions. Pension public employees, with current contributions, will be guaranteed a pension equal to about 40%. The rest will be integrated with supplementary pensions but will add to the current social security burden, which is already very high. Abroad, in general, the load is around a benefit to 33-37% and also ensures the maintenance of approximately 40% of the final salary. By integrating with supplementary pensions, the load also increases contribution to over 50% at maturity, but assures a pension can provide about 80% of final salary. It is clear that we are not competitive and consequently not attractive.

**Rudi:** In view of above, it is convenient for the researcher to ask for aggregation?

**Maria:** Indeed, no. If the researcher has 5 years of contributions paid abroad in supplementary pensions, it is more convenient to get the pension directly from the foreign state. If he/she asks for aggregation in Italy, the contribution is paid at 40% and 80% as the insured. The difference represents a net loss.

**Rudi** Finally, what can be done immediately to benefit researchers?

**Maria:** One useful thing that I think is possibly to realize quickly is a larger sharing of information. Beginning, perhaps, by mutually advertising our websites. Secondly, we could examine some individual mobility cases, the most frequent, and we can give our point of view to help researchers to move in the right way.

**Rudi:** Thanks for your time. Goodbye.

## 4^ Interview – Manger Migrants Association in Padua

**Roberto Babetto**

**Manager of Padua Migrant Association**

**Foreword**

The Association promotes democracy based on equal rights and cultural diversity, mutual respect within agreed rules. Are Members of the association: ACLI (Christian Associations of Italian Workers), Caritas and the three workers Unions (CGIL, CISL and UIL). Its mission is to create decentralized immigration policies across the local territory, bringing them closer to citizens and migrants, fostering the phenomenon of migration. Migrants operate in the territory as a kind of social agency, supporting local public government in coordinating and linking all different actors and, sometimes, supplying for the necessary financial means not available from the government.

The services for immigrants are based essentially on three areas:

*Assistance and consulting* (deliver, renewal and conversion of visa, family reunification, applications for employment abroad, social mediation for home jobs relations, legal advice).

*Orientation* (for entering school; for access to the network of local services; etc.) and *Training* (training to promote social cohesion; training for managers and operators of local authorities and other local associations; organization of public events and conferences on topics related to migration; promotion of active citizenship initiatives and migrants participation into the social life).

Dr Roberto Babetto is the Head of the Host Foreign Guests Service managed by the Association "Migrantes" on behalf of the University of Padua. He has developed more than 10 years of experience in migrants issues.

**Rudi:** What are the main problems to daily face in the processes of international mobility of researchers?

**Roberto:** Researchers suffer particularly of the excessive heaviness of administrative procedures for entry and stay in Italy, above all when they

enter with grants or scholarships, as this type of financial arrangement does not assure basics right of social security and pension contribution.

**Rudi**: Hence, what factors most influence social security and benefit of researchers in international mobility?

**Roberto:** Health insurance is certainly the most important aspect for incoming researchers. This sector is based on two pillars: private insurance from one hand and the public insurance system from the other hand.

Private insurance is generally less bureaucratic and more convenient in term of costs of services delivered. Unfortunately many private insurance have large gaps on the types of injuries and the levels of protection that normally offer.

On the other hand, public insurance, while ensuring full protection in terms of health, are inadequate for the heavy and lengthy of bureaucratic procedures. For example, they are based on annual renovation throughout the entire year. I mean that the insurance is not divisible. So, for a EU citizen, who arrived last September pay the same amount of money of who arrived in January.

**Rudi**: In your everyday experience, what are the most obvious barriers that affect safety and security researchers?

**Roberto:** Most obvious barriers are represented by the lack of coordination between departments responsible for health care management, social security and entry/residence permit of internationally mobile workers.

Another significant barrier is represented by the problem of family reunification and health insurance and social security of dependents. Although this aspect is perhaps less significant for young researchers who often move alone.

Another barrier is the uncertainty linked to short-term research contracts because of its require each time to retrace the formal procedures for entry, health insurance and accident insurance, etc. This results in frustration

for researchers who often disregard their rights. For example it is common that once the researcher entered he/her does not take care of the problem of obtaining or renewing (in the case of obtaining a contract extension or a new contract) his residence permit. This, among other things, deprived him and his family's health coverage.

The barriers also vary depending on whether the researcher come from an EU Member State or not. In terms of entry and residence in Italy issues for extra UE researchers (including citizen from U.S. and Japan) are enormous. Different origins entails completely different bureaucratic processes.

**Rudi**: What practical solutions could be taken to overcome some of these problems?

**Roberto:** I do not know if there is a unique solution, however I believe that a better coordination between departments responsible for the most important aspects of work mobility (healthcare, social security, entry and visa permits, etc..) Could be an important first step. Probably a one-stop-shop will serve the purpose. It would be also relevant to consider the possibility of assigning a specific exemption to the category of mobile researchers in Europe with regard to public health coverage both in order to simplify these practices and in order to not discourage the international mobility.

**Rudi**: Do you think that the problems of social security and relative benefits are a significant barrier to mobility?

**Roberto:** I think they definitely should be.

**Rudi**: Have you had occasion to note a real case of annulment of the mobility project because of difficulties in the social security system or healthcare covering?

**Roberto:** I have seen many cases of surrender and each one is a story in itself, but the case of abandon linked to family reunification is quite common

among researchers in international mobility. Often, for brevity of the contract or complexity of entry procedures, researchers cannot get certainty of reunion before entering and in some cases the entry of the family without reunification rights (e.g. when relatives members enter with tourist visas) the rights related to social security and welfare are in fact denied. This has often discouraged the acceptance of a contract, especially for non-EU researchers coming from the most developed countries like U.S. or Japan.

**Rudi**: What are the motivations that lead researchers to mobility?

**Roberto:** In my experience, the main motivation is his training. Is the opportunity to improve their professional profile accumulating international experience not available at home.

**Rudi**: Among the main factors braking international mobility, do you feel that there are also social security and pension issues?

**Roberto:** In my experience, the main inhibiting factor is given by the precariousness of employment contracts, because of the significant impact on their future careers. Most researchers I have met have expressed this discomfort. The researcher mobility often risking their future careers and their professional position in their original organisations.

However, it does not seem to me that researchers has ever paid a special attention towards social security or welfare problems. Perhaps because the problems faced in the migration are so many that you start immediately from the most urgent and immediate such us housing, visa and health covering.

**Rudi**: There are different problems depending on the origin of researchers or coming from the duration of their stay on the move or the type of contract which they are recruited?

**Roberto:** I think that the problems are mainly related to the geographical origin. EU membership or not is crucial in terms of entry and residence permit. In Italy the problems of entry for non-EU researchers (including "strong" nationality) are enormous. The results from a bureaucratic process is totally different depending on nationality but also by type of contract applied.

**Rudi**: In your opinion, the institutions which you are in contact with have the appropriate expertise/knowledge to supply the necessary support to researchers migrants (both incoming and outgoing)?

**Roberto:** Regarding public institutions directly involved in the processes of immigration, I think they have. Unfortunately only in its specific skills and domain and sometimes without knowing the slightest external reality often contradictory and uncoordinated times and ways to provide various services.

On the other hand, private institutions (such us Patronage Institutions or single Associations or individual practitioners) are often very deficient in terms of skills and knowledge of the matters linked to international migration, above all in terms of rights of the researchers who migrate across Europe. It is necessary to consider that in many cases they represent the first partners to everyday problems encountered by migrant workers and support also researchers in solving problems linked to taxes, insurance or medical coverage.

**Rudi**: Which system Has the association “Migranti” built up to give information, support and consultancy to migrants incoming and outgoing?

**Roberto:** This association has given priority to cooperation with all institutions involved in migration processes, through the institution of a territorial stable connection (“inter-institutional working groups”) devoted to practical resolution of the most important problems registered in the system.

We have also organised 18 info-points spread across the provincial territory with the task to promoted advice and supply practical information on entry and stay in Italy. These info-points act as consultants for individuals but at the same time they are directly involved into the "inter-institutional working groups" mentioned before in order to help standardize the conduct and processes of all entities participating in the process.

**Rudi**: Do you believe that greater knowledge of welfare and social system of other countries could improve the quality and / or the magnitude of mobility of researchers in Europe?

**Roberto:** In my opinion, more than knowledge, you should create a special framework for the protection of European mobility as a fact. I am convinced that a special safeguards and specific privileges for migrant researchers should be recognise. However, with regard to researchers outside the EU, it would still necessary to advertise from the beginning the available benefits of the system of the host country or countries in which they will work. This probably will increase the demands for international mobility.

**Rudi**: Thanks for your time and goodbye.

# ANNEX 2: THE SOCIAL SECURITY OF INTERNATIONALLY MOBILE RESEARCHERS

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**Expert Group on**

**Social security, supplementary pensions & new patterns of work &mobility: researchers' profiles**

# Social Security of Internationally Mobile Researchers

final report

September 2010

**Executive summary with some possible proposals**

## 1. Variety of researchers

It is argued that researchers of all titles and levels are productive members of the European knowledge-based society and should hence be treated as such in the field of social security. At the moment researchers are treated distinctively in national social security systems and European Union (EU) social security coordination law, i.e. as employed, self-employed persons, civil servants, students, non-active persons etc.

The EU should ensure decent employment conditions also by improving social security rights of internationally mobile researchers. On one hand they should be treated as active persons (most favourably as employed persons) in the EU social security law. However, it has only a limited objective of coordinating national social security systems. Hence, if a researcher is not covered by national social security system, there is not much to coordinate. It seems imperative to improve the legal position of researchers not (or only partially) covered by the national social security system.

One of the proper ways for the EU seems to be supporting and complementing activities of the Member States. Due to variety of researchers, it appears that the goal could be better achieved at the EU level. A legislative measure, such as directive would by no way harmonise the social security systems of the Member States. It could urge Member States to include researchers in their social security system, and the most appropriate way to do so would remain in the competence of the Member States.

In both cases, i.e. to resolve rather unclear cases or introduce new designation rule in the social security coordination, or supporting and complementing the activities of the Member States, the definition of 'researcher' seems to be required.

One of the possible definitions, which seems to be preferred by the present expert group could be the following: *'Researcher is a person holding an appropriate higher education qualification, who is carrying out scientific research as his/her main activity, including doctoral candidates and post doctoral researchers who are engaged in remunerated research activity'*. Other possible definitions are elaborated in the present report.

## 2. Interpretation issues and applicable legislation

Regarding the applicable legislation for the internationally mobile researcher who might be confronted with rather frequent changes of applicable legislation, the following solutions might exist:

i) Making extensive use of the Art. 16-agreements either a) using the existing Recommendation 16/84 of the Administrative Commission – maybe with a special focus on researchers or b) by creating a new and specially formulated Recommendation of the Administrative Commission (feasible within the *existing* Regulation);

ii) Introducing a new conflict-of-law rule especially for researchers and/or other highly mobile persons analogous to Art. 15 Regulation 883/04 (this implies a *reform* of the Regulation 883/04)

iii) Interpretation issues regarding researchers who are simultaneously employed in different Member States: solutions and answers will be *feasible* in most cases within the existing Regulation. However, it is difficult – if not impossible – to introduce general interpretation rules applicable to *all* cases of researchers. This is because of the variety of researchers and because of their different employment and mobility patterns. We can thus come to solutions only by making overall assessments of the *concrete* situation of *concrete* researchers.

However, it is difficult – if not impossible – to introduce general interpretation rules applicable to all cases of researchers. This is because of the variety of researchers and because of their different employment and mobility patterns. The present expert group might this come to solutions only by making overall assessments of the *concrete* situation of *concrete* researchers.

## 3. Benefits related interpretation issues

Some issues as regards the new social security coordination framework are dealt with and suggestions are provided for possible adjustments that foster the social security coverage of researchers. Due to the special status of researchers and their increased mobility it is likely that they change residence often or they often stay temporarily short periods in various Member States where they became insured. This phenomenon results

in possible difficulties in connection with the provision of different benefits both in kind and cash, both for the researcher and for his/her family members.

***a) Health care***

It could be argued that the core problem is to regulate the determination of the competent state/institution in a way that guarantees stability and avoids frequent changes. The researcher shall be either included fully into the social security system of the receiving Member State from day one, or shall expressly be left out at the same time leaving him/her affiliated in the state of residence. Affiliation shall optimally mean full coverage and payment of all social security contributions.

If insured status problems are solved, the principles of aggregation and export are fully applicable. However, if the research activity is not coupled with the payment of contributions and therefore on the E 104 form the sending Member State indicates (if at all issues E 104) the coverage for *in kind benefits* only, the receiving Member State can not be expected to acknowledge the research activity as insurance and award *cash* benefit on the basis of aggregation. This is simply excluded. Therefore, the qualification of the research activity from the point of view of the insurance determines also the rights in the second Member State.

*Solution* could be that the adjustment of applicable law to researchers is inevitable from the point of view of health care benefits.

It seems that the difficult situation of *family members* of researchers could be sorted out by adjusting the existing rules. An option to the members of family could be inserted to stay with the social security system of their country of residence as long as the active researcher is travelling around by extending the prioritizing rule of Article 32 Regulation 883/2004/EC to family members of researchers, as new paragraph (3):

[… An independent right to benefits in kind based on the legislation of a Member State or on this Chapter shall take priority over a derivative right to benefits for members of a family. A derivative right… shall take priority over independent rights, where the independent right in the Member State of residence exists directly and solely on the basis of the residence of the person concerned in that Member State.]

*NEW: "(3) Members of the family of a researcher are given the option to choose their social security affiliation in the MS of residence or in the MS where the derivative right has been established".*

A more horizontal wording is possible: "*Members of family who live in a different Member State from the person on whom they are dependent shall be given the option to choose their social security affiliation in the Member State of residence as an independent right or in the competent Member State as a derivative right.* "

It might be combined with discretion by the Member State of residence hence determination of applicable law means the obligation for the competent state to bear the costs.

As regards new-born babies whose social security status is not decided a solution could be to lay down that new-born babies shall be given health care in the first six months for the mother's or the father's European Health Insurance Card (EHIC).

***b). Unemployment benefits***

Article 64 of Reg. 883/2004/EC lays down the basic rules on seeking work in another Member State while retaining the benefits from the competent state. The benefit is provided by the competent state at its own expense if the person cooperates with the employment services and a four-week „waiting period" – during which the persons must be available - is envisaged. As regards the 4 week waiting period the Regulation itself provides for the possibility of its shortening. The limit of registration is also flexible and the duration of the seeking for job can be extended up to 6 months. All in all the rules are *per se* flexible. However, these rules are difficult to be applied to researchers hence there is usually no „suitable job" in one MS for them.

*Solution:* Horizontally, the best solution would be if researchers could leave the competent state with the purpose of searching for job elsewhere without time restraints (i), without being obliged to de-register and register (ii) without the obligation of co-operation in other MSs (iii), for a maximum of 6 months (iv), while retaining their unemployment benefits. *This solution means derogation from Article 64 (1) a) – c). Partial derogation (derogation only from point a) or a) and b) is also possible.* Distinct Member States can opt for this solution between themselves through bilateral agreements if global result is not achieved.

***c). Family benefits (not insurance-based)***

Family benefits are probably the most problematic hence the requirement of insurance or residence is difficult to fulfil in case of frequent, short-term stays. Here the new Regulation lays down priority rules: insurance, receipt of pensions, residence, and if two

Member States are responsible on the same basis the decisive factor is the place of residence of the child. This is confirmed by Article 6 (1) b) of Reg. 987/2009/EC according to which if two Member States have different view on the applicable legislation the place of residence shall be competent. However, the *renvoi* might not solve the benefit question hence – even in accordance with Directive 2004/38/EC and the case-law on "sufficiently close links" – Member States might be exempt from payments if the applicant has no sufficient links with the Member State. The core issue is whether the "presence" on the territory of a MS during the research activity – of course if this is not an insurance - is a "stay" or a "residence" in terms of Reg. 883/2004/EC (c.f. Article 1 points j) and k) – and Reg. 987/2009/EC, especially Article 11). If the country where the whole family lives coincides with the research activity to which no insurance is attached and the respective social security legislation does not accept the "presence" as residence, logically no benefits are provided at the end of the day. Obviously, Member States know that this ending might be questionable, but neither the co-ordination instrument nor the ECJ is crystal clear on this.

*Solution:* A way forward could be to operate with the usage of the term "stay". A general clause could be contemplated on pursuant to which in cases where the application of the presently effective rules results in absolutely no benefit for the family and cumulatively, they have a common country of stay this shall be deemed to be the competent state. This is in compliance with the suggestion as regards Article 32 hence than the family would surely have a country of residence, but if they leave the new country of stay shall take them over.

**d) Strengthening the general institutional framework – collection of contributions**

According to the current philosophy of the coordination regulations, in case of simultaneous activities or multiple employment relationship in several Member States, the employer has the duty to declare the worker in the competent Member State and pay contributions there according to the local rules. However, it could pose tremendous difficulties in practice to those employers who are not used to do so and are by far not aware of the rules applicable in the competent Member State.

Art. 84 of Regulation 883/2004/EC formulates also almost reluctantly that "*collection of contributions […] may be effected in another Member State*". This principle is further reinforced by Article 21 of Regulation 987/2009/EC stipulating that the employer shall act as if it would be established in the competent State. Yet, the practice shows that the

collection of contributions might be hardly effective, if neither the competent institution nor the employer in another Member State is aware of the fact that contribution would be due.

*Solution:* As it is basically in line with Articles 76 and 84 of Regulation 883/2004/EC, it would be sufficient to bring a precision to Article 21 of Regulation 987/2009/EC in order to support technically the payment of contribution and so to increase the protection of rights. A further paragraph (3) could be inserted into Article 21 with the following possible wording:

*"(3) The employer whose registered office or place of business is not situated in the competent Member State may effect the payment of contributions due on grounds of the legislation of the competent Member State directly to the institution of the Member State where it is established. This latter institution shall provide the employer with all relevant information necessary for assessing the basis and the rates of contributions and shall transfer all payments made by the employer to the competent institution in a frequency required by the legislation of the competent Member State."*

In this case employers would be entitled to pay the contributions in their home country to the collecting institution they know and on forms they are used to, and – last but not least – in a language they speak.

## 4. Information and researchers' right to free movement

**a)** Measures to increase researchers´ information about their social security rights should take into account that they are not a homogeneous group. Therefore:

- the information required by full-time professors should differ from the information required by researchers who are looking for a job, or by part-time researchers, students, etc...
- the kind of information demanded may also vary according to the researchers´ legal status: a civil servant, an employee, a self-employed person or a student
- the gender aspect is also important as female researchers probably need specific information about particular social risks

**b)** In the university field researchers´ mobility is inversely proportional to academic status.

Most researchers stay abroad for less than a year. This fact has to be borne in mind in order to specify what kind of information about social security rights may be required. People who are abroad for short periods of time will probably be interested in medical assistance abroad in particular.

**c)** Annex 2 Regulation 987/2009/EC should be revised as it is an obstacle to the free movement of researchers who are civil servants protected by a coordinated special scheme.

**d)** The obstacles to researchers´ free movement do not really seem to derive from researchers´ legal status but rather from the indirect restrictions to moving resulting from administrative and labour legislation. In particular, researchers will refuse to move if they are not automatically entitled to recover their previous jobs after having enjoyed an authorised leave.
*De lege ferenda* all member states should guarantee the right of researchers to be reincorporated into their universities and/or institutions of origin automatically and without delay after working or doing research in other universities/institutions, without the obligation of passing any kind of new examination.

**e)** *De lege ferenda* the information about social security provided by European Institutions should be available in all official languages. When this may not be possible, social security information related to each country should be written in the national language/s and at least in English because English is the most common language among researchers.

**f)** New technologies are a privileged tool for obtaining information.
It does not seem necessary to create a new specific website for mobile researchers because it is possible to obtain a lot of information from specific national websites – not only in national languages but also in English.
Several specific websites already exist where researchers without previous social security training can obtain useful information about working abroad.
However, the information about social security provided by websites supported by European institutions should be more specific and up-to-date.

To show up-to-date information requires an extra effort from the administration. But this effort should be made because it makes no sense to create and maintain websites that do not show accurate information.

It seems a contradiction that specific websites created to improve researchers' mobility do not contain broad information about researchers´ social security rights in particular.

If many researchers are civil servants and social security legislation is usually applicable to them with peculiarities, specific websites designed for researchers should highlight information about these peculiarities. For example, the website EURAXESS, in the link to social security rights, should indicate the different legal status a researcher may be working under in a particular country, and which social security scheme will be applicable to him or her.

European institutions should guarantee that all citizens are able to gain access to the same information through the European websites, independently from the state to which the information is related.

**g)** As an example of good practice we could mention the website Europe Direct and the Citizens' Signpost Service that manage to meet citizens´ expectations about getting free legal information provided by experts and in their national languages through a free phone number or by sending a written question by e-mail.

**h)** European websites that promote researchers' mobility should include information about mobile researchers´ supplementary pension rights. The lack of information about this topic should be resolved urgently.

**i)** European websites should offer information related to questions that, according to new family patterns, could be interesting for mobile researchers: for example, homosexual marriage and non-marital unions.

**j)** Maybe, Directive 2004/114 has been implemented in Spain incorrectly as far as third-country researchers that attend classes or do their PhD in Spain are not entitled to obtain a "residence permit" and therefore they are excluded from all those social benefits linked to the legal residence requisite (invalidity and old-age non-contributory benefits and family benefits). And even if they work as employees, they are excluded from unemployment benefits.

**k)** New technologies could also play an important role in simplifying the application of the Regulations on social security

As the implementation of the Electronic Exchange of Social Security Information (EESSI) has involved substantial investment and due to the current world-wide economic crisis the measures to be proposed should have a low cost for member states.

Suggestions to speed up the recognition of social security rights when more than one administration is implied:

* Substituting the exchange of information by direct access to national records by administrations.

The case of Spain and Germany can serve as an example of good administrative practice in which direct access to information is already applied. An internet "transaction" exists between both countries that allows competent personnel in both countries to access relevant social security information in the other country, while guaranteeing the principle of confidentiality.

* Citizens´ direct access to their social security records by e-means

The Spanish experience can be cited as a good administrative practice in this respect: everybody can get free an "electronic certificate" from the central government through Internet.

This certificate allows anybody to get into the website of the Social Security Ministry to obtain their social security records immediately wherever you are. Moreover, the information can be printed in an official model that due to the internal security codes it contains has the same legal effect as a certificate issued by the administration.

Even when the claimant has no "digital certificate" it is possible to apply to her/his Social Security records through Internet and the administration will send an official certificate by post in a week or so.

* Exporting the experience of the European Health Insurance Card to the social security field

EU citizens are getting used to carrying an EU smart card with them which has a homogeneous design and can be read in all member states by means of specific devices.

Therefore, the same technology that has already been developed in the EU might be used in the field of social security to enable EU citizens or third-country nationals to carry with them all the information that could be required by other EU administrations in order to recognise or calculate their social benefits. In such a case, the need for social

security administrations to exchange data would probably decrease and maybe it would also help to prevent fraud

## 5. Third Country researchers

Third country nationals in their quality of employed persons coming to the European Union benefit in theory from the same social protection as their European colleagues, for themselves and for the members of their family, due to equal treatment as regards social security (application of Directive 2005/71, applicable to researchers, or additionally of Directive 2009/50, applicable to highly skilled workers) at the time of their residence in a Member State. In their movements within the EU, the rights applicable to them under the Regulation 859/2003 are extended to Regulations 1408/71 and 574/72 in the matter of social security coordination.

The expert group underlined the interest of adopting of the so-called single permit directive (equal treatment for workers) and of the new coordination rules 883/2004 and 987/2009 for third country nationals.

This protection is lower for the researchers having a student status or having a grant, or even no statutus, because of the shortcomings of certain national legislations in social security granted to these categories of persons being considered "inactive". Since we are talking about third country nationals, by analogy we will apply the proposals in point XXX of a directive that fixes a minimal protection for the researchers that meet the definition agreed by the expert group but that do not meet the conditions for "worker".

But the most important effort for the third country researchers, similarly for the mobile European researchers, consists of creating or improving the social security legislation coordination in the Member States and those third countries most concerned. The current network consists of bilateral agreements between Member States and third countries or association agreements of the EU with these countries. This system is not protecting the interested person sufficiently.

In view of the explicit recognition by the Lisbon Treaty of an exclusive competence of the Union for the adoption of international agreements when this is necessary to enable

the Union to carry out its internal competence or when it affects internal rules or alters their scope, the expert group recommends the conclusion of agreements primarily with the OECD countries, the major emerging countries, regional organisations such as MERCOSUR, and the other states of Europe that are not members of the EU on important economic agreements that have a research dimension (cooperation, trade, joint projects, the researchers' mobility) and a coordination of Social Security legislation for all categories of mobile workers, including researchers (based on the model of internal coordination of the EU).

These two aspects could be incorporated into the existing association agreements. Failing to enter into such agreements the Union could conclude European agreements confined to the research sector and with these two components.

**Table of Contents**

# INTRODUCTORY REMARKS

## 1. Purpose of the report

According to more traditional type of career path, mobile researcher has left the country of origin and moved abroad for a longer period of time. Such career path has become more and more seldom. The patterns of mobility of researchers (including academics, performing not only educational but also research activities) have become more diverse. They are characterised by multiple shorter-term stays. Although, research may be linked to a specific place (e.g. lab or site), it is more and more done in multinational teams that carry out their research in multiple countries. Hence, there might be more (shorter-term) mobility between various Member States. Researchers could be working for one employer (and posted to another member state) or they could simultaneously perform research activities in two or more Member States for (one or several) employers.

It has become clear that researchers, including paid doctoral or post-doctoral researchers, young researchers or researchers at early stages of their research career, are productive members of the society. They are contributing to the advancement of the European society and its economy, and should be treated as such in the social security law of the Member States and of the European Union (EU).

Objective of the present report is to contribute to the analysis of the EU social security coordination law in the light of highly mobile groups, such as mobile researchers. Free movement of researchers should be promoted, at least by eliminating the existing social security related obstacles to such free movement. Researchers should not suffer disadvantages merely because they are performing research in another country. Migrant workers, including internationally mobile researchers should not be deprived of enjoying the right to social security, one of the fundamental human rights, guaranteed to everyone as a member of the society.

Competition in research should be based on the quality of research, which can be promoted with the creation of the so called fifth freedom, i.e. the free movement of knowledge within the EU. Important element in its realisation might be supporting such movement with proper coordination of social security systems of the Member States.

At this stage, the analysis of certain social security coordination aspects is limited to public research, i.e. statuses researchers may hold while performing research for public universities and research institutions.[4]

## 2. Structure of the report

The first chapter tries to present variety of legal statuses held by researchers in various countries. It is important for the proper application of social security coordination rules to identify 'researchers' and have a clear and operational notion of a 'researcher'. Special attention is given to researchers at early stages of their professional careers (e.g. doctoral students or young researchers, with possibly limited access to social security).

The second chapter focuses on some actual interpretation issues related to applicable legislation, raised by the new social security coordination regulations. In the third chapter some benefits related interpretation issues are analysed, mainly concerning health care, unemployment benefits and family benefits of internationally mobile researchers.

In the fourth chapter multiple national security systems and different models of public administration are emphasised. Information on social security is recognised as a key to facilitating researchers' mobility. Possible obstacles to the free movement of workers deriving from applicable social security legislation which are not mentioned in the information available to mobile researchers are identified and some suggestions to speed up the recognition of social security rights when more than one administration is involved are elaborated.

The fifth chapter analyses the possibilities of improving the social security position of third country researchers, either coming to the EU, or moving within the Union. Further, coordination mechanisms between the EU and third countries are analysed.

[4] On the definition of »public research« performed by Universities and Research and Technology Organisations (RTOs), European Commission, The role of community research policy in the knowledge-based economy, Expert Group Report, October 2009, EU, Luxemburg, 2010, p. 133.

The present draft interim report concludes with some possible suggestions in the form of concrete and realistic proposals on possible solutions. They range from administrative changes and implementation guidelines to minor legislative adaptation of current EU social security co-ordination rules.

It should be acknowledged that mobility of researchers can be promoted with measures beyond social security law. Improving working conditions, salaries, enhancing participation of women and providing fiscal security could be equally important. However, analysis of labour law and tax law provisions would exceed the scope of the present report.

## Chapter One
## VARIETY OF RESEARCHERS

Researchers performing identical or very similar activities in various member states may hold very distinctive social security statues, guaranteeing them no, partial or complete access to social security rights compared to other economically active persons. This diversity is an expression of national competence in the matter and as such reflected also in the EU social security coordination law.

An attempt is made to define the notion of researcher, which might be quite broad and not easy to define. The formulation, selection and implementation of all parameters in an identical way for all groups of researchers might not prove to be the best solution. Therefore, at this stage the focus should be on researchers engaged by accredited universities and recognised scientific research institutions.

### 1. Variety of (social security) statuses held by researchers

#### *1.1. At the national level*

Internationally mobile researchers may hold very distinctive social security statues in their host state. They may range from the status of employed, self-employed person, civil servant, or student. Specific statuses may exist for instance for postdoctoral researchers with a fellowship (or other funding arrangement).

##### *1.1.1. Employed researchers*

In many Member States efforts can be detected to guarantee mobile researchers the status of an *employee*. If an employment contract is concluded with the host university or research institution, internationally mobile researchers are covered by the entire social security legislation applicable to (also all other) employees.

For instance internationally mobile researchers in the Netherlands are employees of one of 14 Dutch Universities or one of the various public research institutes. As a rule, every researcher (including visiting scholars) in the Netherlands concludes an employment

contract. Even, if an employee is paid by a distinct employer, within or outside the Netherlands, the Dutch university must still provide him or her with an unpaid contract.

Researchers performing research at Belgian universities or research institutions may hold a status of an employee, if research is performed on the basis of an employment contract. The contracts of academics and already established researchers in the UK higher education sector are usually tenured compared to the more permanent contracts offered by the government sector.[5] Internationally mobile researchers, who come to the UK, are most likely to be classified as employees, as they will primarily be responding to opportunities for employment.

Researchers working on a specific research project, young(er) researchers and university assistants may also conclude an employment contract, but usually for a limited period of time. For instance in Germany, assistants are employed on the grounds of a fixed term contract, usually lasting for up to six years.

#### *1.1.2. Self-employed researchers*

It appears that *self-employed* researchers are quite common in some Member States (for instance Italy), but rather rare in others. This might be the case of researchers working for an ad hoc project in Germany. For instance, it seems that in Hungary, contracts of assignments in the field of research and hence researchers as entrepreneurs are quite rare. Normally, extra hours are given to the existing staff, or new civil servant or an employee is engaged. In Slovenia there are few independent researchers, which have to be listed in the register of individual private researchers.

Self employed researchers enjoy the same social security status as (all) other self-employed persons, which may be more or less similar to the one of employees.

#### *1.1.3. Researchers as civil servants*

[5] *Paul Cunningham, Aikaterini Karakasidou*, ERAWATCH Country report 2009, UK, p. 45.

In some countries university professors and other researchers may be classified as *civil servants*. In some countries this may lead to a special social security status, while in other such classification may have limited implications for their social security position.

For instance in Germany, university professors are usually members of the Länder or Federal civil service (*Beamte*), covered by a special scheme. It is argued that such solution might provide vast autonomy of the researcher, but may also lead to serious problems in terms of mobility. It appears that the highest level of academic staff (e.g. *catedráticos* and *profesores titulares*) is part of the civil service in Spain. Also full and associate professors in France (*Professeur des Universités* and *Maître de Conférence*) seem to be civil servants. The same appears to apply in Italy, where professors are civil servant, too.

In Hungary, researchers at universities and other higher education establishments that are publicly funded are civil servants, whose legal position is governed by the special Act on Civil Servants. The same goes for persons performing research without participating in educational process and holding a so called "individual researcher status" in Hungary. If engaged in a specific research project, a person may be accorded a fixed-term civil servant status. It appears that it is not uncommon for a Hungarian civil servant to be employed (and hold an employee status in a non-publicly funded establishment) at the same time.

For instance in Slovenia, university professors, young researchers, teaching assistants and researchers at public research institutes have the status of civil servants. However, they still have to conclude an employment contract (open-ended or fixed term, for the duration of the young researchers programme or duration of the project), which classifies them as employees in the social security system. Hence, no special social protection scheme for civil servants exists in the Slovenian legal order.

#### *1.1.4. Doctoral students and young researchers*

*Doctoral students* may be seen as researchers at their earliest stage. They might be employed by the university (e.g. app. 8.000 PhD candidates are employed by Dutch Universities). They might also be employed by other (non-research) company or

institution and pursue their studies only on a part-time basis (e.g. in the UK less than 24 weeks per year). In both cases they will be covered by social security legislation applicable to employees.

But, there are also doctoral students who are relying only on a scholarship (from national or EU source). They might have limited access to social security system. For instance, In UK and Ireland doctoral phases as such are usually not considered employment and there is no complete access to social security system. Younger researcher going abroad after doctoral studies on a stipend normally has special status, which in turn requires no payments to the social security system.

For instance, in Germany doctoral researchers might be considered as students. They might only be covered by (private) health insurance (or hold an EHIC-European Health Insurance Card), but not other social security schemes.[6] In Slovenia, they are only covered by mandatory health insurance. In Hungary, social security for PhD students (even if they work on the basis of a 'student contract') are reduced or non-existent.

However, some countries try to assimilate doctoral students with a scholarship to the position of employee. For instance, Spanish 2+2 formula (two years scholarship and two years contract) enables PhD students limited access to social security (e.g. unemployment benefit might be claimed).[7] In Italy, persons receiving a PhD grant (*Borsa di Dottorato*) are partially covered by the social security system (e.g. with no access to the second pillar pension insurance). However, in Italy for every paid post one unpaid post might be opened. In the latter case there is no social security coverage (only health care for students). According to Belgian legislation, scholarship for PhD students is subject to full social security contributions. Due to this fact, these researchers will be treated as employees for social security purpose.

Also *young researchers* might be treated very distinctively, i.e. from employees with fixed term contract (e.g. in Slovenia) to students. For instance, in Italy after three years of PhD Grant young researcher will receive a Research grant (*Borsa di Ricerca*) for another three years with very limited access to social security. After that he/she may

[6] www.euraxess.de (April 2010).
[7] *Joost Heijs*, ERAWATCH Country Report 2009, Spain, p. 32.

receive a research fellowship (*Assegno di Ricerca*, a hybrid formula between private collaboration and university grant) for six years, with better access to social security (including pension insurance). After that approximately one fifth of young researchers conclude a contract of continued cooperation (*collaborazione coordinate e continuative* - co.co.co) for another two years. This private collaboration relation gives access to social security (including pension insurance) and is used in the last decade to recruit researchers in another way than providing civil servant status. The reason might be financial restriction, lack of competencies or simplicity of the recruiting process.

Additionally, there is no common definition of 'young researcher'. They might be defined in a more general manner, e.g. as 'doctoral students (or candidates) and post-doctorates as well as other researchers in the early stages of their career'.[8] It is also possible to define them according to years of research experience, e.g. as 'researchers with zero to four years of experience',[9] or their age, e.g. as 'doctoral candidates, but often also post docs, i.e. people up to 35 or even 40 years old'.[10]

### *1.1.5. Post-doctoral researchers with a fellowship*

Similar rules might apply to *post-doctoral researchers with a fellowship*, either in an early stage or at later stages of their careers as researchers. In certain cases, post-doctoral researchers might still be registered as students, and hence not fully covered by the social security system.[11]

Post-doctoral researchers might be employed, especially if fellowship is received by their employer, who pays salary to the researcher. For instance, internationally mobile researcher, coming to the Netherlands on a grant or stipend concludes an employment contract. The university will use part of the funds to pay the salary. Another example might be Marie Curie Fellows coming to Slovenia, who are as a rule employed by the public research institute or university.

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[8] Cross-Border Mobility of Young researchers, Brussels, European Parliament, October 2009, p. 9.
[9] *Paul Cunningham, Aikaterini Karakasidou*, ERAWATCH Country report 2009, UK, p. 49.
[10] Realising a single labour market for researchers, Report of ERA Expert Group, EC, 2008, p. 45.
[11] Ackers/Oliver, in Zervakis (Ed.), Mobility without Security?, German Rector's Conference, Bonn, 2009, p. 18.

Post-doctoral researchers may also be self-employed, but they may also simply be relying on a fellowship to perform research in a host county with or without an (active or dormant) employment contract in their home country. They may perform work under a succession of short-tem scholarships, contracts or appointments, often in function of the succession of grants received to do the research. Researchers, relying solely on the fellowship might quite often not be covered by the social security system (either of the home or host country). They might only be entitled to health care, but are for instance not building any pension periods.

On the other hand, such fellowship might be subject to social security contributions (e.g. in Belgium). In Hungary a fellowship might be considered as 'individual earning', also subject to social security contributions. It seems that also in Italy fellowships of researchers are subject to social security contributions.[12]

### *1.2. At the EU level*

Coordination of Member States' social security systems has a quite limited objective. In order to respect the special characteristics of national social security legislation, the EU is given competence only to coordinate, link various social security systems in order to safeguard freedom of movement of (predominately) EU citizens. Hence, the variety of statuses researchers may have on the national level is necessary reflected in the EU social security coordination law.

The first social security coordination regulations (Nos. 3 and 4 from 1958) covered only 'wage earners or assimilated workers' who were nationals of a Member State. The term *'worker'* was not defined by the Regulation in order to determine its personal scope. This had to be done by the Court of the (today) EU. The Court emphasised, e.g. in the case *Unger* (C-75/63, ECR, 1964, 177), that this term was to be given a Union meaning. It opted for an extensive interpretation to include to (EU) nationals of who were or had been subject to a social security scheme of a Member State applicable to workers. Due to limited scope of social security coordination regulations the content of this meaning in a concrete case, reference is made to national legislation. This case law was reflected

[12] Poti, Bianca, Reale, Emanuela, ERAWATCH County Report 2009, Italy, p. 41, and Euraxess Italia (www.euraxess.it, April 2010).

in the definition of 'employed person' in the Regulation 1408/71/EEC (with certain clarifications in its Annex I, Part1).

In the new Regulation 883/2004/ES, applicable since the 1st of May 2010, a rather complicated definition of the term *'employed person'* is no longer required, since all active and non-active EU citizens, covered by national social security system and moving within the Union, are covered. However, distinctions between persons covered are still required for proper application of the coordination rules (for instance those on determining the applicable legislation). Hence, the 'activity as an employed person' had to be defined.[13]

Social security coordination has been focusing on employed persons since its beginning. If a person performs activity as an employed person, he or she will enjoy all the advantages of the EU social security coordination law.

*Self employed persons* had to wait until 1981 in order to be covered by the coordination Regulations.[14] The reason was lack of explicit legislative power. This deficit was in a way remedied in 2009 with the Treaty on the Functioning of the EU.[15] Self employed persons were squeezed into Article 48, now covering 'employed and self-employed migrant workers'. Such provision is indeed a bit odd, since self-employed persons are usually not considered as workers, and the goal of this article is to 'provide freedom of movement for workers'. It has also remained in the chapter 'Workers', despite some alternative suggestions.[16] In the Regulation 1408/71/EEC self-employed persons have been assimilated to employed persons.[17] In the new Regulation 883/2004/EC 'activity as a self-employed person' is defined in the same manner as activity of an employed person.

[13] Art. 1 (a) Regulation 883/2004 stipulates that 'for the purposes of this Regulation 'activity as an employed person' means any activity or equivalent situation treated as such for the purposes of the social security legislation of the Member State in which such activity or equivalent situation exists'.
[14] Regulation (EEC) No. 1390/81 of 12 May 1981, OJ L 143of 29 May 1981.
[15] OJ C 115, 9.5.2008.
[16] *Pieters, Danny*, Towards a Radical Simplification of the Social Security Co-ordination, in: *Schoukens, Paul* (Ed.), Prospects of Social Security Coordination, Leuven, Acco, 1997, p. 184.
[17] Further development of the concept by the Court, e.g. in *Van Roosmalen* (C-300/84, ECR, 1986, 3097).

*Civil servants*, covered by special schemes were included in the personal scope of social security coordination law only in 1998. The new Regulation 883/2004/EC refrains from defining employed and self-employed person, but it defines a 'civil servant'.[18]

Researchers holding a status of employed person, self-employed person or civil servant can benefit from the entire scope of social security coordination law. However, it has been shown above that the most precarious situation is the one of researchers at the beginning of their research careers, for instance *doctoral students* holding a scholarship or a grant, as they might not always have access to the entire social security system. They might also not be fully covered by the social security coordination law either, or special rules might apply.

Personal scope of social security coordination law was extended to students only in 1999. This extension should not be overestimated, since students might be covered as employed or self employed person or member of the family. Hence students were other persons studying or receiving vocational training leading to an officially recognised qualification.[19]

The legal position of these students is no longer regulated in the new Regulation 883/2004/EC. It may be assumed they are considered *as professionally non-active persons*. Such a solution might be acceptable for instance for undergraduate students. But for the doctoral students it might not be the most suitable one. Doctoral students are researchers, actively and professionally (if they are full time students) applying methods of scientific research and contributing to the advancement and wellbeing of the society with their work. It would be appropriate to treat them as professionally active persons and provide them social security coverage as it exists for employed persons.

The same considerations are valid also for *post-doctoral researchers with a fellowship*, which might not enable them to be formally classified as employed persons. They too are productive during these periods and their activity might produce important benefits for the society (and its economy).

[18] Art. 1 (d) Regulation 883/2004 defines 'civil servant' as a person considered to be such or treated as such by the Member State to which the administration employing him or her is subject.'
[19] Precise definition in Article 1 (ca) Regulation 1408/71.

Due to the diversity of researchers and their (sometimes not justified) distinctive social security positions, more effort should be invested not only by the Member Sates, but also by the Union, in order to facilitate their mobility. First, there should be an agreement who can qualify as a researcher, at least for the social security (coordination) purposes.

## 2. Definition of a 'researcher'

### *2.1. Attempts of defining a 'researcher'*

It is acknowledged that the term 'researcher' covers many different roles and activities.[20] The most commonly used definition seems to be the one of *Frascati*. Researchers are considered to be 'professionals engaged in the conception or creation of new knowledge, products, processes, methods and systems and also in the management of the projects concerned'.[21] Such definition is indeed very broad and might not be the most suitable for the social security coordination purpose.

The lack of clarity and homogeneity of the 'legal status' (or better social security status) of researchers has already been emphasised.[22] The definition of a 'researcher' for the purpose of social security coordination could be based upon the definition of the *Directive 2005/71/EC*,[23] which seems to foster also the mobility within the Union of researchers, who are EU citizens, for the purpose of carrying out scientific research.[24] 'Researcher' could then be defined as 'person holding an appropriate higher education

[20] Communication from the Commission to the Council and the European Parliament, Better Careers and More Mobility: A European Partnership for Researchers, COM(2008) 317, Brussels, 23.5.2008, point 2.
[21] *Frascati* definition is used for instance in the Commission Recommendation of 11. March 2005 on the European Charter for Researchers and on the Code of Conduct for the Recruitment of Researchers, COM(2000) 6 final, Brussels, 18.1.2000, Section 3, Definitions; Communication from the Commission to the Council and the European Parliament, Researchers in the European Research Area: One profession, Multiple Careers, COM(2003), 436 final, Brussels, 18.7.2003, p. 6.
[22] Realising a single labour market for researchers, Report of the ERA Expert Group, EC, 2008, p. 37.
[23] Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research, OJ L 289, 3.11.2005.
[24] Directive 2005/71, recital 7.

qualification, which gives access to doctoral programmes, who is selected by a research organisation for carrying out a research project'.[25]

This definition might be further elaborated for the purpose of social security coordination, especially, if we consider that it might exclude doctoral *students*, who seem to require proper social security coverage the most. It should be noted that special Directive 2004/114/EC[26] has been passed in order to attract third-country (doctoral) students. It seems that third-country highly qualified employed persons are also not considered to be researchers, taking into account provisions of the Directive 2009/50/EC.[27]

The definition should consider performing scientific research. It means that the scientific method is applied, excluding any other quest for knowledge or any other systematic investigation to establish facts. Scientific research should be exercised on a professional basis as a main (full time) activity. Professional should not necessary mean that researcher has to be employed, self-employer person or civil servant, but should include also researchers at early stages of their careers having distinctive statues pursuing their occupation. It seems appropriate to exclude so called hobby researchers, who are mainly pursuing other than research activities.

Furthermore scientific research should professionally be exercised by persons holding at least higher education (university) degree. They should be engaged in a research project (including approved research topic for a doctoral thesis or research fellowship). In order to avoid special definitions for rather short periods of international mobility, when researchers might remain covered by their home social security system, it might be required that research should be performed for medium or longer term (e.g. exceeding three months).[28] The definition should cover researchers regardless of their 'legal' status

[25] C.f. Realising a single labour market for researchers, Report of the ERA Expert Group, EC, 2008, p. 43.
[26] Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, OJ L 375, 23.12.2004.
[27] Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third country nationals for the purposes of highly qualified employment.
[28] Not only spatial but also time element might play an important role. Three months limit is also used for instance by MORE-Mobility Patterns and Career Paths of EU Researchers (www.researchersmobility.eu). C.f. also Recitals 5 and 23, and Article 1 of the Directive 2005/71/EC.

as employed, self-employed person, civil servant, doctoral student, post-doctoral fellow according to national legislation.

Taking into account all above mentioned elements, *'researcher'* for the purposes of social security coordination might be defined as a '*person holding an appropriate higher education qualification, professionally carrying out scientific research project as his/her main activity for more than three months*'.

Some elements could be left our, if deemed necessary. The definition of 'researcher' might then be '*a person holding an appropriate higher education qualification, carrying out scientific research as his/her main activity*'.

Of course, there are other possibilities. The definition of research activities could be somewhat detached from the researcher and be more employer oriented. A 'researcher' could then be '*every person engaged by the accredited university or recognised scientific research institution to execute, coordinate or support its research activities*'. Such definition would allow to include not only persons performing scientific research (researchers in a narrower sense), but also coordinators, technical and auxiliary personnel required for executing the research project. They might be linked to researchers and experience the same or similar mobility patterns.

### *2.2. Purpose of defining a 'researcher'*

Attributing a (social security) status to a researcher is a matter of national competence. Whatever national status is attributed to active researchers, mobile researchers have to be considered as professionally active persons, as far as EU social security coordination is concerned. They are making the use of the free movement of work or services within the Union. And as such, their social security needs to be coordinated.

The Court of Justice of the EU has already established (c.f. *Raccanelli*, C-49/07, ECR 2008, I-5939), that a researcher preparing a doctoral thesis on the basis of a grant contract concluded with an association operating in the public interest which manages scientific research institutes and which is established under the private law of a Member State must be regarded as a worker within the meaning of Article 39 EC. The condition

is that his activities are performed for a certain period of time under the direction of an institute forming part of that association and if, in return for those activities, he receives remuneration.

The Court argued that in that regard, the concept of 'worker' within the meaning of Article 39 EC has a specific Union meaning and must not be interpreted narrowly. Any person who pursues activities which are real and genuine, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary, must be regarded as a 'worker'. The essential feature of an employment relationship is that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration.

This was clearly a labour law definition of a worker, which might be distinct from the social security coordination definition of employed person (or activity as an employed person).

In the EU social security coordination law it should be clearly stated that 'research activity' shall be considered (or treated equally) as 'activity of employed person' for the purpose of the Regulation 883/2004/EC.

Member States could list research activities they want to assimilate with an activity of employed person in an Annex to the Regulation 883/2004/EC. If more employer oriented definition would be preferred, Members States could list (types of) employers which they consider to perform research activities.

The important role a definition of 'researcher' might play could be in rather unclear situations. Definition could then provide for the delimitation and proper application of social security coordination rules. For instance, it might not always be completely clear whether (young) researcher at early stage of his/her career should be treated as a non-active person (e.g. a student), or economically active person. This might also be done with non-legislative measures, such as decision of the Administrative Commission for the Coordination of Social Security Systems.

This way no privileges might be granted to researchers, just the application of social security rules designed for employed persons also to researchers, including those at early stages of their research careers, would be enabled.

Of course, the definition of 'researcher' would be required, if special rules for researchers would be advanced. One could think of a special designation rule on the competent State, taking into account activities in various Member States (for one or more employers). In this case probably amending the coordination Regulation 883/2004/EC would be necessary.

### *2.3. Active role of Member States*

It goes without saying that, also Member States should be encouraged to promote mobility of researchers. According to Article 153 of the Treaty on the Functioning of the EU, the Union shall support and complement the activities of the Member States, among others, in the field of social security and social protection of workers.[29]

Member States might be urged to provide full (or at least some sort of) social security coverage for (all) researchers, including doctoral candidates and young researchers (however they are defined in the national law). It should be (and already is) common understanding that they are not non-active persons and should not be treated as such.

Social security obstacles to free movement could be removed for instance by providing employment contracts or self-employed status, or simply by levying social security contributions also on scholarships, grants, fellowships of doctoral students and post-doctoral researchers, providing the same benefits as for other professionally active groups.[30]

## 3. Possible suggestions

[29] C.f. Article 153 of the TFEU.

[30] It has been pointed out that 'grants should be inclusive of all compulsory pension and social security contributions, and researchers should be recruited by their host organisation so as to clarify their labour market position and to guarantee pension and social security', Green Paper, The European Research Area, New Perspectives, Public Consultation Results, EC, Brussels, 2008, p. 35.

It could be argued that variety of social security statues held by researchers at various points of their careers and in various Member States is not accurately reflected in the EU social security coordination law. Researchers are professionally active persons and should be treated as such. They should not be treated as non-active persons, not even in early stages of their professional careers.

The definition of a 'researcher' should therefore also cover doctoral students and young researchers, who might be (or are even required to be) internationally mobile.

It seems that one of the preferred solutions could bet to treat all (including internationally mobile) researchers in all Member States as employees, e.g. by providing (even unpaid) employment contracts and levying social security contributions on their income (also grant, stipend, fellowship). Workers or employed persons traditionally enjoy the most comprehensive social security coverage.

Member States should design proper measures, and their effort should be supported by the EU. Member States could be urged by the Union to provide all researchers, including doctoral students, young (early stage) researchers and other researchers in a professional status other than employee, self employed or civil servant, social security equal (or similar) to the one of employees.

In this case a definition of 'researcher' would be required, which could be more researcher or more employer oriented. The definition might also be necessary for the purpose of EU social security coordination law, in order to delimit researchers as very much active persons (recognised also in the case-law of the Court of Justice of the EU) from non-active persons, also covered by the Regulation 883/2004/EC. This might be done by legislative action or proper interpretation by the Administrative Commission for the Coordination of Social Security Systems.

Amending the Regulation 883/2004 seems to be required, if new coordination rules would be introduced for highly mobile workers (including internationally mobile researchers).

## Chapter Two
## INTERPRETATION ISSUES AND APPLICABLE LEGISLATION

In order to structure the different questions and topics suggested in "Package 2 – Applicable Legislation" it is reasonable to distinguish between two categories of mobile researchers: 1) researchers moving subsequently from one State to another and 2) researchers working simultaneously in different Member States.

### 1) Researchers moving from one Member State to another after short periods of time

A modern pattern of mobility of researchers can include short-term stays and numerous changes of location. "Modern" researchers often only spend a couple of months on a research project, then moving for a Ph.D. or a "post-doc" to another country to then get a work assignment in a third country. In these cases, the social security law applicable to these researchers can be determined according to the Art. 11 – 16 Reg. 883/04; it will (in most cases) be the law of the State where the researcher is employed. Moving from one country to another will thus imply frequent changes of the applicable legislation. These changes, though, make the situation of these researchers very complex. It is in the interest of these researches *not* to change the social security law applicable to them often; otherwise, their social security record will be very fragmented.

### 1.1. Existing instruments of the Reg. 883/04 which can help to avoid frequent changes of the applicable legislation: Art. 16-agreements

In the current situation, it might be advisable *not* to introduce a new conflict rule especially for researchers. The Regulation 883/04 comes into force in May 2010, after years of discussions and changes or amendments and it would be quite hard to justify why there should be specific rules only for researchers – or even for other groups of highly mobile persons. This would contradict the idea of simplification of the Social Security Coordination provisions and many states may be reluctant to adapt new rules that make situations more complicated. In the Pieter/Schoukens paper it has also been suggested that solutions will rather have to be sought in non legislative measures to be taken.

On the other hand, the current conflict-of-law rules in the Reg. 883/04 are not really designed for the situation of highly mobile persons, who move from one country to other countries after quite short periods of time. The "old" idea of a migrant worker refers to a person who moves to another country and spends several – if not many – years there. This is not the case for the new groups of mobile researchers, who often only spend a couple of months on a research project, then moving for a Ph.D. or a "post-doc" to another country to then get a work assignment in a third country.

In many cases, it would be in the interest of these researches *not* to change the social security law applicable to them often. It is therefore advisable to make use of the instruments foreseen by Reg. 883/04 in order to avoid frequent changes of the legislation and complications in the "social security history" of that person. The main tool for this can be found in Art. 16 Reg. 883/04. According to this article "two or more Member States, the competent authorities of these Member States or the bodies designated by these authorities may by common agreement provide for exceptions to Articles 11 to 15 in the interest of certain persons or categories of persons". Art. 16-agreements can be applied to any person and also for many situations: Although these agreements are often used to "extend" posting periods, the wording of the Art. 16 is much broader.

**i) Making a more extensive use of Art. 16-Agreements**

In the past, Art. 16-Agreements were used quite often. They were mostly used in order to prolong the posting period of persons having special knowledge or proficiency that were send by their employer in another State. Also the Administrative Commission[31] recommended that the competent bodies of the Member States make agreements on the basis of Art. 17 Reg. 1408/71 (*now: Art. 16 Reg. 883/04*) with the Recommendation No 16 of 12th December 1984. This Recommendation is not effective anymore, since the Reg. 883/04 became applicable (i.e. since the 1st of May 2010). It is worth taking a closer look at it, though, since it could be used as a basis for a new Recommendation by the Administrative Commission and it was also the basic point of reference for the practical application and use of the Art. 16 (17)-Agreements by the Member States.

According to the Rec. 16/84 the Administrative Commission recommended "to the competent authorities of the Member States that they conclude, or have concluded by

[31] Administrative Commission for the coordination of social security systems – in the past (under Reg. 1408/71): Administrative Commission on social security for migrant workers.

the bodies designated by these competent authorities, agreements pursuant to Article 17 of Regulation (EEC) No 1408/71 *(now Art. 16 Reg. 883/04)* applicable to employed persons who, by virtue of their special knowledge and skills or because of specific objectives set by the undertaking or organization with which they are employed, are posted abroad to a Member State other than the one in which they are normally employed in the interests of, in the name of, or on behalf of that undertaking or organization for a period exceeding 12 *(now: 24)* months. These agreements should lay down that these employed persons remain subject to the legislation of the sending State for the full duration of their assignment provided that the workers concerned agree to this condition".

In the Report of the ERA Expert Group "Realising a single labour market for researchers" (2008)[32], the Recommendation 16/84 is explicitly mentioned. The ERA Expert Group suggested to make an "extensive use" of this Recommendation as it encouraged the Member States to conclude agreements for persons who own "special knowledge and skills" (obviously researchers fit with that definition). However, the wording of the Recommendation No 16 was mainly connected to a posting situation. In the case of researches, a researcher can be mobile without going to another country or institution "in the interests of, in the name of, or on behalf of an organization". An important element of "posting" will be missing. Therefore, a bilateral or multilateral agreement on the basis of Art. 16 Reg. 883/04 should be "separated" from the concept of posting. It should give the opportunity to the persons concerned to choose between being subject to the legislation of their home country or the host country[33], set by criteria agreed upon by parties involved in these agreements.[34] This is a feasible solution under the current law, because Art. 16 Reg. 883/04 can actually be applied *not only to posting, but also to any other forms of cross border mobility*. Especially the possibility of multilateral agreements should be explored further: Even if multilateral agreements based on Art. 16 were and still are rare, there is no reason why States should not make more use of them in the future, in order to achieve legal certainty for larger groups of persons in different countries.

[32] EUR 23321 EN.
[33] Or even choose another legislation: The legislation chosen should have a connection to the researcher though, through elements such as work, place of residence etc. in order to avoid misuse and "social security shopping".
[34] Report of the ERA Expert Group, p. 43.

**ii) Proposal for a new Recommendation of the Administrative Commission for the coordination of social security systems**

Another possibility would be to propose *a new* Recommendation of the Administrative Commission in order to adapt the coordination law better to the needs of researchers and to other groups of highly mobile workers. Since the "old" Recommendation 16/84 became ineffective, there is a good chance that the Administrative Commission agrees on a new Recommendation on the basis of Art. 16 Reg. 883/04. This might not be a smooth operation as the Member States did not seem to be too keen to the idea of having article 16-agreements applied to special categories of workers However, in order to improve the situation of researchers – and other highly mobile persons – also other options should be checked out.

The idea of a new formulation of the Recommendation of the Administrative Commission – especially with regard to the specific situation of specific groups, such as researchers – is not new. In fact, in the years 2002-2003 intensive discussions took place among the Members of the Administrative Commission. The Greek presidency made several proposals for revising the Recommendation 16/84. These proposals were intensively discussed by the Members of the Administrative Commission, but in the end no concrete result was achieved, as the Member States preferred to keep the flexibility provided by the Recommendation 16/84. In the first proposals for a revision, the group of researchers is especially mentioned.

From the discussions in the Administrative Commission in the year 2003 it is quite obvious that the Member States opposed to the idea that Art. 17 (now Art. 16) agreements are applied to special categories of workers – such as researchers. Even if there were several disagreements on different issues regarding the revision of the Recommendation, a consensus was reached on the point of the persons covered: The agreements should include "*all* migrant workers so as to avoid any category or categories thereof being treated more favourably in any manner whatsoever".[35]

A proposal for a <u>new</u> Recommendation[36] regarding the conclusion of agreements pursuant to Art. 16 Reg. 883/04 could be as follows:

*"The Administrative Commission for the Coordination of social security systems*

[35] EMPL/00684/03 – EN, CA.SS.TM. 055/03.
[36] My proposal is on the one hand inspired by the proposals of the year 2003; on the other hand it alterates them by making the wording more general.

*Having regard to:*

*(…)*

*Whereas:*

*Art. 16 of Regulation 883/04 lays down that two or more Member States, the competent authorities of these Member States or the bodies designated by these authorities may by common agreement provide for exceptions to Articles 11 to 15 in the interest of certain persons or categories of persons*

*Certain employed or self-employed persons either (i) move – for a period of up to 24 months or from the outset for longer – to another Member State other than the one in which they normally perform work in order to perform work or to promote knowledge in their field of work there, or (ii) perform their normal work in the territory of two or more Member States (exercise of parallel activities).*

*Such moves are due to those persons' specialised knowledge and skills or to the nature of the work or the specific nature of the objectives set by the undertaking or organisation, when they are employed therein, or form part of non-standard or new forms of employment.*

*The social security record of these persons is fragmented if such moves take place variously in different Member States for frequent, successive and/or regular period. It is necessary to ensure the continuity and completeness of their social protection.*

*The certainty of the law is undermined when, in certain cases of people frequently moving abroad or exercising parallel activities, the determination of the legislation applicable pursuant to the provisions of the said Regulation becomes highly uncertain.*

*In the interests of the persons in question, it should either be allowed to choose between (i) being subject to the legislation of the host State or (ii) remaining subject to the legislation of the State of origin. If possible, this should be decided for the entire duration of their move abroad, provided there are significant socio-economic reasons for this, whether they are of a personal nature or bound up with the undertaking or organisation by which they are employed;*

*Recommends*

*to the competent authorities of the Member States that they themselves, or the bodies they have designated, conclude agreements, pursuant to Article 16 of Regulation 883/04, which may be applied to the abovementioned persons during their move to a Member State other than one in which they are normally employed, and which must be in the*

*workers' (or self-employed) interests, provided that the person concerned agree to them."*

This is of course just a proposal. As mentioned above, also the possibility of the application of a *third* country (such as the country of residence) could be added. It will be up to the competent institutions and Member States to decide how to proceed further.

**iii) Art. 16-agreements in the "interest" of the researcher**

It is important in any case to make sure that the application of an Art. 16-Agreement to a single researcher is in the "*interest*"[37] of the researcher and that he or she *agrees* to that. It is questionable though, how the "interest" of the researcher should be defined. According to the ECJ (Brusse), the worker's interest needs to be linked to the *determination* of an applicable social security system, not to the *application* of such a system. In the past, the Court also denied the application of the principle of "favourability" (the so-called "Petroni-principle") to the rules of conflict of laws.[38]

However, since the "Bosmann"[39]- and "Gouvernement Wallon"[40]-Rulings the ECJ does not seem to stick to this strict interpretation any more. This could allow more flexibility in defining the "interest" of the researcher. For instance – to refer to the discussions in the Administrative Commission during the years 2002-2003 – the "interest" of a researcher could be defined as the possibility to choose for the legislation of the Member State that "*contributes most fully to their social protection*". Admittedly, this may be difficult to define and personal preferences of the researcher may also play an important role.

The application of an Art.16-agreement *"in the interest"* and *with the agreement* of the researcher could solve many problems currently connected with frequent changes of the social security record of researchers.

On the other hand, a very excessive use of the Art. 16-Agreements might also undermine the whole system of conflict-of-law rule of Reg. 883/04 and the importance of the lex-loci-laboris-principle. The Administrative Commission will have to make clear what is meant by 'in the interest of' and 'with the agreement of', in order to delimit the possibility of a variety of interpretations afterwards and thus the creation of

[37] ECJ Case 101/83 (Brusse), 1984, ECR 2223.
[38] ECJ Case 302/84 (Ten Holder), 1986, ECR 1821; Case 60/85 (Luijten), 1986, ECR 2365.
[39] Case C-352/06 (Bosmann), 20 May 2008.
[40] Case C-212/06, 1 April 2008.

differences in treatments. The aim of these agreements should indeed be to make sure that the researcher will have stability in his insurance position when moving frequently to various member states.

**iv) Open question: Status of a researcher– "best practices" in different countries**

One major problem remains. It cannot be solved by an Art. 16-agreement alone, neither by any of the other articles of the Regulation: The problem is that, in many cases, researchers – at least at the beginning of their careers – do not have an employee status, but instead only receive a fellowship. In that case, they do fall under the personal scope of the application of the Reg. 883/04 (Art. 2), but it is unclear under which status (as a student? as a self-employed?). Many problems (especially regarding their pension rights) will remain unsolved. However, this is a problem that can only be solved by national social security law – and not by coordination law. It would be advisable here to identify good solutions in some countries or even to suggest concrete changes in national social security law. But after all, it will remain the decision of the national legislator only, whether they want to implement these changes or not. However, the pointing-out of best practices in different Member States would be the first – and very important – step towards improving the social security situation of researchers.

### 1.2 Introducing a new conflict-of-law rule for researchers

The introduction of a new, specific conflict-of-law rule especially for researchers doesn't seem to be realistic at this point. There are also other groups of persons who are highly mobile and an extra rule would make sense for them, too. But if one begins with making exceptions for different groups of persons, the whole "building" of the Reg. 883/04 might be at stake.

If a new, specific conflict-of-law rule is desirable – this has to be decided by the competent institutions –, one possible "model" would be Art. 15 Reg. 883/04 (contract staff of the EU). It would give researchers the possibility to choose between the legislation of different Member States. Art. 15 Reg. 883/04 lays down that "contract staff of the European Communities may opt to be subject to the legislation of the Member State in which they are employed, to the legislation of the Member State to which they were last subject or to the legislation of the Member State whose nationals they are, in respect of provisions other than those relating to family allowances provided

under the scheme applicable to such staff. The right of option, which may be exercised once only, shall take effect from the date of entry into employment".

The idea behind this article is to avoid frequent changes of the applicable legislation for the contract staff of the EU, since they are employed only for a certain (defined) period of time, usually not exceeding five years. (Without this article, the applicable law for the contract staff would be "automatically" the Belgian or Luxembourgian social security law – law of the state of employment.) The situation of mobile researchers moving from one country to another country on the basis of fixed-time contracts or projects can be considered to be quite similar to the situation of this contract staff. Internationally mobile researchers often hold short or medium term assignments for a relatively long period of their careers in different countries. If Art. 15 Reg. 883/04 would also be made applicable to researchers, they could choose between a) the country of employment, b) the country where they were insured over the last years, or c) the country of their nationality[41]. In some cases, it will not be that easy to determine the "date of entry into employment" (like for contract staff): Is a fellowship or a scholarship an employment? For quite a few countries this is unfortunately not the case.

## 2) Simultaneous performance of activities (as an employee or a self-employed) in different Member States

### 2.1. Interpretation issues of Art. 13 Reg. 883/04

In some cases researchers don't move from country A to country B but perform research activities at the same time in different countries. Example: A researcher who is employed by his or her "home" university in Member State A takes part simultaneously in a big research project (cooperation between different countries or institutions), which is managed by another university in country B. In this case he or she is working for that particular project on a self-employed basis while at the same time being an employee in Member State A. In case of this or similar examples the answers and solutions given by the Regulation 883/04 are quite clear (Art. 13 Regulation 883/04, with specifications in

[41] It is questionable here, though, if the country of their nationality is a reasonable solution. The application of the law of the country of residence might make more sense, despite the problems in defining the notion of "residence" in some cases.

Art. 14 of the Implementing Regulation, i.e. Regulation 987/09). In case of this particular example, the applicable law will be that of the state where the person works as an employee (Art. 13 (3) Regulation 883/04). Contrary to the "old" Regulation 1408/71 there are no exceptions to this. Simultaneous application of two legislations is no more possible, which must be considered as an improvement.

The situation becomes more complicated, if the person combines two or more activities as an employee with two or more self-employed activities across various Member States (e.g. if he or she is taking part at the same time in various research projects in different Member States). In that case, one can assume that Art. 13 (3) Regulation 883/04 is applicable, which (in cases of activities as an employee in two or more Member States) foresees the application of Art. 13 (1) Regulation 883/04 (thus the law of the state of residence becomes applicable, if a substantial part of the researcher's activities is performed there). Nevertheless, we can come to this result only by *interpretation* of Art. 13 (3) Regulation 883/04, as the wording of this article does not explicitly mention cases of multiple employee *and* self-employed activities in different countries.

### 2.2.Distinguishing between posting and simultaneous activities

In the past, it was quite difficult to distinguish between *posting* and *simultaneous activities* in different countries. Now, Art. 14 (7) of the Implementation Regulation 987/09 makes things a bit clearer by mentioning criteria which can be helpful to distinguish between situations of posting and simultaneous activities: The *duration of activity* and its' *character* as permanent, as ad hoc or as temporary nature are important criteria. Another important criterium mentioned in Art. 14 (7) of the Implementation Regulation is the *place of work* as defined in the employment contract. An *overall assessment* of *all* the relevant facts and criteria has to be made.

Taking this into consideration, quite a few of the open questions regarding researchers performing research activities abroad can be answered. For example: In many universities many members of the university staff travel on a very frequent basis (to give talks, present papers, do consultancy or research). These activities have an "ad hoc" or "temporary" character (despite the fact that they take place quite often, they still

have a temporary character!). In addition, usually the place of work as defined in the employment contract is the university/institution in the home country. Therefore, after making an overall assessment, the *posting* provisions (Art. 12 Regulation 883/04) (and *not* the provisions on the simultaneous activities) will probably be applicable in most cases. Especially in cases of researchers the posting condition "performing work on behalf of the employer" must be interpreted *broadly* – the nature of research work is a totally different to the one of construction workers, for instance. In case of researchers, the employer very often does not give any "work instructions" at all (on the contrary, the freedom of research plays a major role in many countries) – but the work performed can still be considered as "performed on behalf" of the employer (university, research institution, etc.). This interpretation also goes in accordance with the Decision No A2 of the Administrative Commission for the coordination of social security systems of 12 June 2009. This decision stipulates that "the work shall be regarded as being performed for the employer of the sending State if it has been established that this work is being performed for that employer and that there continues to exist a direct relationship between the worker and the employer that posted him".

*If*, on the other hand, in the employment contract it is *explicitly* mentioned that the place of work is in not in one, but in two Member States (Member State A *and* Member State B), this would be a strong evidence for the simultaneous pursuit of activities in two Member States and thus for the application of Art. 13 Regulation 883/04.

### 2.3. Interpretation issue: Place of residence

The country of residence becomes competent in cases of simultaneous performance of activities as an employee or simultaneous performance of self-employed activities, if the person/researcher involved undertakes "*substantial activities"* in this country (Art. 13 (1) (a) and (2) (a) Reg. 883/04). The concept of "substantial activities" is made more concrete in Art. 14 (8) of the Implementation Regulation 987/09.

#### *i) "Substantial activities"*

According to Art 14 (8) Regulation 987/09 a "substantial part of activities" means a quantitatively substantial part of all the activities of a person. Various *indicative criteria* shall be taken into account in order to determine if a substantial part of the activities is pursued in a Member State, such as the *working time* and/or *remuneration* (or, in case of self-employed activities, working time, number of services rendered and/or income). "Substantial" does not mean that the *major* part of activities has to be performed in the country of residence, but the proportion of activity cannot be "substantial" if it is less than 25 percent of all activities pursued by the person taking into account the criteria mentioned above. This of course leaves relatively ample space for interpretation by the Member States.

### *ii) Researcher employed by two universities or institutions in different states at the same time: Art. 13 (1) (a) Regulation 883/04*

If a researcher is employed by two universities/institutions in different Member States at the same time, the country of residence is competent, whatever the size of activity performed in that State is (Art. 13 (1) (a) Regulation 883/04).

### *iii) The notion of residence*

For the definition of the place of residence the case law[42] of the European Court of Justice as well as the criteria mentioned in Art. 11 of the Implementation Regulation 987/09 have to be taken into consideration.

According to the European Court of Justice "State of residence" refers to the "State in which the persons concerned habitually reside and where the habitual centre of their interests is to be found. In that context, account should be taken in particular of the employed person's family situation; the reasons which have led him to move; the length and continuity of his residence; the fact (where this is the case) that he is in stable

[42] ECJ Case 76/76 (*Di Paolo*), 1977, ECR 315; Case C-102/91 (*Knoch*), 1992, ECR I-4341, Case C-90/97 (*Swaddling*), 1999, ECR I-1075.

employment; and his intention as it appears from all the circumstances".[43] In a ECJ-case with particular importance for researchers (*Knoch*), the person concerned (German national) was employed for two academic years as a university assistant in another Member State (UK) under a programme for university exchanges (she obtained her post through the German Academic Exchange Service). At the end of that period she became unemployed and applied for an unemployment benefit in the UK. The Court held that Mrs Knoch's moving as university assistant in another Member State for two years and her applying for unemployment benefits there does *not* automatically imply that she was also resident[44] in that State.[45] Indeed, the Court held – already in Case 76/76 *Di Paolo* – that there is no precise definition of the criterion of length of absence and that it is not an exclusive criterion.

According to Art. 11 (1) of the Implementation Regulation 987/09, when there is a discrepancy of views between two Member States about the determination of the residence of a person, the institutions shall establish by a common agreement the "*centre of interests"* of the person concerned based on an overall assessment of different criteria such as:

(a) the duration and continuity of presence on the territory of the Member States concerned;

(b) the person's situation, including:

(i) the nature and the specific characteristics of any activity pursued, in particular the place where such activity is habitually pursued, the stability of the activity, and the duration of any work contract;

(ii) his family status and family ties;

(iii) the exercise of any non-remunerated activity;

(iv) in the case of students, the source of their income;

(v) his housing situation, in particular how permanent it is;

(vi) the Member State in which the person is deemed to reside for taxation purposes.

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[43] See, mutatis mutandis, concerning Article 71(1)(b)(ii) of Regulation No 1408/71, Case 76/76 *Di Paolo*,1977, ECR 315, paragraphs 17 to 20, and Case C-102/91 *Knoch*, 1992 ECR I-4341, paragraphs 21 and 23.

44 *Knoch*, 1992 ECR I-4341, paragraph 28.

[45] For the purposes of the articles of the Regulation 1408/71 concerning the unemployment benefits.

If the consideration of the various criteria based on relevant facts as set out in paragraph 1 does not lead to agreement between the institutions concerned, the *person's intention*, as it appears from such facts and circumstances, especially the reasons that led the person to move, shall be considered to be decisive for establishing that person's actual place of residence.

Taking into account Art. 11 of the Implementation Regulation 987/09 in combination with the case-law of the European Court of Justice a *single* definition of the "State of residence" of a researcher, which is valid for *all* researchers, will *not* be possible. Instead, an overall assessment of different criteria and factors will have to be undertaken in order to establish the "centre of interests" and thus the place of residence of the researcher.

### 2.4.Sabbaticals

In case of sabbaticals (e.g. the researcher takes six months or one year of sabbatical and spends it abroad at another university) the same solution as under 2 b) will be applicable: In most cases, spending research time in another institution in another country will be considered as *posting*, even if there are no "work instructions" by the employer. Still, in these cases, it can be stated that the work is being performed "for" or on "behalf of" that employer – always in a broad sense! – and a "direct relationship" (again, in a broad sense) between researcher and employer still exists: in the vast majority of cases the researcher still remains part of the university or research institution staff.

## 3. Conclusions

Regarding the applicable legislation, the following possibilities exist:

i) Making extensive use of the Art. 16-agreements or ii) creating a new and specially formulated Recommendation of the Administrative Commission (feasible within the existing Regulation);

ii) Introducing a new conflict-of-law rule especially for researchers and/or other highly mobile persons analogous to Art. 15 Reg. 883/04 (this implies a reform of the Reg. 883/04)

iii) Interpretation issues regarding researchers who are simultaneously employed in different Member States: solutions and answers will be feasible in most cases within the existing Regulation. However, it is difficult – if not impossible – to introduce general interpretation rules applicable to *all* cases of researchers. This is because of the variety of researchers and because of their different employment and mobility patterns. We can thus come to solutions only by making overall assessments of the *concrete* situation of *concrete* researchers.

## Chapter Three
## BENEFITS RELATED INTERPRETATION ISSUES

In the scope of the work Package 3 shall focus on issues that follow from the provisions of the future social security coordination framework and shall provide for possible adjustment solutions that foster the social coverage of researchers. In Point I. concrete sub-schemes will be dealt with while in Point II. two general issues are tackled upon.

As regards Package 3 it seems that the definition of researcher is needed in some cases, but some adjustments can be effectuated even without creating a definition for researcher.

### 1. Concrete sub-schemes

#### 1.1. Health care

A substantial problem in connection with the right to health care arises is the case of mobile researchers who stay only for a limited period of time in a given Member State. It is to note that the costs of health care, should there be a full or limited entitlement, are to be borne by the competent institution. However, the core problem is the determination of the competent institution, which, of course, corresponds to the Member State of affiliation to the social security.

A further principle of the social security coordination is that an insured person shall enjoy a full entitlement to the whole range of health care services in the Member State where s/he permanently lives, so where the researcher and his/her family is deemed to be resident. Thus, it is already difficult enough to determine in which State the criteria for residence are met, for it varies according to each Member State (in this respect the provisions of Article 11 of Regulation 987/2009/EC might be helpful); nevertheless, one should not forget that if the country of residence differs from the country of entitlement, the use of the right to benefits generally entails an important administration in the background. However, due to the special status of the researchers and their increased mobility it is likely that they change residence often or, sometimes, they often stay temporarily short periods in various Member States where they became insured.

This phenomenon is also linked to possible difficulties in connection with the provision of benefits both in kind and cash.

***Health Care in Case of Temporary Stay***

All insured persons are entitled to medically necessary treatments in the MS where they temporarily stay, at the expenses of the competent State. This right is certified with a European Health Insurance Card (EHIC) that is always issued by the competent institution, with which the person is insured. Yet, in case of researchers it might often happen that they change employer and go working in another MS several times during a relatively short period of time that would result in a nearly undetectable variation of competent institutions.

It is noteworthy that the EHIC, being generally a plastic card designed for a middle term use, is issued in most cases with a period of validity that rarely corresponds to the duration of the employment that exists at the moment of the application for an EHIC. However, from an administrative point of view, the EHIC shall be withdrawn and a new one shall be issued each time the insured person goes to work in another Member State. This is, of course, especially difficult to implement, and because the researcher and his/her family members are highly mobile, they are often impossible for the institution to contact.

The European Commission confirmed on several occasions that the lack of existing insurance relationship must not be a valid reason to reject reimbursement claims from other Member States, but the costs shall be borne by the very institution that was competent at the time of the treatment. So, in case of researchers that frequently alter their working place among Member States it is likely to cause administrative difficulties to handle such situations and especially to forward invoices to the right institution once it has been established that is was the competent one. A further question is how to issue and which entitlement document to family members of researchers. Here there are also a variety of options, depending on whether they follow the researcher abroad and whether they become resident there. The new regulation (883/2004/EC) would bring about some more clarity in this issue, for it stipulates that the EHIC is always to be issued by the competent institution, but it is not always the case under the current Regulation 1408/71.

To sum up: for researchers are mobile and move irregularly for shorter or longer periods between member States, and sometimes even more than two Member States are involved, whereby the competent institution is also likely to change unpredictably, both the issue of the EHIC and the administration of reimbursement procedures behind them might cause difficulties for institutions and troubles for the researchers and their family members. It is however to stress, that regardless the whereabouts of the competent institution, it is an inherent right of all insured persons to benefit from the necessary health care under the rules of the MS of stay.

***Health Care in Case of Residence***

The picture is more complicated if the researcher (and his/her family) decides to stay permanently in the Member State where the researcher work, although, the place of work is variable and the researcher may be called up to work in another Member State. In such a case the competent State will remain the one of the residence, which apparently makes the situation clear, but in case of frequent changes of residence the continuation of treatments already started in the Member State of the former residence is hardly guaranteed.

Another situation occurs if the researcher and his/her family do not change residence; however, they in fact live together in the Member State where the researcher (temporarily) works. Such a situation might give rise to a problem of determination of residence, for the competent institution must bear the costs of health care rendered in the Member State of residence. Assuming a smooth settlement of questions related to residence, the temporal nature and the frequent change of working place may lead also here to administrative difficulties. Even if it is envisaged in the long run to exchange relevant information electronically, a certain reaction time of the institutions must be taken into account, whereby the institution of the Member State of residence shall duly register and deregister the entitlement of the researcher working in another Member State. Though, currently such a procedure would take sometimes considerable time, especially if the entitled person is hardly present and contactable. In case of a short time work in the other Member State the registration can often effected only retroactively. In

any case, a registration procedure can very rarely directly follow the changing employment and insurance situation.

***Short Term Cash Benefits***

The cash benefits are provided in case of incapacity of work, which is assessed differently as in the case of normal manual or clerical workers, for in most cases the research work can be carried out from a distance or from home. Nevertheless, the biggest problem is linked to the aggregation of periods of insurance, which seems to be particularly difficult if, in course of a certain short period of time the person has worked in several Member States, and it is even more difficult if the insurance periods are interrupted by periods in which no (declared) work has taken place. For, in a number of Member States a certain "waiting period" has to be accomplished in order to be eligible to cash benefits, and it is a common duty of the institutions and the insured to take efforts to certify those previous insurance periods.

Special difficulties arise if a child is born in the researcher's family, and subsequently the cash benefits due in case of maternity shall be claimed for in the country where the parents (mother) is insured at the moment of childbirth. However, it is probable that, in case of a short term insurance, if nothing else but a short term contract links the researcher to the competent State, the application to benefits would cause undue difficulties and maybe the benefits or the additional advantages linked to them (e.g. free use of public transports, pension insurance periods, exemption from study fees etc.) are less attractive than in the country of their habitual or permanent residence.

***Special Case: Scholarships***

It shall not remain disregarded that an important tool of the researchers' mobility within the Community is the variety of study grants or scholarships offered by States, universities and research centers. Yet, it many Member States these grants and scholarships are not subject to social insurance and/or do not constitute a basis for paying contributions, subsequently they are no grounds to seek any kind of cash or in kind, long or short term benefits.

Moreover, researchers are, during the time of scholarship, either on unpaid leave or quit working at all, which also produces a negative impact on their social protection. So it is very much possible that in special situations, especially if the mere subsistence of the researcher is covered by a scholarship, that the researcher is left without insurance or his/her access to social security benefits is restricted or s/he can join the social security schemes in one of the Member States involved only on an optional basis.

***Problem of family members***

In case the researcher changes his/her place of work several times, his/her economically inactive family members – even if they stay in their original state of residence – will follow his/her legal fate resulting in a frequent change in their affiliation as well. This situation is not cured or mitigated by Article 32 of Regulation 883/2004/EC either hence that exception relates to those family members only who are not dependent upon the worker.

It means that the economically inactive family members (most commonly the mother caring for the children) will have to de-register and register again and again and wait for the E 106 or E 109 form (E 109 when the couple lives apart) evidencing their rights to in kind benefits in the country of residence if they need to demonstrate coverage in a health-care institution. These forms are essential for them hence they receive full-scale of the benefits with them contrary to the EHIC that provides only for benefits necessary on medical grounds (mainly emergency benefits).

Each E 106 or E 109 form is issued by the competent institution of different Member States that takes time, albeit family members should not be left without coverage even for one day (especially couple with small children need health-care coverage every day).

In this case the splitting of the legal status of the researcher and the family members shall be reconsidered.

***Problem of new-born children – born abroad***

If a child is born abroad the issuance of the birth certificate in the competent state could take several weeks or months. For this period of time (if the parents' social situation is troubled) the baby's health care costs shall be born by the parents, in this case the EHIC can not be issued retroactively resulting in a detriment situation. There is no explicit rule for this the silent agreements between Member States is that the mother's EHIC shall be accepted (however, this is not mandatory at all). This problem mostly affects persons who travel more frequently than the others – for example researchers.

**Solutions**

The direction of the settlement of the above problems should be to guarantee the most possible stability in the researchers' situation, especially as regards their insurance relationship. Such stability can effectively contribute to eliminate most problems arising from the fact of frequent change of legislation.

What is left without insurance?

Essentially, in kind emergency health-care shall be provided for every Union citizen in the territory of another Member State following from the obligations of the European Social Charter. However, this – of course – is not free of charge it shall be paid for by the researcher. Therefore s/he is evidently put on disadvantage. In turn, cash benefits are absolutely not due. Consequently, if the researcher suffers short-term incapacity, s/he shall be able to buy in kind health care, but no income replacement is offered (not mentioning private insurance).

If there is an insured status problems are solved, the principle of aggregation and export is fully applicable. However, if the research activity is not coupled with the payment of contributions and therefore on the E 104 form the sending Member State indicates (if at all issues E 104) the coverage for *in kind benefits* only, the receiving Member State can not be expected to acknowledge the research activity as insurance and award *cash* benefit on the basis of aggregation. This is simply excluded. Therefore, the qualification

of the research activity from the point of view of the insurance determines also the rights in the second Member State.

The real solution therefore is to include the researcher into the social security system of the receiving Member State or expressly leaving him/her in that of the sending state. A possible instrument for this might be the modification of the Regulation 883/2004/EC that may focus on the following points or the combination thereof:

→ Insertion to Article 12 a special rule for the posting-like situations of research activities where the temporary activity in another MS does not exceed 24 months.

→ Addition of a special clause to Article 14 in which the researchers temporarily active in another or several Member States would be given the right to opt for remaining in the social security system of their "home country", even on a voluntary basis, regardless the mandatory insurance in the other MS (see for more general issues, point 2.).

→ Inclusion of a special provision to Article 16 in which Member States would be expressly authorized to deviate from the general rule of Article 11 in the interest of the researcher.

*Family members*

It seems that their difficult situation could be sort out more effectively by adjusting the main rules to the special situation of researchers. It might seem a feasible solution to give an option to the members of family to stay with the social security system of their country of residence as long as the active researcher is travelling all around.

Solution

1. Extending the prioritizing rule of Article 32 to family members of researchers

→ A sort of short solution might be to insert an addition to the end of Article 32 paragraph (1) as follows.

[… *An independent right to benefits in kind based on the legislation of a Member State or on this Chapter shall take priority over a derivative right to benefits for members of a family. A derivative right… shall take priority over independent rights, where the independent right in the MS of residence exists directly and solely on the basis of the residence of the person concerned in that Member State* ]"… except in case of the members of family of researchers."

2. A more defined solution could be to insert into Article 32 a new paragraph (3):
"Members of the family of a researcher are given the option to choose their social security affiliation in the MS of residence or in the MS where the derivative right has been established".

→ This insertion would be a definitive exception from the main rule.

3. To insert into Article 32 a new paragraph (3) with general coverage for every family members (→ it does not dependent upon defining "researcher").

"Members of family who live in a different MS from the person on whom they are dependent shall be given the option to choose their social security affiliation in the MS of residence as an independent right or in the competent MS as a derivative right. "

This insertion would give an option for a broader circle of family members. Of course it might be combined with discretion by the MS of residence as well.

*New-born babies*

A solution could be to lay down that new-born babies shall be given health care in the first six months for the mother's or the father's EHIC.

*Best practices*

There are some interesting examples that could be made use of. One is a Scandinavian solution that gives the possibility of remaining under the social security system of the Member State even if the person works and resides elsewhere. In this case the coverage

remains and an Article 17 (now 16) is immediately initiated by the sending Member State. An Article 17 (now 16) procedure takes time, and even it ends without result the person is not left without protection.

Finally, the netc@rds project[46] could be mentioned as a best practice that provides an online verification technical devise to support acceptance procedures of the EHIC for health insurances and health care providers. Albeit it has not reached an overall support in the Member States, even some are against it – arguing that a technical problem could not result in loss of rights for EU citizens – an online checking system of whether somebody is a researcher might effectively be used at a later stage.

### 1.2. Unemployment benefits

1. Clearly, the main problem here is the legal status of researchers. Unemployment benefits are connected to economic activity, consequently if the respective MS does not recognise research activity as insurance/service period, no contribution are requested and no benefits are due.

See also *general issue* hence insurance coverage can be obtained through voluntary affiliation or affiliation to a voluntary scheme.

2. If there is insurance researchers are still faced with obstacles.

Article 64 of Regulation 883/2004/EC lays down the basic rules on seeking work in another Member State while retaining the benefits from the competent state. It is very important that the benefit is provided by the competent state at its own expense if the person cooperates with the employment services and a four-week „waiting period" – during which the persons must be available - is envisaged. As regards the 4 week waiting period the Regulation itself provides for the possibility of its shortening. The

[46] http://netcards-project.com/web/files/Press_Release_Netcards_Final.pdf In general: www.netcards.eu

limit of registration is also flexible and the duration of the seeking for job can be extended up to 6 months. All in all the rules are *per se* flexible.

However, these rules are difficult to be applied to researchers hence there is usually no „suitable job" in one MS for them. Looking at the system from this angel the whole concept of the rules is rather a hurdle hence

- researchers need to personally cooperate,
- with one MS at one time (more probably s/he is rather searching for job in the EU as a whole (e.g. through EURAXESS),
- with the obligation to accept jobs the employment service considers "suitable",
- albeit no real result can be awaited – probably the researcher has to find his/her new job,
- correlating with the problem of temporary suspension or termination of benefits, activities that can be pursued parallel to drawing benefits,
- causing an administrative burden for MSs (how to set the average wage, how to ).

One could argue that is why researchers are not granted insured status in the unemployment scheme… However, we are firmly decided to look for a balanced combination of insurance and benefit.

**Solution**

The following solution might be envisaged in priority order.

1. Horizontally, the best solution would be if researchers could leave the competent state with the purpose of searching for job elsewhere without time restraints (i), without being obliged to de-register and register (ii) without the obligation of co-operation in other Member State (iii), for a maximum of 6 months (iv), *while retaining their unemployment benefits*. Hence other EC law instruments (Regulation 1612/68/EEC, Directive 2004/38/EC and ECJ case-law *inter alia Antonissen*) provide for the right to seek for employment, in theory nothing prevents researchers to register with several national employment services. The competent institution could than decide what documents it needs for the payment of benefits (copy of job applications, personal

interview each two months etc.) that is surely simpler than applying Regulation 883/2004/EC.

→ This solution means derogation from Article 64 (1) a) – c).

2. In case of no agreement on the horizontal derogation the 4 weeks rule and the co-operation could be eliminated. In this case we keep the registration requirement providing for guarantee for the competent state that the researcher is looking for a job.

→ This solution means derogation from Article 64 (1) a) – b).

3. As a minimum MSs could be urged not to apply at least the 4 weeks rule in practice leaving it to the researcher how long to search for job in that MS.

→ This solution means derogation from Article 64 (1) point a).

It is clearly a win-win situation irrespective of which option is chosen.

Distinct Member Staes can opt for this solution between themselves through bilateral agreements if global result is not achieved.

Looking forward, mostly as regards point 1 EURAXESS could somehow be channelled as a forum for searching for job (accepting the registration as a valid cause for seeking job?)

*Best practices*

There are special provisions in some Member States' legislations (for example in the Danish legislation) where the acquisition or duration of the unemployment benefit is not linked to the previous completion of periods of insurance, employment or self-employment. These benefits are dependent upon other conditions such as the completion of training or graduation.

Researchers, who cannot fulfil the conditions of the general conditions of the benefit could acquire a special form of benefit, which is dependent upon the previous (research) activity or upon the termination of their grant. The duration and the amount of the benefit are uniform in every case.

### 1.3. Family benefits (not insurance-based)

Family benefits are probably the most problematic hence voluntary schemes are rare or non-existent in this field thereby the amendment of Article 14 of Reg. 883/2004/EC would not mean much of an addition.

Here the new Regulation - by consolidating old case-law – lays down priority rules: insurance, receipt of pensions, residence, and if two Member States are responsible on the same basis the decisive factor is the place of residence of the child. This order should serve the aim that the child is not left without protection: finally the place of residence is competent. This is confirmed by Article 6 (1) b) of Regulation 987/2009/EC according to which if two Member States have different view on the applicable legislation the place of residence shall be competent. I need to emphasize that me, personally find this priority rule a great novelty of the new Regulation that is really very useful in practice.

However, the *renvoi* might not solve the benefit question hence – even in accordance with Dir. 2004/38/EC and the case-law on "sufficiently close links" – Member States might be exempt from payments if the applicant has no sufficient links with the MS. The core issue is whether the "presence" on the territory of a MS during the research activity – of course if this is not an insurance - is a "stay" or a "residence" in terms of Regulation 883/2004/EC – look at Article 1 points j) and k) – and Regulation 987/2009/EC (especially Article 11). If the country where the whole family lives coincides with the research activity to which no insurance is attached and the respective social security legislation does not accept the "presence" as residence, logically no benefits are provided at the end of the day. Obviously, MS know that this ending might be questionable, but neither the co-ordination instrument nor the ECJ is crystal clear on this.

**Solution**

We need to concentrate on the underlying aim: to provide coverage one way or the other.

1. A way forward could be to operate with the usage of the term "stay". A general clause could be contemplated on pursuant to which in cases where the application of the presently effective rules results in no benefit for the family, and cumulatively, they have a common country of stay this is deemed to be the competent state.

→ Indeed, this could be of horizontal importance for every union citizen.

2. If we can not operate with point 1., I am sorry to say but a solution is still to go back to nationality. Of course I am fully aware of the prevailing idea supported by legal literature that Europe goes more and more towards a residence-based social citizenship. However, I would not rule out the relevance of the bond what nationally means.

A general clause could be contemplated on pursuant to which in cases where the application of the presently effective rules results in no benefit for the family, and cumulatively, they have a common nationality this is deemed to be the competent state for periods not exceeding 6 months.

→ The idea could be further elaborated as regards its details, of course (interruptions etc.).

## 2. General issues

### 2.1. Strengthening the general institutional framework – collection of contributions

A significant problem in connection with the insurance relationship of employees working in the research field is, according to general experience, the question of contributions and the basis thereof. In fact, it often happens that the researcher or any other highly mobile worker, is continuously underlying the legislation of a given Member State; either on the basis of the simultaneity of activities or due to a civil

servant or assimilated status of the researcher. However, the circumstance, that might be an obstacle for the movement is the uncertainty how the insurance relationship in the other Member State would affect the rights of benefits of these persons. Here especially the amount (or level) of cash benefits plays a crucial role, being subject of the contribution basis and/or the factually paid contributions.

A loss in the contribution basis is already noticeable in short or medium term by claiming sickness benefits, while the problem is further increasing on the long run in connection with old age pensions. According to the current philosophy of the coordination regulations, in case of simultaneous activities or multiple employment relationship in several Member States, the employer has the duty to declare the worker in the competent Member State and pay contributions there according to the local rules. However, it could pose tremendous difficulties in practice to those employers who are not used to do so and are by far not aware of the rules applicable in the competent Member State.

Art. 84 of Regulation 883/2004/EC formulates also almost reluctantly that "*collection of contributions […] may be effected in another Member State*". This principle is further reinforced by Article 21 of Regulation 987/2009/EC stipulating that the employer shall act as if it would be established in the competent State. Yet, the practice shows that the collection of contributions might be hardly effective if neither the competent institution nor the employer in another Member State is aware of the fact that contribution would be due. As in most cases the sole obstacle to the assessment of the right contribution basis seems to be the simple lack of awareness, it is suggested to enhance paying contributions by making it easier. The best way for it, from the point of view of the employer, would be a solution in the framework of which the employer could pay directly to the collecting institution of the Member State where it is established, and this institution would forward the due amount to the competent one. For this, it is indispensable that the institutions know about the contribution rates and the contribution basis in the competent Member State what, however, is more expectable form them than from the employers.

In this case employers would be entitled to pay the contributions in their home country to the collecting institution they know and on forms they are used to, and – last but not least – in a language they speak.

**Solution**

As it is basically in line with Articles 76 and 84 of Regulation 883/2004/EC, it would be sufficient to bring a precision to Article 21 of Regulation 987/2009/EC in order to support technically the payment of contribution and so to increase the protection of rights.

→ A further paragraph (3) could be inserted into Article 21 with the following possible wording:
*"(3) The employer whose registered office or place of business is not situated in the competent Member State may effect the payment of contributions due on grounds of the legislation of the competent Member State directly to the institution of the Member State where it is established. This latter institution shall provide the employer with all relevant information necessary for assessing the basis and the rates of contributions and shall transfer all payments made by the employer to the competent institution in a frequency required by the legislation of the competent Member State."*

**2.2. Enhanced assurance of access to insurance and benefits**

Usually the acquisition, retention, recovery, duration or export of the right to different benefits is conditional upon the completion of either periods of insurance, employment or self-employment. However, in several Member States researchers are exempt from insurance resulting in no social security status at all. In other Member States researchers (or recipients of grants) are insured after 3-4 months (or years). This endangers their benefits as a whole.

One leading principle could be to strengthen the rights of those who are willing to get affiliated – even by their own efforts.

**Solution**

I propose the following priority order:

1. Member States shall be urged (by proposals, resolutions) to introduce mandatory insurance for researchers *from day one* (→ clear Member States' competence).

2. Voluntary affiliation to the mandatory schemes
→ If the researcher can not mandatory be affiliated (it is not supported by Member States) voluntary affiliation to the mandatory schemes shall be facilitated on favorable terms *from day one* (→ clear Member States' competence).

3. Enhanced usage (or creation) of separated voluntary schemes (→ co-ordination issue)
→ A researcher who is not insured in her/his country of residence (e.g. a freelancer), but is affiliated to a voluntary insurance scheme run or recognised by the state, through that affiliation(s) the researcher is insured at least against two (three) risks (health care, pension, unemployment or any other (family, invalidity) shall be exempted from being insured in the *country of the research activity* (quite arbitrary I do not qualify it as employment or self-employment or service period – may be it is none of those).
→ It could be timely equal to the period of research activities hence we suppose that the person will be dependant upon the benefits deriving from this scheme. Or it might be timely limited: e.g. for a maximum period of 10 years that shall suffice.
→ Member States shall be urged to recognize the affiliation of a researcher to a voluntary system of another MS as binding; or shall facilitate that researchers to join these kind of systems if they run or recognize such for other professions (e.g. artists, sportsmen).
→ Member States shall be urged (by proposals, resolutions) to introduce voluntary schemes for researchers if they do not agree with point 1. (mandatory scheme).

Point 3 means a derogation from Article 14 of Regulation 884/2003/EC however it is in compliance with the underlying principle of Regulation 883/2004/EC, namely to provide for social security coverage for all persons.

*Best practices*

Some countries already acknowledge voluntary affiliation to the mandatory schemes, it varies whether it is valid for in kind benefits only or encompasses cash benefits as well.

## Chapter Four
## INFORMATION
## AND RESEARCHERS´ RIGHT TO FREE MOVEMENT

DEFINITION

### 1. Researchers' free movement rights and obstacles derived from the co-existence of multiple national security systems and different models of public administration

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### 2. Information on social security as a key to facilitating researchers' mobility

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*3.1. New family patterns and legal vacuums in the coordination of social security regimes on the grounds of civil status: homosexual marriage, non-marital unions, polygamous marriage.*
*3.2. The transposition of Directive 2004/114/EC on the conditions of admission of third-country nationals for the purpose of studies, pupil exchange, unremunerated training or voluntary service: "lost in translation"*
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*4.1. Substituting the exchange of information by direct access to national records by Administrations: the Spanish-German experience*
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*4.3. Exporting the experience of the European Health Insurance Card to the Social Security field*

**Definition:**

For the purpose of this package, a teleological concept of research is adopted. According to this, any person whose activity may produce results that can be protected by an ISBN, a copyright, a patent or a utility model would qualify as a researcher.

## 1. Researchers' free movement rights and obstacles derived from the co-existence of multiple national security systems and different models of public administration

### *1.1. Free movement and information*

Free movement is a basic pillar of EU law guaranteed by the Treaty.

With regard to the free movement of researchers between States where EU legislation is applicable it has been pointed out that "basic problems often derive from a lack of awareness of researchers and employers on their social security rights. This should be remedied by improving access to existing information"[47].

Maybe the first step to accomplishing the task of making information about social security rights under national and EU law more accessible to researchers in particular would be to admit that researchers are not a homogeneous group.

In other words, it seems evident that the information required by full-time professors should differ from the information required by researchers who are looking for a job, or by part-time researchers… In the same way, the kind of information may vary according to whether it is demanded by a civil servant, a private employee, a self-employed person or a student. Similarly, social security answers will also differ depending on whether who is asking is protected by a coordinated scheme – a general or a special one – or by a scheme excluded from EU coordination.

Moreover, in the matter of improving social security information available to researchers it is necessary to pay attention to the gender aspect, as female researchers probably need specific information about particular social risks (pregnancy, child-rising, maternity leave…).

[47]Communication from the Commission to the Council and the European Parliament; "Better Careers and More Mobility: A European Partnership for Researchers". COM (2008) 317 final. Brussels. 23.5.2008.

### *1.2. Why is social security a main concern for mobile workers?*

Social Security is the result of a historic process in which many factors are involved (economic, political, demographic, cultural, etc.). This is the main reason for the peculiarities and differences between social security systems in EU states and in the other countries where EU legislation is applicable.

However, EU institutions have no competence either to unify or to harmonise national social security systems, only to coordinate them. Moreover, there is no special scheme designed exclusively for researchers existing in any EU Member State.

It can be asserted that in all member states, social security is a very complex field in which legal reforms take place very frequently. For this reason social security experts must have a broad knowledge not only of current national social security systems but also of EU regulations on the coordination of social security systems and EU case-law.

Therefore, if people without legal training are almost incapable of understanding their own national social security it is not realistic[48] to think that mobile workers/researchers will be able to understand either Regulation 1408/71 or Regulation 883/2004.

A list of frequently asked questions relating to the coordination of social security schemes is available through the TRESS network website. A link to this list is included in the home page of the European Commission, Employment, Social Affairs and Equal Opportunities.

In order to know what are the real problems facing mobile workers/researchers the report "Difficulties experienced by citizens when exercising their mobility rights in Single Market" available in the website of the Citizens Signpost Service, could also be useful. Among the complaints received by the CSS in the social security field, the following topics are worthy of mention: equality of treatment, single country of

[48]Dr. Dagmar Meyer:" I received a 16-page letter from the responsible agency in Germany…I read it several times, but I still can´t understand every detail of it –and that despite having a PhD in mathematics". Mobility without Security? German Rectors´Conference. 2009; p.15.

insurance, aggregation of insurance periods, calculation of pension rights, unemployment benefits, family benefits and the residence of family members. However, in the abovementioned report most complaints were related to health care in kind in another member state.

### *1.3. Different public administration models in Europe*

To explain the different ways national Public Administrations recruit their personnel in Member States, and the peculiarities applicable to them in the field of social security, would require a historical approach[49] that is not the object of this project.

In any case, what it is undeniable is the widely varying legal status of people working for public administrations whose social security rights can also differ substantially.

In Europe, the existence of a high number of civil servants that can be simultaneously qualified as researchers is also undeniable.

However, according to national legislations it is possible that researchers who perform similar or identical tasks for their administrations are included under the personal scope of different schemes (general or special ones).

Moreover, a relationship between a researcher and a public administration regulated by labour law is also possible.

Furthermore, researchers may even perform their tasks as self-employed and be protected by self-employed schemes.

The most extreme situation is the one in which researchers are simply excluded from the personal scope of social security systems, or are only protected in the case of need for medical assistance.

[49] See, Le fonctionnaire est-il un salarié comme les autres? Pensions de retraite dans les fonctions publiques en Europe. CSE. Brylant. 2003.

Due to new technologies, the number of researchers that can be qualified as teleworkers has also increased. As far as teleworking is not a regulated contract in the majority of EU states, social security protection of such teleworkers is a grey zone.

A specific problem related to the legal status of researchers and their social security rights is pointed out in the 2008 TRESS Report (p. 61):"the researcher who is moving to a Greek university…could be characterized as an employee…however his or her affiliation with the social security of IKA-TEAM presupposes participation in competitive examinations and is extremely problematic, if not impossible. The solution to this problem is, in this respect, the affiliation of the researcher to the OAEEE as he or she has the status of a self-employed person".

### *1.4. "Researchers working at accredited universities or in recognized scientific research institutions"*

If according to Parameter 1 of the summary presented by Prof. Pieters we focus our attention on "researchers working at accredited universities or in recognised scientific research institutions" we will jump to the conclusion that the majority of this group will be composed of civil servants and full- or part-time workers who enjoy social security protection.

In fact, it is difficult to imagine the existence of self-employed researchers working at universities or accredited institutions.

However, limiting the scope of researchers to civil servants and other employees runs the risk of forgetting the most vulnerable group of researchers: students (pre- and post-doctoral) who are not bound by a contract but who are linked to a university or research institution by a grant or stipend.

### *1.5. Researchers: a "category of highly mobile workers"?*

There is a general consensus in favour of considering that researchers are among the workers that most exercise their free movement right.

In fact, in the past, when very few universities existed, students and professors needed to move to other cities or countries in order to undertake their studies and research. Nowadays, as a general rule, mobility of students is not the direct consequence of a lack of faculties in their area.

In the 21st century, when the contents of the most prestigious academic libraries can be consulted at home through the Internet, when the number of e-reviews and e-libraries are increasing, when websites provide international information about what has been published in every specific field of science, when even video-conferences are more and more frequent, when you can buy books on the Internet and have them on your desk in 24 hours… travel abroad does not seem so essential for researchers as in the past, or at least, mobility should not have the same importance in all areas of research.

However, nowadays it is undeniable that there is a strong political will to improve researchers´ mobility as the cornerstone of the European Higher Education Area (EHEA).

The European Commission also considers that "mobility is essential for fostering knowledge transfer across Europe."[50] It has also been underlined that "in the current economic climate, Europe needs to mobilise all its available talents."[51]

There are also states in which universities traditionally only hire new PhD holders after they have spent a time researching/teaching in other institutions (Germany). This strategy has been "copied" by other countries in which this requisite was not required in the past as a strategy to confront academic endogamy, but with contradictory results (Spain).

In any case, as far as there is no harmonisation or coordination of "the academic career" among European universities, researchers´ mobility has a different impact according to national systems. And even when mobility could be required or seen as a merit when

[50]http://cordis.europa.eu/eralink/wnew_en.html.
[51]http://ec.europa.eu/social/main.jsp?langId=en&catId=22.

considering promotion in one's university field, this rule has exemptions according to the candidate's supporters[52].

In conclusion, although most probably in the private sector researchers may be highly mobile workers, if we circumscribe the aim of this project, in accordance with Parameter 1, to "researchers working at accredited universities or in recognised scientific research institutions" another point of view can be offered:

1) People who want to be promoted to professor or full-time worker at universities and institutions are encouraged by their national systems to do research in other countries/institutions. In general, the academic results or quality of these periods abroad are more or less irrelevant. The main point is to justify in your CV how many months/years you have spent outside your university/institution.

Meeting this requisite is far easier in central Europe than in the periphery states as in the former case it is easier to work in different states without changing your place of residence. This point should be taken into account by increasing the social security information available to frontier workers in those states where a significant number of such workers exist.

The academic requirement of mobility is also easier for male researchers to fulfil than for females. This could constitute an indirect obstacle to women being promoted in the research and academic field, as women with family responsibilities can hardly take the decision to move abroad for long periods of time in order to improve their academic CV. Furthermore, family duties assumed by female researchers are not taken into account when considering promotion (for instance, two years of maternity leave is not equivalent to two years researching abroad). Women with family responsibilities, therefore, require more time and more sacrifice to reach the top than a male researcher in a similar situation.

[52]Francisco José Ayala, winner of the 2010 Templeton prize, who developed his academic scientific career in the USA, declared that he tried to return to Spain but "in Spain, nepotism rules, posts are given to friends and relatives". Quoted by Henry Kamen in his article "España y la Fuga de Cerebros" published on 7.3.2010 in the newspaper El Mundo, p. 23.

2) With regard to cases of people wishing to be promoted and where mobility is not really a necessity demanded by their research activities but rather something encouraged by the system, it is not infrequent that their periods away take place in summer or during other holiday periods.

In the case of Spain, as Prof. Dr. Araceli Mangas critically wrote, most researchers´ stays abroad take place in August "when people in charge of research projects are also on holiday and therefore it is almost impossible to contact them". Prof. Dr. Mangas Martín ironically qualified these periods away as "holidays paid by the State budget". She also adds that "many projects are false projects and their objectives could be achieved in the same ways as in the past when there was no money to waste"[53].

That the situation described above is not simply an isolated case can be seen by examining the figures contained on pages 12 and 13 of the text entitled "Mobility without Security?" published by the German Rectors´ Conference. The conclusions that can be drawn from the data published – data that may also be applicable to most other EU Member States, although national statistics would be required to confirm this first impression – are that:

(i) Most researchers stay abroad for less than a year. This fact may be important in order to specify the kind of social security information that they will require.

(ii) Researchers´ mobility is inversely proportional to academic status. That is to say: graduates[54] are more mobile than post-doctoral researchers, and postdocs are more mobile than academics/professors.

[53] Araceli Mangas Martín; "Dispendio Universitario en Proyectos Fantasmas". Tribuna/Educación. El Mundo, 2.3.2010, p. 17.

[54] On 6. 4. 2010 the newspaper El Correo de Andalucia published this alarming news: 45% of the medical graduates that will finish the mandatory training period (MIR) this year are third-country nationals. According to the newspaper, this fact makes it difficult for national medical students to gain access to the mandatory training required in order to work as doctors, as there were 13,500 applications for only 6,900 vacancies. The doctors´ trade unions (CESM) have proposed imposing a 10% limit of third-country students admitted to these training courses financed by the State budget.

In other words, one has the feeling that when researchers achieve the objective of obtaining a "decent and stable job" at universities and prestigious institutions, the necessity to pass long periods abroad decreases dramatically.

This does not mean that this group renounces moving in any circumstances, but the motivation changes completely: lots of professors, assistant professors, and post-doctorate researchers travel abroad frequently for short periods of time in order to participate in seminars, attend conferences, give lectures in summer courses, comply with Erasmus exchange agreements etc.

This fact has to be borne in mind in order to specify what kind of information about social security rights may be required, because people who are abroad for short periods of time will probably be interested in medical assistance abroad in particular[55]. As in most EU states beneficiaries have to pay a percentage if they need health care assistance, it would be useful to include information relating to this topic in EU websites in order for people to be aware of the national costs that they may encounter even when they move with a European Health Insurance Card.

Therefore, the European Commission information campaign launched to raise awareness of the benefits of the European Health Insurance Card (EHIC) must be highly appreciated.

### *1.6. Academic and gender obstacles to researchers´ mobility*

After considering the arguments set out above, one has the temptation to agree with Prof. Alexander Lorz when he wrote "anyone who is already a civil servant will hardly

[55]The website Your Europe http://ec.europa.eu/youreurope/. offers this information in case "you go to another EU country for research work, you must have comprehensive sickness insurance cover in your host country:

- If you are a student, the European Health Insurance Card could be an option, if you are eligible. Make sure to apply for it with your home healthcare provider before you go.
- If you are employed in the country you are conducting research work in, you will need to subscribe to a local healthcare scheme once there.
- If you are being sent to a university or research institution in another EU country for a temporary period by your university or research institute of origin, then you will remain under your home healthcare scheme for the time you are posted. You should apply for the EHIC card, or for an E106 form, before leaving. Please note that under new rules entering into force on May 1, 2010, the E forms will be modified.

choose to leave this status. And that inhibits changing from higher education and research to the private sector. Hence, the obstacles to mobility are not just a cross border issue, but a domestic one as well"[56].

However, the obstacle to researchers´ free movement does not really seem to derive from researchers´ legal status (as far as civil servants´ rights and employees´ rights tend to converge) but rather from the indirect restrictions to moving resulting from administrative and labour legislation. In particular, researchers will refuse to move if they are not automatically entitled to recover their previous jobs after having enjoyed an authorised leave.

Therefore, all member states should guarantee the right of researchers to be reincorporated into their universities and/or institutions of origin automatically and without delay after working or doing research in other universities/institutions, without the obligation of passing any kind of new examination. This means paying special attention to national regulations about leave-taking (the reasons that justify applying for a period of leave and also the duration of the leave). It should be emphasised that self-employed researchers are not entitled to ask for a period of leave.

Just as the Bologna process homologates and validates university studies, it would be useful if the "cursus honorum" in European universities were more transparent.

It is contradictory to promote researchers´ mobility but demand several years of teaching experience in order to apply for a post. It can also be the case that previous teaching experience abroad will even be irrelevant, if in order to be selected the candidate must demonstrate experience in a specific area of the national legal system. There are also countries, such as Spain, where the experience of researchers in administrative university tasks is almost as important as the impact of their publications or their research stays abroad when it comes to gaining promotion. Such requisites will easier to meet by researchers that have not exercised their free movement right.

[56]"Mobility without Security?". German Rectors´ Conference; p.6.

It is also a paradox to demand researchers´ mobility while at the same time giving great value to publishing in certain national publishing houses and reviews, whose scientific impact is well-known to national academic authorities, in the selection process leading to possible promotion.
On the contrary, in areas where the impact of scientific reviews is not internationally established or agreed, researchers can be in a disadvantageous position for having published in the reviews of the country where they have been working or doing research.

In conclusion, although free movement in the public sector is guaranteed by the current Article 45 of the Treaty on the Functioning of the European Union, it may be extremely difficult to obtain a post as a civil servant in a different member state from the one where the researcher started his or her career.

## 2. Information as a key to facilitating researchers' mobility

### *2.1. New technologies as a privileged tool for obtaining information.*

Although each person is different and therefore the ways of obtaining information can vary according to multiple factors, it seems a realistic point of view to assume that new technologies will play an important role in that search.

This perspective has been assumed by European institutions that support specific websites which are very useful for researchers: for instance, the European Commission-Research: http://ec.europa.eu/research/index.cfm; the network of European researchers, scientists and scholars abroad: http://cordis.europa.eu/eralink/wnew_en.html; and the European Youth Portal: http://europa.eu/youth/working/index_eu_en.html.....

Due to the fact that, in the EU, Internet is a common work tool for workers in general and researchers in particular, we assume as a logical attitude that when researchers would like to move to another state where EU law is applicable, or when they are looking for a job abroad, their first step will be try to get information through the same technology with which they perform their daily work.

This is the reason why, in order to get information about researchers´ social security rights in the states where EU legislation is applicable quickly, we have directed our interest towards the websites available.

Such an option does not ignore the existence of other ways of getting information, such as, for instance, asking a national adviser, contacting one's embassy, getting in touch with national trade unions… But to be realistic, it seems that this kind of attitude will not be the first option for researchers and workers in general.

### *2.2. Is it convenient or necessary to create a new website for researchers?*

The first question to arise is whether it will be necessary to create a new specific website in order for mobile researchers to get enough information about their social security rights as workers that are exercising or will exercise their right to free movement.

In principle, the answer should be no.

Not only because it is possible to obtain a lot of information from specific national websites – not only in national languages but also in English[57] - but because several specific websites already exist where researchers without previous social security training can obtain useful information about working abroad.

[57]As a example of good practice, it can be mentioned that the Spanish Ministry of Labour and Immigration has edited an electronic version of the Employment and Labour Guide (2009) (http://www.mtin.es/en/Guia/texto/guia_13/contenidos/guia_13_31_10.htm It)
The Guide is composed by the following chapters:
I LOOKING FOR WORK
II PROFESSIONAL TRAINING
III SUPPORT FOR THE CREATION OF COMPANIES AND JOBS
IV HOW WORKERS ARE HIRED AND THE FEATURES OF EACH TYPE OF WORK CONTRACT
V SALARIES AND WORKING HOURS
VI AMENDMENT, SUSPENSION AND TERMINATION OF WORK CONTRACTS
VII SPECIAL WORK RELATIONSHIPS
VIII FOREIGN WORKERS IN SPAIN
IX UNEMPLOYED WORKERS COVERAGE
X INSPECTION AND OCCUPATIONAL HEALTH AND SAFETY SERVICES
XI WORKERS UNIONS
XII COLLECTIVE BARGAINING,THE CORPORATE SOCIAL RESPONSIBILITY AND COLLECTIVE CONFLICT
XIII RIGHTS AND DUTIES WITH RESPECT TO SOCIAL SECURITY

These websites are supported mainly by the European institutions and frequently include links to other competent European or national institutions as well as their addresses and telephone numbers.

### *2.3. In which language should information on social security be available?*

Despite the heyday of nationalisms in several EU countries and the increase of internal barriers due to the promotion of national and regional languages[58], it must be admitted that English is the most common language among researchers.

The fact that most information is available not only in the national language of the country but also in English simplifies access to information. Although, of course, the idea of translating every website supported by the EU into all the official languages of the EU can be defended, maybe it is not realistic.

Therefore, *de lege ferenda*, the information about social security provided by the websites supported by European institutions should be available in all official languages. And when this may not be possible, social security information related to each country should be written in the national language/s and at least in English.

### *2.4. Websites that provide information on social security for people without training in this field*

Leaving aside specific social security websites for academics (tress-network, eur-lex, missoc database…) the most-well known websites to get information include the following:

1) EUROPA - the official website of the European Union
http://ec.europa.eu/

[58]In Spain, there have been complaints within the Catalonian and the Basque Country regions where citizens have said their right to obtain information has been infringed because the information received from the Administration, despite being substantively correct, was provided in Spanish

In its homepage, a specific link to EU local offices and information points is available. However, if you click into the national websites it will be possible to check that the quality and amount of information available, and also the links to other websites, differ from page to page (this happens if you compare Spain, Cyprus, Malta, Belgium and the UK, for instance).
COMMENT: European institutions should supervise that all citizens are able to gain access to the same information though the EUROPA website, independently from the state to which the information is related.

2) Web site of the EUROPEAN COMMISSION, EMPLOYMENT, SOCIAL AFFAIRS AND EQUAL OPPORTUNITIES:
http://ec.europa.eu/social/main.jsp?catId=599&langId=en

You can find links to the following topics:
Mobility, working in another EU country, your social security rights, pensions, coordination of other benefits, non EU-countries, national social security rights, social protection systems, legislation/case law, healthcare abroad, job mobility action plan.

Also there is a link to EULISSES (EU Links and Information on Social Security). Eulisses helps you to find out about your social security rights and obligations at EU and national level, to find the social security institutions you need in different European countries, and to access the national social security services online.
COMMENT: the information is too general but there are links to specialised websites.

3) Website “MOVING WITHIN EUROPE - YOUR SOCIAL SECURITY RIGHTS":
http://ec.europa.eu/employment_social/social_security_schemes/national_schemes_summaries/index_en.htm

Information about all national social security schemes is available through this website.
However, when you click on the Member States sites this disclaimer can be read in all of them: “this website is based on information provided by (name of the EU Member State) on 15 February 2006. It is important to check that the national laws have not changed in the meantime and that the information is still valid. To do this, please check with the relevant bodies or institutions, whose contact details are provided in Section 3“.

COMMENT: it is really a pity that such a clear and comprehensive website that provides an interesting overview of all national social security systems is not up-to-date. Another handicap of this website is that it is focused on the general schemes applicable in EU member states, but no information is available about special schemes for civil servants.

4) EURES (The European Job Mobility Portal)
http://ec.europa.eu/eures/

In this page it is possible to find information, among other things, about living and working conditions in EU member states: rules about the free movement of workers, finding a job, moving to another country, working conditions, living conditions, social security and insurance.
COMMENT: the information provided is really broad and most interesting. Unfortunately the website seems not to have been updated in the last 9 months. A very positive aspect is that after having informed the user about the topic selected a message can be read at the bottom of the page asking you whether you are satisfied with the information provided. To send an answer to this question it is only necessary to click on YES or NO.

5) EURAXESS (Researchers in Motion)
http://ec.europa.eu/euraxess/index_en.cfm

Euraxess is a website specifically addressed to researchers.
Euraxess also has mobility centres to provide information and advice to researchers coming/leaving and moving within Europe, no matter what nationality they are or which funding programme they are going with. The objective is to help remove the barriers to the mobility of researchers. Researchers wanting to go abroad can access the contact points ("Mobility Centres") in other European countries through the European Researcher's Mobility Portal. This portal provides information about: accommodation, day care and schooling, intellectual property rights, language courses, recognition of qualifications, salaries and taxation, social and cultural aspects, social security, pension rights and healthcare, visas and work permits.

The EURAXESS Portal hosts the following initiatives:

EURAXESS Jobs (former European Researcher's Mobility Portal) is a recruitment tool with constantly updated job vacancies for researchers throughout Europe;

EURAXESS Services (former ERA-MORE Network) assist researchers and their families to organise their stay in a foreign country;

EURAXESS Rights (European Charter & Code) sets out the rights and duties of researchers and their employers;

EURAXESS Links - a networking tool for European researchers working outside Europe (US, Japan). ERA-Link USA will be migrating to this new website in the near future.

COMMENT: The social security information contained in the European Researcher's Mobility Portal is not up-to-date. If many researchers are civil servants and social security legislation is usually applicable to them with peculiarities, a specific website designed for researchers should highlight information about these peculiarities.

6) Your Europe

http://ec.europa.eu/youreurope/.

This website is still not fully operative.

Although it is not a website designed especially for researchers, there is specific information addressed to researchers abroad:

Grants and research positions

Taxation on researchers abroad

Residence rights for visiting researchers

Health care for researchers abroad

Research opportunities by country

COMMENT: The website is up-to-date but needs to be fully developed. As a positive aspect, it can be pointed out that the same homepage simultaneously provides employers and employees with a lot of information and useful links.

### *2.5. Do EU institutions offer free advice about social security matters in national languages?*

Social Security is a very specific and complex subject. Therefore, even when websites provide an overview of the main benefits and the requirements to obtain them, and also provide you with links to the legislation applicable and the competent social security institutions, it is necessary to have previous legal training in order to be able to interpret the legislation and, moreover, to be familiar with the applicable case law.

But it does not really matter how much information could be available through Internet, because what everybody wants is a personalised and comprehensive answer to her/his own doubts or problems. Moreover, replies are expected to be received in the national language and for free (one wonders why people do not hesitate to contract legal experts to obtain advice in the tax field but expect free information about social security rights).

In any case, the EU institutions, making without doubt a great effort, manage to meet citizens´ expectations about getting free legal information provided by experts and in their national languages through websites such as the following:

1) Europe Direct
http://ec.europa.eu/europedirect/index_en.htm

Among other services, this website offers answers in the official EU language of your choice; general information about EU matters in any of the official EU languages; an answer to your questions on any European Union policy; practical information; contact details of relevant organisations you may need to deal with; advice to help you overcome practical problems by exercising your rights in Europe; and free postal delivery of certain EU publications.
Everybody may contact Europe Direct from anywhere in the EU through a free phone number.
It is also possible to send a written question by e-mail or contact an operator online.
A list of information centres for every Member State is also available in this website.

2) Citizens Signpost Service (CSS)
http://ec.europa.eu/citizensrights/

In the field of social security, this website can provide support about: the country you are normally covered in and general management; healthcare/maternity; unemployment; industrial injuries/occupational illnesses; disability; old-age pensions; other pensions; survivor's benefits and death grants; family benefits.
The Citizens' Signpost Service (CSS) is formed by a team of independent legal experts providing free and personalised advice on your rights in the EU - in your own language and within a week of your request. The CSS is an EU advice service for the public, currently provided by legal experts from the European Citizen Action Service (ECAS) operating under contract with the European Commission.
You can expect CSS to: clarify the European law that applies in your case; explain how you can exercise your EU rights and obtain redress; signpost you to a body that can offer further help if needed.
To make an enquiry CSS offers you 2 options:
- Online, via a webform
-Call EUROPE DIRECT, on a free phone, and the enquiry will be passed to the Citizens' Signpost Service.
You will receive the reply by e-mail or by phone.

### *2.6. Disclaimer and privacy statement*

Even when citizens obtain an answer to their problems in the social security field through EU websites, it does not necessarily mean that national administrations/judges must agree with the solution.

Therefore, to avoid any responsibility or liability with regard to the information or advice provided though the Citizens' Signpost Service, a disclaimer note has been incorporated into the website.

For similar reasons, people who use EU websites/ telephone numbers are warned that "when you submit a enquiry, you are requested to provide personal information that is treated according to the policy statement".

In any case, as national legislations are subject to successive reforms, it is really impossible for migrants to know what will happen when they claim for social benefits in the future, because the pensionable age might be altered, survivors' pensions for short-term marriages without children could be suppressed, the way of calculating the amount of the pension might be altered, etc.

So, in the end, citizens who want information should rely on themselves because when we refer to legal issues 2 plus 2 are not always 4.

### *2.7. Consequences of lack of information or incorrect information at a national level*

To answer this point it is necessary to know how each member state acts when the information provided by the Administration is not enough or is incorrect.

In Spain, a citizen's right to receive information is tempered by the idea that administrative staff and civil servants providing such information cannot engage in legal interpretation concerning that citizen's rights. Interdiction of legal interpretation when informing citizens is specifically forbidden. In other words, the information should be limited to the applicable legal dispositions, legal options, or to the extent needed to process the application in question.

In particular, with a view to avoiding future complaints with respect to the information received, it is often the case that literature published by administrative bodies contains sentences like 'this information does not exonerate citizens from following legal procedures', or 'this information is not binding upon the government body providing it'.

Another important limit on a citizen's rights to receive information from the administrative body is that, according to the Spanish Supreme Court, current legislation does not allow citizens to request or obtain information from the administration in order to appeal against an act or decision carried out by the administration pursuant to a claimant's initial application.

***2.8. Is national information about social security provided by websites supported by the european institutions homogeneous?***

Even when national websites may have uniform portals (as happens, for instance, with Euraxess, Europa) there can be important differences in their contents.

Not all countries put the same effort into showing and explaining their national social security systems.

For example, there are countries that provide lot of information, such as Austria, Spain or Sweden, and other websites with poor information about social security (Researcher's mobility portal/France; or the UK's). There are some websites which simply don't provide any information about social security ("Estonian research portal" and "Lithuania for researchers").

***2.9. Is the information available addressed specifically to researchers?***

In the field of the social security the proposed answer must be no.
Most information available in specific researchers' websites is interesting for workers and self-employed in general and not only for researchers.

This happens with information relating to accommodation, day care and schooling, language courses, recognition of qualifications, salaries and taxation, work permits…that obviously may be important for everyone moving to another country.

Therefore, if you are able to find information about national social security systems, it is so general that in fact researchers' websites can be useful for anybody because the social security peculiarities that may affect researchers in particular are not pointed out.

For instance, the lack of information relating to special schemes for civil servants is remarkable, despite the huge number of civil servants that do research in EU states.

The provisional conclusion to be drawn is that it seems a contradiction that specific websites created to improve researchers' mobility don't contain broad information about researchers´ social security rights in particular.

### *2.10. Information about researchers´ legal status*

Although you can find information about jobs available, principal research centres and recognition of qualifications, it is really almost impossible to get information through websites about researchers´ legal status according to national legislation.

Therefore, to put information about social security into the website without explaining differences in the legal status of researchers according to national law may lead to confusion, in the sense that someone can jump to false conclusions by thinking that the scheme/s explained in the website are applicable to them.

As a provisional conclusion, it is suggested that a website like Euraxess, in the link to social security rights, should indicate the different legal status a researcher may be working under in a particular country, and which social security scheme will be applicable to him or her.

### *2.11. Is the information about social security rights available in the websites for researchers up-to-date?*

No.

In most cases, when social security information is available it is related to 2009 or to previous years.

Therefore, it seems reasonable not to rely on information that can be out-of-date and can cause people to jump to false conclusions about their rights and duties.

Due to the fact that there are countries whose social security systems tend to be reformed almost every year, it must be admitted that to show up-to-date information requires an extra effort from the administration. But this effort should be made because

it is clearly a contradiction to create and maintain a website that does not show accurate information.

### *2.12. Do websites pay attention to female researchers´ interests?*

As it is more complicated for women to conciliate their working life with family duties, female researchers have to face an extra obstacle when it comes to exercising their free movement right.

For this reason, it seems that female researchers/workers would need extra information about questions like:

-Are women entitled to choose in which State they want to give birth, or do they need prior authorisation, or a form, to move to another state not competent to provide them with medical care?

- What are the rights of mobile researchers/workers regarding one-off payments for birth when national legislation (as occurs in Spain) requires that the beneficiary, which should be the mother, reside in the competent state and that the birth has taken also place in the competent state?

- Which are women's rights in the case of adoption or fostering?

- What are the rights of researchers/workers in cases of premature birth and when the prematurely-born child has to remain in hospital after the birth?

- What are the requirements when applying for maternity leave or another kind of leave to contend with family duties and what is the duration of the leave?

- What would be the effects, in terms of social security, of cases of separation, divorce or abandonment?

EU websites do not give explicit answers to most of these questions.

### *2.13. Information provided by research centres and universities*

Apart from the information that researchers/workers can get by themselves by consulting the wide range of websites available, they can also, of course, directly contact the universities and research centres where they are going to work or where they are applying to.

It is not especially difficult to obtain information about telephone numbers, e-mails and addresses through the Internet. There is often a specific department within universities to inform national and foreign students about their rights.

Researchers can also get information from the personnel department although it is not realistic to think that they can get accurate information about their rights according to EU law. Although such specific information can be required by the administration it is not infrequent that researchers have to queue and waste a lot of time before being attended.

On the other hand, it may also be the case that the information is not centralised or that social security benefits management is shared by central and regional governments. Therefore, researchers/workers need to address different administrative bodies depending on whether they want to be informed about health care, pensions, family benefits, etc.

### *2.14. Information about supplementary pensions*

Another point to emphasise is that it has been almost impossible to find accurate information about mobile researchers´ supplementary pension rights in general or about supplementary pensions in particular in the websites supported by EU institutions that promote researchers' mobility. In the best of cases, only a few lines acknowledging the existence of private insurances have been found.

However, it is possible to get lot of information in the Social Security Worldwide website (http://www-ssw.issa.int/) which includes, among other things, a database with profiles of the system of complementary and private pensions in over 50 countries.

Information about complementary pensions is available in the said website in four languages. The topics covered are: regulatory framework, plan profile, institutional framework, coverage, financing-investment, benefit provision, protection of rights and tax treatment.

Another point to be taken into account is that the lack of coordination in the field of supplementary pensions has a different impact depending on whether this kind of social protection is more or less popular in each country. In Spain, the Minister of Labour has recently recommended trade unions and workers to introduce supplementary pensions through collective bargains as a way of guaranteeing the viability of the social security system. However, Spanish economists have claimed that this type of investment in our country "is four times less profitable than in Britain although the commission to be paid is double". For this reason, newspapers described Spanish supplementary pensions as a "fiasco"[59].

## 3. Obstacles to the free movement of workers deriving from applicable social security legislation which are not mentioned in the information available to mobile researchers.

### *3.1. New family patterns and legal vacuums in the coordination of social security regimes on the grounds of civil status*

HOMOSEXUAL MARRIAGE AND NON-MARITAL UNIONS

From the websites examined, it has not been possible to obtain answers to questions that, according to new family patterns, could be interesting for mobile researchers.

For instance, what rights will the surviving partner of a homosexual marriage enjoy in case of having exercised the right to free movement? Or which rights of national legislation are recognised for non-marital unions?

The only thing that is certain is that nowadays there is not a community concept of spouse in Regulations 1408/71 or 883/2004.

However, states where Union Law is applicable don't recognise the same rights for persons living together as unmarried couples, be they of the same or of different sexes.

[59]Mercados de El Mundo. Nº 117. 14.3.2010; pp.2-3.

The problem resides in the fact that although civil status is a question that remains under the exclusive competence of member states, for the purposes of Union Law the existence or otherwise of a marital relationship can affect the exercise of some of the rights recognised under EU Law.

POLYGAMOUS MARRIAGE

Although none of the states in which Community Law is applicable allow polygamy, a large number of workers in the EU are from countries where polygamy is legal.

National courts have, on several occasions, addressed the legal problem (and not always with the same criteria) which arises when the death of a worker leaves several widows who each claim survivor's benefit. Should the pension be divided equally between the survivors, proportionally to the duration of the marriage? Or should only the first spouse be recognised and none of the others?

No information about this point can be found either in European websites or in national websites.

### *3.2. The transposition of directive 2004/114/ec on the conditions of admission of third-country nationals for the purpose of studies, pupil exchange, unremunerated training or voluntary service: "lost in translation"*

As a huge number of third-county nationals can gain access to European universities/institutions as students for the purpose of doing their PhDs, it would be convenient to analyse how Directive 2004/114 has been implemented in EU member states.

The key point is to answer the question of whether such researchers are entitled to the same social rights as national researchers.

In the particular case of Spain, third-country researchers that attend classes or do their PhD in Spain are treated in a different way from Spanish or EU citizens[60]. The origin of such difference of treatment is Article 12.1 of Directive 2004\114, according to which: "a residence permit shall be issued to the student for a period of at least one year and renewable if the holder continues to meet the conditions of Articles 6 and 7... "

The Spanish translation of this Directive available in Eur lex is a literal one and "residence permit" has been translated as "permiso de residencia".

Nevertheless, when the Spanish legislator has transposed this Directive into national law (Constitutional Law 2/2009 and Royal Decree 2393/2004) "residence permit" has been replaced by "stay authorisation" (autorización de estancia).

Therefore, a student or researcher with a "stay authorisation" is in Spain legally and can never be qualified as an irregular migrant. Moreover, according to Spanish legislation he or she may be entitled, under certain conditions, to obtain an authorisation to work, either as an employee or self-employed.

However, regardless of whether they perform remunerative activities or not, as they are not legal residents (because they do not have a residence permit) they are excluded from all those social benefits linked to the legal residence requisite (invalidity and old-age non-contributory benefits and family benefits) in any case.

And even if they work as employees, they are excluded from unemployment benefits as they are not allowed to pay social contributions for unemployment.

### *3.3. Civil servant researchers and annex 2 regulation 987/2009*

The huge number of researchers protected by special security schemes is undeniable.

As is known, these special social security schemes for civil servants were excluded from coordination until Regulation 1606/98 came into force. As a result, for the

[60]Sánchez-Rodas,"De la entrada y estancia con fines de investigación y estudios a la autorización de trabajo". Aspectos Puntuales del Nuevo Reglamento de Extranjería. Laborum. 2005; pp.249-269.

purposes of the coordination of social security schemes, the terms "employed person" and "civil servant" (whether protected under a general or a special scheme) became theoretically synonymous.

However, regulations on social security systems are still applicable to some kinds of civil servants with "peculiarities" according to Articles 32.2[61] and 41.1[62] Regulation 987/2009 and its Annex 2[63].

Due to these "peculiarities" there are civil servants that cannot invoke the sickness coordination rules contained either in Regulation 1408/71 or in Regulation 883/2004 in the case of moving abroad.
Therefore, the exemption quoted in the application of the coordination rules now contained in Annex 2 Regulation 987/2009 may be a serious obstacle to the free movement right of researchers that are simultaneously civil servants.

[61] Article 32.2 Regulation 987/2009:
For the Member States referred to in Annex 2, the provisions of Title III, Chapter I, of the basic Regulation relating to benefits in kind shall apply to persons entitled to benefits in kind solely on the basis of a special scheme for civil servants only to the extent specified therein.
The institution of another Member State shall not, on those grounds alone, become responsible for bearing the costs of benefits in kind or in cash provided to those persons or to members of their family.
[62] Article 41 Regulation 987/2009:
Special implementing measures
1.In relation to the Member States referred to in Annex 2, the provisions of Title III, Chapter 2 of the basic Regulation relating to benefits in kind shall apply to persons entitled to benefits in kind solely on the basis of a special scheme for civil servants, and only to the extent specified therein.
[63] Annex 2 Regulation 987/2009
Special schemes for civil servants
(referred to in Articles 31 and 41 of the implementing Regulation)
A. Special schemes for civil servants which are not covered by Title III, Chapter 1 of Regulation (EC) No 883/2004 concerning benefits in kind
Germany
Special sickness scheme for civil servants
B. Special schemes for civil servants which are not covered by Title III, Chapter 1 of Regulation (EC) No 883/2004, with the exception of Article 19, paragraph 1 of Article 27 and Article 35, concerning benefits in kind
Spain
Special scheme of social security for civil servants
Special scheme of social security for the armed forces
Special scheme of social security for the court officials and administrative staff
C. Special schemes for civil servants which are not covered by Title III, Chapter 2 of Regulation (EC) No 883/2004 concerning benefits in kind
Germany
Special accident scheme for civil servants

## 4. Suggestions to speed up the recognition of social security rights when more than one administration is implied

Undoubtedly, the simplification of administrative formalities is absolutely necessary when 31 very different national administrations are expected to apply regulations on social security.

As a point of departure, it is necessary to admit that this topic has been discussed profusely in the past by more authorised voices, so no great revolutionary ideas may be expected.

On the other hand, it is necessary to be cautious and wait until Regulations 883/2004 and 987/2009 enter into force in order to verify whether the simplifying measures provided by the new legislation are effective or not.

To be realistic, without knowing the results of the implementation of the EESSI in all national administrations, it is risky to try to move on to new reforms when national states currently face the challenge of connecting themselves to this EESSI.

Moreover, it cannot be forgotten that the implementation of the EESSI has involved substantial investment and due to the current world-wide economic crisis the measures to be proposed should have a low cost for member states.

On the other hand, it seems that the new technologies could play an important role in simplifying the application of the regulations on social security. In this respect, significant references can be found in Regulation 987/2009: electronic means, e-accessibility, electronic documents…

In any case, the ideas that are going to be expounded below are mere suggestions, presented as mere academic hypotheses for further debate, in which it will be absolutely necessary to take into account the opinion of the member states' administrations.

### *4.1. Substituting the exchange of information by direct access to national records by administrations: the Spanish-German experience*

All people involved in the application of regulations on social security will agree that the exchange of data between administrations consumes too much time (there are some administrations that respond quickly, but others answer with great delay).

Probably, the electronic exchange of data and the elimination of the paper E-forms will alleviate this problem. Nevertheless, in theory it seems that it would be quicker if the data that an administration needs were obtained directly without the necessity of waiting for an answer from the other administration involved.

In other words, just as within an EU member state authorised civil servants or employees from different regions have access – under certain controls - to all the centralised information necessary to calculate social security rights, other EU administrations could be authorised to consult the same data – without being able to modify this data, of course.

This implies mutual confidence between administrations, respecting in any case all national and international legislation about data protection. But the confidence required to share data does not seem to exceed the confidence necessary to create the Schengen Area.

The case of Spain and Germany can serve as an example of good administrative practice in which direct access to information is already applied. An internet “transaction” (sic) exists between both countries that allows competent personnel in both countries to access relevant social security information in the other country, while guaranteeing the principle of confidentiality. By this means, each administration can quickly access the social security records of workers and pensioners in the other state and, for instance, find out whether the claimant receives a pension in the other country or not, or the amount of this pension, among other data.

### *4.2. Citizens´ direct access to their social security records by e-means*

According to Article 3.2 Regulation 987/2009 "persons to whom the basic Regulation applies shall be required to forward to the relevant institution the information, documents or supporting evidence necessary to establish their situation or that of their families, to establish or maintain their rights and obligations and to determine the applicable legislation and their obligations under it".

This obligation would be simplified if citizens were able to access their social security records in all the states where they have worked or lived quickly, via Internet, and the information obtained by such e-means were accepted by foreign administrations.

The Spanish experience can be cited as a good administrative practice in this respect: everybody can get free an "electronic certificate" from the central government through Internet: http://www.cert.fnmt.es/index.php?cha=cit&lang=es.

With this electronic certificate a great deal of bureaucratic steps can be resolved from a computer. In particular, it allows you to get into the website of the Social Security Ministry to obtain your social security records immediately wherever you are. Moreover, the information can be printed in an official model that due to the internal security codes it contains has the same legal effect as a certificate issued by the administration.

Even when the claimant has no "digital certificate" it is possible to apply to her/his Social Security records through Internet and the administration will send an official certificate by post in a week or so.

Therefore, if all member states provided mobile workers with e-means to access or to apply to their social security records wherever they are, it would help a lot to speed up the administrative procedure of recognising their social security rights. And it would also avoid the problem of getting information from a state when mobile workers/researchers are residing or performing their activities in another one.

### *4.3. Exporting the experience of the European health insurance card (EHIC) to the social security field*

In the EU there are states that not only have established an electronic identity card, or an electronic driving license card, but have also provided health care beneficiaries with a "health system user's card". Due to the new technologies doctors can prescribe medicines to their patients in this electronic health card. Pharmacies are provided with electronic devices to read these electronic health cards and dispense the medicines according to the prescription contained in the card.

Also, there already exists a common smart[64] card in the EU that simplifies the application of Regulations 1408/71 and 883/204: the EHIC.
"The only personal information on the European health insurance card is the card holder's surname and first name, personal identification number and date of birth. The European health insurance card does not contain any medical data" (http://ec.europa.eu/social/main.jsp?catId=563&langId=en).
Probably, the lack of information relating to medical data is intended to preserve the holders´ intimacy. However, this seems to be a disadvantage when referring to chronic patients, vital emergencies, or simply when due to the foreign language it is not easy to establish a comprehensive conversation between doctor and patient.
In any case, what is important to emphasise is that EU citizens are getting used to carrying an EU smart card with them, which has a homogeneous design and can be read in all member states by means of specific devices.

Therefore, the same technology that has already been developed in the EU might be used in the field of social security to enable EU citizens or third-country nationals to carry with them all the information that could be required by other EU administrations in order to recognise or calculate their social benefits.

In such a case, the need for social security administrations to exchange data would probably decrease and maybe it would also help to prevent fraud.

[64]In the websites the EHIC is qualified as a "smart card". That is "a pocket-sized plastic card, which looks identical to usual bank or credit cards. Smart Cards have a small gold chip on the front. When inserted into a specific reader, the chip makes contact with electrical connectors that can read information from the chip and write information back".

## Chapter Five
## THIRD COUNTRY RESEARCHERS

### 1 - Third country researchers coming to a Member State

It is appropriate to first study the situation of the researcher who leaves a third country to come to a Member State to carry out a research project and whose situation will be internal to this Member State ("of which all the elements confine themselves to a single Member State alone" to take up again the terms used by the Court of Justice). As regards Social Security that means that the interested party cannot avail himself of European Social Security regulations which will be examined further, but only Member State's legislation where the research is made, supplemented by the possible coordination agreements connecting this state or the European Union and its Member States to the country of origin of the third country researcher.

#### *1.1. Directive 2005/71/EC (researchers)*

The guiding text on the matter is Directive 2005/71/EC of 12 October 2005 concerning a specific admission procedure of third-country nationals for the purposes of scientific research:
- first of all because of its purpose, which is to contribute to researchers' mobility and to increasing their numbers in the EU by encouraging the admission and mobility of third-country nationals for the purposes of research for stays of more than three months, in order to make the EU attractive for the researchers of the whole world and to promote its position as an international centre of research (see recital 5),
- then of the fact that the definition of the researcher is very close to that retained by the Working Party for this report, i.e. a holder of a suitable higher education diploma, giving access to doctorate programmes, which is selected by a research organisation [any public or private body which carries out research work and is approved for the purposes of this directive by a Member State in accordance with its legislation or in accordance with its administrative practice] to undertake a research project for which the above-mentioned qualifications are generally necessary (see 1st article).

The directive lays down the admission conditions in the Member States of third country researchers for a duration longer than three months, in order to undertake a research project under the research organisation's hosting conditions (field of application, approval of the research organisations, statute and contents of the hosting conditions, duration and renewal of the residence permit, as well as that of the family members), and the research' rights.

Among these rights article 12 foresees equal treatment with the nationals of the Member State concerned regarding the recognition of diplomas and qualifications, the working conditions, the tax advantages, the assets and services (access and supply) and Social Security in these terms:
"c) the branches of Social Security defined in the Council Regulation No. 1408/71 of 14 June 1971 relating to the application of the social security systems to the employed persons, to the self-employed persons and to the members of their family who move inside the Community. The special provisions appearing in the annex of Council Regulation (EC) n° 859/2003 of 14 May 2003 aiming to extend the provisions of Regulation (EEC) n° 1408/71 and of Regulation (EEC) n° 574/72 to the third-country nationals who are not yet covered by these provisions solely due to their nationality apply accordingly;".

***1.2 Directive 2004/114/EC (students)***

It should be noted that article 3 paragraph 2 of the directive of 2005 specifies that it does not apply to "the third-country nationals asking to remain in a Member State as students within the meaning of Directive 2004/114/EC [of 13 December 2004] in order to undertake research for obtaining a doctorate."

Recitals 11 and 12 clarify this exclusion specifying that it is appropriate to facilitate the admission of the researchers by creating a way of admission independent of their legal status in relation to the host research organisation and no longer requiring the issuance of a work permit, that Member States could observe rules similar to the third-country nationals requiring the admission for the purpose of teaching in a higher educational institution, in accordance with their national legislation or in accordance with their administrative practice, under a research project, but that "it is advisable in parallel to

retain the traditional admission ways (such as workers and trainees), in particular for the doctoral students, carrying our research under cover of the student's statute, which should be excluded from the scope of this directive and which fall within Council Directive 2004/114/EC of 13 December 2004 relating to the conditions for admission of the third-country nationals for the purpose of studies, within exchange of pupils, of unremunerated training or of voluntary services."

The latter text, which specifies that it does not apply to third-country nationals which are considered employed or self-employed persons under that Member State's legislation, regulates the admission and staying conditions and of the persons it covers but, if it relates to non-active persons, lays down on the contrary "to possess a health insurance covering all the risks against which the nationals of member state concerned are usually insured", specifying however that "the students benefiting automatically of a health insurance covering the risks against which the nationals of member state concerned are usually insured are deemed to satisfy that condition.

Therefore there is a degree of equal treatment for students, especially for doctoral students carrying out research under the cover of being a student, if the adherence to a health insurance in that country is automatic by reason of registering with a sought after institution. If not, health insurance is compulsory for students, paid and unpaid trainees, all the categories that are less interesting for the purposes of this report. On the contrary no other provision concerns the interested parties' cover for the other branches of Social Security (accidents at work, old age).

### *1.3. Directive 2009/50/EC (highly qualified workers)*

Last aspect is the admission as a worker, initially under Directive 2009/50/EC of 25 May 2009 establishing the conditions and of stay of third-country nationals for purposes of highly qualified employment.

This directive does not apply to third country nationals having requested to remain in a Member State as a researcher within the meaning of Directive 2005/71/EC so as to undertake a research project. It determines the conditions of entry and stay of more than three months on the territory of the Member States of third-country nationals who carry

out highly qualified work (high professional qualification requirement or other significant professional experience, contract of at least one year) and are consequently delivered a European blue card.

The qualifications required and the nature of the contract make this directive an admission channel for researchers having the worker's status to undertake research outside an organisation within the meaning of the specific directive of 2005.

If the applicant has to produce proof "that he has subscribed or, if that is envisaged by national legislation, he asked to subscribe to health insurance for all the risks for which the nationals of member state concerned are covered normally, for the periods during which he will benefit, because of his contract from work or in connection with it, of no cover of this type nor any corresponding benefit", the holder of a European blue card benefits from equal treatment with the nationals of the member state that delivered the European blue card regarding in particular "the provisions of national legislations concerning Social Security branches, as defined in Regulation 1408/71 ", the special provisions appearing in the annex of Regulation (EC) n° 859/2003 apply accordingly, and "without prejudice to existing bilateral agreements, payment of the rights acquired as regards legal old age pension, at the rate applied under the terms of the legislation of the debtor Member States, in the event of removal in a third country".

### *1.4. Other directives*

Finally for workers as a whole, highly qualified or not, the "single permit" so-called proposal for a Directive should lay down a single application procedure for the issuance of a single permit that authorises third-country nationals to reside and work on the territory of a Member State and to fix a common right base for these workers from third countries which reside legally in a Member State.

Whatever their statute and their admission method, workers should benefit from equal treatment with the nationals of the member state concerned, in particular regarding (preliminary draft) "the Social Security branches, as defined in the Council Regulation (EEC) n° 1408/71 of 14 June 1971, relating to the application of the social security systems to employed persons, to self-employed persons and to the members of their

family who move inside the Community, Council Regulation (EC) n° 859/2003 of 14 May 2003 aiming to extend the provisions of Regulation (EEC) n° 1408/71 and of the Regulation (EEC) 574/72 applicable to third country nationals who are not yet covered by these provisions only due to their nationality accordingly; and the payment of the rights acquired as regards pension in the event of removal in a third country."

Of course these directives do not apply to persons who already have the resident's long-term status in a Member State within the meaning of Directive 2003/109/EC of 25 November 2003 concerning the status of long-term resident third-country nationals, which gives right also to equal treatment with the nationals of the state of residence regarding "Social Security, social assistance and social welfare as defined by national legislation", the Member States can however "in the matter social assistance and of social welfare limit equal treatment to essential benefits."

An equal treatment right thus consolidates and generalises itself as regards Social Security for all of the third-country national researchers, as long as they have the status of worker in a Member State, for themselves and for the members of their family legally admitted to stay in the same Member State. On the other hand the protection is less ensured for the researchers not having this status. One also has to note that all the directives referred to above stipulate that they apply without prejudice to the more favourable provisions (in particular as regards Social Security) of bilateral and multilateral agreements concluded between the EU and the EU and its Member States and third countries and of the bilateral or multilateral agreements concluded between one or more Member States and one or more third countries.

## 2 – Third-country researchers moving from one Member State to another

Subsequently it is advisable to look at the researcher who within the framework of their research has to move to another Member State for the purposes of this research or who will carry out other research in another Member State.

### *2.1. Directives and intra-European mobility*

Directive 2005/71/EC covers this mobility between Member States (Article 13) and stipulates that "*a third country national who was admitted as a researcher under this directive is permitted to undertake part of his research work in another Member State*." If he/she remains in another Member State for a duration not exceeding three months, work can be carried out on the basis of the hosting agreement concluded in the first Member State, in so far as it has sufficient resources in the other Member State and that he/she is not considered as a threat to public order, national security or public health. If the stay exceeds three months, the Member State concerned can require the conclusion of a new hosting agreement for research work undertaken in this Member State, in the view of which the awarding and admission conditions of such an agreement have to be met. In the event of a new research project, it is the rules of first admission which apply.

Directive 2004/114/EC also provides for mobility between Member States for third-country nationals already admitted as students and who ask to follow a part of their studies in which they are engaged or to supplement them by a study course in another Member State. They are admitted by this new Member State after their application has been assessed which is subject also to meeting the conditions for admission and justifying that the study course is complementary to that already achieved or that they take part in a European or bilateral exchange programme.

Similarly Article 18 of Directive 2009/50/EC stipulates that "*after eighteen months of legal stay in the first Member State as a holder of a European blue card, the interested party and family members can go to another Member State for the purposes of a highly qualified post.* "A request for a new blue card has to be submitted to the authorities of the new Member State and it will be granted provided the conditions of its issuing are met in this second Member State.

Finally Directive 2003/109/EC also fixes the principle (Article 14) according to which a long-term resident acquires the right to reside on the territory of a Member State other than that which granted his/her status, for a period exceeding three months, to carry out an economic activity on an employed or self-employed basis, to continue studies or vocational training or for other purposes, subject to conditions being fulfilled according to the purpose of the stay.

The maintenance of the status or its transfer from one Member State to another in these cases of mobility enables the interested parties to preserve their right to equal treatment either in the first Member State, or in the second according to the nature and duration of the new stay.

### *2.2. Regulation No. 859/2003*

However interested parties are then in a European situation (of which all the elements are not confined to within only one Member State) and they do not benefit only from the right to equal treatment, but via Regulation (EC) n° 859/2003 of 14 May 2003, since they are legally resident in a Member State, of all the rights (and obligations) arising from the application of Regulations (EEC) n° 1408/71 and 574/72 on the coordination of national social security legislation for employed and self-employed persons, former workers and students, and family members. This extension is complete, subject to two restrictions i) as regards right to family benefits concerning only Germany and Austria, and ii) this extension of the provisions of regulations n° 1408/71 and 584/72 does not include Denmark, due to its opting out status in relation to the article of the EC Treaty on which regulation n° 859/2003 is based.

It should be noted that interested parties, due to the different scope of these regulations, are covered for periods of mobility in the EU envisaged by the directives referred to above, but also in the event of moving from a research activity to another professional activity or to retirement, and conversely in the event of moving from another professional activity to a research activity. Also covered are stays or transfers of residence to another Member State for non professional reasons (studies, vocational training, leisure, family reasons…) and this applies also to dependent family members, whether they reside with the researcher or in another Member State.

Since they can benefit from these coordinating regulations, interested parties enjoy, within the limits of the provisions of the applicable legislation, global coverage of all risks and branches and the majority of situations that can occur (moving from one national scheme to another, secondment and maintenance of the usual scheme, professional or not professional stay, transfer of residence from one Member State to

another, residence of family members with rights in another Member State, stay or transfer of residence of the family members to another Member State).

The regulation provides protection not only as regards equal treatment, but also the maintenance of rights in the process of being acquired (aggregation of all periods) and the maintenance of acquired rights (lifting of the residence clauses and exporting the benefits, except for certain non-contributory solidarity benefits), as well as in numerous cases the assimilation of the facts or of situations noted in another Member State in which facts have occurred or situations noted in the competent Member State if these facts or situations have a legal effect in the latter Member State.

All researchers with the status of worker, employee or self-employed person, and subject to the national social security legislation can be protected by regulation n° 859/2003, including access to such a legislation. On the other hand those not having this status and not insured as students can escape this protection which, it must be pointed out, aims only to coordinate national legislations and not to harmonise them or compensate for their shortcomings.

### *2.3. Regulation on the extension of the provisions of the regulations Nos. 883/2004 and 987/2009*

The Regulations Nos. 883/2004 and 987/2009, having replaced the regulations n° 1408/71 and 574/72 since 1 May 2010, will also give place to an adoption of a regulation extending their provisions to the Third-country nationals who are now excluded from it only due to their nationality, who have the right to reside in a Member State and whose situation has a European nature. This new regulation is being analysed in the Council and in the European Parliament. In this period the regulation n° 859/2003 applies in order to assure the continuity of social welfare of the Third-countries nationals concerned.

As from the entering into force of the regulation on the extension, the new coordinating regulations will bring the Third-countries nationals the improvements and the new measures that were brought since 1 May to the citizens of the European Union. In particular, due to the extension of the personal area of application to the ensemble of

insured persons (beyond the workers, assimilated and former workers, therefore also to non-working persons) and due to the creation of a rule of determining the applicable legislation to non-working persons (pensioners, students and other non-working persons), those of a State on the territory of which they reside, the coordination will extend or will better extend to the researchers without employees status.

On the other hand, and on the contrary to the position that the United Kingdom took concerning the Regulation 859/2003, they did not declare an opting in at the time of the submission of the proposal of the Regulation on the extension to the third-country nationals of the provisions of the Regulation 883/2004 and 987/2009 and, except a later statement once in force, this regulation will not be applicable to the United Kingdom. In the relations with this Member State the provisions of the regulations n° 1408/71 and 574/72 will continue to apply via the regulation n° 859/2003 maintained in application for this purpose.

Finally, it should be reminded that the work is in the pipeline in the administrative committee for coordination of Social Security systems and in the Think tank of the TRESS network and that they are evaluating the relevance of the rules of determining the applicable legislation and of the administrative practices which follow on from, such as they come under the new regulations of coordination, to answer to a new form of mobility of workers in the European Union, and in particular of researchers (cf. communication of the Commission on the mobility: European action plan 2007-2010, reports 2008 and 2009 of Think Tank of TRESS network, Council conclusion of Competitiveness Council of 2 March 2010 on mobility and career of European researchers).

In conclusion, the mobile researchers from third-countries moving from one Member State to another are well protected by the coordinating regulations if they are workers, are in general better protected, and especially if they don't have the employee status (subject to be able to be covered in this position in the State of residence), because of the entrance into force of the new coordinating regulations on 1 May 2010, enforcement deferred for the third-country nationals until entrance into force of the currently analysed regulation on the extension, but which besides Denmark, will not concern the United Kingdom (upholding in force for this state of the old regulations via the

Regulation n° 859/2003). The work in progress on the new forms of mobility could lead to adaptations and modifications of the rules and administrative practices concerning the applicable legislation, in particular to very mobile researchers not meeting the characteristics of a posted worker.

## 3 - National researchers of a third country - coordination European Union / third countries

Thirdly, it is advisable now, following the example of what was said above about the coordination between the Member State in aid of mobile researchers with a European residence in the European Union, to concentrate on the coordination between third countries and the Member States of the European Union for workers from a third-country who have already been insured as a researcher in other than European Union country before coming to Europe quality of research worker or who was insured in Europe or still who, after a period of work as a researcher in the European Union returned to a third country where next, they will have a social insurance.

It should be noted that from the point of view of reciprocity this coordination is also a need for the researchers who are citizens of the European Union, who leave for a third country within the framework of a research project or who, once on the spot, are recruited for research in one of these countries.

### *3.1. Conventions on Member States - Third countries*

What already exists in this field is made up of the network of the conventions on Social Security, bilateral in general, but also multilateral, signed since a long time between the Member States of the European Union and the Third countries. These conventions, with their limits and their specific fields, aim in general at workers, generally only the employed persons, and are therefore perfectly applicable to researchers having a corresponding statute of workers, who can thus benefit from their provisions of regulation of disputes of laws (principle of the *lex loci laboris*, possibility of a temporary assignment inconsistent in time from one convention to another) and of their coordination mechanisms for access to the benefits and to their calculation.

If the personal application field of these agreements can be limited by a condition of nationality, *Gottardo* case law (judgement of 15 January 2002, AFF. C-55/00) of the Court of Justice obliges the Member States, for what concerns them, to treat in the same way the nationals of any other Member State with identical situation and their own nationals as regards the enforcement of the aforesaid agreements, obligation which doesn't of course apply to the partner countries. The conditions of nationality laid down by numerous agreements can thus be an obstacle to mobility if a Member State of a Community national is not related to a third country or if other Member States are related to a Third country concerned by agreements comprising a very strict condition of nationality.

### *3.2. Association Agreement EU - Third countries*

These conventions are completed by various association agreements signed by the European Union and Member States from one side (these are mixed agreement as far as the division of competences are concerned) and third countries on the other side, often related to some basic coordination rules as regards Social Security covering third country nationals living in a EU Member State, eventually with members of their family, to carry out a professional activity salary-earner and reciprocally nationals from EU Member States having residence and carrying out a salary-earner activity in a third country partner.

Such the case of different agreements, subscribed under variable and evolutionary names, with Turkey, Israel, Algeria, Morocco, Tunisia, FYROM and Croatia. Coordination is therefore limited enough and restricts itself to enacting an equal treatment with the nationals of the concerned States and refers to the exportation without conditions in the country of origin of the pensions, of direct right and of secondary legislation, acquired by exerting a professional activity. Furthermore, for the natives of these third countries working in the European Union, there are provisions for the coordination between the Member States for the totality of the periods and the exportation of the family benefits of the Member State of the activity towards the Member State of the children's residence, however these provisions are taken up by the regulation n° 859/2003 and by its current successor within a much broader and more

protective coordination framework and as such are therefore without practical scope within the association agreements.

### *3.3. External competence of the EU*

These bilateral conventions are limited in number and in scope. In scope these can be even more limited, on the one side by the possible restrictive nationality clauses and the possible non application of *Gottardo* case law to the third countries partners, and on the other side by association agreements between the EU and Third countries that are very limited both in number and in the degree of coordination. Consequently to create a modern network and more complete agreements on Social Security or on broader agreements between the European Union and Third Countries or groups of Third Countries such as the MERCOSUR (with for instance the objective of a more complete coordination, on the model of the one established by the regulation n° 883/2004) having a Social Security section, new ways should to be sought. Evoking the possibility of such agreements raises the question of the respective competences of the Member States and of the European Union on these matters.

According to the attribution principle, the European treaties did not recognise before to the EU any external competence to contract with third countries or international organisations except in some explicitly and precise sectors, such as research (Article 170 EC), the association with one or more third countries or international organisations (Article 310 EC), article 300 EC which limits in a general way the conclusion of the international agreement by the European Community to the cases where the provisions of the treaty envisage the conclusion of such agreements and this seams to exclude any other source of external competences.

But gradually the Court of Justice nevertheless identified an implicit external competence supplementing these explicit competences. The Court firstly affirmed the existence of an external competence parallel to the internal competence: "whenever, for the setting of a policy oversee in the Treaty, the Community took provisions establishing, in whatever form, common rules, Member States are no longer by law on the right, individually or collectively, to contract obligations with the third countries affecting these rules or distorting their scope, and that progressively with the

instauration of these commune rules, the Community the only one able to assume and execute, with effect for the totality of the fields of application of the community law, the commitments contracted with those third countries. "(AETR judgement, the Commission c/Council, on 31 March 1971, AFF. 22/70).

The Court did a step further in its opinion 1/76 of 26 April 1977 by noting that an external competence exists even in a field where the internal competence are not exerted or are not exerted yet, "as far as the participation of the Community in international agreement is necessary for the achievement one of the objectives of the Community,". The Court moderated this statement in its opinions 1/94 of 15 November 1994 and 2/92 of 24 March 1995 by specifying that this conclusion refers to special situations for which the objectives of the treaty in an individual field cannot be achieved by the simple adoption of autonomous common rules, making the international agreement necessary.

Is in this same opinion 1/94 that the Court draws a directly applicable consequence for our subject by specifying also that "*since the Community included in its internal legislative acts clauses concerning the treaties that are reserved for third-country nationals or that it conferred expressly to its institutions a competence to negotiate with the third countries, it acquires an exclusive external competence in the fields covered by these acts*".

The Lisbon Treaty, in its will to fix in a better way the competences and the various degrees of competence of the Union, in order to better respect the attribution principle, shows the parallelism identified by the Court of Justice between the internal competences and the external competences of the Union and makes explicit the latter. Article 3, paragraph 2, TFEU stipulates indeed that "*The Union has an exclusive competence to conclude international agreement when this conclusion is overseen by a legislative act of the Union, or is necessary to allow the Union to execute its internal competence, or insofar as it is likely to affect common rules or modify their scope*". Article 216 of the same treaty almost duplicates these terms while stipulating that "*The Union can conclude an agreement with one or more third parties or international organisations when treaties envisage it or when the conclusion of an agreement, either is necessary to carry out, within the framework of the Union competencies, the*

*objectives pursued by the treaties, or is provided for in a binding legal act of the Union, or still is likely to affecter some common rules or to modify their scope*. "

### *2.4. Towards new EU agreements-Third countries?*

If one recalls that the coordination of the Social Security systems is a shared competence matter which was exerted and which in this exercise also deals with the third-country nationals in regular stay in the Union, the European competence is obvious. In addition it is exclusive, and if one joins to what precedes the article 351 of the TFEU under the terms of which, as regards the previous conventions passed by Member States with third countries, "*insofar as these conventions are not compatible with the treaties, the Member State(s) in question resort to all the suitable means to eliminate noted incompatibilities. Where necessary, Member States lend themselves mutual assistance in sight to reach this aim and adopt a common attitude if necessary*", it is easy to see that the way of the bilateral conventions passed through the Member States with third countries is, or at least should, be closed: no competence anymore to pass new conventions in the European field of coordination, and obligation to make the old conventions compatible with the European engagements. There remains nevertheless a field, out of Community field, for limited or complementary bilateral conventions.

On the other hand, there is well an exclusive competence at the Union level to conclude coordination agreements with third countries in the European field only, but as it is the case for the association agreements, it is preferable that this competence is exerted jointly with the residual competence of the Member States in order to make it possible to treat largely the matter and the situations with the third countries, and therefore to preserve in principle the possibility of mixed agreements passed jointly from the European side by the European Union and its Member States.

The coordination envisaged has to be broad and deepened, adapted of course to the legislation and to the capacities of the selected partner countries, and being based as much as possible on the Regulation n° 883/2004 as regards its personnel and material fields of application and its provisions related to the determination of the applicable

legislation, in order to ensure in particular a good cover of the research workers having the workers' statute.

The partner countries to be sought appear to be, in view of the objectives and in view of the capacities necessary to reach them, the states members of the OECD, the other Member States of the various groups G, the large gatherings of States (Mercosur for example), the emerging states and states of Europe outside the EU-EEA-Switzerland group, ad also the states already related to the Union by an association agreement and not intending themselves for becoming members of it.

The content of these agreements can be limited to the coordination of the Social Security systems or be much broader (on the model of the Association agreements) with a specific aspect for the coordination according to the possibilities and the state of the relationship and of the needs with one or another partner. In this second group one will put the current association agreements which could be gradually endowed with a genuine broader and more complete coordination part than the very basic current aspect.

Giving priority to a broader agreement would have the double advantage for the researchers to envisage the association of a research part facilitating the cooperation on this matter, the exchange of information and of research workers, the joint projects and the research workers' mobility in general, and a coordination aspect of the Social Security systems as mentioned higher, to associate projects and mobility in one hand and the social protection in the other hand.

In addition, the research part could if possible include reciprocal normative provisions by which the partners would commit to provide if necessary for the non hard-working research workers an ad hoc minimum social protection enabling the coordination aspect to play in the event of mobility of the interested parties.

In conclusion, what currently exists as regards the coordination of Social Security legislation with third countries (bilateral conventions and association agreements) forms a not very dense and a badly adapted network to facilitate the research workers' mobility by ensuring the continuity of their social protection. The way of the bilateral conventions is limited by the emergence of a case law related to the exclusive external

competence of the European Union, now explicitly recognised by the Lisbon Treaty. Another way, already opened by the association agreements, should be more largely followed: the way of European agreements specific to the Social Security or broader economic agreements comprising a genuine, broad and modern part on coordination, following the example of the Regulation n°883/2004 internal to the European Union.

## SOME CONCLUSIONS AND POSSIBLE SUGGESTIONS

**1.** It could be argued that **variety of social security statues held by researchers** at various points of their careers and in various Member States is not accurately reflected in the EU social security coordination law. Researchers are professionally active persons and should be treated as such. They should not be treated as non-active persons, not even in early stages of their professional careers.

The definition of a 'researcher' should therefore also cover doctoral students and young researchers, who might be (or are even required to be) internationally mobile.

It seems that one of the preferred solutions could bet to treat all (including internationally mobile) researchers in all Member States as employees, e.g. by providing (even unpaid) employment contracts and levying social security contributions on their income (also grant, stipend, fellowship). Workers or employed persons traditionally enjoy the most comprehensive social security coverage.

Member States should design proper measures, and their effort should be supported by the EU. Member States could be urged by the Union to provide all researchers, including doctoral students, young (early stage) researchers and other researchers in a professional status other than employee, self employed or civil servant, social security equal (or similar) to the one of employees.

In this case a definition of 'researcher' would be required, which could be more researcher or more employer oriented. The definition might also be necessary for the purpose of EU social security coordination law, in order to delimit researchers as very much active persons (recognised also in the case-law of the Court of Justice of the EU) from non-active persons, also covered by the Regulation 883/2004/EC. This might be done by legislative action or proper interpretation by the Administrative Commission for the Coordination of Social Security Systems.

Amending the Regulation 883/2004 seems to be required, if new coordination rules would be introduced for highly mobile workers (including internationally mobile researchers).

**2.** Regarding the **applicable legislation** for the internationally mobile researcher, the following possibilities might exist:

i) Making extensive use of the Art. 16-agreements either a) using the existing Recommendation 16/84 of the Administrative Commission – maybe with a special focus on researchers or b) by creating a new and specially formulated Recommendation of the Administrative Commission (feasible within the existing Regulation);

ii) Introducing a new conflict-of-law rule especially for researchers and/or other highly mobile persons analogous to Art. 15 Regulation 883/04 (this implies a reform of the Regulation 883/04)

iii) Interpretation issues regarding researchers who are simultaneously employed in different Member States: solutions and answers will be feasible in most cases within the existing Regulation. However, it is difficult – if not impossible – to introduce general interpretation rules applicable to *all* cases of researchers. This is because of the variety of researchers and because of their different employment and mobility patterns. We can thus come to solutions only by making overall assessments of the *concrete* situation of *concrete* researchers.

**3.** Concerning the **benefits** related interpretation issues, the following could be proposed:

**a) Health care benefits**

The direction of the settlement of the above problems should be to guarantee the most possible stability in the researchers' situation, especially as regards their insurance relationship. Such stability can effectively contribute to eliminate most problems arising from the fact of frequent change of legislation.

What is left without insurance?

Essentially, in kind emergency health-care shall be provided for every Union citizen in the territory of another Member State following from the obligations of the European Social Charter. However, this – of course – is not free of charge it shall be paid for by

the researcher. Therefore s/he is evidently put on disadvantage. In turn, cash benefits are absolutely not due. Consequently, if the researcher suffers short-term incapacity, s/he shall be able to buy in kind health care, but no income replacement is offered (not mentioning private insurance).

If there is an insured status problems are solved, the principle of aggregation and export is fully applicable. However, if the research activity is not coupled with the payment of contributions and therefore on the E 104 form the sending Member State indicates (if at all issues E 104) the coverage for *in kind benefits* only, the receiving Member State can not be expected to acknowledge the research activity as insurance and award *cash* benefit on the basis of aggregation. This is simply excluded. Therefore, the qualification of the research activity from the point of view of the insurance determines also the rights in the second Member State.

The real solution therefore is to include the researcher into the social security system of the receiving Member State or expressly leaving him/her in that of the sending state. A possible instrument for this might be the modification of the Regulation 883/2004/EC that may focus on the following points or the combination thereof:

→ Insertion to Article 12 a special rule for the posting-like situations of research activities where the temporary activity in another MS does not exceed 24 months.

→ Addition of a special clause to Article 14 in which the researchers temporarily active in another or several Member States would be given the right to opt for remaining in the social security system of their "home country", even on a voluntary basis, regardless the mandatory insurance in the other MS (see for more general issues, point 2.).

→ Inclusion of a special provision to Article 16 in which Member States would be expressly authorized to deviate from the general rule of Article 11 in the interest of the researcher.

*Family members*

It seems that their difficult situation could be sort out more effectively by adjusting the main rules to the special situation of researchers. It might seem a feasible solution to give an option to the members of family to stay with the social security system of their country of residence as long as the active researcher is travelling all around.

Solution

1. Extending the prioritizing rule of Article 32 to family members of researchers

→ A sort of short solution might be to insert an addition to the end of Article 32 paragraph (1) as follows.
[… *An independent right to benefits in kind based on the legislation of a MS or on this Chapter shall take priority over a derivative right to benefits for members of a family. A derivative right… shall take priority over independent rights, where the independent right in the MS of residence exists directly and solely on the basis of the residence of the person concerned in that Member State* ]"… except in case of the members of family of researchers."

2. A more defined solution could be to insert into Article 32 a new paragraph (3):
"Members of the family of a researcher are given the option to choose their social security affiliation in the MS of residence or in the MS where the derivative right has been established".

→ This insertion would be a definitive exception from the main rule.

3. To insert into Article 32 a new paragraph (3) with general coverage for every family members (→ it does not dependent upon defining "researcher").

"Members of family who live in a different MS from the person on whom they are dependent shall be given the option to choose their social security affiliation in the MS of residence as an independent right or in the competent MS as a derivative right. "

This insertion would give an option for a broader circle of family members. Of course it might be combined with discretion by the MS of residence as well.

*New-born babies*

A solution could be to lay down that new-born babies shall be given health care in the first six months for the mother's or the father's EHIC.

*Best practices*

There are some interesting examples that could be made use of. One is a Scandinavian solution that gives the possibility of remaining under the social security system of the MS even if the person works and resides elsewhere. In this case the coverage remains and an Article 17 (now 16) is immediately initiated by the sending MS. An Article 17 (now 16) procedure takes time, and even it ends without result the person is not left without protection.

Finally, the netc@rds project could be mentioned as a best practice that provides an online verification technical devise to support acceptance procedures of the EHIC for health insurances and health care providers. Albeit it has not reached an overall support in the MSs, even some are against it – arguing that a technical problem could not result in loss of rights for EU citizens – an online checking system of whether somebody is a researcher might effectively be used at a later stage.

**b) Unemployment benefits**

The following solution might be envisaged in priority order.

1. Horizontally, the best solution would be if researchers could leave the competent state with the purpose of searching for job elsewhere without time restraints (i), without being obliged to de-register and register (ii) without the obligation of co-operation in other Member State (iii), for a maximum of 6 months (iv), *while retaining their unemployment benefits*. Hence other EC law instruments (Regulation 1612/68/EEC, Directive 2004/38/EC and ECJ case-law *inter alia Antonissen*) provide for the right to seek for employment, in theory nothing prevents researchers to register with several national employment services. The competent institution could than decide what documents it needs for the payment of benefits (copy of job applications, personal

interview each two months etc.) that is surely simpler than applying Regulation 883/2004/EC.

→ This solution means derogation from Article 64 (1) a) – c).

2. In case of no agreement on the horizontal derogation the 4 weeks rule and the co-operation could be eliminated. In this case we keep the registration requirement providing for guarantee for the competent state that the researcher is looking for a job.

→ This solution means derogation from Article 64 (1) a) – b).

3. As a minimum Member States could be urged not to apply at least the 4 weeks rule in practice leaving it to the researcher how long to search for job in that Member State.

→ This solution means derogation from Article 64 (1) point a).

It is clearly a win-win situation irrespective of which option is chosen.

Distinct Member States can opt for this solution between themselves through bilateral agreements if global result is not achieved.

Looking forward, mostly as regards point 1 EURAXESS could somehow be channelled as a forum for searching for job (accepting the registration as a valid cause for seeking job?)

*Best practices*

There are special provisions in some Member States' legislations (for example in the Danish legislation) where the acquisition or duration of the unemployment benefit is not linked to the previous completion of periods of insurance, employment or self-employment. These benefits are dependent upon other conditions such as the completion of training or graduation.

Researchers, who cannot fulfil the conditions of the general conditions of the benefit could acquire a special form of benefit, which is dependent upon the previous (research) activity or upon the termination of their grant. The duration and the amount of the benefit are uniform in every case.

**c) Family benefits (not insurance based)**

We need to concentrate on the underlying aim: to provide coverage one way or the other.

1. A way forward could be to operate with the usage of the term "stay". A general clause could be contemplated on pursuant to which in cases where the application of the presently effective rules results in no benefit for the family, and cumulatively, they have a common country of stay this is deemed to be the competent state.

→ Indeed, this could be of horizontal importance for every union citizen.

2. If we can not operate with point 1., I am sorry to say but a solution is still to go back to nationality. Of course I am fully aware of the prevailing idea supported by legal literature that Europe goes more and more towards a residence-based social citizenship. However, I would not rule out the relevance of the bond what nationally means.

A general clause could be contemplated on pursuant to which in cases where the application of the presently effective rules results in no benefit for the family, and cumulatively, they have a common nationality this is deemed to be the competent state for periods not exceeding 6 months.

→ The idea could be further elaborated as regards its details, of course (interruptions etc.).

**d) Contribution collection**

As it is basically in line with Articles 76 and 84 of Regulation 883/2004/EC, it would be sufficient to bring a precision to Article 21 of Regulation 987/2009/EC in order to support technically the payment of contribution and so to increase the protection of rights.

→ A further paragraph (3) could be inserted into Article 21 with the following possible wording:

*"(3) The employer whose registered office or place of business is not situated in the competent Member State may effect the payment of contributions due on grounds of the legislation of the competent Member State directly to the institution of the Member State where it is established. This latter institution shall provide the employer with all relevant information necessary for assessing the basis and the rates of contributions and shall transfer all payments made by the employer to the competent institution in a frequency required by the legislation of the competent Member State."*

**e) Access to benefits**

I propose the following priority order:

1. Member States shall be urged (by proposals, resolutions) to introduce mandatory insurance for researchers *from day one* (→ clear Member States' competence).

2. Voluntary affiliation to the mandatory schemes

→ If the researcher can not mandatory be affiliated (it is not supported by Member States) voluntary affiliation to the mandatory schemes shall be facilitated on favorable terms *from day one* (→ clear Member States' competence).

3. Enhanced usage (or creation) of separated voluntary schemes (→ co-ordination issue)

→ A researcher who is not insured in her/his country of residence (e.g. a freelancer), but is affiliated to a voluntary insurance scheme run or recognised by the state, through that affiliation(s) the researcher is insured at least against two (three) risks (health care, pension, unemployment or any other (family, invalidity) shall be exempted from being insured in the *country of the research activity* (quite arbitrary I do not qualify it as employment or self-employment or service period – may be it is none of those).

→ It could be timely equal to the period of research activities hence we suppose that the person will be dependant upon the benefits deriving from this scheme. Or it might be timely limited: e.g. for a maximum period of 10 years that shall suffice.

→ Member States shall be urged to recognize the affiliation of a researcher to a voluntary system of another MS as binding; or shall facilitate that researchers to join these kind of systems if they run or recognize such for other professions (e.g. artists, sportsmen).

→ Member States shall be urged (by proposals, resolutions) to introduce voluntary schemes for researchers if they do not agree with point 1. (mandatory scheme).

Point 3 means a derogation from Article 14 of Regulation 884/2003/EC however it is in compliance with the underlying principle of Regulation 883/2004/EC, namely to provide for social security coverage for all persons.

*Best practices*
Some countries already acknowledge voluntary affiliation to the mandatory schemes, it varies whether it is valid for in kind benefits only or encompasses cash benefits as well.

**4.** Although each person is different and therefore the ways of obtaining **information** can vary according to multiple factors, it seems a realistic point of view to assume that new technologies will play an important role in that search.

However, there is no need to create a new specific website. *De lege ferenda*, the information about social security provided by the websites supported by European institutions should be available in all official languages. And when this may not be possible, social security information related to each country should be written in the national language/s and at least in English.

Even when citizens obtain an answer to their problems in the social security field through EU websites, it does not necessarily mean that national administrations/judges must agree with the solution.

National websites may have uniform portals (as happens, for instance, with Euraxess, Europa) but there can be important differences in their contents. Not all countries put the same effort into showing and explaining their national social security systems.

Most information available in specific researchers' websites is interesting for workers and self-employed in general and not only for researchers. Moreover, the lack of information relating to special schemes for civil servants is remarkable, despite the huge number of civil servants that do research in EU states. The provisional conclusion to be drawn is that it seems a contradiction that specific websites created to improve

researchers' mobility don't contain broad information about researchers´ social security rights in particular.

It is suggested that a website like Euraxess, in the link to social security rights, should indicate the different legal status a researcher may be working under in a particular country, and which social security scheme will be applicable to him or her.

Due to the fact that there are countries whose social security systems tend to be reformed almost every year, it must be admitted that to show up-to-date information requires an extra effort from the administration. But this effort should be made because it is clearly a contradiction to create and maintain a website that does not show accurate information.

As it is more complicated for women to reconcile their working life with family duties, female researchers have to face an extra obstacle when it comes to exercising their free movement right. They would required very specific and tailored information.

Researchers can also get information from the personnel department although it is not realistic to think that they can get accurate information about their rights according to EU law. Although such specific information can be required by the administration it is not infrequent that researchers have to queue and waste a lot of time before being attended.

Another point to emphasise is that it has been almost impossible to find accurate information about mobile researchers´ supplementary pension rights in general or about supplementary pensions in particular in the websites supported by EU institutions that promote researchers' mobility. In the best of cases, only a few lines acknowledging the existence of private insurances have been found.

To be realistic, without knowing the results of the implementation of the EESSI in all national administrations, it is risky to try to move on to new reforms when national states currently face the challenge of connecting themselves to this EESSI. Moreover, it cannot be forgotten that the implementation of the EESSI has involved substantial

investment and due to the current world-wide economic crisis the measures to be proposed should have a low cost for member states.

It might be proposed, just as within an EU member state authorised civil servants or employees from different regions have access – under certain controls - to all the centralised information necessary to calculate social security rights, other EU administrations could be authorised to consult the same data – without being able to modify this data, of course.

If all member states provided mobile workers with e-means to access or to apply to their social security records wherever they are, it would help a lot to speed up the administrative procedure of recognising their social security rights. And it would also avoid the problem of getting information from a state when mobile workers/researchers are residing or performing their activities in another one.

The same technology that has already been developed in the EU might be used in the field of social security to enable EU citizens or third-country nationals to carry with them all the information that could be required by other EU administrations in order to recognise or calculate their social benefits. In such a case, the need for social security administrations to exchange data would probably decrease and maybe it would also help to prevent fraud.

**5.** An equal treatment right thus consolidates and generalises itself as regards Social Security for all of the **third-country national researchers**, as long as they have the status of worker in a Member State, for themselves and for the members of their family legally admitted to stay in the same Member State. On the other hand the protection is less ensured for the researchers not having this status. One also has to note that all the directives referred to above stipulate that they apply without prejudice to the more favourable provisions (in particular as regards Social Security) of bilateral and multilateral agreements concluded between the EU and the EU and its Member States and third countries and of the bilateral or multilateral agreements concluded between one or more Member States and one or more third countries.

Mobile researchers from third-countries *moving from one Member State to another* are well protected by the coordinating regulations if they are workers, are in general better protected, and especially if they don't have the employee status (subject to be able to be covered in this position in the State of residence), because of the entrance into force of the new coordinating regulations on 1 May 2010, enforcement deferred for the third-country nationals until entrance into force of the currently analysed regulation on the extension, but which besides Denmark, will not concern the United Kingdom (upholding in force for this state of the old regulations via the Regulation n° 859/2003). The work in progress on the new forms of mobility could lead to adaptations and modifications of the rules and administrative practices concerning the applicable legislation, in particular to very mobile researchers not meeting the characteristics of a posted worker.

What currently exists as regards the coordination of Social Security *legislation with third countries* (bilateral conventions and association agreements) forms a not very dense and a badly adapted network to facilitate the research workers' mobility by ensuring the continuity of their social protection. The way of the bilateral conventions is limited by the emergence of a case law related to the exclusive external competence of the European Union, now explicitly recognised by the Lisbon Treaty. Another way, already opened by the association agreements, should be more largely followed: the way of agreements specific to the Social Security or broader economic agreements comprising a genuine, broad and modern part on coordination, following the example of the Regulation n°883/2004 internal to the European Union.

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# ANNEX 3: SUPPLEMENTARY PENSIONS FOR RESEARCHERS

Mr. Gerard Riemen and Prof. Heinz-Dietrich Steinmeyer

## Recommendations

**The Commission should bring the universities of Europe or their associations together. The universities should be challenged by the Commission to solve the mobility problems in the field of supplementary pensions. Most of the current mobility-barriers aren't caused by EU-legislation or national law. They are caused by the regulation of the various pension schemes.**

**The commission should pay attention to the position of the researchers in the upcoming green paper on supplementary pensions.**

**The upcoming revision of the pension directives should incorporate the minimum standard. This means that every single Member State has to abolish all barriers in their national law concerning:**

- **the portability of pension rights**
- **the mutual recognition of pension periods**
- **the right to stay in you original pension scheme.**

**Above all the Commission and the universities should do much more on exchanging experiences, sharing information on mobility and pensions. The mobile researchers have the right to receive complete and correct information on the consequences of their move.**

**Supplementary Pensions for Researchers Pragmatic Solutions to Remove the Obstacles**

## Introduction

The increasing emphasis on international cooperation between researchers has brought significant changes to the careers of researchers. The researcher who retires from the same university where he studied, did his PhD and had his academic career, is becoming an anomaly. More and more universities expect their PhD's to leave after completion and undertake post doctoral studies in another country. In other words a research career is a career in more than one country. These researchers however, often do not accumulate the same pension rights as someone having the same career, but staying in one country. Given the fact that the EU wants to be at the front of research and innovation, accrual of pension rights of internationally mobile researchers should not be hampered by existing pension provisions.

The task for this project is therefore to find ways *to ensure that there are no losses in supplementary pension entitlements due to moving from one Member State to the other.*

Due to the great variety of supplementary pension schemes in Europe, which substantially exceed the variety of social security systems, it is difficult to find simple solutions for the issue of mobility in these cases. Therefore it is important to address the issues in the first place and then try to identify solutions that are of help not only in the long run, but also address the problems of today's researchers.

### *1. The Definition of Supplementary Pensions and the type of researchers covered by this paper*

There is a large number of roles which may be considered to be "research" roles and there is a need therefore to identify which of these roles would be affected by this paper. By generalizing to a certain extent, it can be stated that a significant number of research projects is predominantly public funded and takes place in public institutions. There is considerable research also in private companies in a number of areas, but this work usually occurs within a standard contract for employment and there are no considerable differences between researchers and other employees of such companies. This means

that solutions in the public sector and/or for the public sector are required, and these solutions will therefore apply to the majority of the researchers that are disadvantaged by the current regulations.

Also there is a wide range of public sector supplementary pension schemes in Europe. Some Member States have unified schemes for the entire public work force, others have a diversified system with a number of funds. There are schemes based on collective agreements and others not. Some of the schemes have longer vesting periods or waiting periods and others not. Some are financed by central governments as PAYG schemes, and others are fully funded through contributions and investments. Taking into account all these differences, pragmatic solutions should be reviewed.

There is no definition for supplementary pensions on an EU-level. However, for practical reasons, this paper assumes the same definition as in article 3 sub a and b of the directive 98/49/EC, which are all old age pension schemes which are not under the scope of regulation 883/04, and have a relation with the collective or individual labour arrangement of the researcher are involved.

### *2.* What are the obstacles for mobility in the field of supplementary pensions?

There are several reasons why international mobility of researchers could hamper their future pension entitlements.

- ***Status of the researcher***. In many countries young researchers spend many years doing research on a student basis[65]. They may well receive a reasonable living allowance, but they do not have employee status and are therefore not eligible for occupational pension rights. This can lead to a marked difference with their peers who do not work as a researcher. The academic researcher may well, after finishing a masters degree, spend another 5 to 10 years seeking additional research funding through various fellowships which rarely attract full employee status. Indeed, this is a typical requirement for a researcher that seeks

[65] League of European Research Universities briefing paper, March 2010: "Early stage researchers often have an unclear status 'in between' that of student and that of 'employee' or 'civil servant'. Sometimes they are artificially labelled as ' students' even after obtaining their PhD.

a full academic career, which means that these individuals only start building pension rights in their early 30's. For researchers coming from countries that grant their young researchers employee status, it is therefore not very attractive to work in these countries.

- ***Waiting periods***: many occupational pension funds have pre- entry waiting periods. Pre-entry waiting may be that you have to reach a certain age before you can enter the fund, or it may be that there is a minimum period of employment before the pension fund can be entered.
- ***Vesting periods***: Post-entry, or vesting periods mean that the employee has to spend some years in the fund before any rights are accrued. In the German pension fund for academic researchers this vesting period is five years. However, research periods are typical of limited duration and an international researcher may therefore move again before the waiting, or vesting period is completed. It may even be the case that the waiting has to be started all over again in another country.
- ***Indexation***: a pension normally is accrued over a long period, maybe 45 years. Wages and prices will increase during that period. Indexation of the pension rights may help the future pension to grow at the same rate as wages, or prices. In some countries dormant pension rights (i.e. rights that stay in the fund after the researcher has moved on) are not indexed. This means that over time these pension rights lose their value because of inflation. If the decision to join a fund that discriminates against mobile workers is voluntary, the young researcher may well choose to opt out of such a scheme.
- ***Opting out***: altogether, young researchers may realize they will build their career in various countries, never staying more than two to four years. In some countries, especially if the pension premium is directly available to the researcher, the researcher has the right to opt out (Various examples in the fact finding pack.) However, if a period of opting out precedes a delayed start date in paid employment, the time left for a researcher to accrue a reasonable pension is further reduced from the 40 -45 years that is traditionally accrued and almost certainly necessary to 35 years or even less.
- ***Finance***: With an aging population, stricter regulations and low interest rates, the financial position of occupational pension funds has significantly

deteriorated in recent years and premiums have risen accordingly. Taking all the previous obstacles into account, the internationally mobile researcher may well decide or prefer to stay in the pension fund of his country of origin. However, neither he, nor his new employer may be willing, or able to pay the employer's share of that premium.

- ***Fiscal***: In supplementary pensions the tax issue is of great importance. Some member states provide tax incentives for employers to establish supplementary pension scheme for employees. Contributions paid into these schemes are usually tax deductible for employer and employee. However, within Europe there are still obstacles when it comes to tax deductibility of contributions paid into schemes abroad. Also transferring capital and/or benefits from one scheme to another across national borders may attract additional tax liabilities. How much this can be mitigated either by deferring taxation, or by how pension benefits rights may ultimately be paid (annuity versus lump sum on retirement) varies per country. This impacts on the opportunities for transferring pension rights thereby creating another obstacle to mobility.[66]
- ***Information***: At their first information event in 2008 the Bonn University Welcome fund held a survey. 97% of the attendees stated that they knew little about their pension rights.[67] This is not a surprising finding: younger people anywhere are not particularly interested in their pension rights and on top of that, many researchers are altogether not all that interested in their financial rights. The lack of information however may lead to decisions that are detrimental to pension rights later.
- ***Overview***: A final obstacle may become apparent at retirement. It seems likely that the pension of a mobile researcher may consist of various smaller units of pension rights. Will the researcher at that time still have all the necessary information, will he have the overview necessary to claim all his rights? If this is not the case, which seems likely because of the information gap mentioned above, it seems possible pension rights are just lost along the way.

[66] In a recent article (....) the Dutch fiscal lawyer Hans van Engelshoven argues that transferring pension rights to and from the Netherlands has become more difficult in recent years. One of the examples he gives is that transferring pension rights for an academic from the Dutch ABP to the British Universities Superannuation Scheme is prohibited since 2007 because of a wider possibility in the UK to receive part of one's pension entitlements at pension age in form of a lump sum.

[67] Quoted in 'Mobility without security' , German Rectors Conference Bologna conference, page 40, Tina Odenthal, 'closing knowledge and awareness gaps'.

*real life cases from researchers moving in the EU.*

I was very unpleasantly surprised to observe, after the end of my first post-doctorate contract (a Marie Curie intra-European fellowship, which is advertised as a very good contract for including pension and social security benefits), that the University of Cambridge mentioned to the European Commission that my Marie Curie fellowship would be a non-pensionable contract. I do not know if it could have been negotiated before signing the contract, if I would have paid attention to this initially. [Case 6]

I moved to the UK from France 1 year ago. I joined the USS pension scheme, but have been told that USS cannot advise me whether I will be able to transfer the pension to another provider when I return to France as they do not know who the provider will be. Much rests on my next job and whether the new pension provider provided by the employer (together with USS) will agree to a transfer. I am concerned that if I pay into USS for 2 years and am not able to transfer my benefits, I will have to wait until I am of UK retirement age in order to receive the pension, and because it is based on limited years' service, the benefits after exchange rates and bank transfer costs, will be minimal. I am concerned that paying into USS at this stage may well be a waste of money. I cannot afford to pay into a private pension scheme in France whilst in the UK. I cannot move back to France until I have secured a job there as I will not be entitled to any social security benefits as I have not worked in the country for a couple of years. [Case 21]

[…] the German pension is calculated on the years of contribution – with expected 45 years. However, every academic in Germany cannot reach the full years of contribution (even with a retiring age of 67) since the time of studies (around 5 years) is not taken into account. In short, even after more than 40 years of work only a minimum pension could be expected – you might be entitled for different national pensions, but only for a certain time each. The next problem could arise with international payments … [Case 2][68]

[68] In fact, Germany has an earnings-related and years-of-employment related public scheme. A person with less than 45 years of insurance would not receive a minimum pension – actually the average does not meet this 45 year criterium. The German benefit formula consists of "wagepoints" (Entgeltpunkte) which reflect the income during

I know I will be entitled to the benefits accrued in the 5 years I worked here, but the problem with many pension plans is that they become better the longer you stay with them (e.g. after 10 or more years for the USS). This disadvantages scientists who tend to move around every 2-5 years especially at the start of their careers. So, you can just mention this as a concern. [Case 14]

A number of research institutions have established their own supplementary pension schemes, which take into account the international mobility of their researchers.
The obviously oldest example is the European Organization for Nuclear Research (CERN) based in Geneva, Switzerland. This institution has a pension fund which insures its members and beneficiaries against the economic consequences of disability and old age of its members. It also insures the families of beneficiaries and members against the economic consequences of the death of its members and beneficiaries. This pension fund, according to its rules, accepts periods bought in by payment of a transfer value into the fund from another pension scheme, provided a contribution was made to this scheme by the employer. Such a pension scheme is defined as "any scheme with a legislative or statutory basis, whether national or international, designed to provide its members and beneficiaries with benefits, in particular in the case of old age, disability and death."
The rules of the CERN fund also provide that a member may be authorised by the administrator of the fund to have his own contribution plus a sum not exceeding 100 % thereof paid into another pension scheme. This assignment shall normally be authorised only where the member was already contributing to the other pension scheme when his membership of the fund started, or if it facilitates integration into another pension scheme. The rules contain specific provisions on the calculation and payment of the transfer value.

The arrangements to be found in the CERN pension scheme can be characterized as a pragmatic solution of typical problems of mobile researchers. Therefore it is a good

working life and the years of insurance; the other factor is a figure representing the current value of that Entgeltpunkt (Rentenwert). This in the end means that a person with 40 years of average income would receive a pension of 40 X Rentenwert which is less than 45 X Rentenwert but could not be qualified as minimum pension.

example for a pension plan serving the needs of researchers who as part of their career work for CERN – or taking this as a model – work for a research institution which is typically international. The researchers might acquire pension entitlement with CERN and might transfer them to another system.

With this kind of flexibility in all or almost all supplementary pension schemes a number of issues would be met successfully.

Whereas the CERN plan is focusing only on researchers in employment with the specific institution, another – more recent – initiative is dealing with researchers not yet in employment but on fellowships or grants. The European Molecular Biology Organization (EMBO) is - effective January 1, 2010 - offers a pension plan for its fellows. All new and second-year EMBO Fellows will have the opportunity to join the pension plan when it begins. EMBC, the EMBO intergovernmental funding body, is contributing additional funding to support the international mobility of early-stage researchers. The EMBC support allows for incentive contributions of 100 euro per month during a two-year fellowship for each EMBO Fellow enrolled in the plan. Participation in the pension plan is voluntary. This plan is focused on researchers with fellowships, i.e. not in employment. It provides them with a certain level of protection also during this period of non-employment. The plan is a group life insurance and can be continued after the fellowship has expired.

The EMBO case shows that there are ways to meet the needs of researchers not in employment but on grants or fellowships. They have some protection through a life insurance contract which they can take to other places after they have left EMBO fellowships. These contracts might function as a basis for further retirement provision of this researcher.

However, there is no reason why these individuals could also be covered on the basis of voluntary membership of a general supplementary pension scheme and paying contributions deducted from the fellowship.

## 3. Introduction in the field of supplementary pensions in Europe

Each Member State has some form of state regulated scheme in respect of basic social security provision. However, there are a large number of supplementary pension schemes in each of the Member States. In the Netherlands for example there are more than a thousand supplementary pension schemes which vary from pure DB-schemes to pure individual DC-scheme. When it comes to supplementary pensions it has to be taken into account that not only does the type of supplementary systems vary from country to country and even within a single country, but also that the importance and/or relevance of these pensions varies from country to country. In some countries – especially in Southern Europe – the basic rate of the (first pillar) public social security system is still generous. Therefore, there has been no need to establish supplementary pension schemes.

On the other hand, there are Member States where the social security schemes provide only low standard benefits and supplementary pensions are of high importance for retirement. Examples for this are the UK as well as the Netherlands. A number of countries like Germany, France and the Scandinavians are somewhere in the middle. However, some of the Member States in Middle and Eastern Europe still have no considerable supplementary schemes due to other reasons.
Supplementary pensions are usually linked to paid employment. This may either be a voluntary scheme sponsored by the employer, or a system where the employee may contribute as well. But there are also mandatory systems based on collective agreements. Pension schemes may cover an entire industry or just a company or institution, or may even be on an individual basis.

Public sector supplementary pensions are often based on collective agreements and cover the entire public work force and not only union members on the employee's side. In a number of countries there are a number of special funds for the public work force. For example in Germany there is a fund for Federal and State Governments (Versorgungsanstalt des Bundes und der Länder – VBL) covering almost all universities and public research institutions as well as funds for persons working for the local governments and for the churches. In the UK there are a number of schemes available to

people working in the public sector ranging from the very large to the relatively small.. In the Netherlands on the other hand just one fund - Stichting Pensioenfonds ABP - is the pension fund for employers and employees in service of the Dutch government and the educational sector. The German and the UK funds for public service have procedures to deal with mobility between the funds. In the UK it is the Public Sector Transfer Club and in Germany there is a system of agreements either on transfers from one fund to the other or on mutual recognition of insurance periods. These approaches may also serve across borders.

Annex 1 gives an overview of supplementary pension arrangements in a variety of EU member states.

**4. European legal basis for supplementary pensions**

There is already some EU-regulation on supplementary pensions which although aimed at the standard definition of pension membership, also covers some aspects of the mobile researcher, but this is currently very limited, and perhaps does not protect this special group sufficiently.

There is EU-directive 98/49/EC, which is aimed at safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community.
This directive primarily focuses on the equal treatment of individuals who accrue pension rights, whether they move between member states or stay in the same member state. So the same rules concerning preservation of pension rights must be applied to those living in the member state and those living in another Member State.
This is a minimum regulation.

Article 6 of this directive might be a good example of how to regulate the "right to stay in their original scheme" situation for researchers. In this case it is about posted workers who have the right to stay in their original pension scheme.

Article 7 states that scheme members should receive adequate information when they move to another Member State. This already applies for the mobile researchers. The

question is of course whether the quality of the information and the way the information is provided is good enough.

Directive 2003/41/EC doesn't have any articles concerning the safeguarding of supplementary pension rights of individual members of a pension scheme. In article 11 there are written obligations concerning the information to be given to the members and beneficiaries of the scheme.

In 2005, the Commission introduced a proposal for a directive to improve the portability of supplementary pension rights. This proposal is now titled: "*Proposal for a directive on minimum requirements for enhancing worker mobility by improving the acquisition and preservation of supplementary pension rights (COM (2007) 603 final)"*. The objective of the new proposal is to address the issue of reducing those obstacles found within some supplementary pension schemes in order to facilitate worker mobility. The potential barriers to worker mobility relate to, in particular, the conditions under which an individual acquires pension rights; and the conditions in which those rights are treated once an individual has changed jobs. Furthermore the proposal addresses the issue of a worker's right to information on how mobility will affect the acquisition and preservation of their supplementary pension rights.
At this moment this proposal is a bridge too far for some Member States and for this reason no action has been taken put this proposal in to action. Nevertheless, the proposal may provide the foundation of how best to tackle the obstacles in the field of supplementary pensions as they apply to the mobile researcher.

**5. The pragmatic solutions to remove these obstacles**

In this paragraph we will discuss four pragmatic solutions that might help to solve obstacles for mobility.

1. An EU pension fund for researchers
2. Mutual recognition of periods
3. Transferability/portability
4. The right to choose a "virtual pension-home" and stay there irrespective of mobility

### *5.1 an EU-pension fund for researchers*

In the context of improving mobility for researchers, DG Research has launched a "Feasibility study for creating an EU Pension Fund for researchers" which has been prepared by Hewitt Associates and presented to the Commission in February 2010. This study shows that it is possible to establish such a pension fund. According to the study this should be designed as a multi-employer pension plan with the participation institutions being members of the fund. This fund should reside in one Member State and be established under the national law of that country. It should be an institution for Occupational Retirement provisions (IORP) set up by European based organizations with the aim of providing employment related pension benefits in compliance with applicable legislative requirements.

A number of research institutions have established their own supplementary pension schemes taking into account the international mobility of their researchers. For example CERN, EMBO).

The idea would be that the first time a researcher moves within Europe for any length of contract time, this researcher would be offered the opportunity to enter the pan-European scheme and transfer his accumulated pension wealth to this new scheme. From that moment on, until the end of his career as a public researcher, he is an active member of this pension scheme. (Whether the researchers' employer needs to have a relationship with this scheme is a point for discussion. However, an employer contribution and probably an EU contribution (subsidy) to the scheme will be necessary to make it work.)

Although a pan-European pension fund at first glance appears to be the most fundamental solution to the problems of internationally mobile researchers, some problems remain unsolved. Establishing a pan-European pension fund is moreover a very complicated and probably time-consuming project.

Decisions have to made on the following subjects:

- what will the governance look like?
- in which country will the fund be seated?

- what will be the supervisory structure? (At present each country has its own pension supervision framework)
- will it be a public fund or a private fund?

Not only the institutional setting of the fund is complicated, also the scheme itself requires many decisions.

- will it be a mandatory scheme or a voluntary scheme?
- What will be the basic benefit structure and who will discharge it?
- Will the fund provide an annuity, or will there only be a lump sum at retirement age?
- will there be a possibility to surrender pension savings before the retirement age?
- will there be a survivor's pension?
- will it be an individual DC scheme, or a collective DB-scheme?

The answers to the questions above will determine whether participating in the scheme will be advantageous to researchers from the various member states. After all, it is important to keep in mind that the primary purpose is not to simply give researchers the opportunity to accrue pension rights, but to accrue pension rights *that are at least as good* as the rights they would have accrued if they had not chosen to become internationally mobile.

It is widely accepted that in countries that have mandatory collective schemes, in which investment risks are shared between participants and between generations, the costs of pension benefits tends, for the time being at least to be cheaper than in the case of individual accounts. So, participants get more value for money in this type of scheme than they would in strictly individual DC-schemes. Therefore, for researchers that come from countries with collective schemes, participating in a pan-European pension scheme will probably not be advantageous, even if the employer would be prepared to pay the premium.

A European Pension Fund in action might very well serve the needs of mobile researchers. But it would require that all Member States (and their respective organizations) with relevant supplementary pension schemes will participate in the system. Otherwise the coordination of this fund with other funds and systems is still

necessary and would cause additional costs. It can also be assumed that the existing funds in the Member States and the Member States themselves are reluctant to finance another fund.

To put such a European Pension Fund on a mandatory basis seems almost impossible from a European law point of view. This would be a very strong intervention into the Member States´ legislative competences which would have no basis in European law.

### *5.2 mutual recognition of periods*

Vesting periods differ among Member States. Especially in Germany, but also in Europe as a whole, about 15 % of DB schemes still require vesting periods of five or more years and 32 % require two or more years[69]. Taking into account the typical style of mobility of researchers in the early years of their career, they might under these conditions lose a lot of entitlements.

The initiative of the European Commission on reducing the vesting periods to one year all over the European Union has failed – at least for the time being. Taking into account the history of attempts to reduce vesting periods, there has to be considerable skepticism that this problem will be solved in the near future. Although even a relatively short vesting period -for example two years- would still be too long for many researchers, a reduction of vesting periods generally would still be a good step forward for the situation of mobile researchers.

Assuming there is no appetite for a Pan-European Pension Fund, the current schemes must be encouraged (regulated) to ensure maximum portability and transferability. As long there are vesting and waiting periods we need a solution to remove this obstacle for the mobile researcher. Mutual recognition of periods can solve the problem.
Let us take a case in which a researcher works (say) for 2 years in country A in a public research institution. The supplementary pension scheme for the public service employees requires a waiting period and/or vesting period of 5 years. He then goes for 4 years to country B - same conditions. We propose a solution in which the system of country A takes into account the years accrued in the scheme in country B and vice

[69] See *Hewitt Associates*, Quantitative Overview on Supplementary Pension Provision, Final Report – prepared fort he European Commission, DG EMPL. November 2007, Chart 19 page 18

versa. In this way, the requirements for qualifying benefits are fulfilled in both schemes, which would then pay benefits on the basis of the total years accrued under each system . In the case of mutual recognition of periods, vested or unvested rights will remain in the country and the scheme in which they are acquired. No transfer takes place. At the time the person retires, each of the systems determines its part and may take into account periods with the other system in order to fulfill vesting requirements, requirements of waiting periods etc, but will pay only pro-rata-temporis along the years elapsed with the system. So in the end the person will receive several pension parts from maybe several systems/countries. This is very close to the system in social security (Reg. 883/04) and will very likely not result in tax problems.

***5.3 transferability/portability***

Regular reviews of financial planning are essential each time the researcher moves and this is key critical in respect of pension transfers.

The transferability of pension rights is limited to vested pension rights, which means that a mobile worker will lose those entitlements which are not yet vested. Transferability is thus not a solution for the problem of vesting periods.

In the Netherlands, transferability of pension rights has been possible for years already. However, experience suggests that it is a complicated, time consuming and expensive process, even within the Netherlands. And even though the expenses of transferring pension rights from one scheme to the other are borne by the fund and not by the individual participant, the benefits for participants of transferring rights are unclear. It is very difficult to compare the quality of pension schemes. Especially comparing DC-rights and DB-rights is extremely difficult, but also comparison of DB-schemes is complicated because of differences in funding requirements and actuarial calculations. Moreover, participants often go back and forth from one fund to the next. The transfer of pension rights is in this case rather unnecessary.

At retirement age however, participants often prefer to obtain their benefits from one institution.

### *5.4* the right to choose a "virtual pension-home" and stay there irrespective of mobility

A different solution might be to give the researcher the right to stay with one pension provider during his entire (research?) career. In this proposal, the researcher will be given the right to remain with the primary pension provider throughout his/her research career. The researcher would be responsible for ensuring that the premium will be paid. This means that he/she has to negotiate with the new employer for the employer part of the premium to be paid to the pension provider. As previously articulated, in article 6 of directive 98/49/EC this is already provided for in respect of posted/seconded workers. It should therefore be possible to amend this article such that it also provides protection for mobile researchers.

In mandatory schemes, (such as exist in the Netherlands), it is not often possible to determine the level of premiums. If an employer in another country is not willing to pay the premium needed, for whatever reason, it might therefore be difficult to stay in the scheme. This approach will also demand that the ability to opt out of the domestic pension scheme/pension provision is facilitated, even if this is a mandatory scheme.

It is a relatively simple measure which puts the responsibility for the pension benefits on the shoulders of the individual researcher. He/she has to decide whether to stay in the scheme or not. He/she also has to take care that the total amount of premium is paid. To make this possible, the EU-rules should ensure that all pension providers offer this option to researchers and that they are exempt from mandatory participation of pension schemes in the case they have decided to remain with the primary pension scheme. However, in those Member States where the employer has to pay relatively high premiums for good quality social security benefits , it appears unlikely that the employer will be inclined to pay a high additional premium for second or third pillar pension benefits.

So, this solution will not be feasible in all countries. Moreover, this solution will not solve the problem of young researchers who start their career with an "in between" status between student and employee/civil servant, because they will not have a pension fund where they can stay.

***6. How to create a greater awareness among researchers***

This is a difficult area because it assumes that all employees outside of the researcher category are fully informed and take an active interest in pension matters. However, it is most certainly true that apathy is the normal approach to all things pension related, and pension rights, whether they are primary (social security) or secondary (supplementary) are accrued almost by accident than by design. It is therefore disconcerting that with this as the norm, lots of time and effort is being expended to ensure that early stage mobile researchers are fully informed and take personal responsibility for pension provision, when this is not the case more broadly speaking. Consequently anything that we propose here should be considered in the broader context of providing better information to employees all across Europe.

On the issue of provision of information, there are clearly major challenges. The difficulty here is ensuring a consistent and equitable information pack to support the individuals in making an informed decision. Normally, pension information is provided by the local employer and if this were to be our recommendation, the pack would need to be provided centrally in order to encapsulate all the European pension and social security issues they may need to take into consideration. There would need to be ownership of not only collating this information pack at a point in time, but also of keeping it updated to take account of local, national and international changes.

Whilst it might be possible to have someone write down all of the state and supplementary benefit rules that currently exist for example in the UK, that exercise would need to be repeated for all of the other EU countries. The difficult bit would then be drawing all that information together in a form which enables a person to fully understand the implications of (say) moving from country A to country B, with a short spell in country C in between. Nevertheless, it must be possible to do something, even if it is simply collating all of the information in one place.

Alternatively, we recommend that the research councils take ownership of the pack. It is surely in their interests that the researcher is prepared to work flexibly across international boundaries to the detriment of future benefits. If we take the Marie Curie Fellowship as an example, there is already a substantial pack produced that covers

national and international mobility issues, audit and control requirements and imposes stringent conditions on the employer in terms of administering different aspects of the grant. Pension and social security issues are glossed over presumably because there is such a variation currently, and the onus is on local employers to provide the information. This could be prevented if some of the various issues are standardised as a result of this work, and these could therefore be incorporated into a standard pack to be issues by the research council.

Therefore a system has to be established which may inform researchers as well as their employers about the supplementary pension schemes, their structures and rules. A researcher joining a research institution should be aware of the scheme provided and its rules. It would also be good if information in respect of cross-border cases is provided which means that on the one hand the employer is aware of the international aspects of pension membership, and on the other, the information is publicly available to be transferred to the researchers; it also means that a kind of database or information-base has to be established. EURAXESS generally is a starter here but needs to provide far more information than now. A cooperation of the relevant schemes might help here as well.

**7. What to do**

So, having investigated four possible solutions, we can conclude that there is not one solution that will solve all problems related to international mobility, given the fact that the pension systems of the member states differ on so many aspects.

In the long term, the establishment of a pan-European pension fund will be an interesting goal, although it will not solve all problems.

For the short term, the Commission should focus on facilitating the three other solutions mentioned, which are in any case needed in the case of a pan-European pension fund. It can be called a no regret scenario to start with these solutions while working out the pan–European pension fund. Furthermore, it should be encouraged right from the beginning that pension providers who hold relatively large populations of researchers, start cooperating right now on a voluntary basis to facilitate the mobility of researchers.

It is acknowledged that all the solutions discussed here have advantages and disadvantages, are difficult to achieve, and may solve the problems albeit only with additional complications. . All these measures have their merits but may – if the initiatives are ultimately successful - serve the needs of mobile researchers only in the long run.

Within some of the Member States there are arrangements to deal with mobility between the different funds for this area – the UK Transfer Club is an example of this. Mutual recognition of insurance periods in Germany is another example. Based on these experiences – the latter approach is very similar to what is done by Reg. 883/04 in social security – the Commission should endorse arrangements – multilateral or bilateral – between the funds on the European level. This might also be done by European law.

The Transfer Club approach would be that pension rights are transferred to the fund in the other country when a person moves from one country / employer /scheme to another. This approach is reflected in the proposed directive on improving the portability of supplementary pension rights. In the absence of such a directive an agreement among institutions on a European level might help and might – or might not – prove that this really works in practice.

It has to be conceded that not all countries or institutions are likely to be interested in participating in such a system as the Transfer club approach, especially at the current time taking the global economic issues into account. Schemes with no vesting periods at all or only short vesting periods and almost no waiting periods might not need such provisions. But taking into account the relevance that vesting or waiting periods still have, expanding on the bilateral agreements that already exist between certain countries might help. Schemes with vesting periods also should be encouraged to accept periods of pension membership accrued via employment in other Member States in schemes that do not request vesting periods (mutual recognition). The implementation of Reg. 883/04 has proved that such a system does not cause a real financial burden for the participating schemes due to –the fact that in such schemes, the percentage of internationally mobile workers is relatively small and the number of mobile researchers is even smaller. This is a risk that a scheme of a considerable size can bear.

Finally, creating the right to choose a "virtual pension-home" and stay there irrespective of mobility is an option which should be applicable for all member states. This option is already in force for posted/seconded workers. Broadening the scope of article 6 of directive 98/49/EC from posted workers to mobile researchers seems unlikely to be detrimental to the interests of the Member States.

Furthermore, we should not dismiss the effect of improved cooperation from existing supplementary pension scheme providers across borders. Engaging with the providers will highlight in what way these institutions might solve the problems. This cooperation could be enforced by European law or might remain – at least for the time being – on a voluntary basis.

Nevertheless considerable research still has to be done in order to make such a system work. Transfer systems of any kind are complicated and may be expensive. It appears therefore more important to simplify the rules rather than to find perfect solutions.

**8. Institutional approach to achieve progress**

The proposals laid down above might be implemented using different approaches, e.g. through a recommendation by the European commission, or through requiring member states to set minimum standards, or through making a directive which requires member states to make at least one of the options possible.

***Recommendation***

The first way to implement it might be the way of a recommendation by the European Commission, addressed to either the Member States, or to the different supplementary pension institutions of the Member States.

The disadvantage of this approach is that it only expresses the concern by the European Commission without any means to make it really work. It also has to be anticipated that a number of Member States and/or institutions might be reluctant to follow this idea. The reason for this reluctance can be that the national law in the Member State might not allow this kind of transfer or mutual recognition. It might also be that in a given

Member State supplementary pensions are not of considerable importance and thus there is less motivation to establish such measures.

Therefore this approach cannot be recommended since the likelihood of real progress by using this approach is limited.

***Set minimum standards***

A more comprehensive approach would be to require the Member States to set minimum standards and to provide a general structure for mutual recognition, portability and the virtual pension-home.
This would mean that the Member States would be required to remove all possible obstacles for these three solutions which may arise from national law. The Member States should be asked to examine their national laws respectively. The institutions providing supplementary pensions should be enabled to act on the basis of the proposed solutions.

***Require member states to make possible at least some options***

Some Member States or their institutions might be reluctant to accept the transfer approach and others might be reluctant to accept the idea of mutual recognition. Following the experiences with the draft directive on minimum requirements for enhancing worker mobility by improving the acquisition and preservation of supplementary pension rights, it may be necessary to propose a solution under which Member States have options. The Member States should be required by a directive to make possible in their national law at least one of the options – either mutual recognition, transferability, or the virtual pension home. –The preferable approach however, is that legislation is introduce which provides for the use of all options by their relevant supplementary pension institutions.
Where a Member State or pension provider adopts mutual recognition, it must follow that the provider would accept all periods of pension membership accrued in schemes that have also adopted mutual recognition. However, there might be countries or systems where mutual recognition is not necessary since they have no such benefit requirements.

Where the Member State or pension provider opts for mutual recognition, no transfers are necessary, since free movement of researchers with regard to supplementary pensions is achieved by this approach.
In case of the transfer option, the Member State would have to legislate for pension providers to make transfers to and from systems in other Member States.

The third option would be to legislate for individuals to remain in the primary pension scheme thereby automatically giving internationally mobile researchers the right to opt out of the domestic system.

***Mandatory use of options by the supplementary pension institutions***

If Member States provide such possibilities, it will only be successful with regard to mobility of researchers if the pension institutions subsequently review the Trust Deed and Rules. Focusing on the national legislation is therefore an alternative approach to relying on the individual pension institutions to implement one or all of these approaches.
This is achievable by ensuring that the national legislation facilitates mutual recognition, and/or the ability to transfer, and/or the right to stay in the primary pension scheme and applies this to all supplementary pension schemes.
In that case agreements between the institutions would not be necessary as the national law would provide rules which could work without agreements of the institutions. In that respect Regulation 883/04 and article 6 of dir. 98/94/EC might act as blueprint. A number of Member States also have provisions in their national law on portability within that Member State.
There might be a number of issues in detail which have to be solved. So it might turn out that also those countries opting for mutual recognition have to require their supplementary pension institutions to accept transfers from other systems.

## Annex 1

### Belgium

All civil servants are entitled to a Social Security pension based upon a final pay formula. No supplementary pension tends to be provided (in excess of this entitlement).
Employees in the private sector are entitled to a Social Security pension and sometimes to a supplementary non-state pension.
Funding in Belgium is via pension funds or insurance contracts.
In recent years there has been a shift from DB to DC and hybrid schemes.

Law does not require any form of revaluation. The majority of DB and hybrid schemes do not provide a revaluation.

Law requires employers to allow a transfer-out and requires transfers to be facilitated, through the normal pension scheme or a specific scheme set up for this purpose.

### France

The majority of employees in France are not entitled to pension benefits other than those provided by the basic state scheme (social security) and the mandatory complementary PAYG schemes (principally affiliated to ARRCO and AGIRC).
Public sector employees are all covered by mandatory state plans which provide a high replacement ration. At least 75% of final salary is guaranteed after completing 40 years of service.
A voluntary DC plan, entirely financed by the employee contributions, is available to all state employees that wish to build up a complementary source of revenues fir their retirement.

Rights under DB-schemes cannot be vested before retirement age without losing the favourable tax regime that allows tax deductibility. Benefits under DC schemes are fully vested.

Revaluation of benefits is usually based on the state pension increase (close to the inflation rate in the last few years).
In all DB schemes, rights cannot be transferred in or out since benefits are not usually vested and are only available at retirement. Rights under DC schemes or collective savings plans can be transferred in or out.

Private companies can offer a large range of supplementary schemes; DB or DC. The trend is to convert DB-schemes into DC for managers and implement collective retirement saving plans for employees.

**Germany**

Public sector employees are all entitled to supplementary pension benefits.
Public service benefits are DB. The benefit amount is computed with the sum of so called accumulated points that are derived by multiplying the gross annual pay with conversion factors.
The public sector is mainly financed with employer-allocated funds and to a lesser extent with funds allocated to the employees.
Schemes that are sponsored by the employer normally have a vesting period of 5 years.

Approximately 46% of private sector employees are entitled to company pensions.
58% of liabilities is in unfunded book reserve schemes.

49% of DB-schemes apply revaluation of dormant pension rights.

For unfunded (book reserved) liabilities, transfer rights are hardly ever granted. For vehicles similar to insurance there are minimum funding requirements in case of transfer of rights.

**Ireland**

Pension provision within the public sector is still almost exclusively on a defined benefit basis. Within the public sector, pension schemes are generally unfunded.

A significant proportion of Ireland-based schemes either have no vesting period or a short period of between one and six months.

The level of coverage in the private sector is relatively low. In recent years many private employers have ceased to offer defined benefit pension accrual for current employees and have replaced this with a defined contribution arrangement.

Public sector schemes provide revaluations in line with pay rises.

The majority of Ireland-based pension schemes permit employees to transfer-in pension rights in accordance with the statutory requirements. Over two-thirds of schemes permit transfers out at all times and the remainder permit transfers within specified time limits.

**Italy**

There is a mechanism of tacit approval on the basis of which the employee statutory severance pay will be transferred into a pension fund, unless the employee decides differently.

**Netherlands**

Public sector workers participate in the multi-employer pension fund for civil servants, teachers and military forces. The scheme is DB, based on average pay.
All pension plans in the Netherlands are funded.

The waiting period for schemes in the Netherlands is limited to two months.
Revaluation of pension rights is not required. Deferred pension rights are revaluated in the same way as those of pensions in payment.

Individual transfer-in and transfer-out rights have existed since 1994.

**Poland**

Employer pension programs apply the TEE taxation approach, which means that contributions are taxed, while investment returns and benefits are not taxed.

90% of pension plans in Poland are DC.

transfer of pension rights is allowed only between the same type of plan. There is no possibility to transfer rights and assets from non-qualified into qualified and from qualified into non-qualified plans.

**Spain**

Supplementary pension for public sector employees can be established through qualified pension schemes or other authorised vehicles. Public sector workers have been mainly covered by defined contribution schemes.

In the case of DC-schemes, non of the organisations allow transferring of pension rights.

**UK**

Public sector employers have historically - up to 2005 - provided DB schemes based on final pay and length of service, with full cost-of-living indexing of pension entitlements in deferment and in payment.
Given the significant increase in the value of these benefits in recent years - as a result of increased longevity and lower real interest rates - public sector schemes are now being converted to a hybrid design. These new hybrid schemes retain the “final pay” design, but also involve sharing risks through negotiated benefit modifications and changes to employee contribution rates.

A high proportion of public sector schemes are unfunded PAYG-schemes, where the benefits are guaranteed by the employers, and underwritten by central government.
DB-schemes are required to revalue preserved benefits in line with the Retail Price Index (with a cap of 5% per annum).

In over half of UK-based schemes, transfer-in rights are either not permitted or only permitted with employer/trustee discretion. All UK-based schemes are subject to statutory transfer-out requirements. These generally ensure that employees have an automatic right to cash transfers once they have completed 3 months' service in the scheme.

**Annex 2 which possible solutions would solve which problems?**

| | vesting periods | waiting periods | losses due to leaving a cost-efficient scheme | losses due to not indexing dormant pension rights | limit number of entitlements |
|---|---|---|---|---|---|
| Pan European Pension fund | yes | yes | no | (yes) | yes |
| transferability or portability | no | no | yes | (yes) | yes |
| mutual recognition | yes | yes | no | no | no |
| Virtual pension home | yes | yes | yes | (yes) | yes |

# ANNEX 4 MEMBERS OF THE EXPERT GROUP

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